

# **COUNTY OF BERKS**

## **Invitation to Bid # 24-37-MZ**

**for**

## **Sweat Patches and Testing Services**

**Issued on November 19, 2024**

**Submittal Deadline:**

**Tuesday, December 17, 2024, 1:00 P.M. Local prevailing time  
Refer to Section One, paragraph 2.1 for submittal instructions.**

**Opening Date/Time:**

**Tuesday, December 17, 2024, 2:30 P.M. Local prevailing time**

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

**Mansoor Zaki, Buyer**

**Tel: 610-478-6168 ext. 6274 Fax: 610-898-7426 Email: [mzaki@berkspa.gov](mailto:mzaki@berkspa.gov)**

**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 59 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 Sweat Patches and Testing Services 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, December 17, 2024 (“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.

1.3.2 Bids will be opened publicly at 2:30 P.M., local prevailing time, the same day, Tuesday, December 17, 2024 (“Bid Opening”). A Bidders may attend the bid opening 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.berkspa.gov](http://www.berkspa.gov)). The Microsoft Teams URL for the opening can be found on the following site under the listing for this specific ITB: <https://www.berkspa.gov/departments/purchasing/itb-rfp>

#### **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 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

## SECTION ONE INSTRUCTIONS TO BIDDERS

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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 2:00PM on November 29, 2024.
- 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.berkspa.gov](http://www.berkspa.gov)) 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 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

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## INSTRUCTIONS TO BIDDERS

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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) copy 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 – "Sweat Patches and Testing Services" 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

- 2.2.1 Bidders shall include with their Bid a minimum of two (2) samples of each alternate item being offered. Samples may be submitted in a separate package from the Bid but must be received by the County by the Bid Deadline for the Bid to be considered complete. Any separate package containing samples must note the applicable ITB number on the outside of the package along with the word "Samples" and must include (inside or outside) the Bidder's name.
- 2.2.2 Samples submitted shall become the property of the County. Bidder shall bear the costs of providing the required samples.
- 2.2.3 The County reserves the right to: (a) request additional samples of the product; (b) conduct in-house testing of the product; or (c) perform tests of the product, including

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## INSTRUCTIONS TO BIDDERS

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destructive tests, that would indicate the product's performance under actual County usage conditions, to completely evaluate the product and make a determination as to its compliance with the specifications.

**2.3 Bid Security**  
Not Applicable

**2.4 Consent of Surety**  
Not Applicable

**2.5** To ensure compliance with all applicable Pennsylvania state labor and workforce safety laws, the Bid shall be accompanied by a completed Worker Protection and Investment Certification Form BOP-2201 acknowledging the Bidder's responsibilities and compliance with Executive Order 2021-06, Worker Protection and Investment, October 21, 2021. Refer to Attachment "K" for the Worker Protection and Investment Certification Form BOP-2201. The Worker Protection and Investment Certification Form BOP-2201 shall be executed by a representative who has sufficient knowledge and authority to make the representations and certifications contained in the Form.

**2.6 Use of Bid Forms**

2.6.1 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; and,

Attachment K Worker Protection and Investment Certification Form BOP 2201.

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

2.6.3 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.

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

**2.7 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.

**2.8 Conflict of Interest**

2.8.1 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

## SECTION ONE INSTRUCTIONS TO BIDDERS

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maintain a business relationship with County departments, boards, commissions, and agencies.

2.8.2 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.

2.8.3 **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.**

2.8.4 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.

### **2.9 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.

### **2.10 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's intent is to award a single contract for the total requirement of the ITB; however, the County reserves the right to award multiple contracts 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.**

## SECTION ONE INSTRUCTIONS TO BIDDERS

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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

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;

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.



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## INSTRUCTIONS TO BIDDERS

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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.berkspa.gov/departments/purchasing/itb-rfp>.

## **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 no more than six (6) months from the commencement date of the Agreement, or until grant funds are depleted, whichever comes first. 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 no more than six (6) months commencing upon the Award of the Agreement, unless otherwise extended, or until grant funds are depleted, whichever comes first.

- - - END OF INSTRUCTIONS TO BIDDERS - - -

## SECTION TWO TECHNICAL SPECIFICATIONS

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### 1. Summary

This section of the ITB describes the County's requirements for Sweat Patches, any additional material for keeping the patches in place (overlays), and Drug Testing Services for the use of Berks County Probation & Parole Department (APO).

### 2. Functional Requirements

- 2.1 Vendor shall provide all labor, equipment, and material necessary for Sweat Patch drug testing, transportation and laboratory services, Sweat Patch collection and confirmation services and/or the conducting of drug testing and confirmation services.
- 2.2 Vendor shall directly provide the Sweat Patches, supplies, and testing services offered. Except for transportation services (specimen pick-up and delivery to the laboratory), the vendor may not subcontract for performance of the requested services without written consent from the County.
- 2.3 Vendor's bid pricing shall be all-inclusive and shall include but not be limited to,
  - 2.3.1 charges for transportation, delivery of specimens and supplies, collection and shipping supplies, and training.
  - 2.3.2 drug testing conducted by the vendor shall include, but not be limited to, the cost of drug testing supplies, results/confirmation, and any administrative costs including staff and processing.
- 2.4 Drug testing laboratory services provided by vendors shall include specimen transportation, specimen screening by immunoassay, confirmation testing of specimens by gas chromatography/mass spectrometry (GC/MS), liquid chromatography/mass spectrometry (LC/MS), tandem mass spectrometry (GC/MS/MS), or liquid chromatography with tandem mass spectrometry (LC/MS/MS), electronic reporting of results data, electronic data transfer to lab and storage of specimens that have been confirmed positive, adulterated, diluted or substituted.
- 2.5 Berks County APO must receive a result (whether screening or confirmation) for each specimen submitted within three (3) business days of vendor's laboratory receipt of the specimen ("Result Final Date"). Vendor's laboratory shall be deemed to have received a specimen when the specimen is delivered to the laboratory by a commercial delivery service or the USPS.
- 2.6 Vendor must notify APO in writing, via electronic mail (email) directed to APO's designated representative, of each specimen for which a final result will not be available by the specimen's Result Final Date and shall provide a date by which the specimen's final result will be available. Such notification shall be sent to APO's designated representative, which will be provided to awarded vendor no later than the specimen's Result Final Date.
- 2.7 With written explanation by the Result Final Date, the vendor's allowable charge for each such delayed result will be reduced by twenty-five percent (25%) for each business day after the third business day that the result is not available. Absent written explanation by the

## SECTION TWO TECHNICAL SPECIFICATIONS

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Result Final Date for the delay, the vendor shall not charge APO for results provided after the Result Final Date.

### 3. Technical Requirements

3.1 Sweat Patches shall be PharmChek® Drugs of Abuse Sweat Patch or approved equal.

3.2 Overlays shall be PharmChek® Overlays or approved equal.

### 4 Vendor Qualifications

4.1 Vendor must possess appropriate licenses, when required, to perform proposed services.

4.2 Vendor must be experienced, technically proficient and capable of maintaining chain of custody, accurately documenting test results and properly securing positive samples that may be used as evidence.

4.3 Vendor must be accredited by at least one of the following bodies to perform the services required herein: the American Board of Forensic Toxicology (ABFT), the American Society of Crime Lab Directors, Laboratory Accreditation Board (ASCLD-LAB), Forensic Quality Services (FQS), the U. S. Department of Health and Human Services (DHHS/SAMHSA), and the College of American Pathologists (CAP-FUOT).

4.4 Current documentation related to both accreditation and accrediting body accreditation must accompany responses to this ITB. Vendor responses shall state clearly whether the vendor's laboratory is accredited to ISO/IEC 17025.

### 5 Testing Specifications

5.1 The lab testing for each Sweat Patch must include at a minimum the following drugs:

- 5.1.1 Methamphetamine
- 5.1.2 Amphetamine
- 5.1.3 Cocaine
- 5.1.4 Codeine
- 5.1.5 Morphine
- 5.1.6 Heroin
- 5.1.7 Marijuana
- 5.1.8 Phencyclidine (PCP)
- 5.1.9 Hydrocodone
- 5.1.10 Hydromorphone
- 5.1.11 Oxycodone
- 5.1.12 Oxymorphone

### 6 Delivery or Performance Requirements

Delivery of Goods must be made within three (3) business days of the date of order placement. Deliveries shall be made to: County of Berks, Deputy Chief Adult Probation Officer, Berks County Probation & Parole Dept., 633 Court Street - Services Center 7th Floor, Reading PA 19601. Deliveries must be made Monday through Friday between the hours of 8:00 A.M. and

## SECTION TWO TECHNICAL SPECIFICATIONS

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5:00 P.M. Services must be performed per Section Two, Functional Requirements, Paragraph 2.7.

All deliveries shall be made FOB destination.

**7 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.

**8 Pennsylvania Prevailing Wage Act**

Not Applicable

**9 Steel Products Procurement Act**

Not Applicable

--- END OF SPECIFICATIONS ----

**ATTACHMENT A  
BID FORM**

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**ITB # 24-37-MZ - Sweat Patches and Testing Services**

**Important note to Bidders:** It is essential that the submitted Bid complies with all 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
- Proof of current accreditation as per Section Two - Technical Specifications, paragraph 4.4
- Worker Protection and Investment Certification Form BOP 2201 – Attachment K

**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/Adds 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.

(A) Item No.	(B) Item/Service Offered	(C) Estimated Quantity	(D) Unit Price/Patch	(E) Extended Price (C x D)
1.	PharmChek® Drugs of Abuse Sweat Patch or approved equal	200 patches	\$	\$
2.	PharmChek® Overlays or approved equal	200	\$	\$
3.	12-Panel Laboratory Testing/Analysis of Sweat Patch, including Screening and Confirmation	200	\$	\$
<b>Total Bid Price FOB Destination (Sum: Items 1 through 3)</b>				<b>\$</b>

# 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 #24-37-MZ 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 #24-37-MZ - Sweat Patches and Testing Services, 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**

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

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

Re: ITB #24-37-MZ, Sweat Patches and Testing Services

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 Sweat Patches and Testing Services 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

To assist the County in obtaining good competition, we ask that each firm who has received Invitation to Bid #24-37-MZ, Sweat Patches and Testing Services, **but does not wish to submit a Bid**, state their reason(s) below and email this form to the County’s Point-of-Contact for this ITB at [Mzaki@berkspa.gov](mailto:Mzaki@berkspa.gov), or mail 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 Sweat Patches and Testing Services in accordance with the requirements set forth in the County’s Invitation to Bid # 24-37-MZ [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 no more than six (6) months, 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 one (1) additional six (6) month term at the Bid prices. Prior to the end of the six (6) month 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 six (6) months from the prior expiration date. Such acceptance shall be automatically incorporated in the Agreement Documents.

#### 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 notated in Section Two of the ITB. 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.

#### 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

## ATTACHMENT H

### FORM OF AGREEMENT AND GENERAL CONDITIONS

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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 the unit prices for Goods and Services supplied to 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: Berks</i>	<i>Vendor:</i>
Attention	Brendan L Harker	
Title	Deputy Chief Adult Probation Officer	
Address	Berks County Probation & Parole Dept. 633 Court Street Services Center - 7th Floor Reading PA 19601	
Telephone	610.478.3400 ext. 5460	
Fax	610.478.3451	
Email	BHarker@countyofberks.com	

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: Deputy Chief Adult Probation Officer, Berks County Probation & Parole Dept., 633 Court St, Services Center – 7<sup>th</sup> Floor, 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.

**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.

## 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 04 13 and CG 20 37 04 13 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 Manager or Sr. 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 materials generated by Vendor pursuant to this project. Employees or agents of the parties shall

## ATTACHMENT H

### FORM OF AGREEMENT AND GENERAL CONDITIONS

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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**

15.1 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.

#### **15.2 Monitoring**

Vendor shall make available to County during the term of this Agreement all pertinent financial, program, administrative and personnel records, reports, documents, and files related directly or indirectly to Vendor's activities under and in compliance with 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

## ATTACHMENT H

### FORM OF AGREEMENT AND GENERAL CONDITIONS

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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 (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.

## ATTACHMENT H

### FORM OF AGREEMENT AND GENERAL CONDITIONS

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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 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 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;

## ATTACHMENT H

### FORM OF AGREEMENT AND GENERAL CONDITIONS

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- 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;
- 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**

- 28.1 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.
- 28.2 Vendor shall, in advertisements or requests for employment placed by it or on its behalf, state that all qualified applicants will receive consideration for employment without regard to race, color, religious creed, handicap, ancestry, national origin, age, or sex.

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- 28.3 Vendor shall send each labor union or workers' representative with which it has a collective bargaining agreement or other Contracts or understanding, a notice advising said labor union or workers' representative of its commitment to this non-discrimination clause. Similar notice shall be sent to every other source of recruitment regularly utilized by Vendor.
- 28.4 It shall be no defense to a finding of noncompliance with this non-discrimination clause that Vendor had delegated some to its employment practices to any union, training program, or other source of recruitment that prevents it from meeting its obligations. However, if the evidence indicates that the Vendor was not on notice of the third-party discrimination or made a good faith effort to correct it, such factor shall be considered in mitigation in determining appropriate sanctions.
- 28.5 Where the practices of a union or any training program or other source of recruitment will result in the exclusion of minority group persons, so that Vendor will be unable to meet its obligations under this non-discrimination clause, Vendor shall then employ and fill vacancies through other non-discriminatory employment procedures.
- 28.6 Vendor shall comply with all state and federal laws prohibiting discrimination in hiring or employment opportunities. In the event of Vendor's noncompliance with the non-discrimination clause of this Agreement or with any such laws, this Agreement may be terminated or suspended, in whole or in part, and Vendor may be declared temporarily ineligible for further Agreements, and other sanctions may be imposed, and remedies invoked.
- 28.7 Vendor shall furnish all necessary employment documents and records to, and permit access to its books, records, and accounts by, the contracting agency for purposes of investigation to ascertain compliance with the provisions of this clause. If Vendor does not possess documents or records reflecting the necessary information requested, it shall furnish such information on reporting forms supplied by the contracting agency.
- 28.8 Vendor shall include the provisions of this non-discrimination clause in every Agreement, so that such provisions will be binding upon each subcontractor.
- 28.9 Vendor obligations under this clause are limited to the Vendor's facilities within Pennsylvania or, where the Agreement is for purchase of goods manufactured outside of Pennsylvania, the facilities at which such goods are actually produced.

#### **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.

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#### **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 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**

This Agreement is subject to the provisions set forth in the following regulations: 28 Code of Federal Regulations Part 38, 45 Code of Federal Regulations Part 75 and 2 CFR 200 "Uniform Administrative Requirements, Cost principles and Audit Requirements for Federal Awards"; 45 Code of Federal Regulations Part 80 - Nondiscrimination Under Programs Receiving Federal Assistance through the Department of Health and Human Services Effectuation of Title VI of The Civil Rights Act of 1964, 45 Code of Federal Regulations Part 81 – Practice and Procedure for Hearings under Part 80 of this Title; 45 Code of Federal Regulations Part 90 – Nondiscrimination of the Basis of Age, and 45 Code of Federal Regulations Part 91 - Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance from HHS.

- 35.1 In carrying out this Agreement, the Vendor and any subcontractors shall minimize pollution and shall strictly comply with all applicable environmental laws and regulations. (Clean Streams Law, Act of June 22, 1937, P.L. 1987, as amended, the Pennsylvania Solid Waste Management Act, Act of July 7, 1980, P.L. 380, as amended and the Water Obstructions Act, Act of June 25, 1913, P.L. 555, as amended.)
- 35.2 Services shall be provided in compliance with 25 Pa. Code\_151 et seq., relating to Environmental Health and Safety regulations for food protection, and 34 Pa. Code\_50.1 et seq., relating to Fire and Panic regulations.
- 35.3 The Vendor agrees to comply with the provisions of the Uniform Relocation Assistance and Real Property Acquisition Act, the Flood Disaster Protection Act and the Commonwealth Motor Vehicle Procurement Act. When applicable, the Vendor agrees to comply with the provisions of the National Historic Preservation Act, Executive Order 11593 and the Archaeological and Historic Preservation Act.
- 35.4 The Vendor agrees to fully comply with the Integrity Provisions set forth below and any changes or modification made thereto.

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- 35.5 The Vendor agrees to comply with the provisions of the Older Americans Act, as amended Section 312 and 321(b), Protecting Federal Reversionary Interest in Multipurpose Senior Centers.
- 35.6 The Vendor agrees to comply with the provisions of the Drug-Free Workplace Act of 1998 in 41 U.S.C. Chapter 10, s. 701, et seq.
- 35.7 The Vendor agrees to comply with and is subject to all applicable provisions of 41 U.S.C. 4172, including prohibitions on reprisal and notice to employees.
- 35.8 All claims against the County respecting any matter pertaining to this Agreement or any part thereof shall be referred to the Board of Claims (under the Act of May 20, 1937, P.L. 728, as amended).
- 35.9 The Vendor agrees to comply with 28 CFR Part 38, "Partnerships with Faith Based and Other Neighborhood Organizations."
- 35.10 The Vendor agrees to comply with the provisions of the Hatch Political Activity Act, 5 U.S.C. 1501-1508.
- 35.11 The Vendor shall comply with the minimum wage and maximum hours provisions of the Federal Fair Labor Standards Act, 29 U.S.C. Chapter 8.
- 35.12 The Vendor agrees to comply with regulations concerning the confidentiality of identifiable research and statistical information set forth in 28 C.F.R. Part 22.
- 35.13 The Vendor agrees to comply with Criminal Intelligence Systems Operating Policies set forth in 28 C.F.R Part 23.
- 35.14 The Vendor agrees to comply with the Office of Justice Programs (OJP) Financial Guide pertaining to financial and administrative requirements.
- 35.15 The Vendor agrees to comply with U.S. Department of Health and Human Services regulations pertaining to grant administration.
- 35.16 The Vendor agrees to comply with U.S. Education Department General Administrative Regulations (EDGAR) pertaining to financial and administrative requirements.
- 35.17 Pursuant to Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving," 74 Fed. Reg 51225. The County encourages vendor to adopt and enforce policies banning employees from text messaging while driving any vehicle during the course of performing work funded by this contract and to establish workplace safety policies and conduct education, awareness and other outreach to decrease crashes cause by distracted drivers.
- 35.18 The Vendor shall comply, and All its subcontractors shall comply, with the nondiscrimination requirements of Title VI of the Civil Rights Act (Title VI) of 1964, as amended, 42 U.S.C. § 2000d; the Indian Civil Rights Act, 25 U.S.C. §§ 1301-

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1303; Section 504 of the Rehabilitation Act (Section 504) of 1973, as amended, 29 U.S.C. § 794; Title II of the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. §§ 12131-34; Title IX of the Education Amendments (Title IX) of 1972, as amended, 20 U.S.C. §§ 1684, 1683, 1685-86); the Age Discrimination Act (Age Act) of 1975, as amended, 42 U.S.C. §§ 6101-07; and any other applicable federal nondiscrimination statutes and regulations.

- 35.19 The Vendor shall comply, and all of its subcontractors shall comply, with any applicable nondiscrimination provisions which may include the Omnibus Crime Control and Safe Streets Act (Safe Streets Act) of 1968, as amended, 34 U.S.C. §§ 10228(c) and 10221(a); the Victims of Crime Act (VOCA) of 1984, as amended, 34 U.S.C. § 20110(e); the Juvenile Justice and Delinquency Prevention Act (JJDP) of 1974, as amended, 34 U.S.C. § 11182(b); the Violence Against Women Act (VAWA) of 1994, as amended, 34 U.S.C. § 12291(b)(13). Vendor shall also comply with Executive Order 13279, Equal Protection of the Laws for Faith-Based and Community Organizations; and Executive Order 13559.
- 35.20 The Vendor shall not discriminate on the basis of national origin in the delivery of services. National origin discrimination includes discrimination on the basis of limited English proficiency (LEP). Vendor is required to take reasonable steps to ensure that LEP persons have meaningful access to its programs. Meaningful access may entail providing language assistance services, including oral and written translation, where necessary. The U.S. Department of Justice has issued guidance for vendors to assist them in complying with Title VI requirements that may be found at 67 F.R. 41455-41472.
- 35.21 Neither the Vendor nor any subgrantee nor any contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate against employees by reason of participation in or decision to refrain from participating in labor activities protected under the Public Employee Relations Act, Pennsylvania Labor Relations Act or National Labor Relations Act, as applicable and to the extent determined by entities charged with such Acts' enforcement, and shall comply with any provision of law establishing organizations as employees' exclusive representatives.
- 35.22 National Environmental Policy Act Compliance.
- 35.22.1 Vendor assures that it will assist any state and sponsoring federal agencies in complying with the National Environmental Policy Act (NEPA) and related federal requirements for environmental-impact analyses. Accordingly, prior to obligating subgrant funds, Vendor agrees to first determine if any of the following activities will be related to the use of the subgrant funds. Vendor understands that this special condition applies to its following new activities whether or not they are being specifically funded with the subgrant funds. That is, as long as the following activity is being conducted by Vendor or any third party and the activity needs to be undertaken in order to use the subgrant funds, this condition must first be met. The activities covered by this condition are one or more of the following:

35.22.1.1 New construction;

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- 35.22.1.2 Minor renovation or remodeling of a property either (i) listed on the National Register of Historic Places or (ii) located within a 100-year flood plain;
  - 35.22.1.3 A renovation, lease, or any proposed use of a building or facility that will either (i) result in a change in its basic prior use or (ii) significantly change its size; or
  - 35.22.1.4 Implementation of a new program involving the use of chemicals other than chemicals that are (i) purchased as an incidental component of a funded activity and (ii) traditionally used, for example, in office, household, recreational, or education environments.
- 35.22.2 Application of this condition to Vendor's existing programs or activities: for any of Vendor's existing programs or activities that will be funded by the Subgrant Project funds, the Vendor, upon specific request of the U.S. Department of Justice (DOJ), agrees to cooperate with DOJ in any preparation by DOJ of a national or program environmental assessment of that funded program or activity.
- 35.22.3 Vendor will comply with all requirements established to avoid or mitigate adverse environmental effects upon its properties.
- 35.23 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 performance of services. The Vendor shall give any and all necessary formal notices required in conjunction with the lawful prosecution of the Services.
- 35.24 In accordance with 2 CRF Part 200, Section 200.318, Vendor attests to the following:
- 35.24.1 That no employee, officer, or agent of the Vendor that participates in the selection, award, or administration of this contract has a real or apparent conflict of interest. Such a conflict of interest would arise when an employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract.
  - 35.24.2 The officers, employees, and agents of the Vendor may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontractors.
  - 35.24.3 The Vendor's standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity/County.

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35.25 In accordance with (2 CFR § 200.326), Appendix II, the Vendor shall comply to the applicable provisions as follows:

#### 35.25.1 Equal Employment Opportunity

35.25.1.1 In accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

#### 35.25.2 Davis-Bacon Act, as amended (40 U.S.C. 3141-3148)

35.25.2.1 Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The Vendor must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The Vendor must report all suspected or reported violations to the County.

#### 35.25.3 Copeland “Anti-Kickback” Act (40 U.S.C. 3145)

35.25.3.1 Copeland “Anti-Kickback Act (40 U.S.C. 3145, as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The Vendor must report all suspected or reported violations to the County.

#### 35.25.4 Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708)

35.25.4.1 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5) applicable for awarded contracts in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704. These requirements do not apply to the purchases of supplies or

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materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

35.25.5 Rights to Inventions Made Under a Contract or Agreement which shall be applicable for federal funding streams that meet the definition of “funding agreement” under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

35.25.6 Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended.

35.25.6.1 Applicable for contracts and subgrants of amounts in excess of \$150,000. Vendor must comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

35.25.7 Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)

35.25.7.1 Vendors with an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

35.25.8 Procurement of Recovered Materials - §200.322

35.25.8.1 Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the

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quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

#### **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 executive order of the Governor of Pennsylvania or statement of policy, management directive, or any other published standard of the Commonwealth 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 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

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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 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



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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”), or engage a procurement contractor to perform services under this Agreement:

36.2.10.4.1 it represents that

36.2.10.4.1.1 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

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

36.2.10.4.1.3 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 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.

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- 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 extortion, bid rigging, misrepresentation, anti-trust, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property.
  - 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

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- 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 Suspension or revocation of any business license or professional license.
- 36.2.12.10 Not currently the subject of a criminal investigation by a federal, state or local prosecuting or investigative agency and/or civil anti-trust investigation by any federal, state or local prosecuting or investigative agency
- 36.2.12.11 Debarment by any agency or department of the federal government or by any other state.
- 36.2.12.12 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:
- 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

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### FORM OF AGREEMENT AND GENERAL CONDITIONS

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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, 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

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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 “Affiliate” means two or more entities where (a) a parent entity owns more than fifty percent of the voting stock of each of the entities; or (b) a common shareholder or group of shareholders owns more than fifty percent of the voting stock of each of the entities; or (c) the entities have a common proprietor or general proprietor.

36.2.19.2 “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.

36.2.19.3 “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.

36.2.19.4 “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.

36.2.19.5 “Financial interest” means:

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

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

36.2.19.6 “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.

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

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36.2.19.8 “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.

36.2.19.9 “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, debarment, proposed for debarment, declared ineligible, sentenced to a denial of federal benefits by a state or federal court, or voluntarily excluded from participation in this transaction 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:

37.1.1.1.1 as of the date of its execution, of any County contract it has no tax liabilities or other County or Commonwealth obligations;

37.1.1.1.2 the Vendor has not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

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- 37.1.1.1.3 the Vendor is not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated below; and
  - 37.1.1.1.4 the Vendor has not within a three-year period preceding this proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
- 37.1.1.2 The Vendor must also certify in writing that the Vendor has not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.
- 37.1.1.3 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.
- 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 is required to screen their employees and contractors, both individuals and entities, to determine if they have been excluded from participation in Medicare, Medicaid or any other federal health care program. Vendor will immediately notify County of any discovered exclusion of an employee or contractor, either an individual or entity.

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- 37.1.5 All employees, vendors, contractors, service providers, and referral sources should be screened for exclusion before employing and/or contracting with them and, if hired, should be rescreened on an ongoing monthly basis to capture exclusions and reinstatements that have occurred since the last search.
- 37.1.6 Vendor will develop and maintain auditable documentation of screening efforts, including dates the screenings were performed and the source data checked and its date of more recent update; and periodically conduct self-audits to determine compliance with this requirement.
- 37.1.7 Any Vendor being paid with Medical Assistance or SCHIP dollars shall adhere to the following:
- 37.1.7.1 Develop policies and procedures for screening of all employees and contractors (both individuals and entities), at time of hire or contracting; and, thereafter, on an ongoing monthly basis to determine if they have been excluded from participation in federal health care programs;
- 37.1.8 Vendor will use the following databases to determine exclusion status:
- 37.1.8.1 *Pennsylvania Medichck List*: a data base maintained by the Pennsylvania Department of Human Services (“DHS”) that identifies providers, individuals, and other entities that are precluded from participation in Pennsylvania’s MA Program:
- 37.1.8.1.1 <https://www.humanservices.state.pa.us/Medchk/MedchkSearch/Index>
- 37.1.8.1.2 Link above is provided for your reference and is subject to change. It shall be the responsibility of the vendor to determine and utilize the appropriate site for said database.
- 37.1.8.1.3 If an individual’s resume indicates that he/she has worked in another state, providers should also check that state’s individual list.
- 37.1.8.2 *List of Excluded Individuals/Entities (LEIE)*: data base maintained by HHS-OIG that identifies individuals or entities that have been excluded nationwide from participation in any federal health care program. An individual or entity included on the LEIE is ineligible to participate, either directly or indirectly, in the MA Program. Although the DHS makes best efforts to include on the Medichck List all federally excluded individuals/entities that practice in Pennsylvania, providers must also use the LEIE to ensure that the individual/entity is eligible to participate in the MA Program:
- 37.1.8.2.1 [https://oig.hhs.gov/exclusions/exclusions\\_list.asp](https://oig.hhs.gov/exclusions/exclusions_list.asp)



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- 37.1.8.2.2 Link above is provided for your reference and is subject to change. It shall be the responsibility of the vendor to determine and utilize the appropriate site for said database.
- 37.1.8.3 Excluded Parties List System (EPLS): worldwide database maintained by the General Services Administration (GSA) that provides information about parties that are excluded from receiving Federal contracts, certain subcontracts, and certain Federal financial and nonfinancial assistance and benefits:
- 37.1.8.3.1 <https://www.sam.gov/>.
- 37.1.8.3.2 Link above is provided for your reference and is subject to change. It shall be the responsibility of the vendor to determine and utilize the appropriate site for said database.
- 37.1.8.4 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:
- 37.1.8.4.1 Via e-mail through the MA Provider Compliance form at the following link:  
  
<https://expressforms.pa.gov/apps/pa/DHS/MA-Provider-Compliance-Hotline>
- 37.1.8.4.2 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
- 37.1.8.4.3 By fax at: 1-717-772-4655 or 1-717-772-4638.
- 37.1.8.4.4 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.
- 37.1.8.5 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.
- 37.1.8.6 Vendor shall periodically conduct self-audits to determine compliance with this requirement.

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37.1.8.7 Vendor shall provide evidence of compliance with these requirements to the County within ten (10) days following a request by the County.

37.1.8.8 The Vendor may obtain a current list of suspended and debarred Commonwealth providers by accessing:

37.1.8.8.1. The Commonwealth of Pennsylvania - Debarment and Suspension List online at the website below:

<https://www.dgs.internet.state.pa.us/debarmentsearch/debarment/index>

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

37.1.8.8.2. The Worker Protection and Labor Law Non-Compliance List online at the website below:

<https://www.dli.pa.gov/Pages/Non-Compliance-List.aspx>

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

#### **38. Americans with Disabilities Act**

Pursuant to federal regulations promulgated under the authority of the Americans with Disabilities Act, 28 C.F.R. §35.101 et seq., the Vendor/Grantee understands and agrees that no individual with a disability shall, on the basis of the disability, be excluded from participation in this Agreement or from the activities provided for under this Agreement. As a condition of accepting and executing this Agreement, the Vendor/Grantee agrees to comply with the "General Prohibitions Against Discrimination," 28 C.F.R. §35.130, and all other regulations promulgated under Title II of the Americans with Disabilities Act which are applicable to the benefits, services, programs and activities provided by the Commonwealth of Pennsylvania through contracts with outside providers.

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

39.1. The Vendor and each contractor and subcontractor represents that it is presently in compliance with and will maintain compliance with all applicable federal, state, and local laws and regulations relating to nondiscrimination and sexual harassment.

39.2. During the term of the Agreement, Vendor agrees as follows:

39.2.8. 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

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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.

- 39.2.9. 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.
- 39.2.10. 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.
- 39.2.11. 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.
- 39.2.12. 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.
- 39.2.13. 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.
- 39.2.14. 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 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.

#### 40. **Set Off Clause**

The Vendor agrees that the County may set off the amount of any county or state tax liability or other obligation of the Vendor or its subsidiaries to the County against any payments due the Vendor under any contract with the County.

#### 41. **Property and Supplies**

41.1. Vendor agrees to use its best efforts to obtain all supplies and equipment for use in the performance of this Agreement at the lowest practicable cost and to purchase all supplies and equipment over \$3,000.00 by means of a system of competitive bidding as required under the provisions of the Pennsylvania 3<sup>rd</sup> Class County Code, Article XVIII and/or Federal Acquisitions Regulations, as applicable.

- 41.1.8. Proper bidding procedures shall adhere to Federal Regulations governing procurement outlined in 2 CFR Part 200 "Uniform Administrative

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Requirements, Cost Principles and Audit Requirements for Federal Awards”, as amended. When obtaining written quotations procedures must be in place to ensure that a linkage is maintained with the Small Business Administration and other agencies which are able to assist in identifying small and minority-owned businesses.

41.2. In addition, the Vendor shall maintain and administer with sound business practice a program for maintenance, repair, preservation and insurance of property.

41.3. Any vehicle purchased by the Vendor with Aging funds shall be adequately insured to cover occasional operation by Berks County Area Agency on Aging staff; said insurance to be in an amount approved by Berks County Area Agency on Aging and proof of said insurance shall be provided to Berks County Area Agency on Aging yearly.

41.4. Title to all property furnished by the Department of Aging through the Area Agency Agreements shall remain with the said Department. Title to all property acquired by the Vendor, including purchase by lease-purchase agreement, for the cost of which the Vendor is to be reimbursed under this Agreement, shall vest in the Vendor during the term of this Agreement unless otherwise noted in the Agreement. Upon cancellation or termination of this Agreement, disposition of such purchased property that has remaining useful life shall be made in accordance with the following provisions:

41.4.8. If the Vendor wishes to retain any items of such purchased property, both parties will arrange for an independent third-party appraisal (agreed upon by the Area Agency) of these property items and will reimburse said Department for the value of the remaining life of the property on the basis of such appraisals;

41.4.9. The Vendor may sell the property and reimburse said Department for its appropriate share providing said Department is notified ten days in advance of the date of sale, and prior written approval is received from the Secretary of Aging, the Governor's Office of Administration and the Area Agency.

41.5. The Commonwealth property and any property purchased under this Agreement shall, unless otherwise provided herein or approved in writing by said Department, be used only for the performance of this Agreement. In the event the Vendor is compensated for any loss, destruction or damage to the property, the Vendor shall renovate, repair, or replace the property. Any proceeds shall be credited to the Agreement.

#### 42. **Right to Know Law**

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

42.2. 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

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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.

42.3. 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:

42.3.8. 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

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

42.4. 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.

42.5. 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. If the County denies a RTKL request in reliance upon Vendors written statement and the denial is appealed, Vendor agrees to fully participate in any RTKL appellate proceedings.

42.6. 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.

42.7. 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.

42.8. 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

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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.

42.9. 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.

**43. Federal and State Audit Requirements**

43.1. Vendor must comply with all federal and state audit requirements including: the Single Audit Act, as amended, 31 U.S.C. 7501 *et seq*; 2 CFR Part 200 "Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards", as amended; Executive Order 12372 (intergovernmental review of federal programs), 28 C.F.R. Parts 18, 22, 23, 30, 35, 38, 42, 54, 61, and 63, and any other applicable law or regulation and any amendment to such other applicable law or regulation which may be enacted or promulgated by the state or federal government.

43.2. If the Vendor is a local government or non-profit organization and expends total federal awards of \$750,000 or more during its fiscal year, received either directly from the federal government or indirectly from a recipient of federal funds, Vendor is required to have an audit made in accordance with the provisions of 2 CFR Part 200 "Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards".

43.3. If the Vendor is a for-profit organization and expends total federal awards of \$750,000 or more during its fiscal year, received either directly from the federal government or indirectly from a recipient of federal funds, Vendor is required to have a program-specific audit made in accordance with the provisions of 2 CFR Part 200 "Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards" and in accordance with the laws and regulations governing the programs in which it participates.

43.4. If the Vendor expends total federal awards of less than \$750,000 during its fiscal year, it is exempt from these audit requirements but is required to maintain auditable records of federal and any state funds which supplement such awards and to provide access to such records by federal and state agencies or their designees.

43.5. In the event an audit is required, the Vendor is responsible for obtaining the required audit and securing the services of a certified public accountant or other independent governmental auditor. The audit shall be completed, and the report submitted to the County no later than 90 days after the close of the agreement period.

43.6. In the event that an audit is performed that is not mandated by applicable federal laws or regulations, Vendor shall not charge its costs of the audit to federal funding streams.

43.7. Vendor shall maintain adequate and sufficiently detailed records of all the services provided pursuant to this Agreement to permit an evaluation of finances and

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performance, which records shall be open at all reasonable times for inspection by the County, federal, state and county agencies or their authorized representatives. The County and any competent federal, state or county agency or their authorized representatives shall have the right to inspect, audit and copy Vendor's records during normal business hours. The County shall provide fourteen (14) days' notice to Vendor in the event of such an audit.

43.8. The County shall advise Vendor of any discrepancies in adherence to this Agreement. Vendor upon receipt of such notification hereby agrees to promptly correct any discrepancies to the satisfaction of the County.

43.9. Vendor shall maintain and make available such books, records and documents related to this Agreement for five (5) years from the termination of this Agreement, or until all disputes have been resolved to the satisfaction of the County or by final decision or judgment, or as otherwise required by applicable federal or state laws and regulations, whichever is greater.

#### 44. **Worker Protection and Investment**

44.1. To the extent applicable, Vendor shall comply with Commonwealth of Pennsylvania Executive Order 2021-06, Worker Protection and Investment, and certify Vendor is in compliance with all applicable Pennsylvania state labor and workforce safety laws including:

- 43.1.1. Construction Workplace Misclassification Act;
- 43.1.2. Employment of Minors Child Labor Act;
- 43.1.3. Minimum Wage Act;
- 43.1.4. Prevailing Wage Act;
- 43.1.5. Equal Pay Law;
- 43.1.6. Employer to Pay Employment Medical Examination Fee Act;
- 43.1.7. Seasonal Farm Labor Act;
- 43.1.8. Wage Payment and Collection Law;
- 43.1.9. Industrial Homework Law;
- 43.1.10. Construction Industry Employee Verification Act;
- 43.1.11. Act 102: Prohibition on Excessive Overtime in Healthcare;
- 43.1.12. Apprenticeship and Training Act; and,
- 43.1.13. Inspection of Employment Records Law.

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43.2. Vendor shall also certify compliance with Unemployment Compensation tax requirements and Workers' Compensation insurance requirements.

**44. Headings**

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

**45. 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.**

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 Vendor 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): Mansoor Zaki

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

Title: Buyer

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

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



**ATTACHMENT I**  
**PERFORMANCE BOND FOR INVITATION TO BID #24-37-MZ**

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Not Applicable

# 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 performed 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.



**WORKER PROTECTION AND INVESTMENT CERTIFICATION FORM**

A. Pursuant to Executive Order 2021-06, *Worker Protection and Investment* (October 21, 2021), the Commonwealth is responsible for ensuring that every worker in Pennsylvania has a safe and healthy work environment and the protections afforded them through labor laws. To that end, contractors and grantees of the Commonwealth must certify that they are in compliance with Pennsylvania’s Unemployment Compensation Law, Workers’ Compensation Law, and all applicable Pennsylvania state labor and workforce safety laws including, but not limited to:

1. Construction Workplace Misclassification Act
2. Employment of Minors Child Labor Act
3. Minimum Wage Act
4. Prevailing Wage Act
5. Equal Pay Law
6. Employer to Pay Employment Medical Examination Fee Act
7. Seasonal Farm Labor Act
8. Wage Payment and Collection Law
9. Industrial Homework Law
10. Construction Industry Employee Verification Act
11. Act 102: Prohibition on Excessive Overtime in Healthcare
12. Apprenticeship and Training Act
13. Inspection of Employment Records Law

B. Pennsylvania law establishes penalties for providing false certifications, including contract termination; and three-year ineligibility to bid on contracts under 62 Pa. C.S. § 531 (Debarment or suspension).

**CERTIFICATION**

I, the official named below, certify I am duly authorized to execute this certification on behalf of the contractor/grantee identified below, and certify that the contractor/grantee identified below is compliant with applicable Pennsylvania state labor and workplace safety laws, including, but not limited to, those listed in Paragraph A, above. I understand that I must report any change in the contractor/grantee’s compliance status to the Purchasing Agency immediately. I further confirm and understand that this Certification is subject to the provisions and penalties of 18 Pa. C.S. § 4904 (Unsworn falsification to authorities).

<i>Signature</i>	<i>Date</i>
<i>Name (Printed)</i>	
<i>Title of Certifying Official (Printed)</i>	
<i>Contractor/Grantee Name (Printed)</i>	

BOP-2201  
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