

**REQUEST FOR PROPOSAL FOR  
WATER RATE STUDY**

**ATLANTIC CITY MUNICIPAL UTILITIES AUTHORITY**



**Proposal Due Date: Tuesday, January 9, 2024  
Time: 11:00 A.M.**

**ADDRESS ALL PROPOSALS TO:**

**Michael A. Armstrong, Executive Director  
Atlantic City Municipal Utilities Authority  
401 North Virginia Ave  
Atlantic City, New Jersey 08401**

## **SECTION I.      GENERAL INFORMATION & INSTRUCTIONS**

### **ORGANIZATION REQUESTING PROPOSAL AND PURPOSE**

The Atlantic City Municipal Utilities Authority (also referred herein as “the Authority” or “the ACMUA”) solicits proposals for the completion of a water rate study. Responses must be received in the Office of the Executive Director, 401 N. Virginia Avenue, Atlantic City, New Jersey 08404, **no later than 11:00 A.M. Tuesday, January 9, 2024**. All responses shall be opened and announced publicly by the Authority Clerk. Responses will be reviewed by Authority staff and the appointment made by the governing body at its regularly scheduled public meeting.

### **EXAMINATION OF PROPOSAL DOCUMENTS**

A copy of the RFP package may be obtained from the offices of the Atlantic City Municipal Utilities Authority (ACMUA), located at 401 North Virginia Avenue, Atlantic City, 08401, from the website at [acmua.org](http://acmua.org) or via email from [athapa@acmua.org](mailto:athapa@acmua.org) or [istill@acmua.org](mailto:istill@acmua.org). Documents obtained from any other source other than the ACMUA cannot be assumed to be complete, and proposals prepared from such documents are subject to rejection.

It is expected that each submitter will read the entire RFP document and will submit the forms and affidavits contained in this RFP without alteration. The ACMUA will not accept RFP forms that have been recreated or reformatted by the submitter.

### **DEADLINE FOR SUBMISSION**

**Proposals are due at 11:00 A.M. EST on January 9, 2024.** The proposal shall consist of a Technical Proposal and a Fee/Cost Proposal. Supporting documentation shall be included with the Technical Proposal. Three (3) copies each of the Technical Proposal and the Fee/Cost Proposal clearly marked with the title of this RFP are to be delivered to Michael A. Armstrong, Executive Director, Atlantic City Municipal Utilities Authority Board Room, located at 401 N. Virginia Avenue, Atlantic City, New Jersey 08401.

### **LATE PROPOSALS**

Late proposals will not be accepted. Proposals received by mail, courier, or messenger will be considered when such proposals are received by the Authority at or before the due date and time. Proposals received after the deadline date and time will be returned to the submitter unopened.

### **ERRORS IN PROPOSALS**

Submitters are cautioned to verify their proposals prior to submission.

## **QUESTIONS AND ANSWERS**

The Authority will accept questions regarding this RFP **via email only until 12:00 p.m. EST on Friday, December 15, 2023.** To ensure your question is received, it should be directed to both [athapa@acmua](mailto:athapa@acmua), **and** [istill@acmua.org](mailto:istill@acmua.org) with reference to this RFP clearly indicated in the subject matter. Questions received after the deadline will not be answered. All questions received and answers will be made available to all potential proposers on the Authority's website at [www.acmua.org](http://www.acmua.org). Proposers are advised to check the website for any updates.

## **ADDENDA/REVISIONS TO RFP**

Addenda or revisions to this RFP, if any, shall be posted on the ACMUA website and provided to all firms that have received this RFP. Proposers are advised to check the website for any updates.

## **EXCEPTIONS TO THE PROPOSAL**

Any deviation from the RFP must be noted on the relevant proposal page(s) with the exact nature of the change(s) outlined in sufficient detail in a cover letter. The reason for such deviation should be included. The ACMUA will evaluate the impact of such exceptions to the Scope of Services and reserves the right to disqualify proposals that do not completely meet the requirements of the Scope of Services.

**NOTE: No changes, additions, or deletions may be made to the General Conditions by the submitter. Any such alterations to the General Conditions may result in disqualification. This RFP, including the General Conditions, will be incorporated by reference into the final awarded contract.**

Failure of a submitter to comply with the terms of exceptions to the proposal also may be cause for rejection of the proposal.

## **WITHDRAWAL OF PROPOSAL**

Submitters may withdraw their submitted proposals at any time prior to the closing time specified in the advertisement for the receipt of the RFP. Such notification of withdrawal **must be made in writing** and may be submitted via email to [athapa@acmua.org](mailto:athapa@acmua.org) and [istill@acmua.org](mailto:istill@acmua.org). Once the time for submittal has passed, the successful submitter may not withdraw, cancel, or modify their proposal, and it is assumed that the proposal has been accepted for consideration by the Authority.

## **PAYMENT OF INVOICES/DISPUTES**

The ACMUA shall pay invoices within sixty (60) days of receipt. The ACMUA may demand that a dispute concerning whether a vendor has failed to provide services as required by this agreement be submitted to non-binding mediation.

### **CONTRACT FORM**

The successful proposer shall be required to execute a contract prepared by the ACMUA, which includes the provisions set forth in this RFP. **The form of contract is attached hereto as Attachment G.**

### **NO SUBCONTRACTORS OR ASSIGNMENT OF CONTRACT**

Submitter shall not include any subcontractors in its proposal for the performance of any of the services that will be performed under the contract. Awardee shall be responsible for any and all work provided under the contract. Moreover, assignment, transfer, or otherwise conveying any obligations, rights, or other responsibilities and interests herein is strictly prohibited without the prior written consent and approval of the Authority.

### **DISCUSSIONS WITH PROPOSERS:**

An oral presentation by a proposer to clarify a proposal may be required at the sole discretion of the ACMUA. However, the ACMUA may award a contract based on the initial proposals received without discussion with the proposer. If oral presentations are required, they will be scheduled after the submission of proposals. The proposer will not be compensated for making the presentation.

## SECTION II.

## DETAILED REQUIREMENTS OF THE RFP

### BACKGROUND

The ACMUA is a public body corporate and politic of the State, which was created, in accordance with the provisions of the Municipal and County Utilities Authorities Law constituting Chapter 183 of the Pamphlet Laws of 1957 of the State of New Jersey and the acts amendatory thereof and supplemental thereto (the “Act”) by virtue of an ordinance of Atlantic City, finally adopted on September 14, 1978. The ACMUA was created for the purpose of acquiring, operating, maintaining, and improving the water system for Atlantic City.

Pursuant to a 1980 ordinance of Atlantic City, the ACMUA is to be the sole source of potable water within the City’s service area, and except for a limited number of users who obtain their water from privately owned wells, the ACMUA is the sole source supplier of potable water to the City of Atlantic City. Resorts International and Bally’s Park Place Hotel Casino have wells that service their properties under diversion permits issued by the State of New Jersey.

The ACMUA receives its source water from a combination of surface water and groundwater sources. Surface water is supplied by two reservoirs (Kuehnle Pond and Doughty Pond) that operate in series. Groundwater is supplied from a series of wells that supply water from the Kirkwood-Cohansey aquifer system.

The ACMUA has outstanding tax-exempt debt (the “**Debt**”) secured by the net revenues of the ACMUA consisting of service charges collected from the users of the water system and annual charges to be received from Atlantic City pursuant to the terms of the service contract with the City dated as of December 19, 1978, as amended and supplemented. Pursuant to the service contract, the City has agreed to pay annual charges to make up deficiencies in revenues of the ACMUA so that the ACMUA will have sufficient funds to pay, among other things, its operating and maintenance costs and debt service. **Proposers are encouraged to review more detailed information about the operations and financial obligations of the ACMUA on its website at [www.acmua.org](http://www.acmua.org)**

### NATURE OF SERVICES

The ACMUA is requesting proposals for experienced firms qualified to provide a rate study for the ACMUA. Although the Authority has consistently raised rates to meet its operational expenses and capital program, it desires a comprehensive study to ensure that it is adequately prepared to meet new and future regulatory mandates, infrastructure upgrades, changing market conditions (including labor) and new technology needs. The Authority seeks assurance that its rates are equitable amongst rate payers and are appropriately classified. In addition to the rates charged to ratepayers for usage, the study should also include a comparative review of connection/capacity fees, and other incidental charges.

The purpose of this Request for Proposal ("RFP") is to solicit proposals from various firms so that the Authority may conduct a fair and extensive evaluation based on the criteria listed herein and select the firm that is determined to serve the ACMUA best.

### **STANDARD REQUIREMENTS OF TECHNICAL PROPOSAL**

Proposers should submit a technical proposal which contains the following:

- A. The name of the proposer, the principal place of business, and, if different, the place where the services will be provided and a description of the firm. Also, provide the company's principals, including the president, chairman, vice president, secretary, chief operation officer, chief financial officer, and general manager (s);
- B. The education, qualifications, experience, and training of all persons who would be assigned to provide services, along with their names and titles. Qualification and experience of the firm and proposed team;
- C. A listing of all other engagements where services of these types being proposed were provided in the past ten years. This should include public and private entities. Contact information for the recipients of similar services must be provided. The ACMUA may obtain references from any of the parties listed;
- D. Proof of insurance in types and amounts satisfactory to the Authority as provided in Section 7 herein;
- E. Proof of any necessary license or certification for all individuals assigned to the engagement;
- F. Statement that neither the firm nor any individuals assigned to this engagement are disbarred, suspended, or otherwise prohibited from practice by any federal, state, or local agency;
- G. A statement that the proposer will comply with the General Terms and Conditions required by ACMUA and enter into the ACMUA's standard Services Contract;
- H. Company's Fee Schedule (copy of form attached)
- I. An Affirmative Action Statement (copy of form attached);
- J. A completed Owner Disclosure Statement (copy of form attached);
- K. A completed Non-Collusion Affidavit (copy of form attached);
- L. Disclosure of Investment Activities in Iran certification (copy of form attached)



- M. Prohibited Activities in Russia-Belarus certification (copy of form attached);
- N. Form of Company; i.e., sole proprietor, partnership, limited liability company, or corporate;
- O. A copy of the proposer's Business Registration Statement

### **COST PROPOSAL**

Proposers should submit a completed cost proposal on the Fee Schedule Form (Attachment A). The cost proposal should include all details of any fees to be paid by the ACMUA for providing services as outlined in the Scope of Services. If the schedule does not contain a specific category applicable to the proposer's services, please append such additional information.

The proposer is required to hold its prices firm throughout the selection process, award of the contract, and duration of the contract term.

### **SCOPE OF SERVICES**

The Atlantic City Municipal Utilities Authority is seeking to retain a qualified firm to provide advice and services regarding the creation of a comprehensive rate study as requested. Firms shall be capable of providing a range of value-added services, including but shall not be limited to those outlined in the Scope of Services below.

- A. Analyze existing Debt and projected debt due and owing for regularly scheduled capital improvements, technology upgrades and planned major infrastructure upgrades, including but not limited to the construction of a new/rehabilitated water treatment plant.
- B. Review and evaluate the Authority's existing capital financing plans and determine a complementary rate structure that meets the Authority's statutory obligation to be self sustaining as well as viable for future years.
- C. Review of the Authority's Operations and Maintenance budget, including the results of a salary study, to be conducted simultaneously with this rate study, and incorporate any projected labor budget needs into the recommended rate structure.
- D. Provide and/or incorporate into findings the results of a comparative review of rates, including but not limited to connection fees, usage and other service fees, charged by similarly situated public water authorities in the State of New Jersey. Similar data on competitor private entities shall be presented to give a complete picture of the landscape in which the ACMUA operates. Pay particular attention to the demographics of the Authority's residential and commercial ratepayers, poverty related statistics of its residential base and make recommendations for where

adjustments to classes and rates of pay may be made or be feasible, such as offering discounted service charges to senior citizen residents.

- E. Develop a five year projection of rate increases, with a range of implementation options for consideration by the Authority board, demonstrating impact on ratepayers. This analysis should take into consideration the capacity, demand and potential fluctuations in demand going forward. Work with Authority board and staff to develop a consensus decision for future rate structure.
- F. Lead public workshops/discussions to present the plan to ratepayers, answer questions relating to the methodology, assumptions relied upon and materials reviewed.
- G. Create or assist in the creation of public outreach materials.
- H. Confer with the Authority's municipal advisor, grants consultant, and/or bond counsel as necessary for a thorough and complete understanding of the Authority's obligations and potential financing options.
- I. Provide such other services as may be requested by the ACMUA in connection with this process.

## **PROPOSAL EVALUATION**

The ACMUA will select the most advantageous proposal based on all of the evaluation factors set forth at the end of this RFP, price, and other factors included. However, the proposal cost is important to the ACMUA. The ACMUA will make the award that is in the best interest of the ACMUA based on cost and other considerations. Each proposal must satisfy the objectives and requirements detailed in this RFP. The features of the proposal, considered together with its economic and other benefits, will form the basis for the evaluation process.

The successful proposer shall be determined by an evaluation of the total content of the proposal submitted. The ACMUA reserves the right to:

- A. Not select any of the proposals.
- B. If applicable, select only portions of a particular proposer's proposal for further consideration (however, proposers may specify portions of the proposal that they consider "bundled").
- C. Award a contract for the requested services at any time within 60 days of the selection of the most advantageous proposal. Every proposal should be valid through this time period.



The ACMUA shall not be obligated to explain the results of the evaluation process to any proposer.

The ACMUA may require proposers to demonstrate any services described in their proposal prior to award.

**LICENSING:**

If the successful proposer is required to maintain a license or otherwise be registered with the Board of Public Utilities or other official office in the State of New Jersey in order to perform the services which are the subject of this contract, then prior to the effective date of this contract, and as a condition precedent to its taking effect, the successful proposer shall provide to the ACMUA a copy of all current licenses and/or registrations. All licenses and/or registrations shall be current and in good standing and shall not be subject to any current action to revoke or suspend.

The successful proposer shall notify the ACMUA immediately in the event of suspension, revocation, or any change in status (or in the event of initiation of any action in status) of the license or certification held by the successful proposer. The successful proposer shall, during the term of the contract, provide the ACMUA with proof of renewal of any licenses for any of the proposer's employees, which renewals occur during the term of the contract.

### **SECTION III. GENERAL TERMS AND CONDITIONS**

#### **PROPOSAL LIMITATIONS**

This RFP is not intended to be an offer, order, or contract and should not be regarded as such, nor shall any obligation or liability be imposed on the ACMUA by the issuance of this RFP. In its sole discretion, the ACMUA reserves the right to refuse any proposal submitted.

#### **USE OF INFORMATION**

Any specifications, drawings, sketches, models, samples, data, computer programs, documentation, technical or business information, and the like ("Information") furnished or disclosed by the ACMUA to the proposer in connection with this RFP shall remain the property of the ACMUA. When in tangible form, all copies of such information shall be returned to the ACMUA upon request. Unless such information was previously known to the proposer, free of any obligation to keep it confidential, or has been or is subsequently made public by the ACMUA or a third party, it shall be held in confidence by the proposer, shall be used only for the purposes of this RFP, and may not be used for other purposes except upon such terms and conditions as may be mutually agreed upon in writing.

#### **PROPRIETARY INFORMATION**

Any proposal submitted may become public information. Proprietary information such as client lists and non-public financial statements may be protected under limited circumstances. Pricing and service elements are not considered proprietary. An entire proposal may not be marked as proprietary. Proposers must clearly identify in the proposal any specific proprietary information they request be protected. Proposals may be reviewed and assessed by any person at the discretion of the ACMUA. All materials submitted become the property of the ACMUA and may be returned only at the ACMUA's option.

#### **INDEMNIFICATION AND HOLD HARMLESS:**

The successful Consultant agrees to defend, indemnify, hold free, and harmless the ACMUA, its Board of Directors, officers, agents, and employees, at the Consultant's sole expense, from and against any and all claims, actions, suits, or other legal proceedings brought against the ACMUA, its Board of Directors, officers, agents and employees arising out of the performance of the Consultant and/or its employees, of the work undertaken pursuant to this Agreement. The defense, obligation provided for hereunder shall apply without an advance showing of negligence or wrongdoing by the Consultant and/or its employees but shall be required whenever any claim, action, complaint, or suit asserts as its basis the negligence, errors, omissions or misconduct of the Consultant and/or its employees, and/or whenever any claim, action, complaint or suit asserts liability against the ACMUA, its Board of Directors, officers, agents and employees based upon the work performed by the Consultant and/or its employees under this Agreement, whether or not the Consultant and/or its employees are specifically named or otherwise asserted to be liable. Notwithstanding the foregoing, the Consultant shall not be liable

for the defense or indemnification of the ACMUA for claims, actions, complaints, or suits arising out of the sole active negligence or willful misconduct of the ACMUA. This provision shall supersede and replace all other indemnity provisions contained either in the ACMUA's specifications or the Consultant's proposal, which shall be of no force and effect.

Proposed limitations on liability in contravention of the aforesaid indemnification and/or insurance coverage limit are not permitted and may be cause for rejection of the respondent's proposal.

## **INSURANCE**

The successful proposer shall maintain liability insurance deemed satisfactory by the ACMUA. The proposal must include evidence of current coverage, the types and amounts carried, **including the deductible amounts, and must cover errors and omissions, improper judgments, and negligence.** The insurance company must be licensed to do business in the State of New Jersey and be in compliance with any and all applicable requirements of the State of New Jersey. The ACMUA must be named an additional insured on the policy.

The proposer shall secure and maintain in force for the term of the contract insurance as provided herein. All required insurance shall be provided by insurance companies with an A-VIII or better rating by A.M. Best & Company. All policies must be endorsed to provide 30 days' written notice of cancellation or material change to the ACMUA at the address shown below. If the proposer's insurer cannot provide 30 days' written notice, then it will become the obligation of the proposer to provide the same. The proposer shall provide the ACMUA with current certificates of insurance for all coverages and renewals thereof. Renewal certificates shall be provided within 30 days of the expiration of the insurance. The proposer shall not begin to provide services or goods to the ACMUA until evidence of the required insurance is provided. The certificates of insurance shall indicate the contract number or purchase order number and title of the contract in the Description of Operations box and shall list an Additional Insured as the Atlantic City Municipal Utilities Authority, Atlantic City, New Jersey 08401. The certificates and any notice of cancellation shall be emailed to the ACMUA Assistant Director of Finance, Ms. Anita Thapa, at [athapa@acmua.org](mailto:athapa@acmua.org)

The successful proposer shall, simultaneously with the execution of a contract, deliver certifications of said insurance to the ACMUA.

## **APPLICABLE LAW**

The terms and provisions of this contract shall be construed pursuant to the laws of the State of New Jersey.

## **INDEPENDENT CONTRACTOR STATUS**

The parties acknowledge that the successful proposer is an independent contractor and is not an agent of the ACMUA.

## **TERMINATION:**

Any contract entered into by and between the ACMUA and the successful proposer may be terminated by the ACMUA at its sole discretion.

- A. The ACMUA reserves the right to reject any or all proposals, if necessary, or to waive any informality in the proposals, and unless otherwise specified by the proposer, to accept any item, items, or services in the proposals should it be deemed in the best interest of the ACMUA to do so.
- B. In case of failure by the successful proposer, the ACMUA may procure the articles or services from other sources, deduct the cost of the replacement from money due to the proposer under the contract, and hold the proposer responsible for any excess cost occasioned thereby.
- C. The Proposer, where applicable, shall be responsible for, shall keep, save and hold the ACMUA harmless from, shall indemnify, and shall defend ACMUA against any claim, loss, liability, expense (specifically including but not limited to costs, counsel fees and/or experts' fees), or damage resulting from all mental or physical injuries or disabilities, including death, to employees or recipients of the Proposer's services or to any other persons, or from any damage to any property sustained in connection with this contract which results from any acts or omissions, including negligence or malpractice, of any of its officers, directors, employees, agents, servants or independent contractors, or from the Proposer's failure to provide for the safety and protection of its employees, or from Proposer's performance or failure to perform pursuant to the terms and provisions of this Contract. The Proposer's liability under this agreement shall continue after the termination of this agreement with respect to any liability, loss, expense, or damage resulting from acts occurring prior to termination.
- E. Each proposal must be signed and each page initialed by the person authorized to do so.
- G. The ACMUA is exempt from any State sales tax or Federal excise tax. In submitting its proposal, the Proposer certifies that its total base proposal does not include any NJ State Sales Tax.
- H. All contract awards are subject to the availability of funds.
- I. In accordance with Affirmative Action Law, P.L. 1975, c.127 (N.J.A.C. 17:27) with implementation of July 10, 1978, successful bidder must agree to obtain individual employer certification and number and complete Affirmative Action employee information report (form AA-302). Also, during the performance of this contract, the contractor agrees as follows: the contractor or subcontractor where applicable, will not discriminate against any employee because of age, race, creed, color, national origin, ancestry, marital status, or affectional or sexual orientation. 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, creed, color, national origin, ancestry, marital status, sex, or handicap. 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 a section for training, including apprenticeship.

The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notice to be provided by the Public Agency Compliance Officer setting forth provisions of this non-discrimination clause: (b) 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, sex or handicap; (c) 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 worker's representative of the contractor's commitments under this act and shall post copies of the notice; (d) the contractor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the treasurer pursuant to the P.L. 1975, c.127, as amended and supplemented from time to time.

- J. All services shall be performed within the United States of America.
- K. All proposals submitted shall include in the price any applicable permits or fees required by any other government entity that has jurisdiction to require the same.
- L. By submission of the proposal, the Proposer certifies that the service to be furnished will not infringe upon any valid patent, trademark, or copyright, and the successful Proposer shall, at its expense, defend any and all actions or suits charging such infringement, and will save the ACMUA harmless in any case of any such infringement.
- M. No Proposer shall influence, or attempt to influence or cause to be influenced, any ACMUA officer or employee to use his/her official capacity in any manner which might tend to impair the objectivity or independence of judgment of said officer or employee.
- N. No Proposer shall cause or influence, or attempt to cause or influence, any ACMUA officer or employee to use his/her official capacity to secure unwarranted privileges or advantages for the Proposer or any other person.
- O. Should any difference arise between the contracting parties as to the meaning or intent of these instructions or specifications, the ACMUA's Executive Director's judgement shall be final and conclusive.
- P. The ACMUA shall not be responsible for any expenditure of monies or other expenses incurred by the Proposer in making its proposal.



- Q.** Any prospective Proposer who wishes to challenge a proposal specification shall file such challenges in writing with the ACMUA no fewer than three (3) business days prior to the opening of the proposals. Challenges filed after that time shall be considered void and have no impact on the contracting unit or the award of the contract.
- R.** The checklist, affidavits, notices, and the like presented at the end of this Request for Proposal are a part of this Request for Proposal and shall be completed and submitted as part of this proposal.
- S.** Pursuant to N.J.A.C. 17:44-2.2, the successful proposer, if awarded a contract shall maintain all documentation related to products, transactions, or services under this contract for a period of five years from the date of final payment. Such records shall be made available to the New Jersey Office of the State Comptroller upon request."
- T.** Pursuant to N.J.S.A 52:15C-14(d), Private vendors or other persons contracting with or receiving funds from a unit in the Executive branch of State government, including an entity exercising executive branch authority, independent State authority, public institution of higher education, or unit of local government or board of education shall upon request by the State Comptroller provide the State Comptroller with prompt access to all relevant documents and information as a condition of the contract and receipt of public monies. The State Comptroller shall not disclose any document or information to which access is provided that is confidential or proprietary. If the State Comptroller finds that any person receiving funds from a unit in the Executive branch of State government, including an entity exercising executive branch authority, independent State authority, public institution of higher education, or unit of local government or board of education refuses to provide information upon the request of the State Comptroller, or otherwise impedes or fails to cooperate with any audit or performance review, the State Comptroller may recommend to the contracting unit that the person be subject to termination of their contract, or temporarily or permanently debarred from contracting with the contracting unit.
- U.** In the hiring of persons for the performance of work under this contract or any subcontract hereunder or for the procurement, manufacture, assembling, or furnishing of any such materials, equipment, supplies, or services to be acquired under this contract, no contractor, nor any person acting on behalf of such contractor or subcontractor, shall, by reason of race, creed, color, national origin, ancestry, marital status, gender identity or expression, affectional or sexual orientation or sex, discriminate against any person who is qualified and available to perform the work to which the employment relates;

No contractor, subcontractor, nor any person on his behalf shall, in any manner, discriminate against or intimidate any employee engaged in the performance of work under this contract or any subcontract hereunder or engaged in the procurement, manufacture, assembling, or furnishing of any such materials, equipment, supplies or services to be acquired under such contract, on account of race, creed, color, national origin, ancestry, marital status, gender identity or expression, affectional or sexual orientation or sex;



There may be deducted from the amount payable to the contractor by the contracting public agency, under this contract, a penalty of \$50.00 for each person for each calendar day during which such person is discriminated against or intimidated in violation of the provisions of the contract; and

This contract may be canceled or terminated by the contracting public agency, and all money due or to become due hereunder may be forfeited, for any violation of this section of the contract occurring after notice to the contractor from the contracting public agency of any prior violation of this section of the contract.

**BASIS OF AWARD**  
(To be completed by ACMUA evaluation committee)  
(100 Points total will be used to determine the Award)

The ACMUA will select the vendor deemed most advantageous to the ACMUA based on price and other factors considered.

<b>EVALUATION FACTORS</b> Points awarded will be based on the information contained in the technical proposal, any supplemental information obtained and information gathered during the interview, if one is conducted.	<b>SCORE</b>
A. <b>Proposal contains all required checklist information</b>  <u>  5  </u> points	
B. <b>Relevance and Extent of Qualifications, Experience, and Training of Personnel to be assigned</b>  <u> 25 </u> points	
C. <b>Relevance and Extent of Similar Engagements performed</b>  <u> 20 </u> points	
D. <b>Plan for performing engagement is realistic, thorough, demonstrates knowledge of the Authority's history and requirements and personnel availability</b>  <u> 25 </u> points	
E. <b>Reasonableness of Cost Proposal</b>  <u> 25 </u> points	
<b>TOTAL:</b>	

# REQUEST FOR PROPOSAL CHECKLIST

THIS CHECKLIST MUST BE COMPLETED AND SUBMITTED WITH YOUR PROPOSAL:

Please initial below, indicating that your proposal includes the itemized document.  
A PROPOSAL SUBMITTED WITHOUT THE FOLLOWING DOCUMENTS IS CAUSE FOR REFUSAL.

INITIAL  
BELOW

- A. An original with Three (3) signed copies of your complete proposal. \_\_\_\_\_
- B. Attachment A: Company's Fee Schedule \_\_\_\_\_
- C. Attachment B: Mandatory Equal Opportunity Employment Language \_\_\_\_\_
- D. Attachment C: Non-Collusion Affidavit properly notarized \_\_\_\_\_
- E. Attachment D: Ownership Disclosure Statement properly notarized \_\_\_\_\_
- F. Attachment E: Disclosure of Investment Activities in Iran \_\_\_\_\_
- G. Attachment F: Prohibited Activities in Russia-Belarus Certification \_\_\_\_\_
- H. Attachment G: Form of Contract \_\_\_\_\_
- I. Authorized signatures on all forms. \_\_\_\_\_
- J. Business Registration Certificate(s) **Must be submitted prior to award** \_\_\_\_\_

Note: N.J.S.A 52:32-44 provides that the ACMUA shall not enter into a contract for goods or services unless the other party to the contract provides a copy of its business registration certificate for the State of New Jersey and the business registration certificate of any subcontractors, at the time that it submits its proposal. The contracting party must also collect the state use tax where applicable.

- K. EEO/AA Form AA-302 or Letter of Federal Approval or Certificate of Employee Information Report (to be submitted after Notice of Award, Prior to Signing of Contract) \_\_\_\_\_

## THE UNDERSIGNED HEREBY ACKNOWLEDGES THE ABOVE LISTED REQUIREMENTS

NAME OF PROPOSER:

\_\_\_\_\_  
Person, Firm, or Corporation

BY: \_\_\_\_\_  
(NAME) (TITLE)

**ATTACHMENT A**  
**COMPANY'S FEE SCHEDULE**

## **ATTACHMENT B**

### **EXHIBIT A**

#### **MANDATORY EQUAL EMPLOYMENT OPPORTUNITY LANGUAGE**

**N.J.S.A. 10:5-31 et seq. (P.L. 1975, C. 127)**

**N.J.A.C. 17:27**

#### **GOODS, PROFESSIONAL SERVICE 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 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 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 afford equal employment opportunities to minority and women workers consistent with Good faith efforts to meet targeted county employment goals established in accordance with N.J.A.C. 17:27-5.2, or Good faith efforts to meet targeted 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.

In conforming with the targeted employment goals, the contractor or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, 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 Public Contracts Equal Employment Opportunity Compliance as may be requested by the office from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Division of 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.**



**MANDATORY EQUAL EMPLOYMENT OPPORTUNITY LANGUAGE**

**N.J.S.A. 10:5-31 et seq. (P.L. 1975, C. 127)**

**N.J.A.C. 17:27**

**GOODS, PROFESSIONAL SERVICE AND GENERAL SERVICE CONTRACTS**

The undersigned vendor further agrees to furnish the required forms of evidence and understands that their contract/company's bid shall be rejected as non-responsive if said contractor fails to comply with the requirements of N.J.S.A. 10:5-31 and N.J.S.A. 17:27

**Representative's Name/Title (Print):** \_\_\_\_\_

**Representative's Signature:** \_\_\_\_\_

**Name of Company:** \_\_\_\_\_

**Tel. No.:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**ATTACHMENT C**

**NON-COLLUSION AFFIDAVIT**

STATE OF NEW JERSEY)

COUNTY OF \_\_\_\_\_ ) ss:

I AM \_\_\_\_\_

OF THE FIRM OF  
\_\_\_\_\_

UPON MY OATH, I DEPOSE AND SAY:

1. THAT I EXECUTED THE SAID PROPOSAL WITH FULL AUTHORITY SO TO DO;
2. THAT THIS PROPOSER HAS NOT, DIRECTLY OR INDIRECTLY ENTERED INTO ANY AGREEMENT, PARTICIPATED IN ANY COLLUSION, OR OTHERWISE TAKEN ANY ACTION IN RESTRAINT OF FAIR AND OPEN COMPETITION IN CONNECTION WITH THIS ENGAGEMENT;
3. THAT ALL STATEMENTS CONTAINED IN SAID PROPOSAL AND IN THIS AFFIDAVIT ARE TRUE AND CORRECT, AND MADE WITH FULL KNOWLEDGE THAT THE ACMUA RELIES UPON THE TRUTH OF THE STATEMENTS CONTAINED IN SAID PROPOSAL AND IN THE STATEMENTS CONTAINED IN THIS AFFIDAVIT IN AWARDING THE CONTRACT FOR THE SAID ENGAGEMENT; AND
4. THAT NO PERSON OR SELLING AGENCY HAS BEEN EMPLOYED TO SOLICIT OR SECURE THIS ENGAGEMENT AGREEMENT OR UNDERSTANDING FOR A COMMISSION, PERCENTAGE, BROKERAGE OR CONTINGENT FEE, EXCEPT BONA FIDE EMPLOYEES OR BONA FIDE ESTABLISHED COMMERCIAL OF SELLING AGENCIES OF THE PROPOSER. (N.J.S.A.52: 34-25)

SUBSCRIBED AND SWORN TO

BEFORE ME THIS \_\_\_\_\_ DAY

OF \_\_\_\_\_ 20 \_\_\_\_\_.

\_\_\_\_\_  
(TYPE OR PRINT NAME OF  
AFFIANT UNDER SIGNATURE)

\_\_\_\_\_  
NOTARY PUBLIC OF

MY COMISSION EXPIRES: \_\_\_\_\_ 20 \_\_\_\_\_

## ATTACHMENT D

### DISCLOSURE OF OWNERSHIP STATEMENT

Every corporation and/or partnership submitting a bid on public work is required by P.L. 1977, c. 33 to list the names and addresses of all stockholders and/or partners who own ten per cent (10%) or more of any class of stock in the corporation or interest in the partnership. If there are no such stockholders or partners, so state by indicating "NONE".

FULL NAME OF ENTITY: \_\_\_\_\_

LEGAL STATUS (CORPORATION, PARTNERSHIP, OTHER): \_\_\_\_\_

STATE OF CREATION OR INCORPORATION: \_\_\_\_\_

FEDERAL ID NUMBER: \_\_\_\_\_

PRINCIPAL BUSINESS ADDRESS: \_\_\_\_\_

PHONE: \_\_\_\_\_ FAX: \_\_\_\_\_

#### NAMES AND ADDRESSES OF PERSONS HOLDING GREATER THAN 10% INTEREST:

NAME	ADDRESS
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

I certify that the above list is complete. If one or more of the above is itself a corporation or partnership, I have annexed hereto the names and addresses of all persons owning a 10% or greater interest in said corporation or partnership.

CHECK HERE IF ADDITIONAL SHEETS ARE ATTACHED: \_\_\_\_ NUMBER OF SHEETS: \_\_\_\_

I certify that the foregoing statements made by me are true and that I am aware that if any statement made herein is willfully false I am subject to punishment.

Dated: \_\_\_\_\_

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
PRINT NAME AND TITLE

**ATTACHMENT E**  
**DISCLOSURE OF INVESTMENT ACTIVITIES IN IRAN**

**Project Name:** \_\_\_\_\_

**Bidder Name:** \_\_\_\_\_

**PART 1: CERTIFICATION**  
**BIDDERS MUST COMPLETE PART 1 BY CHECKING EITHER BOX**

**FAILURE TO CHECK ONE OF THE BOXES WILL RENDER THE PROPOSAL NON-RESPONSIVE**

Pursuant to Public Law 2012, c.25, any person or entity that submits a bid or proposal or otherwise proposes to enter into or renew a contract must complete the certification below to attest, under penalty of perjury, that NEITHER the person or entity, nor any of its parents, subsidiaries, or affiliates, is identified on the Department of Treasury Chapter 25 list as a person or entity engaging in investment activities in Iran. The Chapter 25 list is found on the Division's website at <http://www.state.nj.us/treasury/purchase/pdf/Chapter25List.pdf>. Bidders **must** review this list prior to completing the below certification. **Failure to complete the certification will render a bidder's proposal non-responsive.** If the New Jersey Director of the Division of Purchase and Property finds a person or entity to be in violation of law, he/she shall take action as may be appropriate and provided by law, rule or contract, including but not limited to, imposing sanctions, seeking compliance, recovering damages, declaring the party in default and seeking suspension of the party.

**PLEASE CHECK THE APPROPRIATE BOX:**

- ☐ I certify, pursuant to Public Law 2012, c.25, that neither the bidder listed above nor any of the bidder's parents, subsidiaries, or affiliates listed on the N.J. Department of the Treasury's list of entities determined to be engaged in prohibited activities in Iran pursuant to P.L. 2012, c.25 ("Chapter 25 List"). I further certify that I am the person listed above, or I am an officer or representative of the entity listed above and am authorized to make this certification on its behalf. **I will skip Part 2 and sign and complete the Certification below: OR**
- ☐ I am unable to certify as above because the bidder and/or one of its parents, subsidiaries, or affiliates is listed on the Department's Chapter 25 List. I will provide a detailed, accurate and precise description of the activities in Part 2 below and sign and complete the Certification below. Failure to provide such will result in the proposal being rendered as non-responsive and appropriate penalties, fines and/or sanctions will be assessed as provided by law.

**PART 2: PLEASE PROVIDE FURTHER INFORMATION RELATED TO INVESTMENT ACTIVITIES IN IRAN.**

You must provide a detailed, accurate and precise description of the activities of the bidding person/entity, or one of its parents, subsidiaries or affiliates, engaging in the investment activities in Iran outlined above by completing the boxes below.

**PLEASE PROVIDE THOROUGH ANSWERS TO EACH QUESTION. IF YOU NEED ADDITIONAL ROOM, ADD ADDITIONAL PAGES.**

Name \_\_\_\_\_ Relationship to Bidder/Owner \_\_\_\_\_

Description of Activities \_\_\_\_\_

Duration of Engagement \_\_\_\_\_ Anticipated Cessation Date \_\_\_\_\_

Bidder/Offeror Contact Name \_\_\_\_\_

Certification: I, being duly sworn upon my oath, hereby represent and state that the foregoing information and any attachments thereto to the best of my knowledge are true and complete. I attest that I am authorized to execute this certification on behalf of the above-referenced person or entity. I acknowledge that the State of New Jersey and the Owner of the project are relying on the information contained herein and thereby acknowledge that I am under a continuing obligation from the date of this certification through the completion of any contracts with the State of New Jersey and the Owner to notify the State of New Jersey and the Owner in writing of any changes to the answers of information contained herein. I acknowledge that I am aware of that it is a

criminal offense to make a false statement or misrepresentation in this certification, and if I do so, I recognize that I am subject to criminal prosecution under the law and that it will also constitute a material breach of my agreement(s) with the State of New Jersey and/or the Owner and that the State and/or the Owner at its option may declare any contract(s) resulting from this certification void and unenforceable.

Full Name (Print): \_\_\_\_\_ Signature: \_\_\_\_\_

Title: \_\_\_\_\_ Date: \_\_\_\_\_

**ATTACHMENT F**  
**CERTIFICATION OF NON-INVOLVEMENT IN PROHIBITED ACTIVITIES IN RUSSIA OR BELARUS**

Pursuant to N.J.S.A. 52:32-60.1, et seq. (P.L. 2022, c.3) any person or entity ("Vendor") that seeks to enter into or renew a contract with a State agency or local unit for the provision of goods or services, or the purchase of bonds or other obligations, must complete the certification below indicating whether or not the Vendor is engaged in prohibited activities in Russia or Belarus. If the local contracting unit determines that a person has submitted a false certification concerning its engagement in prohibited activities in Russia or Belarus pursuant to section 1 of P.L.2022, c.3 (C.52:32-60.1), the local contracting unit shall report to the New Jersey Attorney General the name of that person or entity, and the Attorney General shall determine whether to bring a civil action against the person to collect the penalty prescribed in subsection c. of section 1 of P.L.2022, c.3 (C.52:32-60.1).

c. The local contracting unit may also report to the municipal attorney or county counsel, as appropriate, the name of that person, together with its information as to the false certification, and the municipal attorney or county counsel, as appropriate, may determine to bring such civil action against the person to collect such penalty.

**CERTIFICATION**

I, the undersigned, certify that I have read the definition of "Vendor" below, and have reviewed the Department of the Treasury's list of Vendors engaged in prohibited activities in Russia or Belarus, and having done so certify:

(Check the Appropriate Box)

- ☐ A. That the Vendor is not identified on the Department of the Treasury's list of Vendors engaged in prohibited activities in Russia or Belarus and is not engaged in prohibited activities in Russia or Belarus.
- ☐ B. That I am unable to certify as to "A" above, because the Vendor is identified on the Department of the Treasury's list of Vendors engaged in prohibited activities in Russia and/or Belarus.
- ☐ C. That I am unable to certify as to "A" above, because the Vendor, though not identified on the Department of the Treasury's list of Vendors engaged in prohibited activities in Russia or Belarus, is engaged in prohibited activities in Russia or Belarus. A detailed, accurate and precise description of the Vendor's activity in Russia and/or Belarus is set forth below.

**Description of Prohibited Activity** (Attach Additional Sheets If Necessary.)

Signature of Vendor's Authorized Representative

Date

Print Name and Title of Vendor's Authorized Representative

Vendor's FEIN

Vendor's Name

Vendor's Phone Number

Vendor's Address (Street Address)

Vendor's Fax Number



**Additional Certification of Federal Exemption and/or License  
(Complete only if appropriate)**

☐ D. I, the undersigned, certify that Vendor is currently engaged in activity in Russia and/or Belarus, but is doing so consistent with federal law and/or regulation and/or license. A detailed description of how the Vendor's activity in Russia and/or Belarus is consistent with federal law, or is within the requirements of the federal exemption and/or license is set forth below. (Attach Additional Sheets If Necessary.)

\_\_\_\_\_  
Signature of Vendor's Authorized Representative

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name and Title of Vendor's Authorized Representative

\_\_\_\_\_  
Vendor's FEIN

\_\_\_\_\_  
Vendor's Name

\_\_\_\_\_  
Vendor's Phone Number

\_\_\_\_\_  
Vendor's Address (Street Address)

\_\_\_\_\_  
Vendor's Fax Number

\_\_\_\_\_  
Vendor's Address (City/State/Zip Code)

\_\_\_\_\_  
Vendor's Email Address

**Definitions**

i Vendor means: (1) A natural person, corporation, company, limited partnership, limited liability partnership, limited liability company, business association, sole proprietorship, joint venture, partnership, society, trust, or any other nongovernmental entity, organization, or group; (2) Any governmental entity or instrumentality of a government, including a multilateral development institution, as defined in Section 1701(c)(3) of the International Financial Institutions Act, 22 U.S.C. 262r(c)(3); or (3) Any parent, successor, subunit, direct or indirect subsidiary, or any entity under common ownership or control with, any entity described in paragraph (1) or (2).

ii Engaged in prohibited activities in Russia or Belarus means: (1) companies in which the Government of Russia or Belarus has any direct equity share; (2) having any business operations commencing after the effective date of this act that involve contracts with or the provision of goods or services to the Government of Russia or Belarus; (3) being headquartered in Russia or having its principal place of business in Russia or Belarus, or (4) supporting, assisting or facilitating the Government of Russia or Belarus in their campaigns to invade the sovereign country of Ukraine, either through in-kind support or for profit.

**ATTACHMENT G  
(FORM OF CONTRACT)**

**CONSULTING SERVICES  
AGREEMENT BETWEEN  
ATLANTIC CITY MUNICIPAL  
UTILITIES AUTHORITY AND**

THIS AGREEMENT for consulting services is made by and between the Atlantic City Municipal Utilities Authority (the “Authority”) and (“Consultant”) (together referred to as the “Parties”) pursuant to Resolution No. by the Authority Board, hereinafter the (the “Effective Date”).

**SECTION 1 – SERVICES**

As the Authority’s consultant, subject to the terms and conditions set forth in this Agreement, Consultant shall provide to the Authority the services described in the Request for Proposal (RFP), and also attached hereto as Exhibit A. The RFP and its General Terms and Conditions are incorporated herein by reference, and made part of this Agreement. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A, the Agreement shall prevail.

**Recommendation.** If Consultant makes a recommendation of a product or service within the scope of the engagement, Consultant will determine, based on the information obtained through reasonable diligence of Consultant whether such product or service is suitable for the Authority. In addition, Consultant will inform the Authority of:

- the evaluation of the material risks, potential benefits, structure, and other characteristics of the recommendation;
- the basis upon which Consultant reasonably believes that the recommended product or service is, or is not, suitable for the Authority; and
- whether Consultant has investigated or considered other reasonably feasible alternatives to the recommendation that might also or alternatively serve the Authority’s objectives.

If the Authority elects a course of action that is independent of or contrary to the advice provided by Consultant, Consultant is not required on that basis to disengage from the Authority.

- 1.1 Term of Services.** The term of this Agreement shall be for one (1) year or upon completion of the Scope of Services described in Exhibit A, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Consultant to complete the service required by this Agreement shall not affect the Authority’s right to terminate the Agreement, as referenced in Section 8.

- 1.2 **Standard of Performance.** Consultant shall perform all services required pursuant to this Agreement according to the standards observed by a competent practitioner of the profession in which Consultant is engaged.
- 1.3 **Assignment of Personnel.** Consultant shall assign only competent personnel to perform services pursuant to this Agreement. In the event the Authority, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Consultant shall, immediately upon receiving notice from the Authority of such desire of the Authority, reassign such person or persons.
- 1.4 **Time.** Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Section 1.1 above and to satisfy Consultant's obligations hereunder.

## SECTION 2 - COMPENSATION

The Authority hereby agrees to pay Consultant compensation for services outlined in the Scope of Services (Exhibit A) under the Compensation Schedule (Exhibit B).

The Authority shall pay Consultant for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from the Authority to Consultant for services rendered pursuant to this Agreement. Consultant shall submit all invoices to the Authority in the manner specified herein. Except as specifically authorized by the Authority in writing, Consultant shall not bill the Authority for duplicate services performed by more than one person.

- 2.1 **Invoices.** Consultant shall submit invoices, not more often than once a month during the term of this Agreement, based on the cost for services performed prior to the invoice date. Invoices shall contain the following information:
- The beginning and ending dates of the billing period;
  - At the Authority's option, for each work item in each task, a copy of the applicable time entries or time sheets shall be submitted showing the name of the person doing the work, the hours spent by each person and a brief description of the work;
  - For work performed on an hourly Compensation Schedule, the total number of hours of work performed under the Agreement by Consultant and each employee, agent, and subcontractor of Consultant performing services hereunder;

- 2.2 **Monthly Payment.** The Authority shall make monthly payments, based on invoices received, for services satisfactorily performed. The Authority shall have 60 days from the receipt of an invoice that complies with all of the requirements above to pay Consultant.
- 2.3 **Hourly Fees.** Fees for work performed by Consultant on an hourly basis shall not exceed the amounts shown on the compensation schedule attached hereto as Exhibit B.
- 2.4 **Payment of Taxes.** Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.
- 2.5 **Payment upon Termination.** In the event the Authority or Consultant terminates this Agreement pursuant to Section 8, the Authority shall compensate Consultant for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. Consultant shall maintain adequate logs and timesheets to verify costs incurred to that date.
- 2.6 **Authorization to Perform Services.** Consultant is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of authorization from the Contract Administrator.

### **SECTION 3 - INSURANCE REQUIREMENTS**

Before beginning any work under this Agreement, Consultant, at its own cost and expense, unless otherwise specified below, shall procure the types and amounts of insurance listed below against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by Consultant and its agents, representatives, employees, and subcontractors. Consistent with the following provisions, Consultant shall provide proof satisfactory to the Authority of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects, and that such insurance is in effect prior to beginning work to the Authority. Consultant shall maintain the insurance policies required by this section throughout the term of this Agreement. The cost of such insurance shall be included in Consultant's bid. Consultant shall not allow any subcontractor to commence work on any subcontract until Consultant has obtained all insurance required herein for the subcontractor(s) and provided evidence that such insurance is in effect to the Authority. Verification of the required insurance shall be submitted and made part of this Agreement prior to execution. Consultant shall maintain all required insurance listed herein for the duration of this Agreement. Note: the coverage amounts listed below may vary dependent on the scope of work; therefore the coverage amounts listed in the Request for Proposal (RFP), incorporated as a part of this contract, prevail in the event of any discrepancy.

- 3.1 **Workers' Compensation.** Consultant shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than \$500,000 per accident. The insurer, if insurance

is provided, or Consultant, if a program of self-insurance is provided, shall waive all rights of subrogation against the Authority and its officers, officials, employees, and volunteers for loss arising from work performed under this Agreement.

### **3.2 Commercial General and Automobile Liability Insurance.**

**3.2.1 General Requirements.** Consultant, at its own cost and expense, shall maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than \$1,000,000 per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

**3.2.2 Additional Requirements.** Each of the following shall be included in the insurance coverage or added as a certified endorsement to the policy:

- a) The Insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.
- b) The Authority, its officers, officials, employees, and volunteers are to be covered as **additional insured** as respects: liability arising out of work or operations performed by or on behalf of Consultant; or automobiles owned, leased, hired, or borrowed by Consultant.
- c) For any claims related to this Agreement or the work hereunder, Consultant's insurance covered shall be primary insurance as respects the Authority, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the Authority, its officers, officials, employees, or volunteers shall be excess of Consultant's insurance and shall not contribute with it.
- d) Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after 30 days' prior written notice has been provided to the Authority.

### **3.3 Professional Liability Insurance.**

**3.3.1 General Requirements.** Consultant, at its own cost and expense, shall



maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing work pursuant to this Agreement in an amount not less than \$2,000,000 covering the licensed professionals' errors and omissions. Any deductible or self-insured retention shall not exceed \$250,000 per claim.

**3.3.2 Claims-Made Limitations.** The following provisions shall apply if the professional liability coverage is written on a claims-made form:

- a) The retroactive date of the policy must be shown and must be before the date of the Agreement.
- b) Insurance must be maintained and evidence of insurance must be provided for at least five years after completion of the Agreement or the work, so long as commercially available at reasonable rates.
- c) If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Consultant must purchase an extended period coverage for a minimum of five years after completion of work under this Agreement.
- d) A copy of the claim reporting requirements must be submitted to the Authority for review prior to the commencement of any work under this Agreement

**3.4 All Policies Requirements.**

**3.4.1 Acceptability of Insurers.** All insurance required by this section is to be placed with insurers with an AM Best rating of no less than A:VIII or better.

**3.4.2 Verification of Coverage.** Prior to beginning any work under this Agreement, Consultant shall furnish the Authority with complete copies of all policies delivered to Consultant by the insurer, including complete copies of all endorsements attached to those policies. All copies of policies and endorsements shall show the signature of a person authorized by that insurer to bind coverage on its behalf. If the Authority does not receive the required insurance documents prior to Consultant beginning work, it shall not waive Consultant's obligation to provide them. The Authority reserves the right to require complete copies of all required insurance policies at any time.

**3.4.3 Wasting Policies.** No policy required by this Section 4 shall include a "wasting" policy limit (i.e. limit that is eroded by the cost of defense).



**3.4.4 Waiver of Subrogation.** Consultant hereby agrees to waive subrogation which any insurer or contractor may require from vendor by virtue of the payment of any loss. Consultant agrees to obtain any endorsements that may be necessary to affect this waiver of subrogation.

The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the entity for all work performed by the contractor, its employees, agents, and subcontractors.

**3.4.5 Subcontractors.** Consultant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

**3.5 Remedies.** In addition to any other remedies the Authority may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, the Authority may, at its sole option exercise any of the following remedies, which are alternatives to other remedies the Authority may have and are not the exclusive remedy for Consultant's breach:

- Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
- Order Consultant to stop work under this Agreement or withhold any payment that becomes due to Consultant hereunder, or both stop work and withhold any payment, until Consultant demonstrates compliance with the requirements hereof; and/or
- Terminate this Agreement.

## **SECTION 4 – CONSULTANT’S RESPONSIBILITIES AND INDEMNIFICATION**

Consultant has a fiduciary duty to the Authority and must provide both a Duty of Care and a Duty of Loyalty that entails the following.

### **Duty of Care:**

1. exercise due care in performing its consulting activities;
2. possess the degree of knowledge and expertise needed to provide the Authority with informed advice;
3. make a reasonable inquiry as to the facts that are relevant to the Authority’s determination as to whether to proceed with a course of action or that form the basis for any advice provided to the Authority; and
4. undertake a reasonable investigation to determine that Consultant is not forming any recommendation on materially inaccurate or incomplete information; Consultant must have a reasonable basis for:
  - a. any advice provided to or on behalf of the Authority;
  - b. any representations made in a certificate that it signs that will be reasonably foreseeably relied upon by the Authority; and
  - c. any information provided to the Authority in connection with the procurement of products or services.

### **Duty of Loyalty:**

Consultant must deal honestly and with the utmost good faith with the Authority and act in the Authority’s best interests without regard to the financial or other interests of Consultant. Consultant will eliminate or provide full and fair disclosure (included herein) to Issuer about each material conflict of interest (applicable). Consultant will not engage in advisory activities with the Authority if it cannot manage or mitigate its conflicts in a manner that will permit it to act in the Authority’s best interests.

## **Conflicts of Interest and Other Matters Requiring Disclosures**

- As of the date of the Agreement, there are no actual or potential conflicts of interest other than those noted below that Consultant is aware of that might impair its ability to render unbiased and competent advice or to fulfill its fiduciary duty. If Consultant becomes aware of any potential conflict of interest that arise after this disclosure, Consultant will disclose the detailed information in writing to the Authority in a timely manner.
- The fee paid to Consultant increases the cost of investment to the Authority. The increased cost occurs from compensating Consultant for advisory services provided. This conflict of interest will not impair Consultant's ability to render unbiased and competent advice or to fulfill its fiduciary duty to the issuer.
- Consultant does not act as principal in any of the transaction(s) related to this Agreement.
- During the term of the advisory relationship, this agreement will be promptly amended or supplemented to reflect any material changes in or additions to the terms or information within this agreement and the revised writing will be promptly delivered to the Authority.
- Consultant does not have any affiliate that provides any advice, service, or product to or on behalf of the Authority that is directly or indirectly related to the advisory activities to be performed by Consultant.
- Consultant has not made any payments directly or indirectly to obtain or retain the Authority's advisory business.
- Consultant has not received any payments from third parties to enlist a recommendation to the Authority of its services, any product or service.
- Consultant has not engaged in any fee-splitting arrangements involving Consultant and any provider of products or services to the Authority.
- Consultant has a conflict of interest from compensation for products or services to be performed that is contingent on the size or closing of any transactions as to which Consultant is providing advice.
- Consultant serves a wide variety of other clients that may from time to time have interests that could have a direct or indirect impact on the interests of another Consultant client. For example, Consultant serves as advisor to other clients and, in such cases, owes a regulatory duty to such other clients just as it does to the Authority. These other clients may, from time to time and depending on the specific circumstances, have competing interests. In acting in the interests of its various clients, Consultant could potentially face a conflict of interest arising from these competing client interests. Consultant fulfills its regulatory duty and mitigates such conflicts through dealing honestly and with the utmost good faith with the Authority.

- Consultant does not have any legal or disciplinary event that is material to the Authority's evaluation of the advisor firm or the integrity of its management or advisory personnel.

### **Record Retention**

**Consultant is required to maintain in writing, all communication and created documents between Consultant and the Authority for five (5) years. Additionally, Consultant, pursuant to N.J.S.A. 52:15c-14(d) is required to give prompt access to the New Jersey State Controller to all documents and records pertaining to this Agreement.**

### **Indemnification**

The Consultant agrees to defend, indemnify, hold free, and harmless the ACMUA, its Board of Directors, officers, agents, and employees, at the Consultant's sole expense, from and against any and all claims, actions, suits, or other legal proceedings brought against the ACMUA, its Board of Directors, officers, agents and employees arising out of the performance of the Consultant and/or its employees, of the work undertaken pursuant to this Agreement. The defense, obligation provided for hereunder shall apply without and advance showing of negligence or wrongdoing by the Consultant and/or its employees but shall be required whenever any claim, action, complaint, or suit asserts as its basis the negligence, errors, omissions or misconduct of the Consultant and/or its employees, and/or whenever any claim, action, complaint or suit asserts liability against the ACMUA, its Board of Directors, officers, agents and employees based upon the work performed by the Consultant and/or its employees under this Agreement, whether or not the Consultant and/or its employees are specifically named or otherwise asserted to be liable. Notwithstanding the foregoing, the Consultant shall not be liable for the defense or indemnification of the ACMUA for claims, actions, complaints, or suits arising out of the sole active negligence or willful misconduct of the ACMUA. This provision shall supersede and replace all other indemnity provisions contained either in the ACMUA's specifications or the Consultant's proposal, which shall be of no force and effect.

## **SECTION 5 – STATUS OF CONSULTANT**

- 5.1 **Independent Contractor.** At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of the Authority. The Authority shall have the right to control Consultant only insofar as the results of Consultant's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subparagraph 1.3; however, otherwise the Authority shall not have the right to control the means by which Consultant accomplishes services rendered pursuant to this Agreement. Notwithstanding any other the Authority, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by the Authority, including but not limited to eligibility to enroll in the New Jersey Public Employees Retirement System (PERS) as an employee of the Authority and entitlement to any contribution to be paid by the Authority for employer contributions and/or employee contributions for PERS benefits.
- 5.2 **Consultant Not an Agent.** Except as the Authority may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of the Authority in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind the Authority to any obligation whatsoever.

## **SECTION 6 - LEGAL REQUIREMENTS**

- 6.1 **Governing Law.** The laws of the State of New Jersey shall govern this Agreement.
- 6.2 **Compliance with Applicable Laws.** Consultant and any subcontractors shall comply with all laws applicable to the performance of the work hereunder.
- 6.3 **Other Governmental Regulations.** To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Consultant and any subcontractors shall comply with all applicable rules and regulations to which the Authority is bound by the terms of such fiscal assistance program.
- 6.4 **Licenses and Permits.** Consultant represents and warrants to the Authority that Consultant and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. Consultant represents and warrants to the Authority that Consultant and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions. In addition to the foregoing, Consultant and any subcontractors shall obtain and maintain during the term of this Agreement valid Business Licenses from the Authority.
- 6.5 **Legal Events and Disciplinary History.** Consultant does not have any legal events and disciplinary history with the BPUC, which includes information about any criminal actions, regulatory actions, investigations, terminations, judgments, liens, civil judicial actions, customer complaints, arbitrations and civil litigation.
- 6.6 **Nondiscrimination and Equal Opportunity.** Consultant shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Consultant under this Agreement. Consultant shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Consultant thereby.

Consultant shall include the provisions of this Subsection in any subcontract approved by the Contract Administrator or this Agreement.

## **SECTION 7 - TERMINATION AND MODIFICATION**

- 7.1 **Termination.** The Authority may cancel this Agreement at any time and without cause upon written notification to Consultant.

Consultant may cancel this Agreement upon 45 days' written notice to the Authority and shall include in such notice the reasons for cancellation. In the event of termination, Consultant shall be entitled to compensation for services performed to the effective date of termination; the Authority, however, may condition payment of such compensation upon Consultant delivering to the Authority any or all documents and other materials provided to Consultant or prepared by or



for Consultant or the Authority in connection with this Agreement.

- 7.2 **Amendments.** The parties may amend this Agreement only by a writing signed by all the parties.
- 7.3 **Assignment and Subcontracting.** The Authority and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to the Authority for entering into this Agreement was and is the professional reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the Contract Administrator. Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors noted in the proposal, without prior written approval of the Contract Administrator.
- 7.4 **Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between the Authority and Consultant shall survive the termination of this Agreement.
- 7.5 **Options upon Breach by Consultant.** If Consultant materially breaches any of the terms of this Agreement, the Authority's remedies shall include, but not be limited to, the following:
- 7.5.1 Immediately terminate the Agreement;
  - 7.5.2 Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement;
  - 7.5.3 Retain a different consultant to complete the work described in Exhibit A not finished by Consultant; or
  - 7.5.4 Charge Consultant the difference between the cost to complete the work described in Exhibit A that is unfinished at the time of breach and the amount that the Authority would have paid Consultant pursuant to Section 2 if Consultant had completed the work.

## **SECTION 8 – MISCELLANEOUS PROVISIONS**

**Venue.** In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of New Jersey in the County of Atlantic County.

- 8.1 **Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 8.2 **No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 8.3 **Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.



**8.4 Notices.**

Any written notice to the Authority shall be sent to:

Michael Armstrong  
Executive Director  
Atlantic City Municipal Utilities Authority  
401 North Virginia Avenue  
Atlantic City, New Jersey 08401

- 8.5 Integration.** This Agreement, including the Scope of Service and Cost Proposal are attached hereto and incorporated herein as Exhibits A and B, and the Request for Proposal represents the entire and integrated agreement between the Authority and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral.
- 8.6 Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.