

**COUNTY OF BERKS**

**Invitation to Bid #21-25-JR**

**for**

**Scrap Metal Recycling**

**Issued on August 23, 2021**

**Submittal Deadline:**

**Tuesday, September 28, 2021, 1:00 P.M. Local prevailing time  
Refer to Section One, paragraph 2.1 for submittal instructions.**

**Opening Date/Time:**

**Tuesday, September 28, 2021, 2:15 P.M. Local prevailing time**

**County's Point-of-Contact for this ITB:**

**Name:**

**Tel: 610-478-6168 ext. 6278 Fax: 610-898-7432 Email [jarhoads@countyofberks.com](mailto:jarhoads@countyofberks.com)**

**Mailing Address: Berks County Services Center, 633 Court Street – 13<sup>th</sup> Floor,  
Reading, PA, 19601**

This Invitation to Bid (ITB) package consists of 48 pages including this cover page and the Table of Contents page. If the ITB package you received is missing any pages, contact the County of Berks Purchasing Department at telephone number (610) 478-6168.

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# SECTION ONE INSTRUCTIONS TO BIDDERS

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## **PART 1 - Introduction and General Instructions**

### **1.1 Purpose of Invitation to Bid**

This Invitation to Bid (“ITB”) sets forth the terms and conditions under which a successful Bidder shall be obligated to supply and deliver an indefinite quantity of Scrap Metal Recycling as further detailed in the specifications (“Goods and Services”), through sealed bids (each a “Bid”) and which are requested by the County of Berks (hereinafter “County”), a municipal corporation with its principal office in Reading, Pennsylvania. If the County elects to make an award to the lowest responsive, responsible Bidder for the Goods and Services, the Form of Agreement and General Conditions included as Attachment H to this ITB as well as all documents incorporated therein shall form the entire agreement between the County and the successful Bidder (“Agreement”).

### **1.2 Pre-Bid Meeting**

Not Applicable

### **1.3 Due / Opening Dates**

1.3.1 The deadline for receipt of Bids is 1:00 P.M., local prevailing time, Tuesday, September 28, 2021 (“Bid Deadline”). The County Controller’s time clock shall be considered the official time. **There will be no exceptions to Bid Deadline.** See Section One, paragraph 2.1 for detailed submittal instructions. We would recommend that you submit your proposal via a courier service, however if you opt not to and elect to physically deliver it personally you will need to leave it with County of Berks Security personnel, which must be done at minimum one hour prior to the time in which the proposals are due to ensure they have the appropriate time and resources to deliver it to the County Controller’s Office.

1.3.2 Bids will be opened publicly at 2:15 P.M., local prevailing time, the same day, Tuesday, September 28, 2021 (“Bid Opening”). As a result of limited public access to the Berks County Services Center the only manner in which to attend the bid opening will be through a live broadcast using Microsoft Teams. A summary of bids received (company name and bid price) will be posted on the Purchasing Department page of the County’s website ([www.countyofberks.com](http://www.countyofberks.com)). The public may participate in the opening of this request for proposals through the URL shown below:

[https://teams.microsoft.com/l/meetup-join/19%3ameeting\\_ODI5YjJkNTEtZjMxNy00OWNmLTllNTYtN2E0YmEwMGJhOGU0%40thread.v2/0?context=%7b%22Tid%22%3a%22f5d90629-52f9-4673-b795-45b53bad5ad3%22%2c%22Oid%22%3a%228fc12697-9d10-424d-ba48-7de5910315c6%22%2c%22IsBroadcastMeeting%22%3a%22true%7d&bttype=a&role=a](https://teams.microsoft.com/l/meetup-join/19%3ameeting_ODI5YjJkNTEtZjMxNy00OWNmLTllNTYtN2E0YmEwMGJhOGU0%40thread.v2/0?context=%7b%22Tid%22%3a%22f5d90629-52f9-4673-b795-45b53bad5ad3%22%2c%22Oid%22%3a%228fc12697-9d10-424d-ba48-7de5910315c6%22%2c%22IsBroadcastMeeting%22%3a%22true%7d&bttype=a&role=a)

### **1.4 Bid Modification / Withdrawal**

1.4.1 Bids may not be modified after submittal. Bids may be withdrawn after submittal, provided the Bidder makes its request to withdraw in writing and the request is acknowledged by the Owner in writing prior to the time specified for Bid opening in the Invitation to Bid.

1.4.2 Negligence by Bidder in preparing its Bid confers no right of withdrawal or modification of its Bid after such Bid has been opened. No claims on account of mistakes or omissions in any Bid will be considered.

1.4.3 Notwithstanding the above, a Bidder may withdraw its Bid after such Bid has been opened if the price Bid was submitted in good faith, and the Bidder submits credible evidence that the reason for the price Bid being substantially lower was a clerical mistake as opposed to a

## SECTION ONE INSTRUCTIONS TO BIDDERS

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judgment mistake, and was actually due to an unintentional and substantial arithmetical error or an unintentional omission of a substantial quantity of work, labor, material or services made directly in the compilation of the Bid; provided, (i) notice of a claim of the right to withdraw such Bid is made in writing with the County within two (2) business days after the Bid Opening; and (ii) the withdrawal of the Bid would not result in the awarding of the Agreement on another Bid of the same Bidder, its partner, or to a corporation or business venture owned by or in which such Bidder has a substantial interest. No Bidder who is permitted to withdraw a Bid shall supply any material or labor to or perform any subcontract or other work agreement for any person to whom the Agreement may be subsequently awarded without the prior written approval of the County.

- 1.4.4 Bids shall be irrevocable for sixty (60) days after the actual day of opening thereof unless delayed by the required approval of another governmental agency, the sale of bonds or the award of a grant, in which case, Bids shall be irrevocable for one hundred twenty (120) days after Bid opening. Extensions of the date for the award of contract may be made by the mutual written consent of Owner and the lowest responsible and responsive Bidder.
- 1.4.5 In the event the Prevailing Wage Rates included with the Bidding Document expire after the opening of Bids, but before the award of the Contract, the Bidder agrees that an updated determination of the Prevailing Wage Rates shall be obtained from the Secretary of Labor and Industry and that the Bidder, if awarded the Contract, will pay the Prevailing Wage Rates set forth in such updated determination in accordance with the requirements of the General Conditions. Under such circumstances, the Bidder agrees that it will not withdraw its Bid nor be entitled to increase the amount Bid or the Contract Sum, as applicable.
- 1.4.6 Withdrawn Bids may be resubmitted up to the time designated for the receipt of Bids provided that they are then fully in conformance with these Instructions to Bidders.

### **1.5 Bidder Questions / Requested Changes to ITB**

- 1.5.1 Questions requesting changes to the ITB requirements, or requests to bid a product that differs from the Technical Specifications must be submitted **in writing** to the County's point-of-contact for this ITB (see cover page) no later than 3:00PM on September 14, 2021.
- 1.5.2 Requests to bid a product that differs from the Technical Specifications must include detailed specifications on the proposed substitute product(s). If requested by the County, the Bidder shall provide samples of the proposed substitute product(s). Such samples shall be provided at the expense of the Bidder and shall become the property of the County.
- 1.5.3 Answers to questions, acceptance of requested changes to ITB requirements or Technical Specifications will be provided in an amendment to the ITB, which will be posted on the County's website ([www.countyofberks.com](http://www.countyofberks.com)) and notice of the issuance of the amendment will be given to all parties recorded by the County as having received the ITB documents from the County's Purchasing Department.
- 1.5.4 Questions answered, or responses not set forth in an amendment shall not be valid and binding upon the County. A Bid that contains exceptions or offers substitute products not previously approved by the County may result in the County rejecting the Bid as a non-responsive Bid.

### **1.6 Preparation Costs**

The County will not be responsible for any costs associated with the preparation or submittal of any Bid. If the County rejects a Bid or does not award an Agreement to any particular Bidder, the

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## INSTRUCTIONS TO BIDDERS

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Bidder agrees that it will not seek to recover lost or expected profits, Bid preparation costs or claims for unjust enrichment.

### **1.7 Bidders' Receipt of the ITB Package**

1.7.1 The County's Purchasing Department is the sole authority to provide the ITB package to interested companies or individuals. Bidders who are working from an ITB package obtained from any other source may be working from an incomplete set of documents. The County assumes no responsibility for a Bid's errors, omissions or misinterpretations resulting from a Bidder's use of an incomplete ITB package.

1.7.2 Bidders who have received the ITB package from a source other than the County's Purchasing Department or who have downloaded the ITB package from the County's website, are advised to contact the Purchasing Department to provide their company's name, address, telephone number, fax number and contact name. This will ensure that the Bidder will receive all communication regarding the ITB such as addenda.

### **1.8 Public Information**

1.8.1 Under Pennsylvania's "Right to Know" laws (65 P.S. §§ 67.101-67.3104), public records are required to be open to reasonable inspection. The County will make available for viewing the Bids and associated documents by appointment, at the County's Purchasing Department. Requests for photocopies of public records must be made to the Chief Clerk and will be provided to the requestor for a nominal per page fee.

1.8.2 Trade secrets and other proprietary data associated with the Goods and Services may be held confidential, if the Bidder requests, in writing, that the County does so, and if the County agrees, in writing, to do so. Material considered confidential by the Bidder must be clearly identified and the Bidder must include a brief statement that sets out the reasons for confidentiality.

1.8.3 All Bids received become the property of the County.

## **PART 2 - Bid Submission: Format and Content**

### **2.1 Submission of Bids**

2.1.1 Bids shall be submitted with one (1) original and one (1) copies printed on 8½" x 11" paper to the following address: County of Berks, c/o County Controller, Berks County Services Center, 633 Court Street, 12<sup>th</sup> Floor, Reading, PA 19601. The original Bid shall be marked "original" and each copy of the Bid must be a complete copy of the original including all attachments and appendixes.

2.1.2 Bids (original and copies) must be enclosed in a sealed, opaque envelope or other container with the words "Sealed Bid – "Institutional Linens" and the Invitation to Bid number clearly printed on the outside.

**2.1.3 To be considered, the Bid must be submitted in accordance with all requirements set forth in this ITB.**

### **2.2 Submission of Samples**

Not Applicable

### **2.3 Bid Security**

Not Applicable

### **2.4 Consent of Surety**

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Not Applicable

### **2.5 Use of Bid Forms**

2.5.1 The Bid shall be made on the forms included in this ITB and all applicable blanks on such forms shall be filled in. The forms to be included in the Bid are:

- Attachment A Bid Form;
- Attachment B Piggyback Agreement;
- Attachment C Non-Collusion Affidavit;
- Attachment D Reference Form;

**2.5.2 A Bidder's failure to submit proper documentation may result in the County's rejection of the Bid.**

2.5.3 For each line item offered, Bidders shall show both the unit price and extended price. In case of a discrepancy between the unit price and extended price, the unit price will be presumed to be correct and the extended price shall be corrected accordingly.

2.5.4 Bids for supplies or services other than those specified or approved substitutes will not be considered.

### **2.6 Evidence of Insurance**

All Bidders must provide with their Bid a sample certificate of insurance evidencing, at minimum, the insurance coverage types and levels set forth in Attachment H Form of Agreement and General Conditions of this ITB.

### **2.7 Conflict of Interest**

2.7.1 To preserve the integrity of County employees and elected officials and to maintain public confidence in the ITB process, the County prohibits the solicitation or acceptance of anything of value by a County employee or elected official from any person seeking to initiate or maintain a business relationship with County departments, boards, commissions, and agencies.

2.7.2 Bidders shall not pay any salaries, commissions, fees, or make any payments or rebates to any employee, elected official of the County or their designees. Nor shall Bidders favor any employee or elected official of the County or their designees with gifts or entertainment of significant cost or value or with services or goods sold at less than full market value.

**2.7.3 It is the Bidder's responsibility to include in their Bid a notification to the County of any principals in the company, their spouse, or their child who are employed by the County, and of any other possible conflict of interest that exists and the nature of that conflict.**

2.7.4 The County reserves the right to disqualify a Bidder or cancel the award of the Agreement if any association disclosed from any source could either give the appearance of a conflict or cause speculation as to the objectivity of the Goods and Services to be supplied by the Bidder. The County's determination regarding any question of conflict of interest shall be final.

### **2.8 Proof of Product Equivalency**

If applicable and/or required in the Technical Specifications, Bids must include proof of product equivalency and/or manufacturer specification sheets.

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## INSTRUCTIONS TO BIDDERS

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### 2.9 Debarment

By submitting a Bid, the Bidder certifies to the County that it is not currently under suspension or debarment by the Commonwealth of Pennsylvania or federal government and if the Bidder cannot so certify, then it shall submit with its Bid a written explanation of why such certification cannot be made.

## PART 3 – Evaluation of Bids

### 3.1 Evaluation of Bids

The County reserves the right to award a single contract for the total requirement of the ITB or award multiple contracts on a group or line item basis in any combination that best serves the interest of the County.

### 3.2 Rejection or Disqualification of Bids

3.2.1 A Bid that is incomplete, obscure, conditioned or contains additions or substitute products not called for or irregularities of any kind, including, but not limited to, alterations or erasures which are not initialed, may be rejected as non-conforming. Reasons for rejection of a Bid at the time of Bid Opening include, but are not limited to, failure to include a signed Bid Bond (if required) on the County's form; failure to include a signed consent of security (if required); failure to include a signed Non-Collusion Affidavit; and lack of an authorized signature on the Bid Form.

3.2.2 The County reserves the right to waive a Bid's minor irregularities if rectified by Bidder within three (3) business days of the County's issuance of a written notice of such irregularities.

**3.2.3 Any Bidder who has demonstrated poor performance during a current or previous agreement with the County may be considered a non-responsible Bidder and its Bid may be rejected. The County reserves the right to exercise this option as is deemed proper and/or necessary.**

3.2.4 The County reserves the right to disqualify a Bid before or after opening, upon evidence of collusion with intent to defraud or other illegal practices upon the part of the Bidder.

### 3.3 Identification of the Lowest Responsive, Responsible Bidder

3.3.1 The County intends to award the Agreement to the lowest responsive, responsible Bidder meeting all terms, conditions, and specifications of the ITB, within sixty (60) days of the opening of the Bids. Submitted Bids shall remain valid during this sixty-day period. The County reserves the right, in its sole and absolute discretion, to accept or reject any and all Bids or parts thereof.

3.3.2 In determining the lowest responsive, responsible Bidder, the following conditions, among others, will be considered. Whether the Bidder:

3.3.2.1 maintains a permanent place of business;

3.3.2.2 has adequate equipment to supply the Goods and Services properly and expeditiously;

3.3.2.3 has suitable financial status to meet obligations to supply the Goods and Services;

3.3.2.4 has had experience on projects of similar character and magnitude; and

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3.3.2.5 is licensed to do business in the Commonwealth of Pennsylvania (if applicable).

### **3.4 Post-Bid Qualifications**

After the Bid Opening, Bidders must be prepared to present suitable evidence of their qualifications and financial standing within three (3) business days after request by the County.

### **3.5 Post-Bid Forms**

3.5.1 After the County identifies the apparent lowest responsive, responsible Bidder, the County's Purchasing Office will notify such Bidder. Such Bidder shall, within ten (10) business days of such notice, submit all necessary post-Bid documentation meeting the requirements of this ITB, which shall include, without limitation:

3.5.1.1 an executed Form of Agreement and

3.5.1.2 certificate of insurance.

### **3.6 Performance Security**

Not Applicable

### **3.7 Confidentiality of Protected Health Information**

3.7.1 To the extent applicable, the parties hereto agree to fully comply with the Health Insurance Portability and Accountability Act of 1996, P.L. 104-191, and all amendments thereto and regulations promulgated thereunder (collectively, "HIPAA"), as well as any other applicable laws or regulations concerning the privacy and security of health information. The successful Bidder agrees at all times to treat any protected health information (as defined by HIPAA), created by or disclosed or otherwise made available to the successful Bidder in connection with the Agreement, in accordance with all federal, state and local laws and regulations regarding the confidentiality of protected health information. Without limitation to other rights and remedies under the Agreement or afforded by law, County may immediately terminate the Agreement if it determines that there has been a material breach of this provision.

3.7.2 To the extent that County meets the definition of a "Covered Entity" or "Business Associate" (as such terms are defined under HIPAA) and the successful Bidder is determined by County to meet the definition of a "Business Associate" or "Subcontractor" (as such terms are defined under HIPAA) of County, the successful Bidder and County shall enter into a HIPAA Business Associate Agreement in a form satisfactory to County, which shall govern the treatment of any protected health information created, received, transmitted or maintained by successful Bidder on behalf of the County.

### **3.8 Awarding the Agreement**

Upon the County's receipt and approval of the lowest responsive, responsible Bidder's Post-Bid qualifications and forms, the County will make a recommendation to the County Commissioners with regard to awarding the Agreement. The Agreement shall only be awarded upon the passage of a resolution awarding the Agreement by the Berks County Board of Commissioners.

### **3.9 Protests**

Any and all protests related to this Invitation to Bid are subject to the County of Berks Protest Policy which is located on the County of Berks Purchasing Department website:

<https://www.co.berks.pa.us/Dept/Purchasing/Pages/ITBRFP.aspx>



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### **PART 4 – Operation of Resulting Agreement**

#### **4.1 Form of Agreement and General Conditions**

Upon request, the apparent lowest, responsible Bidder shall fill in all necessary details and execute the Form of Agreement and General Conditions attached hereto as Attachment H and submit the same for the County's execution.

#### **4.2 Agreement Documents**

The entire integrated Agreement shall be comprised of the Agreement Documents which include, without limitation, the executed Form of Agreement, this ITB, the successful Bidder's performance security, the Bid of the successful Bidder, and all purchase orders.

#### **4.3 Pricing**

The successful Bidder is required to hold the Bid prices fixed and firm for a period of one (1) year from the commencement date of the Agreement. Bids containing references to possible escalation of prices during the term of the Agreement will be rejected as conditioned Bids.

#### **4.4 Purchase Orders**

The County shall requisition the successful Bidder to supply a certain quantity of Goods and Services in accordance with the Agreement Documents through issuance of a Purchase Order in the form attached hereto as Attachment J which shall be automatically integrated as an Agreement Document.

#### **4.5 Term of the Agreement**

The contract, which results from the award of this ITB, shall be for a period of one (1) year commencing upon the Award of the Agreement unless otherwise extended.

- - - END OF INSTRUCTIONS TO BIDDERS - - -

## SECTION TWO TECHNICAL SPECIFICATIONS

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### 1. Summary

The purpose of this ITB is to seek bids from qualified vendors to provide scrap metal pickup, removal and recycling for the County of Berks.

### 2. Performance Requirements

2.1. Vendor shall provide a container to the County Facility within two business days of the request.

2.1.1. Container shall be roll off type container requested sizes may vary.

2.1.2. Containers to be charged on a daily or monthly rate, whichever is less based on the time the County kept the container on site.

2.1.3. Vendor is responsible for inspecting the contents of the container for unacceptable material before moving the container from the County facility. Vendor shall accept container with less than 10% of unacceptable material (non-metallic material).

2.1.4. Vendor shall not hold the County responsible for damages done to containers during the loading of scrap metal or moving of containers.

2.1.5. The locations where containers may be requested but not limited to are: Berks Heim, 1011 Berks Road, Leesport, Pa 19533, Jail System, 1287 County Welfare Road, Leesport, PA 19533, or Facilities, 633 Court Street, Reading PA 19601.

2.2. Vendor shall pick up scrap metal within two business days of request.

2.3. When scrap metal is to be delivered to the vendor's yard by the County, the County facility will notify the vendor of intended delivery.

2.4. Vendor shall provide a pick up ticket or bill of lading at the time of pick up with a tractable identification number and description of the load being picked up.

2.5. Vendor shall provide a copy of the dated weigh bill with vendor's payment to the County. The weigh bill shall provide gross weight including container, less container weight, equals net weight. The County reserves the right to verify weights at a facility selected by the County. If a discrepancy exists between the weight of the vendor's facility and the County facility, the weight at the County's facility prevails in determining payments.

2.6. Vendor shall calculate the amount due to the County. The calculation shall be made by determining the applicable unit price (the quoted percentage of the current American Metal Market (AMM) #2 bundles, Philadelphia exchange rate) multiplied by the net weight of the material received.

2.7. Within five business days of pickup of the material, Vendor shall mail payment to the County. Payment shall be made by check and payable to the "County of Berks". The check should be sent to The County Purchasing Department at 633 Court Street, Services Center, 13<sup>th</sup> floor, Reading, PA 19601.

2.8. Vendor is responsible for all costs of equipment, labor and supplies associated with the transportation of materials as outlined in this bid.

## SECTION TWO TECHNICAL SPECIFICATIONS

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2.9. Vendor shall assume ownership, control and responsibility of any material removed from the County facility.

2.10. Vendor shall perform the services specified in such a manner as not to interrupt or interfere with the operation of any activity on the premises.

### **3. Acceptable Types of Scrap Metal**

- 3.1. Brass
- 3.2. Copper
- 3.3. Tin
- 3.4. Steel
- 3.5. Aluminum
- 3.6. Silver
- 3.7. Stainless Steel
- 3.8. Nickel

### **4. Unacceptable Material**

It shall be understood that some items provided by the County will contain mixed material and/or non-metallic material. Vendor shall accept container with less than 10% of unacceptable material. If more than 10% the vendor can reject pick up until unacceptable material has been removed, or brought into the 10% tolerance level.

### **5. Performance Requirements**

Services must be made within the mutually agreed upon dates and times between the County Facility and awarded . All deliveries shall be made FOB destination.

### **6. Human Relations Act**

The successful Bidder shall comply with the Pennsylvania Human Relations Act, 43 P.S. § 951, *et seq.*, which prohibit discrimination because of race, color, religious, creed, ancestry, age, sex, national origin, or no-job related handicap or disability or the use of a guide or support animal because of blindness, deafness physical handicap, by employers, employment agencies, labor organizations, contractors and others.

### **7. Pennsylvania Prevailing Wage Act**

Not applicable.

### **8. Steel Products Procurement Act**

Special attention is drawn to the provisions of the Commonwealth of Pennsylvania Steel Products Procurement Act 73 P.S. § 1881, *et. Seq.*, and Trade Practice Act, 71 P.S. § 773.101, *et seq.*, with respect to any steel, aluminum or cast-iron product (including machinery and equipment) used in connection with Goods and Services. These laws include certain limitations and prohibitions on the source countries for certain raw products. The successful Bidder must provide the County with written certification of the source of steel products used before any payments can be made under the Agreement.

--- END OF SPECIFICATIONS ----

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**ATTACHMENT A  
BID FORM**

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**ITB #21-25-JR - Scrap Metal Recycling**

**Important note to Bidders:** It is essential that the submitted Bid complies with all of the requirements contained in Section One, Part Three of the ITB.

**This Bid is submitted to:** County of Berks  
c/o Berks County Controller  
Berks County Services Center  
633 Court Street, 12<sup>th</sup> Floor  
Reading, PA 19601

**This Bid is submitted on** \_\_\_\_\_, 20\_\_\_\_.  
**This Bid is valid for sixty (60) days from the date of Bid Opening.**

**This Bid is submitted by:**

Company Name: \_\_\_\_\_

Company Address: \_\_\_\_\_  
\_\_\_\_\_

Main Telephone: \_\_\_\_\_ Main Fax: \_\_\_\_\_

*Communications and questions concerning this Bid are to be directed to:*

Contact Name / Title: \_\_\_\_\_

Contact Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

Contact Email: \_\_\_\_\_

*In the event our company is awarded the Agreement as a result of the ITB and this Bid, the following individual will serve as project liaison/manager:*

Name / Title: \_\_\_\_\_

Office Address: \_\_\_\_\_  
\_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

Email: \_\_\_\_\_

**Receipt of Amendments (if applicable)**

In submitting this Bid, Bidder represents that they have received and examined the following ITB Amendments:

Amendment #\_\_\_\_ Amendment #\_\_\_\_ Amendment #\_\_\_\_ Amendment #\_\_\_\_

# ATTACHMENT A BID FORM

**Checklist - Attachments to Bid Form**

The following documents are attached to and made a part of this Bid (check all that apply):

- Piggyback Form – ITB Attachment B
- Non-collusion Affidavit – ITB Attachment C
- Reference Form – ITB Attachment D
- Sample Certificate of Insurance

**Delivery Schedule**

Mode of transport (check all that apply):

- common carrier
- package express (i.e. UPS, RPS, etc.)
- in-house fleet
- other \_\_\_\_\_

**Payment**

Will you accept a Credit Card to pay the invoice(s) for this Agreement? Yes \_\_\_\_\_ No \_\_\_\_\_

Will you offer a discount for using a Credit Card? Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, what discount will you offer? \_\_\_\_\_%

**Quoted Pricing**

Unless items or services are specifically excluded in the Bid, the County shall deem the Bid to be complete and shall not be charged any costs above and beyond the Bid amount. The successful Bidder shall bill at actual usage quantities. Deducts/Addrs shall be made at quoted unit prices.

Prices as quoted herein shall remain valid throughout the entire term of the Agreement. The estimated quantity is provided for purposes of comparing Bids. It is no guarantee for the procurement of any certain quantity or quantities of Goods and Services. The County reserves the right to order more or less Goods and Services throughout the entire term of the Agreement and the Bidder agrees to supply all Goods and Services requisitioned by the County through a Purchase Order at these Bid prices throughout the entire term of the Agreement.

Item No.	Item Offered	Estimated Quantity	Unit Price and % of AMM
1.	Container Charge, 10 yard	1	\$ _____ daily \$ _____ monthly
2.	Container Charge, 20 yard	5	\$ _____ daily \$ _____ monthly
3.	Container Charge, 30 yard	1	\$ _____ daily \$ _____ monthly
4.	Container Charge, 40 yard	1	\$ _____ daily \$ _____ monthly
5.	Ferrous Metals	20,000 lbs	_____ %
6.	Non-Ferrous Metals	2,000 lbs	_____ %
Total Bid Price FOB Destination			

# ATTACHMENT A BID FORM

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### Authorized Signature of Bidder

The Bid Form must be signed by an individual with actual authority to bind the company.

Company Type (check one):

Sole Proprietorship       Partnership       Corporation

### Bidder attests that:

(1) they have thoroughly reviewed the County's Invitation to Bid #21-25-JR and that this Bid is submitted in accordance with the ITB requirements; and

(2) they have visited and are familiar with the site facilities, site conditions, the pertinent state and local codes, state of labor and material markets, and has made do allowance in the Bid for all contingencies or conditions.

\_\_\_\_\_  
COMPANY NAME

\_\_\_\_\_  
FEDERAL ID#

\_\_\_\_\_  
STREET ADDRESS

\_\_\_\_\_  
PO BOX

\_\_\_\_\_  
CITY

\_\_\_\_\_  
STATE

\_\_\_\_\_  
ZIP

\_\_\_\_\_  
TELEPHONE #

\_\_\_\_\_  
FAX #

\_\_\_\_\_  
SIGNATURE (\*\*see note below)

\_\_\_\_\_  
SIGNATORY'S NAME (printed)

\_\_\_\_\_  
SIGNATORY'S TITLE (printed)

\_\_\_\_\_  
WITNESS'S SIGNATURE (\*\*see note below)

\_\_\_\_\_  
WITNESS'S NAME (printed)

\_\_\_\_\_  
WITNESS'S TITLE (printed)

**\*\*For Corporations: The Bid must be signed by the President or Vice President and the signature must be attested by the Corporate Secretary or Treasurer. If any employee other than the President or Vice President signs on behalf of the corporation, or if the President's or Vice President's signature is not attested to by the Corporate Secretary or Treasurer, a copy of the corporate resolution authorizing said signature(s) must be attached to this Bid. Failure to attach a copy of the appropriate authorization, if required, may result in rejection of the Bid.**

**ATTACHMENT B  
PIGGYBACK FORM**

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During the term of the Agreement resulting from Invitation to Bid #21-25-JR -Scrap Metal Recycling, the County of Berks would like to afford the same prices, terms and conditions to any current or future members of the Berks County Cooperative Purchasing Council (BCCPC); the Southeastern Pennsylvania Counties Cooperative Purchasing Board (SPCCPB); and any political subdivision of the Commonwealth of Pennsylvania even though their requirements are not included in the quantities listed on the Bid. The BCCPC consists of municipalities (townships, boroughs, etc.) located within Berks County. The SPCCPB consists of the Counties of Berks, Bucks, Chester, Delaware, Lancaster, Lehigh, Montgomery, and Northampton.

**Bidders must check one of the following options under each category below.** A non-affirmative response will in no way have a negative impact on the County's evaluation of the Bid.

**BCCPC**

\_\_\_\_\_ I *will* offer the quoted prices to all authorized members of the BCCPC during the term of the County's Agreement.

\_\_\_\_\_ I *will not* offer quoted prices to all authorized members of the BCCPC.

**SPCCPB**

\_\_\_\_\_ I *will* offer the quoted prices to all authorized members of the SPCCPB during the term of the County's Agreement.

\_\_\_\_\_ I *will not* offer quoted prices to all authorized members of the SPCCPB.

**PA Political Subdivisions**

\_\_\_\_\_ I *will* offer the quoted prices to all political subdivisions of the Commonwealth of Pennsylvania during the term of the County's Agreement.

\_\_\_\_\_ I *will not* offer the quoted prices to all political subdivisions of the Commonwealth of Pennsylvania during the term of the County's Agreement.

Company Name: \_\_\_\_\_

Authorized Signature: \_\_\_\_\_

Name (printed): \_\_\_\_\_

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

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

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## INSTRUCTIONS FOR NON-COLLUSION AFFIDAVIT

1. This Non-Collusion Affidavit is material to any contract awarded pursuant to this Bid. According to the Pennsylvania Antibid-Rigging Act, 62 Pa. C.S.A § 4501, et seq., governmental agencies may require Non-Collusion Affidavits to be submitted together with Bids.
2. This Non-Collusion Affidavit must be executed by the member, officer or employee of the Bidder who makes the final decision on prices and the amount quoted in the Bid.
3. Bid rigging and other efforts to restrain competition and the making of false sworn statements in connection with the submission of Bids are unlawful and may be subject to criminal prosecution. The person who signs the Affidavit should examine it carefully before signing and assure himself or herself that each statement is true and accurate, making diligent inquiry, as necessary, of all other persons employed by or associated with the Bidder with responsibilities for the preparation, approval or submission of this Bid.
4. In the case of a Bid submitted by a joint venture, each party to the venture must be identified in the Bid and an Affidavit must be submitted separately on behalf of each party.
5. The term “complementary Bid” as used in the Affidavit has the meaning commonly associated with that term in the bidding process and includes the knowing submission of Bids lower than the Bid of another firm, any intentionally low or non-competitive Bid and any other form of Bid submitted for the purpose of giving a false appearance of competition.
6. Failure to file an Affidavit in compliance with these instructions may result in disqualification of the Bid immediately after opening of the Bid.



**ATTACHMENT C  
NON-COLLUSION AFFIDAVIT**

State of \_\_\_\_\_:  
:s.s.

County of \_\_\_\_\_:

Re: ITB #21-25-JR

I state that I am \_\_\_\_\_ (Title) of \_\_\_\_\_  
(Name of Firm) and that I am authorized to make this affidavit on behalf of my firm, and its owners,  
directors, and officers. I am the person responsible in my firm for the price(s) and the amount of this Bid.

I state that:

- (1) The price(s) and amount of this Bid have been arrived at independently and without consultation, communication or agreement with any other contractor, Bidder or potential Bidder.
- (2) Neither the price(s) nor amount of this Bid and neither the approximate price(s) nor approximate amount of this Bid, have been disclosed to any other firm or person who is a Bidder or potential Bidder and they will not be disclosed before Bid Opening.
- (3) No attempt has been made or will be made to induce any firm or person to refrain from Bidding on this Agreement or to submit a Bid lower than this Bid or to submit any intentionally low or non-competitive Bid or other form of complementary Bid.
- (4) The Bid of my firm is made in good faith and not pursuant to any agreement or discussion with or inducement from any firm or person to submit a complementary or other non-competitive Bid.
- (5) \_\_\_\_\_ (Name of Firm), its affiliates, subsidiaries, officers, directors and employees are not currently under investigation by any governmental agency and have not in the last three years been convicted or found liable for any act prohibited by State or Federal law in any jurisdiction involving conspiracy or collusion with respect to bidding on any public contract, except as follows:  
\_\_\_\_\_  
\_\_\_\_\_

I state that \_\_\_\_\_ (Name of Firm) understands and acknowledges that the above representations are material and important and will be relied on by the County of Berks in awarding the Agreement for which this Bid is submitted. I understand, and my firm understands that any misstatement in this affidavit is and shall be treated as fraudulent concealment from the County of Berks of the true facts relating to the submission of Bids for this Agreement.

Signature: \_\_\_\_\_

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

SWORN TO AND SUBSCRIBED  
BEFORE ME THIS \_\_\_\_\_ DAY  
OF \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

## ATTACHMENT D REFERENCE FORM

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Bidder: \_\_\_\_\_

Each Bidder must submit at least three references to whom the Bidder has provided Scrap Metal Recycling within the preceding 24 months, and for whom Bidder has provided a similar volume of Goods and Services to that being requested by the County in this ITB. References must be provided even if Bidder is a current vendor of the County.

1. Company Name: \_\_\_\_\_

Address: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Contact Person's Title: \_\_\_\_\_

Tel / Fax Nos.: \_\_\_\_\_

Email: \_\_\_\_\_

2. Company Name: \_\_\_\_\_

Address: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Contact Person's Title: \_\_\_\_\_

Tel / Fax Nos.: \_\_\_\_\_

Email: \_\_\_\_\_

3. Company Name: \_\_\_\_\_

Address: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Contact Person's Title: \_\_\_\_\_

Tel / Fax Nos.: \_\_\_\_\_

Email: \_\_\_\_\_

**ATTACHMENT E**  
**BID BOND**

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Not Applicable

**ATTACHMENT F**  
**CONSENT (OR AGREEMENT) OF SURETY**

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Not Applicable

# ATTACHMENT G NO BID REPLY FORM

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To assist the County in obtaining good competition, we ask that each firm who has received Invitation to Bid #21-25-JR, **but does not wish to submit a Bid**, state their reason(s) below and return this form to the County of Berks, Attn: Director Contracts and Procurement, 633 Court Street, 13<sup>th</sup> Floor Services Center, Reading, PA 19601.

**Unfortunately, we must offer a “No Bid” at this time because:**

_____ 1.	We do not wish to participate in the Bid process.
_____ 2.	We do not wish to Bid under the terms and conditions of the Invitation to Bid document. Our objections are: _____ _____
_____ 3.	We do not feel we can be competitive.
_____ 4.	We cannot submit a Bid because of the marketing or franchising policies of our company.
_____ 5.	We do not wish to sell to the County of Berks. Our objections are: _____ _____ _____
_____ 6.	We do not provide the items/services for which Bids are requested.
_____ 7.	Other: _____ _____ _____

COMPANY NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_  
\_\_\_\_\_

SIGNATURE: \_\_\_\_\_

NAME (printed): \_\_\_\_\_

TITLE: \_\_\_\_\_

# ATTACHMENT H

## FORM OF AGREEMENT AND GENERAL CONDITIONS

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### AGREEMENT #

THIS AGREEMENT (“Agreement”) is entered into by and between the **County of Berks** with offices at Berks County Services Center, 633 Court Street, Reading, Pennsylvania, 19601 (hereinafter “County”) and **Vendor** with offices at [ ] (hereinafter “Vendor”).

#### Background

The County desires to engage the Vendor for the delivery of Scrap Metal Recycling in accordance with the requirements set forth in the County’s Invitation to Bid #21-25-JR [inclusive of all Amendment] (“ITB”), and Vendor’s Bid thereto dated Month Day, Year, both of which are incorporated in this Agreement by reference.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and intending to be legally bound hereby, the parties agree as follows:

#### 1. Definitions

Capitalized terms not defined herein shall have the meaning set forth in the ITB.

#### 2. Engagement

Subject to the terms and conditions set forth in this Agreement, the County hereby engages the Vendor to provide the Goods and Services set forth in the ITB on behalf of the County consistent with the terms of this Agreement and as further set forth in subsequently issued Purchase Orders.

#### 3. Term of Agreement

- 3.1 This Agreement shall be effective [Month Day, Year through Month Day, Year] unless terminated or extended in accordance with the terms and conditions of this Agreement.
- 3.2 With the consent of the Vendor, the County reserves the option to renew the Agreement for two (2) additional one-year terms at the Bid prices. Prior to the end of each one-year term, the County will notify the Vendor in writing if County would like to renew the Agreement. Upon receipt of the Vendor’s written acceptance to renew the Agreement, the Agreement shall then renew for an additional one (1) year from the prior expiration date. Such acceptance shall be automatically incorporated in the Agreement Documents.
- 3.3 The County reserves the right to extend the term of the Agreement period for up to three (3) months to prevent a lapse of coverage and only for the time necessary to issue and award a new Invitation to Bid.

#### 4. Time is of the Essence

Time is of the essence in the performance of this Agreement. The schedule for the performance of Goods and Services is as per Section Two, Paragraph Six in the ITB package. If the completion of Goods and Services is delayed, the County reserves the right, without liability, and in addition to its other rights and remedies, to terminate this Agreement by notice, and to procure substitute Goods and Services from another vendor. The Vendor shall reimburse the County for the costs to procure substitute Goods and Services.

## ATTACHMENT H

### FORM OF AGREEMENT AND GENERAL CONDITIONS

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#### 5. Supply and Inspection of Goods and Services

5.1 This Agreement is for an indefinite quantity of Goods and Services. The County reserves the right to order more or less Goods and Services throughout the entire term of the Agreement and the Bidder agrees to supply all Goods and Services requisitioned by the County through a Purchase Order at the Bid prices incorporated in this Agreement throughout the entire term of the Agreement. The Vendor shall supply Goods and Services to the County meeting the quality set forth in the ITB in quantities set forth in each Purchase Order issued by the County for the procurement of Goods and Services.

5.2 Goods and Services received by the County shall not be deemed accepted until the County has had a reasonable opportunity to inspect. Goods and Services that are discovered to be defective or non-conforming to the agreed upon specifications may be rejected upon initial inspection or at any later time if the defects or non-conformity were not reasonably discoverable at the time of initial inspection. Within fifteen (15) days of receipt of notification of rejection, Vendor shall remove rejected Goods and Services from the premises without expense to the County. Rejected Goods and Services not removed within fifteen (15) days will be regarded as abandoned and the County shall have the right to dispose of such Goods and Services as its own property and shall retain that portion of the proceeds of any sale which represents the County's costs and expenses in regard to the storage and sale of the Goods and Services. Upon notification of rejection, the Vendor shall immediately replace all such rejected Goods and Services with others conforming to the specifications and which are not defective. If the Vendor fails, neglects or refuses to do so, the County shall then have the right to purchase in the open market a corresponding quantity of such Goods and Services and deduct from any monies due or that may thereafter become due to the Vendor, the difference between the price stated and the actual cost thereof to the County. If the amount due the Vendor is insufficient to meet such expenses, the Vendor shall be liable for the excess and the County may proceed against the Vendor through appropriate legal action.

#### 6. Compensation

The Vendor shall be paid/pay the unit prices for Goods and Services supplied to/received by the County in accordance with the prices set forth in the Bid, as follows:

- **(Table shall be inserted here with unit prices)**

#### 7. Notices

All necessary coordination and communication required to carry out this Agreement, including meetings between the parties, as well as all written notices, shall be done through the individuals indicated below. Written notices shall be effective when delivered by hand, or if sent by registered or certified mail, or verified facsimile, or by confirmed courier to the address of each party indicated below.

**ATTACHMENT H**  
**FORM OF AGREEMENT AND GENERAL CONDITIONS**

	<i>County:</i>	<i>Vendor:</i>
Attention	Rex Levengood	
Address	633 Court Street 16th Floor, Services Center Reading, PA 19601	
Telephone	610-373-0776 ext 2531	
Fax		
Email	<a href="mailto:RLevengood@countyofberks.com">RLevengood@countyofberks.com</a>	

Written notices shall be copied to: County of Berks, Attn: Kelly A. Laubach, Berks County Services Center, 633 Court Street, 13<sup>th</sup> Floor, Reading, PA, 19601. Fax: 610-898-7404.

**8. Invoicing / Payment**

- 8.1 **Invoices and packing lists must reference the above-noted Agreement number.** Original invoices shall be submitted to: County of Berks, Attn: Rex Levengood, 633 Court Street, 16<sup>th</sup> Floor Services Center, Reading, PA 19601.
- 8.2 Vendor may submit invoices no more than once per month for Goods and Services supplied under this Agreement. No advance payments or billings are allowed. Payment by the County shall require the submittal of an itemized invoice of all Goods and Services supplied. The County shall render payment within thirty (30) days of the County's receipt of a properly prepared invoice. Payment shall be considered made when the County mails the check. Undisputed amounts unpaid after thirty (30) days of the County's receipt of a properly prepared invoice shall bear interest at a rate of three percent (3%) per annum.
- 8.3 As per Section Two, Paragraph 2.7 Vendor shall make payment within 5 business days for goods received.

**9. Insurance**

- 9.1 The Vendor, at its sole expense, shall carry and maintain, in full force at all times during the term of this Agreement, the following insurance coverages:
- 9.1.1 Comprehensive General Liability insurance covering bodily injury and property damage with limits of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate;
- 9.1.2 Commercial Automobile Liability insurance with a combined single limit of not less than \$1,000,000;
- 9.1.3 Umbrella/Excess Liability insurance with limits of not less than \$2,000,000 per occurrence and \$2,000,000 aggregate; and
- 9.1.4 Worker's Compensation insurance in statutory limits; and Employer's Liability insurance with limits of not less than \$100,000 each accident, \$500,000 disease-policy limit, and \$100,000 disease-each employee.
- 9.1.5 Pollution Liability: \$1,000,000 each loss, \$1,000,000 aggregate



## ATTACHMENT H

### FORM OF AGREEMENT AND GENERAL CONDITIONS

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9.2 Prior to commencement of performance of this Agreement, Bidder shall furnish to the County a certificate of insurance evidencing all required coverage in at least the limits required herein, **naming the County of Berks, its elected officials, agents, and employees as Additional Insured for “ongoing operations” and “products and completed operations” for a period of three years after final payment under the Commercial General Liability Coverage. Coverage should be provided by ISO Endorsements CG20 10 07 04 and CG2037 07 04 or their equivalent. Bidder’s Commercial General Liability and Umbrella/Excess Policy shall be Primary to and will not require contribution from any other insurance under which the Additional Insured is a Named Insured. To the fullest extent permitted by applicable state law, all policies shall contain a Waiver of Subrogation Clause.** The County of Berks reserves the right to waive the waiver of subrogation for any and all worker’s compensation policies that are provided under the State Worker’s Insurance Fund (SWIF). The Certificate shall note the project and provide that no policies may be cancelled without thirty (30) days advance notice to the County. Such certificate shall be issued to: County of Berks, Attn: Contract Coordinator, 633 Court Street, 13<sup>th</sup> Floor Services Center, Reading, PA 19601. All insurance policies shall be in effect with companies holding an A.M. Best rating of “A-” or better or financial rating of 1X or better with the A.M. Best’s Company Key Rating, Guide Latest Edition and shall be licensed or authorized to do business in the Commonwealth of Pennsylvania. Such companies shall also be acceptable to the County. Said policies shall remain in full force and effect until the expiration of the terms of the contract or until completion of all duties to be performed hereunder by the Bidder, whichever shall occur later.

#### **10. Precedence**

Where a conflict exists between these General Conditions and the ITB as to Goods and Services, the Vendor shall provide the higher quality or quantity of Goods and Services, otherwise the terms of these General Conditions shall prevail as to any conflict among the Agreement Documents. In the event any term of a Purchase Order conflicts with any other term within the Agreement Documents, such other term in the Agreement Documents shall prevail.

#### **11. Availability of Appropriated Funds**

The parties agree that any and all payments due from the County, as required under the terms of the Agreement, are contingent upon the availability of appropriated funds.

#### **12. Taxes**

The County is exempt from all Federal Excise Taxes and Pennsylvania Sales Taxes, as a political subdivision of the Commonwealth of Pennsylvania. The County’s registration number with the Internal Revenue Service is 23-6003049. Net prices shown in the Bid as incorporated in these General Conditions shall exclude such Federal and State taxes. This statement is not meant to exempt the Vendor from the payment of sales or use tax required to be paid with respect to its purchase or use of tangible personal property used or transferred in connection with the performance herein.

#### **13. Ownership of Work Product**

The County, its departments, employees, agents or assigns shall have the unrestricted right and authority to reproduce, distribute, and use in whole or in part any submitted report or written

## ATTACHMENT H

### FORM OF AGREEMENT AND GENERAL CONDITIONS

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materials generated by Vendor pursuant to this project. Employees or agents of the parties shall not divulge, transfer, assign, sell or otherwise convey the other party's proprietary methodologies (designated in writing by each party as proprietary) in any form to a third party, person or organization except as may be specifically agreed to in writing by the affected party.

#### **14. Patents, Copyrights, Trademarks**

Vendor warrants, represents and covenants that the Goods and Services and the sale and use thereof do not infringe directly or indirectly any valid patent, copyright, property right or trademark and Vendor agrees, at its cost and expense, to indemnify and hold the County free and harmless from and against any and all costs, expense, liabilities or damages, including attorneys' fees, arising out of alleged or actual patent, copyright, property right, trademark or trade secret infringement resulting from the sale or use of Goods and Services.

#### **15. Records, Audit and Inspection**

Vendor shall maintain such records as may be necessary to adequately reflect the accuracy of Vendor's charges and invoices for reimbursement under this Agreement and such other additional records as the County may reasonably require in connection with this Agreement. Vendor shall preserve such records in accordance with statutory requirements, but in no case for less than three (3) years after the date of final payment, without additional reimbursement or compensation therefor. The County and its duly authorized representatives shall have the right, from time to time, and upon reasonable notice, to audit, inspect and verify the records kept by Vendor in connection with this Agreement. The County and its duly authorized representatives shall have the right to visit, observe, audit, and inspect, during the Vendor's normal business hours, Vendor's production and related facilities utilized to perform its obligations under this Agreement.

#### **16. Warranty**

16.1 Goods and Services furnished as a result of this Agreement, whether manufactured or fabricated by Vendor or a third party, shall (a) be new; (b) be first quality; (c) strictly conform to the specifications and samples; and (d) be free from defects in materials and workmanship. Vendor shall be required to promptly replace Goods and Services, after receiving notification from the County of defects or nonconformance.

16.2 Goods manufactured by a third party and supplied by Vendor shall carry all third-party warranties. All warranties shall survive any inspection, delivery, acceptance or payment.

AND/OR

16.3 Services performed as a result of this Agreement, whether performed by Vendor or a third party, shall be performed in a skilled manner and shall comply with industry standards. Vendor shall promptly re-perform services, after receiving notification from the County of defects or nonconformance of services performed. All warranties shall survive inspection, delivery, acceptance and payment.

#### **17. Indemnity**

Vendor agrees to indemnify and hold harmless the County, its elected officials, employees and agents from and against any and all liability, damages, claims, suits, liens, and judgments

## ATTACHMENT H

### FORM OF AGREEMENT AND GENERAL CONDITIONS

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(including reasonable attorney's fees), of whatever nature, for injuries to or death of any person or persons, or loss of or damage to property, to the extent attributable to the negligent acts or omissions or willful misconduct of Vendor or its subcontractors or any of their respective agents, servants, or employees or Vendors' failure to perform in accordance with the provisions of this Agreement.

#### **18. Force Majeure**

Neither party shall be liable for any failure or delay in its performance resulting from any cause beyond its reasonable control including, but not limited to, acts of God; acts or omissions of civil or military authority; fires, floods; unusually severe weather; strikes or other labor disputes; embargoes; wars; political strife; riots; delays in transportation; sabotage; or fuel, power, material or labor shortages, provided that the affected party notifies the other party, in writing, within forty-eight (48) hours subsequent to the commencement of an occurrence of force majeure.

#### **19. Purchase Orders**

The County will requisition the purchase of additional Goods and Services throughout the term of this Agreement through Purchase Orders. Each Purchase Order shall be automatically incorporated in this Agreement.

#### **20. Termination for Convenience**

The County reserves the right, at any time and for its convenience, to terminate this Agreement in whole or in any separable part by written notice to Vendor. Such notice shall be provided at least thirty (30) days prior to the intended termination date. Vendor shall be compensated for Goods and Services supplied in accordance with the provisions of this Agreement up to the effective date of termination, less any payments previously made by the County for such Goods and Services, but in no event shall Vendor be entitled to recover lost or expected profit.

#### **21. Termination for Cause**

- 21.1 In the event that either the Vendor or the County defaults in the performance of any obligation specified herein, the non-defaulting party shall notify the other party in writing and may suspend the Agreement, in whole or in part, pending remedy of the default. If such default is not remedied within fifteen (15) days from the date of receipt of such notice, or if the other party is diligently attempting to cure such default but is unable to cure such default within thirty (30) days from the date of receipt of such notice, then the non-defaulting party shall have the right to terminate the Agreement immediately by providing written notice of termination to the other party.
- 21.2 If, during the term of this Agreement, Vendor shall be adjudged bankrupt, make a general assignment for the benefit of its creditors, or become insolvent, Vendor shall give the County written notice of such occurrence as soon as is legally permissible. If such occurrence or proposed occurrence is unacceptable to the County, the County may terminate this Agreement immediately upon written notice thereof to Vendor.
- 21.3 If the County terminates this Agreement for cause, in whole or in part, it may acquire, correct, or replace Goods and Services similar to those terminated, by contract or otherwise, and the Vendor shall reimburse the County for any costs incurred by the County thereby, or make an equitable adjustment in the price. This

## ATTACHMENT H

### FORM OF AGREEMENT AND GENERAL CONDITIONS

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paragraph shall not operate or bar the County from exercising any other rights or remedies to which it may be entitled to under the Pennsylvania Uniform Commercial Code, Article 2, 13 Pa.C.S.A., Section 2101 et seq.

#### **22. Claims for Consequential and/or Incidental Damages**

The Vendor waives claims against the County for lost or expected profits, consequential damages and/or incidental damages arising out of or relating to this Agreement.

#### **23. Release of Liens**

Before any payment hereunder shall become due, the County, at its option, may require Vendor to furnish reasonable evidence of the payment of all subcontractor accounts for labor and materials pertaining to Vendor's performance hereunder. Prior to payment, the County reserves the right to require Vendor to furnish the County with a full and complete release of liens from all persons furnishing labor and materials toward the performance hereof, and in any event, Vendor agrees to indemnify and hold harmless the County, its officials, employees and agents from and against any and all liens and encumbrances arising out of Vendor's performance of this Agreement.

#### **24. Assignment**

Vendor shall not assign this Agreement in whole or in part nor delegate any duties, without the prior written consent of the County. Such consent shall not be unreasonably withheld. Any assignment consented to by the County shall be evidenced by a written assignment agreement executed by the Vendor and its assignee in which the assignee agrees to be legally bound by all of the terms and conditions of the original Agreement and to assume the duties, obligations, and responsibilities being assigned.

#### **25. Publicity**

Neither Vendor nor any tier subcontractor shall use the name of the County of Berks or quote the opinion of any County employee in any advertising, publicity, endorsement or testimonial, without the prior written approval of the County.

#### **26. Compliance with Laws**

In the performance of this Agreement, Vendor shall comply with all applicable laws, ordinances, rules and regulations of governmental authorities. Vendor shall minimize pollution and shall strictly comply with all applicable environmental laws and regulations. Vendor shall give required notices, and secure and pay for any permits, licenses, and easements required for supply of Goods and Services. The Vendor shall give any and all necessary formal notices required in conjunction with the lawful supply of the Goods and Services.

#### **27. Health and Safety**

The Vendor shall, at all times, control the health, safety and welfare of its employees and subcontractors. Vendor shall:

- 27.1 comply with all federal, state and local regulations, as well as all safety information and instructions as may be set forth in writing or otherwise provided by the County;
- 27.2 promptly report to the County all incidents with potentially adverse safety, health or environmental implications, including slips, falls, equipment malfunctions, fume releases and any situation requiring first-aid or medical observations or treatment;

## ATTACHMENT H

### FORM OF AGREEMENT AND GENERAL CONDITIONS

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- 27.3 promptly report to the County all cases Vendor determines to be recordable on the OSHA 300 log or its equivalent and upon request, provide the County with a copy of the OSHA 300 log and all supporting forms;
- 27.4 properly maintain, inspect and supervise its designated work area and roadways to keep them in reasonably safe condition. This responsibility includes Vendor's right and duty to conduct reasonable and necessary maintenance in the work area and of the roadways to prevent unsafe work conditions from existing. Vendor shall regularly conduct safety audits and inspections to ensure compliance with its responsibility to maintain a reasonably safe work area;
- 27.5 supply the applicable safety data sheets on all Goods and Services supplied to the County or used on County property;
- 27.6 use, handle, store and dispose of any hazardous materials or waste while on the County's property in strict compliance with applicable laws and as instructed in the safety data sheet(s); and
- 27.7 keep the County's property free of waste as the work progresses and, on completion of such activities, leave the site "broom clean" and tools, equipment and materials furnished shall be so placed and maintained as to permit unobstructed access to the work and to minimize exposure to personal injury or fire loss in a location approved by the County. The County may remove waste or store Vendor's tools, equipment and materials if Vendor fails to properly do so and the Vendor shall reimburse the County for any costs incurred, including charges for employee time, within seven (7) days of demand.

#### **28. Equal Employment Opportunity**

During the performance of the Agreement, the Vendor shall not discriminate against any employees or applicant for employment because of race, color, religion, sex, or national origin. The Vendor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to race, color, religion, sex or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Vendor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this paragraph.

#### **29. Independent Contractor**

The employees, subcontractors, methods, facilities, and equipment used by Vendor shall be at all times under Vendor's direction and control. Vendor's relationship to the County under this Agreement shall be that of an independent contractor, and nothing in this Agreement shall be construed to constitute Vendor, its subcontractors or any of their employees as an employee, agent, associate, joint venturer, or partner of the County.

#### **30. Employees of Vendor**

- 30.1 Vendor agrees that each of its employees will be properly qualified and will use reasonable care in the performance of services while on County property. If the

## ATTACHMENT H

### FORM OF AGREEMENT AND GENERAL CONDITIONS

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County, in the County's sole opinion, determines, for any reason, that the qualifications, actions or conduct of any particular Vendor employee is inconsistent with Vendor's obligations under this Agreement by performing unsatisfactory services, interfering with the operation of the County's facilities, bothering or annoying any occupants, visitors, or other vendors then at facility, or that such actions or conduct is otherwise detrimental to the County, then upon the County's written notice, Vendor shall immediately provide a qualified replacement.

30.2 Vendor shall advise its employees and the employees of its subcontractors and agents that:

30.2.1 It is the policy of the County of Berks to provide a drug-free work environment. To that end the County prohibits the consumption of alcohol or illegal use, possession, sale, manufacture, dispensing, and distribution of drugs or other controlled substances while supplying Goods and Services or on County property on the work site, and prohibits in the workplace the presence of an individual with such substances in the body for non-medical reasons.

30.2.2 Any employee of Vendor who is found in violation of the policy may be removed or barred from the work site at the discretion of the County.

#### **31. Governing Law and Jurisdiction**

This Agreement shall be interpreted under the substantive law of the Commonwealth of Pennsylvania, without giving effect to its principles of conflicts of law. EACH PARTY IRREVOCABLY CONSENTS TO THE EXCLUSIVE JURISDICTION AND VENUE OF THE COURT OF COMMON PLEAS OF BERKS COUNTY, COMMONWEALTH OF PENNSYLVANIA, AND IRREVOCABLY AGREES THAT ALL ACTIONS OR PROCEEDINGS BETWEEN THE PARTIES, INCLUDING, BUT NOT LIMITED TO, THOSE ACTIONS OR PROCEEDINGS RELATING TO THIS AGREEMENT, SHALL BE LITIGATED IN SUCH COURT.

#### **32. Subcontractors**

32.1 The Vendor shall not subcontract with or employ any entity or individual who is currently suspended or debarred by the Commonwealth of Pennsylvania or federal government during the term of this Agreement or any extensions or renewals thereof. The County shall have the right to require the Vendor to terminate such subcontracts or employment at no cost to the County. The Vendor agrees to reimburse the County for costs and expenses incurred due to the Vendor's noncompliance with the terms of this certification requirement.

32.2 The Vendor may obtain the current list of suspended and debarred Vendors by contacting the:

Department of General Services  
Office of Chief Counsel  
603 North Office Building  
Harrisburg, PA 17125

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#### **33. Severability**

The provisions of this Agreement shall be deemed to be severable. Consequently, in the event that any provision of this Agreement is found to be void or unenforceable, such findings shall not be construed to render any other provision of this Agreement either void or unenforceable, and all other provisions shall remain in full force and effect unless the provisions which are void or unenforceable shall substantially affect the rights or obligations granted to or undertaken by either party.

#### **34. Reservation of Rights**

Either party's waiver of any of its remedies afforded hereunder or by law is without prejudice and shall not operate to waive any other remedies which such party shall have available to it, nor shall such waiver operate to waive such party's rights to any remedies for future breach, whether of a like or different character. Furthermore, any termination or assignment of this Agreement shall not relieve or release either party hereto from any rights, liabilities, or obligations which it has accrued under law or under the terms of this Agreement prior to the date of such termination or assignment.

#### **35. Regulations**

Not Applicable

#### **36. Integrity Provisions**

36.1 It is essential that those who seek to contract with the County observe high standards of honesty and integrity. They must conduct themselves in a manner that fosters public confidence in the integrity of the County procurement process.

36.2 In furtherance of this policy, Vendor agrees to the following:

36.2.1 Vendor shall maintain the highest standards of honesty and integrity during the performance of this Agreement and shall take no action in violation of state or federal laws or regulations or any other applicable laws or regulations or other requirements applicable to Vendor or that governs contracting with the County and Commonwealth.

36.2.2 Vendor shall establish and implement a written business integrity policy, which includes, at a minimum, the requirements of these provisions as they relate to Vendor employee activity with the County and Commonwealth; County and Commonwealth employees, and which is distributed and made known to all Vendor employees.

36.2.3 Vendor, its affiliates, agents and employees shall not influence, or attempt to influence any County or Commonwealth employee to breach the standards of ethical conduct for County or Commonwealth employees set forth in the *Public Official and Employees Ethics Act, 65 Pa.C.S. §§1101 et seq.*; the *State Adverse Interest Act, 71 P.S. §776.1 et seq.*; and the *Governor's Code of Conduct, Executive Order 1980-18, 4 Pa. Code §7.151 et seq.*, or to breach any other state or federal law or regulation.

36.2.4 Vendor, its affiliates, agents and employees shall not offer, give or agree or promise to give any gratuity to a County and/or Commonwealth official or

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### FORM OF AGREEMENT AND GENERAL CONDITIONS

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employee or to any other person at the direction or request of any County and/or Commonwealth official or employee.

- 36.2.5 Vendor, its affiliates, agents and employees shall not offer, give or agree or promise to give any gratuity to a County official or employee or to any other person, the acceptance of which would violate the *Governor's Code of Conduct, Executive Order 1980-18, 4 Pa. Code §7.151 et seq.* or any statute, regulation, statement of policy, management directive or any other published standard of the County and Commonwealth.
- 36.2.6 Vendor, its affiliates, agents and employees shall not, directly or indirectly, offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for the decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty by any County or Commonwealth official or employee.
- 36.2.7 Vendor, its affiliates, agents, employees or anyone in privity with him or her shall not accept or agree to accept from any person, any gratuity in connection with the performance of work under the agreement, except as provided in the Agreement.
- 36.2.8 Vendor shall not have a financial interest in any other provider, subcontractor or supplier providing services, labor or material on this program, unless the financial interest is disclosed to the County in writing and the County consents to Vendor's financial interest prior to County execution of the agreement. Vendor shall disclose the financial interest to the County at the time of bid or proposal submission, or if no bids or proposals are solicited, no later than Vendor's submission of the agreement signed by Vendor.
- 36.2.9 Vendor must promptly refer to the Department of Justice Office of the Inspector General (OIG) any credible evidence that a principal, employee, agent, subrecipient, contractor subcontractor or other person has, in connection with funds under this award (1) submitted a claim that violates the False Claims Act or (2) committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity or similar misconduct. Potential fraud, waste, abuse or misconduct involving or relating to funds under this contract should be reported to the OIG by (1) mail directed to: Office of the Inspector General, U.S. Department of Justice, Investigations Division 950 Pennsylvania Avenue, N.W. Room 4706, Washington, DC 20530; (2) email to [oig.hotline@usdoj.gov](mailto:oig.hotline@usdoj.gov) and/or (3) the DOJ OIG hotline: at (800) 869-4499 (phone) or (202) 616-9881. Additional information is available from the DOJ OIG website at <http://www.usdoj.gov/oig>.
- 36.2.10 Restrictions and certifications regarding non-disclosure agreements and related matters.
- 36.2.10.1 Vendor shall not require any employee or contractor to sign an internal confidentiality agreement or statement that prohibits or otherwise restricts or purports to prohibit or restrict the reporting (in accordance



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with law) of waste, fraud, or abuse to an investigative or law enforcement representative of federal department or agency authorized to receive such information.

36.2.10.2 The foregoing is not intended, and shall not be understood by, to contravene requirements applicable to Standard Form 312 (which relates to classified information). Form 4414 (which relates to sensitive compartmental information), or any other form issued by a federal department or agency governing the nondisclosure of classified information.

36.2.10.3 In accepting this Agreement, the Vendor

36.2.10.3.1 represents that it neither requires nor has required internal confidentiality agreements or statements from employees or contractors that currently prohibit or otherwise currently restrict (or purport to prohibit or restrict) employees or contractors from reporting waste, fraud, or abuse as described above; and

36.2.10.3.2 certifies that if it learns or is notified that it is or has been requiring its employees or contractors to execute agreements or statements that prohibit or otherwise restrict (or purport to prohibit or restrict), reporting of waste, fraud, or abuse as described above, it will immediately stop any further obligations of award funds, will provide prompt written notification to the federal agency whom has awarded these grant funds and will resume (or permit resumption of) such obligations only if expressly authorized to do so by that agency.

36.2.10.4 If the Vendor does or is authorized to make subawards (“subgrants”), procurement contracts, or both

36.2.10.4.1 it represents that

36.2.10.4.2 it has determined that no other entity that the Vendor’s application proposes may or will receive award funds (whether through a subaward (“subgrant”), procurement contract, or subcontract under a procurement contract) either requires or has required internal confidentiality agreements or statements from employees or contractors that currently prohibit or otherwise currently restrict (or purport to prohibit or restrict) employees or contractors from reporting waste, fraud, or abuse as described above; and

36.2.10.4.3 it has made appropriate inquiry, or otherwise has an adequate factual basis, to support this representation; and

36.2.10.4.4 it certifies that if it learns or is notified that any subrecipient contractor or subcontractor entity that receives funds under this agreement is or has been requiring its employees or contractors to

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### FORM OF AGREEMENT AND GENERAL CONDITIONS

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execute agreements or statements that prohibit or otherwise restrict (or purport to prohibit or restrict), reporting of waste, fraud, or abuse as described above, the County, will immediately stop any further obligations of agreement funds to or by that entity, will provide prompt written notification to the federal agency making this award, and will resume (or permit resumption of) such obligations only if expressly authorized to do so by that agency.

- 36.2.11 Vendor, its affiliates, agents and employees shall not disclose to others any information, documents, reports, data or records provided to, or prepared by, Vendor under this agreement without the prior written approval of the County, except as required by the *Pennsylvania Right-to-Know Law, 65 P.S. §§67.101-3104*, or other applicable law or as otherwise provided in this Agreement. Any information, documents, reports, data, or records secured by Vendor from the County or a third party in connection with the performance of this agreement shall be kept confidential unless disclosure of such information is:
- 36.2.11.1 Approved in writing by the County prior to its disclosure; or
  - 36.2.11.2 Directed by a court or other tribunal of competent jurisdiction unless the agreement requires prior County approval; or
  - 36.2.11.3 Required for compliance with federal or state securities laws or the requirements of national securities exchanges; or
  - 36.2.11.4 Necessary for purposes of Vendor's internal assessment and review; or
  - 36.2.11.5 Deemed necessary by Vendor in any action to enforce the provisions of this Agreement or to defend or prosecute claims by or against parties other than the County; or
  - 36.2.11.6 Permitted by the valid authorization of a third party to whom the information, documents, reports, data or records pertain; or
  - 36.2.11.7 Otherwise required by law.
- 36.2.12 Vendor certifies that neither it nor any of its officers, directors, associates, partners, limited partners or individual owners has been officially notified of, charged with, or convicted of any of the following and agrees to immediately notify the County agency granting officer in writing if and when it or any officer, director, associate, partner, limited partner or individual owner has been officially notified of, charged with, convicted of, or officially notified of a governmental determination of any of the following:
- 36.2.12.1 Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property.

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- 36.2.12.2 Commission of fraud or a criminal offense or other improper conduct or knowledge of, approval of or acquiescence in such activities by Vendor or any affiliate, officer, director, associate, partner, limited partner, individual owner, or employee or other individual of entity associated with:
- 36.2.12.2.1 Obtaining;
  - 36.2.12.2.2 Attempting to obtain; or
  - 36.2.12.2.3 Performing a public grant or subgrant Vendor's acceptance of the benefits derived from the conduct shall be deemed evidence of such knowledge, approval or acquiescence.
- 36.2.12.3 Violation of federal or state antitrust statutes.
- 36.2.12.4 Violation of any federal or state law regulating campaign contributions.
- 36.2.12.5 Violation of any federal or state environmental law.
- 36.2.12.6 Violation of any federal or state law regulating hours of labor, minimum wage standards or prevailing wage standards; discrimination in wages; or child labor violations.
- 36.2.12.7 Violation of the *Act of June 2, 1915 (P.L.736, No. 338)*, known as the *Workers' Compensation Act*, 77 P.S. 1 et seq.
- 36.2.12.8 Violation of any federal and state law prohibiting discrimination in employment, including but not limited to 28 CFR Part 42.
- 36.2.12.9 Debarment by any agency or department of the federal government or by any other state.
- 36.2.12.10 Any other crime involving moral turpitude or business honesty or integrity. Vendor acknowledges that the County may, in its sole discretion, terminate the agreement for cause upon such notification or when the County otherwise learns that Vendor has been officially notified, charged or convicted.
- 36.2.13 If this Agreement was awarded to Vendor on a non-bid basis, Vendor must, (as required by *Section 1641* of the *Pennsylvania Election Code*) file a report of political contributions with the Secretary of the Commonwealth on or before February 15 of the next calendar year. The report must include an itemized list of all political contributions known to Vendor by virtue of the knowledge possessed by every officer, director, associate, partner, limited partner, or individual owner that has been made by:

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### FORM OF AGREEMENT AND GENERAL CONDITIONS

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- 36.2.13.1 Any officer, director, associate, partner, limited partner, individual owner or members of the immediate family when the contributions exceed as aggregate of one thousand dollars (\$1,000) by any individual during the preceding year; or any employee or members of his immediate family whose political contribution exceeded one thousand dollars (\$1,000) during the preceding year.
- 36.2.13.2 To obtain a copy of the report form, Vendor shall contact the Bureau of Commissioners, elections and Legislation, Division of Campaign Finance and Lobby Disclosure, Room 210, North Office Building, Harrisburg, PA 17120.
- 36.2.14 Vendor shall comply with requirements of the *Lobbying Disclosure Act, 65 Pa.C.S. § 13A01 et seq.*, and the regulations promulgated pursuant to that law. Vendor employee activities prior to or outside of formal Commonwealth procurement communication protocol are considered lobbying and subjects the Vendor employees to the registration and reporting requirements of the law. Actions by outside lobbyists on Vendor's behalf, no matter the procurement stage, are not exempt and must be reported.
- 36.2.15 When Vendor has reason to believe that any breach of ethical standards as set forth in law, the Governor's code of Conduct, or in these provisions has occurred or may occur, including but not limited to contact by a Commonwealth officer or employee which, if acted upon, would violate such ethical standards, Vendor shall immediately notify the Commonwealth granting officer or Commonwealth Inspector General in writing.
- 36.2.16 Vendor, by submission of its bid or proposal and/or execution of this agreement by the submission of any bills, invoices or requests for payment pursuant to the grant, certifies and represents that it has not violated any of these integrity provisions in connection with the submission of the bid or proposal, during any agreement negotiations or during the term of the Agreement.
- 36.2.17 Vendor shall cooperate with the Office of Inspector General in its investigation of any alleged Commonwealth employee breach of ethical standards and any alleged Vendor non-compliance with these provisions. Vendor agrees to make identified Vendor employees available for interviews at reasonable times and places. Vendor, upon the inquiry or request of the Office of Inspector General, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Inspector General to Vendor's integrity and compliance with these provisions. Such information may include, but shall not be limited to, Vendor's business or financial records, documents or files of any type or form that refers to or concern this Agreement.
- 36.2.18 For violation of any of these Integrity Provisions, the County may terminate that and any other agreement with Vendor, claim liquidated damages in an amount equal to the value of anything received in breach of these provisions,

## ATTACHMENT H

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claim damages for all additional costs and expenses incurred in obtaining another Vendor to complete performance under this Agreement, and debar and suspend Vendor from doing business with the County. These rights and remedies are cumulative, and the use or non-use of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those the Commonwealth may have under law, statute, regulation or otherwise.

36.2.19 For purposes of these Integrity Provisions, the following terms shall have the meanings found in this Clause 36.

36.2.19.1 “Confidential information” means information that a) is not already in the public domain; b) is not available to the public upon request; c) is not or does not become generally known to Vendor from a third party without an obligation to maintain its confidentiality; d) has not become generally known to the public through an act or omission of Vendor; or e) has not been independently developed by Vendor without the use of confidential information of the County or Commonwealth.

36.2.19.2 “Consent” means written permission signed by a duly authorized officer or employee of the County or Commonwealth, provided that where the material facts have been disclosed, in writing, by pre-qualification, bid, proposal, or grantual terms, the County or Commonwealth shall be deemed to have consented by virtue of execution of this Agreement.

36.2.19.3 “Vendor” means the individual or entity that has entered into this Agreement with the County, including those directors, officers, partners, managers and owners having more than a five percent interest in Vendor.

36.2.19.4 “Financial interest” means:

36.2.19.4.1 Ownership of more than a five percent interest in any business; or

36.2.19.4.2 Holding a position as an officer, director, trustee, partner, employee or holding any position of management.

36.2.19.5 “Gratuity” means tendering, giving or providing anything of more than nominal monetary value including, but not limited to, cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment or grants of any kind. The exceptions set forth in the Governor’s Code of Conduct, Executive Order 1980-18, the 4 Pa. Code §7.153(b), shall apply.

36.2.19.6 “Immediate family” means a spouse and any unemancipated child.

36.2.19.7 “Non-bid basis” means a grant awarded or executed by the County with Vendor without seeking bids or proposals from any other potential bidder or offeror.

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### FORM OF AGREEMENT AND GENERAL CONDITIONS

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36.2.19.8 “Political contribution” means any payment, gift, subscription, assessment, grant, payment for services, dues, loan, forbearance, advance or deposit of money or any valuable thing, to a candidate for public office or to a political committee, including but not limited to a political action committee, made for the purpose of influencing any election in the Commonwealth of Pennsylvania or for paying debts incurred by or for a candidate or committee before or after any election.

#### **37. Debarment/Tax Liabilities**

37.1 For the purpose of these provisions, the term vendor is defined as any person, including, but not limited to, a bidder, offeror, loan recipient, provider, or subcontractor, who has furnished or seeks to furnish goods, supplies, services, or leased space, or who has performed or seeks to perform construction activity under contract, subcontract, grant or subgrant with the County, or with a person under contract, subcontract, grant, or subgrant with the County or its state-affiliated entities, and state-related institutions. The term vendor may include a permittee, licensee, or any agency, political subdivision, instrumentality, public authority, or other entity of the County.

37.1.1 The Vendor must certify, in writing, for itself and all its subcontractors, that as of the date of its execution of any County contract, that neither the vendor, nor any subcontractors, nor any suppliers are under suspension or debarment by the Commonwealth or any governmental entity, instrumentality, or authority and, if the vendor cannot so certify, then it agrees to submit, along with the bid/proposal, a written explanation of why such certification cannot be made.

37.1.1.1 The Vendor must also certify, in writing, that as of the date of its execution, of any County contract it has no tax liabilities or other County or Commonwealth obligations.

37.1.1.2 The Vendor’s obligations pursuant to these provisions are ongoing from and after the effective date of the contract through the termination date thereof. Accordingly, the Vendor shall have an obligation to inform the contracting agency if, at any time during the term of the contract, it becomes delinquent in the payment of taxes, or other County or Commonwealth obligations, or if it or any of its subcontractors are suspended or debarred by the Commonwealth, the federal government, or any other state or governmental entity. Such notification shall be made within 15 days of the date of suspension or debarment.

37.1.2 The failure of the Vendor to notify the contracting agency of its suspension or debarment by the Commonwealth, any other state, or the federal government shall constitute an event of default of the contract with the County.

## ATTACHMENT H

### FORM OF AGREEMENT AND GENERAL CONDITIONS

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- 37.1.3 The Vendor agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of State Inspector General for investigations of the Vendor's compliance with the terms of this or any other agreement between the Vendor and the County, which results in the suspension or debarment of the Vendor. Such costs shall include, but shall not be limited to, salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The Vendor shall not be responsible for investigative costs for investigations that do not result in the Vendor's suspension or debarment.
- 37.1.4 Vendor shall immediately self-report any discovered exclusion of an employee or contractor, either an individual or an entity, to the Bureau of Program Integrity either:
- 37.1.4.1 Via e-mail through the MA Provider Compliance form at the following link:  
  
<https://expressforms.pa.gov/apps/pa/DHS/MA-Provider-Compliance-Hotline>
- 37.1.4.2 By U.S. mail at the following address:  
  
Department of Human Services  
Office of Administration  
Bureau of Program Integrity  
Commonwealth of Pennsylvania  
P.O. Box 2675  
Harrisburg, PA 17105-2675
- 37.1.4.3 By fax at: 1-717-772-4655 or 1-717-772-4638.
- 37.1.4.4 Vendor shall copy the County on any notice given to the Bureau of Program Integrity in the manner and at the address provided for giving notices to the County in this Agreement.
- 37.1.5 Vendor shall develop and maintain auditable documentation of screening efforts, including dates the screenings were performed and the source data checked and its date of most recent update.
- 37.1.6 Vendor shall periodically conduct self-audits to determine compliance with this requirement.
- 37.1.7 Vendor shall provide evidence of compliance with these requirements to the County within ten (10) days following a request by the County.
- 37.1.8 The Vendor may obtain a current list of suspended and debarred Commonwealth providers by accessing:

## ATTACHMENT H

### FORM OF AGREEMENT AND GENERAL CONDITIONS

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[http://www.dgs.internet.state.pa.us/debarment\\_list](http://www.dgs.internet.state.pa.us/debarment_list) or contacting the:

Department of General Services  
Office of Chief Counsel  
603 North Office Building  
Harrisburg, PA 17125  
Telephone No: 717-783-6472  
FAX No.: 717-787-9138

37.1.9 It shall be the responsibility of the Vendor to determine and utilize the appropriate site for said database.

#### **38. Nondiscrimination/Sexual Harassment Clause**

38.1 During the term of the Agreement, Vendor agrees as follows:

- 38.1.1 In the hiring of any employee(s) for the manufacture of supplies, performance of work, or any other activity required under the Agreement or any contract or subcontract, the Vendor, a contractor, a subcontractor, or any person acting on behalf of the Vendor shall not, by reason of gender, race, creed or color, discriminate against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.
- 38.1.2 The Vendor, contractor or any subcontractor or any person on their behalf shall not in any manner discriminate against or intimidate any of its employees on account of gender, race, creed or color.
- 38.1.3 The Vendor, contractor or any subcontractor shall establish and maintain a written sexual harassment policy and shall inform their employees of the policy. The policy must contain a notice that sexual harassment will not be tolerated and employees who practice it will be disciplined.
- 38.1.4 The Vendor, contractor or any subcontractor shall not discriminate by reason of gender, race, creed or color against any contractor, subcontractor or supplier who is qualified to perform the work to which the agreement relates.
- 38.1.5 The Vendor, any contractor or any subcontractor shall, within the time periods requested by the County, furnish all necessary employment documents and records and permit access to their books, records and accounts by the County and the Bureau of Minority and Women Business Opportunities (BMWBO), for the purpose of ascertaining compliance with provisions of this Nondiscrimination/Sexual Harassment Clause.
- 38.1.6 The Vendor, any contractor or subcontractor shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every contract or subcontract so that those provisions applicable to contractors or subcontractors will be binding upon each contractor or subcontractor.
- 38.1.7 The County may cancel or terminate the agreement and all money due or to become due under the agreement may be forfeited for a violation of the terms



## ATTACHMENT H

### FORM OF AGREEMENT AND GENERAL CONDITIONS

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and conditions of this Nondiscrimination/Sexual Harassment Clause. In addition, County may proceed with debarment or suspension and may place the Vendor, contractor or subcontractor in the Contractor Responsibility File.

39 **Set Off Clause**

Not Applicable

40 **Property and Supplies**

Not Applicable

41 **Right to Know Law**

41.1 The Pennsylvania Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101-3104, applies to this Agreement.

41.2 Unless the Vendor provides the County, in writing, with the name and contact information of another person, the County shall notify the provider using the Vendor information provided by the Vendor in this Agreement if the County needs the Vendor’s assistance in any matter arising out of the RTKL. The Vendor shall notify the County in writing of any change in the name or the contact information within a reasonable time prior to the change.

41.3 Upon notification to the Vendor that the County has received a request for records under the RTKL related to this Agreement that may be in the Vendor’s possession, constituting or alleged to constitute, a public record in accordance with the RTKL (“Requested Information”), the Vendor shall:

41.3.1 Provide the Vendor, within five (5) business days after receipt of the County’s written notification, access to, and copies of, any document or information in the Vendor’s possession arising out of this Agreement that the County reasonably believes is Requested Information and may be a public record under the RTKL; and

41.3.2 Provide such other assistance as the County may reasonably request, in order to comply with the RTKL with respect to this Agreement.

41.4 If the Vendor considers the Requested Information to include a request for a Trade Secret or Confidential Proprietary Information, as those terms are defined by the RTKL, or information that the Vendor considers exempt from production under the RTKL, the Vendor must notify the County and provide within five (5) business days of receiving the County’s written notification, a written statement signed by a representative of the Vendor explaining why the requested material is exempt from public disclosure under the RTKL.

41.5 The County will rely upon the written statement from the Vendor in denying a RTKL request for the Requested Information unless the County determines that the Requested Information is clearly not protected from disclosure under the RTKL.

## ATTACHMENT H

### FORM OF AGREEMENT AND GENERAL CONDITIONS

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- 41.6 If the Vendor fails to provide the Requested Information within the time period required by these provisions, the Vendor shall indemnify and hold the County harmless for any damages, penalties, costs, detriment or harm that the County may incur as a result of the Vendor's failure, including any statutory damages assessed against the County.
- 41.7 The County will reimburse the Vendor for any costs associated with complying with these provisions only to the extent allowed under the fee schedule established by the Office of Open Records or as otherwise provided by the RTKL if the fee schedule is inapplicable.
- 41.8 The Vendor may file a legal challenge to a decision by the County to release a record the public with the Office of Open Records, or in the Pennsylvania Courts, however, the Vendor shall indemnify the County for any legal expenses incurred by the County as a result of such a challenge and shall hold the County harmless for any damages, penalties, costs, detriment or harm that the County may incur as a result of the Vendor's failure, including any statutory damages assessed against the County, regardless of the outcome of such legal challenge. As between the parties, the Vendor agrees to waive all rights or remedies that may be available to it as a result of the County's disclosure of Requested Information pursuant to the RTKL.
- 41.9 The Vendor's duties relating to the RTKL are continuing duties that survive the expiration of the Agreement and shall continue as long as the Vendor has Requested Information in its possession.

42 **Federal and State Audit Requirements**

Not Applicable

43 **Headings**

All headings included for convenience only and shall not affect any construction or interpretation of this Agreement.

44 **Entire Agreement**

The governing terms and conditions of this Agreement are expressly limited to the terms and conditions contained in this Agreement and documents incorporated herein. This Agreement constitutes the complete integration of all oral and written documents, is the entire and final Agreement between the parties and **may be amended only by a written instrument signed by authorized officials of both parties.**

**ATTACHMENT H**  
**FORM OF AGREEMENT AND GENERAL CONDITIONS**

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With the intent to be legally bound, authorized officials of each party have signed this Agreement on the dates written below. Each person signing this Agreement represents and warrants that such person is fully authorized to sign and enter into this Agreement on behalf of the company named above his or her signature.

Both parties agree and acknowledge that electronic/facsimile signatures are binding to this Agreement.

**County of Berks**

**name of other party**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name (printed): Kelly A. Laubach, CPPB

Name (printed): \_\_\_\_\_

Title: Director of Contracts and Procurement

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

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

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

ATTEST:

ATTEST:

By: \_\_\_\_\_

By: \_\_\_\_\_

Name (printed): \_\_\_\_\_

Name (printed): \_\_\_\_\_

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

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

---- END OF FORM OF AGREEMENT AND GENERAL CONDITIONS ----

**ATTACHMENT I**  
**PERFORMANCE BOND FOR INVITATION TO BID #21-25-JR**

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KNOW ALL MEN BY THESE PRESENTS that we, \_\_\_\_\_, as Principal (the "Principal"), and \_\_\_\_\_, a company organized and existing under the laws of the \_\_\_\_\_ of \_\_\_\_\_, having its principal office at \_\_\_\_\_, and authorized to do business in the Commonwealth of Pennsylvania, as Surety (the "Surety"), are held and firmly bound unto the COUNTY OF BERKS as Obligee (the "Obligee"), as hereinafter set forth in the full and just sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_), lawful money of the United States of America, for the payment of which sum we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

**WITNESSETH THAT:**

WHEREAS, the Principal heretofore has submitted to the Obligee a certain Bid, dated \_\_\_\_\_, 20\_\_ (the "Bid"), to perform \_\_\_\_\_ for the Obligee, in connection with the \_\_\_\_\_; and

WHEREAS, the Obligee is a "Contracting Body" under provisions of Act No. 385 of the General Assembly of the Commonwealth of Pennsylvania, approved by the Governor on December 20, 1967, known and cited as the "Public Works Contractors' Bond Law of 1967" (the "Act"); and

WHEREAS, the Act, in Section 3(a), requires that, before an issuance shall be made to the Principal by the Obligee in accordance with the Bid, the Principal shall furnish this Performance Bond to the Obligee, with this Performance Bond to become binding upon the issuance of an Agreement to the Principal by the Obligee in accordance with the Bid; and

WHEREAS, it also is a condition of the Bid that this Performance Bond shall be furnished by the Principal to the Obligee; and

WHEREAS, under the Bid, it is provided, *inter alia*, that if the Principal shall furnish this Performance Bond to the Obligee, and if the Obligee shall issue an Agreement to the Principal in accordance with the Bid, then the Principal and the Obligee shall execute the Agreement with respect to the supply of certain Goods and Services (the "Agreement"), the form of which Agreement is attached.

NOW, THEREFORE, the terms and conditions of this Performance Bond are and shall be that if: (a) the Principal well, truly and faithfully shall comply with and shall supply the Goods and Services in accordance with the Agreement, and if the Principal shall satisfy all claims and demands incurred in or related to the performance of the Agreement by the Principal or arising out of the performance of the Agreement by the Principal, and if the Principal shall indemnify completely,

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**PERFORMANCE BOND FOR INVITATION TO BID #21-25-JR**

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defend and save harmless the Obligee and all of its officers, agents and employees from any and all costs and damages, including, but not limited to, liquidated damages which the Obligee and all of its officers, agents and employees may sustain or suffer by reason of the failure of the Principal to do so, and if the Principal shall reimburse completely and shall pay to the Obligee any and all costs and expenses which the Obligee and all of its officers, agents and employees may incur by reason of any such default or failure of the Principal, including, but not limited to, legal fees (e.g., fees of attorneys, paralegals and other legal professionals) and professional fees resulting from such default or failure of the Principal, in accordance with the Agreement, and (b) if the Principal shall remedy, without cost to the Obligee, all defects which may develop during the period of one (1) year from the date of final completion by the Principal and acceptance of the Obligee of the Goods and Services to be supplied in accordance with the Agreement, which defects, in the sole judgment of the Obligee or its legal successors in interest, shall be caused by or shall result from defective or inferior materials or workmanship, then this Performance Bond shall be void; otherwise, this Performance Bond shall be and shall remain in force and effect and all claims, demands, costs, expenses and damages including, but not limited to, legal fees and professional fees resulting from the default or failure of Principal, in accordance with the Agreement, shall be payable by Principal and Surety upon demand of Obligee (such occurrence being an "Event of Default"); provided, however, that the obligations of the Surety hereunder shall not exceed the amount of this Performance Bond, as this Performance Bond is amended, whether automatically or in writing, in accordance with the terms hereof.

**THE SURETY, ITS HEIRS, EXECUTORS, ADMINISTRATORS, SUCCESSORS AND ASSIGNS, FIRMLY BY THESE PRESENTS, AUTHORIZE AND EMPOWER ANY ATTORNEY OF ANY COURT OF RECORD TO APPEAR FOR IT AND EACH OF ITS HEIRS, EXECUTORS, ADMINISTRATORS, SUCCESSORS AND ASSIGNS, AND CONFESS JUDGMENT IN FAVOR OF THE OBLIGEE, ITS SUCCESSORS AND ASSIGNS, AND AGAINST THE SURETY AND EACH OF ITS HEIRS, EXECUTORS, ADMINISTRATORS, SUCCESSORS AND ASSIGNS, TOGETHER WITH AN ATTORNEY'S COMMISSION OF TWENTY PERCENT (20%), BESIDES COST OF SUIT, WITH RELEASE OF ERRORS AND WAIVE OF ALL CAUSES FOR STAY OF EXECUTION AND EXEMPTION. THE SURETY FURTHER AGREES THAT IF, IN THE OPINION OF THE OBLIGEE, ANY EVENT OF DEFAULT SHALL HAPPEN ON THE PART OF THE PRINCIPAL, THE SURETY SHALL PAY ALL LOSS OCCASIONED THEREBY, AND THAT THE ASCERTAINED AMOUNT THEREOF, WHICH SHALL BE DETERMINED BY THE OBLIGEE, AND OF THE TRUTH OF WHICH OATH OR AFFIRMATION SHALL BE MADE BY THE OBLIGEE SHALL BE FINAL, BINDING AND CONCLUSIVE UPON THE SURETY, AND THAT EXECUTION FORTHWITH SHALL ISSUE AGAINST THE SURETY THE AMOUNT OF SAID DEFAULT.**

This Performance Bond is executed and delivered under and subject to the Act, to which reference hereby is made.

The Principal and the Surety agree that any alterations, changes and/or additions to the Agreement, and/or any alterations, changes and/or additions to the Goods and Services to be supplied in accordance with the Agreement, and/or any giving by the Obligee of any extensions of time for the Goods and Services to be supplied in accordance with the Agreement, and/or any act of forbearance of either the Principal or the Obligee toward the other with respect to the Agreement, and/or the reduction of any percentage to be retained by the Obligee as permitted by the Agreement, shall not release and/or discharge, in any manner whatsoever, the Principal and the Surety, or either

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**PERFORMANCE BOND FOR INVITATION TO BID #21-25-JR**

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of them, or their heirs, executors, administrators, successors and assigns, from liability and obligations under this Performance Bond; and the Surety, for value received, does waive notice of any such alterations, changes, additions, extensions of time, acts of forbearance and/or reduction of retained percentage.

The Principal and the Surety agree that this Performance Bond shall be deemed amended automatically and immediately, without formal and separate amendments hereto, upon any amendment to the Agreement not increasing the Contract Price in the aggregate by more than twenty percent (20%), so as to bind the Principal and the Surety to the full and faithful performance of the Agreement as so amended and the Surety, for value received, does waive notice of any such amendment to the Agreement not increasing the Contract Price in the aggregate by more than twenty percent (20%). The term "Amendment", wherever used in this Performance Bond and whether referring to this Performance Bond or the Agreement shall include, without limitation, any alteration, addition, extension or modification of any character whatsoever.

In the event that the Obligee incurs legal fees for default or enforcement of its rights under the Agreement or Performance Bond, the Surety agrees to pay for all reasonable legal fees and costs incurred by the Obligee.

Any dispute resolution proceeding, legal or equitable, under this Performance Bond, shall be instituted in the Court of Common Pleas of Berks County and not elsewhere. In such dispute resolution proceeding, Obligee may join both Principal and Surety as parties, and Principal and Surety hereby consent to such joinder, jurisdiction and venue. This Performance Bond shall be governed by, construed and enforced in accordance with the laws of the Commonwealth of Pennsylvania, without regard to principles of conflicts of law.

[Signatures on the following page]

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IN WITNESS WHEREOF, the Principal and the Surety cause this Performance Bond to be signed, sealed and delivered this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Individual Principal (Trading and/or Doing Business as: _____ )	
Witness: _____	By: _____
	Name: _____

Partnership Principal	
Name of Partnership: _____	
	By: _____
Witness: _____	Name: _____
	Title: _____
	By: _____
Witness: _____	Name: _____

Corporate/Limited Liability Principal	
Name of Corporation: _____	
	By: _____
Attest: _____	Name: _____
	Title: _____*
[SEAL]	
* If the signatory is an authorized representative, attach proof evidencing authority to execute on behalf of the corporation or limited liability company.	

Corporate Surety	
Name of Surety: _____	
Witness or Attest: _____	By: _____
	Name: _____
[SEAL]	Title: _____**
** Attach an appropriate Power of Attorney evidencing the authority of the Attorney-in-Fact to act on behalf of the Surety.	

# ATTACHMENT J

## FORM OF PURCHASE ORDER

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### COUNTY OF BERKS - PURCHASE ORDER TERMS AND CONDITIONS

- 1. Entire Agreement.** This Purchase Order ("P.O."), including these terms and conditions, is integrated into Agreement # \_\_\_\_\_ between the parties ("Agreement") hereto and may not be modified or changed in any way without the written consent of the parties. Capitalized terms not defined herein shall have the meaning set forth in the Agreement. Any different or additional terms in Vendor's acceptance of this offer are hereby rejected. Shipment and/or delivery by Vendor of any of the items covered in this Purchase Order shall in all cases constitute an unqualified acceptance of all County's terms and conditions.
- 2. Freight/Delivery.** Unless otherwise agreed, all prices stated herein are inclusive of packaging and freight costs to the delivery point stated on the face of this P.O. Collect shipments will not be accepted. If freight is allowed, freight costs are to be prepaid by Vendor and added to the invoice as a separate line item. A copy of the bill of lading must accompany the invoice. All goods shall be shipped via the most economical method, unless otherwise specifically agreed upon by the County. Time or times of delivery, in the quantity or number of units required to be delivered is of the essence of this Purchase Order and must be strictly complied with. In the event delivery of goods is delayed, County reserves the right to require Vendor to ship the goods via express transport at Vendor's expense.
- 3. Invoicing/Payment.** Payment shall be net thirty (30) days from receipt of a properly documented invoice. If a cash discount is available for early payment, such cash discount period will be calculated from the date of receipt of a properly documented invoice or, for goods, from the date of receipt at the specified delivery point, and, for services, from the date of completion, whichever is later. Each invoice must reference the P.O. number, shall not include goods or services for more than one P.O., and must indicate whether for a partial or complete shipment. The County is exempt from any sale, excise or federal transportation taxes.
- 4. Inspection/Acceptance.** All goods shall be packaged to protect them from damage during shipment. County will refuse delivery of damaged packages. All goods delivered, or services performed shall comply with all federal, state and/or local laws relative thereto. Inspection of all goods shall be conducted at the place of delivery or other place of inspection if so specified herein and shall occur within a reasonable time after delivery. At County's option, Vendor shall either (a) remove from the place of inspection at Vendor's risk of loss and expense any goods, which the County after inspection rejects or revokes acceptance due to non-conformance or Vendor's non-compliance with any terms of this P.O., or (b) correct rejected goods within a reasonable time after notification of rejection.
- 5. Default.** If the Vendor fails to supply and deliver conforming goods or fails to perform services pursuant to this P.O., County may, after providing notification to Vendor, procure the same from other sources and charge the Vendor for any excess cost or damages resulting therefrom, as liquidated damages. This paragraph shall not operate or bar the County from exercising any other rights or remedies to which it may be entitled to under the Pennsylvania Uniform Commercial Code, Article 2, 13 Pa.C.S.A, Section 2101 et seq.
- 6. Independent Contractor.** The employees, subcontractors, methods, facilities, and equipment used by Vendor shall be at all times under Vendor's direction and control. Vendor's relationship to County under this Agreement shall be that of an independent contractor, and nothing in this P.O. or the Agreement shall be construed to constitute Vendor, its subcontractors or any of their employees as an employee, agent, associate, joint venturer, partner of County.
- 7. Warranty.** Vendor warrants to County that the goods furnished under this P.O., whether manufactured or fabricated by Vendor or others, shall be (a) new (unless otherwise approved on the face of this P.O.) and strictly conform to the specifications, drawings, samples and descriptions referred to herein or provided by County to Vendor, and (b) free from defects in materials and workmanship. All work performed shall be done in a skilled manner and shall comply with industry standards. Vendor shall promptly repair or replace goods and re-perform services, after receiving notification from County of defects or nonconformance. Goods manufactured, or services provided by a third party and supplied by Vendor shall carry all third-party warranties. All warranties shall survive any inspection, delivery, acceptance, or payment.
- 8. Indemnity/Limitation of Liability.** Vendor agrees to indemnify and hold harmless the County of Berks, its elected officials, employees and agents from all costs, losses, expenses, damages, claims, suits, and liability for injuries to, and/or death of, any and all persons and for loss of and/or damage to property sustained or alleged to be sustained in connection with or to have arisen out of the performance of the work by the Vendor, its subcontractors or its respective agents, servants or employees. In no event shall County be liable for any indirect, incidental, special, or consequential damages.
- 9. Insurance.** In the event Vendor provides any services under this P.O., Vendor shall provide and maintain at its own expense, and require its subcontractors to maintain during progress of any work (a) Worker's Compensation insurance in statutory limits mandated by the Commonwealth of Pennsylvania; and (b) bodily injury, liability, and property damage insurance in such amounts as are appropriate and commercially reasonable for parties engaging in the type of activities contemplated by the projects entered into hereunder, but in no event shall these amounts be less than \$1,000,000. Upon request, Vendor shall furnish certificates of insurance evidencing the required insurance coverage.
- 10. Termination.** County reserves the right, at any time and for its convenience, to terminate this P.O. in whole or in any separable part by written notice to Vendor. Such notice shall be provided at least thirty (30) days prior to the intended date of termination date. Vendor shall be compensated for goods accepted or services properly performed up to the effective date of termination, less any payments previously made by County for such goods or services, but in no event shall Vendor be entitled to recover loss of profits.
- 11. Changes.** County shall have the right to make changes to this order. If such changes affect the price or the delivery date specified herein, Vendor shall, before proceeding, secure approval, in writing, of any change in price or date of delivery. County shall also have the right to cancel all or any separable part of this Purchase Order by written notice.
- 12. Publicity.** Neither Vendor nor any tier subcontractor shall use the name of the County of Berks or quote the opinion of any County employee in any advertising, publicity, endorsement or testimonial, without the prior written approval of the County.
- 13. Assignment.** This P.O. may not be assigned nor any duties delegated by the Vendor without the written consent of the County. This P.O. shall be construed and enforced in accordance with the laws of the Commonwealth of Pennsylvania.
- 14. Compliance with Laws.** Vendor shall comply with all applicable laws, ordinances, rules and regulations of governmental authorities and shall further specifically comply with those sections related to Equal Employment Opportunity.
- 15. Governing Law.** This P.O. shall be interpreted under the substantive law of the Commonwealth of Pennsylvania.
- 16. Severability/Reservation of Rights.** The provisions of this P.O. shall be deemed to be severable. Consequently, in the event that any provision of this P.O. is found to be void or unenforceable, such findings shall not be construed to render any other provision of the Agreement either void or unenforceable, and all other provisions shall remain in full force and effect unless the provisions which are void or unenforceable shall substantially affect the rights or obligations granted to or undertaken by either party. Either party's waiver of any of its remedies afforded hereunder or by law is without prejudice and shall not operate to waive any other remedies which such party shall have available to it, nor shall such waiver operate to waive such party's rights to any remedies for future breach, whether of like or different character.