

THE SOUTHEAST MORRIS COUNTY MUNICIPAL UTILITIES AUTHORITY

MEETING MINUTES

NOVEMBER 2, 2017

The Regular Meeting of The Southeast Morris County Municipal Utilities Authority (the "Authority") was held on Thursday, November 2, 2017, at 7:00 PM prevailing time in the Board Room at the offices of the Authority at 19 Saddle Road, Cedar Knolls, New Jersey.

The Chairman called the meeting to order at 7:00 PM and Mr. Weiss read the attached statement of Public Notice (Sunshine Law) and caused same to be entered into the minutes of the meeting.

ROLL CALL

PRESENT: Chairman Kissil; Members Baldassari, Dougherty, Iannaccone, Johnson, Rotando and Schimpf

ABSENT: Member Conradi

Also present at the meeting were the following Authority staff: Laura Cummings, Executive Director/Chief Engineer; Paul Kozakiewicz, Superintendent; Charles Maggio, Manager of Finance; Alexis Bozza, Administrative Assistant; and General Counsel to the Authority, Sidney D. Weiss, Esq.

MOTION APPROVING MINUTES OF OCTOBER 19, 2017

Copies of the minutes of the meeting held on October 19, 2017, were distributed to the members prior to the meeting for review and comment. Member Rotando moved that the minutes be adopted. Member Johnson seconded the motion which was duly adopted by the following vote:

YEAS: Chairman Kissil; Members Baldassari, Iannaccone, Johnson, Rotando and Schimpf

NOES: None

ABSTAINS: Member Dougherty

RESOLUTION – APPROVAL OF NOVEMBER 2017 LIST OF BILLS

Copies of the bill list for November 2017 were distributed to the members prior to the meeting for comment and approval. Member Dougherty moved to approve the list of bills and offered the following resolution:

RESOLUTION NO. 103-17

RESOLUTION AUTHORIZING PAYMENT OF LIST OF BILLS FOR NOVEMBER 2017

“COPY ANNEXED”

Member Rotando seconded the motion which was duly adopted by the following vote:

YEAS: Chairman Kissil; Members Baldassari, Dougherty, Iannaccone, Johnson, Rotando and Schimpf

NOES: None

COMMUNICATIONS

1. October 30, 2017 – Memorandum from Manager of Finance regarding 2018 insurance policies.
2. October 28, 2017 – E-mail message from “Concerned Citizen” and draft response.

OTHER BUSINESS

- A. Resolution Authorizing the Transfer of Funds between 2017 Budget Appropriations

The Board reviewed a memorandum from the Manager of Finance dated October 30, 2017, where he advised that there exists certain funds in the 2017 budget line items which will be remaining at year end and that there are certain budget line items in the 2017 budget that require additional funding prior to the year end. Per suggestion by the Authority’s Auditors that it authorize and obtain Board approval for budget transfers among its internal appropriation line items to cover actual expenditures, the Manager of Finance requested that such balances, totaling \$34,000.00, be transferred from the various budget line items with balances to those requiring additional funds to balance. Member Johnson offered the following resolution:

RESOLUTION NO. 104-17

RESOLUTION AUTHORIZING THE TRANSFER OF FUNDS BETWEEN 2017 BUDGET APPROPRIATIONS

"COPY ANNEXED"

Member Dougherty seconded the motion which was duly adopted by the following vote:

YEAS: Chairman Kissil; Members Baldassari, Dougherty, Iannaccone, Johnson, Rotando and Schimpf

NOES: None

- B. Resolution Authorizing Approval of Takeover Agreement with International Fidelity Insurance Company for Completion of Pro-Spec Structural Repairs Contract (Picatinny Tank No. 1)

Mr. Weiss recalled that the Authority entered into an agreement with Pro-Spec Painting, Inc. ("Pro-Spec") for structural repairs to Picatinny Water Tank No. 1 in the amount of \$298,450 (the "Contract"). He stated that International Fidelity Insurance Company ("IFIC") as surety and Pro-Spec, as principal executed and delivered to the Authority a Performance and Payment Bond in the penal sum of \$298,450 (the "Bond"). Mr. Weiss recalled that Pro-Spec defaulted on the Contract and has filed a petition for Chapter 11 bankruptcy protection. He added that the Authority has filed a motion in Pro-Spec's bankruptcy proceeding requesting relief of the automatic stay and to allow the Authority to terminate the Contract with Pro-Spec. Mr. Weiss continued that the Authority's motion was approved by the Bankruptcy Court on September 7, 2017 and the Authority has terminated the Contact as therein permitted. He stated that IFIC, as surety, has secured a proposal from a contractor (the "Completion Contactor") to complete the work under the Contract; and has agreed to assume all obligations of Pro-Spec to complete the Contract as more particularly set forth in a proposed Takeover Agreement between the Authority and IFIC, a copy of which Takeover Agreement was reviewed by the Members. It was determined that execution of the Takeover Agreement is necessary and desirable to expedite completion of the Contract and avoid further expense and delays. Member Dougherty offered the following resolution:

RESOLUTION NO. 105-17

RESOLUTION AUTHORIZING APPROVAL OF TAKEOVER AGREEMENT WITH INTERNATIONAL
FIDELITY INSURANCE COMPANY FOR COMPLETION OF PRO-SPEC STRUCTURAL REPAIRS
CONTRACT (PICATINNY TANK NO. 1)

"COPY ANNEXED"

Member Baldassari seconded the motion which was duly adopted by the following vote:

YEAS: Chairman Kissil; Members Baldassari, Dougherty, Iannaccone, Johnson, Rotando and Schimpf

NOES: None

C. Resolution Authorizing Approval of Takeover Agreement with International Fidelity Insurance Company for Completion of Pro-Spec Painting and Rehabilitation Contract (Picatinny Tank No. 1)

Mr. Weiss recalled that the Authority entered into an agreement with Pro-Spec Painting, Inc. ("Pro-Spec") for painting and rehabilitation to Picatinny Water Tank No. 1 in the amount of \$798,850 (the "Contract"). He stated that International Fidelity Insurance Company ("IFIC") as surety and Pro-Spec, as principal executed and delivered to the Authority a Performance and Payment Bond in the penal sum of \$798,850 (the "Bond"). Mr. Weiss recalled that Pro-Spec defaulted on the Contract and has filed a petition for Chapter 11 bankruptcy protection. He added that the Authority has filed a motion in Pro-Spec's bankruptcy proceeding requesting relief of the automatic stay and to allow the Authority to terminate the Contract with Pro-Spec. Mr. Weiss continued that the Authority's motion was approved by the Bankruptcy Court on September 7, 2017 and the Authority has terminated the Contact as therein permitted. He stated that IFIC, as surety, has secured a proposal from a contractor (the "Completion Contactor") to complete the work under the Contract; and has agreed to assume all obligations of Pro-Spec to complete the Contract as more particularly set forth in a proposed Takeover Agreement between the Authority and IFIC, a copy of which Takeover Agreement was reviewed by the Members. It was determined that execution of the Takeover Agreement is necessary and desirable to expedite completion of the Contract and avoid further expense and delays. Member Dougherty offered the following resolution:

RESOLUTION NO. 106-17

RESOLUTION AUTHORIZING APPROVAL OF TAKEOVER AGREEMENT WITH INTERNATIONAL FIDELITY INSURANCE COMPANY FOR COMPLETION OF PRO-SPEC PAINTING AND REHABILITATION CONTRACT (PICATINNY TANK NO. 1)

"COPY ANNEXED"

Member Iannaccone seconded the motion which was duly adopted by the following vote:

YEAS: Chairman Kissil; Members Baldassari, Dougherty, Iannaccone, Johnson, Rotando and Schimpf

NOES: None

PUBLIC DISCUSSION

Chairman Kissil stated the next portion of the meeting was set aside for public discussion. No one from the public was present. The Chairman then closed the public portion of the meeting.

ADJOURNMENT

There being no further business, Member Dougherty moved that the meeting be adjourned. Member Johnson seconded the motion. The meeting adjourned at 7:30 PM.

THE SOUTHEAST MORRIS COUNTY
MUNICIPAL UTILITIES AUTHORITY



SIDNEY D. WEISS
Assistant Secretary



Southeast Morris County Municipal Utilities Authority

19 SADDLE ROAD • CEDAR KNOLLS, NEW JERSEY 07927 • TEL 973-326-6880 • FAX 973-326-9521

Resolution No. 103-17

RESOLUTION AUTHORIZING PAYMENT OF NOVEMBER 2017 LIST OF BILLS

BE IT RESOLVED that authorization is hereby granted to make payment of the following list of bills:

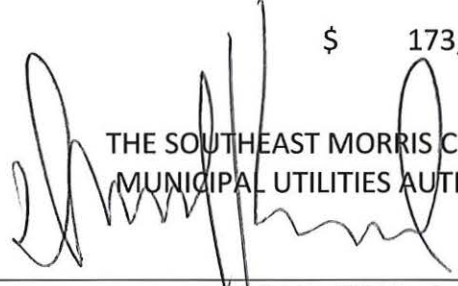
OPERATING FUND

Total Salary and Wages	\$ 136,727.45
Total Operating Fund Checks and Wire Transfers	<u>\$ 36,615.47</u>
TOTAL OF NOVEMBER 2017 LIST OF BILLS	\$ 173,342.92

ATTEST:



SIDNEY D. WEISS, Assistant Secretary



DONALD KISSIL, Chairman

THE SOUTHEAST MORRIS COUNTY
MUNICIPAL UTILITIES AUTHORITY

Dated: November 2, 2017

Board Members

Morristown:
Mary Dougherty
Donald Kissil

Morris Township:
Dennis Baldassari
Alan Johnson

Morris Plains:
William Conradi
Ralph Rotando

Hanover Township:
Saverio C. Iannaccone
Adolf Schimpf

Executive Director/Chief Engineer: Laura Cummings, P.E.

Superintendent: Paul A. Kozakiewicz

TREASURER'S CERTIFICATION

I hereby certify that there are sufficient funds available (\$173,342.92) for payment of the resolution entitled Resolution Authorizing Payment of November 2017 List of Bills in the Authority's 2017 Operating Budget.



CHARLES MAGGIO, Treasurer

Dated: November 2, 2017

CERTIFICATION

I hereby certify the foregoing to be a true copy of the resolution adopted by The Southeast Morris County Municipal Utilities Authority on Thursday, November 2, 2017, at a meeting duly convened of said Authority.



SIDNEY D. WEISS, Assistant Secretary

Dated: November 2, 2017



Southeast Morris County Municipal Utilities Authority

19 SADDLE ROAD • CEDAR KNOLLS, NEW JERSEY 07927 • TEL 973-326-6880 • FAX 973-326-9521

Resolution No. 104-17

RESOLUTION AUTHORIZING THE TRANSFER OF FUNDS BETWEEN 2017 BUDGET APPROPRIATIONS

WHEREAS, the Authority's Manager of Finance/Treasurer has advised that a new budget account was needed to cover expenses incurred by temporary staff; and

WHEREAS, the Manager of Finance/Treasurer has requested that such balances be transferred from a previously established budget line item with a balance to fund the new budget line item; and

WHEREAS, it appears that such transfer is in the best interest of the Authority and the Water System;

NOW THEREFORE, BE IT RESOLVED by The Southeast Morris County Municipal Utilities Authority that the following transfer within the 2017 Operating Budget totaling \$34,000.00 is hereby approved:

Budget Transfers for 2017 Budget

<u>Budget Line Item</u>	<u>Title</u>	<u>Amount</u>
Transfer To:		
02-60-400-629	Vehicle and Equipment Maintenance	15,000.00
02-60-400-635	TRANS: Traffic Control	1,500.00
02-60-400-510	TRANS: Temporary Staff	17,500.00
	Total	<u>\$34,000.00</u>
Transfer From:		
02-70-400-632	Maintenance and Services	16,500.00
02-60-400-501	TRANS: Salary & Wages	17,500.00
	Total	<u>\$34,000.00</u>

Board Members

Morristown:
Mary Dougherty
Donald Kissil

Morris Township:
Dennis Baldassari
Alan Johnson

Morris Plains:
William Conradi
Ralph R. Rotando

Hanover Township:
Saverio C. Iannaccone
Adolf Schimpf

Executive Director/Chief Engineer: Laura Cummings, P.E.

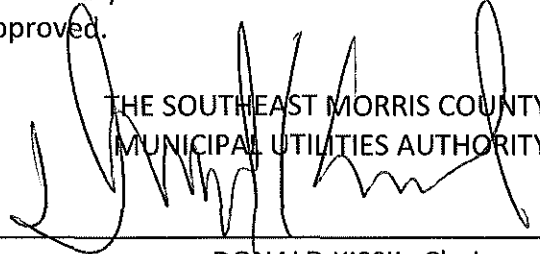
Superintendent: Paul A. Kozakiewicz

AND BE IT FURTHER RESOLVED that the Manager of Finance/Treasurer be and is hereby authorized and directed to take whatever actions are necessary or convenient to effectuate the provisions of this Resolution and the transfers hereby approved.

ATTEST:



SIDNEY D. WEISS, Assistant Secretary

THE SOUTHEAST MORRIS COUNTY
MUNICIPAL UTILITIES AUTHORITY


DONALD KISSIL, Chairman

DATED: November 2, 2017

CERTIFICATION

I hereby certify the foregoing to be a true copy of the resolution adopted by The Southeast Morris County Municipal Utilities Authority on Thursday, November 2, 2017, at a meeting duly convened of said Authority.



SIDNEY D. WEISS, Assistant Secretary

Dated: November 2, 2017



Southeast Morris County Municipal Utilities Authority

19 SADDLE ROAD • CEDAR KNOLLS, NEW JERSEY 07927 • TEL 973-326-6880 • FAX 973-326-9521

Resolution No. 105-17

RESOLUTION AUTHORIZING APPROVAL OF TAKEOVER AGREEMENT WITH INTERNATIONAL FIDELITY INSURANCE COMPANY FOR COMPLETION OF PRO-SPEC STRUCTURAL CONTRACT (PICATINNY TANK NO 1.)

WHEREAS, the Authority entered into an agreement with Pro-Spec Painting, Inc. ("Pro-Spec") for structural repairs to Picatinny Water Tank No. 1 in the amount of \$298,450 (the "Contract"); and

WHEREAS, International Fidelity Insurance Company ("IFIC") as surety and Pro-Spec, as principal executed and delivered to the Authority a Performance and Payment Bond in the penal sum of \$298,450 (the "Bond"); and

WHEREAS, Pro-Spec has defaulted on the Contract and has filed a petition for Chapter 11 bankruptcy protection; and

WHEREAS, the Authority has filed a motion in Pro-Spec's bankruptcy proceeding requesting relief of the automatic stay and to allow the Authority to terminate the Contract with Pro-Spec;

WHEREAS, the Authority's motion was approved by the Bankruptcy Court on September 7, 2017 and the Authority has terminated the Contract as therein permitted; and

WHEREAS, IFIC, as surety, has secured a proposal from a contractor (the "Completion Contactor") to complete the work under the Contract; and has agreed to assume all obligations of Pro-Spec to complete the Contract as more particularly set forth in a proposed Takeover Agreement between the Authority and IFIC, a copy of which Takeover Agreement is annexed hereto as Exhibit "A" (the "Takeover Agreement"); and

WHEREAS, the Authority has determined that execution of the Takeover Agreement is necessary and desirable to expedite completion of the Contract and avoid further expense and delays;

NOW THEREFORE BE IT RESOLVED by The Southeast Morris County Municipal Utilities Authority as follows:

Board Members

Morristown:
Mary Dougherty
Donald Kissil

Morris Township:
Dennis Baldassari
Alan Johnson

Morris Plains:
William Conradi
Ralph R. Rotando


Hanover Township:
Saverio C. Iannaccone
Adolf Schimpf

Executive Director/Chief Engineer: Laura Cummings, P.E.

Superintendent: Paul A. Kozakiewicz

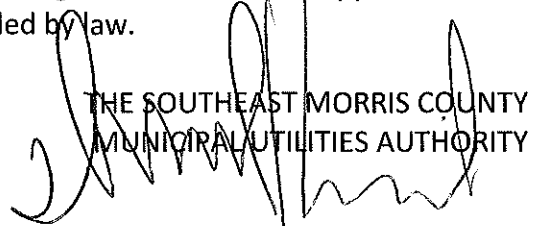
1. The proposed Takeover Agreement between the Authority and IFIC be and the same is hereby approved substantially in the form annexed hereto as Exhibit "A" together with such revisions as may be recommended by the Executive Director and approved by the Chairman or Vice Chairman; the execution of such agreement by the Chairman or Vice Chairman, with any such revisions, to be conclusive evidence of their approval.
2. The appropriate officers of the Authority be and they are hereby authorized and directed to execute and deliver the Takeover Agreement as herein approved on behalf of the Authority in the manner provided by law.

ATTEST:



SIDNEY D. WEISS, Assistant Secretary

THE SOUTHEAST MORRIS COUNTY
MUNICIPAL UTILITIES AUTHORITY



DONALD KISSIL, Chairman

DATED: November 2, 2017

TAKEOVER AGREEMENT

This Takeover Agreement (the "Agreement") is made this _____ day of November 2017, by and between International Fidelity Insurance Company, (hereinafter referred to as "IFIC" or "Surety"), and The Southeast Morris County Municipal Utilities Authority, (hereinafter referred to as "Obligee").

RECITALS

WHEREAS, on or about October 20, 2016, Obligee, awarded the Principal the project known as **Structural Repairs of Picatinny Water Storage Tank No. 1** ("the Project");

WHEREAS, on or about November 9, 2016 the Obligee and Principal entered into a Construction Contract, which is incorporated herein by reference, relating to the award of the Project;

WHEREAS, in connection with the Contract, International Fidelity Insurance Company, as surety, issued a Performance Bond and Payment Bond, each bearing bond number PAIFSU0708096 (the "Bond") and each in the penal sum of \$298,450.00 (true and correct copies of which are attached hereto and incorporated by reference herein as Exhibit A), on behalf of Principal, as principal, and in favor of Obligee, as obligee; and

WHEREAS, on September 7, 2017 Obligee declared a Contractor Default, terminating the Construction Contract, notifying the Surety accordingly;

WHEREAS, in an effort to mitigate damages by expediting the progress and completion of Principal's obligations under the Contract, and with the express acceptance and approval of the Obligee, Surety has obtained a proposal for the completion of the work from US Tank Painting, Inc. (the "Completion Contractor");

WHEREAS, Surety desires to tender, and Obligee desires to accept, the services of Completion Contractor in full settlement and satisfaction of any and all obligations under the Performance Bond, subject to the terms of this Agreement;

NOW THEREFORE, in consideration of the promises, and other good and valuable consideration, and the mutual covenants set forth herein, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

AGREEMENTS

1.0 **Precatory Clauses**. The foregoing ("Whereas") clauses are incorporated herein and made a part of this Agreement.

2.0 **Performance of the Work.** Subject to the terms and conditions of this Agreement, IFIC hereby undertakes to cause the completion of the Contract, including all modifications thereto, in accordance with the terms, covenants and conditions thereof, and agrees to be bound by the Contract. The Contract shall remain in full force and effect and nothing in this Agreement shall reduce, waive or modify the rights and obligations of the parties, except as specifically set forth herein. Oblige acknowledges that IFIC, by its execution of this Agreement, is acting in its capacity as the surety for the Original Contractor in making arrangements for the performance and completion of the Contract, and not as a completing contractor, and that IFIC is not assuming any obligations or liabilities beyond those set forth in the Performance Bond. As to the completion of the Contract, except as otherwise provided in this Agreement, IFIC is entitled to all rights, title and interest of the Original Contractor in and to the Contract in all respects as if IFIC were the original party to the Contract.

3.0 **Completion Contractor.** Oblige acknowledges that IFIC will contract the performance of the work under the Contract to Completion Contractor, to be managed by the IFIC's consultant; Beacon Consulting Group, Inc., (hereinafter "Beacon"). IFIC shall require that the Completion Contractor be subject to all of the terms, conditions and specifications of the Contract, including but not limited to all technical construction specifications. IFIC may satisfy the required insurance obligations under the Contract by providing evidence of the required insurance coverage carried by the Completion Contractor with IFIC, Beacon, and Oblige being named as additional insureds under the policy or policies of insurance.

4.0 **Final Contract Proceeds.** The original Contract price was for \$298,450.00. As of the date of this Agreement, Oblige has not approved any change orders. Oblige has made payments to Principal under the Contract in the amount of \$286,691.64 accordingly there remains an unpaid balance and/or amounts remaining available for use on the Contract in the amount of \$11,758.36 ("Final Contract Proceeds").

Oblige represents and warrants that the Final Contract Proceeds as defined herein is accurate. IFIC reserves the right to verify the accuracy of the Final Contract Proceeds, including, without limitation, the amount of Payments to Original Contractor.

5.0 **Change Orders.** Oblige represents that, as of the date of this Agreement, there are no approved change orders. Oblige and IFIC reserve all rights and remedies under the Contract with respect to any pending, or future, change orders and acknowledge that the Final Contract Proceeds shall be increased/decreased by the value of any pending, or future, change orders subsequently approved by Oblige and IFIC in accordance with the terms of the Contract.

6.0 **Application of Remaining Contract Balance.** Oblige agrees that the Final Contract Proceeds are dedicated to and will be applied to the completion of the Contract pursuant to this Agreement. Oblige shall pay directly to IFIC or its Authorized Representative the Final Contract Proceeds, plus or minus any additional amounts of money on account of any modifications requested and authorized by Oblige and agreed to by IFIC or its Authorized Representative as the work progresses. Except as set forth herein, the payment of the Final Contract Proceeds shall be made in accordance with the terms of the Contract as to the time,

amount, and method of payment, and no payment shall be delayed by reason of any slow down or cessation of work in connection with the takeover of the Contract by IFIC. All payments to IFIC shall be made by check payable to International Fidelity Insurance Company and delivered to the address stated in paragraph 19.0 of this Agreement. Provided IFIC fulfills any and all obligations of defense and indemnity to which IFIC is entitled under the Contract and/or this Agreement, including, without limitation, promptly bonding and/or satisfying any liens arising under the Contract, Obligees shall not withhold any of the Final Contract Proceeds from IFIC because of or on account of any claims, suits or demands by any persons or entities furnishing or alleging to have furnished labor and/or materials to the Project. Additionally, Obligees shall not withhold any of the Final Contract Proceeds from IFIC because of or on account of any claim(s) Obligees may have against the Original Contractor and/or IFIC in connection with the Contract, the rights to all claims being specifically reserved. This shall include, but is not limited to, any claim(s) for delay or liquidated damages that may be alleged or assessed by Obligees. IFIC agrees to spend its own funds as may be necessary from time to time to pay for the performance of the Contract by the Completion Contractor in the event that the Final Contract Proceeds is insufficient, subject to the terms and conditions of Paragraph 9, with any and all such payments being credited against the penal sum of the Performance Bond.

7.0 **Work To Be Performed.** Subject to the terms of this Agreement, IFIC agrees to complete all remaining work required under the Contract, including, without limitation, any obligations to correct defective work, which is incorporated herein and hereby made a part of this Agreement. IFIC reserves the right to refuse to perform any item of work that is beyond the scope of the Contract and any modifications thereto. Notwithstanding the foregoing, in the event of a dispute between the parties as to whether any work is beyond the scope of the Contract, IFIC agrees to cause the work to be performed, subject to the terms and dispute resolution provisions of the Contract.

8.0 **Schedule for Completion of Remaining Work.** IFIC shall substantially complete the remaining work under the Contract within nine weeks from the date on which it issues a Notice to Proceed to the Completion Contractor, and will reach final completion within 30 days after substantial completion (hereinafter referred to as the "Revised Completion Date"), subject to appropriate time extensions that may be granted pursuant to the Contract. Obligees agree that the work shall commence by the Completion Contractor upon execution of this Agreement. IFIC is hereby granted a non-compensatory time extension from the original completion date/schedule under the Contract until the Revised Completion Date. IFIC, through its Authorized Representative, will coordinate and cooperate with Obligees and the Completion Contractor in formulating a schedule for the completion of the remaining work under the Contract by the Revised Completion Date, subject to appropriate time extensions that may be granted pursuant to the Contract.

9.0 **Liquidated Damages and Backcharges.** Obligees agree that it will not assess any liquidated damages or backcharges against IFIC or against the Contract provided that IFIC completes the Contract by the Revised Completion Date; subject to any subsequent revisions. Obligees represent that as of the date of this Agreement, it has not assessed delay and/or liquidated damages or backcharges against Original Contractor on the Project.

10.0 **Use of Equipment and Materials.** Insofar as Obligees has any right, title or interest therein, Obligees agrees that IFIC and its Completion Contractor shall have the right to use, without charge, any of the equipment, materials and appurtenances furnished or supplied by the Original Contractor which may be stored on or about the premises of the Project site or materials which may have been fabricated for use in connection with the Completion Contractor, whether or not presently upon the Project site, which use by IFIC shall be at IFIC's sole risk and provided such equipment, materials and appurtenances comply with the requirements of the Completion Contractor.

11.0 **Authorized Representative.** IFIC specifically designates and authorizes Beacon to be its representative, (hereinafter the "Authorized Representative") solely for the purposes set forth in this paragraph. Routine day-to-day operations and decisions of IFIC as to the manner of performance of the work shall be made by the Authorized Representative, subject to the terms and conditions of the Contract, provided, however, that the Authorized Representative shall have no right to: (i) agree to any changes in the Contract or remaining work; (ii) agree to any Change Orders; (iii) agree to any backcharges or deductions of any nature; (iv) agree to any schedule changes; (v) agree to any adjustments in the Contract amount or remaining work; (vi) agree to perform warranty work or corrective work as a result of latent defects in the work performed by the Original Contractor, without IFIC's prior express, written consent which shall be delivered to Obligees as a condition precedent to the Authorized Representative's negotiating items (i) through (vi). IFIC hereby designates its Authorized Representative to prepare and process pay requisitions on the Contract, in consultation with, and subject to the approval of, the Obligees's design engineer. Pursuant to the terms of a Completion Contract with the Completion Contractor, all payments to the Completion Contractor will be made by IFIC.

12.0 **No Waiver of Penal Sum.** Except as specifically set forth herein, the total liability of IFIC under this Agreement and the Performance Bond for the performance of the work, after the expenditure of the Final Contract Proceeds, is limited to and shall not exceed the \$298,450.00 penal sum of the Performance Bond. All payments properly made by IFIC for the performance of the Contract shall be credited against the penal sum of the Performance Bond.

13.0 **Payment Bond to Remain in Effect.** The Payment Bond shall remain in full force and effect in accordance with its terms and provisions. The total liability of IFIC under the Payment Bond is limited to and shall not exceed the penal sum of the Payment Bond. All Payment Bond payments properly made by IFIC shall be credited against the penal sum of the Payment Bond. Nothing in this Agreement constitutes a waiver of such penal sum or an increase in the liability of IFIC under the Payment Bond. IFIC agrees to investigate all proper payment bond claims made against it, but shall have the right to settle, compromise, defend, appeal, pay or dispute such claims as it, in its sole and complete discretion, may deem appropriate. Obligees agrees that it will not honor any claim or charges against the Final Contract Proceeds by any alleged assignees, successors, creditors or transferees of the Original Contractor, or any other person or entity making claim to the Final Contract Proceeds without the consent of IFIC, except by order of a court of competent jurisdiction after due notice to IFIC. Obligees agrees to refer all inquiries from any person furnishing labor or materials to the Original Contractor or to a

subcontractor to the Original Contractor to IFIC. Provided Oblige meets its obligations to IFIC under this Agreement, IFIC agrees to indemnify and hold Oblige harmless as to claims of all labor and material suppliers of the Original Contractor on the Contract.

14.0 **Liens, Claims and Assignments.** IFIC represents that as of the date of this Agreement, the claim notices, mechanic's liens, other liens, assignments or encumbrances against the Final Contract Proceeds that IFIC is aware of receiving are identified in Exhibit B. IFIC shall defend (at IFIC's expense, using its counsel), indemnify and hold harmless Oblige, its agents and all of its directors and employees from and against any and all claims made by the claimants arising as a consequence of and up to the amount of payments made to IFIC under this Agreement. .

15.0 **IFIC's Indemnity Rights.** The execution of this Agreement shall in no way waive or affect any of IFIC's indemnification rights against the Original Contractor, or any of its indemnitors, under any applicable indemnity agreement, in equity or at law.

16.0 **Oblige's Rights Under contract.** Subject to the terms of this Agreement, Oblige's rights against IFIC under the Contract and/or the Performance and Payment Bond, in equity or at law are specifically reserved and the execution of this Agreement shall not be deemed in any way a waiver of Oblige's rights. IFIC reserves all rights, remedies, and defenses, as well as those of the Original Contractor, if any, to any claims asserted by Oblige's.

17.0 **Reservation of Original Contractor's Rights.** By execution of this Agreement, IFIC does not waive the Original Contractor's rights, if any, to contest the validity of the default or any other rights the Original Contractor may have, which rights are specifically reserved.

18.0 **Beneficiaries.** This Agreement is solely for the benefit of the Oblige and IFIC. Oblige and IFIC do not intend by any provision of this Agreement to create any rights in or increase the rights of any third-party beneficiaries, nor to confer any benefit upon or enforceable rights under this Agreement or otherwise upon anyone other than Oblige and IFIC. Specifically, Oblige and IFIC acknowledge that nothing in this Agreement shall extend or increase the rights of any third-party claimants or the liabilities or obligations of IFIC under the Bonds.

19.0 **Notices.** All notices and correspondence to Oblige and IFIC under this Agreement shall be sent to:

To Oblige:

Sidney Weiss, Esquire
Southeast Morris County Municipal Utilities Authority
19 Saddle Road
Cedar Knolls NJ 07927
Telephone: 973-326-7234
Fax: 973-326-9521
Email address: sdweiss@smcmua.org

And

Paul Kozakiewicz
Southeast Morris County Municipal Utilities Authority
Telephone: 973-326-6865
Cellular: 973-214-6193
Fax: 973-326-9521
Email address: pkozakiewicz@smcmua.org

To IFIC:

Kathleen Maloney
International Fidelity Insurance Company
2570 Boulevard of the Generals
Suite 125
Norristown PA 19403
Telephone: 610-205-5230
Email address: kmaloney@ific.com

And

John Steele
Beacon Consulting Group, Inc.
1933 Highway 35
Suite 105-101
Wall NJ 07719
Telephone: 732-714-6613
Fax: 732-612-1206
Cell: 732-272-4363
email: jsteele@beacon.ws

20.0 **Review of Agreement.** All Parties acknowledge that they had an opportunity to review this Agreement with counsel of their choosing prior to executing same.

21.0 **Effective Date.** The Effective Date of this Agreement shall be the date on which this Agreement is executed by all Parties.

22.0 **No Joint Venture or Partnership Created.** The relationship between the Parties shall be limited to the performance of this Agreement, which shall be construed and be deemed to be a specific arrangement for the performance of the Project only. Nothing herein contained shall be construed to constitute the Parties as partners or joint venturers or to constitute either as general agent of the other.

23.0 **Entire Agreement.** This Agreement constitutes the whole of the understanding,

discussions, and agreements by and between the Parties. The terms and provisions of this Agreement are contractual and not mere recitals. The Parties acknowledge that there have been no oral, written or other agreements of any kind as a condition precedent to or to induce the execution and delivery of this Agreement. Any written or oral discussions conducted prior to or contemporaneously with the effective date of this Agreement shall not in any way vary or alter the terms of this Agreement. In case of conflict between the provisions of this Agreement, the provisions of the Contract, and/or the Performance Bond, this Agreement shall control.

24.0 **Modifications.** The modification, amendment and/or waiver of this Agreement, or of any of the provisions of this Agreement, shall not become effective unless executed in writing by the party to be charged with such modification, amendment and/or waiver in each case by a duly authorized representative.

25.0 **Severability.** In the event that one or more provisions of this Agreement shall be declared to be invalid, illegal or unenforceable in any respect, unless such invalidity, illegality or unenforceability shall be tantamount to a failure of consideration, the validity, legality and enforceability of the remaining provisions contained in this Agreement shall not in any way be affected or impaired thereby.

26.0 **Successors and Assigns.** This Agreement shall be binding upon the Parties and their respective successors and assigns.

27.0 **Rules of Construction.** Should any provision of this Agreement require interpretation or construction, the parties hereto agree that the court, administrative body, or other entity interpreting or construing this Agreement shall not apply a presumption that the provisions herein shall be more strictly construed against one party by reason of the rule of construction that the provisions of a document shall be more strictly construed against the party who itself or through its representatives prepared same; it being agreed that the parties and their respective attorneys have fully participated in the preparation of all provisions of this Agreement.

28.0 **No Waiver.** The failure of either party to exercise in any respect a right provided for in this Agreement shall not be deemed a waiver subsequent waiver of the same right or of any other right.

29.0 **All Rights are Cumulative.** All rights and remedies hereunder are cumulative.

30.0 **Headings.** The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

31.0 **Numbers.** Words shall take precedence over numerals in the event of a discrepancy.

32.0 **Facsimile and Email Signatures.** Signatures transmitted by facsimile or email shall be accepted and deemed to be original signatures and shall be binding on the parties upon signing.

33.0 **Counterparts.** This Agreement shall become effective when executed by all parties and may be executed in counterparts, any one of which shall be deemed to be an original instrument. Any proof of the Agreement shall require production of only one such counterpart duly executed by the party to be charged therewith.

34.0 **Authority to Execute.** Each of the undersigned individuals represent, warrant and certify that they are authorized to execute this Agreement in the capacity indicated.

35.0 **Governing Law.** This Agreement shall be governed by and controlled by the laws of the State of New Jersey.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date indicated above, and each of the undersigned personally represent and warrant that they have the full right, power and authority to execute this Agreement on behalf of the respective parties.

**THE SOUTHEAST MORRIS COUNTY MUNICIPAL
UTILITIES AUTHORITY**

By: Donald Kissil
Title: Chairman

**INTERNATIONAL FIDELITY INSURANCE
COMPANY**

By:
Title:

EXHIBIT A, STRUCTURAL

Bond No. PAIFSU0708096

Performance Bond

KNOW all men by these presents, that we, the undersigned, Pro-Spec Painting, Inc., 1819 Cedar Avenue, Vineland, NJ 08360, as principal and International Fidelity Insurance Company as sureties, are hereby held and firmly bound unto the Southeast Morris County Municipal Utilities Authority in the penal sum of (\$298,450.00) dollars, for the payment of which well and truly to be made, we hereby jointly and severally bind ourselves, our heirs, executors, administrators, successors and assigns. *Two Hundred Ninety Eight Thousand Four Hundred Fifty and 00/100

Signed this 27th day of October, 2016.

The condition of the above obligation is such that whereas, the above named principal did on the 26th day of October, 2016, enter into a contract with the Southeast Morris County Municipal Utilities Authority (the "Contract"), which said Contract is made a part of this bond the same as though set forth herein; Structural Repairs of Picatinny Water Storage Tank No. 1

Now, if the said Pro-Spec Painting, Inc. shall well and faithfully do and perform the things agreed by SMCMUA to be done and performed according to the terms of said Contract, and shall pay all lawful claims of subcontractors, materialmen, laborers, persons, firms or corporations for labor performed or materials, provisions, provender or other supplies or teams, fuels, oils, implements or machinery furnished, used or consumed in the carrying forward, performing or completing of said contract, we agreeing and assenting that this undertaking shall be for the benefit of any subcontractor, materialman, laborer, person, firm or corporation having a just claim, as well as for the obligee herein; then this obligation shall be void; otherwise the same shall remain in full force and effect; it being expressly understood and agreed that the liability of the surety for any and all claims hereunder shall in no event exceed the penal amount of this obligation as herein stated.

The said surety hereby stipulates and agrees that no modifications, omissions or additions in or to the terms of the said Contract or in or to the plans or specifications therefor shall in anyway affect the obligation of said surety on its bond.

Recovery of any claimant under this bond shall be subject to the conditions and provisions of Article 12, Chapter 44 of Title 2A of the New Jersey Statutes (N.J.S.A. 2A:44-143, et seq.) to the same extent as if such conditions and provisions were fully incorporated in this bond.

IN WITNESS WHEREOF said principal and surety have hereunto set their respective hands and seals or caused these presents to be signed and sealed by their proper representatives on the day and date set forth above.

Pro-Spec Painting, Inc.

Principal

WITNESS/ATTEST

By: _____

International Fidelity Insurance Company

Surety

ATTEST

By: _____

Michele Hardeaty, Witness as to Surety

Gregory J. Risnychok, Attorney-in-Fact

NOTE: If the principal (Contractor) is a partnership, the bond should be signed by each of the general partners.

If the principal (Contractor) is a corporation, the bond must be signed by and attested by duly authorized representatives and an enabling corporate resolution must be attached.

There are to be executed an appropriate number of counterparts of this Performance Bond corresponding to the number of counterparts of the Contract.

**EXHIBIT B TO THE TAKEOVER AGREEMENT BETWEEN THE
SOUTHEAST MORRIS COUNTY MUNICIPAL UTILITIES AUTHORITY
AND INTERNATIONAL FIDELITY INSURANCE COMPANY**

Claims, Liens and Assignments filed as of the date of this Agreement

Bond Number PA0708096
Structural Repairs to Tank No. 1

Atlantic Fabricators, LLC: As of the date of this Agreement, the claimant has not identified the amount of its claim.

CERTIFICATION

I hereby certify the foregoing to be a true copy of the resolution adopted by The Southeast Morris County Municipal Utilities Authority on Thursday, November 2, 2017, at a meeting duly convened of said Authority.



SIDNEY D. WEISS, Assistant Secretary

Dated: November 2, 2017



Southeast Morris County Municipal Utilities Authority

19 SADDLE ROAD • CEDAR KNOLLS, NEW JERSEY 07927 • TEL 973-326-6880 • FAX 973-326-9521

Resolution No. 106-17

RESOLUTION AUTHORIZING APPROVAL OF TAKEOVER AGREEMENT WITH INTERNATIONAL FIDELITY INSURANCE COMPANY FOR COMPLETION OF PRO-SPEC PAINTING CONTRACT (PICATINNY TANK NO 1.)

WHEREAS, the Authority entered into an agreement with Pro-Spec Painting, Inc. ("Pro-Spec") for painting and rehabilitation of Picatinny Water Tank No. 1 in the amount of \$798,850.00 (the "Contract "); and

WHEREAS, International Fidelity Insurance Company ("IFIC") as surety and Pro-Spec, as principal executed and delivered to the Authority a Performance and Payment Bond in the penal sum of \$798,850.00 (the "Bond"); and

WHEREAS, Pro-Spec has defaulted on the Contract and has filed a petition for Chapter 11 bankruptcy protection; and

WHEREAS, the Authority has filed a motion in Pro-Spec's bankruptcy proceeding requesting relief of the automatic stay and to allow the Authority to terminate the Contract with Pro-Spec;

WHEREAS, the Authority's motion was approved by the Bankruptcy Court on September 7, 2017 and the Authority has terminated the Contact as therein permitted; and

WHEREAS, IFIC, as surety, has secured a proposal from a contractor (the "Completion Contactor") to complete the work under the Contract; and has agreed to assume all obligations of Pro-Spec to complete the Contract as more particularly set forth in a proposed Takeover Agreement between the Authority and IFIC, a copy of which Takeover Agreement is annexed hereto as Exhibit "A" (the "Takeover Agreement"); and

WHEREAS, the Authority has determined that execution of the Takeover Agreement is necessary and desirable to expedite completion of the Contract and avoid further expense and delays;

NOW THEREFORE BE IT RESOLVED by The Southeast Morris County Municipal Utilities Authority as follows:

Board Members

Morristown:
Mary Dougherty
Donald Kissil

Morris Township:
Dennis Baldassari
Alan Johnson

Morris Plains:
William Conradi
Ralph R. Rotando

Hanover Township:
Saverio C. Iannaccone
Adolf Schimpf

Executive Director/Chief Engineer: Laura Cummings, P.E.

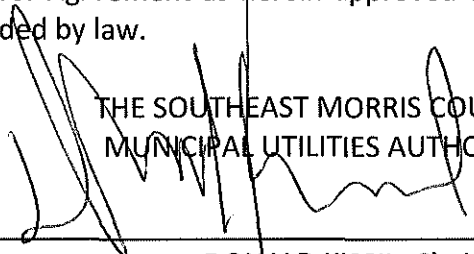
Superintendent: Paul A. Kozakiewicz

1. The proposed Takeover Agreement between the Authority and IFIC be and the same is hereby approved substantially in the form annexed hereto as Exhibit "A" together with such revisions as may be recommended by the Executive Director and approved by the Chairman or Vice Chairman; the execution of such agreement by the Chairman or Vice Chairman, with any such revisions, to be conclusive evidence of their approval.
2. The appropriate officers of the Authority be and they are hereby authorized and directed to execute and deliver the Takeover Agreement as herein approved on behalf of the Authority in the manner provided by law.

ATTEST:



SIDNEY D. WEISS, Assistant Secretary



DONALD KISSIL, Chairman

DATED: November 2, 2017

TAKEOVER AGREEMENT

This Takeover Agreement (the "Agreement") is made this _____ day of November 2017, by and between International Fidelity Insurance Company, (hereinafter referred to as "IFIC" or "Surety"), and The Southeast Morris County Municipal Utilities Authority, (hereinafter referred to as "Obligee").

RECITALS

WHEREAS, on or about January 21, 2016, Obligee, awarded the Principal the project known as **Painting and Rehabilitation of Picatinny Water Storage tank No. 1** ("the Project");

WHEREAS, on or about February 3, 2016 the Obligee and Principal entered into a Construction Contract, which is incorporated herein by reference, relating to the award of the Project;

WHEREAS, in connection with the Contract, International Fidelity Insurance Company, as surety, issued a Performance Bond and Payment Bond, each bearing bond number PAIFSU0692096 (the "Bond"), and each in the penal sum of \$798,850.00 (true and correct copies of which are attached hereto and incorporated by reference herein as Exhibit A), on behalf of Principal, as principal, and in favor of Obligee, as obligee; and

WHEREAS, on September 7, 2017 Obligee declared a Contractor Default, terminating the Construction Contract, notifying the Surety accordingly;

WHEREAS, in an effort to mitigate damages by expediting the progress and completion of Principal's obligations under the Contract, and with the express acceptance and approval of the Obligee, Surety has obtained a proposal for the completion of the work from US Tank Painting, Inc. (the "Completion Contractor");

WHEREAS, Surety desires to tender, and Obligee desires to accept, the services of Completion Contractor in full settlement and satisfaction of any and all obligations under the Performance Bond, subject to the terms of this Agreement;

NOW THEREFORE, in consideration of the promises, and other good and valuable consideration, and the mutual covenants set forth herein, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

AGREEMENTS

1.0 **Precatory Clauses**. The foregoing ("Whereas") clauses are incorporated herein and made a part of this Agreement.

2.0 **Performance of the Work**. Subject to the terms and conditions of this Agreement, IFIC hereby undertakes to cause the completion of the Contract, including all

modifications thereto, in accordance with the terms, covenants and conditions thereof, and agrees to be bound by the Contract. The Contract shall remain in full force and effect and nothing in this Agreement shall reduce, waive or modify the rights and obligations of the parties, except as specifically set forth herein. Obligees acknowledge that IFIC, by its execution of this Agreement, is acting in its capacity as the surety for the Original Contractor in making arrangements for the performance and completion of the Contract, and not as a completing contractor, and that IFIC is not assuming any obligations or liabilities beyond those set forth in the Performance Bond. As to the completion of the Contract, except as otherwise provided in this Agreement, IFIC is entitled to all rights, title and interest of the Original Contractor in and to the Contract in all respects as if IFIC were the original party to the Contract.

3.0 **Completion Contractor.** Obligees acknowledge that IFIC will contract the performance of the work under the Contract to Completion Contractor, to be managed by the IFIC's consultant; Beacon Consulting Group, Inc., (hereinafter "Beacon"). IFIC shall require that the Completion Contractor be subject to all of the terms, conditions and specifications of the Contract, including but not limited to all technical construction specifications. IFIC may satisfy the required insurance obligations under the Contract by providing evidence of the required insurance coverage carried by the Completion Contractor with IFIC, Beacon, and Obligees being named as additional insureds under the policy or policies of insurance.

4.0 **Final Contract Proceeds.** The original Contract price was for \$798,850.00. As of the date of this Agreement, Obligees approved change orders totaling \$22,390.12. The revised Contract Price is \$821,240.12. Obligees have made payments to Principal under the Contract in the amount of \$587,346.95, accordingly there remains an unpaid balance and/or amounts remaining available for use on the Contract in the amount of \$233,893.17 ("Final Contract Proceeds").

Obligees represent and warrant that the Final Contract Proceeds as defined herein is accurate. IFIC reserves the right to verify the accuracy of the Final Contract Proceeds, including, without limitation, the amount of Payments to Original Contractor.

5.0 **Change Orders.** Obligees represent that, as of the date of this Agreement, change orders totaling \$22,390.12 have been approved. Obligees and IFIC reserve all rights and remedies under the Contract with respect to any pending, or future, change orders and acknowledge that the Final Contract Proceeds shall be increased/decreased by the value of any pending, or future, change orders subsequently approved by Obligees and IFIC in accordance with the terms of the Contract.

6.0 **Application of Remaining Contract Balance.** Obligees agree that the Final Contract Proceeds are dedicated to and will be applied to the completion of the Contract pursuant to this Agreement. Obligees shall pay directly to IFIC or its Authorized Representative the Final Contract Proceeds, plus or minus any additional amounts of money on account of any modifications requested and authorized by Obligees and agreed to by IFIC or its Authorized Representative as the work progresses. Except as set forth herein, the payment of the Final Contract Proceeds shall be made in accordance with the terms of the Contract as to the time, amount, and method of payment, and no payment shall be delayed by reason of any slow down or

cessation of work in connection with the takeover of the Contract by IFIC. All payments to IFIC shall be made by check payable to International Fidelity Insurance Company and delivered to the address stated in paragraph 19.0 of this Agreement. Provided IFIC fulfills any and all obligations of defense and indemnity to which IFIC is entitled under the Contract and/or this Agreement, including, without limitation, promptly bonding and/or satisfying any liens arising under the Contract, Obligees shall not withhold any of the Final Contract Proceeds from IFIC because of or on account of any claims, suits or demands by any persons or entities furnishing or alleging to have furnished labor and/or materials to the Project. Additionally, Obligees shall not withhold any of the Final Contract Proceeds from IFIC because of or on account of any claim(s) Obligees may have against the Original Contractor and/or IFIC in connection with the Contract, the rights to all claims being specifically reserved. This shall include, but is not limited to, any claim(s) for delay or liquidated damages that may be alleged or assessed by Obligees. IFIC agrees to spend its own funds as may be necessary from time to time to pay for the performance of the Contract by the Completion Contractor in the event that the Final Contract Proceeds is insufficient, subject to the terms and conditions of Paragraph 9, with any and all such payments being credited against the penal sum of the Performance Bond.

7.0 **Work To Be Performed.** Subject to the terms of this Agreement, IFIC agrees to complete all remaining work required under the Contract, including, without limitation, any obligations to correct defective work, which is incorporated herein and hereby made a part of this Agreement. IFIC reserves the right to refuse to perform any item of work that is beyond the scope of the Contract and any modifications thereto. Notwithstanding the foregoing, in the event of a dispute between the parties as to whether any work is beyond the scope of the Contract, IFIC agrees to cause the work to be performed, subject to the terms and dispute resolution provisions of the Contract.

8.0 **Schedule for Completion of Remaining Work.** IFIC shall substantially complete the remaining work under the Contract within nine weeks from the date on which it issues a Notice to Proceed to the Completion Contractor, and will reach final completion within 30 days after substantial completion (hereinafter referred to as the "Revised Completion Date"), subject to appropriate time extensions that may be granted pursuant to the Contract. Obligees agree that the work shall commence by the Completion Contractor upon execution of this Agreement. IFIC is hereby granted a non-compensatory time extension from the original completion date/schedule under the Contract until the Revised Completion Date. IFIC, through its Authorized Representative, will coordinate and cooperate with Obligees and the Completion Contractor in formulating a schedule for the completion of the remaining work under the Contract by the Revised Completion Date, subject to appropriate time extensions that may be granted pursuant to the Contract.

9.0 **Liquidated Damages and Backcharges.** Obligees agree that it will not assess any liquidated damages or backcharges against IFIC or against the Contract provided that IFIC completes the Contract by the Revised Completion Date; subject to any subsequent revisions. Obligees represent that as of the date of this Agreement, it has not assessed delay and/or liquidated damages or backcharges against Original Contractor on the Project.

10.0 **Use of Equipment and Materials.** Insofar as Obligee has any right, title or interest therein, Obligee agrees that IFIC and its Completion Contractor shall have the right to use, without charge, any of the equipment, materials and appurtenances furnished or supplied by the Original Contractor which may be stored on or about the premises of the Project site or materials which may have been fabricated for use in connection with the Completion Contractor, whether or not presently upon the Project site, which use by IFIC shall be at IFIC's sole risk and provided such equipment, materials and appurtenances comply with the requirements of the Completion Contractor.

11.0 **Authorized Representative.** IFIC specifically designates and authorizes Beacon to be its representative, (hereinafter the "Authorized Representative") solely for the purposes set forth in this paragraph. Routine day-to-day operations and decisions of IFIC as to the manner of performance of the work shall be made by the Authorized Representative, subject to the terms and conditions of the Contract, provided, however, that the Authorized Representative shall have no right to: (i) agree to any changes in the Contract or remaining work; (ii) agree to any Change Orders; (iii) agree to any backcharges or deductions of any nature; (iv) agree to any schedule changes; (v) agree to any adjustments in the Contract amount or remaining work; (vi) agree to perform warranty work or corrective work as a result of latent defects in the work performed by the Original Contractor, without IFIC's prior express, written consent which shall be delivered to Obligee as a condition precedent to the Authorized Representative's negotiating items (i) through (vi). IFIC hereby designates its Authorized Representative to prepare and process pay requisitions on the Contract, in consultation with, and subject to the approval of, the Obligee's design engineer. Pursuant to the terms of a Completion Contract with the Completion Contractor, all payments to the Completion Contractor will be made by IFIC.

12.0 **No Waiver of Penal Sum.** Except as specifically set forth herein, the total liability of IFIC under this Agreement and the Performance Bond for the performance of the work, after the expenditure of the Final Contract Proceeds, is limited to and shall not exceed the \$798,850.00 penal sum of the Performance Bond. All payments properly made by IFIC for the performance of the Contract shall be credited against the penal sum of the Performance Bond.

13.0 **Payment Bond to Remain in Effect.** The Payment Bond shall remain in full force and effect in accordance with its terms and provisions. The total liability of IFIC under the Payment Bond is limited to and shall not exceed the penal sum of the Payment Bond. All Payment Bond payments properly made by IFIC shall be credited against the penal sum of the Payment Bond. Nothing in this Agreement constitutes a waiver of such penal sum or an increase in the liability of IFIC under the Payment Bond. IFIC agrees to investigate all proper payment bond claims made against it, but shall have the right to settle, compromise, defend, appeal, pay or dispute such claims as it, in its sole and complete discretion, may deem appropriate. Obligee agrees that it will not honor any claim or charges against the Final Contract Proceeds by any alleged assignees, successors, creditors or transferees of the Original Contractor, or any other person or entity making claim to the Final Contract Proceeds without the consent of IFIC, except by order of a court of competent jurisdiction after due notice to IFIC. Obligee agrees to refer all inquiries from any person furnishing labor or materials to the Original Contractor or to a

subcontractor to the Original Contractor to IFIC. Provided Obligeo meets its obligations to IFIC under this Agreement, IFIC agrees to indemnify and hold Obligeo harmless as to claims of all labor and material suppliers of the Original Contractor on the Contract.

14.0 **Liens, Claims and Assignments.** IFIC represents that as of the date of this Agreement, the claim notices, mechanic's liens, other liens, assignments or encumbrances against the Final Contract Proceeds that IFIC is aware of receiving are identified in Exhibit C. IFIC shall defend (at IFIC's expense, using its counsel), indemnify and hold harmless Obligeo, its agents and all of its directors and employees from and against any and all claims made by the claimants arising as a consequence of and up to the amount of payments made to IFIC under this Agreement. .

15.0 **IFIC's Indemnity Rights.** The execution of this Agreement shall in no way waive or affect any of IFIC's indemnification rights against the Original Contractor, or any of its indemnitors, under any applicable indemnity agreement, in equity or at law.

16.0 **Obligeo's Rights Under contract.** Subject to the terms of this Agreement, Obligeo's rights against IFIC under the Contract and/or the Performance and Payment Bond, in equity or at law are specifically reserved and the execution of this Agreement shall not be deemed in any way a waiver of Obligeo's rights. IFIC reserves all rights, remedies, and defenses, as well as those of the Original Contractor, if any, to any claims asserted by Obligeo's.

17.0 **Reservation of Original Contractor's Rights.** By execution of this Agreement, IFIC does not waive the Original Contractor's rights, if any, to contest the validity of the default or any other rights the Original Contractor may have, which rights are specifically reserved.

18.0 **Beneficiaries.** This Agreement is solely for the benefit of the Obligeo and IFIC. Obligeo and IFIC do not intend by any provision of this Agreement to create any rights in or increase the rights of any third-party beneficiaries, nor to confer any benefit upon or enforceable rights under this Agreement or otherwise upon anyone other than Obligeo and IFIC. Specifically, Obligeo and IFIC acknowledge that nothing in this Agreement shall extend or increase the rights of any third-party claimants or the liabilities or obligations of IFIC under the Bonds.

19.0 **Notices.** All notices and correspondence to Obligeo and IFIC under this Agreement shall be sent to:

To Obligeo:

Sidney Weiss, Esquire
Southeast Morris County Municipal Utilities Authority
19 Saddle Road
Cedar Knolls NJ 07927
Telephone: 973-326-7234
Fax: 973-326-9521
Email address: sdweiss@smcmua.org

And

Paul Kozakiewicz
Southeast Morris County Municipal Utilities Authority
Telephone: 973-326-6865
Cellular: 973-214-6193
Fax: 973-326-9521
Email address: pkozakiewicz@smcmua.org

To IFIC:

Kathleen Maloney
International Fidelity Insurance Company
2570 Boulevard of the Generals
Suite 125
Norristown PA 19403
Telephone: 610-205-5230
Email address: kmaloney@ific.com

And

John Steele
Beacon Consulting Group, Inc.
1933 Highway 35
Suite 105-101
Wall NJ 07719
Telephone: 732-714-6613
Fax: 732-612-1206
Cell: 732-272-4363
email: jsteele@beacon.ws

20.0 **Review of Agreement.** All Parties acknowledge that they had an opportunity to review this Agreement with counsel of their choosing prior to executing same.

21.0 **Effective Date.** The Effective Date of this Agreement shall be the date on which this Agreement is executed by all Parties.

22.0 **No Joint Venture or Partnership Created.** The relationship between the Parties shall be limited to the performance of this Agreement, which shall be construed and be deemed to be a specific arrangement for the performance of the Project only. Nothing herein contained shall be construed to constitute the Parties as partners or joint venturers or to constitute either as general agent of the other.

23.0 **Entire Agreement.** This Agreement constitutes the whole of the understanding,

discussions, and agreements by and between the Parties. The terms and provisions of this Agreement are contractual and not mere recitals. The Parties acknowledge that there have been no oral, written or other agreements of any kind as a condition precedent to or to induce the execution and delivery of this Agreement. Any written or oral discussions conducted prior to or contemporaneously with the effective date of this Agreement shall not in any way vary or alter the terms of this Agreement. In case of conflict between the provisions of this Agreement, the provisions of the Contract, and/or the Performance Bond, this Agreement shall control.

24.0 **Modifications.** The modification, amendment and/or waiver of this Agreement, or of any of the provisions of this Agreement, shall not become effective unless executed in writing by the party to be charged with such modification, amendment and/or waiver in each case by a duly authorized representative.

25.0 **Severability.** In the event that one or more provisions of this Agreement shall be declared to be invalid, illegal or unenforceable in any respect, unless such invalidity, illegality or unenforceability shall be tantamount to a failure of consideration, the validity, legality and enforceability of the remaining provisions contained in this Agreement shall not in any way be affected or impaired thereby.

26.0 **Successors and Assigns.** This Agreement shall be binding upon the Parties and their respective successors and assigns.

27.0 **Rules of Construction.** Should any provision of this Agreement require interpretation or construction, the parties hereto agree that the court, administrative body, or other entity interpreting or construing this Agreement shall not apply a presumption that the provisions herein shall be more strictly construed against one party by reason of the rule of construction that the provisions of a document shall be more strictly construed against the party who itself or through its representatives prepared same; it being agreed that the parties and their respective attorneys have fully participated in the preparation of all provisions of this Agreement.

28.0 **No Waiver.** The failure of either party to exercise in any respect a right provided for in this Agreement shall not be deemed a waiver subsequent waiver of the same right or of any other right.

29.0 **All Rights are Cumulative.** All rights and remedies hereunder are cumulative.

30.0 **Headings.** The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

31.0 **Numbers.** Words shall take precedence over numerals in the event of a discrepancy.

32.0 **Facsimile and Email Signatures.** Signatures transmitted by facsimile or email shall be accepted and deemed to be original signatures and shall be binding on the parties upon signing.

33.0 **Counterparts**. This Agreement shall become effective when executed by all parties and may be executed in counterparts, any one of which shall be deemed to be an original instrument. Any proof of the Agreement shall require production of only one such counterpart duly executed by the party to be charged therewith.

34.0 **Authority to Execute**. Each of the undersigned individuals represent, warrant and certify that they are authorized to execute this Agreement in the capacity indicated.

35.0 **Governing Law**. This Agreement shall be governed by and controlled by the laws of the State of New Jersey.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date indicated above, and each of the undersigned personally represent and warrant that they have the full right, power and authority to execute this Agreement on behalf of the respective parties.

**THE SOUTHEAST MORRIS COUNTY MUNICIPAL
UTILITIES AUTHORITY**

By: Donald Kissil
Title: Chairman

**INTERNATIONAL FIDELITY INSURANCE
COMPANY**

By:
Title:

IN WITNESS WHEREOF said principal and surety have hereunto set their respective hands and seals or caused these presents to be signed and sealed by their proper representatives on the day and date set forth above.

Pro-Spec Painting, Inc.

Principal

1819 Cedar Avenue, Vineland, NJ 08380

WITNESS/ATTEST

By: _____

International Fidelity Insurance Company

Surety

ATTEST

By: _____

Michele Hardesty, Witness

Gregory J. Risnychok, Attorney-in-Fact

NOTE: If the principal (Contractor) is a partnership, the bond should be signed by each of the general partners.

If the principal (Contractor) is a corporation, the bond must be signed by and attested by duly authorized representatives and an enabling corporate resolution must be attached.

There are to be executed an appropriate number of counterparts of this Performance Bond corresponding to the number of counterparts of the Contract.

**EXHIBIT B TO THE TAKEOVER AGREEMENT BETWEEN THE
SOUTHEAST MORRIS COUNTY MUNICIPAL UTILITIES AUTHORITY,
AND INTERNATIONAL FIDELITY INSURANCE COMPANY**

Claims, Liens and Assignments filed as of the date of this Agreement

Bond Number PA0692096

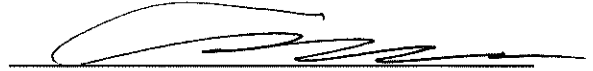
Painting and Rehabilitation of Picatinny Water Storage Tank No. 1

Atlantic Fabricators, LLC: As of the date of this Agreement, the claimant has not identified the amount of its claim.

IWT Transport, Inc.: As of the date of this Agreement, the claimant has not identified the amount of its claim.

CERTIFICATION

I hereby certify the foregoing to be a true copy of the resolution adopted by The Southeast Morris County Municipal Utilities Authority on Thursday, November 2, 2017, at a meeting duly convened of said Authority.

A handwritten signature in black ink, appearing to read 'Sidney D. Weiss', is written over a horizontal line.

SIDNEY D. WEISS, Assistant Secretary

Dated: November 2, 2017