



**PHILADELPHIA REGIONAL PORT AUTHORITY**

**REQUEST FOR PROPOSALS**

**FOR**

**THE SUPPLY OF**

**ELECTRIC YARD TRACTORS**

**Pre-Proposal Meeting:** N/A

**Questions:** Questions regarding this proposal are due **Wednesday, July 6, 2022, by 12:00 PM (Noon)** Please send all written questions via email to [procurement@philaport.com](mailto:procurement@philaport.com). Be sure to include the project name and number in the subject line of the email. Questions received after the deadline may not receive a response.

**Submissions:** Proposal submissions are due on **Wednesday, July 20, 2022, by 2:00 PM**. Proposals will only be accepted by bonfire, see Section III, D for further instructions:

<https://philaport.bonfirehub.com>

**THE PURCHASE OF THIS EQUIPMENT IS PARTIALLY FUNDED WITH FEDERAL DOLLARS UNDER A FY2019 DIESEL EMISSIONS REDUCTION ACT (DERA) GRANT, PROVIDED BY THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY.**

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## **I. INTRODUCTION**

### **A. NOTICE**

The information contained in and provided for this RFP is provided for background purposes only. While every effort has been made to ensure the accuracy of the information contained in this RFP, it is not, and shall not be construed as and shall not constitute, a representation, warranty or guaranty by the Philadelphia Regional Port Authority (“PhilaPort”) regarding the content, completeness, or accuracy of such information, or the qualifications or expertise of the individual(s) or firm(s) providing or preparing such information. Each entity responding to this RFP (“Offeror”) shall rely solely on its own inspections, investigation, confirmation and analysis of (1) the circumstances that will affect the performance of the “Supply”, as defined in the General Conditions, (2) the information contained in or delivered pursuant to this RFP and (3) all other information that such Offeror deems necessary or prudent in evaluating and analyzing the “Project,” as defined in the General Conditions.

This RFP is not a legally binding document, but an invitation to submit proposals on the terms and conditions of this RFP. In no event shall PhilaPort be responsible for any costs, expenses or fees incurred by or on behalf of the Offeror in connection with this RFP. The Offeror shall be solely responsible for all such costs, expenses and fees.

PhilaPort reserves the right at any time prior to award, to modify the schedule and scope of this solicitation process, to terminate the RFP process, and to reject or not consider all or any part of any proposal submitted in response to this RFP for any reason or no reason. Further, after review of the proposals, PhilaPort reserves the right to request additional or clarifying information from any or all parties that submit proposals in response to this RFP. PhilaPort reserves the right to hold interviews with Offerors after receipt of proposals.

### **B. BACKGROUND**

PhilaPort is an independent agency of the Commonwealth of Pennsylvania, responsible for the management, maintenance, promotion, and development of port facilities along the Delaware River.

PhilaPort’s principal goals are to enhance waterborne commerce, promote economic growth, and create jobs. PhilaPort was created for the purpose of acquiring, holding, developing, constructing, improving, maintaining, managing, operating, financing, equipping, repairing, leasing or subleasing, and owning port facilities and port-related projects within the Pennsylvania, Delaware River Port district. The port-district includes the area along Delaware River in Philadelphia, Bucks and Delaware Counties.

Over 3,000 ships load and offload at the Port of Philadelphia each year - making it one of the busiest ports on the North Atlantic range. The Port of Philadelphia handles more than one-quarter of the entire North Atlantic District's annual tonnage, and is the fourth largest port in the U.S. for the handling of imported goods.

The Port of Philadelphia is strategically located at the center of the Northeast corridor, the country's largest and richest marketplace. The port has direct access to more major cities by rail and truck than any other port in the country; ensuring deliveries are made in a timely and cost-effective manner.

PhilaPort's facilities are highly diversified and handle containers, break-bulk, project cargo, and liquid bulk. The port includes specialized facilities for forest products and for perishable cargo.

### **C. OBJECTIVES AND REQUIREMENTS:**

The Philadelphia Regional Port Authority ("PhilaPort") has been awarded EPA funding to purchase four (4) electric terminal tractors and (4) electric charging stations and to assist in coordinating the install of the associated infrastructure. The terminal tractors, also referred to as yard hostlers or yard tractors, are the most commonly used, heavy duty vehicles on port terminals.

Terminal tractors are nonroad vehicles critical to the handling of cargo on port terminals. Typically, cargo is unloaded from a vessel and placed directly on the yard hostler's trailer via a ship-to-shore crane. The yard hostler then drives the cargo to its first point of rest where another piece of cargo handling equipment, such as a top pick, removes the cargo. The yard hostler repeats this process of shuttling container or breakbulk cargo from the water's edge to the terminal yard numerous times throughout a shift. To better understand the frequency of the yard hostler use, the Packer Avenue Marine Terminal ("PAMT") had 340,060 container lifts in 2018; a yard hostler was needed for each move. Likewise, yard hostlers are used in the day-to-day operations at the Tioga Marine Terminal ("TMT") for the transport of containers, breakbulk (steel) and oversized project cargo. The everyday use of these diesel-powered vehicles causes this type of cargo handling equipment to be a significant contributor to air emissions. Because of this, the EPA has awarded PhilaPort grant funds to purchase four (4) new electric terminal tractors. Offeror's must comply with EPA grant regulations provided in this RFP.

Electric Terminal Tractor units offered must meet the minimum requirements listed below:

- Operating/run time of greater than 8 hours
- Pulling (payload) capacity for a minimum of 80,000 lbs.
- Less than 6-hour charging time
- Ability to function in temperatures below freezing
- Must be able to reach, at minimum, 20 MPH
- Tractors to be charged at the same time therefore need 1:1 charging station to Tractor ratio
- Cab to include heating and air conditioning
- Ability to supply a charging station that is compatible with the tractor

These are our minimum requirements; these requirements will be evaluated on a pass/fail basis. Please demonstrate full capabilities in Section I – Capabilities Narrative of the proposal submission.

**D. DELIVERABLES AS PART OF SCOPE OF WORK:**

Equipment shall be delivered F.O.B. Destination (freight pre-paid) to the Philadelphia Regional Port Authority. Equipment to be delivered to PhilaPort is listed below:

- Four (4) Electric Yard Tractors
  - Two (2) are to be delivered to Packer Avenue Marine Terminal (PAMT) and two (2) to be delivered to Tioga Marine Terminal (TMT)
- Four (4) Charging Stations
  - Two (2) are to be delivered to Packer Avenue Marine Terminal (PAMT) and two (2) to be delivered to Tioga Marine Terminal (TMT)

**Additional information on location of charging stations can be found in Attachment A.**

**II. PROCESS**

**A. EVALUATION AND SELECTION CRITERIA**

The selection criteria for an Offeror submitting in response to this RFP (the “Proposal”) include a combination of the following:

- The Offeror’s capability to provide the supply which meets the minimum requirements listed above. (Section I, C.) (Pass/Fail)
- Cost Information (60%)
- Schedule (20%)
- Offeror’s Relevant Experience (10%)
- Maintenance and Training (10%)

The Offerors will be ranked in accordance with the criteria identified above. The highest-ranking Offeror will have their “Cost Information” as defined hereinafter, submittal opened, and the process outlined in Section IV C will be followed. The Offeror’s Proposal will be submitted using the Form for Submission of Proposal (**Appendix A**) and will be the basis for review and for discussion with the Offeror.

## **B. SUBMISSION DEADLINE:**

Proposals are due by the deadline set forth on the first page of this RFP unless an Addendum is issued to extend the proposal submission deadline. Please check the website [www.philaport.com/procurement](http://www.philaport.com/procurement) often during this solicitation.

## **C. SITE TOUR**

If appropriate to the nature of the Supplies requested, a site tour will be offered upon an Offeror's request.

## **D. QUESTIONS ABOUT RFP**

All questions or comments regarding this RFP must be submitted **in written form** via email to [procurement@philaport.com](mailto:procurement@philaport.com).

E-mail is the only acceptable method for submitting questions. Other forms of electronic communication and telephone inquiries will not be accepted. All questions submitted to PhilaPort and the corresponding responses will be put on the PhilaPort website in the form of an addendum. The deadline for submitting questions to PhilaPort is set forth on the first page of this RFP. **Addenda should be acknowledged by emailing the acknowledgement page to [procurement@philaport.com](mailto:procurement@philaport.com).**

## **III. SUBMISSION REQUIREMENTS**

Proposals shall be signed by a duly authorized representative capable of executing a contract on behalf of the Offeror. If the Proposal is made by an individual, the complete post office address should be given in addition to the individual's signature. If made by a partnership, the complete post office address of each partner of the partnership (limited and/or general, as applicable) must be given. If made by a corporation, the Proposal must be signed by the President or a Vice President and the Secretary or Treasurer of the corporation; otherwise, the signing individual's authority to execute such papers shall accompany the Proposal.

A Proposal which is incomplete or conditional or which contains additions or deductions not called for, or irregularities of any kind, including alterations or erasures, may be rejected by the Authority as an informal Proposal. The Authority reserves the right to waive technical defects or irregularities in the Proposals.

Proposals must contain all of the following elements to be considered complete. PhilaPort reserves the right to reject, or not consider, all or part of any proposal submitted in response to this RFP for any reason whatsoever at any time prior to the full execution of the Agreement with the selected Offeror. PhilaPort further reserves the right to request additional or clarifying information from Offerors.

## A. PROPOSAL FORMAT

Offerors are to provide sufficient information for PhilaPort to evaluate the proposals to determine responsiveness and ability to meet the specifications for the Project. Offeror is to use the Form for Submission of Proposal, appearing here as **Appendix A** Submissions are limited to twenty pages, resumes excluded. At a minimum, the following sections should contain:

### **Section I. Capabilities Narrative:**

- Describe the technical capabilities of the tractor and the ability to meet the minimum requirements listed in.

### **Section II. Relevant Experience:**

- List similar supply projects, matters, or projects completed in terms of their nature, size and scope and the individual professionals.
- Demonstrate ability to operate in a port environment. Provide details on current vehicle uses. Provide at least 3 references, including contact information for similar use projects. Note: references do not have to be port specific.
- Demonstrate experience by providing similar project experience references. Provide type of equipment, location of use, model number, how long equipment has been in use, provide Point-of-Contact and relevant contact information.

### **Section III. Schedule:**

- Provide timeline with a Notice-to-Proceed as day 1. Schedule should include detailed information on major milestones from contract execution (NTP) through on-site delivery.

### **Section IV. Maintenance/Training:**

- Describe typical process for the commissioning of the vehicles.
- Describe training program for tractors.
- Provide details on tractor maintenance and the ability to provide on-site support.
- Minimum 3-year warranty on tractor/charging station/battery (Provide details).
- Ability to provide maintenance contract.

**Section V. Proposal Certification and Legal Disclosures:** The Form for Submission of Proposal, appearing as **Appendix A** shall be completely filled and executed. The response to this Part III shall be placed in a sealed envelope separate from the remainder of the Proposal and mailed to PhilaPort within one (1) business day after submission deadline:

**Kate Bailey**  
**PhilaPort**  
**2<sup>nd</sup> Floor**  
**3460 N. Delaware Avenue**  
**Philadelphia, PA 19134**

Also, indicate whether there are any convictions or criminal proceedings within the last 10 years or any outstanding judgments, claims, arbitration proceedings or suits against any firm or individual who is a member of the team, and whether any firm has been debarred by any governmental authority within the last 10 years. If so, provide the caption and venue of the matter, along with identifying case number and description. The Offeror's response should not indicate that another individual or entity should be contacted nor should it state that the requested information is not applicable to this project.

Offeror's submission shall be based upon the General Conditions as they exist in **Appendix B**.

Finally, submit copies of the addenda acknowledgements.

**Part VI. Cost Information:** Submit "Form for the Submission of Price Proposal attached as Appendix C and defined as the information sufficient for PhilaPort to price with an appropriate degree of accuracy the cost that will be incurred for the Supply. In certain instances, lump sum amounts will be appropriate. The form provided in Appendix C shall be utilized.

Proposals shall be broken down into two (2) parts.

**Part I** shall consist of the following four (4) sections:

- Section I. Capabilities Narrative
- Section II. Relevant Experience
- Section III. Schedule
- Section IV. Maintenance/Training

**Part II** shall consist of the following two (2) sections:

- Section V. Proposal Certification and Legal Disclosure
- Section VI. Cost Information

Proposals shall be tabbed clearly identifying each section. References to financial terms in any Section of Part I may be grounds for rejection of the proposal as being non-responsive.

## **B. OFFICIAL DESIGNATED TO RECEIVE PROPOSALS**

Unless otherwise specified, all Proposals must be submitted in the format specified in this RFP. Proposals shall be signed by a duly authorized representative capable of executing the Agreement on behalf of the Offeror. PhilaPort reserves the right to waive technical defects or irregularities in a Proposal. References to financial terms in any Part other than Part VI may be grounds for rejection of the proposal as being non-responsive.

### **C. PROPOSAL DEPOSIT**

No proposal deposit, bond or other form of security is required.

### **D. DELIVERY OF PROPOSALS**

It is the responsibility of the Offeror to ensure that the Offeror's Proposal is received by the Authority prior to the time scheduled for the receipt of Proposals. No Proposal shall be considered if it arrives after the time set for the opening of Proposals.

PhilaPort will be utilizing an e-Sourcing platform called Bonfire. Offerors must register with Bonfire to submit an electronic proposal with PhilaPort. Instructions and video tutorial can be found at:

- <https://support.gobonfire.com/hc/en-us/articles/360011135513-Vendor-Registration>.
- and
- <https://support.gobonfire.com/hc/en-us/articles/203903356-Vendor-Registration-and-Submission>

Proposals must be submitted through the online Bonfire Portal at:

<https://PHILAPORT.bonfirehub.com>

Be sure to register well in advance of the proposal submission date and time. Submissions by other methods will not be accepted.

Offerors must use Internet Explorer 11, Microsoft Edge, Google Chrome, or Mozilla Firefox. JavaScript must be enabled. Browser cookies must be enabled. Ensure pop-up blockers are turned off to avoid any issues.

Respondents should contact Bonfire at [Support@GoBonfire.com](mailto:Support@GoBonfire.com) for technical questions related to submissions or visit Bonfire's help forum at <https://bonfirehub.zendesk.com/hc>.

Submission materials should be prepared in the file formats listed under Requested Information for this opportunity in the Bonfire Portal. The maximum upload file size is 1000 MB. Documents should not be embedded within uploaded files, as the embedded files will not be accessible or evaluated.

The entire proposal submission should be uploaded into Bonfire.

**Within one (1) business day of the proposal submission date, the original Form for Submission of Proposal (Appendix A)**

Kate Bailey  
PhilaPort  
3460 North Delaware Avenue  
2<sup>nd</sup> Floor  
Philadelphia, PA 19134

#### **E. MODIFICATION OF PROPOSALS**

Proposals may be modified by written notice by an Offeror by its authorized representative prior to the exact hour and date set for the opening of Proposals. If an authorized representative submits a modified Proposal on behalf of an Offeror, written documentation substantiating that the authorized representative is authorized to make the modified Proposal and that the modified Proposal is submitted on the Offeror's behalf must be provided with the modified Proposal. A modification of the Proposal shall also state that it is in compliance with this RFP.

#### **F. WITHDRAWAL OF PROPOSALS**

An Offeror may withdraw the Proposal by its authorized representative after receipt by PhilaPort, provided that the Offeror makes a request therefor in writing and the request is received by PhilaPort prior to the time fixed for the opening of Proposals.

### **IV. EVALUATION AND AWARD OF PROPOSALS**

#### **A. EVALUATION AND DISCUSSION OF PROPOSALS**

After the Proposals are opened and reviewed, PhilaPort may conduct discussions with one or more responsible Offerors which submitted Proposals that are determined by PhilaPort in its sole discretion to be reasonably susceptible of being selected for award on the basis of the best interests of PhilaPort. The discussions may be conducted for the purpose of clarification to assume full understanding of and responsiveness to the solicitation requirements and for the purpose of obtaining best and final offers.

If PhilaPort chooses not to conduct discussions, the submitted Proposals shall become the best and final offers. A best and final offer can be modified or withdrawn any time prior to the deadline for its submission in the same manner as if it were a Proposal.

## **B. COLLUSIVE PROPOSALS WILL BE REJECTED**

The Proposals of any Offeror or Offeror which engage in collusion shall be rejected. Any Offeror who submits more than one Proposal in such manner as to make it appear that the Proposals submitted are on a competitive basis from different parties shall be considered a collusive Offeror. PhilaPort may reject the Proposals of any collusive Offeror upon Proposal openings. Nothing in this Section shall prevent an Offeror from superseding a Proposal by a subsequent Proposal delivered prior to the opening of Proposals which expressly revokes the previous Proposal.

## **C. AWARD OF CONTRACT**

Negotiations will be held with the highest ranked firm(s). To begin the negotiation, the highest ranked firm(s) will be asked to clarify and supplement the Cost Information submitted with its Proposal. The supplemental Cost Information shall be sufficiently detailed to allow PhilaPort to direct questions at specific areas of concern. By way of illustration, where the Offeror would expect to invoice PhilaPort on an hourly basis, the supplemental information should include complete information on the job classifications and billing rates as they would appear on monthly invoices. Similarly, where the Offeror would expect to invoice on a lump sum basis, information on the derivation of the lump sum figures should be provided.

If negotiations fail to proceed to an award of a contract, the negotiations will be terminated and PhilaPort will then begin negotiations with the next highest ranked responsive firm. This process will continue. Awards may be made to more than one Offeror. PhilaPort reserves the right to reject all proposals that are submitted, cancel the project, and or rebid for the Supply.

## **D. EXECUTION OF THE AGREEMENT**

Promptly after the completion of negotiations, contracts may be awarded by PhilaPort, and the Supply Agreement shall be executed by PhilaPort and the successful Offeror. As PhilaPort is an independent agency of the Commonwealth, for the purposes and within the meaning of the Act of October 15, 1980 (P.L. 950, No. 164), known as the Commonwealth Attorneys Act, all Contracts must be approved as to form and legality by the Office of the Attorney General.

Any Offeror not lawfully released from the submitted Proposal, and which refuses to execute a contract in accordance with the submitted Proposal shall be liable to PhilaPort for its damages, and, if security has been deposited with the Proposal, the amount of the security as liquidated damages.

By executing the Supply Agreement, the Offeror represents that the Offeror has (i) reviewed the RFP thoroughly, (ii) if appropriate, visited the Site to become familiar with local conditions that may in any manner affect the cost, progress or performance of the Supplies, (iii) become familiar with Federal, Commonwealth and City laws, ordinances, rules and regulations that may in any manner effect cost, progress or performance of the Project, (iv) studied and carefully reviewed

the Contract Documents, (v) received all information and documents necessary to allow the Offeror to perform the Supplies required under the Contract Documents, and (vi) reviewed and hereby acknowledges the provisions of the Philadelphia Regional Port Authority Act (55 Pa. C.S.A., § 697.1 *et seq.*) relevant to the performance of Supplies. The Offeror shall not at any time after the execution of the Contract make any claims whatsoever alleging insufficient data or incorrectly assumed conditions, nor shall the Offeror claim any misunderstanding with regard to the nature, conditions, or character of the work to be done under the Project.

#### **E. CONTRACT SURETY**

This section intentionally deleted. There is no requirement for security in connection with the submission of a Proposal in response to the RFP.

#### **F. PROTESTS IN CONNECTION WITH THE SOLICITATION OR AWARD OF A CONTRACT**

Protests asserted in connection with the solicitation or award of a contract by PhilaPort are governed by the provisions of the Commonwealth Procurement Code, 62 Pa.C.S. §1711.1.

- (a) An actual or prospective Offeror who is aggrieved in the connection with the solicitation or award of a contract must file a protest with the Executive Director of PhilaPort in writing within the period of time provided in the Code.
- (b) Upon receipt of a timely protest and until the time has elapsed for the Offeror to file an action in Commonwealth Court, PhilaPort shall not proceed further with the solicitation or with the award of the Contract unless and until the appropriate official within PhilaPort makes a written determination that the protest is clearly without merit or that award of the Contract without delay is necessary to protect substantial interests of PhilaPort.
- (c) If the protest is not resolved by mutual agreement, the appropriate official within PhilaPort shall promptly, but in no event later than sixty (60) calendar days from the filing of the protest, issue a decision in writing stating the reason for the action taken and notifying the Offeror of their right to file an action in the Commonwealth Court within fourteen (15) calendar days from the mailing date of the decision.
- (d) No action may be commenced in Commonwealth Court in connection with the solicitation or award of a Contract unless the Offeror has exhausted the remedies set forth in this section.

**ATTACHMENT A**  
**ADDITIONAL INFORMATION ON CHARGING STATION LOCATIONS**

## Tioga Marine Terminal Charging Stations

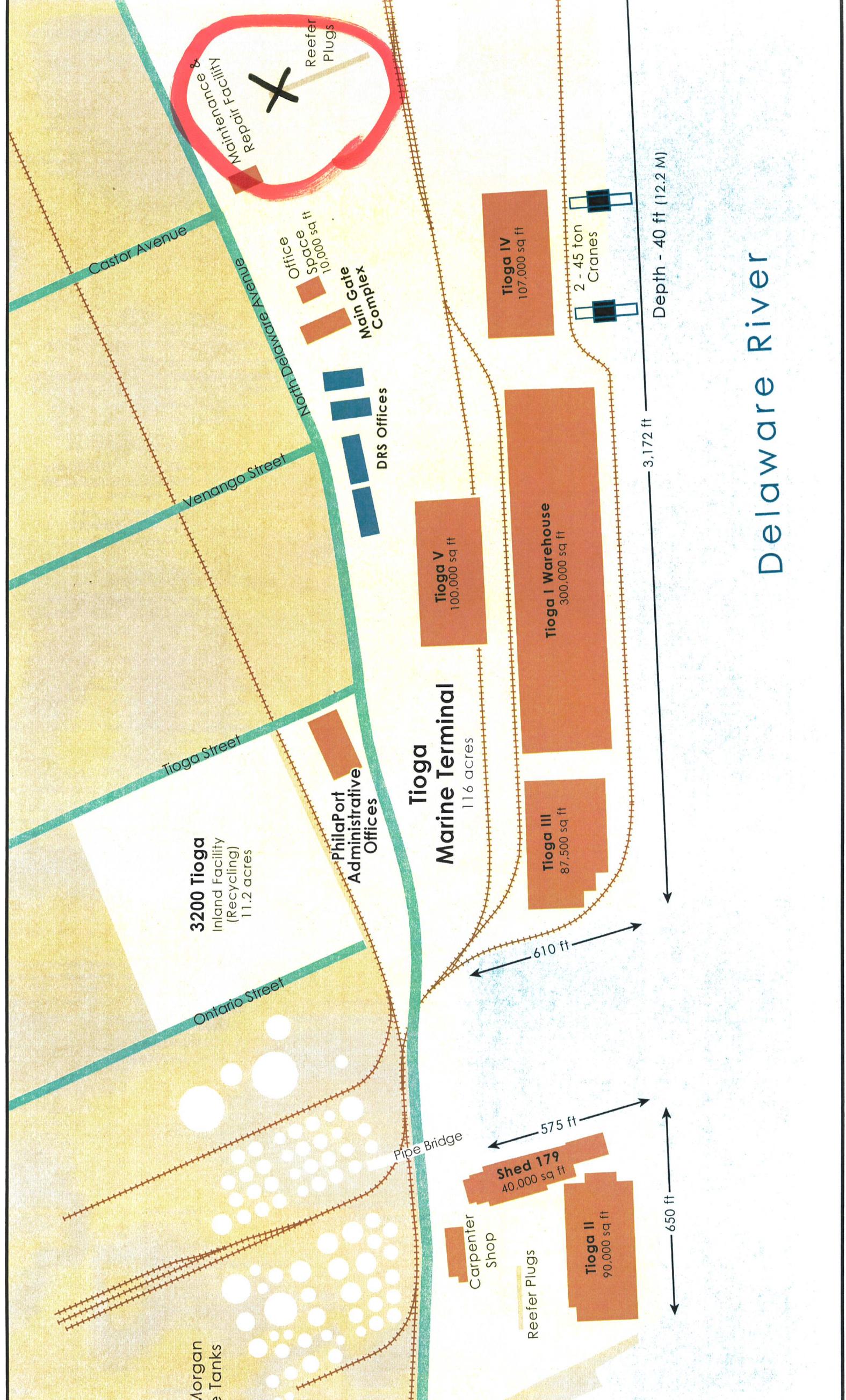
(Area for Charging Stations is approximately 80'x30' when clear)



Maintenance shop

Location of the charging stations - Approximately 80'X30' when cleared.





# Delaware River

## Packer Avenue Marine Terminal (PAMT) Charging Stations

(Area for Charging Stations is approximately 50' x 30')



SERVICE  
AREA

3  
GREENWICH  
CRANE SHOP

EMPT  
1075



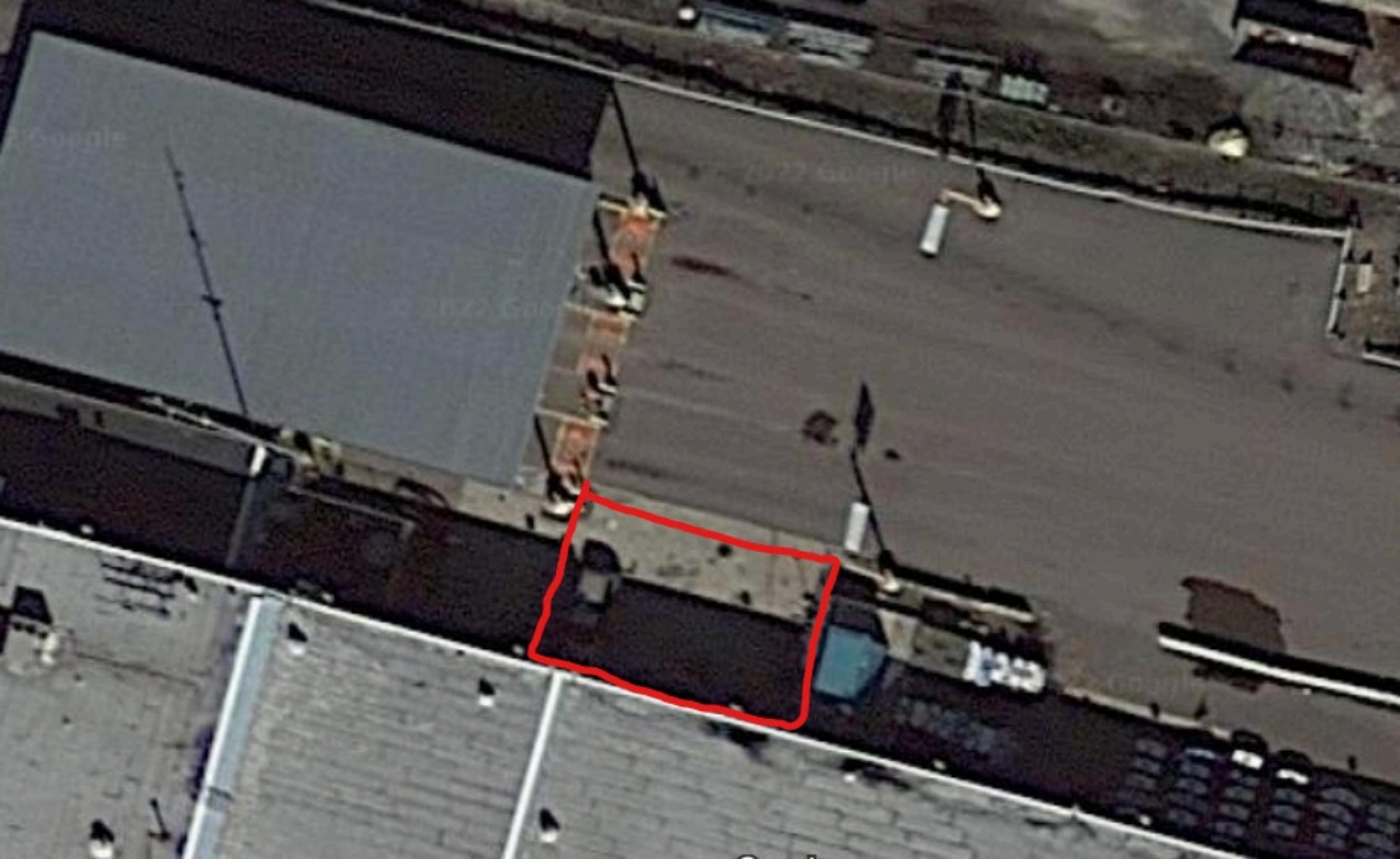
Power Generation

3  
GREENWICH  
CRANE SHOP

1075

PROPANE  
24

PROPANE





Charging Stations

**Appendix A**

**FORM FOR SUBMISSION OF PROPOSAL & RFP**



**PROPOSAL FOR  
PROJECT 22-019.P - SUPPLY OF ELECTRIC YARD TRACTORS**

The undersigned, \_\_\_\_\_ (“Offeror”), having familiarized itself and its team with the Supply being requested in PhilaPort’s Request for Proposal (“RFP”) dated \_\_\_\_\_, 20\_\_, hereby proposes to provide the requested Supply in accordance with the standards applicable to its profession or occupation. Offeror hereby incorporates Parts I through VI of this Proposal, which are attached and incorporated by reference as though fully set forth herein.

**I. Monetary Section:**

Offeror proposes to provide the Supplies for the cost set forth in Part 2, Section VI.

**II. Offeror Responsiveness Section:**

A. The Offeror certifies by its representative below that to the best of the representative’s knowledge, information and belief:

- i. Neither the Offeror nor the members of its team are under suspension or debarment by the Commonwealth or any governmental entity, instrumentality, or authority and, if this representation cannot be made, that Offeror agrees to submit, along with its Proposal, a written explanation of why such certification cannot be made and why the Contract should nonetheless be awarded to Offeror.
- ii. That as of the date of its execution of this Proposal, the Offeror has no tax liabilities or other Commonwealth obligations, or has filed a timely administrative or judicial appeal if such liabilities or obligations exist, or is subject to a duly approved deferred payment plan if such liabilities exist.

- iii. That the Offeror's team possesses all required business, professional contracting and trade licenses required to provide the Supply.
- iv. That the Offeror's team possesses all the technical qualifications and resources, including equipment, personnel and financial resources, to provide the Supply.

**III. Offeror Responsibility Section:**

A. The Offeror certifies by its representative below that to the best of the representative's knowledge, information and belief:

- i. Offeror's team has a satisfactory record of past contract performance and past compliance with applicable law that demonstrates a solid history of both technical competency and business integrity sufficient to justify receiving a Port PhilaPort contract.
- ii. Offeror's team possesses all qualifications, skills, resources, equipment personnel, financial resources and other required performance capabilities needed to successfully complete the prospective contract it is seeking to perform.
- iii. Offeror's team will comply with all relevant security requirements.
- iv. If applicable, Offeror's team will have sufficient personnel that possess Transportation Worker Identification Credentials to gain access and properly provide the Supply.

B. The Offeror certifies by its representative below that the following responses to the questions posed to assist PhilaPort in its determination of Offeror Responsibility are true and correct:

1. Has the Offeror or any member of its team been suspended and/or debarred or voluntarily agreed not to submit a proposal in response to the RFP as a result of an action by any federal, state or local government agency or authority in the past three years?

Yes No

2. Has any officer, director, owner or managerial employee of the Offeror or any member of its team been convicted of a felony relating to construction, maintenance, service or repair contracting industries?

Yes No

3. Has the Offeror or any member of its team defaulted on any project in the past three years?

Yes No

4. Has the Offeror or any member of its team had any type of business, contracting or trade license revoked or suspended by any government agency or authority in the past three (3) years?

Yes No

5. Has the Offeror or any member of its team been found in violation of any other law relating to its contracting business, including, but not limited to antitrust laws, licensing laws, tax laws, wage or hour laws, environmental or safety\* laws, by a final decision of a court or government agency authority in the past three (3) years?

Yes No

\*For purposes of this question, violations of safety laws may be limited to serious or willful safety violations.

6. Has the Offeror or any member of its team been the subject of voluntary or involuntary bankruptcy proceedings at any time in the past three years?

Yes No

C. Offeror's SAM.gov Registration Number is: \_\_\_\_\_.

D. Offeror's Vendor Data Management Unit Number is: \_\_\_\_\_.

For more information on obtaining a Vendor Data Management Unit Number, please see:  
<https://www.vendorregistration.state.pa.us/CVMU/paper/default.aspx>

**IV. Offeror's Point of Contact Section:**

Contact Information for the Offeror on this project (for purposes of affirming pricing, or providing information in response to inquiries, insurance information, , and the like):

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

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

Phone: \_\_\_\_\_

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

**V. Acknowledgment and Disclaimers Section:**

Offeror should include in Part VI, an acknowledgement of any addenda issued by PhilaPort.

It is understood that the right is reserved by PhilaPort to reject any or all proposals and to waive any informalities in the Proposal.

Submission of false or misleading information or statements in connection with this Certification shall render the Offeror ineligible to provide the Supply to PhilaPort and/or shall be considered a material breach of any contract entered and entitle PhilaPort to all applicable remedies available at law or in equity.

Failure to submit or fully complete the certifications required by this Proposal Form shall render the Offeror ineligible for the prospective contract.

**VI. Representation and Authorization Section:**

By making this Proposal, Offeror and its representative understand, represent, acknowledge and certify:

- a) That the foregoing representations regarding the past performance and present qualifications of the undersigned Offeror and its team are true and correct;
- b) The Offeror by its representative has read and understands the terms and conditions of the RFP and this Proposal is made in accordance with those terms and conditions;
- c) The price(s) and amount of the Proposal have been arrived at independently and without consultation, communication, or agreement with any other contractor, proposer or potential proposer;
- d) Neither the price(s) contained in nor the total amount of the Proposal, nor the approximate price(s) or total amount, have been disclosed to any other firm or person who is a proposer or potential proposer, and they will not be disclosed prior to the deadline for submitting proposals;
- e) No attempt has been made or will be made to induce any firm or person to refrain from proposing in response to the RFP, or to submit a proposal higher than the Proposal, or to submit an intentionally high or noncompetitive proposal or other form of complementary proposal;
- f) The Proposal is made in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person;
- g) This Proposal has been completed by an authorized representative of the Offeror that the sufficient knowledge and information to address all matter addressed herein;
- h) If an award is made to the Offeror, the Offeror agrees that it intends to be legally bound to the contract that is formed between PhilaPort and the Offeror; and

- i) If an award is made to the Offeror, the Offeror will enter into and execute a contract based upon this Proposal, without delay, upon notice of award of contract.

*[Signature pages to follow; select the page that is appropriate to Offeror's form of business organization.]*

**[SIGNATURE PAGE FOR INDIVIDUAL OFFEROR]**

\_\_\_\_\_  
Name of Offeror (Printed)

\_\_\_\_\_  
Signature of Individual

Trading and doing business as:  
\_\_\_\_\_

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

Tax Identification Number:  
\_\_\_\_\_

*\*If fictitious or trade name is employed in conduct of business, complete, by deletion as appropriate, the following statement:*

[Foregoing fictitious or trade name (has) (has not) been registered by the individual proprietorship under Pennsylvania Law.]

[SIGNATURE PAGE FOR PARTNERSHIP OFFEROR]

\_\_\_\_\_  
Name of Partnership

\_\_\_\_\_  
Name of General Partner (Printed)

By: \_\_\_\_\_  
(Signature of General Partner)

Witness: \_\_\_\_\_

Business Address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Tax Identification Number:

\_\_\_\_\_

The partners constituting the partnership herein named are:

Partner: \_\_\_\_\_

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

\_\_\_\_\_  
\_\_\_\_\_

Partner: \_\_\_\_\_

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

\_\_\_\_\_  
\_\_\_\_\_

*Add additional lines for the names and addresses of additional Partners, if there are more than four Partners in the Partnership, by attaching an additional page or pages to this Proposal.*

\*If fictitious or trade name is employed by the partnership in conduct of its business, insert name here:

\_\_\_\_\_

*Next, complete, by deletion as appropriate, the following statement:*

[Foregoing fictitious or trade name (has) (has not) been registered by the partnership under Pennsylvania Law.

[SIGNATURE PAGE FOR CORPORATE OFFEROR]

\_\_\_\_\_  
Name of Corporation

\_\_\_\_\_  
Attest:  
  
Signature of Secretary, Assistant Secretary  
Treasurer, Assistant Treasurer or  
other authorized representative\*\*

\_\_\_\_\_  
By:  
  
Signature of President, Vice President or  
other authorized representative\*

\_\_\_\_\_  
(Print Name of Representative)

\_\_\_\_\_  
(Print Name of Representative)

*\* If a representative other than the President or a Vice President of the Corporation signs this Proposal on its behalf, then attach a valid corporate resolution or other appropriate proof, dated prior to or as of the date of the Proposal, evidencing authority to execute this Proposal on behalf of the Corporation.*

*\*\* If a representative other than the Secretary, an Assistant Secretary, the Treasurer or an Assistant Treasurer attests to the signature of the corporate representative, then attach a valid corporate resolution or other appropriate proof, dated prior to or as of the date of the Proposal, evidencing authority to attest to the execution of this Proposal on behalf of the Corporation.*

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

Tax Identification Number:  
  
\_\_\_\_\_

(1) Complete the following statement: The Corporation has been organized and is existing under laws of the State/Commonwealth of: \_\_\_\_\_.

(2) *If Corporation has been organized under laws of a State other than those of the Commonwealth of Pennsylvania, complete, by deletion as appropriate, the following statement: [The Corporation (has) (has not) been granted a certificate of authority to do business in the Commonwealth of Pennsylvania under applicable laws.]*

(3) *If Corporation has been organized under laws other than those of the Commonwealth of Pennsylvania and has NOT been granted a certificate of authority, complete, by deletion as appropriate, the following statement:*

**[SIGNATURE PAGE FOR CORPORATE OFFEROR]**

[The Corporation (has) (has not) applied for a certificate of authority to do business in the Commonwealth of Pennsylvania and (has) (has not) attached a copy of the pending application to this Proposal.]

[SIGNATURE PAGE FOR LIMITED LIABILITY OFFEROR]

\_\_\_\_\_  
Name of Limited Liability Company

\_\_\_\_\_  
Attest:

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

\_\_\_\_\_  
Signature of an Authorized Representative\*

\_\_\_\_\_  
Signature of Authorized Representative\*\*

\_\_\_\_\_  
(Print Name of Representative)

\_\_\_\_\_  
(Print Name of Representative)

*\* The individual attesting verifies and represents that the person whose signature is affixed to this Proposal on behalf of the Limited Liability Company (LLC) is duly authorized in accordance with the representations hereafter set forth.*

*\*\* Check the box which applies to this Proposal:*

\_\_\_\_\_ *The Certificate of Organization provides that LLC is to be managed by managers, and this Proposal has been executed by a Manager fully authorized by the Certificate, by the Operating Agreement and by Resolutions of the LLC. Copies of the relevant documents are provided with the Proposal or can be provided upon request within three (3) working days.*

\_\_\_\_\_ *The Certificate of Organization does not provide that LLC is to be managed by managers, and this Proposal has been executed by a Member fully authorized by the Certificate, by the Operating Agreement and by Resolutions of the LLC. Copies of the relevant documents are provided with the Proposal or can be provided upon request within three (3) working days.*

\_\_\_\_\_ *This Proposal has been executed by a representative of the LLC who is not a Manager or a Member of the LLC, and instead who holds the office of \_\_\_\_\_ (insert title), and the execution of this Proposal is fully authorized by the Certificate, by the Operating Agreement and by Resolutions of the LLC. Copies of the relevant documents are provided with the Proposal or can be provided upon request within three (3) working days. The Offeror and the individuals signing and attesting to the execution of this document further represent that (1) execution of the Proposal is carrying on business in the usual way; (2) the LLC authorizes the execution of this Proposal even if execution and submission of this Proposal is not carrying on business in the usual way for the LLC; and (3) to the best of the individuals' information and belief, the Owner has no knowledge of the Member's or the Manager's lack of actual authority, or of any applicable and relevant restriction on his or her authority.*

Business Address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**[SIGNATURE PAGE FOR LIMITED LIABILITY OFFEROR]**

Tax Identification Number:

\_\_\_\_\_

(1) Complete the following statement: The LLC has been organized and is existing under laws of the State/Commonwealth of \_\_\_\_\_.

*(2) If the LLC has been organized under laws of a State other than those of the Commonwealth of Pennsylvania, complete, by deletion as appropriate, the following statement:*

[The LLC (has) (has not) been granted a certificate of authority to do business in the Commonwealth of Pennsylvania under applicable laws.]

*(3) If the LLC has been organized under laws other than those of the Commonwealth of Pennsylvania and has NOT been granted a certificate of authority, complete, by deletion as appropriate, the following statement:*

[The LLC (has) (has not) applied for a certificate of authority to do business in the Commonwealth of Pennsylvania and (has) (has not) attached a copy of the pending application to this Proposal.]

## **Appendix B**

### **Form of Agreement, General Conditions, and Grant Requirements**

## **Form of Agreement**



**SUPPLY ORDER:**

**DATE:**

**PROJECT #:**

**EXPIRATION DATE:**

**CONTRACT #:**

**PHILADELPHIA REGIONAL PORT AUTHORITY**

3460 N. Delaware Avenue, 2<sup>nd</sup> Floor, Philadelphia Pennsylvania 19134, Attn: \_\_\_\_\_ (“PhilaPort”), a body corporate and politic and an independent agency of the Commonwealth of Pennsylvania, and \_\_\_\_\_, located at \_\_\_\_\_,

Attn: \_\_\_\_\_ (the “Contractor”), a \_\_\_\_\_ corporation.

PhilaPort and Contractor hereby agree that Contractor will provide the requisite supplies as set forth herein (the “Supply Order”):

**Terms and Conditions:** The terms and conditions set forth in the General Conditions Exhibit “A” attached hereto are incorporated by reference and constitute part of this Supply Order. The General Conditions shall include any Special Conditions or Specifications as PhilaPort may issue as attachments thereto.

**Supplies:** Contractor will provide the supplies and related services to PhilaPort, as provided in Exhibit “B” attached hereto and incorporated herein by reference as part of this Supply Order (the “Supplies”) The Contractor shall provide the Supplies hereunder using its best efforts and in accordance with the standards of the relevant industry.

**Diversity and Inclusion Policy.** Contractor will adhere to the requirements set forth in the General Conditions regarding PhilaPort’s Diversity and Inclusion Policy and the commitments made and reflected in completed form, appearing here as Exhibit “C”, attached hereto, are incorporated by reference and constitute part of this Supply Order.

**Supply Order Amount:** The payment from PhilaPort for the Supplies provided by the Contractor hereunder, inclusive of all expenses (the “Supply Order Amount”), shall not exceed the sum of \_\_\_\_\_ (\$ \_\_\_\_\_) for the term of this Supply Order.

**Term of Supply Order:** This Contract shall be effective on the date that the last of the signatures have been affixed to this Agreement (“Effective Date”). The duration of this Agreement shall be \_\_\_\_\_ ( ) days (“Term”) from the Effective Date.

**IN WITNESS WHEREOF**, and intending to be legally bound hereby, PhilaPort and the Contractor have caused this Agreement to be executed on the dates hereafter set forth.

PHILADELPHIA REGIONAL PORT  
AUTHORITY (“PHILAPORT”)

By: \_\_\_\_\_  
Name: Jeff Theobald  
Title: CEO & Executive Director  
Date: \_\_\_\_\_

Approved as to Legality and Form:

Approved as to Budgetary Appropriateness  
& Fiscal Responsibility:

PHILADELPHIA REGIONAL PORT  
AUTHORITY (“PHILAPORT”)

By: \_\_\_\_\_  
Name: Colette A. Pete  
Title: Chief Counsel  
Date: \_\_\_\_\_

PHILADELPHIA REGIONAL PORT  
AUTHORITY (“PHILAPORT”)

By: \_\_\_\_\_  
Name: George Hutchinson  
Title: Director of Finance  
Date: \_\_\_\_\_

OFFICE OF ATTORNEY GENERAL

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Chief Deputy Attorney General  
Date: \_\_\_\_\_

OFFICE OF THE BUDGET

By: \_\_\_\_\_  
Title: Comptroller  
Date: \_\_\_\_\_

CONTRACTOR (where entity  
is a business corporation)

\_\_\_\_\_  
Name of Corporation

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

Signature of Secretary, Assistant Secretary  
Treasurer, Assistant Treasurer or  
other authorized representative\*\*

Signature of President, Vice President or  
other authorized representative\*

\_\_\_\_\_  
(Print Name of Representative)

\_\_\_\_\_  
(Print Name of Representative)

*\* If a corporate representative other than the President or a Vice President of the Corporation signs this Contract on its behalf, then attach a valid corporate resolution or other appropriate proof, dated prior to or as of the date of signature, evidencing PhilaPort to execute this Contract on behalf of the Corporation.*

*\*\* If a representative other than the Secretary, an Assistant Secretary, the Treasurer or an Assistant Treasurer attests to the signature of the corporate representative, then attach a valid corporate resolution or other appropriate proof, dated prior to or as of the date of signature, evidencing PhilaPort to attest to the execution of this Contract on behalf of the Corporation.*

**[Note: When agreements are signed with limited liability companies or non-corporate contractors, the form of signatures will be changed to the form appropriate to the form of business organization being used.]**

**Exhibit "A"**

**General Conditions for Supply Order**

**STANDARD CONTRACT  
TERMS AND CONDITIONS FOR SUPPLY**

**1. TERM OF CONTRACT**

The term of the Contract shall commence on the Effective Date (as defined below) and shall end on the Expiration Date identified in the Contract, subject to the other provisions of the Contract. The Effective Date shall be fixed by the Contracting Officer after the Contract has been fully executed by the Contractor and by PhilaPort and all approvals required by Commonwealth contracting procedures have been obtained. The Contract shall not be a legally binding contract until after the Effective Date is affixed and the fully-executed Contract has been sent to the Contractor. The Contracting Officer shall issue a written Notice to Proceed to the Contractor directing the Contractor to start performance on a date which is on or after the Effective Date. The Contractor shall not start the performance of any work prior to the date set forth in the Notice to Proceed and PhilaPort shall not be liable to pay the Contractor for any service or work performed or expenses incurred before the date set forth in the Notice to Proceed. No agency employee has the authority to verbally direct the commencement of any work under this Contract.

**2. EXTENSION OF CONTRACT TERM**

PhilaPort reserves the right, upon notice to the Contractor, to extend the term of the Contract upon the same terms and conditions.

**3. DEFINITIONS**

As used in this Contract, these words shall have the following meanings:

- a. Agency: The department, board, commission or other agency of PhilaPort listed as the Purchasing Agency. If external procurement activity has issued an order against this contract, that entity shall also be identified as "Agency".
- b. Contracting Officer: The person authorized to administer this Contract for PhilaPort and to make written determinations with respect to the Contract.
- c. Days: Unless specifically indicated otherwise, days mean calendar days.
- d. Developed Works or Developed Materials: All documents, sketches, drawings, designs, works, papers, files, reports, computer programs, computer documentation, data, records, software, samples or any other tangible material without limitation authored or prepared by Contractor as the work product covered in the scope of work for the Project.
- e. Documentation: All materials required to support and convey information about the services required by this Contract. It includes, but is not necessarily restricted to, written reports and analyses, diagrams, maps, logistical and physical designs, system designs, computer programs, flow charts, disks, and/or other machine-readable storage media.
- f. PhilaPort: Shall mean Philadelphia Regional Port Authority.
- g. Purchase Order: Shall mean the Contract.
- h. Services: All Contractor activity necessary to satisfy the Contract.

#### **4. INDEPENDENT PRIME CONTRACTOR**

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

#### **5. DELIVERY**

- a. **Supplies Delivery:** All item(s) shall be delivered F.O.B. Destination. The Contractor agrees to bear the risk of loss, injury, or destruction of the item(s) ordered prior to receipt of the items by PhilaPort. Such loss, injury, or destruction shall not release the Contractor from any contractual obligations. Except as otherwise provided in this contract, all item(s) must be delivered within the time period specified. Time is of the essence and, in addition to any other remedies, the Contract is subject to termination for failure to deliver as specified. Delivery must be made in accordance with the Contract/Purchase Order documents.
- b. **Delivery of Services:** The Contractor shall proceed with all due diligence in the performance of the services with qualified personnel, in accordance with the completion criteria set forth in the Contract.

#### **6. ESTIMATED QUANTITIES**

It shall be understood and agreed that any quantities listed in the Contract are estimated only and may be increased or decreased in accordance with the actual requirements of PhilaPort and that PhilaPort in accepting any bid or portion thereof, contracts only and agrees to purchase only the materials and services in such quantities as represent the actual requirements of PhilaPort. PhilaPort reserves the right to purchase materials and services covered under the Contract through a separate competitive procurement procedure, whenever PhilaPort deems it to be in its best interest and that of the Commonwealth

#### **7. WARRANTY**

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

#### **8. PATENT, COPYRIGHT, AND TRADEMARK INDEMNITY**

The Contractor warrants that it is the sole owner or author of, or has entered into a suitable legal agreement concerning either: a) the design of any product or process provided or used in the performance of the Contract which is covered by a patent, copyright, or trademark registration or other right duly authorized by state or federal law or b) any copyrighted matter in any report document or other material provided to PhilaPort under the contract. The Contractor shall defend any suit or proceeding brought against PhilaPort on account of any alleged patent, copyright or trademark infringement in the United States of any of the products provided or used in the performance of the Contract. This is upon condition that PhilaPort shall provide prompt notification in writing of such suit or proceeding; full right, authorization and opportunity to conduct the defense thereof; and full information and all reasonable cooperation for the defense of same. As principles

of governmental or public law are involved, PhilaPort may participate in or choose to conduct, in its sole discretion, the defense of any such action. If information and assistance are furnished by PhilaPort at the Contractor's written request, it shall be at the Contractor's expense, but the responsibility for such expense shall be only that within the Contractor's written authorization. The Contractor shall indemnify and hold PhilaPort harmless from all damages, costs, and expenses, including attorney's fees that the Contractor or PhilaPort may pay or incur by reason of any infringement or violation of the rights occurring to any holder of copyright, trademark, or patent interests and rights in any products provided or used in the performance of the Contract. If any of the products provided by the Contractor in such suit or proceeding are held to constitute infringement and the use is enjoined, the Contractor shall, at its own expense and at its option, either procure the right to continue use of such infringement products, replace them with non-infringement equal performance products or modify them so that they are no longer infringing. If the Contractor is unable to do any of the preceding, the Contractor agrees to remove all the equipment or software which are obtained contemporaneously with the infringing product, or, at the option of PhilaPort, only those items of equipment or software which are held to be infringing, and to pay PhilaPort: 1) any amounts paid by PhilaPort towards the purchase of the product, less straight line depreciation; 2) any license fee paid by PhilaPort for the use of any software, less an amount for the period of usage; and 3) the pro rata portion of any maintenance fee representing the time remaining in any period of maintenance paid for. The obligations of the Contractor under this paragraph continue without time limit. No costs or expenses shall be incurred for the account of the Contractor without its written consent.

## **9. OWNERSHIP RIGHTS**

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

## **10. ACCEPTANCE**

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

thereafter become due to the Contractor, the difference between the price stated in the Contract and the cost thereof to PhilaPort.

#### **11. PRODUCT CONFORMANCE**

PhilaPort reserves the right to require any and all Contractors to:

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

#### **12. REJECTED MATERIAL NOT CONSIDERED ABANDONED**

PhilaPort shall have the right to not regard any rejected material as abandoned and to demand that the Contractor remove the rejected material from the premises within thirty (30) days of notification. The Contractor shall be responsible for removal of the rejected material as well as proper clean-up. If the Contractor fails or refuses to remove the rejected material as demanded by PhilaPort, PhilaPort may seek payment from, or set-off from any payments due to the Contractor under this or any other Contract with PhilaPort, the costs of removal and clean-up. This is in addition to all other rights to recover costs incurred by PhilaPort.

#### **13. COMPLIANCE WITH LAW**

The Contractor shall comply with all applicable federal and state laws and regulations and local ordinances in the performance of the Contract.

#### **14. ENVIRONMENTAL PROVISIONS**

In the performance of the Contract, the Contractor shall minimize pollution and shall strictly comply with all applicable environmental laws and regulations, including, but not limited to, the Clean Streams Law Act of June 22, 1937 (P.L. 1987, No. 394), as amended 35 P.S. § 691.601 et seq.; the Pennsylvania Solid Waste Management Act, Act of July 7, 1980 (P.L. 380, No. 97), as amended, 35 P.S. § 6018.101 et seq.; and the Dam Safety and Encroachment Act, Act of November 26, 1978 (P.L. 1375, No. 325), as amended, 32 P.S. § 693.1.

#### **15. POST-CONSUMER RECYCLED CONTENT**

- a. Except as specifically waived by PhilaPort in writing, any products which are provided to PhilaPort as a part of the performance of the

Contract must meet the minimum percentage levels for total recycled content as specified on the Department of General Services website at [www.dgs.state.pa.us](http://www.dgs.state.pa.us) on the date of submission of the bid, proposal or contract offer.

- b. **Recycled Content Enforcement:** The Contractor may be required, after delivery of the Contract item(s), to provide PhilaPort with documentary evidence that the item(s) was in fact produced with the required minimum percentage of post-consumer and recovered material content.

## **16. COMPENSATION**

- a. **Compensation for Supplies:** The Contractor shall be required to furnish the awarded item(s) at the price(s) quoted in the Contract. All item(s) shall be delivered within the time period(s) specified in the Contract. The Contractor shall be compensated only for item(s) that are delivered and accepted by PhilaPort.
- b. **Compensation for Services:** The Contractor shall be required to perform the specified services at the price(s) quoted in the Contract. All services shall be performed within the time period(s) specified in the Contract. The Contractor shall be compensated only for work performed to the satisfaction of PhilaPort. The Contractor shall not be allowed or paid travel or per diem expenses except as specifically set forth in the Contract.

## **17. BILLING REQUIREMENTS**

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

- a. Vendor name and "Remit to" address, including Vendor number;
- b. Bank routing information, if ACH;
- c. Purchase Order number;
- d. Delivery Address, including name of PhilaPort point of contact;
- e. Description of the supplies/services delivered in accordance with Purchase Order Number (include purchase order line number as applicable);
- f. Quantity provided;
- g. Unit price;
- h. Price extension;
- i. Total price; and
- j. Delivery date of supplies or services.

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

Contractors are required to establish separate billing accounts with each using agency and invoice them directly. Each invoice shall be itemized with adequate detail and match the line item on the Purchase Order. In no instance shall any payment be made for services to the Contractor that are not in accordance with the prices on the Purchase Order, the Contract, updated price lists or any discounts negotiated by the purchasing agency.

## **18. PAYMENT**

PhilaPort shall put forth reasonable efforts to make payment by the required payment date. The required payment date is: (a) the date on which payment is due under the terms of the Contract; (b) thirty (30) days after a proper invoice actually is received at the “Bill To” address if a date on which payment is due is not specified in the Contract (a “proper” invoice is not received until PhilaPort accepts the service as satisfactorily performed); or (c) the payment date specified on the invoice if later than the dates established by (a) and (b) above. Payment may be delayed if the payment amount on an invoice is not based upon the price(s) as stated in the Contract. If any payment is not made within fifteen (15) days after the required payment date, PhilaPort may pay interest as determined by the Secretary of Budget in accordance with Act No.266 of 1982 and regulations promulgated pursuant thereto. Payment should not be construed by the Contractor as acceptance of the service performed by the Contractor. PhilaPort reserves the right to conduct further testing and inspection after payment, but within a reasonable time after performance, and to reject the service if such post payment testing or inspection discloses a defect or a failure to meet specifications. The Contractor agrees that PhilaPort may set off the amount of any state tax liability or other obligation of the Contractor or its subsidiaries to PhilaPort against any payments due the Contractor under any contract with PhilaPort.

- a. PhilaPort will make contract payments through Automated Clearing House (ACH).

Within 10 days of award of the contract or purchase order, the contractor must submit or must have already submitted their ACH information to PhilaPort.

- 1) The contractor must submit a unique invoice number with each invoice submitted. The unique invoice number will be listed on PhilaPort of

Pennsylvania's ACH remittance advice to enable the contractor to properly apply the state agency's payment to the invoice submitted.

- 2) It is the responsibility of the contractor to ensure that the ACH information is accurate and complete. Failure to maintain accurate and complete information may result in delays in payments.

## **19. TAXES**

. PhilaPort is exempt from Pennsylvania state sales tax, local sales tax, public transportation assistance taxes and fees and vehicle rental tax. The Department of Revenue regulations provide that exemption certificates are not required for sales made to governmental entities and none will be issued. Nothing in this paragraph is meant to exempt a construction contractor from the payment of any of these taxes or fees which are required to be paid with respect to the purchase, use, rental, or lease of tangible personal property or taxable services used or transferred in connection with the performance of a construction contract. The Contractor shall pay all sales, mercantile, consumer, use, service, and other similar taxes which are required by Applicable Laws for the Work or portions thereof provided by the Contractor. The Contractor is required to pay Pennsylvania Sales and Use Taxes and may claim an exemption only for some construction materials. The Contractor shall pay all Federal Excise Taxes if due.

## **20. ASSIGNMENT OF ANTITRUST CLAIMS**

The Contractor and PhilaPort recognize that in actual economic practice, overcharges by the Contractor's suppliers resulting from violations of state or federal antitrust laws are in fact borne by PhilaPort. As part of the consideration for the award of the Contract, and intending to be legally bound, the Contractor assigns to PhilaPort all right, title and interest in and to any claims the Contractor now has, or may acquire, under state or federal antitrust laws relating to the products and services which are the subject of this Contract.

## **21. COMMONWEALTH AND PHILAPORT HELD HARMLESS**

Contractor and its subcontractors, employees and agents under the Contract shall, at the request of PhilaPort, defend any and all actions brought against PhilaPort based upon any such claims or demands. The Contractor shall indemnify, defend, and hold harmless PhilaPort, the agent of PhilaPort acting as Construction Manager, the Commonwealth, and the tenants of any facilities affected by the Work, and their officers, employees, and agents, from and against any and all losses, costs (including litigation costs and counsel fees), claims, suits, actions, damages, liability, and expenses in connection with loss of life, bodily injury, personal injury, or damage to tangible property to the extent occasioned wholly or in part by the Contractor's act or omission or the act or omission of the Contractor's agents, contractors (including subcontractors and suppliers), officers, employees, or servants pursuant to the Contract. Contractor's indemnity obligations under this clause shall be excluded to the extent the loss of life, bodily injury, personal injury, or damage to tangible property have been caused in whole or in part by a breach of this Contract, act or omission by PhilaPort, the agent of PhilaPort acting as Construction Manager, the Commonwealth, and the tenants of any facilities affected by the Work, and their officers, employees, and agents.

## **22. SOVEREIGN IMMUNITY:**

The Contractor acknowledges that PhilaPort, as an agency of the Commonwealth of Pennsylvania, enjoys sovereign immunity pursuant to 42 Pa.C. S. A. Sections 8521, et seq. and the Philadelphia Regional Port Authority Act, . 55 P.S. Section 697.18.

## **23. AUDIT PROVISIONS**

PhilaPort shall have the right, at reasonable times and at a site designated by PhilaPort, to audit the books, documents and records of the Contractor to the extent that the books, documents and records relate to costs or pricing data for the Contract. The Contractor agrees to maintain records which will support the prices charged and costs incurred for the Contract. The Contractor shall preserve books, documents, and records that relate to costs or pricing data for the Contract for a period of three (3) years from date of final payment. The Contractor shall give full and free access to all records to PhilaPort and/or their authorized representatives.

## **24. DEFAULT**

- a. PhilaPort may, subject to the Force Majeure provisions of this Contract, and in addition to its other rights under the Contract, declare the Contractor in default by written notice thereof to the Contractor, and terminate (as provided in the Termination Provisions of this Contract) the whole or any part of this Contract or any Purchase Order for any of the following reasons:
- 1) Failure to begin work within the time specified in the Contract or Purchase Order or as otherwise specified;
  - 2) Failure to perform the work with sufficient labor, equipment, or material to insure the completion of the specified work in accordance with the Contract or Purchase Order terms;
  - 3) Unsatisfactory performance of the work;
  - 4) Failure to deliver the awarded item(s) within the time specified in the Contract or Purchase Order or as otherwise specified;
  - 5) Improper delivery;
  - 6) Failure to provide an item(s) which is in conformance with the specifications referenced in the Contract or Purchase Order;
  - 7) Delivery of a defective item;
  - 8) Failure or refusal to remove material, or remove and replace any work or material rejected as defective or unsatisfactory;
  - 9) Discontinuance of work without approval;
  - 10) Failure to resume work, which has been discontinued, within a reasonable time after notice to do so;
  - 11) Insolvency or bankruptcy;
  - 12) Assignment made for the benefit of creditors;
  - 13) Failure or refusal within 10 days after written notice by the Contracting Officer, to make payment or show cause why payment should not be made, of any

amounts due for materials furnished, labor supplied or performed, for equipment rentals, or for utility services rendered;

- 14) Failure to protect, to repair, or to make good any damage or injury to property;
  - 15) Breach of any provision of the Contract;
  - 16) Failure to comply with representations made in the Contractor's bid/proposal; or
  - 17) Failure to comply with applicable industry standards, customs, and practice.
- b. In the event that PhilaPort terminates this Contract or any Purchase Order in whole or in part as provided in Subparagraph a. above, PhilaPort may procure, upon such terms and in such manner as it determines, items similar or identical to those so terminated, and the Contractor shall be liable to PhilaPort for any reasonable excess costs for such similar or identical items included within the terminated part of the Contract or Purchase Order.
- c. If the Contract or a Purchase Order is terminated as provided in Subparagraph a. above, PhilaPort, in addition to any other rights provided in this paragraph, may require the Contractor to transfer title and deliver immediately to PhilaPort in the manner and to the extent directed by the Contracting Officer, such partially completed items, including, where applicable, reports, working papers and other documentation, as the Contractor has specifically produced or specifically acquired for the performance of such part of the Contract or Purchase Order as has been terminated. Except as provided below, payment for completed work accepted by PhilaPort shall be at the Contract price. Except as provided below, payment for partially completed items including, where applicable, reports and working papers, delivered to and accepted by PhilaPort shall be in an amount agreed upon by the Contractor and Contracting Officer. PhilaPort may withhold from amounts otherwise due the Contractor for such completed or partially completed works, such sum as the Contracting Officer determines to be necessary to protect PhilaPort against loss.
- d. The rights and remedies of PhilaPort provided in this paragraph shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.
- e. PhilaPort's failure to exercise any rights or remedies provided in this paragraph shall not be construed to be a waiver by PhilaPort of its rights and remedies in regard to the event of default or any succeeding event of default.
- f. Following exhaustion of the Contractor's administrative remedies as set forth in the Contract Controversies Provision of the Contract, the Contractor's exclusive remedy shall be to seek damages in the Board of Claims.

## **25. FORCE MAJEURE**

Neither party will incur any liability to the other if its performance of any obligation under this Contract is prevented or delayed by causes beyond its control and without the fault or negligence of either party. Causes beyond a party's control may include, but aren't limited to, acts of God or war, changes in controlling law, regulations, orders or the requirements of any governmental

entity, severe weather conditions, civil disorders, natural disasters, fire, epidemics and quarantines, general strikes throughout the trade, and freight embargoes.

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

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

## **26. TERMINATION PROVISIONS**

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

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

## **27. CONTRACT CONTROVERSIES**

- a. In the event of a controversy or claim arising from the Contract, the Contractor must, within six months after the cause of action accrues, file a written claim with the contracting officer for a determination. The claim shall state all grounds upon which the Contractor asserts a controversy exists. If the Contractor fails to file a claim or files an untimely claim, the Contractor is deemed to have waived its right to assert a claim in any forum. At the time the claim is filed, or within sixty (60) days thereafter, either party may request mediation through PhilaPort's Office of Chief Counsel.
- b. If the Contractor or the contracting officer requests mediation and the other party agrees, the contracting officer shall promptly make arrangements for mediation. Mediation shall be scheduled so as to not delay the issuance of the final determination beyond the required 120 days after receipt of the claim if mediation is unsuccessful. If mediation is not agreed to or if resolution is not reached through mediation, the contracting officer shall review timely-filed claims and issue a final determination, in writing, regarding the claim. The final determination shall be issued within 120 days of the receipt of the claim, unless extended by consent of the contracting officer and the Contractor. The contracting officer shall send his/her written determination to the Contractor. If the contracting officer fails to issue a final determination within the 120 days (unless extended by consent of the parties), the claim shall be deemed denied. The contracting officer's determination shall be the final order of the purchasing agency.
- c. Within fifteen (15) days of the mailing date of the determination denying a claim or within 135 days of filing a claim if, no extension is agreed to by the parties, whichever occurs first, the Contractor may file a statement of claim with the Pennsylvania Board of Claims. Pending a final judicial resolution of a controversy or claim, the Contractor shall proceed diligently with the performance of the Contract in a manner consistent with the determination of the contracting officer and PhilaPort shall compensate the Contractor pursuant to the terms of the Contract.

## **28. ASSIGNABILITY AND SUBCONTRACTING**

- a. Subject to the terms and conditions of this Paragraph, this Contract shall be binding upon the parties and their respective successors and assigns.
- b. The Contractor shall not subcontract with any person or entity to perform all or any part of the work to be performed under this Contract without the prior written consent of the Contracting Officer, which consent may be withheld at the sole and absolute discretion of the Contracting Officer.
- c. The Contractor may not assign, in whole or in part, this Contract or its rights, duties, obligations, or responsibilities hereunder without the prior written consent of the Contracting Officer, which consent may be withheld at the sole and absolute discretion of the Contracting Officer.
- d. Notwithstanding the foregoing, the Contractor may, without the consent of the Contracting Officer, assign its rights to payment to be received under the Contract, provided that the Contractor provides written notice of such assignment to the Contracting Officer together with a written acknowledgement from the assignee that any such payments are subject to all of the terms and conditions of this Contract.

- e. For the purposes of this Contract, the term “assign” shall include, but shall not be limited to, the sale, gift, assignment, pledge, or other transfer of any ownership interest in the Contractor provided, however, that the term shall not apply to the sale or other transfer of stock of a publicly traded company.
- f. Any assignment consented to by the Contracting Officer shall be evidenced by a written assignment agreement executed by the Contractor and its assignee in which the assignee agrees to be legally bound by all of the terms and conditions of the Contract and to assume the duties, obligations, and responsibilities being assigned.
- g. A change of name by the Contractor, following which the Contractor’s federal identification number remains unchanged, shall not be considered to be an assignment hereunder. The Contractor shall give the Contracting Officer written notice of any such change of name.

## **29. OTHER CONTRACTORS**

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

## **30. NONDISCRIMINATION/SEXUAL HARASSMENT CLAUSE**

The Contractor agrees:

- a. In the hiring of any employee(s) for the manufacture of supplies, performance of work, or any other activity required under the contract or any subcontract, the Contractor, each subcontractor, or any person acting on behalf of the Contractor or subcontractor shall not discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the *Pennsylvania Human Relations Act* (PHRA) and applicable federal laws, against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.
- b. Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the PHRA and applicable federal laws, against or intimidate any employee involved in the manufacture of supplies, the performance of work, or any other activity required under the contract.
- c. Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the PHRA and applicable federal laws, in the provision of services under the contract.
- d. Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate against employees by reason of participation in or decision to refrain

from participating in labor activities protected under the *Public Employee Relations Act*, *Pennsylvania Labor Relations Act* or *National Labor Relations Act*, as applicable and to the extent determined by entities charged with such Acts' enforcement, and shall comply with any provision of law establishing organizations as employees' exclusive representatives.

- e. The Contractor and each subcontractor shall establish and maintain a written nondiscrimination and sexual harassment policy and shall inform their employees in writing of the policy. The policy must contain a provision that sexual harassment will not be tolerated and employees who practice it will be disciplined. Posting this Nondiscrimination/Sexual Harassment Clause conspicuously in easily-accessible and well-lit places customarily frequented by employees and at or near where the contracted services are performed shall satisfy this requirement for employees with an established work site.
- f. The Contractor and each subcontractor shall not discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of PHRA and applicable federal laws, against any subcontractor or supplier who is qualified to perform the work to which the contract relates.
- g. The Contractor and each subcontractor represents that it is presently in compliance with and will maintain compliance with all applicable federal, state, and local laws, regulations and policies relating to nondiscrimination and sexual harassment. The Contractor and each subcontractor further represents that it has filed a Standard Form 100 Employer Information Report ("EEO-1") with the U.S. Equal Employment Opportunity Commission ("EEOC") and shall file an annual EEO-1 report with the EEOC as required for employers' subject to *Title VII of the Civil Rights Act of 1964*, as amended, that have 100 or more employees and employers that have federal government contracts or first-tier subcontracts and have 50 or more employees. The Contractor and each subcontractor shall, upon request and within the time periods requested by PhilaPort, furnish all necessary employment documents and records, including EEO-1 reports, and permit access to their books, records, and accounts by the contracting agency and the Bureau of Diversity, Inclusion and Small Business Opportunities for purpose of ascertaining compliance with provisions of this Nondiscrimination/Sexual Harassment Clause.
- h. The Contractor shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subcontract so that those provisions applicable to subcontractors will be binding upon each subcontractor.
- i. The Contractor's and each subcontractor's obligations pursuant to these provisions are ongoing from and after the effective date of the contract through the termination date thereof. Accordingly, the Contractor and each subcontractor shall have an obligation to inform PhilaPort if, at any time during the term of the contract, it becomes aware of any actions or occurrences that would result in violation of these provisions.
- j. PhilaPort may cancel or terminate the contract and all money due or to become due under the contract may be forfeited for a violation of the terms and conditions of this Nondiscrimination/Sexual Harassment Clause. In addition, the agency may proceed with debarment or suspension and may place the Contractor in the Contractor Responsibility File.

### 31. CONTRACTOR INTEGRITY PROVISIONS

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

1. **DEFINITIONS.** For purposes of these Contractor Integrity Provisions, the following terms shall have the meanings found in this Section:
  - a. **“Affiliate”** means two or more entities where (a) a parent entity owns more than fifty percent of the voting stock of each of the entities; or (b) a common shareholder or group of shareholders owns more than fifty percent of the voting stock of each of the entities; or (c) the entities have a common proprietor or general partner.
  - b. **“Consent”** means written permission signed by a duly authorized officer or employee of PhilaPort, provided that where the material facts have been disclosed, in writing, by prequalification, bid, proposal, or contractual terms, PhilaPort shall be deemed to have consented by virtue of the execution of this contract.
  - c. **“Contractor”** means the individual or entity, that has entered into this contract with PhilaPort.
  - d. **“Contractor Related Parties”** means any affiliates of the Contractor and the Contractor’s executive officers, Pennsylvania officers and directors, or owners of 5 percent or more interest in the Contractor.
  - e. **“Financial Interest”** means either:
    - (1) Ownership of more than a five percent interest in any business; or
    - (2) Holding a position as an officer, director, trustee, partner, employee, or holding any position of management.
  - f. **“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 contracts 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.
  - g. **“Non-bid Basis”** means a contract awarded or executed by PhilaPort with Contractor without seeking bids or proposals from any other potential bidder or offeror.
2. In furtherance of this policy, Contractor agrees to the following:
  - a. Contractor shall maintain the highest standards of honesty and integrity during the performance of this contract 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 Contractor or that govern contracting or procurement with PhilaPort.

- b.** Contractor shall establish and implement a written business integrity policy, which includes, at a minimum, the requirements of these provisions as they relate to the Contractor activity with PhilaPort and PhilaPort employees and which is made known to all Contractor employees. Posting these Contractor Integrity Provisions conspicuously in easily-accessible and well-lighted places customarily frequented by employees and at or near where the contract services are performed shall satisfy this requirement.
- c.** Contractor, its affiliates, agents, employees and anyone in privity with Contractor shall not accept, agree to give, offer, confer, or agree to confer or promise to confer, directly or indirectly, any gratuity or pecuniary benefit to any person, or to influence or attempt to influence any person in violation of any federal or state law, regulation, executive order of the Governor of Pennsylvania, statement of policy, management directive or any other published standard of PhilaPort in connection with performance of work under this contract, except as provided in this contract.
- d.** Contractor shall not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material under this contract, unless the financial interest is disclosed to PhilaPort in writing and PhilaPort consents to Contractor's financial interest prior to PhilaPort's execution of the contract. Contractor shall disclose the financial interest to PhilaPort at the time of bid or proposal submission, or if no bids or proposals are solicited, no later than Contractor's submission of the contract signed by Contractor.
- e.** Contractor certifies to the best of its knowledge and belief that within the last five (5) years Contractor or Contractor Related Parties have not:

  - (1)** been indicted or convicted of a crime involving moral turpitude or business honesty or integrity in any jurisdiction;
  - (2)** been suspended, debarred or otherwise disqualified from entering into any contract with any governmental agency;
  - (3)** had any business license or professional license suspended or revoked;
  - (4)** had any sanction or finding of fact imposed as a result of a judicial or administrative proceeding related to fraud, extortion, bribery, bid rigging, embezzlement, misrepresentation or anti-trust; and
  - (5)** been, and is not currently, the subject of a criminal investigation by any federal, state or local prosecuting or investigative agency and/or civil anti-trust investigation by any federal, state or local prosecuting or investigative agency.

If Contractor cannot so certify to the above, then it must submit along with its bid, proposal or contract a written explanation of why such certification cannot be made and PhilaPort will determine whether a contract may be entered into with the Contractor. The Contractor's obligation pursuant to this certification is ongoing from and after the effective date of the contract through the termination date thereof. Accordingly, the Contractor shall have an obligation to immediately notify PhilaPort in writing if at any time during the term of the contract it becomes aware of any event which would cause the Contractor's certification or explanation to change. Contractor acknowledges that PhilaPort may, in its sole discretion, terminate

the contract for cause if it learns that any of the certifications made herein are currently false due to intervening factual circumstances or were false or should have been known to be false when entering into the contract.

- f. Contractor shall comply with the requirements of the *Lobbying Disclosure Act (65 Pa.C.S. §13A01 et seq.)* regardless of the method of award. If this contract was awarded on a Non-bid Basis, Contractor must also comply with the requirements of the *Section 1641 of the Pennsylvania Election Code (25 P.S. §3260a)*.
- g. When Contractor has reason to believe that any breach of ethical standards as set forth in law, the Governor’s Code of Conduct, or these Contractor Integrity Provisions has occurred or may occur, including but not limited to contact by a Commonwealth or PhilaPort officer or employee which, if acted upon, would violate such ethical standards, Contractor shall immediately notify PhilaPort contracting officer or the Office of the State Inspector General in writing.
- h. Contractor, by submission of its bid or proposal and/or execution of this contract and by the submission of any bills, invoices or requests for payment pursuant to the contract, certifies and represents that it has not violated any of these Contractor Integrity Provisions in connection with the submission of the bid or proposal, during any contract negotiations or during the term of the contract, to include any extensions thereof. Contractor shall immediately notify PhilaPort in writing of any actions for occurrences that would result in a violation of these Contractor Integrity Provisions. Contractor agrees to reimburse PhilaPort for the reasonable costs of investigation incurred by PhilaPort, or the Office of the State Inspector General for investigations of the Contractor’s compliance with the terms of this or any other agreement between the Contractor and PhilaPort that results in the suspension or debarment of the Contractor. Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor’s suspension or debarment.
- i. Contractor shall cooperate with PhilaPort, or the Office of the State Inspector General in its investigation of any alleged Commonwealth agency or employee breach of ethical standards and any alleged Contractor non-compliance with these Contractor Integrity Provisions. Contractor agrees to make identified Contractor employees available for interviews at reasonable times and places. Contractor, upon the inquiry or request of an 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 Office of the State Inspector General to Contractor’s integrity and compliance with these provisions. Such information may include, but shall not be limited to, Contractor’s business or financial records, documents or files of any type or form that refer to or concern this contract. Contractor shall incorporate this paragraph in any agreement, contract or subcontract it enters into in the course of the performance of this contract/agreement solely for the purpose of obtaining subcontractor compliance with this provision. The incorporation of this provision in a subcontract shall not create privity of contract between PhilaPort and any such subcontractor, and no third party beneficiaries shall be created thereby.
- j. For violation of any of these Contractor Integrity Provisions, PhilaPort may terminate this and any other contract with Contractor, 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 contractor to

complete performance under this contract, and debar and suspend Contractor from doing business with PhilaPort. 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 PhilaPort may have under law, statute, regulation, or otherwise.

### **32. CONTRACTOR RESPONSIBILITY PROVISIONS**

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

- a. The Contractor certifies, in writing, for itself and its subcontractors required to be disclosed or approved by PhilaPort, that as of the date of its execution of this Bid/Contract, that neither the Contractor, nor any such subcontractors, are under suspension or debarment by PhilaPort or any governmental entity, instrumentality, or authority and, if the Contractor cannot so certify, then it agrees to submit, along with its Bid/Contract, a written explanation of why such certification cannot be made.
- b. The Contractor also certifies, in writing, that as of the date of its execution of this Bid/Contract it has no tax liabilities or other Commonwealth obligations, or has filed a timely administrative or judicial appeal if such liabilities or obligations exist, or is subject to a duly approved deferred payment plan if such liabilities exist.
- c. The Contractor's obligations pursuant to these provisions are ongoing from and after the effective date of the Contract through the termination date thereof. Accordingly, the Contractor shall have an obligation to inform PhilaPort if, at any time during the term of the Contract, it becomes delinquent in the payment of taxes, or other PhilaPort or Commonwealth obligations, or if it or, to the best knowledge of the Contractor, any of its subcontractors are suspended or debarred by PhilaPort, the federal government, or any other state or governmental entity. Such notification shall be made within 15 days of the date of suspension or debarment.
- d. The failure of the Contractor to notify PhilaPort of its suspension or debarment by PhilaPort, any other state, or the federal government shall constitute an event of default of the Contract with PhilaPort.
- e. The Contractor agrees to reimburse PhilaPort for the reasonable costs of investigation incurred by PhilaPort, or the Office of State Inspector General for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and PhilaPort that results in the suspension or debarment of the contractor. Such costs shall include, but shall not be limited to, salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor's suspension or debarment.

- f. The Contractor may obtain a current list of suspended and debarred Commonwealth contractors by either searching the Internet at <http://www.dgs.state.pa.us/> 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

### **33. AMERICANS WITH DISABILITIES ACT**

- a. Pursuant to federal regulations promulgated under the authority of The Americans With Disabilities Act, 28 C.F.R. § 35.101 et seq., the Contractor understands and agrees that it shall not cause any individual with a disability to be excluded from participation in this Contract or from activities provided for under this Contract on the basis of the disability. As a condition of accepting this contract, the Contractor agrees to comply with the “General Prohibitions Against Discrimination,” 28 C.F.R. § 35.130, and all other regulations promulgated under Title II of The Americans With Disabilities Act which are applicable to all benefits, services, programs, and activities provided by PhilaPort of Pennsylvania through contracts with outside contractors.
- b. The Contractor shall be responsible for and agrees to defend, indemnify and hold harmless PhilaPort from all losses, damages, expenses, claims, demands, suits, and actions brought by any party against PhilaPort as a result of the Contractor’s failure to comply with the provisions of subparagraph a above.

### **34. PROHIBITION AGAINST THE USE OF CERTAIN STEEL AND ALUMINUM PRODUCTS (OCT 2009):**

In accordance with the Trade Practices Act of July 23, 1968 P.L. 686 (71 P.S. §773.101 et seq.), the Contractor cannot and shall not use or permit to be used in the work any aluminum or steel products made in a foreign country which is listed below as a foreign country which discriminates against aluminum or steel products manufactured in Pennsylvania. The countries of Brazil, South Korea, Spain and Argentina have been found to discriminate against certain products manufactured in Pennsylvania. Therefore, the purchase or use of those countries’ products, as listed below, is not permitted.

1. BRAZIL: Welded carbon steel pipes and tubes; carbon steel wire rods; tool steel; certain steel products, including hot-rolled stainless steel bar; stainless steel wire rod and coldformed stainless steel bar; pre-stressed concrete steel wire strand; hot-rolled carbon steel plate in coil; hot-rolled carbon steel sheet and cold-rolled carbon steel sheet.
2. SPAIN: Certain stainless steel products, including stainless steel wire rod, hot-rolled stainless steel bars and cold-formed stainless steel bars; pre-stressed concrete steel wire strands; certain steel products, including hot-rolled steel plate, cold-rolled carbon steel plate, carbon steel structural shapes, galvanized carbon steel sheet, hot-rolled carbon steel bars and cold-formed carbon steel bars.
3. SOUTH KOREA: Welded carbon steel pipes and tubes hot-rolled carbon steel plate; hot-rolled carbon steel sheet and galvanized steel sheet.
4. ARGENTINA: Carbon steel wire rod and cold-rolled carbon steel sheet.

Penalties for violations of this paragraph may be found in the Trade Practices Act, which penalties include becoming ineligible for public works contracts for a period of three years. Note: This

provision in no way relieves the Contractor of its responsibility to comply with those provisions of this Agreement that prohibit the use of foreign-made steel and cast iron products.

### **35. HAZARDOUS SUBSTANCES**

The Contractor shall provide information to PhilaPort about the identity and hazards of hazardous substances supplied or used by the Contractor in the performance of the Contract. The Contractor must comply with Act 159 of October 5, 1984, known as the “Worker and Community Right to Know Act” (the “Act”) and the regulations promulgated pursuant thereto at 34 Pa. Code Section 301.1 et seq.

- a. Labeling. The Contractor shall insure that each individual product (as well as the carton, container or package in which the product is shipped) of any of the following substances (as defined by the Act and the regulations) supplied by the Contractor is clearly labeled, tagged or marked with the information listed in Paragraph (1) through (4):
  - 1) Hazardous substances:
    - a) The chemical name or common name,
    - b) A hazard warning, and
    - c) The name, address, and telephone number of the manufacturer.
  - 2) Hazardous mixtures:
    - a) The common name, but if none exists, then the trade name,
    - b) The chemical or common name of special hazardous substances comprising .01% or more of the mixture,
    - c) The chemical or common name of hazardous substances consisting 1.0% or more of the mixture,
    - d) A hazard warning, and
    - e) The name, address, and telephone number of the manufacturer.
  - 3) Single chemicals:
    - a) The chemical name or the common name,
    - b) A hazard warning, if appropriate, and
    - c) The name, address, and telephone number of the manufacturer.
  - 4) Chemical Mixtures:
    - a) The common name, but if none exists, then the trade name,
    - b) A hazard warning, if appropriate,
    - c) The name, address, and telephone number of the manufacturer, and

- d) The chemical name or common name of either the top five substances by volume or those substances consisting of 5.0% or more of the mixture.

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

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

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

- NFPA 704, Identification of the Fire Hazards of Materials.
- National Paint and Coatings Association: Hazardous Materials Identification System.
- American Society for Testing and Materials, Safety Alert Pictorial Chart.
- American National Standard Institute, Inc., for the Precautionary Labeling of Hazardous Industrial Chemicals.

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

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

### **36. COVENANT AGAINST CONTINGENT FEES**

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

### **37. APPLICABLE LAW**

This Contract shall be governed by and interpreted and enforced in accordance with the laws of the Commonwealth of Pennsylvania (without regard to any conflict of laws provisions) and the decisions of the Pennsylvania courts. The Contractor consents to the jurisdiction of any court of the Commonwealth of Pennsylvania and any federal courts in Pennsylvania, waiving any claim or

defense that such forum is not convenient or proper. The Contractor agrees that any such court shall have in personam jurisdiction over it, and consents to service of process in any manner authorized by Pennsylvania law.

### **38. INTEGRATION**

This Contract, including all referenced documents, constitutes the entire agreement between the parties. No agent, representative, employee or officer of either PhilaPort or the Contractor has authority to make, or has made, any statement, agreement or representation, oral or written, in connection with the Contract, which in any way can be deemed to modify, add to or detract from, or otherwise change or alter its terms and conditions. No negotiations between the parties, nor any custom or usage, shall be permitted to modify or contradict any of the terms and conditions of the Contract. No modifications, alterations, changes, or waiver to the Contract or any of its terms shall be valid or binding unless accomplished by a written amendment signed by both parties.

### **39. ORDER OF PRECEDENCE**

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

### **40. CONTROLLING TERMS AND CONDITIONS**

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

### **41. CHANGES**

PhilaPort reserves the right to make changes at any time during the term of the Contract or any renewals or extensions thereof: 1) to increase or decrease the quantities resulting from variations between any estimated quantities in the Contract and actual quantities; 2) to make changes to the services within the scope of the Contract; 3) to notify the Contractor that PhilaPort is exercising any Contract renewal or extension option; or 4) to modify the time of performance that does not alter the scope of the Contract to extend the completion date beyond the Expiration Date of the Contract or any renewals or extensions thereof. Any such change shall be made by the Contracting Officer by notifying the Contractor in writing. The change shall be effective as of the date of the change, unless the notification of change specifies a later effective date. Such increases, decreases, changes, or modifications will not invalidate the Contract, nor, if performance security is being furnished in conjunction with the Contract, release the security obligation. The Contractor agrees to provide the service in accordance with the change order. Any dispute by the Contractor in regard to the performance required by any notification of change shall be handled through the Contract Controversies Provision.

### **42. BACKGROUND CHECKS**

- a. The Contractor must, at its expense, arrange for a background check for each of its employees, as well as the employees of any of its subcontractors, who will have access to PhilaPort facilities, either through on-site access or through remote access. Background checks are to be conducted via the Request for Criminal Record Check form and procedure

found at <http://www.psp.state.pa.us/psp/lib/psp/sp4-164.pdf>. The background check must be conducted prior to initial access and on an annual basis thereafter.

- b. Before PhilaPort will permit access to the Contractor, the Contractor must provide written confirmation that the background checks have been conducted. If, at any time, it is discovered that a Contractor employee has a criminal record that includes a felony or misdemeanor involving terroristic behavior, violence, use of a lethal weapon, or breach of trust/fiduciary responsibility or which raises concerns about building, system or personal security or is otherwise job-related, the Contractor shall not assign that employee to any PhilaPort facilities, shall remove any access privileges already given to the employee and shall not permit that employee remote access unless PhilaPort consents to the access, in writing, prior to the access. PhilaPort may withhold its consent in its sole discretion. Failure of the Contractor to comply with the terms of this Section on more than one occasion or Contractor's failure to appropriately address any single failure to the satisfaction of PhilaPort may result in the Contractor being deemed in default of its Contract.
- c. PhilaPort specifically reserves the right of PhilaPort to conduct background checks over and above that described herein.

### **43. CONFIDENTIALITY**

- a. Each party agrees to guard the confidentiality of the other party's confidential information with the same diligence with which it guards its own proprietary information. If the receiving party needs to disclose all or part of project materials to third parties to assist in the work or service performed for PhilaPort, it may do so only if such third parties sign agreements containing substantially the same provisions as contained in this Section. In order for information to be deemed to be confidential, the party claiming confidentiality must designate the information as "confidential" in such a way as to give notice to the other party. The parties agree that such confidential information shall not be copied, in whole or in part, except when essential for authorized use under this Contract. Each copy of such confidential information shall be marked by the party making the copy with all confidentiality notices appearing in the original. Upon termination or cancellation of this Contract or any license granted hereunder, the receiving party will return to the disclosing party all copies of the confidential information in the receiving party's possession, other than one copy, which may be maintained for archival purposes only. Both parties agree that a material breach of these requirements may, after failure to cure within the time frame specified in this Contract, and at the discretion of the non-breaching party, result in termination for default.
- b. The obligations stated in this Section do not apply to information:
  - 1) already known to the recipient at the time of disclosure other than through the contractual relationship;
  - 2) independently generated by the recipient and not derived from the information supplied by the disclosing party;
  - 3) known or available to the public, except where such knowledge or availability is the result of unauthorized disclosure by the recipient of the proprietary information;
  - 4) disclosed to the recipient without a similar restriction by a third party who has the

right to make such disclosure; or

- 5) required to be disclosed by the recipient by law, regulation, court order, or other legal process.
- c. There shall be no restriction with respect to the use or disclosure of any ideas, concepts, know-how, or data processing techniques developed alone or jointly with PhilaPort in connection with services provided to PhilaPort under this Contract.

#### **44. NOTICE**

Any written notice to any party under this Contract shall be deemed sufficient if delivered personally, or by facsimile, telecopy, electronic or digital transmission (provided such delivery is confirmed), or by a recognized overnight courier service (e.g., DHL, Federal Express, etc.) with confirmed receipt, or by certified or registered United States mail, postage prepaid, return receipt requested, and sent to following:

- a. If to the Contractor: the Contractor's address as recorded under this contract.
- b. If to PhilaPort: the address of the Issuing Office as set forth on the Contract.

#### **45. RIGHT TO KNOW LAW**

- a. The Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104, (“RTKL”) applies to this Contract. For the purpose of these provisions, the term “PhilaPort” shall refer to the contracting Commonwealth agency.
- b. If PhilaPort needs the Contractor’s assistance in any matter arising out of the RTKL related to this Contract, it shall notify the Contractor using the legal contact information provided in this Contract. The Contractor, at any time, may designate a different contact for such purpose upon reasonable prior written notice to PhilaPort.
- c. Upon written notification from PhilaPort that it requires the Contractor’s assistance in responding to a request under the RTKL for information related to this Contract that may be in the Contractor’s possession, constituting, or alleged to constitute, a public record in accordance with the RTKL (“Requested Information”), the Contractor shall:
  - 1) Provide PhilaPort, within ten (10) calendar days after receipt of written notification, access to, and copies of, any document or information in the Contractor’s possession arising out of this Contract that PhilaPort reasonably believes is Requested Information and may be a public record under the RTKL; and
  - 2) Provide such other assistance as PhilaPort may reasonably request, in order to comply with the RTKL with respect to this Contract.
- d. If the Contractor 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 Contractor considers exempt from production under the RTKL, the Contractor must notify PhilaPort and provide, within seven (7) calendar days of receiving the written notification, a written statement signed by a

representative of the Contractor explaining why the requested material is exempt from public disclosure under the RTKL.

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

#### **46. ENHANCED MINIMUM WAGE PROVISIONS**

- a. **Enhanced Minimum Wage.** Contractor agrees to pay no less than \$12.00 per hour to its employees for all hours worked directly performing the services called for in this Contract and for an employee's hours performing ancillary services necessary for the performance of the contracted services or lease when such employee spends at least twenty per cent (20%) of their time performing ancillary services in a given work week.
- b. **Adjustment.** Beginning July 1, 2019, and annually thereafter, the minimum wage rate shall be increased by \$0.50 until July 1, 2024, when the minimum wage reaches \$15.00. Thereafter, the minimum wage rate would be increased by an annual cost-of-living adjustment using the percentage change in the Consumer Price Index for All Urban Consumers (CPI-U) for Pennsylvania, New Jersey, Delaware, and Maryland. The applicable adjusted amount shall be

published in the Pennsylvania Bulletin by March 1 of each year to be effective the following July 1.

- c. **Exceptions.** These Enhanced Minimum Wage Provisions shall not apply to employees:
  - 1. exempt from the minimum wage under the Minimum Wage Act of 1968;
  - 2. covered by a collective bargaining agreement;
  - 3. required to be paid a higher wage under another state or federal law governing the services, including the Prevailing Wage Act and Davis-Bacon Act; or
  - 4. required to be paid a higher wage under any state or local policy or ordinance.
- d. **Notice.** Contractor shall post these Enhanced Minimum Wage Provisions for the entire period of the contract conspicuously in easily-accessible and well-lighted places customarily frequented by employees at or near where the contracted services are performed.
- e. **Records.** Contractor must maintain and, upon request and within the time periods requested by PhilaPort, furnish all employment and wage records necessary to document compliance with these Enhanced Minimum Wage Provisions.
- f. **Sanctions.** Failure to comply with these Enhanced Minimum Wage Provisions may result in the imposition of sanctions, which may include, but shall not be limited to, termination of the contract or lease, nonpayment, debarment or referral to the Office of General Counsel for appropriate civil or criminal referral.
- g. **Subcontractors.** Contractor shall include the provisions of these Enhanced Minimum Wage Provisions in every subcontract so that these provisions will be binding upon each subcontractor.

**Grant Flow Down Requirements**

**PART I.B**  
**GRANT SPECIFIC FLOW-DOWN REQUIREMENTS – APPLICABLE TO PRIME CONTRACTOR AND ALL SUBCONTRACTORS**

**The following clauses flow-down to the Contractor as sub-grantee, and all of the subcontractors utilized for this project. To the extent any of these flow-down requirements conflict with other terms of this RFP or Contract these flow-down shall control. Flow down requirements apply to prime and subcontractors.**

**The Contractor shall be responsible for complying with all requirements applicable in the following clauses:**

1. SAM Registration. Requirement for SAM Registration and Data Universal Numbering System (DUNS) numbers: No entity may receive a subaward unless the entity is registered with [www.sam.gov](http://www.sam.gov) has provided its DUNS number.
2. Reporting of Total Compensation of Subrecipient Executives. Each first-tier subrecipient under this award, the recipient shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if:
  - a. in the subrecipient's preceding fiscal year, the subrecipient received: (i.) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and (ii.) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and
  - b. the public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at: <http://www.sec.gov/answers/excomp.htm>.)
  - c. Where and when to report. The subrecipient must report subrecipient executive total compensation described above to PhilaPort by the end of the month following the month during which PhilaPort makes the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (i.e., between October 1 and 31), the recipient must report any required compensation information of the subrecipient by November 30 of that year.
  - d. Definitions. For purposes of this award term:
    - i. Entity means all of the following, as defined in 2 CFR Part 25: (i.) A Governmental organization, which is a State, local government, or Indian tribe; (ii.) A foreign public entity; (iii.) A domestic or foreign nonprofit organization; (iv.) A domestic or foreign for-profit organization; (v.) A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.
    - ii. Executive means officers, managing partners, or any other employees in management positions.
    - iii. Subaward:

1. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that the recipient award to an eligible subrecipient.
  2. The term does not include procurement of property and services needed to carry out the project or program (for further explanation, see 2 CFR 200 Subpart D).
  3. A subaward may be provided through any legal agreement, including an agreement that the recipient or a subrecipient considers a contract.
  4. Subrecipient means an entity that:
    - a. Receives a subaward from the recipient under this award; and
    - b. Is accountable to the recipient for the use of the Federal funds provided by the subaward.
  5. Total compensation means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):
    - a. Salary and bonus.
    - b. Awards of stock, stock options and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
    - c. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
    - d. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
    - e. Above-market earnings on deferred compensation which is not tax-qualified.
    - f. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.
3. **Conflicts of Interest (COI):** The contractor must disclose any an actual or potential COI situation described at 2 CFR 200.318(c)(1) or (c)(2)., as applicable, involving a procurement contract regardless of amount including, but not limited to, consulting fees or other compensation paid by contractors to employees, officers, agents of the recipient or subrecipient and/or members of their Immediate Families. The term COI also includes situations that create, or may create, an unfair competitive advantage, or the appearance of such, for an applicant in competing for federal financial assistance from EPA.
4. **2 CFR Part 200** to include but not limited to the clauses listed below. For more information regarding the requirements of 2 CFR 200, visit <https://www.ecfr.gov/>) and **Appendix II to Part 200**—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards; The Procurement Standards in 2 CFR Part 200 including those requiring competition when the subrecipient acquires goods and services from contractors (including consultants).
5. Title VI of the Civil Rights Act and other Federal statutes and regulations prohibiting discrimination in Federal financial assistance programs, as applicable.

6. Limitations on individual consultant fees as set forth in 2 CFR 1500.9 and the General Condition of the pass-through entity's agreement with EPA entitled "**Consultant Fee Cap.**"
7. EPA's prohibition on paying management fees as set forth in General Condition of the pass-through entity's agreement with EPA entitled "**Management Fees.**"
8. 2 CFR § 200.322 Domestic preferences for procurements.

(a) As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.

(b) For purposes of this section:

(1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(2) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

9. 2 CFR § 200.323 Procurement of recovered materials.

A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines. Suspension or Disbarment

## **10. Utilization of Disadvantaged Business Enterprises, 40 CFR Part 33:**

- a. The contractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 40 CFR part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the contractor to carry out these requirements

is a material breach of this contract which may result in the termination of this contract or other legally available remedies.

b. Six Good Faith Efforts, 40 CFR 33, Subpart C:

Pursuant to 40 CFR, Section 33.301, the recipient agrees to make the following good faith efforts whenever procuring construction, equipment, services and supplies under an EPA financial assistance agreement, and to require that sub-recipients, loan recipients, and prime contractors also comply. Records documenting compliance with the six good faith efforts shall be retained:

- (a) Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State and Local and Government recipients, this will include placing DBEs on solicitation lists and soliciting them whenever they are potential sources.
- (b) Make information on forthcoming opportunities available to DB Es and arrange time frames for contracts and establish delively schedules, where the requirements pelmit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.
- (c) Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. For Indian Tribal, State and local Government recipients, this will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.
- (d) Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.
- (e) Use the services and assistance of the SBA and the Minority Business Development Agency of the Department of Commerce.
- (f) If the prime contractor awards subcontracts, require the prime contractor to take the steps in paragraphs (a) through (e) ofthis section.

**11. Emissions Control Technologies:** The Contractor must use verified technologies and/or must use engines and engine configurations certified by EPA and, if applicable, CARB. Technologies are verified under EPA or California's Retrofit Technology Verification Programs. See the following lists for eligible technologies:

- B.1. EPA verified engine retrofit technologies and engine upgrade technologies:  
[www.epa.gov/verified-diesel-tech/verified-technologies-list-clean-diesel](http://www.epa.gov/verified-diesel-tech/verified-technologies-list-clean-diesel)
- B.2. California Air Resources Board (CARB) verified engine retrofit technologies:  
[www.arb.ca.gov/diesel/verdev/vt/cvt.htm](http://www.arb.ca.gov/diesel/verdev/vt/cvt.htm)
- B.3. EPA verified idle reduction technologies:  
[www.epa.gov/verified-diesel-tech/idling-reduction-technologies-irts-trucks-and-school-buses](http://www.epa.gov/verified-diesel-tech/idling-reduction-technologies-irts-trucks-and-school-buses)
- B.4. EPA verified aerodynamic technologies:  
[www.epa.gov/verified-diesel-tech/aerodynamic-devices](http://www.epa.gov/verified-diesel-tech/aerodynamic-devices)
- B.5. EPA verified low rolling resistance tires:  
[www.epa.gov/verified-diesel-tech/low-rolling-resistance-lrr-new-and-retread-tires](http://www.epa.gov/verified-diesel-tech/low-rolling-resistance-lrr-new-and-retread-tires)
- B.6. EPA certified engines and certified remanufacture systems for locomotives and marine engines: [www.epa.gov/compliance-and-fuel-economy-data/engine-certification-data](http://www.epa.gov/compliance-and-fuel-economy-data/engine-certification-data)
- B.7. EPA Certified Conversion Systems for New Vehicles and Engines and compliant Conversion Systems for Intermediate-Age Vehicles and Engines:  
[www.epa.gov/vehicle-and-engine-certification/lists-epa-compliant-alternative-fuel-conversion-systems](http://www.epa.gov/vehicle-and-engine-certification/lists-epa-compliant-alternative-fuel-conversion-systems)
- B.8. CARB Approved Alternate Fuel Retrofit Systems:  
[www.arb.ca.gov/msprog/aftermkt/altfuel/altfuel.htm](http://www.arb.ca.gov/msprog/aftermkt/altfuel/altfuel.htm)

## 12. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment

This term and condition implements 2 CFR 200.216 and is effective for obligations and expenditures of EPA financial assistance funding on or after 8/13/2020.

As required by 2 CFR 200.216, EPA recipients and subrecipients, including borrowers under EPA funded revolving loan fund programs, are prohibited from obligating or expending loan or grant funds to procure or obtain; extend or renew a contract to procure or obtain; or enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in [Public Law 115-232](#), section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities). Recipients, subrecipients, and borrowers also may not use EPA funds to purchase:

- a. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
- b. Telecommunications or video surveillance services provided by such entities or using such equipment.

c. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

Consistent with 2 CFR 200.471, costs incurred for telecommunications and video surveillance services or equipment such as phones, internet, video surveillance, and cloud servers are allowable except for the following circumstances:

- a. Obligating or expending EPA funds for covered telecommunications and video surveillance services or equipment or services as described in 2 CFR 200.216 to:
- (1) Procure or obtain, extend or renew a contract to procure or obtain;
  - (2) Enter into a contract (or extend or renew a contract) to procure; or
  - (3) Obtain the equipment, services, or systems.

Certain prohibited equipment, systems, or services, including equipment, systems, or services produced or provided by entities identified in section 889, are recorded in the [System for Award Management](#) exclusion list.

### 13. Copyrighted Material and Data

In accordance with [2 CFR 200.315](#), EPA has the right to reproduce, publish, use and authorize others to reproduce, publish and use copyrighted works or other data developed under this assistance agreement for Federal purposes.

Examples of a Federal purpose include but are not limited to: (1) Use by EPA and other Federal employees for official Government purposes; (2) Use by Federal contractors performing specific tasks for [i.e., authorized by] the Government; (3) Publication in EPA documents provided the document does not disclose trade secrets (e.g. software codes) and the work is properly attributed to the recipient through citation or otherwise; (4) Reproduction of documents for inclusion in Federal depositories; (5) Use by State, tribal and local governments that carry out delegated Federal environmental programs as “co-regulators” or act as official partners with EPA to carry out a national environmental program within their jurisdiction and; (6) Limited use by other grantees to carry out Federal grants provided the use is consistent with the terms of EPA’s authorization to the other grantee to use the copyrighted works or other data.

Under Item 6, the grantee acknowledges that EPA may authorize another grantee(s) to use the copyrighted works or other data developed under this grant as a result of: the selection of another grantee by EPA to perform a project that will involve the use of the copyrighted works or other data or; termination or expiration of this agreement.

In addition, EPA may authorize another grantee to use copyrighted works or other data developed with Agency funds provided under this grant to perform another grant when such use promotes efficient and effective use of Federal grant funds.

#### **14. Patents and Inventions**

Rights to inventions made under this assistance agreement are subject to federal patent and licensing regulations, which are codified at Title 37 CFR Part 401 and Title 35 USC Sections 200-212.

Pursuant to the Bayh-Dole Act (set forth in 35 USC 200-212), EPA retains the right to a worldwide, nonexclusive, nontransferable, irrevocable, paid-up license to practice the invention owned by the assistance agreement holder, as defined in the Act. To streamline the invention reporting process and to facilitate compliance with the Bayh-Dole Act, the recipient must utilize the Interagency Edison extramural invention reporting system at [iEdison.gov](http://iEdison.gov). Annual utilization reports must be submitted through the system. The recipient is required to notify the Project Officer identified on the award document when an invention report, patent report, or utilization report is filed at [iEdison.gov](http://iEdison.gov). EPA elects not to require the recipient to provide a report prior to the close-out of a funding agreement listing all subject inventions or stating that there were none.

**15. Drug-Free Workplace** The recipient organization of this EPA assistance agreement must make an ongoing, good faith effort to maintain a drug-free workplace pursuant to the specific requirements set forth in Title 2 CFR Part 1536 Subpart B. Additionally, in accordance with these regulations, the recipient organization must identify all known workplaces under its federal awards, and keep this information on file during the performance of the award. Those recipients who are individuals must comply with the drug-free provisions set forth in Title 2 CFR Part 1536 Subpart C. The consequences for violating this condition are detailed under Title 2 CFR Part 1536 Subpart E. Recipients can access the Code of Federal Regulations (CFR) Title 2 Part 1536 at [www.ecfr.gov/](http://www.ecfr.gov/).

#### **16. Lobbying Restrictions**

iv) Contracts awarded by a recipient shall contain, when applicable, the anti-lobbying provision as stipulated in the Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards.

#### **17. Resource Conservation and Recovery Act**

Consistent with section 6002 of RCRA (42 U.S.C. 6962) and 2 CFR 200.322, State agencies or agencies of a political subdivision of a State and its contractors are required to purchase certain items made from recycled materials, as identified in 40 CFR Part 247, when the purchase price exceeds \$10,000 during the course of a fiscal year or where the quantity of such items acquired in the course of the preceding fiscal year was \$10,000 or more. Pursuant to 40 CFR 247.2 (d), the recipient may decide not to procure such items if they are not reasonably available in a reasonable period of time; fail to meet reasonable performance standards; or are only available at an unreasonable price.

## **18. Trafficking in Persons**

### **a. Provisions applicable to a recipient that is a private entity.**

i. The recipient, the recipient's employees, subrecipients under this award, and subrecipients' employees may not— 1. Engage in severe forms of trafficking in persons during the period of time that the award is in effect; 2. Procure a commercial sex act during the period of time that the award is in effect; or 3. Use forced labor in the performance of the award or subawards under the award.

ii. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if the recipient or a subrecipient that is a private entity— 1. Is determined to have violated a prohibition in paragraph a of this award term; or 2. Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph a of this award term through conduct that is either— a. Associated with performance under this award; or b. Imputed to the recipient or subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, “OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” as implemented by our Agency at 2 CFR 1532.

### **b. Definitions.** For purposes of this award term:

i. “Employee” means either:

1. An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or
2. Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.

ii. “Forced labor” means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

iii. “Private entity”:

1. Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR 175.25.

2. Includes:

a. A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 CFR 175.25(b).

b. A for-profit organization.

iv. “Severe forms of trafficking in persons,” “commercial sex act,” and “coercion” have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. 7102).

**Exhibit “B”**

**Listing of Quantities of Equipment, Materials, Printing and Other Tangible and Intangible  
Personal Property (“Supplies”) that are the Subject of this Contract**

**Listing of Quantities of Equipment, Materials, Printing and Other Tangible and Intangible Personal Property  
("Supplies") that are the Subject of this Procurement**

<b>Item</b>	<b>Item Description</b>	<b>Item Quantity</b>	<b>Item Location</b>
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			
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**Appendix C**

**Form for the Submission of Price Proposal**

**PROJECT 22-019.P  
FORM FOR THE SUBMISSION OF PRICE PROPOSAL**

**COST TO SUPPLY ELECTRIC TRACTORS**

**TRACTOR ITEM 1 – Electric Yard Tractor 1 for PAMT: \$ \_\_\_\_\_**

**TRACTOR ITEM 2 – Electric Yard Tractor 2 for PAMT: \$ \_\_\_\_\_**

**TRACTOR ITEM 3 – Electric Yard Tractor 1 for TMT: \$ \_\_\_\_\_**

**TRACTOR ITEM 4 – Electric Yard Tractor 2 for TMT: \$ \_\_\_\_\_**

**TOTAL COST TO SUPPLY ELECTRIC YARD TRACTORS (Add Tractor Items 1 through 4 above):**

**\$ \_\_\_\_\_**

**COST AND MANUFACTURER INFORMATION ON CHARGING STATIONS**

**CHARGING ITEM 1 – Charging Station 1 for PAMT: \$ \_\_\_\_\_**

**CHARGING ITEM 1.A – Manufacturer/Make/Model: \_\_\_\_\_**

**CHARGING ITEM 2 – Charging Station 2 for PAMT: \$ \_\_\_\_\_**

**CHARGING ITEM 2.A – Manufacturer/Make/Model: \_\_\_\_\_**

**CHARGING ITEM 3 – Charging Station 1 for TMT: \$ \_\_\_\_\_**

**CHARGING ITEM 3.A – Manufacturer/Make/Model: \_\_\_\_\_**

**CHARGING ITEM 4 – Charging Station 2 for TMT: \$ \_\_\_\_\_**

**CHARGING ITEM 4.A – Manufacturer/Make/Model: \_\_\_\_\_**

**TOTAL COST TO SUPPLY CHARGING STATIONS (Add CHARGING ITEM 1, CHARGING ITEM 2, CHARGING ITEM 3, and CHARGING ITEM 4 to arrive at a total cost):**

\$ \_\_\_\_\_

**TOTAL BID PRICE – (Add TOTAL COST TO SUPPLY ELECTRIC YARD TRACTORS and TOTAL COST TO SUPPLY CHARGING STATIONS)**

\$ \_\_\_\_\_