

AGREEMENT
FOR
PROFESIONAL ENGINEERING SERVICES

This agreement is entered into by and between The City of Newark, a municipal corporation of the State of New Jersey, having its principal offices at Newark City Hall, 920 Broad Street, Newark, New Jersey 07102 (hereinafter referred to as the "CITY"), and Agra Environmental & Laboratory Services, Inc., a corporation with offices at 90 ½ West Blackwell Street, Dover, New Jersey 07801 (hereinafter referred to as the "VENDOR").

NOW THEREFORE, the parties hereto do mutually agree as follows:

1. **CONTRACT WITH VENDORS:** The City of Newark, hereby agrees to engage Agra Environmental & Laboratory Services, Inc. and the vendor hereby agrees to provide the Services on the basis hereinafter set forth in conformity with all applicable federal, state and local laws and regulations to which the City, the Vendor, and their respective employees are subject.

2. **SCOPE OF SERVICES:**

As per the Statement of Qualifications submitted to the City of Newark on November 29, 2018 the Vendor will provide engineering services on an as needed basis.

Such Services shall be provided by Agra Environmental & Laboratory Services, Inc. with the normal degree of care and skill of other reputable design professional providing similar services on similar project of like size and nature in the vicinity of this project.

3. **CITY OF NEWARK RESPONSIBILITIES:**

CITY shall assist VENDOR by placing at his disposal all available information pertinent to professional engineering services described and any facilities upon which the VENDOR will provide assistance, including reports, plans, and any other data. VENDOR shall be entitled to rely on the accuracy and completeness of such information.

CITY shall arrange for access to make all provision for VENDOR and his representative to enter upon public and private property as required for VENDOR to perform his services.

CITY shall designate a person to act as CITY's representative with respect to the services to be rendered under this AGREEMENT. Such person shall have complete authority to transmit instructions, receive information, interpret and define CITY's policies and decisions with respect to the VENDOR's services.

CITY shall give prompt written notice to VENDOR whenever CITY observes or otherwise becomes aware of any development that affects the scope or timing of VENDOR'S service.

4. **AMOUNT AND TERM OF CONTRACT:** The maximum amount of this contract shall not exceed \$50,000.00 inclusive of all actual disbursement. This contract shall be for one (1) year from authorization by the Newark Municipal Council.

5. **PAYMENT SCHEDULE AND SERVICES:** In consideration for the above services, the City shall pay the Vendor for services on a monthly basis in accordance with work completed. Payments are to be made upon submission of invoices by Vendor.

Itemized invoices for services rendered shall be submitted and shall include disbursements, costs, and expenses accrued in connection with this matter.

No retainage is required under this contract.

The services under this agreement shall be performed in the most efficient and economic manner. Should additional services be required, the contract shall be amended with the approval by the Newark Municipal Council.

All taxes and governmental imposition upon the Services, including labor and materials, furnished hereunder shall be paid by Vendor. The City shall not be obligated to compensate Vendor for any services performed prior to the commencement of this contract or after its expiration.

Payment hereunder shall only be made upon invoices properly submitted hereunder by Vendor and approved by the Director of the Department of Water and Sewer Utilities and the Director of Finance/CFO. Invoices shall be submitted monthly for services performed or costs incurred during the preceding month. Each invoice submitted shall identify the funding authorization (purchase order) number assigned to this contract. Each invoice shall be supported by satisfactory documentation, as determined by the City, as to the service performed during that time.

The services under this Agreement shall be performed in the most efficient and economic manner. Any changes to the material terms of this Agreement require Municipal Council Approval.

The agreed upon rates shall include all salaries, wages, benefits and other similar costs as well as the ordinary costs of operating an office. The Vendor will not receive any health benefits, retirement benefits, or benefits, or other benefits as part of this Agreement.

Vendor shall pay all taxes and governmental imposition upon the Services, including labor and materials, furnished hereunder. The CITY shall not be obligated to compensate Vendor for any Services performed prior to the commencement of this Agreement or after its expiration. The CITY will provide a 1099 to the Vendor for these services as part of its reporting functions as it would other vendors.

Payment generally will be made within thirty (30) days following approval of each invoice, such approval or payment shall not constitute acceptance or approval of the service invoiced. Late payments shall accrue no interest. Final payment shall be made only upon satisfactory completion of the entire service and submittal of all necessary and appropriate documentation required.

6. **PAY TO PLAY NOTIFICATIONS:** "Contractor is advised of the responsibility to file an annual statement on political contributions with the New Jersey Election Law Enforcement Commission pursuant to N.J.S.A. 19:44A-20.13 (P.L. 2005, c.271, s.3) if the contractor receives contracts in excess of \$50,000 from public entities in a calendar year. It is the contractor's responsibility to determine if

filing is necessary. Additional information on this requirement is available from ELEC at 888-313-3532 or at www.elec.state.nj.us."

7. **LIMITATIONS OF COSTS:** The parties agree that the service shall not cost the City of Newark more than the amount specified in Paragraph 4 above. However, the parties acknowledge that the amount specified in Paragraph 4 above is an estimate amount required to complete the contract agreement. When the amounts incurred by Vendor reach seventy-five percent (75%) of the authorized amount, Vendor shall notify the City or designee to the effect in writing. The parties shall review the status of the service and determine the appropriate course of action to either increase the amounts available, resolve the matters with the amount specified, or to terminate the Vendor's engagement.

8. **INSURANCE**

- a) **General Requirement:** Vendor shall maintain for the duration of the contracts, at its cost and expense, general liability insurance against claims for injuries to persons and damages to property, including contractual liability, which may arise from or in connection with the performance of the work by Vendor, its agents, employees, representatives, assigns or subcontractors. The general liabilities insurance and/or the Professional Liability Insurance shall cover such claims as may be cause by any negligent act or omission and shall be in the amounts of \$1,000,000 per occurrence and \$2,000,000 aggregate. Vendor shall also maintain Professional Liability insurance in the amount of \$1,000,000 per claim and \$2,000,000 aggregate.
- b) **Primary Insurance:** Vendor's general liability insurance coverage shall be primary insurance as respect to the City of Newark, its officers, officials, employees and volunteers, and shall apply separately to each project or location. Any insurance or self-insurance maintained by City of Newark, its officers, officials, employees or volunteers shall be excess of Vendor's insurance and shall not contribute with it.
- c) **Additional Insured Status:** The City of Newark is to be listed as additional insured for liability arising out of activities performed by or on behalf of Vendor on all policies except the Workers Compensation and Professional Liability Insurance Policies.
- d) **Certificate of Insurance/Endorsements:** At the commencement of the contract Vendor must provide the City with written evidence of compliance with required coverage as listed above and shall produce a certificate of insurance from an insurer with a Best's rating of no less than A- indicating compliance with the required coverages, along with a copy of the Additional Insured Broad Form Endorsement with the policy number contained therein indicating the City is an additional insured for the General Liability and Automobile Liability Policies. The following language shall appear on the face of the insurance certificate and in the policy:

The City of Newark is included as an additional insured with respect to general liability and automobile liability coverage as required by written contract.

Vendor must notify the City of Newark immediately, of any material change in insurance coverage, such as changes, change in status of policy, etc. The City of Newark reserves the right

to require complete copies of insurance policies at all times. The sufficiency and form of Certificates of Insurance are subject to the approval of the City of Newark Risk Manager and the City of Newark Corporation Counsel.

- e) **Workers Compensation Insurance:** Vendor shall procure and maintain during the life of this agreement, Workmen's Compensation Insurance in the statutory amount pursuant to N.J.S.A. 34:et seq.
- f) **Amounts:** All insurance shall be written for the following minimum limits of liability:

General Liability Insurance: \$1,000,000.00 per occurrence
\$2,000,000.00 aggregate

Professional Liability (if the services to be performed are a professional service): \$1,000,000.00 per claim.

9. **INDEMNIFICATION:** to the fullest extent permitted by law, Vendor shall, at its sole cost and expense, indemnify and hold the City of Newark, including its Trustees, officers, employees, designated agents and representatives, harmless from and against any and all claims, actions judgments, costs, penalties, liabilities, damages, losses and expenses, including but not limited to reasonable attorney's fees and worker's compensation benefits to the extent arising out of or resulting from the negligent performance of this Agreement, providing that such claim, action, judgment, cost, penalty, liability, damage, loss or expense is caused by the negligent acts, errors, or omissions, the recklessness or willful misconduct of Vendor, any person employed by it, or any of Vendor's consultants, agents, or representatives.

The Vendor has agreed to execute a City of Newark Hold Harmless Agreement prescribed by the City, which is incorporated by reference and made part of this Agreement.

The Vendor further agrees that his/her failure to execute a Hold Harmless Agreement is not a waiver by the City of Newark.

10. CHANGES AND TERMINATION: Any changes in the service, compensation or other terms of this agreement shall be made by written amendment to this Agreement, signed by the parties hereto. The performance of the service hereunder may be terminated by the City of Newark in whole or in part by written notice to Vendor.

The Mayor, Business Administrator, or appropriate contracting Department Director can terminate the contract without cause upon thirty (30) days notice to the other party.

11. **OWNERSHIP OF INFORMATION AND DATA:** The parties hereto agree that City shall retain possession and ownership of all drawings, specifications and other documents when its services have been completed and Vendor has been paid all amounts rightfully owed to it by City. The City will be provided two (2) sets of reproducible drawings, specifications reports, analysis and test results and other documents so furnished and they shall be reused either for additional services on this PROJECT to be done by others, or on the projects , without the prior written consent of Vendor. Any reuse or modification of such documents by the Owner for purposes other than those intended

by Vendor under its Scope of Services hereunder shall be Owner's sole risk and without liability to Vendor.

12. **CONFIDENTIALITY:** The Vendor shall exercise the utmost discretion in all matters relating to the performance of work under this Agreement.

The Vendor shall treat all information (in whatever format) to which he/she may gain access in connection with or as a result of the work to be performed under the Agreement, as confidential and proprietary, and agrees to take all reasonable measures to provide that such information:

- Is not used for any purpose other than the performance of the work; and
- Is disclosed and provided only to persons who have a need to know for the purpose of performing the work and are bound by like obligations of confidentiality and non-use as contained in this Agreement or as required by law, subpoena or other court order.

The Vendor shall not be bound by any obligation of confidentiality or non-use, to the extent he/she is clearly able to demonstrate that the information is or becomes part of the public domain through no fault of the Vendor.

The vendor agrees to return any and all copies of the aforesaid information to the CITY upon completion of the work however to the extent the Vendor utilized such information to meet its standard of care it shall be entitled to keep one such copy for its business records. Such copies shall be kept confidential pursuant to this Article 12.

In addition, the Vendor undertakes to abide by similar obligation of confidentiality and non-use as provided above with regard to the work performed under this Agreement.

The above-mentioned obligations of confidentiality and restrictions on use shall survive the expiration or earlier termination of this Agreement.

13. **Conflict of Interest:** Vendor acknowledges that the nature of the service to be performed requires that Vendor must not have or appear to have a conflict of interest with any potentially adversarial party. Vendor agrees that:

It will not accept any assignments, compensation, consideration or gratuities from any other party with an interest in the subject matter of this contract that shall conflict or shall have the appearance of conflicting with the interest of the City of Newark/Department of Water and Sewer Utilities relative to the purposes of this agreement.

In the event a conflict or potential conflict of interest arise, Vendor shall notify the City of Newark in writing within three (3) days of becoming aware of the conflict or the potential conflict. Failure to provide such notice may be grounds for termination of this agreement for cause.

In the event that the City of Newark receives timely notice of an actual or potential conflict, Vendor and the City of Newark shall attempt to reach an agreement on a course of action in response to the

actual or potential conflict. If such an agreement cannot be reached, the City of Newark has the right to terminate the contract for convenience.

14. **LIMITATION OF LIABILITY:** Neither party shall be liable for any incidental, indirect, consequential, or punitive damages, under any circumstances.
15. **ASSIGNMENT:** Vendor shall not assign, transfer, convey, sublet, or otherwise dispose of this contract or its right, title or interest in or to the same or any part thereof without prior written consent of the City of Newark endorsed thereon or attached thereto.
16. **SOCIAL SECURITY ACT:** Vendor shall be and remain an independent contractor with respect to all services performed hereunder and agrees to and does hereby accept full and exclusive liability for the payment of any and all contributions or taxes for social security, unemployment insurance or old age retirement benefits, pensions or annuities now or hereafter imposed under any state or federal law which are measured by the wages, salaries or other remuneration paid to persons employed by Vendor for work performed under the terms of this contract and further agrees to obey all lawful rules and regulations and to meet all lawful requirements which are now or hereafter may be issued or promulgated under said respective laws by all duly authorized state or federal officials, and Vendor agrees to indemnify and save harmless the City of Newark from any such contributions or taxes or liability therefore.
17. **INTEGRATED AGREEMENT:** This Agreement, including the attachments referenced herein, constitutes the entire agreement of the parties. No prior agreements or understandings, or oral modifications or representations are enforceable unless reduced to written form, signed by both parties, and are incorporated herein by amendment prior to performance of the affected Service.
18. **GOVERNING LAW:** This Agreement shall be governed by and interpreted pursuant to the law of the United States and the State of New Jersey, as appropriate, notwithstanding any provisions of such laws relating to jurisdiction.
19. **COMPLIANCE WITH LAW:** Vendor will comply with all federal, state and local laws, regulations, ordinances, guidelines, and requirements as may be reasonably necessary for the performance of the Services outlined in this Agreement.
20. **NO ADVANCE PAYMENT:** No payments may be made in advance of service pursuant to 40A: 5-16.
21. **TERMINATION:** Either party shall have the right to terminate this Contract at its convenience without cause at any time by giving written notice to the other party of such termination and specifying the effective date therefor at least thirty (30) days before the effective date of such termination. In the event of termination by the City of Newark provided herein, Vendor shall receive full compensation for any services rendered, or any disbursements, costs or expenses incurred under this Contract up to the date set forth in written notice of said termination. Vendor's work product shall be submitted to the City of Newark upon demand at the termination of the Contract.

The mayor, Business Administrator, or appropriate contracting Department Director can terminate the contract without cause upon thirty (30) days notice to the other party.

22. **PROHIBITION OF CONTRIBUTIONS AND SOLICITATIONS OF CONTRIBUTIONS:** By executing this Agreement, the Vendor certifies that it has neither made nor will make a prohibited Contribution in violation of any applicable federal or state laws, or City ordinances, including but not limited to, the Executive Order on Pay to Play Reform (MEO-07-0001), as may be amended from time to time. Any such failure to comply shall constitute a breach of the Agreement.
23. **POLITICAL CONTRIBUTION CLAUSE:** This contract has been awarded to Vendor based on the merits and abilities of Vendor to provide the services as described herein and pursuant to N.J.S.A. 40A:11-13.1 and 40A:5-29. This contract was awarded through a "fair and open process" pursuant to N.J.S.A. 19:44A-20.4 et seq. As such, Vendor does hereby attest that he/she has neither made a contribution, that is reportable pursuant to the Election Law Enforcement Commission pursuant to N.J.S.A. 19:44A-8 or 19:44A-16, in the one (1) year period preceding the award of the contract that would, pursuant to P.L. 2004, c.19, affect its eligibility to perform this contract, nor will it make a reportable contribution during the term of the contract to any political party committee in the County of Essex or City of Newark, if a member of that political party is serving in an elective public office of the City of Newark when the contract is awarded, or to any candidate committee of any person serving in an elective public office of the City of Newark when the contract is awarded.
24. Whereas, the Municipal Council adopted the Contractor Pay-To-Play Reform Ordinance, R.O 2:4-22C, which forbids the award of a contract of a Business Entity, as defined therein, which has made or solicited political contributions to Newark Municipal Candidates, office holders having ultimate responsibility for the award of a contract; candidate committees of the aforementioned candidates; and political or political party committees of the City of Newark or County of Essex; and continuing political committees or political action committees regularly engages in the support of the City of Newark municipal or County of Essex elections; and certain other political party or candidates committees, in excess of certain thresholds.
25. **EQUAL EMPLOYMENT OPPORTUNITY:** The Vendor acknowledges that Vendor shall comply with the requirements of N.J.S.A. 10:5-31 and N.J.A.C. 17:27-1 et seq. and submit to the State OF New Jersey and/or the City of Newark such documentation as shall be required by law and the City of Newark Office of Affirmative Action. Exhibit A, Goods, Professional Service and General Service Contracts is incorporated by reference herein.
26. **WAIVER AND AMENDMENTS:** Any provision of the Contract for services may be waived or amended upon agreement in writing signed by the parties hereto, subject to approval by the Municipal Council of the City of Newark.
27. **COUNTERPARTS:** This contract shall be executed in six (6) counterparts, each of which shall be deemed to be an original and such counterparts shall constitute one and the same document.

IN WITNESS WHEREOF, the City and the Vendor have executed this Contract as of this date first herein written.

CITY OF NEWARK

APPROVED AS TO FORM AND
LEGALITY

DEPARTMENT OF WATER AND SEWER UTILITIES
KAREEM ADEEM
ACTING DIRECTOR

KENYATTA STEWART
CORPORATION COUNSEL

ATTEST

KENNETH LOUIS
CITY CLERK

Agra Environmental & Laboratory Services, Inc.

ATTEST

