

# TERMS AND CONDITIONS

1. **Agreement to Be Bound.** By acknowledgement of this Purchase Order, Vendor agrees to be bound to the PWSA by the terms and conditions of: (i) this Purchase Order; and (ii) any and all agreements (if any) between Vendor and the PWSA in connection with or related to this Purchase Order (the "Agreement") (collectively, the "Contract"). The provisions of any such Agreement are incorporated herein by reference. For purposes of determining the obligations of Vendor hereunder and in the event of a conflict between the Purchase Order and the Agreement, the provisions of the Agreement (if any) shall apply and supersede the Terms and Conditions of this Purchase Order.

2. **Scope of Work.** Vendor agrees to provide any and all labor, materials and/or services set forth in the Contract (the "Work") to the satisfaction of the PWSA, in the PWSA's absolute discretion. Vendor acknowledges that the Contract, including any plans and specifications, are for reference only and that actual quantities or conditions may vary from those identified. Vendor shall perform the Work, using the highest skill and attention applicable. Vendor warrants that performance of the Work, including all materials supplied, will be of good merchantable quality fit for the purpose intended, free from fault and defects. Vendor hereby grants to the PWSA an unconditional guarantee of performance of the Work.

3. **Compliance With Laws.** Vendor shall comply with all laws, ordinances, codes, rules, regulations, and orders of any government or public authority bearing on the performance of the Work.

4. **Safety.** Vendor shall take and observe all necessary measures and precautions for the safety and protection of property and persons during the performance of the Work. Vendor shall secure and pay for all permits, fees, licenses and inspections necessary for the execution of the Work.

5. **Insurance.** Prior to commencing the Work, Vendor shall procure and maintain, at its own expense and for the duration of this Contract, at least the following insurance from insurance companies that are found to be satisfactory by the PWSA, in PWSA's sole discretion, which insurance shall name PWSA a named insured on a no fault basis, and shall not include any deductibles or self-insurance retention amounts (unless approved in writing by the PWSA): (a) Comprehensive General Liability Insurance with the following minimum limits: General Commercial Aggregate Limit - \$2,000,000 Worker's Compensation - \$1,000,000; Bodily Injury, including death - \$1,000,000 each occurrence, \$2,000,000 aggregate; Property Damage - \$1,000,000 each occurrence, \$2,000,000 aggregate; and (b) Comprehensive Automobile Liability Insurance covering all owned, non-owned and hired automobiles used in connection with the Work, with the following minimum limits: Automobile Liability - \$1,000,000 each occurrence, \$1,000,000 aggregate for bodily injury including death and \$50,000 each occurrence and \$500,000 aggregate for property damage. Vendor shall furnish a certificate, satisfactory to the PWSA from each insurance company showing that the above insurance is in force, stating policy numbers, dates of expiration, and limits of liability thereunder, and further that any cancellation or change will be mailed to and received by the PWSA 30 days prior to any such cancellation. To the extent permitted by law, Vendor waives its subrogation rights against the PWSA, the PWSA's customer and any other person or entity.

6. **Indemnity.** Vendor shall indemnify, defend and hold harmless the PWSA, and its officers, agents, and employees from and against all claims, damages, liabilities, judgments, liens, charges, demands, losses, fines, penalties, lawsuits, encumbrances, costs and expenses, whether well founded or unfounded, including, but not limited to, attorney's fees, costs of litigation and investigation, directly or indirectly arising out of or resulting from the performance of the Work or in connection with or as a result of Vendor's breach of this Contract, or failure to comply with the terms of this Contract, by Vendor, in the case of claims against the PWSA, and/or any other person or entity or their agents and employees by any employee of Vendor, anyone directly or indirectly employed by Vendor, anyone acting on behalf of or at the direction of Vendor, or anyone else for whom Vendor may be liable, Vendor's indemnification obligations shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Vendor under workers compensation acts, disability benefit acts or other employee benefit acts.

7. **Relationship of the Parties.** Vendor shall act as an independent contractor, and is retained by the Authority only for the purposes and to the extent set forth in this Contract.

8. **Assignment.** Vendor shall not assign or sublet the Work or any part thereof or transfer an interest in the Contract without the written consent of the PWSA.

9. **Delays.** If the Work is delayed by any fault or neglect or act or failure to act by Vendor or any of its officers, agents, servants, employees, vendors, sub-contractors or suppliers, then Vendor shall, in addition to all of the other obligations imposed by this Contract at its own cost and expense, work such overtime and/or otherwise provide additional labor as may be necessary to make up for all time lost in the completion of the Work and of the project due to such delay. Should Vendor fail to make up for the time lost by reason of such delay, the PWSA shall have the right to retain other entities to perform the Work and to take whatever other action it deems to be necessary to avoid delay in the completion of the Work and of the project, and the cost and expense of such work and/or such other action shall be exclusively borne by Vendor. The PWSA shall not be liable for any delay in or failure of performance hereunder by the PWSA due to any contingency beyond its control, including act of God, war, terrorism, government priority, mobilization, insurrection, rebellion, civil commotion, riot, act of extremist or public enemy, sabotage, labor dispute, lockout, strike, job action, explosion, earthquake, fire, flood, weather conditions, accident, drought, power failure, inability to obtain suitable or sufficient labor or material, delay of carrier, embargo, law, ordinance, rule or regulation, whether valid or invalid, or other cause beyond the PWSA's reasonable control.

10. **Termination.** The PWSA may, (i) after having given forty-eight (48) hours' notice to Vendor terminate this Contract for convenience; or (ii) upon written notice to Vendor immediately terminate this Contract in the event of a breach of this Contract. Should the PWSA terminate the engagement of Vendor for all or any portion of the Work, the PWSA may take possession, for the purpose of completing the Work, of all materials, equipment, tools, appliances and other items thereon, all of which Vendor hereby transfers, assigns and sets over to the PWSA for such purpose. In case of a termination in the event of a breach of this Contract, Vendor shall not be entitled to receive any further payment under this Contract until Vendor's Work shall be wholly completed to the satisfaction of the PWSA, at which time, if the unpaid balance of the amount to be paid under this Contract shall exceed the cost and expenses incurred by the PWSA and the related overhead and profit earned by the PWSA in completing the Work, such excess monies shall be paid by the PWSA to Vendor; but if such cost, expense and earned income shall exceed such unpaid balance, then Vendor shall pay the difference to the PWSA or a withholding may be made by the PWSA from Vendor related to any Work performed by Vendor pursuant to this Contract. Such cost and expense shall include, not only the cost of completing the Work to the satisfaction of the PWSA and of performing and furnishing all labor, services, materials, equipment, and other items required therefor, but also all losses, damages, costs and expenses, including, but not limited to, legal fees and disbursements sustained, incurred or suffered by reason of or resulting from Vendor's default. Upon a termination for the PWSA's convenience, the PWSA shall pay Vendor for all Work satisfactorily completed through the date of termination, less the sums Vendor shall have already been paid on account of the Work. The PWSA shall not pay Vendor, and Vendor shall not be entitled to payment, for any Work not performed or for any anticipated profit for such non-completed Work.

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the actual expense incurred as part of the invoice(s) submitted to the PWSA. In the event that Vendor does not submit such documentation, the PWSA reserves the right to reject the charges set forth in the invoice(s).

12. **Governing Law; Jurisdiction.** This Contract, its terms and conditions and any claims arising therefrom, shall be governed by the laws of the Commonwealth of Pennsylvania, without regard to its conflicts of law principles. Should any dispute or controversy whatsoever arise between Vendor and the PWSA, then the complaining party shall give the other party thirty (30) days' written notice of the complaining party's intent to resort to legal action. If Vendor chooses to pursue legal action against the PWSA, it must commence such legal action within one (1) year of the accrual of any such alleged claim. In the event that Vendor brings and/or files a lawsuit against the PWSA, and does not recover the entire amount sought and/or alleged in its lawsuit against the PWSA, Vendor shall compensate the PWSA for any and all attorneys' fees and costs incurred by the PWSA to defend itself against Vendor's lawsuit. Any dispute, controversy or claim arising out of or relating to this Contract shall be resolved in the Court of Common Pleas of Allegheny County, Pennsylvania.

13. **Limitation of Liability.** IN NO EVENT SHALL THE PWSA, ITS EMPLOYEES, OFFICERS, DIRECTORS OR AGENTS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, INDIRECT OR CONSEQUENTIAL DAMAGES (OR EQUIVALENTS THEREOF NO MATTER HOW CLAIMED, COMPUTED OR CHARACTERIZED) ARISING OUT OF OR IN CONNECTION WITH THE CONTRACT OR THE PWSA'S PERFORMANCE OR BREACH THEREOF, REGARDLESS OF WHETHER ANY SUCH LIABILITY SHALL BE CLAIMED IN CONTRACT, WARRANTY, EQUITY, TORT (INCLUDING NEGLIGENCE, GROSS NEGLIGENCE AND STRICT TORT LIABILITY) OR OTHERWISE, EVEN IF THE PWSA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

14. **Confidentiality.** Vendor acknowledges that as a result of its engagement hereunder, it will be making use of and/or acquiring information of a special unique nature and value relating to the PWSA's business. As a material inducement to the PWSA agreeing to enter into this Contract, and to pay Vendor compensation, Vendor covenants and agrees that it and its employees, representatives, subcontractors and agents shall not at any time during the term of this Contract or thereafter directly or indirectly divulge or disclose for any purpose whatsoever any confidential information which has been obtained by or disclosed to Vendor as a result of its association with the PWSA. Confidential information shall include, without limitation, information concerning the PWSA's financial condition, customers, methods of doing business and the manufacturing, creation, design, marketing and distribution of the PWSA's products.

15. **Rights in Data; Copyrights; Disclosure.** All Data (written reports, studies, drawings, or other graphic, electronic, chemical or mechanical representations) developed pursuant to this Contract shall be the property of the PWSA and the PWSA shall have the full right to use such Data for any official purpose and in whatever manner deemed desirable and appropriate, including making it available to the general public. Such use shall be without any additional payment to or approval by Vendor. The PWSA shall have unrestricted authority to publish, disclose, distribute and otherwise use, in whole or in part, any Data developed or prepared under this Contract.

16. **Anti-Discrimination.** Vendor shall not discriminate in its employment on the basis of race, color, religion, ancestry, national origin, place of birth, sex, age, disability, non-job related handicap or sexual orientation. Vendor shall comply with the applicable provisions of the Pittsburgh Code, Title Six - Conduct, Article V - Discrimination, and any amendments thereto. Vendor shall also comply with the applicable provisions of Title I and Title II of the Americans with Disabilities Act, any amendments thereto and any regulations issued thereunder. The PWSA reserves the right to direct that Vendor to submit a statement signed by an authorized officer or agent of any labor union or any agency referring workers or providing or supervising apprenticeship or other training, with which Vendor deals, with supporting information to the effect that the signer's practices and policies do not discriminate on the grounds of race, sex, color, religion, ancestry, national origin or place of birth. In this statement the signer either will agree to cooperate affirmatively in the implementation of the policy and provisions of the Contract and the MBE/WBE/VBE/SDVBE Solicitation and Commitment Statement or will agree that recruitment, employment, and the terms and conditions of employment under the Contract shall be in accordance with the purposes and provisions of the Contract. In the event that the union, or agency, shall refuse to execute such a statement, Vendor shall so certify and set forth what efforts have been made to secure such a statement and such additional factual material as the PWSA may require.

17. **Minority, Women, Veteran and Service Disabled-Veteran Business Enterprise Participation.** The PWSA has set forth a goal for participation of Minority Business Enterprise ("MBE") at 18%, Women Business Enterprise ("WBE") at 7% and for Veteran Business Enterprise ("VBE")/Service Disabled-Veteran Business Enterprises ("SDVBE") at 5% of the total dollar value of the PWSA's contracts. The PWSA's duty and obligation to make final payment under this Contract is conditioned upon the PWSA's receipt of a report from Vendor detailing the names, addresses and total dollar amount of this Contract that went to WBEs (if any), MBEs (if any), VBEs/SDVBEs (if any) and/or an explanation of any failure to meet the MBE, WBE and VBE/SDVBE goals. This does not convey a requirement to meet the goals and final payment to Vendor shall not be withheld if the PWSA's goals are not achieved, unless Vendor fails to provide an explanation as to why the MBE, WBE and VBE/SDVBE goals were not met.

18. **Taxes.** Vendor shall be solely responsible to pay all applicable federal, state and local taxes and to file all related returns and reports in connection with the performance of Work.

19. **Conflict of Interest.** Vendor covenants and represents that neither it, nor any officer or principal of its firm, has, or shall acquire any investment, income, business entity, interest in real property, or other interest, directly or indirectly, which would conflict in any manner with the interests of PWSA, hinder Vendor's performance under this Contract, or be affected in any manner or degree by performance of the Work hereunder.

20. **Collusion.** Vendor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing this Contract. For purposes of this Contract, the following definitions shall apply: (1) "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official or PWSA employee in the bidding/proposal process or in the Contract execution; (2) "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding/proposal process or the execution of the Contract to the detriment of the PWSA, (b) to establish the Contract prices at artificial non-competitive levels, or (c) to deprive the PWSA of the benefits of free and open competition; (3) "collusive practice" means a scheme or arrangement between two or more companies, with or without the knowledge of the PWSA, a purpose of which is to establish Contract prices at artificial, non-competitive levels; and (4) "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding/proposal process or affect the execution of the Contract.

21. **Audit.** At any time up to three years after the day of final payment, Vendor will provide the PWSA with access to its records related, in any way, to this Contract.

22. **Entire Agreement; Binding.** This Contract represents the entire agreement between the PWSA and Vendor and incorporate all of the understandings of the parties hereto as to the matters contained herein and supersedes any and all contracts, negotiations, representations, agreements or other communications reached, participated in or discussed by the parties prior to the execution of the Contract, whether oral or written, as to such matters. This Contract may only be amended by a written instrument that is duly executed by the PWSA and Vendor. If any provision of this Contract is held to be invalid or unenforceable, the validity and enforceability of the balance of the provisions of this Contract shall not be affected thereby if the balance of the provisions of this Contract would then continue to conform to the requirements of applicable laws. Except as otherwise specifically provided in this Contract, whenever under this Contract approvals, authorizations, determinations, satisfactions or waivers are required or permitted, such items shall be effective and valid only when agreed to in a writing signed by a duly authorized officer of the PWSA. This Contract shall be binding upon and inure to the benefit of the parties named herein and their respective successors and assigns.

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22. **Entire Agreement; Binding.** This Contract represents the entire agreement between the PWSA and Vendor and incorporate all of the understandings of the parties hereto as to the matters contained herein and supersedes any and all contracts, negotiations, representations, agreements or other communications reached, participated in or discussed by the parties prior to the execution of the Contract, whether oral or written, as to such matters. This Contract may only be amended by a written instrument that is duly executed by the PWSA and Vendor. If any provision of this Contract is held to be invalid or

## TERMS AND CONDITIONS

unenforceable, the validity and enforceability of the balance of the provisions of this Contract shall not be affected thereby if the balance of the provisions of this Contract would then continue to conform to the requirements of applicable laws. Except as otherwise specifically provided in this Contract, whenever under this Contract approvals, authorizations, determinations, satisfactions or waivers are

required or permitted, such items shall be effective and valid only when agreed to in a writing signed by a duly authorized officer of the PWSA. This Contract shall be binding upon and inure to the benefit of the parties named herein and their respective successors and assigns.