

# Indemnification

Contractor/Vendor shall defend, indemnify, save harmless the Municipality, its elected and appointed officials, its employees, agents, volunteers and others working on behalf of the Municipality, from and against any and all liability, suits, damages, costs (including attorney's fees), losses, outlays, and expenses from claims in any manner caused by or allegedly caused by, or arising out of, or connected with, this Contract, or the work of any subcontract thereunder (the Contractor/Vendor hereby assuming full responsibility for relations with subcontractors), including but not limited to claims for personal injuries, death, property damage, and/or for damages from the award of this Contract to the Contractor/Vendor, notwithstanding any possible negligence, whether sole or concurrent, on the part of the Municipality, its officials or agents.

Contractor/Vendor shall indemnify and hold the Municipality harmless from all wages or overtime compensation due any employees in rendering services pursuant to this agreement or any subcontract, including payment of reasonable attorney's fees and costs in the defense of any claim made under the Fair Labor Standards Act, the New Jersey Prevailing Wage Law or any other federal or state law. Nothing herein shall preclude the Municipality from requiring additional documentation as needed to ensure that the appropriate wage rates are being paid in order to ensure compliance with all state and federal rules, regulations and statutes.

The indemnification obligations of the Contractor/Vendor hereunder shall not be limited by any limitations as to the amount or type of damages, compensation or benefits payable by or for the Contractor/Vendor, under any federal or state law, to any person asserting the claim against the Municipality, its elected or appointed officials, agents and employees, for which indemnification is sought.

The indemnification obligations herein shall not negate, abridge or reduce in any way any additional indemnification rights of the Municipality, its elected or appointed officials, agents and employees, which are otherwise available under statute, or in law or equity.

Contractor/Vendor affirms that it has had the opportunity to recover the costs of liability insurance required in this agreement in its contract price. Contractor/Vendor's obligation under this agreement to defend, indemnify and hold harmless any person from that person's own negligence or wrongdoing is limited to the coverage and limits of the applicable insurance required of the Contractor/Vendor under this agreement.

The Contractor/Vendor shall indemnify and hold the Municipality harmless for any penalties, fines, fees or costs, including costs of defense, which are charged or assessed by any Federal, State or local agency including, but not limited to, the Environmental Protection Agency or Department of Natural Resources and the New Jersey Department of Environmental Protection.

The Contractor/Vendor shall hold and save the Municipality, its elected or appointed officials, agents, servants and employees harmless for liability of any nature or kind, including costs and expenses for, or on account of any patented or unpatented invention, process, article, or appliance manufactures or used in the performance of the Contract including its use by the Municipality, unless otherwise specifically stipulated in the Contract document.

If the Contractor/Vendor uses any design device, materials covered by letters, patent or copyright, any proprietary computer hardware, software/software applications or telecommunications systems or equipment, the Contractor/Vendor shall provide for such use by suitable agreement with the owner of such patented or copy-righted design device or material or any proprietary computer hardware, software/software applications or telecommunications systems or equipment. It is mutually agreed and understood that without exception, the contract prices shall include all royalties or costs arising from the use of such design, device, applications or materials, in any way involved in the work.

The Contractor/Vendor and/or his Sureties shall indemnify and save harmless the Municipality/Owner of the project from any and all claims for infringement by reason of the use of such patented or copy-righted design, device or materials, any proprietary computer hardware, software/software applications or telecommunications systems or equipment and any trademark or copyright in connection with work agreed to be performed under this Contract, and shall indemnify the Municipality/Owner for any cost, expense, or damage which it may be obligated to pay by reason of such infringement at any time during the performance of the work or after completion of the work.

## **Insurance**

Insurance Requirements. Without limiting any of the other obligations or liabilities of the Contractor/Vendor, the Contractor/Vendor shall secure and maintain, at its own cost and expense, throughout the duration of this Contract and until the work is completed and accepted by the Municipality, insurance of such types and in such amounts as may be necessary to protect it and the interests of the Municipality against all hazards or risks of loss as hereunder specified or which may arise out of the performance of the Contract Documents. The form and limits of such insurance, together with the underwriter thereto in each case, are subject to approval by the Municipality. Regardless of such approval, it shall be the responsibility of the Contractor/Vendor to maintain adequate insurance coverage at all times during the term of the Contract. Failure of the Contractor/Vendor to maintain coverage shall not relieve it of any contractual responsibility or obligation or liability in general or under the Contract Documents.

Contractor/Vendor shall be required to name the Municipality as an "Additional Insured" in the Contractor/Vendor's policy of commercial general liability insurance through an Endorsement to the policy, and simultaneously with the delivery of the executed Contract Documents, Contractor/Vendor shall provide the Municipality with a Certificate of Insurance and Endorsement indicating that the insurance coverage as described in the attached schedule, and as is appropriate for the work being performed and furnished, has been obtained and that the Municipality has been designated as an "Additional Insured" where required. On or before the renewal date of said policy, Contractor/Vendor shall be required to provide the Municipality with a Certificate of Insurance and Endorsement indicating the continuation of insurance coverage and designating the Municipality as an "Additional Insured".

The Schedule of Insurance and the Limits of Liability for the insurance shall provide coverage for not less than the following amounts (or greater) where required by law:

## Schedule of Insurance

Notwithstanding the indemnification and defense obligations of the Contractor/Vendor, the “Contractor/Vendor” shall provide at its own cost and expense proof of the following insurance to the Municipality:

- A. Workers’ Compensation – Statutory coverage and limits in compliance with the Workers’ Compensation Law of the State of New Jersey (any and all sole proprietors shall provide coverage for the sole proprietor);
- B. Commercial General Liability Insurance, including coverage for Premises, Operations, Products and Completed Operations, Contractual Liability, Broad Form Property Damage, Independent Contractor/Vendors, Explosion, Collapse, and Underground Property Damage and endorsed for blasting if blasting required. Such coverage shall apply to bodily injury and property damage on an “Occurrence Form Basis” with limits of at least One Million (\$1,000,000.00) Dollars (Two Million [\$2,000,000.00] Dollars for Aggregate plus One Million (\$1,000,000.00) Dollars in Excess/Umbrella Coverage) for all claims arising out of a single accident or occurrence and at least One Million (\$1,000,000.00) Dollars with respect to injuries and/or death of any one person in a single occurrence and an amount not less than at least Five Hundred Thousand (\$500,000.00) Dollars for all claims to property arising out of a single occurrence and at least Five Hundred Thousand (\$500,000.00) Dollars to any one owner with respect to damages to property. Contractor/Vendor agrees that the proceeds of such insurance policy shall first be used to pay an award, damages, costs, and/or attorney’s fees incurred by or assessed against the Municipality, its employees, officers and agents, before payment or any award, damages, costs, or attorney’s fees of Contractor/Vendor, its employees, officers or agents. Contractor/Vendor agrees to cause its insurer to name the Municipality as an “Additional Insured” on such insurance policy, through an Endorsement to the policy, and also including the Municipality as an “Additional Insured” for coverage under its products-completed operations hazard, and said policy shall be primary and noncontributory and shall contain a waiver of subrogation clause.
- C. Automobile Liability Insurance Coverage covering bodily injury and property damage for owned, non-owned, and hired vehicles, with limits of at least One Million (\$1,000,000.00) Dollars for all claims arising out of a single accident or occurrence and at least Two Million (\$2,000,000.00) dollars with respect to injuries and/or death of any one person in a single accident plus One Million (\$1,000,000.00) Dollars in Excess/Umbrella Coverage. Contractor/Vendor agrees to cause its insurer to name the Municipality as an “Additional Insured” on such insurance policy, through an Endorsement to the policy, including the Municipality as an “Additional Insured” for coverage.
- D. Owner’s and Contractor/Vendor’s Protective Liability. Insurance to protect the Municipality, its agents, servants and employees from claims which may arise from the performance of this Contract, with limits of at least One Million (\$1,000,000.0) Dollars for all claims arising out of a single accident or occurrence and at least Three Million (\$3,000,000.00) dollars with respect to injuries and/or death of any one person in a single accident.

The Owner's and Contractor/Vendor's Protective Liability Insurance must:

- (1) Be a separate policy with the named insured being: The Municipality and
  - (2) Contain an endorsement that disclaims coverage for any claim barred by the doctrines of sovereign immunity or official immunity, except attorney's fees and other litigation costs incurred in defending a claim. Nothing contained in this policy (or this endorsement thereto) shall constitute a waiver of whatever kind of these defenses or sovereign immunity or official immunity for any monetary amount whatsoever.
- E. Errors and Omissions/Professional Liability – A minimum limit of liability of one million (\$1,000,000.00) dollars per incident and in the annual aggregate;
- F. Builders Risk Insurance – Contractor/Vendor shall provide a Builder's Risk Policy to be payable to the Municipality in an amount equal to the replacement cost of the building. Such insurance shall be provided on an All Risk basis and include coverage, without limitation, for windstorm, storm surge, flood and earth movement. Unless waived by the Municipality by Resolution, it shall include coverage for ordinance and law, demolition and increased costs of construction, debris removal, pollutant clean up and removal, and expediting costs. Such insurance shall cover, without limitation, (a) all buildings and/or structures involved in the work, as well as temporary structures at the Site, and (b) any property that is intended to become a permanent part of such building or structure, whether such property is on Site, in transit or in temporary storage. The policies shall name the Contractor/Vendor as the named insured and list the Municipality as both an additional insured, through an Endorsement to the policy, and Loss Payee as its interest may appear.
- G. Pollution Risk Insurance – Pollution Liability Insurance covering Contractor/Vendor's or appropriate subcontractor's liability for bodily injury, property damage and environmental damage resulting from sudden accidental and gradual pollution and related cleanup costs incurred by Contractor/Vendor, all arising out of the Goods delivered or Services (including transportation risk) performed under this Contract is required. Combined single limit per occurrence shall not be less than One Million (\$1,000,000.00) Dollars. Annual aggregate limit shall not be less than Three Million (\$3,000,000.00).
- H. Cyber Risk – Contractor/Vendor shall provide Cyber Risk Liability Insurance in the amount of with a minimum combined single limit of liability per occurrence and one million (\$1,000,000) dollars for bodily and personal injury and property damage and two million (\$2,000,000) dollars annual aggregate. However, if the Contractor/Vendor is an IT Contractor/Vendor, the annual aggregate shall be three million (\$3,000,000.00) dollars.
- I. Subcontracts – in case any or all of this work is sublet, the Contractor/Vendor shall require the subcontractor to procure and maintain all insurance required in subparagraphs (a), (b) and (c) hereof and in like amounts. Contractor/Vendor shall require any and all subcontractors with whom it enters in a contract to perform work on this project to protect the Municipality through insurance against applicable hazards or risks and shall, upon request of the Municipality, provide evidence of such insurance.

- J. Notice – the Contractor/Vendor and/or subcontractor shall furnish the Municipality prior to beginning the work, the policy as specified in subparagraphs A. through I., and satisfactory proof of all the insurance required by this Contract, with the provision that policies shall not be canceled, modified or non-renewed without thirty (30) days written notice to the Municipality. Failure by the Contractor/Vendor to supply such written evidence of required insurance and to maintain same for the duration of this Contract shall result in default under the Contract.

The insurance companies for the above coverages must be licensed by the State of New Jersey and acceptable to the “Municipality”. The “Contractor/Vendor” shall take no action to cancel or materially change any of the insurance required under this Contract without the Municipality’s prior approval. The maintenance of insurance under this section shall not relieve the “Contractor/Vendor” of any liability greater than the limits of the scope of the applicable insurance coverage.

The Certificates of Insurance, including evidence of the required endorsements hereunder or the policies, shall be filed with the Municipality within ten (10) days after the date of the receipt of Notice of Award or Contract to the Contractor/Vendor and prior to the start of work. All insurance policies shall require that the insurance company in question provide thirty (30) days written notice prior to modification or cancellation of such insurance. Such notices shall be emailed and mailed, certified mail, return receipt requested to:

**Supply Municipality email address and mailing address**

\*ABOVE INSURANCE SCHEDULE TO BE PREPARED IN CONSULTATION WITH YOUR RISK MANAGEMENT CONSULTANT AS RECOMMENDED BY THE FUND’S CERTIFICATE OF INSURANCE GUIDELINES.