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## TOWNSHIP OF FERGUSON

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# REQUEST FOR PROPOSAL TELECOMMUNICATIONS PLATFORM REPLACEMENT PROJECT

**Ferguson Township**  
**Request for Proposal**  
**Telecommunications Platform Replacement Project**

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## Introduction to Ferguson Township

Ferguson Township (“Township”) is a Home Rule Charter incorporated in 1976 that operates under the Council-Manager form of government. The Township Manager is appointed by the Board of Supervisors and serves as the chief executive officer responsible for all municipal functions.

The Township legislative, administrative, and municipal services include the following: the Board of Supervisors; Township Manager; Township Solicitor; Finance and Tax; Human Resources; Communications and Engagement; Planning and Zoning; Police; Public Works. The Township’s IT services are provided under contract with Hinton and Associates. The Township employs approximately 68 employees.

The Township is located in the southwestern corner of Centre County and is approximately 50 square miles of land area. The Township is looking for proposals to replace its current telecommunications system platform with a brand new, state-of-the-art unified communications system. The Township’s existing telecommunications platform is approaching end-of-support status and township staff have reported issues with reliability, stability, and availability.

## Project Overview

The purpose of the Request for Proposal (RFP) is to solicit proposals for a new Voice over Internet Protocol (VoIP) telephone communications system for the Township Administrative offices. The Township will consider and evaluate proposals that present new communications technology including cloud-based, unified communication systems that will increase productivity, enhance service quality and unify the various communication services across the Township. The RFP is part of a competitive bid process to provide vendors an opportunity for their services to be considered. The Township’s current technology environment includes \_\_\_ active IP phones in two (2) facilities.

### Summary of Existing VoIP Network

#### *Current VoIP Network Design and Configuration*

#### *Local Area Network (LAN)*

#### *IT Environment*

#### *Desktop/Laptop Environment*

All parties interested in submitting a proposal must meet all the requirements defined in this document. The Township reserves the right to conduct interviews with some or all representatives of the respondents and shall not be liable for any costs incurred by respondents in preparing any proposals for services or participating in the interview process. The Township reserves the right to reject all submissions or to amend the requirements herein with proper notice. This shall include the right to re-issue the RFP, prior to the contract award, with substantially different terms and conditions as provided herein or to cancel this RFP with or without issuing another RFP. The Township may choose to accept or reject any or all of an RFP response and award a partial contract for the services requested herein, if the Township determines, in its sole discretion, that

it is in the best interests of Township. The Township may also waive any informality, defect, or deviation from this RFP that is not, in the Township's sole judgment, material to a response provided to the RFP. The Township also reserves the right to request that a respondent modify its proposal or provide further information beyond what is submitted with the proposal. The Township may conduct any further investigations that it considers appropriate and/or necessary with respect to the qualifications of any respondent and/or the information provided in any response to the RFP.

The Township is an affirmative action/equal opportunity employer that selects contractors without consideration of race, religion, color, ethnic background, sex, age or handicapped status. Minority-owned businesses are encouraged to submit responses to this RFP.

## Background or Statement of Need and User Profiles

### Tentative Schedule

Activity	Dates
Issuance of Request for Proposal (RFP)	Tuesday, March 14, 2023
Written Question to Township - Submission Deadline	Friday, March 24, 2023
RFP Submission Deadline	Friday, April 14, 2023
Demonstration of platform with proof-of-concept	April 17 through April 21
Award contract	April 25

### Terms and Condition for RFP Submittal

Upon submission of a response to the RFP, respondents agree to the following terms and conditions:

- Proposal must include all fees, expenses, payment schedule, and any terms and conditions requirements by the vendor.
- Submit proposals with five (5) hard copies and one electronic copy on USB Flash Drive.
- Provide qualifications of firm which must include experience and examples of similar projects (see specific requirements in RFP).
- The Township reserves the right to reject any respondents that submit missing or incomplete responses to the RFP.
- All submitted RFPs become property of Township and shall not be returned.
- The Township will not accept responses via telephone, email, or facsimile.
- Respondents are responsible for all costs associated in development and submission of their response to the RFP – including all direct or indirect costs.
- The Township reserves the right to amend the RFP. Persons receiving this RFP should provide complete contact information to the Township so that any amendments can be communicated to all respondents. Failure to provide the Township with contact information will not be the fault of the Township if a respondent fails to receive any amendments to this RFP.

- Proof-of-concept or demonstration of platform will be required of the respondent to include coordination with the Township to provide demonstration, if requested, to selection committee.
- Prior to commencement of work, the selected respondent will enter into a contractual agreement with the Township to include the standard terms and conditions shown in Attachment A and must submit a valid Certificate of Insurance in accordance with the requirements required herein.
- All respondents should carefully review this RFP for defects, inconsistencies, or uncertainties. Comments concerning defects, inconsistencies or uncertainties must be made in writing and received by the Township, via the email address provided herein, at least ten (10) days prior to the RFP deadline.
- The Township is the sole authority to provide this RFP package to interested companies or individuals. Respondents working from an RFP package provided by a source other than the Township may receive an incomplete RFP package. The Township assumes no responsibility for an error, omission or misinterpretation resulting from a respondent's use of an incomplete RFP package.
- The Township is not requesting, and does not require, confidential or proprietary information or trade secrets in order to evaluate any response. After an award of the RFP is made, all submissions are subject to disclosure in response to a request for public records made under the Pennsylvania Right-to-Know Law, 65 P.S. §67.101, et. seq. ("RTKL"). If a respondent wishes to protect any information from disclosure, it should be so marked prior to submitting the response. Respondents should refer to Attachment A of the RFP for further information on the RTKL.

## Required Qualifications of Respondents

The Township is soliciting proposals from respondents that have expertise in configuring and provisioning of telecommunications services. Respondents should be able to demonstrate their expertise through education, certification, accreditation, or training. Respondents should also have experience working with local government municipalities, agencies, or corporations. Specifically, respondents should be responsive to the Township's required features, implementation, and support agreement.

## Requirements | Features

The proposed telecommunication system should contain the following features:

- Cloud-based or On-premises VoIP System
- Minimum of 16 concurrent calls
- Direct Inward Dialing (DID)
- Busy/no answer/auto forward
- Caller ID
- Call forwarding
- Internal/External Call transfer
- Conferencing
- Hunt Group call

- Paging
- Voicemail to email
- Voicemail Management Portal
- Follow Me capabilities
- Calendar Integration with Office 365
- Softphone client
- Mobile App
- Auto Attendant/IVR – with day, evening, afterhours scheduling capabilities
- Receptionist client
- Hold music
- Handset compatibility with handsets
- Integration capabilities for conferencing/AV with Zoom and Teams
- Fax integration
- Virtual mailboxes
- Collaboration
- Call analytics
- Enhanced E911 service, fully compliant with the Ray Baum’s Act and Kari’s Law
- Unlimited local and long-distance calling minutes
- Capabilities for analog lines where needed (Fire alarm system, etc.)
- Scalability options
- Number of handsets: 66 -75
- Number of conference phones: 2
- Preference to retain important public facing numbers and extension numbers

## Requirements | Implementation

The implementation plan for the proposed platform should include:

- Plan for Porting of existing DIDs
- Compatibility with existing 1GB switching and POE infrastructure
- Vendor must provide specific network configuration requirements (QoS, LLDP, etc.)
- Site survey to determine configuration requirements for hardware installation, extensions, call groups, and schedule of auto attendants
- Installation and placement of all handsets
- Installation of any hardware or software need to operate the system
- Comprehensive training for system administrators, end-users, and operators to properly onboard the new system
  - Specify if training is in-person or virtual

## Requirements | Support Agreement

The Township requires RFP responses to include a plan for support and maintenance of the proposed platform. The minimum requirements must include:

- Service Level Agreement (SLA) – please provide details

- 24x7x365 support agreement – please specify support request process
- Specify where technical support resources are geographically located
- Minimum Maintenance agreements term of 5 years to include:
  - Software updates and upgrades as required or necessary to ensure availability and security of installed system, feature enhancements, and/or stability improvements
  - Next day business day hardware replacement
- Data centers specifications- please provide details.
  - Data center locations
  - Are data center redundant?
  - Tier ratings
  - SLA
  - Physical security controls (i.e. access control, CCTV, access logs, etc.)
  - Temperature and humidity monitoring
  - Is there Redundant Power, HVAC, and internetworking components, routers, switches, and firewalls?
  - Downtime for the last five (5) years
  - Current certifications and regulatory compliance

## RFP Submission Requirements

Please submit five (5) hard copies with an electronic copy of the USB flash drive included by 3:00 p.m. on Friday, April 14, 2023, signed by the firm’s authorized agent to Ferguson Township with ATTN: RFP Selection Committee: Response to RFP for Phone System Replacement. The proposal must be received by Township before the specified time. Late proposals will not be considered.

All respondents must submit proposals to:

Ferguson Township  
 ATTN: RFP Selection Committee: Response to RFP for Phone System Replacement  
 3147 Research Drive  
 State College, PA 16801

Respondents must clearly identify any limitations or exceptions to the requirements defined in this RFP. Alternative approaches will be given consideration if the approach clearly offers increased benefit to the Township.

Interested parties shall not directly contact staff members or appointed officials. All questions or inquires about the RFP prior to the submittal date need to be in writing and emailed to [admin@twp.ferguson.pa.us](mailto:admin@twp.ferguson.pa.us).

Respondents shall provide the following information in their RFP response:

- Table of Contents
- Title Page
- Executive Summary

- The responding firm's name and postal address as well as the name and contact information for the project manager or contact person, the date of the proposal, and signature of an authorized official representing the vendor/consultant guaranteeing the proposal is valid for a minimum of 120 days.
- The response to the RFP must be signed by an official authorized to bind the respondent to the provisions of the RFP and the response.
- The responding firm's background (number of years actively providing professional services for technology services, location of office from which service will be provided, firm's normal business hours.
- The number of years the firm has been in business.
- The number of years the firm has been under current leadership.
- W-9 Form
- Business Registration Certificate
- The response shall include a conflict of interest statement indicating whether or not any principals in the company, their spouse, or their child is employed by Township, and whether or not the company or any individuals providing services has a possible conflict of interest, and, if so, the nature of that conflict.
- Description of any claims, lawsuits, or legal settlements your firm has had in the past and/or those that are currently pending.
- Disclosure of bankruptcy or reorganization proceedings in the last 7 years If any part of the proposal is deemed a trade secret or proprietary by the respondent, such portions shall be appropriately marked as the same and if necessary, respondent shall provide additional information to Township as to the basis of such claim.
- Contact information and qualifications for personnel assigned to the project.
- If any subcontractors will be used, respondent shall provide for each such party, the company or individual name and contact information as well as the principal involved in such company if applicable.
- Brief executive summary to include overview of proposal and all information contained in the proposal
- Provide a narrative of overall project summary and understanding of the needs and goals of the Township of Ferguson
- Detailed description and scope of work provided by respondent
  - Define scope of work performed directly by respondent
  - Describe portions of the project that include subcontractors or other vendors
  - Define "out of scope" requirements needed to complete the project
  - Specify work required by Township of Ferguson IT resources
- Estimated project timeline – please specify if a project manager will be assigned
- Respondents must breakdown costs including initial purchase price and specifically list all fees and charges associated with implementation, hardware, software, recurring and non-recurring charges, and ongoing maintenance costs
- Please specify vendor's billing process



- Will vendor invoice client directly?
- Is the vendor the actual carrier? If not, please specify
- Submission should include all foreseeable expenditures that the Township of Ferguson will incur to complete this project
- Respondents who are resellers or system integrators should specify system(s) they would be implementing (i.e., WebEx, Mitel, Teams calling, Zoom calling, etc.)
- Please provide Name, address, and contact information of three (3) references for whom the firm has developed similar VoIP systems.
- Copy of certificate of insurance in accordance with the requirements noted in Attachment A.

## Consultant Participation

The Township reserves the right to share with any consultant of its choosing this RFP and proposal responses in order to secure a second opinion. The Township may also invite said consultant to participate in the proposal evaluation process if desired.

## Selection Criteria and Process

- All RFP responses will be reviewed by the selection committee.
- A scorecard will be utilized by the <selection committee> and will be based on the following criteria:
  - Experience
  - Innovation
  - Overall cost of project
  - Service and Support offerings
  - Implementation Plan
  - Comprehension of project objectives
  - Accuracy of response to RFP
  - Expertise and experience with enterprise deployment with state and local government municipalities
  - Responsiveness to identified requirements
  - Demonstration of platform

## ATTACHMENT A

### **STANDARD CONTRACT TERMS AND CONDITIONS**

The Contract with the awarded respondent (who shall become the “Contractor”) shall include the following terms and conditions:

#### **1. Term of Contract**

- a. The term of the Contract shall commence on the Effective Date and shall end on the Expiration Date identified in the Contract, subject to the other provisions of the Contract. The Township shall fix the Effective Date after the Contract has been fully executed by the Contractor and all approvals required by the Townships contracting procedures have been obtained. The Contract shall not be a legal binding Contract until after the Effective Date is affixed and the Contract is sent to the Contractor.

#### **2. Extension of Contract Term**

The Township reserves the right, upon notice to the Contractor, to extend the term of the Contract on terms agreeable to both parties and in writing.

#### **3. Agreement Content**

The Agreement will incorporate all the terms and conditions set forth in the following Contract Documents, all of which are incorporated herein by reference thereto as if set forth herein at length:

- a. Legal Notice
- b. RFP Documents, including, but not limited to, Scope of Work and response requirements
- c. Written Addenda (if any) clarifying or correcting specifications and issued by the Township.
- d. Contractor’s Proposal
- e. Contractor’s Bond(s) and Insurance Certificate(s), if required.
- f. The Contract, as signed by the parties.
- g. Written amendments and/or Addenda made concurrent with or subsequent to the Contract, only if signed by all parties.
- h. Any additional information deemed necessary as a result of the negotiations held with the successful Contractor(s).

#### **4. Insurance**

The successful respondent shall within ten (10) days following the notification of the award of the Contract, submit to the Township certificates of insurance naming the Township of Ferguson, its officers and employees as additional insured in accordance with the following requirements and subject to the approval and acceptance by the Township. No payments will be made until proof of adequate insurance is provided.

- a. Contractor agrees, if it is a corporation or employer to carry Workers’ Compensation and Unemployment Compensation per statutory requirements. Original Certificate(s) of Insurance showing Automobile Liability, Workers’ Compensation, General Liability and Professional Liability insurance coverage (if applicable to the work) made out to the Township of Ferguson, will be submitted by Contractor to Township along with signed Agreement. The Township will not approve the Agreement if a Certificate of Insurance is

not present.

- b. Contractor hereby expressly waives any immunity under the Workers' Compensation Act, either as an employer or statutory employer, for any claim brought by the Township. This waiver is intended to comply with the provisions of Section 303 (b) [77 P.S.@481(b)] of said act. Contractor accepts, in so far as the work covered by any such Agreement is concerned, the provisions of the Workers' Compensation Act and any reenactments, supplements and amendments thereto.
- c. At a minimum, the Contractor must carry the following:

Commercial General Liability:

\$1,000,000 Completed single body limit for bodily injury and property damage  
\$2,000,000 Products/Completed Operations Aggregate  
\$1,000,000 Personal/Advertising Injury  
\$1,000,000 Each Occurrence  
(Any restrictive endorsements must be included)

Workers' Compensation & Employer's Liability

PA Statutory Coverage  
Employers Liability – 500/500/500

Professional Errors and Omissions Liability

\$1,000,000 Each Occurrence  
\$3,000,000 Aggregate

Policy shall contain no retroactive date.

Claims-made basis acceptable for *Professional Errors and Omissions*.

Computer crime coverage to include data processing service operations with a minimum limit of \$ 1,000,000.

- d. If coverage on the insurance policy is due to expire before the end of the Agreement period, it is the responsibility of the Contractor to provide an updated Certificate of Insurance to the Township prior to the expiration date. If coverage should expire prior to the completion date shown on Agreement, the Township reserves the right to withhold payment(s) until updated Certificate of Insurance is provided.
- e. If Professional Services are provided, Contractor shall include Professional Liability Insurance as a requirement of the Professional Errors and Omissions Liability.
- f. Contractor shall accept full responsibility for the payment of premiums on all insurances as well as for social security taxes, income tax deductions, and any other taxes or payroll deductions required by law for its employees who are performing services under this Agreement.
- g. Contractor shall immediately advise the Township of any cancellation or change in insurance(s).

**5. Bonds**

- a. In accordance with the Pennsylvania Public Works Contractors' Bond Law of 1967,

Contractor shall furnish to the Township within ten (10) days following the notification of the award of the Contract, the following bonds on the forms prescribed, which would become binding upon the execution of the Contract agreement.

- i. A performance bond, in the amount of one hundred percent (100%) of the Contract amount awarded; conditioned upon the faithful performance of the Contract in accordance with the plans, specifications, and conditions of the Contract. Such bond shall be solely for the protection of the Township.
- b. A surety company authorized to do business in the Commonwealth of Pennsylvania shall be execute each of such bonds made payable to the Township of Ferguson.

## **6. Project Schedule**

The respondent shall prepare with the response a schedule identifying Project start date, stages, milestones with target dates, and date for substantial completion.

## **7. Notice to Proceed**

- a. The Township shall issue a written Notice to Proceed to the Contractor directing the Contractor to start performance on a date, which is on or after the Effective Date.
- b. The Contractor shall not start the performance of any work or provide any services or products prior to the date set forth in the Notice to Proceed and the Township shall not be liable to pay the Contractor for any service or work performed or expenses incurred before the date set forth in the Notice to Proceed.
- c. No Township employee has the authority to verbally direct the commencement of any work under this Contract.

## **8. Independent Prime Contractor**

In performing its obligations under the Contract, the Contractor will act as an independent Contractor and not as an employee of the Township. The Contractor will be responsible for all services in the Contract whether or not Contractor provides them directly. Further, the Contractor is the sole point of contact with regard to all Contractual matters, including payment of any and all charges resulting from the Contract.

## **9. Delivery**

- a. **Supplies Delivery:** All item(s) and equipment required for completion of the Scope of Work shall be delivered F.O.B Destination to the project site or as specified by the Contractor. The Contractor agrees to bear the risk of loss, injury, or destruction of the item(s) ordered. Such loss, injury, or destruction shall not release the Contractor from any contractual obligations. The Contract is subject to termination for failure to deliver as specified and within the Period of Performance defined by the Contract Effective Date and its Expiration Date.
- b. **Delivery of Work:** The Contractor shall proceed with all due diligence in the performance of the Work with qualified personnel, in accordance with the completion criteria set forth in the Contract.

## **10. Estimated Quantities**

- a. It shall be understood and agreed that any quantities listed in the Contract are estimated only and may be increased or decreased in accordance with the actual requirements of the Township and that the Township in accepting any Proposal or portion thereof, Contracts only and agrees to purchase only the materials and services in such quantities as represent

the actual requirement so of the Township.

- b. The Township reserves the right to purchase materials and services covered under the Contract through a separate and competitive procurement procedure, whenever the Township deems it to be in its best interest.

## **11. Warranty**

The Contractor warrants that all items furnished, and all services performed by the Contract, its agents and subcontracts shall be free and clear of any defects in workmanship or materials. Unless otherwise stated in the Contract, all items are warranted for a period of one year following delivery by the Contractor and acceptance by the Township. The Contractor shall repair, replace, or otherwise correct any problem with the delivered item(s). When an item is replaced, it shall be replaced with an item of equivalent or superior quality without any additional cost to the Township.

## **12. Patent, Copyright, and Trademark Indemnity**

The Contractor warrants that it is the sole owner or author of or has entered into a suitable legal agreement concerning either: a) the design of any product or process provided or use in the performance of the Contract which is covered by a patent, copyright, or trademark registration or other right duly authorized by State or Federal law or b) any copyrighted matter in any report, document or other material provided to the Township under the Contract.

The Contractor shall defend any suit or proceeding brought against the Township on account of any alleged patent, copyright or trademark infringement in the United States of any of the products provided or used in the performance of the Contract.

This is upon condition that the Township shall provide prompt notification in writing of such suit or proceeding; full right, authorization and opportunity to conduct the defense thereof; and full information and all reasonable cooperation for the defense of same.

As principles of governmental or public law are involved, the Township may participate in or choose to conduct, in its sole discretion, the defense of any such action.

If the Township at the Contractor's written request furnishes information and assistance, it shall be at the Contractor's expense, but the responsibility for such expense shall be only that within the Contractor's written authorization.

The Contractor shall indemnify and hold the Township harmless from all damages, costs, and expenses, including attorney's fees that the Contractor or the Township may pay or incur by reason of any infringement or violation of the rights occurring to any holder of copyright, trademark, or patent interests and rights in any products provided or used in the performance of the Contract.

If any of the products provided by the Contractor in such suit or proceeding are held to constitute infringement and the use is enjoined, the Contractor shall, at its own expense and at its option, either procure the right to continue use of such infringement products, replace them with non-infringement equal performance products or modify them so that they are no longer infringing.

If the Contractor is unable to do any of the preceding, the Contractor agrees to remove all the equipment or software which are obtained contemporaneously with the infringing product, or, at the option of the Township, only those items of equipment or software which are held to be infringing, and to pay the Township: 1) any amounts paid by the Township towards the purchase of the product, less straight line depreciation; 2) any license fee paid by the Township for the use of any software, less an amount for the period of usage; and 3) the pro rata portion of any maintenance fee representing the time remaining in any period of maintenance paid for. The

obligations of the Contractor under this paragraph continue without time limit. No costs or expenses shall be incurred for the account of the Contractor without its written consent.

### **13. Ownership Rights**

The Township shall have unrestricted authority to reproduce, distribute, and use any submitted report, data, or material, and any software or modifications and any associated documentation that is designed or developed and delivered to the Township as part of the performance of the Contract.

### **14. Acceptance**

No item(s) received by the Township shall be deemed accepted until the Township has had a reasonable opportunity to inspect the item(s). Any item(s) that is discovered to be defective or fails to conform to the specifications may be rejected upon initial inspection or at any time later if the defects contained in the item(s) or the noncompliance with the specifications were not reasonably ascertainable upon the initial inspection. It shall thereupon become the duty of the Contractor to remove rejected item(s) from the premises without expense to the Township within fifteen (15) days after notification. Rejected item(s) left longer than fifteen (15) days will be regarded as abandoned and the Township shall have the right to dispose of them as its own property and shall retain that portion of the proceeds of any sale that represents the Township's costs and expenses concerning the storage and sale of the item(s). Upon notice of rejection, the Contractor shall immediately replace all such rejected item(s) and deduct from any monies due or that may thereafter become to the Contractor, the difference between the price stated in the Contract and the cost thereof to the Township.

### **15. Product Conformance**

The Township reserves the right to require any and all Contractors to:

- a. Supply published manufacturer product documentation.
- b. Provide a product demonstration.
- c. Provide certified data from laboratory testing performed by the Contractor, or performed by an independent laboratory, as specified by the Township.
- d. Permit a Township representative to witness testing at the Contractor's location or at an independent laboratory.
- e. Complete a survey/questionnaire relating to the RFP requirements and specifications.
- f. Provide customer references.

### **16. Cleaning of the Site**

Before the work will be considered fully complete, the Contractor shall clean and remove from the project and adjacent property all surplus and discarded materials, equipment, temporary structures, rubbish, and other waste matter and shall leave the project in a satisfactory and presentable condition throughout.

All work required to be done under this item shall be considered subsidiary to and included in the Total Proposal Sum and no extra compensation will be paid to the Contractor for this item of work.

### **17. Environmental Provisions**

In the performance of the Contract, the Contractor shall minimize pollution and shall strictly comply with all applicable environmental laws and regulations, including, but not limited to: the

Clean Streams Law Act of June 22, 1937 (P.L. 1987, No. 394), as amended 35 P.S. Section 691.601 et seq.; the Pennsylvania Solid Waste Management Act, Act of July 7, 1980 (P.L. 380, No. 97), as amended, 35 P.S. Section 6018.101 et seq. ; and the Dam Safety and Encroachment Act, Act of November 26, 1978 (P.L. 1375, No. 325), as amended , 32 P.S. Section 693.1.

## **18. Compensation**

The Contractor shall be required to furnish the awarded item(s), service(s) and price(s) quoted in the response to the RFP. All item(s) shall be delivered within the time period(s) specified in the Contract. The Contractor shall be compensated only for item(s) that are delivered and accepted by the Township.

## **19. Billing Requirements**

The Contractor shall include in all of its invoices the following minimum information:

- a. Contractor name and “Remit to” address
- b. Purchase Order Number (if applicable)
- c. Delivery Address
- d. Description of the supplies/services delivered
- e. Quantity Provided
- f. Price Extension
- g. Total Price

If an invoice does not contain the minimum information set forth in this paragraph, the Township may return the invoice as improper. If the Township returns the invoice as improper, the time for processing a payment will be suspended until the Township receives a correct invoice. The Contractor may not receive payment until the Township has received a corrected invoice.

Each invoice shall be itemized with adequate detail and match the line item on the Purchase Order. In no instance shall any payment be made for services to the Contractor that are not in accordance with the prices on the Purchase order, the Contract, updated price lists, or any discounts negotiated by the Township.

## **20. IRS W-9 Form**

## **21. Payment**

The successful Contractor will be required to complete an Internal Revenue Service form (W-9) providing the Contractor’s taxpayer identification number and, if applicable, certification regarding backup withholding and submit the completed (W-9) Form along with the executed Contract.

The Contract sum is stated in the Contract and is the total amount payable by the Township to the Contractor for the performance of the Work under the Contract.

The Township shall put forth reasonable efforts to make payment by the required payment date. The required payment date is: a) the date on which payment is due under the terms of the Contract; b) thirty (30) days after a proper invoice actually is received at the “Bill To” address if a date on which payment is due is not specified in the Contract (a “proper” invoice is not received until the Township accepts the service as satisfactorily performed); or c) the payment date specified on the invoice if later than the dates established by a) and b) above. Payment may be delayed if the payment amount on the invoice is not based upon the price(s) stated in the Contract. Payments should not be construed by the Contractor as acceptance of the service

performed by the Contractor. The Township reserves the right to conduct further testing and inspection after payment, but within a reasonable time after performance, and to reject the service if such post payment testing or inspection discloses a defect or failure to meet specifications.

## **22. Hold Harmless Provision**

- a. The Contractor shall hold the Township harmless from and indemnify the Township against any and all third party claims, demands, and actions based upon or arising out of any activities performed by the Contractor and its employees and agents under this Contract, provided the Township gives the Contractor prompt notice of any such claim of which it learns.
- b. Notwithstanding the above, neither party shall enter into any settlement without the other party's written consent, which shall not be unreasonably withheld. The Township may, in its sole discretion, allow the Contractor to control the defense and any unrelated settlement negotiations.

## **23. Audit Provisions**

The Township shall have the right, at reasonable times and at a site designated by the Township, to audit the books, documents, and records of the Contractor to the extent that the books, documents, and records relate to costs or pricing data for the Contract. Upon request, a legible copy of any or all such documents shall be produced. The Contractor agrees to maintain records, which will support the prices, charges and costs incurred for the Contract. The Contractor shall preserve books, documents, and records that relate to costs or pricing data for the Contract for a period of five (5) years from the date of final payment. The Contractor shall give full and free access to all records to the Township and/or their authorized representatives.

## **24. Default**

- a. The Township may, subject to the Force Majeure provisions of this Contract, and in addition to its other rights under the Contract, declare the Contractor in default by written notice thereof to the Contractor, and terminate (as provided in the Termination Provisions of this Contract) the whole or any part of this Contract or any Purchase Order for any of the following reasons:
  - i. Failure to begin work within the time specified in the Contract or Purchase Order or as otherwise specified;
  - ii. Failure to perform the work with sufficient labor, equipment, or material to ensure the completion of the specified work in accordance with the Contract or Purchase Order terms;
  - iii. Unsatisfactory performance of the work;
  - iv. Failure to deliver the awarded item(s) within the time specified in the Contract or Purchase Order or as otherwise specified;
  - v. Improper delivery;
  - vi. Failure to provide an item(s) which is in conformance with the specifications referenced in the Contract or Purchase Order;
  - vii. Delivery of a defective item;
  - viii. Failure or refusal to remove material, or remove and replace any work rejected as defective or unsatisfactory;
  - ix. Discontinuance of work without approval;



- x. Failure to resume work, which has been discontinued, within a reasonable time after notice to do so;
  - xi. Insolvency or bankruptcy;
  - xii. Assignment made for the benefit of creditors;
  - xiii. Failure or refusal within ten (10) days after written notice by the Contracting Officer, to make payment or show cause why payment should not be made, of any amounts due for materials furnished, labor supplied, or performed for equipment rentals, or for utility services rendered;
  - xiv. Failure to protect, to repair, or to make good any damage or injury to property;
  - xv. Breach of any provision of the Contract;
  - xvi. Failure to comply with representations made in the Contractor's bid/proposal; or
  - xvii. Failure to comply with applicable industry standards, customs, and practices.
- b. The Township reserves the right to terminate the Contract at any time that the Contractor fails to carry out its obligations or to make substantial progress toward those obligations under the terms specified in the Contract or RFP. Township shall provide the Contractor with thirty (30) days written notice of conditions endangering performance. If after such notice, the Contractor fails to remedy the condition contained in the notice to the satisfaction of Township, the Township shall issue an order to stop services immediately.
  - c. In the event that the Township terminates this Contract in whole or in part as provided in Subparagraph a. above, the Township may procure, upon such terms and in such manner as it determines, items similar or identical to those so terminated, and the Contractor shall be liable to the Township for any reasonable excess costs for such similar or identical items included within the terminated part of the Contract.
  - d. If the Contract is terminated as provided in Subparagraph a. above, the Township in addition to any other rights provided in this paragraph, may require the Contractor to transfer title and deliver immediately to the Township in the manner and to the extent directed by the Township, such partially completed items, including, where applicable, reports, working papers and other documentation, as the Contractor has specifically produced or specifically acquired for the performance of such part of the Contract as has been terminated. Except as provided below, payment for completed work accepted by the Township shall be at the Contract price. Except as provided below, payment for partially completed items including, where applicable, reports and working papers, delivered to and accepted by the Township shall be in an amount agreed upon by the Contractor and Township. The Township may withhold from amounts otherwise due the Contractor for such completed or partially completed works, such sum as the Township determines to be necessary to protect the Township against loss.
  - e. The rights and remedies of the Township provided in this paragraph shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.
  - f. The Township's failure to exercise any rights or remedies provide in this paragraph shall not be construed to be a waiver by the Township of its rights and remedies in regard to the event of default or any succeeding event of default.

## **25. Force Majeure**

Neither party will incur any liability to the other if its performance of any obligation under this

Contract is prevented or delayed by causes beyond its control and without the fault or negligence of either party. Causes beyond a party's control may include, but are not limited to, acts of God or war, changes in controlling law, regulations, orders or requirements of any governmental entity, severe weather conditions, civil disorders, natural disasters, fire, epidemics and quarantines, general strikes throughout the trade, and freight embargoes.

The Contractor shall notify the Township orally within five (5) days and in writing within ten (10) days of the date on which the Contractor becomes aware, or should have reasonable become aware, that such cause would prevent or delay its performance. Such notification shall i) describe fully such cause(s) and its effect on performance, ii) state whether performance under the Contract is prevented or delayed and iii) if performance is delayed, state a reasonable estimate of the duration of the delay. The Contractor shall have the burden of proving that such cause(s) delayed or prevented the performance despite its diligent efforts to perform and shall produce such supporting documentation as the Township may reasonably request. After receipt of such notification, the Township may elect to cancel the Contract or to extend the time for performance as reasonable necessary to compensate for the Contractor's delay.

In the event of a declared emergency by competent governmental authorities, the Township by notice to the Contractor, may suspend all or a portion of the Contract.

## **26. Termination Provisions**

The Township has the right to terminate this Contract or any Purchase Order for any of the following reasons. Termination shall be effective upon written notice to the Contractor:

- a. **Termination for Convenience:** Upon 180 days written notice, the Township shall have the right to terminate the Contract for its convenience if the Township determines termination to be in its best interest. The Contractor shall be paid for work satisfactorily completed prior to the effective date of the termination, but in no event shall the Contractor be entitled to recover loss of profits.
- b. **Termination for Cause:** The Township shall have the right to terminate the Contract for Contractor default under the Default Clause upon written notice to the Contractor. The Township shall also have the right, upon written notice to the Contractor, to terminate the Contract for other cause as specified in the Contract or by law. If it is later determined the Township erred in terminating the Contract for cause, then, at the Township's discretion, the Contract shall be deemed to have been terminated for convenience under Subparagraph a.
- c. **Non-Appropriation:** The Township's obligation to make payments during any Township fiscal year succeeding the current fiscal year shall be subject to availability and appropriation of funds. When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the Township shall have the right to terminate the Contract. The Contractor shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the supplies or services delivered under the Contract. Such reimbursement shall not include loss of profit, loss of use of money, or administrative or overhead costs. The reimbursement amount may be paid from any appropriations available for that purpose.

## **27. Continuation of Performance Through Termination**

The Contractor shall continue to perform, in accordance with the requirements of Agreement, up to the date of termination, as directed in the termination notice.

## **28. Stop Work Order**

The Township may at any time, by written order to the Contractor, require the Contractor to stop all or any part of the work called for by the Agreement for a period of up to ninety (90) days after the order is delivered to the Contractor, and for any further period to which the parties may agree. The order shall be specifically identified as the Stop Work Order issued under this provision. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incidence of costs allocable to the work covered by the order during the period of work stoppage. If a Stop Work Order issued under this provision is cancelled or the period of the order or any extension expires, the Contractor shall resume work. The Township shall make an equitable adjustment in the delivery schedule or Agreement price, or both, and the Agreement shall be amended in writing accordingly.

## **29. Assignability and Subcontracting**

- a. Subject to the terms and conditions in this paragraph, this Contract shall be binding upon all parties and their respective successors and assigns.
- b. The Contractor shall not subcontract with any person or entity to perform all or any part of the work to be performed under this Contract without the prior written consent of the Township, which may be withheld at the sole and absolute discretion of the Township.
- c. The Contractor may not assign, in whole or in part, this Contract or its rights, duties, obligations, or responsibilities hereunder without the prior written consent of the Township, which consent may be withheld at the sole and absolute discretion of the Township.
- d. Notwithstanding the foregoing, the Contractor may, without the Consent of the Township, assign its rights to payment to be received under the Contract, provided that the Contractor provides written notice of such assignment to the Township together with a written acknowledgement from the assignee that any such payments are subject to all of the terms and conditions of this Contract.
- e. For the purposes of this Contract, the term “assign” shall include, but shall not be limited to, the sale, gift, assignment, pledge, or other transfer of any ownership interest in the Contractor provided, however, that the term shall not apply to the sale or other transfer of stock of a publicly traded company.
- f. Any assignment consented to by the Township shall be evidence by a written assignment agreement executed by the Contractor and its assignee in which the assignee agrees to be legally bound by all of the terms and conditions of the Contract and to assume the duties, obligations, and responsibilities being assigned.
- g. A change of name by the Contractor, following, which the Contractor’s federal identification number remains unchanged, shall not be considered to be an assignment, hereunder, The Contractor shall give the Township written notice of any such change of name.

## **30. Other Contractors**

The Township may undertake or award other Contracts for additional or related work, and the Contractor shall fully cooperate with other Contractors and Township employees and coordinate its work with such additional work as may be required. The Contractor shall not commit or permit any act that will interfere with the performance of work by any other Contractor or by Township employees. This paragraph shall be included in the Contracts of all Contractors with which this Contractor will be required to cooperate. The Township shall equitably enforce this paragraph as to all Contractors to prevent the imposition of unreasonable burdens on any Contractor.

### **31. Contractor Integrity Provisions**

It is essential that those who seek to Contract with the Township observe high standards of honesty and integrity. They must conduct themselves in a manner that fosters public confidence in the integrity of the Township contracting and procurement process. Contractor shall maintain the highest standards of honesty and integrity as required by Pennsylvania laws.

### **32. Contractor Responsibility Provisions**

For the purpose of these provisions, the term Contractor is defined as any person, including, but not limited to, a proposer, loan recipient, grantee or lessor, who has furnished or performed or seeks to furnish or perform, goods, supplies, services, leased space, construction, or other activity, under a Contract, grant, lease, purchase order or reimbursement agreement with the Township. The term Contractor includes a permittee, licensee, or any agency, political subdivision, instrumentality, public authority, or other public entity in the Township.

- a. The Contractor certifies in writing, for itself and its Subcontractors required to be disclosed or approved by the Township, that as of the date of its execution of this Contract, that neither the Contractor, nor any such Subcontractors, are under suspension or debarment by the Commonwealth or any governmental entity, instrumentality, or authority, and, if the Contractor cannot so certify, then it agrees to submit, along with its Contract, a written explanation of why such certification cannot be made.
- b. The Contractor also certifies, in writing, that as of the date of its execution of this Contract it has no tax liabilities or other Township obligations or has filed a timely administrative or judicial appeal if such liabilities or obligations exist or is subject to a duly approved deferred payment plan if such liabilities exist.
- c. The Contractor's obligations pursuant to these provisions are ongoing from and after the effective date of the Contract through the termination thereof. Accordingly, the Contractor shall have an obligation to inform the Township if, at any time during the term of the Contract, it becomes delinquent in the payment of taxes, or Township obligations, or if it or, to the best knowledge of the Contractor, 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.
- d. The failure of the Contractor to notify the Township of its suspension or debarment by the Commonwealth, any other state, or Federal government shall constitute an event of default of the Contract with the Township.
- e. The Contractor agrees to reimburse the Township for the reasonable cost of investigation incurred for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and Township that results in the suspension or debarment of the Contractor. 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 Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor's suspension or debarment.
- f. The Contractor may obtain a current list of suspended and debarred Commonwealth Contractors by searching the Internet at <http://www.dgs.state.pa.us/>.

### **33. Hazardous Substances**

The Contractor shall provide information to the Township about the identity of hazards and hazardous substances supplied or used by the Contractor in the performance the Contract. The

Contractor must comply with Act 159 of October 5, 1984, known as the “Worker and Community Right to Know Act” (the “Act”) and the regulations promulgated pursuant there to 34 Pa. Code Section 301.1-323.6.

a. **Labeling**

The Contractor shall ensure that each individual product (as well as the carton, container or package in which the product is shipped) of any of the following substances (as defined by the Act and the regulations) supplied by the Contractor is clearly labeled, tagged, or marked with the information listed in subparagraphs (1) through (4).

i. Hazardous substances:

1. The chemical name or common name,
2. A hazard warning, and
3. The name, address, and telephone number of the manufacturer.

ii. Hazardous mixtures:

1. The common name, but if none exists, then the trade name,
2. The chemical or common name of special hazardous substances comprising .01% or more of the mixture,
3. The chemical or common name of hazardous substances consisting of 1.0% or more of the mixture,
4. A hazard warning, and
5. The name, address, and telephone number of the manufacturer.

iii. Single chemicals:

1. The chemical name or the common name,
2. A hazard warning, if appropriate, and
3. The name, address, and telephone number of the manufacturer.

iv. Chemical Mixtures:

1. The common name, but if none exists, then the trade name,
2. A hazard warning, if appropriate,
3. The name, address, and telephone number of the manufacturer, and
4. The chemical name or common name of either the top five substances by volume or those substances consisting of 5.0% or more of the mixture.

A common name or trade name may be used only if the use of the name more easily or readily identifies the true nature of the hazardous substance, hazardous mixture, single chemical, or mixture involved.

Container labels shall provide a warning as to the specific nature of the hazard arising from the substance in the container.

The hazard warning shall be given in conformity with one of the nationally recognized and accepted systems of providing warnings, and hazard warnings shall be consistent with one or more of the recognized systems throughout the workplace. Examples are:

NFPA 704, Identification of the Fire Hazards of Materials.

National Paint and Coatings Association: Hazardous Materials Identification System.

American Society for Testing and Materials, Safety Alert Pictorial Chart.

American National Standard Institute, Inc., for the Precautionary Labeling of Hazardous Industrial Chemicals

Labels must be legible and prominently affixed to and displayed on the product and the carton, container, or package so that employees can easily identify the substance or mixture present therein.

**b. Material Safety Data Sheet**

The Contractor shall provide Material Safety Data Sheets (MSDS) with the information required by the Act and the regulations for each hazardous substance or hazardous mixture. The Township must be provided an appropriate MSDS with the initial shipment and with the first shipment after an MSDS is updated or product changed. For any other chemical, the Contractor shall provide an appropriate MSDS, if the manufacturer, importer, or supplier produces or possesses the MSDS. The Contractor shall also notify the Township when a substance or mixture is subject to the provisions of the Act. Material Safety Data Sheets may be attached to the carton, container, or package mailed to the Township at the time of shipment.

**34. Covenant Against Contingent Fees**

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the Township shall have the right to terminate the Contract without liability or in its discretion to deduct from the Contract price or consideration or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

**35. Compliance with Law**

- a. The Contractor is responsible to procure and pay for all permits, licenses, and approvals necessary for the execution of its Contract. Contractor shall comply with all applicable laws, ordinances, rules, orders, and regulations relating to the performance of the Contract, the protection of adjacent properties, and the maintenance and protection of traffic, including adherence to conditions of permits or other approvals issued.
- b. This Contract shall be governed by, interpreted, and enforced in accordance with the laws of the Commonwealth of Pennsylvania (without regard to any conflict of law provisions) and the decision of the Pennsylvania courts. The Contractor consents to the jurisdiction of the Court of Common Pleas of Centre County or the Federal courts sitting in the Middle District of Pennsylvania, waiving any claim or defense that such forum is not convenient or proper. The Contractor agrees that any such court shall have in personam jurisdiction over it, and consents to service of process in any manner authorized by Pennsylvania law.
- c. Contractor assumes responsibility under the Immigration Control and Reform Act of 1986 for verification of identity and employment eligibility in connection with Contractor's own agent/servants, workers, and employees.

**36. Integration**

This Contract, including the RFP, the Contractor's response, and all referenced documents herein, constitutes the entire agreement between the parties. No agent, representative, employee, or officer of either the Township or the Contractor has authority to make, or has made, any

statement, agreement, or representation, oral or written, in connection with the Contract, which in any way can be deemed to modify, add to or detract from, or otherwise change or alter its terms and conditions. No negotiations between the parties, nor any custom or usage, shall be permitted to modify or contradict any of the terms and conditions in the Contract. No modifications, alterations, changes, or waiver to the Contract or any of its terms shall be valid or binding unless accomplished by a written amendment signed by both parties.

### **37. Order of Precedence**

In the event there is a conflict among the documents comprising this Contract, the Township and the Contractor agree on the following order of precedence: the Contract, the RFP, and the Contractor's response to the FRP.

### **38. Controlling Terms and Conditions**

The terms and conditions of this Contract shall be the exclusive terms of agreement between the Contractor and the Township. All quotations requested and received from the Contractor are for obtaining firm pricing only. Other terms and conditions or additional terms and conditions included or referenced in the Contractor's quotations, invoices, business forms, or other documentation shall not become part of the parties' agreement and shall be disregarded by the parties, unenforceable by the Contractor and not binding on the Township.

### **39. Changes**

The Township reserves the right to make changes at any time during the term of the Contract or any renewals or extensions thereof:

- a. To increase or decrease the quantities resulting from variations between any estimated quantities in the Contract and actual quantities;
- b. To make changes to the services within the scope of the Contract;
- c. To notify the Contractor that the Township is exercising any Contract renewal or extension option; or
- d. To modify the time of performance that does not alter the scope of the Contract to extend the completion date beyond the Expiration Date of the Contract or any renewals thereof.

The Township's manager must approve all Change Orders in writing. The Township shall make any such change by notifying the Contractor in writing. The change shall be effective as the date of the change, unless the notification of change specified a later effective date. Such increases, decreases, changes, or modifications will not invalidate the Contractor, nor, if performance security is being furnished in conjunction with the Contract, release the security obligation. The Contractor agrees to provide the service in accordance with the change order. No payment will be allowed for extra work performed by the Contractor unless so directed in writing by the Township.

### **40. Background Checks**

- a. The Contractor must at its expense, arrange for a background check for each of its employees, as well as the employees of any of its Subcontractors who will have access to Township facilities, either through on-site access or through remote access. Background checks must be conducted prior to the Contract Effective Date and initial access, and on an annual basis thereafter if the Contract exceeds one (1) year.
- b. Before the Township will permit access to the Contractor, the Contractor must provide written confirmation that the background checks have been conducted. If, at any time, it is discovered that a Contractor employee or Subcontractor has a criminal record that

includes a felony or misdemeanor involving terroristic behavior, violence, use of a lethal weapon, or breach of trust/fiduciary responsibility that raises concerns about building, system or personal security or is otherwise job-related, the Contractor shall not assign that employee to any Township facilities, shall remove any access privileges already given to the employee and shall not permit that employee remote access unless the Township consents to the access, in writing, prior to the access. The Township may withhold its consent in its sole discretion. Failure of the Contractor to comply with the terms of this Section on more than one occasion or Contractor's failure to appropriately address any single failure to the satisfaction of the Township may result in the Contractor being deemed in default of its Contract.

- c. Contractor must ensure individuals directly associated with this project do not have a criminal record including, but not limited to, onsite staff associated with the Project.

#### **41. Confidentiality**

- a. **General Terms.**

The Contractor agrees to protect the confidentiality of the Township's confidential information. The Township agrees to protect the confidentiality of the Contractor's confidential information. In order for information to be deemed confidential, the party claiming confidentiality must designate the information as "confidential" in such a way as to give notice to the other party (notice may be communicated by describing the information, and the specifications around its use or disclosure, in the Scope of Work). Neither party may assert that information owned by the other party is such party's confidential information. The parties agree that such confidential information shall not be copied, in whole or in part, or used or disclosed except when essential for authorized activities under this Contract, and in the case of disclosure, where the recipient of the confidential information has agreed not be bound by confidentiality requirements no less restrictive than those set forth herein. The party making the copy with any notices appearing in the original shall mark each copy of such confidential information. Both parties agree that a material breach of these requirements may, after failure to cure within the time specified in the Contract, and at the discretion of the non-breaching part, result in termination for default pursuant to the default provision of this Contract, in addition to other remedies available to the non-breaching party.

- b. **Exempt Information**

Insofar as information is not otherwise protected by law or regulation, the obligations stated in this Section do not apply to information:

- i. already known to the recipient at the time of disclosure other than through the Contractual relationship;
- ii. independently generated by the recipient and not derived by the information supplied by the disclosing party;
- iii. known or available to the public, except where such knowledge or availability is the result of unauthorized disclosure by the recipient of the proprietary information;
- iv. disclosed to the recipient without a similar restriction by a third party who has the right to make such disclosure; or
- v. required to be disclosed by law, regulation, court order, or other legal process.

There shall be no restriction with respect to the use or disclosure of any ideas, concepts,



know-how, or data processing techniques developed alone or jointly with the Township in connection with services provided to the Township under this Contract.

**c. Confidential Information**

The Township is not requesting, and does not require, confidential proprietary information or trade secrets to be included as part of the Proposal submission in order to evaluate Proposals submitted in response to this RFP. Accordingly, except as provided herein, Proposers should not label Proposal submissions as confidential or proprietary or trade secret protected. Any Proposer who determines that it must divulge such information as part of its Proposal must complete and submit the written statement described in Section VIII Subsection (e) below and must additionally provide a redacted version of its Proposal, which removes only the confidential proprietary information and trade secrets, for required public disclosure purposes.

**d. Township Use**

All material submitted with the Proposal shall be considered the property of the Township and may be returned only at the Administrator's option. The Township has the right to use any or all ideas not protected by intellectual property rights that are presented in any Proposal regardless of whether the Proposal becomes part of a Contract. Notwithstanding any Proposal copyright designations contained on Proposals, the Township shall have the right to make copies and distribute Proposals internally and to comply with public record or other disclosure requirements under the provisions of any Commonwealth or United States statute or regulation, or rule of order in any court of competent jurisdiction.

**e. Public Disclosure**

- i. After the award of a Contract pursuant to this RFP, all Proposal submissions are subject to disclosure in response to a request for public records made under the Pennsylvania Right-to-Know Law, 65 P.S. §67.101, et. Seq. The Township will make available for view the Proposals and associated documents by appointment, at the Commissioners' Office. Requests for photocopies of public records must be made to the Township manager and will be provided to the requestor for a nominal per page fee.
- ii. If a proposal submission contains confidential proprietary information or trade secrets, a signed written statement to this effect must be provided with the submission in accordance with 65 P.S. §67.707(b) for the information to be considered exempt under 65 P.S. § 67.708(b)(11) from public records requests. If financial capability information is submitted in response to Part III of this RFP such financial capability information is exempt from public records disclosure under 65 P.S. § 67.708(b)(26).
- iii. All Proposals received become the property of the Township.

**42. Right to Know Law Provisions**

- a. Contractor understands that the Agreement and records related to or arising out of the Agreement are subject to requests made pursuant to the Pennsylvania Right-to-Know Law, 65 P.S. §§67.101-3104, (RTKL). For the purpose of these provisions, the term "the Township" shall refer to the Township of Ferguson and all departments and agencies thereto.
- b. If the Township needs Contractor's assistance in any matter arising out of the RTKL

related to this Agreement, it shall notify Contractor using the legal contact information provided in this Agreement. Contractor, at any time, may designate a different contact for such purpose upon reasonable prior written notice to the Township.

- c. Upon written notification from the Township that it requires Contractor's assistance in responding to a request under the RTKL for information related to this Agreement may be in Contractor's possession, constituting, or alleged to constitute, a public record in accordance with the RTKL ("Requested Information"), Contractor shall:
  - i. Provide the Township, within ten (10) calendar days after receipt of written notification, access to, and copies of, any document or information in Contractor's possession arising out of this Agreement that the Township reasonably believes is Requested Information and may be a public record under the RTKL; and
  - ii. Provide such other assistance as the Township may reasonably request, in order to comply with the RTKL with respect to this Agreement.
- d. If Contractor considers the requested information to include a request for Trade Secret or Confidential Proprietary Information, as those terms defined by the RTKL or other information that Contractor considers exempt from production under the RTKL, Contractor must notify the Township and provide, within seven (7) calendar days of receiving written notification of the RTKL request, a written statement signed by a representative of Contractor explaining why the requested material is exempt from public disclosure under the RTKL.
- e. The Township will rely upon the written statement from Contractor in denying a RTKL request for the requested information unless the Township determines that the requested information is clearly not protected from disclosure under the RTKL. Should the Township determine the requested information is clearly not exempt from disclosure, Contractor shall provide the requested information within five (5) business days of receipt of written notification of the Township's determination.
- f. If Contractor fails to provide the requested information within the time period required by these provisions, Contractor shall indemnify and hold the Township harmless for any damages, penalties, costs, detriment, or harm that the Township may incur as a result of Contractor's failure, including any statutory damages assessed against the Township.
- g. The Township will reimburse Contractor 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 to the extent costs are reimbursed by the requestor pursuant to such schedule.
- h. Contractor may file a legal challenge to any Township decision to release record to the public with the Office of Open Records, or in the Pennsylvania Courts, however, Contractor shall indemnify the Township for any legal expenses incurred by the Township as a result of such a challenge and shall hold the Township harmless for any damages, penalties, costs, detriment, or harm that the Township may incur as a result of Contractor's failure, including any statutory damages assessed against the Township, regardless of the outcome of such legal challenge. As between the Parties, Contractor agrees to waive all rights or remedies that may be available to it as a result of the Township's disclosure of requested information pursuant to the RTKL.
- i. Contractor's duties relating to the RTKL are continuing duties that survive the expiration

of this Agreement and shall continue as long as Contractor has requested information in its possession.

#### **43. Federal Occupational Safety and Health Act of 1970**

The successful Contractor must comply with all regulations of the Federal Occupational Safety and Health Act of 1970 (“OSHA”) to assure safe and healthy work conditions. If requested by Township, Contractor shall provide evidence of such compliance including, but not limited to, information about employee training programs related to the same.

#### **44. Suspension or Debarment**

The Township may by written notice to the Contractor immediately terminate the Agreement if the Township determines that the Contractor has been debarred, suspended, or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a Subcontractor or Contractor of any public procurement unit or other governmental body.

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

Federal law and the policies of the Township prohibit sexual harassment of Township employees. Sexual harassment includes any unwelcome sexual advance toward a Township employee, any request to a sexual favor from a Township employee, or any other verbal or physical conduct of a sexual nature that is so pervasive as to create a hostile or offensive working environment. Contractor, Subcontractors and suppliers for this project are required to exercise control over their employees so as to prohibit acts of sexual harassment of Township employees.

The Contractor agrees that neither the Contractor nor any Subcontractor nor any person on their behalf shall in any manner discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or express, or in violation of the PHRA and applicable Federal laws, against or intimidate any employee involved in the manufacture of supplies, the performance of work, or any other activity required under the Contract. The Township may cancel or terminate the Contract and all money due or to become due under the Contract may be forfeited for a violation of the terms and conditions of this Nondiscrimination/Sexual Harassment Clause.

#### **46. Americans with Disabilities Act**

Pursuant to Federal regulations promulgated under the authority of The Americans with Disabilities Act, 28 C.F.R. Section 35.101 et seq., the Contractor understands and agrees that it shall not cause any individual with a disability to be excluded from participation in this Contract or from activities provided for under this Contract on the basis of the disability. As a condition of accepting this Contract, the Contractor agrees to comply with the “General Prohibitions Against Discrimination” 28 C.R.F. Section 35.130, and all other regulations promulgated under Title II of The Americans with Disabilities Act, which are applicable to all benefits, services, programs, and activities provide by the Township through Contracts with outside Contractors.

The Contractor shall be responsible for and agree to indemnify and hold harmless the Township from all losses, damages, expenses, claims, demands, suits and actions brought by any party against the Township as a result of the Contractor’s failure to comply with the provisions of this section.

#### **47. Drug Free Workplace**

The Contractor agrees that in the performance of the Contract, neither the Contractor nor any employee of the Contractor nor subcontractor shall engage in the unlawful manufacture, distribution, possession, or use of a controlled substance in conducting any activity covered in the Contract. The Township reserve the right to request a copy of the Contractor’s Drug Free

Workplace Policy. The Contractor further agrees to insert a provision similar to this statement in all subcontracts for services required.

Should the Contractor or any subcontractor not have an adopted drug free workplace policy, they may adopt the provisions of the Township's policy, and posting the Township's policy in lieu of their company policy in accordance with the specifications above.

#### **48. Gratuities**

The Township may, by written notice to the Contractor, cancel the agreement if it is found by the Township that gratuities, in the form of entertainment, gifts or otherwise were offered or given by the Contractor or any agent or representative of the Contractor, to any officer or employee of the Township with a view toward securing an agreement or securing favorable treatment with respect to the performing of such agreement.

#### **49. Liens**

Each Contractor shall keep the Township free and clear from all liens asserted by any person or entity for any reason arising out of the furnishing of services or materials by or to the Contractor.

#### **50. News Releases**

Contractors shall not issue news releases, internet postings, advertisements, or any other public communications pertaining to this Project without prior written approval of the Township, and then only in coordination with the Township.

#### **51. Defined Terms**

- a. **Addenda** – written alteration issued prior to the opening of Proposals, which clarify, correct, or change the Proposal Requirements or proposed Contract Documents.
- b. **Agreement** – written contract duly executed and legally binding between the Township and Contractor covering the Work, Product, or Service.
- c. **Change Order** – document approved and acknowledged by the Township, which authorizes an addition, deletion, or revision to the Contract, issued on or after the Effective Date.
- d. **Contract** – the entire legally binding agreement between the Township and Contractor concerning the Work, Product or Service.
- e. **Contract Documents** – the Contract, the RFP and the Contractor's Proposal.
- f. **Contract Price** – moneys payable to the Contractor for completion of the Work or Service or provision of a Product in accordance with the Contract.
- g. **Contractor** – any individual or entity that enters into the Contract with the Township.
- h. **Debarment** – action taken by the Commonwealth to remove a person or entity from consideration for an award of a contract or subcontract for a specified period of time.
- i. **Effective Date** – date fixed by the Township, which is on or after the date the Contract, has been fully executed by the Contractor and the Township and all approvals required by the Township's contracting procedures have been obtained. The Contract shall not be a legal binding contract until after the Effective Date is affixed and the Contract is sent to the Contractor.
- j. **Expiration Date** – The date on which the Contract expires. The last date when work to be billed under the Contract can be performed.

- k. **Extension of Contract** – Continuation of an existing contract, with the same supplier or contractor, which is due to expire and does not provide for an option to renew.
- l. **Gratuity** – 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 contracts of any kind.
- m. **Holidays** – those days of the calendar year specified as “Holidays” by the Township.
- n. **Liens** – charges, security interests, or encumbrances upon Project funds, real property, or personal property.
- o. **Notice of Award** – written notice by the Township to the successful proposer stating that upon timely compliance with the conditions listed there in, the Township will sign and deliver the Contract.
- p. **Notice to Proceed** – written notice by the Township to the Contractor fixing the date on which the Contract will commence and on which the Contractor shall start to perform the Work or provide the service or product under the Contract.
- q. **Proposal** – a firm unconditional offer or proposal setting forth the price for Work, Product, or Service to be performed.
- r. **Proposer** – Individual or entity who submits a Proposal directly to the Township.
- s. **Proposal Documents** – requirements and proposed Contract.
- t. **Proposal Requirements** – set forth in the RFP and Instructions to Proposers.
- u. **Project** – the total construction of which the Work to be performed under the Contract may be the whole or a part.
- v. **Request for Proposals (RFP)** – All documents, including those either attached or incorporated by reference, used for soliciting Proposals.
- w. **Sealed Proposal** – A Proposal whose contents are not disclosed until the Proposal opening time. Proposals are submitted in sealed envelopes to meet this requirement.
- x. **Services** – Furnishing of labor, time, or effort by a contractor not involving the delivery of a specific end product other than drawings, specifications, or reports, which are merely incidental to the required performance.
- y. **Specifications** – Description of the physical or functional characteristics or nature of a material, service, or construction item. It may include a description of any requirement for inspecting, testing, or preparing a material, service, or construction item for delivery.
- z. **Subcontractor** – an individual, business, university, governmental entity, or nonprofit organization contracting to perform part, or all of another entity’s Contract.
- aa. **Supplier** – manufacturer, fabricator, supplier, distributor, or Contractor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or any Subcontractor. May also be referred to as a Contractor.
- bb. **Supplies** – Any property including, but not limited to, equipment, materials, printing, insurance, and leases of installment purchases of tangible or intangible personal property. The term does not include real property or leases of real property.
- cc. **Unit Price Work** – Work to be paid for on the basis of unit prices.

dd. **Work** – entire construction or the various separately identifiable parts thereof required to be provided under the Contract. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract.