

COUNTY OF BERKS

Request for Proposals #14-12-MB

Meals-On-Wheels Delivery Service for Berks County Area Agency on Aging

Issued on Thursday, March 27, 2014

Pre-Proposal Conference

Friday, April 4, 2014, 11:00 AM

Refer to Section 1, paragraph 1.2 for details

Submittal Deadline:

Friday, April 25, 2014, 2:00 P.M., Local Prevailing Time

Refer to Section 5, paragraph 5.1 for submittal instructions.

County's Point-of-Contact for this RFP

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19601**

Website: www.countyofberks.com

This Request for Proposals (RFP) package consists of 47 pages including this cover page and the Table of Contents page. If the RFP package you received is missing any pages, contact the County of Berks Purchasing Department by telephone at (610) 478-6168.

TABLE OF CONTENTS

SECTIONS

One	Introduction and Instructions
Two	Method of Vendor Selection
Three	Standard Contract Information
Four	Specifications
Five	Proposal Format and Content
Six	Evaluation Criteria and Process

ATTACHMENTS

Attachment A	Proposed Form of Agreement and General Conditions
Attachment B	Non-Collusion Affidavit Form

SECTION ONE - Introduction and Instruction

1.1 Purpose of this Request for Proposals (“RFP”)

The County of Berks (hereinafter “County”), a municipal corporation with its principal office in Reading, Pennsylvania is soliciting competitive sealed proposals (a “Proposal”) from professional firms (each a “Proposer”) that are interested in and capable of providing meals-on-wheels delivery service as further detailed in the specifications of this RFP (inclusive of all tasks, deliverables and products required herein, “Services”). If the County elects to make an award to a Proposer in connection with the Services, the Proposed Form of Agreement and General Conditions included as Attachment A to this RFP as well as all documents incorporated therein shall form the entire agreement between the County and the successful Proposer (“Agreement”).

1.2 Pre-Proposal Conference

A pre-proposal conference will be held in the Berks County Area Agency On Aging Conference Room on Friday, April 4, 2014, beginning promptly at 11:00 AM. The Berks County Area Agency On Aging Conference Room is located on the 8th floor of the Berks County Services Center at 633 Court Street, Reading, Pennsylvania, 19601. The purpose of this meeting is to conduct a question and answer session regarding this RFP package to maximize the proposer’s understanding as to what is required. Should questions asked and answers given at the pre-proposal conference potentially alter the intent or scope of the RFP, the County will issue an addendum to the RFP to formally modify the RFP. This RFP cannot be modified by, and Proposers shall not rely on, comments made during the pre-proposal conference except as set forth in an addendum. All Proposers who have received the RFP package from the County will receive notification of the issuance of the addendum.

1.3 Due / Opening Dates

The deadline for the County’s receipt of Proposals is 2:00 P.M., local prevailing time, Friday, April 25, 2014 (“Proposal Deadline”). The County Controller’s time clock shall be considered the official time. **Proposals received after the Proposal Deadline will not be considered.** Refer to Section 5, paragraph 5.1 for specific Proposal submittal instructions.

Proposals will be opened publicly at 2:15 P.M., local prevailing time, in the Berks County Area Agency On Aging Conference Room, 8th Floor, County Services Center the same day, Friday, April 25, 2014. *Only the name of each Proposer will be read publicly. All other information contained in each Proposal shall be treated as confidential so as to avoid disclosure of contents prejudicial to competing Proposers.*

1.4 Amendments to Submitted, Unopened Proposals

Amendments to or withdrawals of submitted, unopened Proposals will only be allowed, if requests are received by the County prior to the Proposal Deadline. No amendments or withdrawals will be accepted after the Proposal Deadline unless they are in response to the County’s request.

1.5 Required Review of RFP Package

Proposers shall carefully review this RFP for defects, inconsistencies or ambiguities. Comments concerning defects, inconsistencies or ambiguities must be made in writing and received by the RFP’s point-of-contact (see cover page), at least seven (7) business days prior to the Proposal Deadline. This will allow for the issuance of any necessary addenda.

All questions must be in writing and directed to the RFP's point-of-contact. This RFP cannot be modified except by a written addenda issued by the County. The decision on whether an addendum is required shall be made by the County in its sole discretion.

If an addendum is issued, it will be provided to all parties who were provided a copy of the RFP by the County's Purchasing Department.

1.6 Receipt of RFP Package

The County's Purchasing Department is the sole authority to provide the RFP package to interested companies or individuals. Proposers who are working from an RFP package obtained from any other source, may be working from an incomplete set of documents. The County assumes no responsibility for an error, omission, or misinterpretation resulting from a Proposer's use of an incomplete RFP package.

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

Proposers who have received the RFP package by downloading it from the County's website, and have not provided their company's information to the County's Purchasing Department are responsible for checking the website to obtain any addenda issued for the RFP.

1.7 Preparation Costs

The County will not be responsible for any costs associated with the preparation, submittal, or presentation of any Proposal. If the County rejects a Proposal or does not award an Agreement to any particular Proposer, the Proposer agrees that it will not seek to recover lost or expected profits, Proposal preparation costs or claims for unjust enrichment.

1.8 Public Information

All Proposals and other material submitted become the property of the County and may be returned only at the County's option. Information contained in the Proposals will not be disclosed during the evaluation process. Under Pennsylvania's "Right to Know" laws (65 P.S. §§ 67.101-67.3104), public records are required to be open to reasonable inspection. All Proposal information, including detailed price and cost information, will be held in confidence during the evaluation process and prior to the time the Agreement is executed by the County. Thereafter, the Proposals will become public information. The County will make available for viewing the Proposals and associated documents by appointment, at the County's Purchasing Department. Requests for photocopies of public records must be made to the Chief Clerk and will be provided to the requestor for a nominal per page fee.

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

1.9 Reservation of Rights

The County reserves and may, at its sole discretion, exercise the following rights with respect to this RFP and all Proposals submitted pursuant to this RFP:

- a. To reject all Proposals and re-issue the RFP at any time prior to execution of the Agreement; to require, in any RFP for similar products and/or services that may be issued subsequent to this RFP, terms and conditions that are substantially different from the terms and conditions set forth in this RFP; or to cancel this RFP with or without issuing another RFP.
- b. To reject any Proposal if, in the County's sole discretion, the Proposal is incomplete, the Proposal is not responsive to the requirements of this RFP, the Proposer does not meet the qualification requirements set forth in Section 5 herein, or it is otherwise in the best interest of the County to reject the Proposal.
- c. To supplement, amend, substitute, or otherwise modify this RFP at any time prior to the execution of the Agreement.
- d. To accept or reject any or all of the items in any Proposal and award the Agreement for the whole or only a part of any Proposal if the County determines, in its sole discretion, that it is in the County's best interest to do so.
- e. To reject the Proposal of any Proposer that, in the County's sole judgment, has been delinquent or unfaithful in the performance of any contract with the County, is financially or technically incapable, or is otherwise not a responsible Proposer.
- f. To waive any informality, defect, non-responsiveness, and/or deviation from this RFP that is not, in the County's sole judgment, material to the Proposal.
- g. To permit or reject, at the County's sole discretion, amendments (including information inadvertently omitted), modifications, alterations, and/or corrections to Proposals by one or more of the Proposers following Proposal submission.
- h. To request that one or more of the Proposers modify their Proposals or provide additional information.
- i. To request additional or clarifying information from any Proposer at any time, including information inadvertently omitted by a Proposer.
- j. To require that Proposers appear for interviews and/or presentations of their Proposals at County offices.
- k. To inspect programs similar in type and scope to the work sought in this RFP and/or to inspect the Proposer's facilities to be used in furnishing goods or services required by the RFP.
- l. To conduct such investigations as the County considers appropriate with respect to the qualifications of any Proposer and with respect to the information contained in any Proposal.

1.10 RFP Timeline

Following is the County's estimated timeline for the RFP process:

Issue RFP	Thursday, March 27, 2014
Pre-Proposal Conference	Friday, April 4, 2014
Cutoff for Submission of Written Questions	Thursday, April 10, 2014
Deadline for Submission of Proposals	Friday, April 25, 2014
Opening of Submitted Proposals	Friday, April 25, 2014
County's Review of Proposals	April 25 – May 9, 2014
Notify Short List Firms	Wednesday, May 16, 2014
Interview Short List Firms	Thursday, May 29, 2014

SECTION 2 – Method of Vendor Selection

2.1 Interviews with Short List Firms

The County may, in its sole discretion, elect to conduct interviews with one or more Proposers. The purpose of an interview will be to clarify and assure the Proposer's full understanding of, and responsiveness to, the solicitation requirements. Revisions to a Proposal may be permitted after submission and before the County's execution of the Agreement for the purpose of obtaining best and final offers with the County's approval. The individual identified in the Proposal as the Program Manager, must be in attendance at the interview.

2.2 Right to Negotiate

After the County's completion of the Proposal evaluation process, including any interviews held with Proposers during the evaluation process, the County may elect to initiate negotiations with one or more Proposers for modification of any component of the Agreement, including, without limitation, the scope of services, price or schedule for completion. The option of whether or not to initiate or terminate negotiations rests solely with the County, which may be exercised at any time.

2.3 Award of Contract

If the County elects to award the Agreement pursuant to this RFP, it intends to award the Agreement to the responsible and responsive Proposer whose Proposal is determined to provide the best overall value to the County. The County intends to award a three-year Agreement term with the option of extending the term of the Agreement for two additional one-year periods upon the mutual agreement of the parties.

At the option of the County and the agreement of the Proposer, the agreement may be extended for an additional twelve (12) months; at the option of the County and with the agreement of the Proposer, the agreement may be extended for a second additional twelve (12) months. The cost per unit of service for any additional twelve (12) month period shall be negotiated between the County and the Proposer and agreed to no later than ninety (90) days before the end of the prior agreement term. Any increase in the cost per unit of service for any additional twelve (12) month period is limited to the percentage increase provided in the County's Regular Block Grant categorical allocation. Failure to agree on a guaranteed cost per unit of service provided for any additional twelve (12) months may require the County to re-solicit.

The County reserves the right, upon notice to the Proposer, to extend the term of the agreement for up to three (3) months upon the same terms and conditions. This will be utilized to prevent a lapse in agreement coverage and only for the time necessary, up to three (3) months, to enter into new Agreement and to ensure a smooth transition process for consumers.

This option provision shall be within the sole and exclusive discretion of the County to exercise and shall not obligate the County to extend the agreement.

Amounts of services to be purchased by County in any additional twelve (12) month period shall be dependent upon the availability of funds and participant demand.

SECTION 3 - Standard Contract Information

3.1 Standard Agreement Provisions

The Agreement resulting from the award of this RFP will be governed by the terms and conditions set forth in the Proposed Form of Agreement and General Conditions set forth in Attachment A, attached hereto and incorporated herein. Proposers must detail in their Proposal their reasons for objection to any part of RFP or Proposed Form of Agreement and General Conditions in their Technical Proposal. Hindrance of the award process due to the extent of a Proposer’s objection to the form or substance of the RFP or Proposed Form of Agreement and General Conditions may have a negative impact on the County’s assessment of that Proposal.

3.2 Agreement Content

The Agreement will incorporate this RFP, the Proposer’s Proposal, and any additional information deemed necessary as a result of the negotiations held with the successful Proposer(s).

3.3 Confidentiality of Protected Health Information:

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

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

SECTION 4 - Specifications

4.1 Program Summary

Vendor shall serve as an administrator for the Meals-on-Wheels Delivery service from specified senior centers. The current Senior Centers are listed below; however, these locations are subject to change:

Berks Encore- Fleetwood
109 W. Vine St.
Fleetwood, PA 19522

Berks Encore- Strausstown
44 East Ave.
Strausstown, PA 19559

Berks Encore- Wernersville
Brenner Building 5
Wernersville State Hospital
Wernersville, PA 19565

Berks Encore- Birdsboro
201 East Main St.
Birdsboro, PA 19508

Berks Encore- Mifflin
30 Liberty St.
Shillington, PA 19607

Berks Encore- Reading
40 North 9th St.
Reading, PA 19601

We currently average 14,913 meals delivered per month for the centers listed above.

The quantities identified herein were obtained utilizing historical data and provided for informational purposes. There are a variety of factors that may impact these figures, it shall be the responsibility of the Vendor to identify and ensure that these are accounted for within their respective proposal submissions.

4.2 Program Goals and Objectives

Deliver nutritious meals and a safety check to help keep seniors whose mobility is limited healthy, safe and living independently in their own homes.

4.3 Scope of Work

- 4.3.1 Standards and regulations for delivery of meals are set by Aging Program Directive #06-03-01.
- 4.3.2 Meals shall be delivered Monday through Friday at no charge to the Consumer.
- 4.3.3 Senior Center shall provide unitized meals packaged in hot and cold insulated containers which are to be used for transport by delivery staff. Insulated containers will be equipped with handles and secure closures and provide for the separation of hot, refrigerated, and frozen food items during delivery.
 - 4.3.3.1 The temperature of hot foods must at no time drop below 135°F from the point of preparation, through delivery and during meal service.
 - 4.3.3.2 The temperature of cold foods must remain below 41°F at all times.
 - 4.3.3.3 If frozen, food temperature must be -10°F to 0°F during transportation and delivery.
- 4.3.4 Containers for transporting individually packaged meals shall be cleaned and sanitized daily prior to delivery of meals.
- 4.3.5 Delivery personnel shall conduct and record weekly temperature checks for each meal delivery route to ensure that the first meal delivered as well as the last meal delivered both meet the standards for safe temperature. Records to be made available to AAA personnel upon request.
- 4.3.6 If, upon receipt at a meal site, food temperature checks reveal that hot foods have not maintained at 135°F or above and/or cold foods have not been maintained at 41°F or

- below, the affected foods shall not be served but be discarded for reasons of food safety and a replacement meal delivered the same day.
- 4.3.7 Paid and unpaid staff involved in food/meal delivery shall practice good personal hygiene, including but not limited to:
 - 4.3.7.1 washing, drying, and sanitizing hands before handling food,
 - 4.3.7.2 not coughing or sneezing over food or where food is prepared,
 - 4.3.7.3 wearing clean clothing,
 - 4.3.7.4 not smoking in the presence of food or food preparation areas,
 - 4.3.7.5 keeping nails short, clean, and absent of nail polish,
 - 4.3.7.6 covering up wounds completely with a waterproof bandage and disposable gloves that are changed regularly,
 - 4.3.7.7 securing long hair.
 - 4.3.7.8 thermometers shall also be sanitized after each use
 - 4.3.8 No person with any disease in communicable form shall work or volunteer, in any capacity with the transfer and/or delivery of meals.
 - 4.3.9 Delivery vehicles shall be cleaned, sanitized, and inspected weekly by the Senior Center Manager or designee.
 - 4.3.10 Animals are not permitted in vehicles during the delivery of meals.
 - 4.3.11 The use of tobacco is prohibited during the delivery of meals.
 - 4.3.12 All delivery personnel shall be equipped with an operational cell phone to notify the Senior Center of any unusual or emergency situations.
 - 4.3.13 During transportation, food and food utensils should be kept in covered containers so they are protected from contamination.
 - 4.3.14 Written and verbal instructions for proper handling of home delivered meals shall be provided to Consumers. For example: heating instructions or proper storage of the meal if it is not eaten right away.
 - 4.3.15 Delivery routes shall be established and route sheets provided to all paid and volunteer personnel involved in the delivery of meals.
 - 4.3.16 Delivery personnel must speak to and/or see the Consumer at each delivery and shall under no circumstances leave the meal at the door or with another person.
 - 4.3.17 Persons delivering the meals are responsible for reporting to their supervisors the following upon return to the Center:
 - 4.3.17.1 Each instance when Consumer is not at home.
 - 4.3.17.2. Consumer's request or possible need for additional services
 - 4.3.18 Persons delivering meals are responsible for reporting significant changes in the Consumer's situation/condition to the Senior Center Manager immediately from the delivery route. This includes but is not limited to physical, mental or environmental conditions such as changes in physical appearance or speech, being in a confused state, lack of basic utilities such as heat, electricity, and water.
 - 4.3.19 The Senior Center Manager is responsible for immediately relaying this information verbally to the Consumer's Care Manager and the Consumer's emergency contacts, with written documentation to follow no later than the following day. If the Consumer is not care managed the supervisor should make a referral to BCAA Information and Referral (610-478-6500) to arrange for an assessment.
 - 4.3.20 All meals shall be delivered to the Consumer's home before 1:00 P.M. unless an emergency such as extreme weather conditions arises. In case of an emergency, or a change in meal service (dinner or breakfast meals) the Consumer and the BCAA shall be notified the same day of the revised delivery time by the Vendor at 610-478-6500.
 - 4.3.21 Arrangements shall be made, to provide meals to homebound persons during emergency situations such as the unexpected closing of a center, delivery vehicle breakdown, or weather related emergencies.

- 4.3.22 The AAA shall be notified the same day by the Center Manager or the Meals On Wheels Coordinator if a meal is not delivered.
- 4.3.23 A monthly report shall be provided to BCAA no later than the 15th of the succeeding month that includes but may not be limited to:
 - 4.4.23.1 The number of meals delivered from each meal delivery site
 - 4.4.23.2 The number of meals attempted, but not delivered,
 - 4.4.23.3 Copies of the temperature logs
 - 4.4.23.4 The number of food shortages
 - 4.4.23.5 The number of complaints received from Consumer
- 4.3.24 Proposer will be expected to work cooperatively as a community partner in the County's effort to implement a unified system of care that maximizes all resources around an individual or family to meet their goals. Services should be delivered from a strengths-based, family centered perspective. The Proposer shall participate in trainings, meetings, forums, etc. offered about implementing the System of Care "Best Practice Guidelines" and fully cooperates in supporting a System of Care approach by participating in single plan of care meetings for individuals and families served through the Proposer.

4.4 Qualifications / Experience

a. Proposing Firm

The proposing firm shall at minimum:

- have three (3) years experience in Pennsylvania
- have demonstrated past performance related to the ability to meet schedules and deadlines
- have demonstrated past exceptional performance related to developing and implementing programming

It is important to note that "proposing firm" refers to the company that would enter into the Agreement with the County. To be considered, the proposing firm must meet or exceed the benchmarks set forth above on its own merit. The experience and qualifications of firms that the proposing firm will partner with in the performance of this program, cannot be used to bring a proposing firm's less than required experience and qualifications up to the benchmark. Also important to note is that the County is not interested in a joint venture program, but prefers to enter into the Agreement with a single entity.

Each proposing firm shall certify that it is not currently under suspension or debarment by the Commonwealth of Pennsylvania or federal government. If the proposing firm cannot so certify, then it shall submit a written explanation of why such certification cannot be made.

b. Program Team

The program manager shall at minimum:

- have three (3) years experience in Pennsylvania
- on past programs have demonstrated skills, technical knowledge, and administrative capability to serve all the requirements of the proposed program specifications
- possess certifications, licenses and proficiency in the application of requirements and guidelines as applicable.

The program team shall at minimum:

- have three (3) years experience in meals-on-wheels delivery service
- on past programs have demonstrated skills, technical knowledge, and administrative capability to serve all the requirements of the proposed program specifications

4.5 Program Timeline

The successful Proposer(s) will be required to begin the work by July 1, 2014 upon receipt of the County's issuance of the notice to proceed.

SECTION 5 - Proposal Format and Content

5.1 Submission of Proposal

Proposals shall be submitted with one (1) original and four (4) copies printed on 8½" x 11" paper, and one (1) word searchable electronic copy to: County of Berks, c/o County Controller, Berks County Services Center, 633 Court Street, 12th Floor, Reading, PA, 19601. The original Proposal shall be marked "original" and each copy of the Proposal must be a complete copy of the original including all attachments and appendixes.

Proposals shall be submitted in two (2) parts – a "Technical Proposal" and "Price Proposal". The Technical Proposal shall cover the technical aspects of the Services, but shall not include any mention of proposed fees or out-of-pocket expenses. The Price Proposal shall include all details as to the fees charged and out-of-pocket expenses to be billed for the comprehensive completion of Services. The Technical Proposal and the Price Proposal shall be submitted in separate sealed, opaque envelopes or containers with the words "Sealed Technical Proposal – RFP #14-12-MB" and "Sealed Price Proposal – RFP #14-12-MB" clearly printed on the outside of each package. Proposals received via facsimile will not be considered.

Each Proposal section enumerated in paragraph 5.1 must be clearly identified and tabbed in the submitted Proposal.

5.2 Proposal Format

The County discourages overly lengthy and costly proposals; however, Proposers should follow the format set out herein and provide all of the information requested. For a Proposal to be considered, Proposers must follow the instructions outlined in this RFP.

5.3 Transmittal Letter

Proposals shall include a brief letter which provides the company's name; address of the main office and any branch offices; telephone and fax number for each office; name, title, telephone number, fax number, and email address of the company's contact person for this program; a statement that the Proposal is in response to this RFP; and the signature, typed name, and title of an individual who has *actual authority** to commit the Proposer to the Proposal. The transmittal letter shall also include an acknowledgement of each RFP addendum received (if applicable), and a statement that the Price Proposal is valid for at minimum ninety (90) days from the Proposal opening date.

**Proposals by individuals must be signed personally, with name typed below signature, and witnessed. A complete address and trade name must be provided. Proposals by partnerships must include the typed names and business address of all partners and the trade name of the company. The Proposal must be signed by at least one general partner, whose signature must be*

witnessed. Proposals by corporations must include the typed name of the corporation, the State of incorporation, and the principal officer of the corporation. The Proposal must be signed by the President or Vice-President (or by an officer or agent duly authorized to bind the corporation to a contract, proof of whose corporate authority shall be attached), and attested by the Secretary, Assistant Secretary, or Treasurer of the corporation.

5.4 Understanding of the Services

Proposers must provide a comprehensive narrative statement that illustrates their understanding of the requirements of the Services, and illustrates how their methodology will serve to accomplish the work and meet the County's schedule. Proposers must describe how they will approach the Services; describe the methods and frequency of interface between your program team members and the County's program team members in performing the Services; and indicate how often the program manager and the program team members will be on site in the performance of Services.

5.5 Qualification Statement

Each Proposal shall include, at minimum, the following information about the company:

- a. The number of years the company has been in business.
- b. The number of years the company has provided meals-on-wheels delivery services.
- c. The type of organization of the company. (i.e. Corporation, Partnership, Sole Proprietorship).
- d. The names and titles of the company's principles.
- e. The company's most recent annual report or the company's most recent income statement, balance sheet, and statement of cash flow accompanied by an auditor's report attesting to the accuracy of these financial statements.

The following questions should be answered thoroughly as part of the Proposal:

- a. What is the company's main business focus?
- b. What are the strengths of the company and how will the County benefit from those strengths?

Each Proposal shall address the company's qualifications for the development and completion of the Services based on the following:

- a. List and describe the company's experience with county government meals-on-wheels delivery service programs as well as other government meals-on-wheels delivery service programs. For each listed program include: name and location of program; reference contact name and telephone number; estimated total program cost and actual total program cost; planned program completion date and actual program completion date; summary description of the program.
- b. Identify the program manager and submit this individual's credentials (work/program experience and education), evidencing the experience required in Section 4.4 herein. List the names and titles of your planned program team members and describe their individual levels of experience and expertise with this type of program, evidencing the experience required in Section 4.4 herein. Include an organizational chart showing the reporting structure of the team members.
- c. Describe the company's capacity to execute the Services within the proposed schedule. Describe the company's willingness and ability to commit personnel to meet the scope

and schedule of the Services. (Include a list of current programs and the anticipated completion dates of these programs.)

5.6 Conflict of Interest

Each Proposal shall include a conflict of interest statement indicating whether or not any principals in the company, their spouse, or their child is employed by the County of Berks, 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. Furthermore, Proposers shall complete the Non-Collusion Affidavit Form attached to this RFP as Attachment B and submit an executed copy with its Technical Proposal.

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

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

The County reserves the right to disqualify a Proposer or cancel an award of the Agreement if any interest disclosed from any source could either give the appearance of a conflict or cause speculation as to the objectivity of the program to be performed by the Proposer. The County's determination regarding any question of conflict of interest shall be final.

5.7 Subcontractors

Subcontractors may be used to perform portions of Services. If a Proposer intends to use subcontractors, the Proposer must identify in its Proposal the names of the subcontractors and the portions of Services the subcontractors will perform in its Proposal. Proposals must contain the following information concerning each prospective subcontractor:

- a. complete name of the subcontractor
- b. complete address of the subcontractor
- c. type of Services the subcontractor will be performing
- d. percentage of Services the subcontractor will be performing
- e. evidence that the subcontractor holds a valid Pennsylvania business license
- f. a written statement, signed by each proposed subcontractor, that clearly verifies that the subcontractor is committed to render the Services required.

A Proposer's failure to provide this information in its Proposal may cause the County to consider the Proposal non-responsive and reject the Proposal.

5.8 Insurance

Each Proposer must provide with its Proposal a sample certificate of insurance evidencing, at minimum, the insurance coverage types and levels set forth in the Proposed Form of Agreement and General Conditions.

5.9 Counter Terms

The Proposer shall specify any exceptions or objections taken to this RFP or the Proposed Form of Agreement and General Conditions, attached hereto as Attachment A, for the County to consider when evaluating the Proposal. Each provision the Proposer takes exception to shall be specifically identified (including a citation to the paragraph such provision is found) with the Proposer’s suggested modification. It is understood that the Proposer takes no exception to the provisions of the RFP and form of Agreement not specifically identified as an exception or objection in this section of its Proposal.

5.10 Program Schedule

Proposals shall include the Proposer’s planned program schedule including expected completion time periods for each task defined in Section 4 - Specifications, and an expected completion time period for the overall program.

5.11 Alternative Proposals

Proposers are encouraged to review the scope of Services created by the County and the various task requirements called for within the scope of the Specification. If the Proposer believes that there are alternate methods for meeting any of the RFP requirements different than those envisioned by the County, the Proposer should detail these and submit them as a separate section within the Proposal.

5.12 Price Proposal (the paper and electronic Price Proposal shall be submitted in a separate sealed envelope)

Price Proposals must include:

Meals-On-Wheels Delivery	Year 1	Year 2	Year 3
Monthly Cost Breakdown			
Salaries by Position:			
Program Director			
Program Coordinator			
Activity Coordinator			
Special Programs/Operation Facilitator			
Accountant			
Meal Preparation/Cooks			
Subtotal			
Fringes by Position:			
Program Director			
Program Coordinator			
Activity Coordinator			
Special Programs/Operation Facilitator			
Meal Preparation/Cooks			
Subtotal			
Occupancy:			
Rent			
Utilities(List)			

Meals-On-Wheels Delivery	Year 1	Year 2	Year 3
Monthly Cost Breakdown			
Building & Ground Maintenance			
Building Insurance			
Other (List)			
Subtotal			
Communications:			
Telephone			
Postage			
Printing(List)			
Other (List)			
Subtotal			
Supplies/Minor Equipment:			
Equipment Maint.			
Office Supplies			
Program Supplies			
Minor Equipment (List)			
Copier/Postage Meter			
Subtotal			
Transportation:			
Staff Expenses for Meetings			
Hotel, Food, etc.			
Staff Travel (# Miles at current per mile rate)			
Other (List)			
Subtotal			
Contract Services:			
Audit			
Accounting			
Other (List)			
Subtotal			
Other Operating Costs:			
Advertising			
Dues/Memberships			
Conference Dues			
Staff Recruitment			
Staff Training (includes Travel)			
Liability Insurance			
Other (List)			
Subtotal			
Fixed Assets (List)			
Total Monthly Cost/Fee			

The Agreement resulting from the award of this RFP will be for a not to exceed monthly amount as determined by BCAA of \$30,000.00 for Year 1. Additional years will be determined at a later date.

SECTION 6 - Evaluation Criteria and Process

A committee of County personnel representing the functions of the County's Purchasing Department and the Berks County Area Agency on Aging will review and evaluate Proposals submitted in response to this RFP ("Evaluation Committee"). The proceedings of the Evaluation Committee are confidential. Members of the Evaluation Committee are not to be contacted by the Proposers. All communication between a Proposer and the County shall be through Maria Ballas, Deputy Director of Contracts and Procurement.

Proposals will be evaluated against the following criteria using a pass/fail determination.

- Financial stability of the Proposer (based on our examination of the required financial statements).
- Compliance with the essential minimum experience and qualifications of the Proposer.
- Compliance with the essential minimum experience and qualifications of the program team members.
- Evidence of sufficient levels of insurance coverage.

Proposals must pass this first tier evaluation to move on to the second tier evaluation described below.

Proposals will be evaluated against the following criteria using point-rated scoring.

- **Price**
- **Ability (Resource Commitment)** – The Proposer's ability to perform the required service expeditiously. The Proposer must have the resources to be capable of meeting the required program completion schedule.
- **Competence (Qualifications of Personnel)** – The Proposer's competence in performing the required service as indicated by the training, education and experience of the personnel assigned to the program team. The Proposer must have in their possession all appropriate and required certifications, permits, and licenses.
- **Past Performance** – The Proposer's past performance on similar programs. If the County cannot verify references based on the information provided in the Proposal, the scoring for this criteria factor may be affected.
- **Quality and Feasibility (Technical & Organizational Approach)** – The quality and feasibility of the Technical Proposal and the Proposer's understanding of the program's requirements and the overall goals and objectives of the program.
- **Proposal Content/Format** – The Proposal's compliance with the content and format requirements of the RFP.

ATTACHMENT A – PROPOSED FORM OF AGREEMENT AND GENERAL CONDITIONS

AGREEMENT

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

Background

The County desires to engage the Vendor for the administration of Meals-On-Wheels Delivery services in accordance with the requirements set forth in the County’s Request for Proposal #14-12-MB inclusive of all addendums (“RFP”), and Vendor’s Proposal thereto dated April 25, 2014, both of which are incorporated in this Agreement by reference.

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

1. Definitions

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

2. Engagement

Subject to the terms and conditions set forth in this Agreement, the County hereby engages the Vendor to perform the Services set forth in the RFP on behalf of the County consistent with the terms of this Agreement.

3. Term of Agreement

This Agreement shall be effective July 1, 2014 through June 30, 2017 unless terminated in accordance with the terms and conditions of this Agreement.

4. Scope of Work

The Services shall include, without limitation delivery of Meals-on-Wheels to senior centers as set by Aging Program Directive #06-03-01 and further detailed in RFP #14-12-MB.

The following County employee(s) are hereby authorized to request service under this Agreement:

- 1) Jessica Jones
- 2) Todd Reinert

5. Time is of the Essence

Time is of the essence in the performance of this Agreement. The schedule for the performance of Services is identified in RFP #14-12-MB. If the completion of Services is delayed, the County reserves the right, without liability, and in addition to its other rights and remedies, to terminate this Agreement by notice, and to procure substitute Services from another vendor. The Vendor shall reimburse the County for the costs to procure substitute Services.

6. Fees

As set forth in Vendor’s Price Proposal dated April 25, 2014.

**ATTACHMENT A – PROPOSED FORM OF AGREEMENT AND
GENERAL CONDITIONS**

7. Notices and Program Manager

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

	<i>County:</i>	<i>Vendor:</i>
Attention	Director, Berks County Area Agency on Aging	
Address	633 Court Street 8th Floor, Services Center Reading, PA 19601	
Telephone	610-478-6500	
Fax	610-478-6886	
Email	jjones@coountyofberks.com	

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

8. Invoicing / Payment

Invoices must reference the above noted Agreement number. Original invoices shall be submitted to: County of Berks, Attn: Fiscal Manager, Berks County Area Agency On Aging, 8th Floor, Services, Center, Reading, PA 19601.

Vendor may submit invoices no more than once per month for Services properly performed under this Agreement. No advance payments or billings are allowed. Payment by the County shall require the submittal of an itemized invoice, which shall include, but not be limited to, a description of the Services performed, the associated fee for each task, and the date(s) of performance for each task. The County shall render payment within forty-five (45) days of the County's receipt of a properly prepared invoice. Payment shall be considered made when the County mails the check. Undisputed amounts unpaid after thirty (30) days of the County's receipt of a properly prepared invoice shall bear interest at a rate of three percent (3%) per annum.

9. Insurance

9.1 The Vendor, at its sole expense, shall carry and maintain, in full force at all times during the term of this Agreement, the following insurance coverages:

- 9.1.1 Comprehensive General Liability insurance covering bodily injury and property damage with limits of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate;
- 9.1.2 Commercial Automobile Liability insurance with a combined single limit of not less than \$1,000,000;
- 9.1.3 Professional Liability insurance with limits of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate;
- 9.1.4 Umbrella/Excess Liability insurance with limits of not less than \$2,000,000 per occurrence and \$2,000,000 aggregate; and
- 9.1.5 Worker's Compensation insurance in statutory limits; and Employer's Liability insurance with limits of not less than \$100,000 each accident, \$500,000 disease-policy limit, and \$100,000 disease-each employee.

ATTACHMENT A – PROPOSED FORM OF AGREEMENT AND GENERAL CONDITIONS

9.2 Prior to the commencement of the performance of Services, Vendor shall furnish to the County a certificate of insurance evidencing all required coverage with at least the limits required herein, naming the County of Berks, its elected officials, agents, and employees as Additional Insured for “ongoing operations” and “products and completed operations” for a period of three (3) years after final payment under the Commercial General Liability Coverage. Coverage should be provided by ISO Endorsements CG20 10 07 04 and CG2037 07 04 or their equivalent. Vendor’s Commercial General Liability and Umbrella/Excess Policy shall be Primary to and will not require contribution from any other insurance under which the Additional Insured is a Named Insured. To the fullest extent permitted by applicable state law, all policies shall contain a Waiver of Subrogation Clause. The Certificate shall note the program and provide that no policies may be cancelled without thirty (30) days advance notice to the County. Such certificate shall be issued to: County of Berks, Attn: Contract Coordinator, 633 Court Street, 13th Floor Services Center, Reading, PA 19601. All insurance policies shall be in effect with companies holding an A.M. Best rating of “A-” or better or financial rating of 1X or better with the A.M. Best’s Company Key Rating, Guide Latest Edition and shall be licensed or authorized to do business in the Commonwealth of Pennsylvania. Such companies shall also be acceptable to the County. Said policies shall remain in full force and effect until the expiration of the terms of the Agreement or until completion of all duties to be performed hereunder by the Vendor, whichever shall occur later.

10. Precedence

Where a conflict exists between the RFP and the Vendor’s Proposal, the Vendor shall provide the higher quality or quantity of Services except as specifically addressed in this Agreement. Where a conflict exists between these General Conditions and RFP or the Vendor’s Proposal, the terms of these General Conditions shall prevail.

11. Availability of Appropriated Funds

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

12. Taxes

The County is exempt from all Federal excise and transportation taxes, and Pennsylvania sales and use tax. The County’s registration number with the Internal Revenue Service is 23-6003049. No exemption certificates are required and none will be issued. Nothing in this paragraph is meant to exempt the Vendor from the payment of any applicable sales tax or use tax required to be paid with respect to its purchase or use of tangible personal property used or transferred in connection with its performance of Service. Only the County is required by law to pay any excise tax and then seek a refund or credit, the Vendor may separately charge the County the amount of the tax (as a reimbursable expense).

13. Ownership of Work Product

The County, its departments, employees, agents or assigns shall have the unrestricted right and authority to reproduce, distribute and use in whole or in part any submitted report or written materials generated by the Vendor in the performance of this Agreement.

14. Patents, Copyrights, Trademarks

Vendor warrants, represents and covenants that the Goods and the sale and use thereof do not infringe directly or indirectly any valid patent, copyright, property right or trademark and Vendor agrees, at its cost and expense, to indemnify and hold the County free and harmless from and against any and all costs,

ATTACHMENT A – PROPOSED FORM OF AGREEMENT AND GENERAL CONDITIONS

expense, liabilities or damages, including attorneys' fees, arising out of alleged or actual patent, copyright, property right, trademark or trade secret infringement resulting from the sale or use of deliverables provided in the performance of Services.

15. Records, Audit and Inspection

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

16. Warranty

Vendor warrants to the County that all Services shall be done in a skilled manner and shall comply with industry standards. Vendor shall promptly re-perform Services, after receiving notification from the County of defects or nonconformance.

17. Indemnity

Vendor agrees to indemnify and hold harmless the County, its elected officials, employees and agents from and against any and all liability, damages, claims, suits, liens, and judgments (including reasonable attorney's fees), of whatever nature, for injuries to or death of any person or persons, or loss of or damage to property, to the extent attributable to the negligent acts or omissions or willful misconduct of Vendor or its subcontractors or any of their respective agents, servants, or employees or Vendors' failure to perform in accordance with the provisions of this Agreement.

18. Force Majeure

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

19. Additional Services

In the event the Vendor determines that any alteration, modification or addition to the Services is necessary ("Additional Services"), the Vendor shall submit a proposal to the County setting forth in reasonable detail the scope of such Additional Services, the estimated time and price of performing the Additional Services and any potential impact on the then-existing Services and any fees related thereto. The Vendor shall obtain the prior written approval from the County before performing any Additional Services. The Vendor shall not be entitled to additional compensation for any work or materials associated with Additional Services unless it received such approval. If approved by the County, the Vendor shall perform or cause to be performed such Additional Services in accordance with the terms of this Agreement.

ATTACHMENT A – PROPOSED FORM OF AGREEMENT AND GENERAL CONDITIONS

20. Termination for Convenience

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

21. Termination for Cause

- 21.1 In the event that either the Vendor or the County defaults in the performance of any obligation specified herein, the non-defaulting party shall notify the other party in writing and may suspend the Agreement, in whole or in part, pending remedy of the default. If such default is not remedied within fifteen (15) days from the date of receipt of such notice, or if the other party is diligently attempting to cure such default but is unable to cure such default within thirty (30) days from the date of receipt of such notice, then the non-defaulting party shall have the right to terminate the Agreement immediately by providing written notice of termination to the other party.
- 21.2 In the event of such notice of breach, and a failure to cure same, all finished or unfinished documents, dates of studies and reports prepared by Proposer shall at the option of the County become its property and Vendor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents through the date of termination.
- 21.3 Notwithstanding the above, Vendor shall not be relieved of any liability to the County for damages sustained by the County by virtue of any breach of the Agreement by Vendor. The County may withhold any payments to Vendor for the purpose of set off until such time as the exact amount of damage due the County from Vendor is determined.
- 21.4 In the event that a Vendor's agreement is terminated, whether for cause or through nonrenewal, and a new Vendor is awarded the agreement, the existing Vendor must participate in a plan of transition as developed by County. This plan may include a gradual transfer of consumers to the new agency prior to the end of the existing Vendor's agreement period.
- 21.5 Existing Vendors are prohibited from communicating with consumers regarding changes in Vendor agencies. County will notify all consumers in writing regarding the change in service Vendor.
- 21.6 If this Agreement is only terminated by County in part, Vendor shall continue performance of this Agreement to the extent not terminated, provided, however, that said continuation by Vendor shall take place only after County's evaluation of any and all surrounding circumstances.
- 21.7 After the effective date of any termination by County and except as otherwise stated by County, Vendor shall:
 - 21.7.1 Stop work under this Agreement to the extent specified in such termination notice.

ATTACHMENT A – PROPOSED FORM OF AGREEMENT AND GENERAL CONDITIONS

- 21.7.2 Place no further orders and/or agreements for materials, services and/or facilities except as may be necessary for completion of any such portion of work under this Agreement that is not subject to termination.
 - 21.7.3 Terminate any and all orders and/or contracted work to the extent that relates to the performance of any work terminated.
 - 21.7.4 Settle any and all outstanding liabilities and any and all claims arising out of any such termination of orders and/or agreements, to the extent County may require, and/or upon County's written approval of any such settlement.
 - 21.7.5 Return to County any and all funds received not expended for any services and/or materials pursuant to this Agreement.
- 21.8 The remedies set forth above shall be cumulative and shall be in addition to any and all other rights and remedies otherwise available to the County at law or in equity.
- 21.9 If, during the term of this Agreement, Vendor shall be adjudged bankrupt, make a general assignment for the benefit of its creditors, or become insolvent, Vendor shall give the County written notice of such occurrence as soon as is legally permissible. If such occurrence or proposed occurrence is unacceptable to the County, the County may terminate this Agreement immediately upon written notice thereof to Vendor.
- 21.10 If the County terminates this Agreement for cause, in whole or in part, the County may acquire, correct, or replace Services similar to those terminated, by contract or otherwise, and the Vendor shall reimburse the County for any costs incurred by the County thereby, or an equitable reduction to the Vendor's compensation shall be made.

22. Claims for Consequential and/or Incidental Damages

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

23. Release of Liens

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

24. Assignment

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

ATTACHMENT A – PROPOSED FORM OF AGREEMENT AND GENERAL CONDITIONS

25. Publicity

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

26. Compliance with Laws

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

27. Health and Safety

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

- 27.1 comply with all federal, state and local regulations, as well as all safety information and instructions as may be set forth in writing or otherwise provided by the County;
- 27.2 promptly report to the County all incidents with potentially adverse safety, health or environmental implications, including slips, falls, equipment malfunctions, fume releases and any situation requiring first-aid or medical observations or treatment;
- 27.3 promptly report to the County all cases Vendor determines to be recordable on the OSHA 300 log or its equivalent and upon request, provide the County with a copy of the OSHA 300 log and all supporting forms;
- 27.4 properly maintain, inspect and supervise its designated work area and roadways to keep them in reasonably safe condition;
- 27.5 supply the applicable MSDS on all products supplied to the County or used on County property;
- 27.6 use, handle, store and dispose of any hazardous materials or waste while on the County's property in strict compliance with applicable laws and as instructed in the Material Safety Data Sheets(s); and
- 27.7 keep the County's property free of waste as the work progresses and, on completion of such activities, leave the site "broom clean" and tools, equipment and materials furnished shall be so placed and maintained as to permit unobstructed access to the work and to minimize exposure to personal injury or fire loss in a location approved by the County. The County may remove waste or store Vendor's tools, equipment and materials if Vendor fails to properly do so and the Vendor shall reimburse the County for any costs incurred, including charges for employee time, within seven (7) days of demand.

ATTACHMENT A – PROPOSED FORM OF AGREEMENT AND GENERAL CONDITIONS

28. Equal Employment Opportunity

- 28.1 During the performance of the Agreement, the Vendor shall not discriminate against any employees or applicant for employment because of race, color, religion, sex, or national origin. The Vendor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to race, color, religion, sex or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Vendor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this paragraph.
- 28.2 Vendor shall, in advertisements or requests for employment placed by it or on its behalf, state that all qualified applicants will receive consideration for employment without regard to race, color, religious creed, handicap, ancestry, national origin, age, or sex.
- 28.3 Vendor shall send each labor union or workers' representative with which it has a collective bargaining agreement or other Contracts or understanding, a notice advising said labor union or workers' representative of its commitment to this non-discrimination clause. Similar notice shall be sent to every other source of recruitment regularly utilized by Vendor.
- 28.4 It shall be no defense to a finding of noncompliance with this non-discrimination clause that Vendor had delegated some to its employment practices to any union, training program, or other source of recruitment that prevents it from meeting its obligations. However, if the evidence indicates that the Vendor was not on notice of the third-party discrimination or made a good faith effort to correct it, such factor shall be considered in mitigation in determining appropriate sanctions.
- 28.5 Where the practices of a union or any training program or other source of recruitment will result in the exclusion of minority group persons, so that Vendor will be unable to meet its obligations under this non-discrimination clause, Vendor shall then employ and fill vacancies through other non-discriminatory employment procedures.
- 28.6 Vendor shall comply with all state and federal laws prohibiting discrimination in hiring or employment opportunities. In the event of Vendor's noncompliance with the non-discrimination clause of this Agreement or with any such laws, this Agreement may be terminated or suspended, in whole or in part, and Vendor may be declared temporarily ineligible for further Agreements, and other sanctions may be imposed and remedies invoked.
- 28.7 Vendor shall furnish all necessary employment documents and records to, and permit access to its books, records, and accounts by, the contracting agency for purposes of investigation to ascertain compliance with the provisions of this clause. If Vendor does not possess documents or records reflecting the necessary information requested, it shall furnish such information on reporting forms supplied by the contracting agency.
- 28.8 Vendor shall include the provisions of this non-discrimination clause in every Agreement, so that such provisions will be binding upon each subcontractor.

ATTACHMENT A – PROPOSED FORM OF AGREEMENT AND GENERAL CONDITIONS

28.9 Vendor obligations under this clause are limited to the Vendor's facilities within Pennsylvania or, where the Agreement is for purchase of goods manufactured outside of Pennsylvania, the facilities at which such goods are actually produced.

29. Independent Contractor

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

30. Employees of Vendor

30.1 Vendor agrees that each of its employees will be properly qualified and will use reasonable care in the performance of services while on County property. If the County, in the County's sole opinion, determines, for any reason, that the qualifications, actions or conduct of any particular Vendor employee is inconsistent with Vendor's obligations under this Agreement by performing unsatisfactory services, interfering with the operation of the County's facilities, bothering or annoying any occupants, visitors, or other vendors then at facility, or that such actions or conduct is otherwise detrimental to the County, then upon the County's written notice, Vendor shall immediately provide a qualified replacement.

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

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

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

31. Governing Law and Jurisdiction

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

32. Subcontractors

32.1 If subcontractors are permitted by the RFP, the Vendor shall only use such subcontractors identified in its Proposal. The substitution of one subcontractor for another may be made only with the prior written approval of the County. Such approval shall not be unreasonably withheld.

ATTACHMENT A – PROPOSED FORM OF AGREEMENT AND GENERAL CONDITIONS

32.2 Notwithstanding the foregoing, the Vendor shall not subcontract with or employ any entity or individual who is currently suspended or debarred by the Commonwealth of Pennsylvania or federal government during the term of this Agreement or any extensions or renewals thereof. The County shall have the right to require the Vendor to terminate such subcontracts or employment at no cost to the County. The Vendor agrees to reimburse the County for costs and expenses incurred due to the Vendor's noncompliance with the terms of this certification requirement. For further details regarding debarment refer to Clause 47.

33. Severability

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

34. Reservation of Rights

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

35. Funds from Private Sources

Vendor agrees that funds under this Agreement shall not be used to replace funds from non-Federal and non-State sources. Vendor further agrees to continue or initiate efforts to obtain support from private sources or other public organizations for services funded under this Agreement.

36. Special Efforts in Employment

Subject to the requirements of merit employment systems, and in accordance with state and federal laws and regulations, the Vendor shall make every possible effort to recruit and hire persons aged 60 and over for staff positions (full-time and part-time) paid under this contract. For positions paid under this contract the Vendor shall not have a policy of mandatory retirement or deny employment to any person on account of age or have a policy of mandatory retirement applicable to positions paid under subcontract with the Vendor.

37. Regulations

This Agreement is subject to the provisions set forth in the following regulations: 45 Code of Federal Regulations Part 74- Administration of Grants, except subpart N; 45 Code of Federal Regulations Part 81 – Practice and Procedure for Hearings under Part 80 of this Title; and 45 Code of Federal Regulations Part 90 – Nondiscrimination of the Basis of Age.

37.1 In carrying out this Agreement, the Vendor and any subcontractors shall minimize pollution and shall strictly comply with all applicable environmental laws and regulations. (Clean Streams Law, Act of June 22, 1937, P.L. 1987, as amended, the Pennsylvania Solid Waste Management Act, Act of July 7, 1980, P.L. 380, as amended and the Water Obstructions Act, Act of June 25, 1913, P.L. 555, as amended.)

ATTACHMENT A – PROPOSED FORM OF AGREEMENT AND GENERAL CONDITIONS

- 37.2 Services shall be provided in compliance with 25 Pa. Code 151 et seq., relating to Environmental Health and Safety regulations for food protection, and 34 Pa. Code 50.1 et seq., relating to Fire and Panic regulations.
- 37.3 The Vendor agrees to comply with the provisions of the Davis-Bacon Act, Uniform Relocation Assistance and Real Property Acquisition Act, Clean Air Act, the Flood Disaster Protection Act and the Commonwealth Motor Vehicle Procurement Act. When applicable, the Vendor agrees to comply with the provisions of the National Historic Preservation Act, Executive Order 11593 and the Archaeological and Historic Preservation Act.
- 37.4 The Vendor agrees to fully comply with the Integrity Provisions set forth below and any changes or modification made thereto.
- 37.5 The Vendor agrees to comply with the provisions of the Older Americans Act, as amended Section 312 and 321(b), Protecting Federal Reversionary Interest in Multipurpose Senior Centers.
- 37.6 The Vendor agrees to comply with the provisions of the Drug-Free Workplace Act of 1998 in 41 U.S.C. Chapter 10, s. 701, et seq.
- 37.7 All claims against the County respecting any matter pertaining to this Agreement or any part thereof shall be referred to the Board of Claims (under the Act of May 20, 1937, P.L. 728, as amended).

38. Grievance Procedure

Vendor will establish a system through which applicants for and recipients of service may present grievances about the operation of the program. Vendor will advise applicants and recipients of their rights to appeal, denial, or exclusion from the program or failure to recognize the recipient's choice of service and of their right to a fair hearing. The Berks County Area Agency On Aging appeal process must be followed by the Vendor.

39. Notice Required

All notices, informational pamphlets, press releases, research reports, and similar public notices prepared and released by the Vendor shall be pre-approved by the Area Agency and include the statement, "This program is funded, in part, under an Agreement with money allocated by the Pennsylvania Department of Aging and the Berks County Commissioners, through the Berks County Area Agency On Aging."

40. Budget Flexibility

- 40.1 Vendor may reallocate funds within cost centers and/or major objects up to 10% of the amount budgeted for the cost center/major object to which the funds are to be transferred, after informing the Area Agency. Reallocation of funds within cost centers major objects exceeding 10% require prior written approval by the Area Agency. Vendor shall submit copies of any changes in writing to the Area Agency. No amendments or revisions may be made after the end of the third quarter of the annual Agreement period.

41. Earnings of Funds

- 41.1 Receipt of funds from County, by advance or reimbursement, does not constitute earnings of funds; funds are earned only when an allowable cost is incurred. Any unearned funds paid to

ATTACHMENT A – PROPOSED FORM OF AGREEMENT AND GENERAL CONDITIONS

Vendor shall be repaid by check to County no later than thirty (30) days after notification by County that said funds are due and owing.

- 41.2 Should the “County” or “Department” or “Agency” determine that there are accruals (under spending) in the contract, the “entity” shall have the right to reduce the contract by the accrual amount, with 30 days written notice to the Vendor. Vendor has the right to request a meeting within the 30 day period to review the accrual calculation and present information to amend the accrual amount. This right to reduce shall only be utilized by the “entity” when accruals are present and not as a means to modify the scope or term of the contract.

42. Program-Budget Changes

Vendor shall inform the Area Agency in writing of all proposed changes in program operations, administration, or policy prior to implementation and will implement changes only after Area Agency's approval. The Area Agency reserves the right to approve contracted client service priorities, forms, and service delivery.

43. Eligibility Determination

- 43.1 Eligibility for service recipients will be determined by the Berks County Area Agency On Aging and approved by the Pennsylvania Department of Aging in accordance with the regulations and philosophy of the Older Americans Act and Pa. Act 70.
- 43.2 For Adult Services Block Grant service recipients only, eligibility determination for those persons eligible for Title XX of the Social Security Act will be by the Vendor through the Area Agency and the County Board of Assistance in accordance with the Department of Public Welfare's comprehensive Annual Services Program Plan and Department regulations, and any Department of Aging processes and regulations.

44. Travel Expenses

Reimbursement for travel expenses of the staff of the Vendor agency under the provisions of the Agreement shall be subject to the following conditions:

- 44.1 Travel outside the State must have prior approval of the Area Agency.
- 44.2 Living and travel expenses, with itemized receipts, to be paid under the terms of this Agreement, will be reimbursed by the Vendor, at prevailing County rates, unless otherwise specified.
- 44.3 Travel and expenses for other than state Aging approved events of more than \$200.00 must receive prior approval by the Area Agency.

45. Integrity Provisions

- 45.1 It is essential that those who seek to contract with the County observe high standards of honesty and integrity. They must conduct themselves in a manner that fosters public confidence in the integrity of the County procurement process.
- 45.2 In furtherance of this policy, Vendor agrees to the following:

ATTACHMENT A – PROPOSED FORM OF AGREEMENT AND GENERAL CONDITIONS

- 45.2.1 Vendor shall maintain the highest standards of honesty and integrity during the performance of this Agreement and shall take no action in violation of state or federal laws or regulations or any other applicable laws or regulations or other requirements applicable to Vendor or that govern contracting with the County and Commonwealth.
- 45.2.2 Vendor shall establish and implement a written business integrity policy, which includes, at a minimum, the requirements of these provisions as they relate to Vendor employee activity with the County and Commonwealth; County and Commonwealth employees, and which is distributed and made known to all Vendor employees.
- 45.2.3 Vendor, its affiliates, agents and employees shall not influence, or attempt to influence any County or Commonwealth employee to breach the standards of ethical conduct for County or Commonwealth employees set forth in the *Public Official and Employees Ethics Act, 65 Pa.C.S. §§1101 et seq.*; the *State Adverse Interest Act, 71 P.S. §776.1 et seq.*; and the *Governor's Code of Conduct, Executive Order 1980-18, 4 Pa. Code §7.151 et seq.*, or to breach any other state or federal law or regulation.
- 45.2.4 Vendor, its affiliates, agents and employees shall not offer, give or agree or promise to give any gratuity to a County and/or Commonwealth official or employee or to any other person at the direction or request of any County and/or Commonwealth official or employee.
- 45.2.5 Vendor, its affiliates, agents and employees shall not offer, give or agree or promise to give any gratuity to a County official or employee or to any other person, the acceptance of which would violate the *Governor's Code of Conduct, Executive Order 1980-18, 4 Pa. Code §7.151 et seq.* or any statute, regulation, statement of policy, management directive or any other published standard of the County and Commonwealth.
- 45.2.6 Vendor, its affiliates, agents and employees shall not, directly or indirectly, offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for the decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty by any County or Commonwealth official or employee.
- 45.2.7 Vendor, its affiliates, agents, employees or anyone in privity with him or her shall not accept or agree to accept from any person, any gratuity in connection with the performance of work under the agreement, except as provided in the Agreement.
- 45.2.8 Vendor shall not have a financial interest in any other provider, subcontractor or supplier providing services, labor or material on this program, unless the financial interest is disclosed to the County in writing and the County consents to Vendor's financial interest prior to County execution of the agreement. Vendor shall disclose the financial interest to the County at the time of bid or proposal submission, or if no bids or proposals are solicited, no later than Vendor's submission of the agreement signed by Vendor.
- 45.2.9 Vendor, its affiliates, agents and employees shall not disclose to others any information, documents, reports, data or records provided to, or prepared by, Vendor

ATTACHMENT A – PROPOSED FORM OF AGREEMENT AND GENERAL CONDITIONS

under this agreement without the prior written approval of the County, except as required by the *Pennsylvania Right-to-Know Law, 65 P.S. §§67.101-3104*, or other applicable law or as otherwise provided in this Agreement. Any information, documents, reports, data, or records secured by Vendor from the County or a third party in connection with the performance of this agreement shall be kept confidential unless disclosure of such information is:

- 45.2.9.1 Approved in writing by the County prior to its disclosure; or
 - 45.2.9.2 Directed by a court or other tribunal of competent jurisdiction unless the agreement requires prior County approval; or
 - 45.2.9.3 Required for compliance with federal or state securities laws or the requirements of national securities exchanges; or
 - 45.2.9.4 Necessary for purposes of Vendor's internal assessment and review; or
 - 45.2.9.5 Deemed necessary by Vendor in any action to enforce the provisions of this Agreement or to defend or prosecute claims by or against parties other than the County; or
 - 45.2.9.6 Permitted by the valid authorization of a third party to whom the information, documents, reports, data or records pertain; or
 - 45.2.9.7 Otherwise required by law.
- 45.2.10 Vendor certifies that neither it nor any of its officers, directors, associates, partners, limited partners or individual owners has been officially notified of, charged with, or convicted of any of the following and agrees to immediately notify the County agency granting officer in writing if and when it or any officer, director, associate, partner, limited partner or individual owner has been officially notified of, charged with, convicted of, or officially notified of a governmental determination of any of the following:
- 45.2.10.1 Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property.
 - 45.2.10.2 Commission of fraud or a criminal offense or other improper conduct or knowledge of, approval of or acquiescence in such activities by Vendor or any affiliate, officer, director, associate, partner, limited partner, individual owner, or employee or other individual of entity associated with:
 - 45.2.10.2.1 Obtaining;
 - 45.2.10.2.2 Attempting to obtain; or
 - 45.2.10.2.3 Performing a public grant or subgrant
Vendor's acceptance of the benefits derived from the conduct shall be deemed evidence of such knowledge, approval or acquiescence.
 - 45.2.10.3 Violation of federal or state antitrust statutes.
 - 45.2.10.4 Violation of any federal or state law regulating campaign contributions.
 - 45.2.10.5 Violation of any federal or state environmental law.
 - 45.2.10.6 Violation of any federal or state law regulating hours of labor, minimum wage standards or prevailing wage standards; discrimination in wages; or child labor violations.
 - 45.2.10.7 Violation of the *Act of June 2, 1915 (P.L.736, No. 338)*, known as the *Workers' Compensation Act, 77 P.S. 1 et seq.*
 - 45.2.10.8 Violation of any federal and state law prohibiting discrimination in employment.

ATTACHMENT A – PROPOSED FORM OF AGREEMENT AND GENERAL CONDITIONS

45.2.10.9 Debarment by any agency or department of the federal government or by any other state.

45.2.10.10 Any other crime involving moral turpitude or business honesty or integrity.

Vendor acknowledges that the County may, in its sole discretion, terminate the agreement for cause upon such notification or when the County otherwise learns that Vendor has been officially notified, charged or convicted.

45.2.11 If this Agreement was awarded to Vendor on a non-bid basis, Vendor must, (as required by *Section 1641* of the *Pennsylvania Election Code*) file a report of political contributions with the Secretary of the Commonwealth on or before February 15 of the next calendar year. The report must include an itemized list of all political contributions known to Vendor by virtue of the knowledge possessed by every officer, director, associate, partner, limited partner, or individual owner that has been made by:

45.2.11.1 Any officer, director, associate, partner, limited partner, individual owner or members of the immediate family when the contributions exceed as aggregate of one thousand dollars (\$1,000) by any individual during the preceding year; or

45.2.11.2 Any employee or members of his immediate family whose political contribution exceeded one thousand dollars (\$1,000) during the preceding year.

To obtain a copy of the report form, Vendor shall contact the Bureau of Commissioners, elections and Legislation, Division of Campaign Finance and Lobby Disclosure, Room 210, North Office Building, Harrisburg, PA 17120.

45.2.12 Vendor shall comply with requirements of the *Lobbying Disclosure Act, 65 Pa.C.S. § 13A01 et seq.*, and the regulations promulgated pursuant to that law. Vendor employee activities prior to or outside of formal Commonwealth procurement communication protocol are considered lobbying and subjects the Vendor employees to the registration and reporting requirements of the law. Actions by outside lobbyists on Vendor's behalf, no matter the procurement stage, are not exempt and must be reported.

45.2.13 When Vendor has reason to believe that any breach of ethical standards as set forth in law, the Governor's code of Conduct, or in these provisions has occurred or may occur, including but not limited to contact by a Commonwealth officer or employee which, if acted upon, would violate such ethical standards, Vendor shall immediately notify the Commonwealth granting officer or Commonwealth Inspector General in writing.

45.2.14 Vendor, by submission of its bid or proposal and/or execution of this agreement by the submission of any bills, invoices or requests for payment pursuant to the grant, certifies and represents that it has not violated any of these integrity provisions in connection with the submission of the bid or proposal, during any agreement negotiations or during the term of the Agreement.

45.2.15 Vendor shall cooperate with the Office of Inspector General in its investigation of any alleged Commonwealth employee breach of ethical standards and any alleged Vendor non-compliance with these provisions. Vendor agrees to make identified Vendor employees available for interviews at reasonable times and places. Vendor, upon the

ATTACHMENT A – PROPOSED FORM OF AGREEMENT AND GENERAL CONDITIONS

inquiry or request of the Office of Inspector General, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Inspector General to Vendor's integrity and compliance with these provisions. Such information may include, but shall not be limited to, Vendor's business or financial records, documents or files of any type or form that refers to or concern this Agreement.

- 45.2.16 For violation of any of these Integrity Provisions, the County may terminate that and any other agreement with Vendor, claim liquidated damages in an amount equal to the value of anything received in breach of these provisions, claim damages for all additional costs and expenses incurred in obtaining another Vendor to complete performance under this Agreement, and debar and suspend Vendor from doing business with the County. These rights and remedies are cumulative, and the use or non-use of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those the Commonwealth may have under law, statute, regulation or otherwise.
- 45.2.17 For purposes of these Integrity Provisions, the following terms shall have the meanings found in this Clause 45.
- 45.2.17.1 "Confidential information" means information that a) is not already in the public domain; b) is not available to the public upon request; c) is not or does not become generally known to Vendor from a third party without an obligation to maintain its confidentiality; d) has not become generally known to the public through an act or omission of Vendor; or e) has not been independently developed by Vendor without the use of confidential information of the County or Commonwealth.
- 45.2.17.2 "Consent" means written permission signed by a duly authorized officer or employee of the County or Commonwealth, provided that where the material facts have been disclosed, in writing, by pre-qualification, bid, proposal, or grantual terms, the County or Commonwealth shall be deemed to have consented by virtue of execution of this Agreement.
- 45.2.17.3 "Vendor" means the individual or entity that has entered into this Agreement with the County, including those directors, officers, partners, managers and owners having more than a five percent interest in Vendor.
- 45.2.17.4 "Financial interest" means:
- 45.2.17.4.1 Ownership of more than a five percent interest in any business; or
- 45.2.17.4.2 Holding a position as an officer, director, trustee, partner, employee or holding any position of management.
- 45.2.17.5 "Gratuity" means tendering, giving or providing anything of more than nominal monetary value including, but not limited to, cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment or grants of any kind. The exceptions set forth in the Governor's Code of Conduct, Executive Order 1980-18, the 4 Pa. Code §7.153(b), shall apply.
- 45.2.17.6 "Immediate family" means a spouse and any unemancipated child.
- 45.2.17.7 "Non-bid basis" means a grant awarded or executed by the County with Vendor without seeking bids or proposals from any other potential bidder or offeror.

ATTACHMENT A – PROPOSED FORM OF AGREEMENT AND GENERAL CONDITIONS

45.2.17 .8 “Political contribution” means any payment, gift, subscription, assessment, grant, payment for services, dues, loan, forbearance, advance or deposit of money or any valuable thing, to a candidate for public office or to a political committee, including but not limited to a political action committee, made for the purpose of influencing any election in the Commonwealth of Pennsylvania or for paying debts incurred by or for a candidate or committee before or after any election.

46. Debarment/Tax Liabilities

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

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

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

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

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

46.1.3 The Vendor agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of State Inspector General for investigations of the Vendor’s compliance with the terms of this or any other agreement between the Vendor and the County, which results in the suspension or debarment of the Vendor. Such costs shall include, but shall not be limited to, salaries of investigators, including overtime; travel and lodging expenses; and expert witness and

ATTACHMENT A – PROPOSED FORM OF AGREEMENT AND GENERAL CONDITIONS

documentary fees. The Vendor shall not be responsible for investigative costs for investigations that do not result in the Vendor's suspension or debarment.

- 46.1.4 Vendor is required to screen their employees and contractors, both individuals and entities, to determine if they have been excluded from participation in Medicare, Medicaid or any other federal health care program. Vendor will immediately notify County of any discovered exclusion of an employee or contractor, either an individual or entity.
- 46.1.5 All employees, vendors, contractors, service providers, and referral sources should be screened for exclusion before employing and/or contracting with them and, if hired, should be rescreened on an ongoing monthly basis to capture exclusions and reinstatements that have occurred since the last search.
- 46.1.6 Vendor will develop and maintain auditable documentation of screening efforts, including dates the screenings were performed and the source data checked and its date of more recent update; and periodically conduct self-audits to determine compliance with this requirement.
- 46.1.7 Vendor will use the following databases to determine exclusion status:

- 46.1.7.1 *Pennsylvania Medichcek List*: a data base maintained by the Department that identifies providers, individuals, and other entities that are precluded from participation in Pennsylvania's MA Program:
http://www.dpw.state.pa.us/learnaboutdpw/fraudandabuse/medichcekprecludedproviderslist/S_001152 Link above is provided for your reference and is subject to change. It shall be the responsibility of the vendor to determine and utilize the appropriate site for said database.

If an individual's resume indicates that he/she has worked in another state, providers should also check that state's individual list.

- 46.1.7.2 *List of Excluded Individuals/Entities (LEIE)*: data base maintained by HHS-OIG that identifies individuals or entities that have been excluded nationwide from participation in any federal health care program. An individual or entity included on the LEIE is ineligible to participate, either directly or indirectly, in the MA Program. Although the Department makes best efforts to include on the Medichcek List all federally excluded individuals/entities that practice in Pennsylvania, providers must also use the LEIE to ensure that the individual/entity is eligible to participate in the MA Program:
<http://oig.hhs.gov/exclusions/index.asp>. Link above is provided for your reference and is subject to change. It shall be the responsibility of the vendor to determine and utilize the appropriate site for said database.
- 46.1.7.3 *U. S. General Services Administration (SAM)*: World wide data base maintained by the General Services Administration (GSA) that provides information about parties that are excluded from receiving Federal contracts, certain subcontracts, and certain Federal financial and nonfinancial assistance and benefits:

ATTACHMENT A – PROPOSED FORM OF AGREEMENT AND GENERAL CONDITIONS

<https://www.sam.gov/>. Link above is provided for your reference and is subject to change. It shall be the responsibility of the vendor to determine and utilize the appropriate site for said database.

- 46.1.7.4 The Vendor may obtain a current list of suspended and debarred Commonwealth providers by accessing: http://www.dgsweb.state.pa.us/Debarment_list or contacting the:

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

47. Examination of Records

- 47.1 Vendor shall maintain books, records, documents, and other evidence and accounting procedures and practices, sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred for the performance of this Agreement. The foregoing constitutes "records" for the purpose of this section. Vendor agrees that a program and facilities review, including meetings with consumers, review of service records, review of service policy and procedural issuances, review of staffing rations and job descriptions, and meetings with any staff directly or indirectly involved in the provision of services may be conducted at any reasonable time by State and Federal personnel and other persons duly authorized by the Area Agency. If Vendor is not a public body, Vendor agrees to maintain books, records, documents, and other evidence and accounting procedures and practices which comply with the nationally accepted Uniform Standards of Accounting and Financial Reporting for Voluntary Health and Welfare Organizations, as published by the National Health Council and the National Social Welfare Assembly, 1964.
- 47.2 Vendor facilities or such part thereof as may be utilized in the performance of this Agreement and Vendor's records shall be subject at all reasonable times to inspection and audit by the Commonwealth and Federal auditors and other persons duly authorized by the Area Agency.
- 47.3 Vendor agrees that until the expiration of five years after final payment under this Agreement, Federal and Commonwealth auditors and other persons duly authorized by the Area Agency shall have access to and the right to examine any records of the Vendor involving transactions related to this Agreement. Vendor may, in fulfillment of Vendor's obligation to retain Vendor's records, substitute photographs, microphotographs, or other authentic reproductions of such records after the expiration of two years following the last date of reimbursement to the Vendor.
- 47.4 Vendor agrees to collect statistical data of a fiscal nature on a regular basis and to make fiscal statistical reports at time prescribed by, and on forms furnished by the Area Agency.
- 47.5 If this Agreement is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for a period of four years from the date of any resulting final settlement. In addition, records which relate to litigations or the settlement

ATTACHMENT A – PROPOSED FORM OF AGREEMENT AND GENERAL CONDITIONS

of claims arising out of the performance of this Agreement, or costs and expenses of this Agreement as to which exception has been taken by the Auditors, shall be retained by the Vendor until such litigations, claims, or exceptions have been disposed of.

- 47.6 During the period of this Agreement, all information obtained by the Vendor shall be made available to the Area Agency immediately upon demand.

48. Progress Reports

- 48.1 The Vendor and its subcontractors shall furnish to the County such progress and periodic reports in such form and quantity as the County may from time to time require, including but not limited to, status reports of the program, proposed budgets, invoices, copies of all contracts executed and proposed and any and all other information relative to the program as may be requested.
- 48.2 In the event that the County determines that the Vendor or its subcontractors have not furnished such reports as required by the County, the County, by giving written notice to the Vendor, may suspend payments under this Agreement, until such time as the required reports are submitted.

49. Rights In Data: Copyrights and Disclosure

- 49.1 Definition: The term "data" as used herein, includes written reports, drawings, studies, computer programs, and work of any similar nature that is required to be delivered under this Agreement. It does not include Vendor's financial reports or other information incidental to Agreement's administration.
- 49.2 Rights in Data: Data submitted to and accepted by the Department under this Agreement shall be the property of the Department and it shall have full right to use such data for any official purpose in whatever manner deemed desirable and appropriate. Such use shall be without any additional payment to or approval by the Vendor.
- 49.3 Copyrights: Vendor relinquishes any and all copyrights and/or privileges to data developed under this Agreement. Vendor shall not include in the data any copyrighted matter without the written approval of the Department of Aging unless Vendor provides the Department of Aging with written permission of the copyright owner for the Department of Aging to use such copyrighted matter in a manner provided herein. Vendor shall exert all reasonable effort to advise the Department of Aging, at the time of delivery of data furnished under this Agreement, of all invasions of the right to privacy contained therein. The Vendor shall defend any suit or proceeding brought against the Commonwealth on account of any alleged infringement of any copyright arising out of the performance of this Agreement, including all work, services, materials, reports, studies, and computer programs provided by the Vendor. This is upon the condition that the Commonwealth shall provide prompt notification in writing of such suit or proceedings, full right, authorization and opportunity to conduct the defense thereof, and full information and all reasonable cooperation for the defense of the same. As principles of governmental or public law are involved, the Commonwealth may participate in the defense of any such action. The Vendor shall pay all damages and costs awarded therein against the Commonwealth. If information and assistance are furnished by

ATTACHMENT A – PROPOSED FORM OF AGREEMENT AND GENERAL CONDITIONS

the Commonwealth at Vendor's written request, it shall be at the Vendor's expense, but the responsibility for such expense shall be only that within the Vendor's written authorization. If any of the materials, reports, studies, or computer programs provided by the Vendor are in such suit or proceeding held to constitute infringement and the use of publication thereof is enjoined, the Vendor shall, at his own expense and at his option, either procure the right to publish or continue use of such infringing materials, reports, studies, or computer programs, replace them with non-infringing items, or so modify them so that they are no longer infringing. The obligations of the Vendor under this paragraph continue without time limit.

50. Americans with Disabilities Act

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

51. Nondiscrimination/Sexual Harassment Clause

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

- 51.1 In the hiring of any employee(s) for the manufacture of supplies, performance of work, or any other activity required under the Agreement or any contract or subcontract, the Vendor, a contractor, a subcontractor, or any person acting on behalf of the Vendor shall not, by reason of gender, race, creed or color, discriminate against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.
- 51.2 The Vendor, contractor or any subcontractor or any person on their behalf shall not in any manner discriminate against or intimidate any of its employees on account of gender, race, creed or color.
- 51.3 The Vendor, contractor or any subcontractor shall establish and maintain a written sexual harassment policy and shall inform their employees of the policy. The policy must contain a notice that sexual harassment will not be tolerated and employees who practice it will be disciplined.
- 51.4 The Vendor, contractor or any subcontractor shall not discriminate by reason of gender, race, creed or color against any contractor, subcontractor or supplier who is qualified to perform the work to which the agreement relates.
- 51.5 The Vendor, any contractor or any subcontractor shall, within the time periods requested by the County, furnish all necessary employment documents and records and permit access to their books, records and accounts by the County and the Bureau of Minority and Women Business Opportunities (BMWBO), for the purpose of ascertaining compliance with provisions of this Nondiscrimination/Sexual Harassment Clause. Within thirty (30) days after award of any Agreement, the Vendor shall be required to complete, sign and submit

ATTACHMENT A – PROPOSED FORM OF AGREEMENT AND GENERAL CONDITIONS

Form STD-21, the “Initial Contract Compliance Data” form. Vendors who have fewer than five employees or whose employees are all from the same family or who have completed the STD-21 form within the past 12 months may, within the 15 days, request an exemption from the STD-21 form from the County.

- 51.6 The Vendor, any contractor or subcontractor shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every contract or subcontract so that those provisions applicable to contractors or subcontractors will be binding upon each contractor or subcontractor.
- 51.7 The County may cancel or terminate the agreement and all money due or to become due under the agreement may be forfeited for a violation of the terms and conditions of this Nondiscrimination/Sexual Harassment Clause. In addition, County may proceed with debarment or suspension and may place the Vendor, contractor or subcontractor in the Contractor Responsibility File.

52. Set Off Clause

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

53. Property and Supplies

- 53.1 Vendor agrees to use its best efforts to obtain all supplies and equipment for use in the performance of this Agreement at the lowest practicable cost and to purchase all supplies and equipment over \$2,000.00 by means of a system of competitive bidding as required under the provisions of the 3rd Class County Code, Article XVIII and/or Federal Acquisitions Regulations, as applicable.

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

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

- 53.2 Title to all property furnished by the Department of Aging through the Area Agency Agreements shall remain with the said Department. Title to all property acquired by the Vendor, including purchase by lease-purchase agreement, for the cost of which the Vendor is to be reimbursed under this Agreement, shall vest in the Vendor during the term of this Agreement unless otherwise noted in the Agreement. Upon cancellation or termination of this Agreement, disposition of such purchased property that has remaining useful life shall be made in accordance with the following provisions:
- 53.2.1 If the Vendor wishes to retain any items of such purchased property, both parties will arrange for an independent third party appraisal (agreed upon by the Area Agency) of these property items and will reimburse said Department for the value of the remaining life of the property on the basis of such appraisals;

ATTACHMENT A – PROPOSED FORM OF AGREEMENT AND GENERAL CONDITIONS

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

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

54. Agreement Subject to Laws and Regulations

This Agreement is subject to the provisions of all pertinent federal, state and local laws and regulations and all amendments made thereto. Definitions of service, eligibility of recipients of service and other limitations on the purchase of the services established in this Agreement are subject to modification by amendments to Federal, State and Local laws and regulations without further notice to the Vendor.

55. Right to Know Law

55.1 The Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104, applies to this Agreement.

55.2 Unless the Vendor provides the County, in writing, with the name and contact information of another person, the County shall notify the provider using the Vendor information provided by the Vendor in this Agreement. If the County needs the Vendor's assistance in any matter arising out of the Right to Know Law (RTKL). The Vendor shall notify the County in writing of any change in the name or the contact information within a reasonable time prior to the change.

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

55.3.1 Provide the Vendor, within ten (10) calendar days after receipt of written notification, access to, and copies of, any document or information in the Vendor's possession arising out of this Agreement that the County reasonably believes is Requested Information and may be a public record under the RTKL; and

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

55.4 If the Vendor considers the Requested Information to include a request for a Trade Secret or Confidential Proprietary Information, as those terms are defined by the RTKL, or other information that the proposer considers exempt from production under the RTKL, the Vendor must notify the County and provide within seven (7) calendar days of receiving the written notification, a written statement signed by a representative of the Vendor explaining why the requested material is exempt from public disclosure under the RTKL.

ATTACHMENT A – PROPOSED FORM OF AGREEMENT AND GENERAL CONDITIONS

- 55.4 The County will rely upon the written statement from the Vendor in denying a RTKL request for the Requested Information unless the County determines that the Requested Information is clearly not protected from disclosure under the RTKL. Should the County determine that the Requested Information is clearly not exempt from disclosure, the Vendor shall provide the Requested Information within five (5) business days of receipt of written notification of the County's determination.
- 55.5 If the Vendor fails to provide the Requested Information within the time period required by these provisions, the Vendor shall indemnify and hold the County harmless for any damages, penalties, costs, detriment or harm that the County may incur as a result of the Vendor's failure, including any statutory damages assessed against the County.
- 55.6 The County will reimburse the Vendor for any costs associated with complying with these provisions only to the extent allowed under the fee schedule established by the Office of Open Records or as otherwise provided by the RTKL if the fee schedule is inapplicable.
- 55.7 The Vendor may file a legal challenge to any County's decision to release a record the public with the Office of Open Records, or in the Pennsylvania Courts, however, the Vendor shall indemnify the County for any legal expenses incurred by the County as a result of such a challenge and shall hold the County harmless for any damages, penalties, costs, detriment or harm that the County may incur as a result of the Vendor's failure, including any statutory damages assessed against the County, regardless of the outcome of such legal challenge. As between the parties, the Vendor agrees to waive all rights or remedies that may be available to it as a result of the County's disclosure of Requested Information pursuant to the RTKL.
- 55.8 The Vendor's duties relating to the RTKL are continuing duties that survive the expiration of the Agreement and shall continue as long as the Vendor has Requested Information in its possession.

56. Federal and State Audit Requirements

- 56.1 Vendor must comply with all federal and state audit requirements including: the Single Audit Act, as amended, 31 U.S.C. 7501 *et seq*; Office of Management and Budget (OMB) Circular A-133, Audits of states, Local Government and Non-Profit Organizations, as amended; and any other applicable law or regulation and any amendment to such other applicable law or regulation which may be enacted or promulgated by the state or federal government.
- 56.2 If the Vendor is a local government or non-profit organization and expends total federal awards of \$500,000 or more during its fiscal year, received either directly from the federal government or indirectly from a recipient of federal funds, Vendor is required to have an audit made in accordance with the provisions of OMB Circular A-133.
- 56.3 If the Vendor is a for-profit organization and expends total federal awards of \$500,000 or more during its fiscal year, received either directly from the federal government or indirectly from a recipient of federal funds, Vendor is required to have a program-specific audit made in accordance with the provisions of OMB Circular A-133 and in accordance with the laws and regulations governing the programs in which it participates.

ATTACHMENT A – PROPOSED FORM OF AGREEMENT AND GENERAL CONDITIONS

- 56.4 If the Vendor expends total federal awards of less than \$500,000 during its fiscal year, it is exempt from these audit requirements but is required to maintain auditable records of federal and any state funds which supplement such awards and to provide access to such records by federal and state agencies or their designees.
- 56.5 In the event an audit is required, the Vendor is responsible for obtaining the required audit and securing the services of a certified public accountant or other independent governmental auditor. The audit shall be completed and the report submitted to the County no later than 120 days after the close of the agreement period.
- 56.6 In the event that an audit is performed that is not mandated by applicable federal laws or regulations, Vendor shall not charge its costs of the audit to federal funding streams.
- 56.7 Vendor shall maintain adequate and sufficiently detailed records of all the services provided pursuant to this Agreement to permit an evaluation of finances and performance, which records shall be open at all reasonable times for inspection by the County, federal, state and county agencies or their authorized representatives. The County and any competent federal, state or county agency or their authorized representatives shall have the right to inspect, audit and copy Vendor's records during normal business hours. The County shall provide fourteen (14) days notice to Vendor in the event of such an audit.
- 56.8 The County shall advise Vendor of any discrepancies in adherence to this Agreement. Vendor upon receipt of such notification hereby agrees to promptly correct any discrepancies to the satisfaction of the County.
- 56.9 Vendor shall maintain and make available such books, records and documents related to this Agreement for five (5) years from the termination of this Agreement, or until all disputes have been resolved to the satisfaction of the County or by final decision or judgment, or as otherwise required by applicable federal or state laws and regulations, whichever is greater.

57. Assurance of Compliance

- 57.1 The Vendor provides this assurance in consideration of and for the purpose of obtaining Federal Grants, loans, contracts, property, discounts or other Federal financial assistance from the Department of Health and Human Services.
- 57.2 The Vendor hereby agrees that it will comply with:
- 57.2.1 Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352), as amended, and all requirements imposed by or pursuant to the Regulations of the Department of Health and Human Services (45 C.F.R. Part 80), to the end that, in accordance with Title VI of that Act and the Regulations, no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Vendor receives Federal financial assistance from the County.

ATTACHMENT A – PROPOSED FORM OF AGREEMENT AND GENERAL CONDITIONS

- 57.2.2 Section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112), as amended, and all requirements imposed by or pursuant to the Regulations of the Department of Health and Human Services (45 C.F.R. Part 84), to the end that, in accordance with Section 504 of that Act and the Regulations, no otherwise qualified individual with a disability in the United States shall, solely by reason of her or his handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity for which the Vendor receives Federal financial assistance from the County.
- 57.2.3 Title IX of the Educational Amendments of 1972 (Pub. L. 92-318), as amended, and all requirements imposed by or pursuant to the Regulations of the Department of Health and Human Services (45 C.F.R. Part 86), to the end that in accordance with IX and the Regulations, no person in the United States shall on the basis of sex, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any educational program or activity for which the Vendor received Federal financial assistance from the County.
- 57.2.4 The Age Discrimination Act of 1975 (Pub. L. 94-135), as amended, and all requirements imposed by or pursuant to the Regulations of the Department of Health and Human Services (45 C.F.R. Part 91), to the end that, in accordance with the Act and the Regulations, no person in the United States shall, on the basis of age, be denied the benefits of, be excluded from participation in or be subjected to discrimination under any program or activity for which the Vendor receives Federal financial assistance from the County.
- 57.3 The Vendor agrees that compliance with this assurance constitutes a condition of continued receipt of Federal financial assistance, and that is binding upon the Vendor, its successors, transferees and assignees for the period during which such assistance is provided. If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to the Vendor by the County, this assurance shall obligate the Vendor, or in the case of any transfer of such property, any transferee, for the period during which the real property or structure is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. If any personal property is so provided, this assurance shall obligate the Vendor for the period during which it retains ownership or possession of the property. The Vendor further recognizes and agrees that the United States shall have the right to seek judicial enforcement of this assurance.

ATTACHMENT A – PROPOSED FORM OF AGREEMENT AND GENERAL CONDITIONS

58. Vendor's Commitments

Any written commitment or representation of Vendor made within the scope of this Agreement shall be binding upon Vendor and is hereby incorporated into this Agreement.

59. Cooperation in Litigation

The Vendor shall cooperate fully with the County in any prosecution or defense of any litigations, claims, and threatened litigations. If County becomes involved in any matters involving litigation or threatened litigation against others not including Vendor, Vendor shall cooperate fully with County's efforts to dispose of such matters. Such cooperation shall include, but not be limited to, submission of information, attendance at meetings and appearance in court or before other judicial or quasijudicial bodies.

60. Membership Restrictions of Facilities

Funds awarded by this Agreement shall not be used to hold meetings, conferences, training sessions or other gatherings at any facility which excludes or restricts membership of individuals on account of race, color, religion, national origin, ancestry or gender.

61. Reporting of Allegations/Suspicious

- 61.1 Vendor shall be responsible for resolution of consumer/family allegations against Vendor employees regarding theft and misappropriation, including instituting disciplinary/legal action against the employee if warranted. Vendor shall immediately notify County of all allegations made by or on behalf of a consumer funded under this Agreement.
- 6.2 All allegations made against any Vendor employee involving consumer abuse, neglect or exploitation shall be immediately reported to County and County's Older Adult Protective Services Unit. Failure to report such allegations shall jeopardize continuation of the agreement.
- 6.3 If any Vendor employee suspects consumer abuse, neglect, exploitation or abandonment by individuals other than Vendor employees, it shall be immediately reported to County's Older Adult Protective Services Unit.

62. Refer Web

Vendor will be expected to be familiar with, have access to, and utilize Refer Web, Area Agency's online Community Resource Director, with their consumers. Refer Web can be accessed via any computer with internet access at www.referweb.net/berks. If the Vendor needs assistance or training in understanding or utilizing Refer Web, the Vendor's staff can call Todd Reinert at the Area Agency at 610-478-6500 or by e-mail at treinert@countyofberks.com. The Vendor is expected to update their information in Refer Web, at a minimum, when the annual survey is sent to them electronically to update their information and/or when basic information changes, such as address or contact person or e-mail, or as new programs or sites are opened or discontinued.

63. Headings

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

**ATTACHMENT A – PROPOSED FORM OF AGREEMENT AND
GENERAL CONDITIONS**

64. Entire Agreement

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

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

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

County of Berks

Vendor

By: _____

By: _____

Name (printed): Kelly A. Laubach, CPPB

Name (printed): _____

Title: Director of Contracts and Procurement

Title: _____

Date: _____

Date: _____

ATTEST:

ATTEST:

By: _____

By: _____

Name (printed): _____

Name (printed): _____

Title: _____

Title: _____

ATTACHMENT B – NON-COLLUSION AFFIDAVIT

INSTRUCTIONS FOR NON-COLLUSION AFFIDAVIT

1. This Non-Collusion Affidavit is material to any Agreement pursuant to a Proposal. According to the Pennsylvania Antirigging Act, 62 Pa. C.S.A. § 4501 *et seq.*, governmental agencies may require Non-Collusion Affidavits to be submitted together with Proposals, such as the Proposal submitted by the Proposer.
2. This Non-Collusion Affidavit must be executed by the member officer, or employee of the Proposer who is authorized to legally bind the Proposer.
3. Proposal rigging and other efforts to restrain competition, and the making of false sworn statements in connection with the submission of bids are unlawful and may be subject to criminal prosecution. The person who signs the Affidavit should carefully examine it before signing and assure himself or herself that each statement is true and accurate, making diligent inquiry, as necessary, of all other persons employed by or associated with the Proposer with responsibilities for the preparation, approval or submission of the Proposal.
4. If the Proposal is submitted by a joint venture, each party to the venture must be identified in the Proposal documents, and a Non-Collusion Affidavit must be submitted separately on behalf of each party.
5. The term “complementary Proposal” as used in the Non-Collusion Affidavit has the meaning commonly associated with that term in the RFP process, and includes the knowing submission of a Proposal higher than the Proposal of another firm, any intentionally high or noncompetitive Proposal, and any form of Proposal submitted for the purpose of giving a false appearance of competition.
6. Failure to file a Non-Collusion Affidavit in compliance with these instructions will result in disqualification of the Proposal.

ATTACHMENT B – NON-COLLUSION AFFIDAVIT

NON-COLLUSION AFFIDAVIT

State of _____

County of _____

_____, being first duly sworn, deposes and says that:

(1) He/She is _____
(Owner, Partner, Officer, Representative or Agent of Proposer)

of _____, the Proposer that
(Name of the Proposer)

has submitted the attached Proposal;

(2) He/She is fully informed respecting the preparation and contents of the attached Proposal and of all pertinent circumstances respecting such Proposal;

(3) Such Proposal is genuine and is not a collusive or sham Proposal;

(4) Neither the said Proposer nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, has in any way colluded, conspired, connived or agreed, directly or indirectly, with any other Proposer, firm or person to submit a collusive or sham Proposal or complementary Proposal in connection with the Contract for which the attached Proposal is submitted or to refrain from submitting in connection with such Contract, or has in any manner, directly or indirectly, sought by agreement or collusion or communication of conference with any other Proposer, firm or person to fix the price or prices in the attached Proposal or of any other Proposer, or to fix any overhead, profit or cost element of the prices in the Proposal or the price of any other Proposer, or to secure through any collusion, conspiracy, connivance or unlawful agreement any advantage against the City of Reading or any person interested in the proposed Agreement;

(5) The price or prices quoted in the attached Proposal are fair and proper and are not tainted by any collusion, conspiracy, connivance or unlawful agreement on the part of the Proposer or any of its agents, representatives, owners, employees, or parties in interest, including this affiant; and,

(6) Neither the said Proposer nor any of its officers, partners, owners, agents or parties in interest, have any interest, present or prospective, that can be reasonably construed to result in a conflict of interest between them and the City of Reading, which the Proposer will be required to perform.

ATTACHMENT B – NON-COLLUSION AFFIDAVIT

I state that _____ understands
(Name of Proposer)

and acknowledges that the above representations are material and important, and will be relied on by the City of Reading in awarding the Agreement for which the Proposal is submitted. I understand and the Proposer understands that any misstatement in this Non-Collusion Affidavit is and shall be treated as fraudulent concealment from the City of Reading of the true facts relating to the submission of proposals for this Agreement.

Name: _____

By: _____
Authorized Signatory

Title: _____
President or Vice President

SWORN TO AND SUBSCRIBED
BEFORE ME THIS _____ DAY
OF _____, 20____

Notary Public

My Commission Expires: _____