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|  | **The Massachusetts Water Resources Authority**  **SAMPLE**  **Authority-Contractor Agreement**  **with**  **SUPPLIER NAME**  **for**  **PROJECT TITLE**  **MWRA CONTRACT NUMBER** |

AGREEMENT, made as of the \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_, by and between the Massachusetts Water Resources Authority (the "Authority"), a body politic and corporate of the Commonwealth of Massachusetts, and «Supplier.SupplierName» (the "Contractor"), a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ organized under the laws of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and having a usual place of business printed in this agreement.

In consideration of the mutual agreements by the parties contained herein, the Authority and the Contractor agree as set forth below:

ARTICLE 1. THE CONTRACT DOCUMENTS

1.1 The Contract Documents consist of this Agreement and the other documents, plans, drawings and specifications listed in the Table of Contents and in Subparagraph 1.1.4 of Section 00700, General Conditions. The Contract Documents are all as fully a part of the Contract as if attached to this Agreement or repeated herein. Terms used herein shall have the meanings assigned to them in such Contract Documents.

ARTICLE 2. THE WORK

2.1 The Contractor shall furnish all labor, materials, tools, equipment, and insurance necessary to perform the Work in strict accordance with the Contract Documents for the project entitled: «Name» including Addenda to the Contract Documents numbered \_\_\_\_\_\_.

ARTICLE 3. CONTRACT PRICE

3.1 The Authority shall pay the Contractor for the performance of the Work in accordance with the Contract Documents, in current funds, the Contract Price of [TOTAL CONTRACT PRICE] including the unit prices, if any, and allowances, if any, stated in the General Bid Response.

| **Contract Lines** | | | |
| --- | --- | --- | --- |
| **Item** | **Item Description** | **Unit of Measure** | **Base Cost** |
| LINE# | DESCRIPTION | UOM | $##.## |

ARTICLE 4. PAYMENT OF THE CONTRACT PRICE

4.1 Progress payments and final payment shall be made to the Contractor as provided in Section 00700, General Conditions and in accordance with applicable provisions of the Massachusetts General Laws.

ARTICLE 5. CONTRACT TIME; LIQUIDATED DAMAGES

5.1 It is agreed that time is of the essence of this Contract. Contractor shall commence Work forthwith on the date specified in the Notice to Proceed and shall diligently carry out the Work with dispatch to completion within the time specified in Division One of the Contract Documents, including any interim milestones specified therein. The time specified in Division One and the time(s) specified for achieving interim milestone(s), if any, together with any valid extensions thereof approved by the Authority as provided in the Contract Documents, is herein referred to as the Contract Time.

5.2 The Contractor shall be assessed liquidated damages for each calendar day of delay in Substantial Completion of the Work (as defined in Section 00700, General Conditions) after expiration of the Contract Time, and for each calendar day of delay in achieving any interim milestone(s) specified in Division One of the Contract Documents, in accordance with the following provisions:

5.2.1 Time as Essential Condition - It is understood and agreed that the time of commencement of Work, including any interim milestone(s), and completion of the Work and interim milestone(s) in accordance with the Contract Documents are essential conditions of this Contract. It is further agreed that time is of the essence of each and every portion of the Contract Documents wherein a definite and certain or maximum length of time is fixed for the performance of any act whatsoever; and where, in accordance with the Contract Documents, an additional time is allowed for the completion of any work, the new time fixed by such extension shall be of the essence of this Contract. It is understood and agreed that the Contract Time and other times for the completion of Work specified in the Contract Documents are reasonable times for the same.

5.2.2 Progress and Completion - The Contractor shall commence work promptly upon receipt of a Notice to Proceed, and shall prosecute and complete the Work regularly, diligently and uninterruptedly in accordance with the Contract Documents at such rate of progress as will ensure completion and achievement of interim milestones, if any, within the Contract Time.

5.2.3 Liquidated Damages - If the Contractor shall neglect, fail or refuse to complete the Work within the Contract Time, the Contractor and the Contractor's Surety agree, as part of the consideration for the execution of this Contract by the Authority, to pay the Authority the amount specified in Division One of the Contract Documents, not as a penalty, but as liquidated damages to partially cover losses, expenses and damages of the Authority for such breach of contract as herein set forth, for each and every calendar day occurring after expiration of the Contract Time, as of which the Contractor shall not have achieved completion of the Work. If the Contractor shall neglect, fail or refuse to complete the Work of any milestone within the time specified in Division One of the Contract Documents, the Contractor and the Contractor's Surety agree, as a part of the consideration for the execution of this Contract by the Authority, to pay the Authority the liquidated damage amount corresponding to said milestone as specified in Division One of the Contract Documents, not as a penalty, but as liquidated damages to partially cover losses, expenses and damages of the Authority for such breach of contract, for each and every calendar day occurring after expiration of the milestone, as of which the Contractor shall not have achieved completion of the Work included in said milestone. The Contractor and its Surety acknowledge and agree that the Authority has made, and will have made, commitments to third parties which are, and which will be made based on the Authority's reliance upon the achievement by the Contractor of completion of the Work and all other milestones, deadlines, and times specified in the Contract Documents in accordance with the terms thereof, and that delays in completion of the Work could expose the Authority to liability to such third parties, in addition to other financial losses and expenses. In light of the above-described costs, damages, losses, risks and liabilities, the parties have agreed upon the daily liquidated damages stated above for any delay in achieving completion of the Work and to those liquidated damages specified in Division One of the Contract Documents for any delay in achieving the milestones set forth therein. Such damages have been fixed and agreed upon because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages the Authority would in such event sustain, and said amounts shall be retained from time to time by the Authority from current progress payments or any other amounts owing to the Contractor or, to the extent not so retained, shall be paid promptly by the Contractor or its Surety to the Authority.

5.3

5.3.1 Non-Waiver - None of the following shall constitute a waiver of the Contractor's or its Surety's obligations to pay liquidated damages or any portion thereof:

(a) Acceptance of any portion of the Work or payment to the Contractor or its surety therefor;

(b) Completion of a portion of the Work or the use or occupancy thereof by the Authority or separate contractors;

(c) The Authority's requiring or allowing the Contractor or its Surety to complete the Work.

5.3.2 Employees Not Liable - No member, officer, director, employee or agent of the Authority shall be liable to the Contractor under any term or provision of this Contract or because of any breach thereof. This Contract shall be binding upon the heirs, executors, administrators, successors and assigns of the Contractor.

5.3.3 Cumulative Remedies - The rights and remedies of the Authority provided herein are in addition to, and not in limitation of, any other rights and remedies the Authority may have at law, or under the Contract Documents, for Contractor's failure to perform any of its other obligations under the Contract Documents, including but not limited to Contractor's or Surety's failure, refusal or neglect to complete the Work, through fault or otherwise.

ARTICLE 6. CERTIFICATIONS

6.1 The individual signing this Agreement on behalf of the Contractor hereby certifies, under the penalties of perjury, that to the best of his/her knowledge and belief, the Contractor has filed with the Massachusetts Secretary of State all certificates and annual reports required by the applicable provisions of the Massachusetts General Laws.

6.2 The individual signing this Agreement on behalf of the Contractor hereby certifies, under the penalties of perjury, that to the best of his/her knowledge and belief, the Contractor has complied with any and all applicable state and local tax laws related to the taxes included in the following: G.L. c. 59 - Assessment of Local Taxes; G.L. c. 60B - Excise on Boats, Ships and Vessels in Lieu of Local Property Tax; and G.L. c. 62C, §2.

ARTICLE 7. BONDS

7.1 The following bonds, duly executed by sureties qualified to do business in Massachusetts, are hereby delivered to the Authority by the Contractor and its Surety:

7.2.1 Labor and Material Bond in the form contained in the Contract Documents.

7.2.2 Performance Bond in the form contained in the Contract Documents.

ARTICLE 8. VOTE OF AUTHORIZATION

A Vote of Corporation verifying that the undersigned is authorized to execute contracts, bonds and other instruments in the name and behalf of the Contractor and affix its seal thereto and that such execution of any contract or other instrument or obligation in the Contractor's name on its behalf by the undersigned shall be valid and binding upon the Contractor is hereby delivered.

IN WITNESS WHEREOF, the parties hereto have executed this agreement under seal in triplicate as of the date and year first above written.

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| CONTRACTOR | MASSACHUSETTS WATER RESOURCES AUTHORITY |
| SUPPLIER NAME  SUPPLIER ADDRESS 1  SUPPLIER ADDRESS 2 | By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Frederick A. Laskey, Executive Director |
| By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Hereunto Duly Authorized |  |
| Name (Printed): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  |
| Title (Printed): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  |

[ATTEST]