

**ATTACHMENT V**

**MEMORANDUM OF UNDERSTANDING BETWEEN THE STATE OF NEW JERSEY,  
DEPARTMENT OF THE TREASURY, THE DEPARTMENT OF HUMAN SERVICES  
OF THE WOODBINE DEVELOPMENTAL CENTER AND THE CAPE MAY COUNTY  
MUNICIPAL UTILITIES AUTHORITY, 2011**

See associated files for attachment.

**MEMORANDUM OF UNDERSTANDING**

**Between the**

**STATE OF NEW JERSEY  
DEPARTMENT OF THE TREASURY  
Division of Purchase and Property**

**DEPARTMENT OF HUMAN SERVICES  
Division of Developmental Disabilities  
Woodbine Developmental Center**

**CAPE MAY COUNTY MUNICIPAL UTILITY AUTHORITY**

**FOR THE  
SALE AND DELIVERY OF METHANE GAS PRODUCED AT THE  
COUNTY'S LANDFILL  
TO THE  
WOODBINE DEVELOPMENTAL CENTER  
AS A FUEL SOURCE FOR BOILER OPERATION**

**THIS** Memorandum of Understanding (MOU), dated March 2, 2011, is between the State of New Jersey, acting by and through the Director of the Division of Purchase and Property in the Department of the Treasury, for and on behalf of the New Jersey Department of Human Services (State), and Cape May County Municipal Utilities Authority (CMCMUA), a municipal utility authority duly established by Cape May County pursuant to N.J.S.A. 40:14B-1 et seq. and a public body corporate and politic of the State of New Jersey, (collectively, the Parties); and

**WHEREAS**, the CMCMUA operates the Cape May County Secure Sanitary Landfill (Landfill) the only operating landfill in Cape May County, New Jersey.

**WHEREAS**, the Woodbine Developmental Center, operated by the New Jersey Department of Human Services is located in Cape May County, New Jersey.

**WHEREAS**, in 1995, the Cape May Energy Associates, L.P. a Delaware limited partnership (CMEA) and the CMCMUA entered an Engineering, Construction and Operation Agreement whereby the CMEA provided engineering, construction and operation of energy equipment to the CMCMUA related to the delivery of landfill gas (LFG) produced at the Landfill; and

**WHEREAS**, on April 25, 1997, the State and the Cape May Energy Associates, L.P., and New Jersey Limited Partnership, pursuant to N.J.S.A. 52:34-10(c), entered into a Purchase Bureau Agreement (the "1997 Agreement") on behalf of the NJ Department of Human Services,

for a period of twelve (12) years, beginning on May 12, 1998, the date on which LFG from the CMCMUA's landfill was first delivered to the Department of Human Services, Woodbine Developmental Center (User); and

**WHEREAS**, in 2008, the Director of the Division of Purchase and Property on behalf of the Department of Human Services executed an assignment of proceeds with CMCMUA in which CMEA agreed that the payments the State was making to it should now be made to the CMCMUA, and the State and the CMCMUA continued operating under the 1997 Agreement with CMCMUA assuming CMEA's responsibilities; and

**WHEREAS**, on or about December 31, 2009, the State ceased utilizing LFG from the CMCMUA following the entry of an Administrative Consent Order with the New Jersey Department of Environmental Protection (NJDEP); and

**WHEREAS**, the 1997 Agreement ultimately expired on or about May 12, 2010; and

**WHEREAS**, the CMCMUA previously has procured and installed the necessary equipment to remove excess amounts of sulfur from the LFG and has provided certified testing results to the NJDEP demonstrating the sulfur content of its product to be 20.2 ppm or less depending on the sampling method employed, and has committed to abide by the sulfur removal equipment manufacturer's preventive maintenance program which requires that the filters and any/all other parts be replaced when the sulfur content rises toward 250 ppm; and,

**WHEREAS**, the work of the CMCMUA includes the sale and delivery to User, at the Delivery Point (defined as the location of the LFG's delivery pipe within the boiler room immediately downstream of the filter/seperator provided by the CMCMUA) of LFG, collected at the Landfill; and

**WHEREAS**, the STATE has construction projects underway to replace the User's three (3) powerhouse boilers with boilers capable of burning LFG, Natural Gas; and No. 2 fuel oil; and

**WHEREAS**, the User's new main boiler was operational on November 5, 2010 (firing natural gas only) and the two supplementary boilers are scheduled to be operational on July 1, 2011; and,

**WHEREAS**, the State desires to maximize use of CMCMUA-supplied LFG in all three of the User's new boilers located at the Woodbine Developmental Center, provided that the CMCMUA-supplied LFG allows User's equipment (1) to achieve and maintain efficient combustion characteristics, (2) to meet the NJDEP required air quality regulations, (3) to comply with any other NJDEP requirements or operating permits, and, specifically, the User's operating permit, and to maintain safe equipment operations; and

**WHEREAS**, Parties desire to enter into an Agreement whereby the User may again utilize LFG as one of its fuel sources, but with no required minimum purchase or restrictions placed on the User's ability to use other fuel sources;

**NOW, THEREFORE**, the parties agree to enter into a new Agreement, embodied in this MOU, with the following tenets:

1. The State will, to the extent it deems appropriate, maximize its use of CMCMUA's LFG while also obtaining efficient and safe combustion for the boilers it operates and complying with NJDEP requirements. If the State or User determines that the use of Contactor-supplied LFG does not allow the User to achieve these ends, the User has the option, to be exercised in its sole discretion to use other fuel types and sources and to suspend firing CMCMUA-supplied LFG. It is understood by the Parties that the User's new boiler equipment has an automated system to cease use of LFG if the LFG being delivered does not meet certain standards. A cessation of use of CMCMUA-supplied-LFG for an extended period of time alone will not terminate this MOU.

2. It is understood by the parties, that the anticipated volume of LFG used by the State will change upon the installation of the new boiler equipment depending upon the required combustion characteristics necessary at each boiler to satisfy the State facility's DEP operating permit parameters for emissions, maximize combustion efficiency, and maintain safe equipment operations.

3. The State and User shall use best efforts to notify the CMCMUA immediately after learning of (i) any material malfunction in the operation of the User's facility or (ii) any interruption or alteration of LFG supply to the User's facility.

4. The CMCMUA shall have or install, and maintain at their facility, the equipment needed to deliver LFG that meets all applicable DEP and EPA requirements and to ensure sufficient pressure (PSI) and thermal content (BTU's) to satisfy the User's operating requirements as set forth in Section 5. The parties agree that the CMCMUA shall use reasonable commercial efforts to deliver quantities of LFG of a quality sufficient to satisfy the requirements of the User's energy needs. However, the CMCMUA is under no obligation to produce or supply a minimum quantity of landfill gas for the User's consumption.

5. The CMCMUA shall use best efforts to notify the State and the User immediately after learning of (i) any material malfunction in the operation of the CMCMUA's LFG equipment or (ii) any interruption or alteration of LFG supply to the User's facility.

6. a. The CMCMUA shall provide the User with certified laboratory test results, from a vendor chosen by the CMCMUA, and supply an analysis of the content and quality of the LFG on an annual basis. The CMCMUA shall provide a copy of its Field Reports, including the average methane content, total cubic feet of LFG delivered, and MMBTU's utilized at standard conditions on a daily basis, which shall be submitted to the State on a monthly basis.

b. The CMCMUA shall cause and record daily measurements of LFG at the Delivery Point, to determine, at a minimum, the methane and oxygen content of LFG at such point, as well as its pressure and flow using an industry standard Gas Emission Monitor or equivalent device reasonably approved by CMCMUA and the State. The hydrogen sulfide content of the LFG and the oxygen and temperature of the LFG shall also be measured and

recorded daily with an industry standard meter located at the CMCMUA's site. The meter readings will be reported to the User by the CMCMUA on a monthly basis or the CMCMUA may provide, at its expense, a computer assisted direct read capability in the User's powerhouse at a mutually acceptable location.

7. The parties agree that the CMCMUA shall calibrate their meters for flow, temperature, pressure and methane content every six (6) months and at the CMCMUA's expense, have an independent third party verify that they are functioning accurately on an annual basis. The CMCMUA shall record readings from the meters for flow and methane content on a continuous basis and also if upon demand by the State. The CMCMUA shall make periodic tests of metering equipment as mutually deemed necessary by both the CMCMUA and the State. The State shall have access to such measuring equipment, reports and charts at all reasonable times when accompanied by a representative of the CMCMUA, but readings, calibrations and adjustments thereof that pertain to revenue calculations shall be done by employees or agents of the CMCMUA with the acceptance and approval of the methodology and computations by the State. The CMCMUA shall give three (3) days notice to the State prior to any annual verification calibration and/or testing of metering equipment, so that the State may have a representative witness said calibration and testing.

The State shall have the right of challenge the accuracy of the CMCMUA's meters and when challenged, the meters shall be tested for sufficiency and accuracy by the CMCMUA in the presence of representatives of the State by an independent third party with the cost to be borne by the CMCMUA if the meters are found to be inaccurate by 2% or more, and by the State if the meters are found to be accurate or inaccurate by less than 2%.

If at any time a meter has been found to be inaccurate by 2% or more, then corrections to billings shall be made at the rate of such inaccuracy for any period of inaccuracy known or agreed upon, if unknown or not agreed upon, the corrections period shall one-half (1/2) of the time elapsed since the last calibration.

The records of the readings of the meter shall remain the property of the CMCMUA and shall be kept on file and retained by the CMCMUA for a period of time consistent with either Parties' applicable records retention schedules, whichever is of longer duration. The CMCMUA shall provide the State or the User with certified as true and correct copies of the records of the readings of the meter upon written request, at no charge.

8. The parties agree that the CMCMUA-supplied LFG shall be delivered to the Delivery Point at a pressure of no less than 8 P.S.I. with the optimum target being 10 P.S.I., a maximum temperature of 140 degrees Fahrenheit, a water content which does not result in excess condensation at the delivery temperature at the User's powerhouse injection point, and a minimum thermal content of 460 BTU/standard cubic foot with the optimum target being 500 BTU/standard cubic foot. If LFG delivered to the Delivery Point fails to meet any of the above parameters, as determined by any metering/measuring equipment at the CMCMUA's facility or at the State's facility, the State may decline the receipt of LFG and use an alternate fuel until the CMCMUA can prove that the LFG meets the parameters to the satisfaction of the State.

9. Condensate return shall be metered at the CMCMUA's condensate pump and monitored for reasonable consistency over time. The State shall connect all drip legs in the User's facility's powerhouse associated with condensate in the landfill gas, under construction project M1422-00, to the CMCMUA's condensate return line in order to return all condensate to the CMCMUA for proper disposal. The drip legs in the landfill gas supply piping shall be exercised on a monthly basis by the CMCMUA. The CMCMUA shall dispose of the resultant condensate from the return line to the CMCMUA's site as appropriate and not on the User's property.

10. The CMCMUA reserves the right to make comment on any permit applications or renewals as it relates to the burning of landfill gas.

11. The parties agree that cost for LFG will be determined as follows: Beginning with the delivery after execution of this MOU, the monthly cost for LFG will be based upon the actual amount of energy content, expressed in million BTUs (MMBTU) delivered to the State's Delivery Point based upon the metered flow and the measured methane content to derive the total monthly MMBTUs, times the applicable monthly NYMEX Natural Gas futures contract expiration price (Expiration Price) plus an additional \$0.90 per MMBTU to compensate CMCMUA for delivery to the Delivery Point. The Expiration price used for cost computations shall be capped at \$8.50 per MMBTU for the duration of the agreement. If the STATE at some point in the future determines it is in the State's best interest to consider the development of a Combine Heat and Power (CHP) facility at Woodbine Developmental Center, this pricing scenario may be amended, in writing, upon the written consent of both parties.

12. Invoices for LFG delivered to the User by the CMCMUA shall be rendered on a monthly basis and based upon the amount of MMBTUs delivered to the Delivery Point. The STATE shall pay the CMCMUA within 60 business days after receipt of each invoice for Landfill Gas supplied by the CMCMUA. All payments will comply with the provisions of the New Jersey Prompt Payment Act, N.J.S.A. 52:32-32.

13. To the extent applicable to a public body corporate and politic of the State of New Jersey as such the CMCMUA, the State's Standard Terms and Conditions for Waivered Commodities, dated July 31, 2007, (Standard Terms) are incorporated herein. Notwithstanding the provisions of the Standard Terms and Conditions, in the event of a conflict between this MOU and the Standard Terms, this MOU shall control. For the sake of clarity, whenever the term "bidder" or "contractor" is used in the Standard Terms, it shall mean CMCMUA.

14. The Term of this Memorandum of Understanding shall be for a period of three (3) years, commencing on the date that LFG is first delivered to the User after the User's replacement main boiler becomes operational, projected to be on or about January 21, 2011. This Memorandum of Understanding shall automatically be extended five (5) additional 3-year terms, unless the State or the CMCMUA terminates it at the end of the then-current term by giving the other party written notice of the intent to terminate at least 6 months prior to the end of the then-current term. In the event of one or more of User's cessations of use of CMCMUA-supplied LFG for an extended period of time, the State may terminate this MOU upon 90 days written notice of intent and a concurrent 90-day period of time for CMCMUA to cure by taking

commercially reasonable steps to ensure that the supply of LFG meets the standards required by the User.

15. Performance under this Agreement shall be excused to the extent that inability to perform is caused by force majeure, which shall mean hurricane, tornado, flood, lightning, earthquake, fire, civil disturbance, labor dispute, act of God or of the public enemy, or any other cause similarly beyond the control of the non-performing party. The non-performing party shall use all reasonable efforts to cure its non-performance due to the force majeure, however, if despite the use of such reasonable efforts, the event of force majeure shall not be cured, neither party shall have any liability to the other as a consequence of the force majeure.

16. Whenever an unforeseen change in applicable law or regulation affects the performance of either party to this agreement, the affected party shall notify the other party as soon as practicable and the parties may terminate the MOU or negotiate an appropriate amendment to the MOU.

17. Notices required under the MOU shall be given to and by the parties in writing and sent by U.S. Mail, certified return receipt requested or tracked delivery services as follows:

To the State:                   Commissioner  
New Jersey Department of Human Services  
PO Box 700  
Trenton, New Jersey 08625-0700

To the User:                    Chief Executive Officer  
Woodbine Developmental Center  
PO box 601  
Dehirsh Avenue, Rte. 55  
Woodbine, NJ 08270

To the CMCMUA:            Executive Director  
Cape May County Municipal Utilities Authority  
P.O. Box 610  
Cape May Court House, New Jersey 08210

18. This Agreement may only be amended by a writing executed by both Parties.

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IN WITNESS WHEREOF, the parties have executed this MEMORANDUM OF UNDERSTANDING, which will be effective on the date this Memorandum is executed by both the CCMUA and the Director of the New Jersey Division of Purchase and Property on behalf of the State.

**CAPE MAY COUNTY MUNICIPAL UTILITIES AUTHORITY**

By: Charles M. Norkis  
Charles M. Norkis, P.E.  
Executive Director

Date: 2/17/2011

**STATE OF NEW JERSEY DEPARTMENT OF THE TREASURY**

By: Jignasa Desai-McCleary  
for Jignasa Desai-McCleary  
Acting Director  
Division of Purchase and Property

Date: 3/2/11

**STATE OF NEW JERSEY DEPARTMENT OF HUMAN SERVICES**

By: Jennifer Velez  
Jennifer Velez  
Commissioner

Date: 2/9/11

**DEPARTMENT OF THE TREASURY OFFICE OF ENERGY SAVINGS**

By: John Rhodes  
John Rhodes  
Director

Date: 1/13/11

Approved as to Legal Form:

PAULA T. DOW  
ATTORNEY GENERAL OF NEW JERSEY

By: Beth Leigh Mitchell  
Beth Leigh Mitchell  
Deputy Attorney General  
Assistant

Date: 3/1/11



## STANDARD TERMS & CONDITIONS WAIVERED COMMODITIES

July 31, 2007

- I. By Submitting a proposal in response to an Agency Request for services and/or goods ("Agency Request"), the bidder certifies that it understands and agrees that all the following terms, conditions and definitions (collectively the "Standard Terms and Conditions") are part of any contract or award placed as a result of the Agency Request unless specifically and expressly modified by reference in the Agency Request or in a writing executed by the Director, Division of Purchase and Property. Unless the bidder is specifically instructed, the following terms and conditions will apply to all contracts or purchase agreements made with the State of New Jersey. If applicable, these terms are in addition to the terms and conditions set forth in the Request for Quotations (RFQ) and should be read in conjunction with same unless the RFQ specifically indicates otherwise.
- II. If a bidder proposes changes or modifications or takes exception to any of the State's terms and conditions, the bidder must so state specifically in writing in the bid proposal. Any proposed change, modification or exception in the State's terms and conditions by a bidder may be a factor in the determination of an award of a contractor purchase agreement.
- III. All of the State's terms and conditions will become a part of any contract(s) or order(s) awarded. In the event the bidder's terms and conditions conflict with the State's, the State's terms and conditions will prevail, unless the bidder is notified in writing of the State's acceptance of the bidder's terms and conditions.
- IV. The statutes, laws or codes cited are available for review at the New Jersey State Library, 185 West State Street, Trenton, New Jersey 08625.
- V. If awarded a contract or purchase agreement, the bidder's status shall be that of any independent principal and not as an employee of the State.

### 1. STATE LAW REQUIRING MANDATORY COMPLIANCE BY ALL CONTRACTORS

#### 1.1 BUSINESS REGISTRATION

- a. All New Jersey and out of State Corporations must obtain a Business Registration Certificate (BRC) from the Department of the Treasury, Division of Revenue prior to conducting business in the State of New Jersey.
- b. Proof of valid business registration with the Division of Revenue, Department of the Treasury, State of New Jersey, shall be submitted by the bidder and, if applicable, by every subcontractor of the bidder, with the bidder's bid. No contract will be awarded without proof of business registration with the Division of Revenue. Any questions in this regard can be directed to the Division of Revenue at (609) 292-1730. Form NJ-REG. Can be filed online at <http://www.state.nj.us/njbgs/services.html>.
- c. Before performing work under the contract, all sub-contractors of the contractor must provide to the contractor proof of New Jersey business registration. The contractor shall forward the business registration documents on to the using agency.

1.2 ANTI-DISCRIMINATION - All parties to any contract with the State of New Jersey agree not to discriminate in employment and agree to abide by all anti-discrimination laws including those contained within N.J.S.A. 10:2-1 through N.J.S.A. 10:2-4, N.J.S.A.10:5-1 et seq. and N.J.S.A.10:5-31 through 10:5-38, and all rules and regulations issued there under.

- 1.3 PREVAILING WAGE ACT - The New Jersey Prevailing Wage Act, N.J.S.A. 34:11-56.26 et seq. is hereby made part of every contract entered into on behalf of the State of New Jersey through the Division of Purchase and Property, except those contracts which are not within the contemplation of the Act. The bidder's signature on this proposal is his guarantee that neither he nor any subcontractors he might employ to perform the work covered by this proposal has been suspended or debarred by the Commissioner, Department of Labor for violation of the provisions of the Prevailing Wage Act and/or the Public Works Contractor Registration Acts; the bidder's signature on the proposal is also his guarantee that he and any subcontractors he might employ to perform the work covered by this proposal will comply with the provisions of the Prevailing Wage and Public Works Contractor Registration Acts, where required.
- 1.3(a) PUBLIC WORKS CONTRACTOR REGISTRATION ACT - The New Jersey Public Works Contractor Registration Act requires all contractors, subcontractors and lower tier subcontractors who bid on or engage in any contract for public work as defined in N.J.S.A. 34:11-56.26 be first registered with the New Jersey Department of Labor and Workforce Development. Any questions regarding the registration process should be directed to the Division of Wage and Hour Compliance at (609) 292-9464 or <http://www.nj.gov/labor/lasse/lspubcon.html>;
- 1.4 AMERICANS WITH DISABILITIES ACT - The contractor must comply with all provisions of the Americans With Disabilities Act (ADA), P.L. 101-336, in accordance with 42 U.S.C. 12101 et seq. 1.4
- 1.5 THE WORKER AND COMMUNITY RIGHT TO KNOW ACT - The provisions of N.J.S.A. 34:5A-1 et seq. which require the labeling of all containers of hazardous substances are applicable to this contract. Therefore, all goods offered for purchase to the State must be labeled by the contractor in compliance with the provisions of the Act.
- 1.6 OWNERSHIP DISCLOSURE - Contracts for any work, goods or services cannot be issued to any corporation or partnership unless prior to or at the time of bid submission the bidder has disclosed the names and addresses of all its owners holding 10% or more of the corporation or partnership's stock or interest. Refer to N.J.S.A. 52:25-24.2.
- 1.7 COMPLIANCE - LAWS - The contractor must comply with all local, state and federal laws, rules and regulations applicable to this contract and to the goods delivered and/or services performed hereunder.
- 1.8 COMPLIANCE - STATE LAWS - It is agreed and understood that any contracts and/or orders placed as a result of this proposal shall be governed and construed and the rights and obligations of the parties hereto shall be determined in accordance with the laws of the STATE OF NEW JERSEY.
- 1.9 P.L. 2004, C.57. The contractor and its subcontractors must comply with P.L. 2004, C.57, which requires the contractor and its subcontractors to collect and remit applicable State use tax to the New Jersey Division of Taxation on the sale of all goods and services in the State of New Jersey subject to the provisions of the "Sales and Use Tax Act," P.L. 1966, C.30 (N.J.S.A. 54:32B-1 et seq.).
- 1.10. COMPLIANCE WITH N.J.S.A. 19:44A-20.13 et seq. All contractors are required to comply with the "pay to play" disclosure requirements set forth in the statute. Compliance requires the contractor to submit the Executive Order 134 Certification and Disclosure (DPP134-C &D). In addition, the contractor is under a continuing duty to disclose during the time of the contract all contributions made during the term of the contract covered under the statute. Towards satisfying that duty, the contractor shall submit the Continuing Disclosure of Political Contributions (DPP134-CD) when required

under the statute. Failure to comply with any of the requirements of the Executive Order may result in the termination of the contract for the reasons set forth in the statute. All forms and instructions are available on the Division of Purchase and Property web-site: <http://www.state.nj.us/treasury/purchase/forms.htm>

- 1.11 COMPLIANCE - CODES - The contractor must comply with NJUCC and the latest NEC70, B.O.C.A. Basic Building code, OSHA and all applicable codes for this requirement. The contractor will be responsible for securing and paying all necessary permits, where applicable.
- 1.12 SET-OFF FOR STATE TAXES AND CHILD SUPPORT: Pursuant to N.J.S.A. 54:49-19, if the Contractor is entitled to payment under the Contract at the same time as it is indebted for any State tax (or is otherwise indebted to the State) or child support, the State Treasurer may set off that payment by the amount of the indebtedness.
- 1.13 Contractor is advised of its responsibility to file an annual disclosure statement on political contributions with the New Jersey Election Law Enforcement Commission (ELEC), pursuant to P.L. 2005, c. 271, section 3 if the contractor receives contracts in excess of \$50,000 from a public entity in a calendar year. It is the contractor's responsibility to determine if filing is necessary. Failure to so file can result in the imposition of financial penalties by ELEC. Additional information about this requirement is available from ELEC at 888-313-3532 or at <http://www.elec.state.nj.us/>
- 1.14 SUBCONTRACTORS: A vendor that will subcontract any of the work or services to be provided under the contract shall submit with its proposal to the agency a **Notice of Intent to Subcontract** form located on the Advertised Solicitation, Current Bid Opportunities webpage <http://www.state.nj.us/treasury/purchase/forms/SubContracting.pdf>

## 2. LIABILITIES

- 2.1 LIABILITY - COPYRIGHT - The contractor shall hold and save the State of New Jersey, its officers, agents, servants and employees, harmless from liability of any nature or kind for or on account of the use of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, article or appliance furnished or used in the performance of his contract.
- 2.2 INDEMNIFICATION - The contractor shall assume all risk of and responsibility for, and agrees to indemnify, defend, and save harmless the State of New Jersey and its employees from and against any and all claims, demands, suits, actions, recoveries, judgments and costs and expenses in connection therewith on account of the loss of life, property or injury or damage to the person, body or property of any person or persons whatsoever, which shall arise from or result directly or indirectly from the work and/or materials supplied under this contract. This indemnification obligation is not limited by, but is in addition to the insurance obligations contained in this agreement.
- 2.3 INSURANCE - The contractor shall secure and maintain in force for the term of the contract liability insurance as provided herein. The contractor shall provide the State of New Jersey with current certificates of insurance for all coverage and renewals thereof which must contain the proviso that the insurance provided in the certificate shall not be canceled for any reason except after written notice to:

STATE OF NEW JERSEY  
Purchase Bureau - Waiver Number or Purchase Order Number

The insurance to be provided by the contractor shall be as follows.

- a. Commercial General Liability policy as broad as the standard coverage forms in use in the State of New Jersey which shall not be circumscribed by any endorsements limiting the breadth of coverage.

The limits of liability for bodily injury and property damage shall not be less than \$1 million per occurrence as a combined single limit.

- b. Automobile liability insurance which shall be written to cover any automobile used by the insured. Limits of liability for bodily injury and property damage shall not be less than \$1 million per occurrence as a combined single limit.
- c. Worker's Compensation Insurance applicable to the laws of the State of New Jersey and Employers Liability Insurance with limits not less than

\$1,000,000 BODILY INJURY, EACH OCCURRENCE  
\$1,000,000 DISEASE EACH EMPLOYEE  
\$1,000,000 DISEASE AGGREGATE LIMIT

### 3. TERMS GOVERNING ALL PROPOSALS TO NEW JERSEY PURCHASE BUREAU

- 3.1 CONTRACT AMOUNT - The estimated amount of the contract(s), when stated on the Purchase Order, shall not be construed as either the maximum or minimum amount which the State shall be obliged to order as the result of this Agency Request or any contract entered into as a result of this Agency Request.
- 3.2 AVAILABILITY OF FUNDS: The State's obligation to make payment under the Contract is contingent upon the availability of appropriated funds from which payment for contract purposes can be made. No legal liability on the part of the State for payment of any money shall arise unless and until funds are made available each fiscal year to the using agency by the State Legislature.
- 3.3 CONTRACT PERIOD AND EXTENSION OPTION - If, in the opinion of the Director of the Division of Purchase and Property, it is in the best interest of the State to extend any contract entered into as a result of this Agency Request, the contractor will be so notified of the Director's intent at least 30 days prior to the expiration date of the existing contract. The contractor shall have 15 calendar days to respond to the Director's request to extend the contract. If the contractor agrees to the extension, all terms and conditions of the original contract, including price, will be applicable.
- 3.4 CONTRACT TRANSITION - In the event services end by either contract expiration or termination, it shall be incumbent upon the contractor to continue service, if requested by the State, until new services can be completely operational. The contractor acknowledges its responsibility to cooperate with the replacement contractor and the State to ensure a smooth and timely transition to the replacement contractor. Such transitional period shall not extend more than one hundred eighty (180) days beyond the expiration date of the contract or any extension thereof. The contractor will be reimbursed for services during the transition period at the rates in effect when this section is invoked by the State.

### 3.5 BID AND PERFORMANCE SECURITY

- a. Bid Security - If bid security is required, such security must be submitted with the bid in the amount listed in the Request for Proposal, see N.J.A.C. 17:12-2.4. Acceptable forms of bid security are as follows:
  1. A properly executed individual or annual bid bond issued by an insurance or security company authorized to do business in the State of New Jersey, a certified or cashier's check drawn to the order of the Treasurer, State of New Jersey, or an irrevocable letter of credit drawn naming the Treasurer, State of New Jersey as beneficiary issued by a federally insured financial institution.
  2. The State will hold all bid security during the evaluation process. As soon as is practicable after the completion of the evaluation, the State will:
    - a. Issue an award notice for those offers accepted by the State;
    - b. Return all bond securities to those who have not been issued an award notice.

All bid security from contractors who have been issued an award notice shall be held until the successful execution of all required contractual documents and bonds (performance bond, insurance, etc. If the contractor fails to execute the required contractual documents and bonds within thirty (30) calendar days after receipt of award notice, the contractor may be found in default and the contract terminated by the State. In case of default, the State reserves all rights inclusive of, but not limited to, the right to purchase material and/or to complete the required work in accordance with the New Jersey Administrative Code and to recover any actual excess costs from the contractor. Collection against the bid security shall be one of the measures available toward the recovery of any excess costs.

- b. Performance Security - If performance security is required, the successful bidder shall furnish performance security in such amount on any award of a term contractor line item purchase, see N.J.A.C. 17:12-2.5. Acceptable forms of performance security are as follows:
  1. The contractor shall be required to furnish an irrevocable security in the amount listed in the Agency Request payable to the Treasurer, State of New Jersey, binding the contractor to provide faithful performance of the contract.
  2. The performance security shall be in the form of a properly executed individual or annual performance bond issued by an insurance or security company authorized to do business in the State of New Jersey, a certified or cashier's check drawn to the order of the Treasurer, State of New Jersey, or an irrevocable letter of credit drawn naming the Treasurer, State of New Jersey as beneficiary issued by a federally insured financial institution.

The Performance Security must be submitted to the State within 30 days of the effective date of the contract award and cover the period of the contract and any extensions thereof. Failure to submit performance security may result in cancellation of contract for cause pursuant to provision 3.5b, 1, and nonpayment for work performed.

### 3.6 TERMINATION OF CONTRACT

a. For Convenience:

Notwithstanding any provision or language in this contract to the contrary, the Director may terminate at any time, in whole or in part, any contract entered into as a result of this Agency Request for the convenience of the State, upon no less than 30 days written notice to the contractor.

b. For cause:

1. Where a contractor fails to perform or comply with a contract, and/or fails to comply with the complaints procedure in N.J.A.C. 17:12-4.1 et seq., the Director may terminate the contract upon 10 days notice to the contractor with an opportunity to respond.
  2. Where a contractor continues to perform a contract poorly as demonstrated by formal complaints, late delivery, poor performance of service, short-shipping etc., so that the Director is repeatedly required to use the complaints procedure in N.J.A.C. 17:12-4.1 et seq. the Director may terminate the contract upon 10 days notice to the contractor with an opportunity to respond.
  3. The Director's right to rescind the contract award for cause includes any reason set forth in any other provision contained in the Contract.
  4. The failure of a Contractor to respond to the Director's notice of intent to rescind the contract award within the ten (10) day period automatically converts said notice into a final agency decision without further action of the Director.
  5. The Director's right to rescind the contract award for cause includes the Contractor's performance on any other State contract, a violation of state or federal law (as demonstrated by the Contractor's admissions of same or a final decision of an appropriate decision-making body), or any reason related to the ability of the contractor to fulfill its contractual obligations. The Director may also rescind any contract with a federally debarred contractor or a contractor which is presently identified on the list of parties excluded from federal procurement and non-procurement contracts.
  6. Except for termination of the contract by the Director for convenience, upon rescission of the contract award, the Director may acquire the services which are the subject of the Contract from another source and may charge the Contractor whose contract award has been rescinded the difference in price, and the said Contractor shall be liable for same.
- c. In cases of emergency the Director may shorten the time periods of notification and may dispense with an opportunity to respond.
- d. In the event of termination under this section, the contractor will be compensated for work performed in accordance with the contract, up to the date of termination. Such compensation may be subject to adjustments.

3.7 COMPLAINTS - Where a bidder has a history of performance problems as demonstrated by formal complaints and/or contract 3.6 cancellations for cause

pursuant to 3.5b a bidder may be bypassed for this award. See N.J.A.C. 17:12-2.8.

3.8 EXTENSION OF CONTRACT QUASI-STATE AGENCIES - It is understood and agreed that in addition to State Agencies, Quasi-State 3.7 Agencies may also participate in this contract. Quasi-State Agencies are defined in N.J.S.A. 52:27B-56.1 as any agency, commission, board, authority or other such governmental entity which is established and is allocated to a State department or any bi-state governmental entity of which the State of New Jersey is a member.

3.9 EXTENSION OF CONTRACTS TO POLITICAL SUBDIVISIONS, VOLUNTEER FIRE DEPARTMENTS AND FIRST AID SQUADS, AND INDEPENDENT INSTITUTIONS OF HIGHER EDUCATION - N.J.S.A. 52:25-16.1 permits counties, municipalities and school districts to participate in any term contract(s) that may be established as a result of this proposal.

N.J.S.A. 52:25-16.2 permits volunteer fire departments, volunteer first aid squads and rescue squads to participate in any term contract(s) that may be established as a result of this proposal.

N.J.S.A. 52:25-16.5 permits independent institutions of higher education to participate in any term contract(s) that may be established as a result of this proposal, provided that each purchase by the independent institution of higher education shall have a minimum cost of \$500.

In order for the State contract to be extended to counties, municipalities, school districts, volunteer fire departments, first aid squads and independent institutions of higher education the bidder must agree to the extension and so state in his bid proposal. The extension to counties, municipalities, school districts, volunteer fire departments, first aid squads and independent institutions of higher education must be under the same terms and conditions, including price, applicable to the State.

3.10 EXTENSIONS OF CONTRACTS TO COUNTY COLLEGES - N.J.S.A. 18A:64A-25.9 permits any college to participate in any term 3.9 contract(s) that may be established as a result of this proposal.

3.11 EXTENSIONS OF CONTRACTS TO STATE COLLEGES - N.J.S.A. 18A:64-60 permits any State College to participate in any term 3.10 contract(s) that may be established as a result of this proposal.

3.12 SUBCONTRACTING OR ASSIGNMENT - The contract may not be subcontracted or assigned by the contractor, in whole or in part, without the prior written consent of the Director of the Division of Purchase and Property. Such consent, if granted, shall not relieve the contractor of any of his responsibilities under the contract.

In the event the bidder proposes to subcontract for the services to be performed under the terms of the contract award, he shall state so in his bid and attach for approval a list of said subcontractors and an itemization of the products and/or services to be supplied by them. A vendor that proposes to subcontract any of the work or services to be provided under the contract shall submit with its proposal to the agency a **Notice of Intent to Subcontract** form located on the Advertised Solicitation, Current Bid Opportunities webpage  
<http://www.state.nj.us/treasury/purchase/bid/summary/<bid#>.shtml>.

Nothing contained in the specifications shall be construed as creating any contractual relationship between any subcontractor and the State.

3.13 MERGERS, ACQUISITIONS - If, subsequent to the award of any contract resulting from this Agency Request, the contractor shall merge with or be acquired by another firm, the following documents must be submitted to the Director, Division of Purchase & Property.

- a. Corporate resolutions prepared by the awarded contractor and new entity ratifying acceptance of the original contract, terms, conditions and prices.
- b. State of New Jersey Bidders Application reflecting all updated information including ownership disclosure, pursuant to provision 1.5.
- c. Vendor Federal Employer Identification Number.
- d. Ownership Disclosure: Within thirty (30) days after any merger or acquisition, the Contractor must disclose the names and addresses of all of its owners and potential owners which hold or may acquire 10% or more of its stock or interest. The Contractor has the continuing obligation to notify the Division of any change in its ownership affecting 10% or more of its ownership as soon as such change has been completed. Compliance with this provision does not give rise to any rights to the Contract to the acquirer or resulting entity (in the case of a merger) without the written consent of the Director.

The documents must be submitted within thirty (30) days of completion of the merger or acquisition. Failure to do so may result in termination of contract pursuant to provision 3.5b.

- e. Dissolution: If, during the term of the Contract, the Contractor's partnership, joint venture or corporation shall dissolve, the Director must be so notified. All responsible parties of the dissolved partnership or corporation must submit to the Director, in writing, the names of the parties proposed to perform the contract and the names of the parties to whom payment should be made. No payment will be made until all parties to the dissolved partnership, joint venture or corporation submit the required documents to the Director. If the Contractor is (1) a corporation, it must provide a copy of the corporate resolution to dissolve; (2) a partnership, the written statement of the partnership, general partner, receiver or custodian thereof that the partnership has dissolved; and (3) a joint venture, the written agreement of the principal parties thereto to dissolve the joint venture.

3.14 PERFORMANCE GUARANTEE OF BIDDER - The bidder hereby certifies that:

- a. The equipment offered is standard new equipment, and is the manufacturer's latest model in production, with parts regularly used for the type of equipment offered; that such parts are all in production and not likely to be discontinued; and that no attachment or part has been substituted or applied contrary to manufacturer's recommendations and standard practice.
- b. All equipment supplied to the State and operated by electrical current is UL listed where applicable.
- c. All new machines are to be guaranteed as fully operational for the period stated in the Agency Request from time of written acceptance by the State. The bidder will render prompt service without charge, regardless of geographic location.



- d. Sufficient quantities of parts necessary for proper service to equipment will be maintained at distribution points and service headquarters.
- e. Trained mechanics are regularly employed to make necessary repairs to equipment in the territory from which the service request might emanate within a 48-hour period or within the time accepted as industry practice.
- f. During the warranty period, the contractor shall replace immediately any material which is rejected for failure to meet the requirements of the contract.
- g. All services rendered to the State shall be performed in strict and full accordance with the specifications stated in the contract. The contract shall not be considered complete until final approval by the State's using agency is rendered.

**3.15 DELIVERY GUARANTEES - Deliveries shall be made at such time and in such quantities as ordered in strict accordance with conditions contained in the Agency Request.**

The contractor shall be responsible for the delivery of material in first class condition to the State's using agency or the purchaser under this contract, and in accordance with good commercial practice.

Items delivered must be strictly in accordance with the Agency Request.

In the event delivery of goods or services is not made within the number of days stipulated or under the schedule defined in the Agency Request, the using agency may be authorized to obtain the material or service from any available source, the difference in price, if any, to be paid by the contractor failing to meet his commitments.

**3.16 DIRECTOR'S RIGHT OF FINAL BID ACCEPTANCE - The Director reserves the right to reject any or all bids, or to award in whole or in part if deemed to be in the best interest of the State to do so. The Director shall have authority to award orders or contracts to the vendor or vendors best meeting all specifications and conditions in accordance with N.J.S.A. 52:34-12. Tie bids will be awarded by the Director in accordance with N.J.A.C.17:12-2.10.**

**3.17 BID ACCEPTANCES AND REJECTIONS - The provisions of N.J.A.C. 17:12-2.9, relating to the Director's right to waive minor elements of non-compliance with bid specifications and N.J.A.C. 17:12-2.2 which defines causes for automatic bid rejection, apply to all proposals and bids.**

**3.18 STATE'S RIGHT TO INSPECT BIDDER'S FACILITIES - The State reserves the right to inspect the bidder's establishment before making an award, for the purposes of ascertaining whether the bidder has the necessary facilities for performing the contract.**

The State may also consult with clients of the bidder during the evaluation of bids. Such consultation is intended to assist the State in making a contract award which is most advantageous to the State.

**3.19 STATE'S RIGHT TO REQUEST FURTHER INFORMATION - The Director reserves the right to request all information which may assist him in making a contract award, including factors necessary to evaluate the bidder's financial capabilities to perform**

the contract. Further, the Director reserves the right to request a bidder to explain in detail how the bid price was determined.

- 3.20 MAINTENANCE OF RECORDS - The contractor shall maintain records for products and/or services delivered against the contract for a period of three (3) years from the date of final payment. Such records shall be made available to the State upon request for purposes of conducting an audit or for ascertaining information regarding dollar volume or number of transactions.

#### 4. TERMS RELATING TO PRICE QUOTATION

- 4.1 PRICE FLUCTUATION DURING CONTRACT - Unless otherwise noted by the State, all prices quoted shall be firm through issuance of contract or purchase order and shall not be subject to increase during the period of the contract.

In the event of a manufacturer's or contractor's price decrease during the contract period, the State shall receive the full benefit of such price reduction on any undelivered purchase order and on any subsequent order placed during the contract period. The Director of Purchase and Property must be notified in writing of any price reduction within five (5) days of the effective date.

Failure to report price reductions will result in cancellation of contract for cause, pursuant to provision 3.5b,1.

- 4.2 DELIVERY COSTS - Unless otherwise noted in the Agency Request, all prices for items in bid proposals are to be submitted F.O.B. Destination. Proposals submitted other than F.O.B. Destination may not be considered. Regardless of the method of quoting shipments, the contractor shall assume all costs, liability and responsibility for the delivery of merchandise in good condition to the State's using agency or designated purchaser.

F.O.B. Destination does not cover "spotting" but does include delivery on the receiving platform of the ordering agency at any destination in the State of New Jersey unless otherwise specified. No additional charges will be allowed for any additional transportation costs resulting from partial shipments made at contractor's convenience when a single shipment is ordered. The weights and measures of the State's using agency receiving the shipment shall govern.

- 4.3 C.O.D. TERMS - C.O.D. terms are not acceptable as part of a bid proposal and will be cause for rejection of a bid.

- 4.4 TAX CHARGES - The State of New Jersey is exempt from State sales or use taxes and Federal excise taxes. Therefore, price quotations must not include such taxes. The State's Federal Excise Tax Exemption number is 22-75-0050K.

- 4.5 PAYMENT TO VENDORS - Payment for goods and/or services purchased by the State will only be made against State Payment Vouchers. The State bill form in duplicate together with the original Bill of Lading, express receipt and other related papers must be sent to the consignee on the date of each delivery. Responsibility for payment rests with the using agency which will ascertain that the contractor has performed in a proper and satisfactory manner in accordance with the terms and conditions of the award. Payment will not be made until the using agency has approved payment.

For every contract the term of which spans more than one fiscal year, the State's

obligation to make payment beyond the current fiscal year is contingent upon legislative appropriation and availability of funds.

The State of New Jersey now offers State contractors the opportunity to be paid through the MasterCard procurement card (p-card). A contractor's acceptance and a State Agency's use of the p-card, however, is optional. P-card transactions do not require the submission of either a contractor invoice or a State payment voucher. Purchasing transactions utilizing the p-card will usually result in payment to a contractor in three days. A Contractor should take note that there will be a transaction processing fee for each p-card transaction. To participate, a contractor must be capable of accepting the MasterCard card. For more information, call your bank or any merchant services company.

4.6 NEW JERSEY PROMPT PAYMENT ACT - The New Jersey Prompt Payment Act N.J.S.A. 52:32-32 et seq. requires state agencies to pay for goods and services within sixty (60) days of the agency's receipt of a properly executed State Payment Voucher or within sixty (60) days of receipt and acceptance of goods and services, whichever is later. Properly executed performance security, when required, must be received by the state prior to processing any payments for goods and services accepted by state agencies. Interest will be paid on delinquent accounts at a rate established by the State Treasurer. Interest will not be paid until it exceeds \$5.00 per properly executed invoice.

Cash discounts and other payment terms included as part of the original agreement are not affected by the Prompt Payment Act.

4.7 RECIPROCITY - In accordance with N.J.S.A. 52:32-1.4 and N.J.A.C. 17:12-2.13, the State of New Jersey will invoke reciprocal action against an out-of-State bidder whose state or locality maintains a preference practice for their bidders.

5. CASH DISCOUNTS - Bidders are encouraged to offer cash discounts based on expedited payment by the State. The State will make efforts to take advantage of discounts, but discounts will not be considered in determining the lowest bid.
  - a. Discount periods shall be calculated starting from the next business day after the recipient has accepted the goods or services, received a properly signed and executed State Payment Voucher form and, when required, a properly executed performance security, whichever is latest.
  - b. The date on the check issued by the State in payment of that Voucher shall be deemed the date of the State's response to that Voucher.
6. STANDARDS PROHIBITING CONFLICTS OF INTEREST - The following prohibitions on vendor activities shall apply to all contracts or purchase agreements made with the State of New Jersey, pursuant to Executive Order No. 189 (1988).
  - a. No vendor shall pay, offer to pay, or agree to pay, either directly or indirectly, any fee, commission, compensation, gift, gratuity, or other thing of value of any kind to any State officer or employee or special State officer or employee, as defined by N.J.S.A. 52:13D-13b. and e., in the Department of the Treasury or any other agency with which such vendor transacts or offers or proposes to transact business, or to any member of the immediate family, as defined by N.J.S.A. 52:13D-13i., of any such officer or employee, or partnership, firm or corporation with which they are employed or associated, or in which such officer or employee has an interest within the meaning of N.J.S.A. 52:13D-13g.

- b. The solicitation of any fee, commission, compensation, gift, gratuity or other thing of value by any State officer or employee or special State officer or employee from any State vendor shall be reported in writing forthwith by the vendor to the Attorney General and the Executive Commission on Ethical Standards.
- c. No vendor may, directly or indirectly, undertake any private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, express or implied, or sell any interest in such vendor to, any State officer or employee or special State officer or employee or special State officer or employee having any duties or responsibilities in connection with the purchase, acquisition or sale of any property or services by or to any State agency or any instrumentality thereof, or with any person, firm or entity with which he is employed or associated or in which he has an interest within the meaning of N.J.S.A. 52:13D-13g. Any relationships subject to this provision shall be reported in writing forthwith to the Executive Commission on Ethical Standards, which may grant a waiver of this restriction upon application of the State officer or employee or special State officer or employee upon a finding that the present or proposed relationship does not present the potential, actuality or appearance of a conflict of interest.
- d. No vendor shall influence, or attempt to influence or cause to be influenced, any State officer or employee or special State officer or employee in his official capacity in any manner which might tend to impair the objectivity or independence of judgment of said officer or employee.
- e. No vendor shall cause or influence, or attempt to cause or influence, any State officer or employee or special State officer or employee to use, or attempt to use, his official position to secure unwarranted privileges or advantages for the vendor or any other person.
- f. The provisions cited above in paragraph 6a. through 6e. shall not be construed to prohibit a State officer or employee or Special State officer or employee from receiving gifts from or contracting with vendors under the same terms and conditions as are offered or made available to members of the general public promulgate under paragraph 6c.

7. NOTICES: All notices required under this contract shall be in writing and shall be validly and sufficiently served by the Agency and/or Division upon the Contractor, and vice versa, if addressed and mailed by certified mail to the addresses set forth in the Contract.

8. CLAIMS: The following shall govern claims made by the Contractor against the State concerning interpretation of the Contract, Contractor performance and/or rescission of the contract award:

- A. No dispute concerning the interpretation of the Contract and/or Contractors performance under the Contract shall be deemed a contested case as defined in the Administrative Procedure Act, or the regulations promulgated thereunder. Any such dispute shall be subject to an informal hearing by the Director, or the designee thereof, if the Director determines that an informal hearing is necessary to resolve the issue(s). The Director's final decision shall be deemed a final agency action reviewable by the Superior Court of New Jersey, Appellate Division.
- B. All claims asserted against the State and/or Agency by the Contractor shall be subject to the New Jersey Tort Claims Act, N.J.S.A. 59:1-1, et seq., and the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1, et seq.

- C. In the event the contractor fails to comply with any material contract requirement, the Director may take steps to terminate the contract in accordance with the State Administrative Code. In this event, the Director may authorize delivery of contract items by any available means, with the difference between the prices paid and defaulting contractor's price either being deducted from any monies due the defaulting contractor or being an obligation owed the State by the defaulting contractor.

9. APPLICABLE LAW: This agreement and any and all litigation arising therefrom or related thereto shall be governed by the applicable laws, regulations and rules of evidence of the State of New Jersey without reference to conflict of laws principles.

I HEREBY ACCEPT THE TERMS AND CONDITIONS  
OF THIS AGREEMENT

\_\_\_\_\_  
NAME

\_\_\_\_\_  
TITLE

\_\_\_\_\_  
COMPANY NAME

\_\_\_\_\_  
DATE