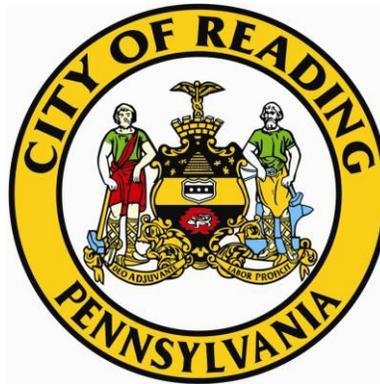


REQUEST FOR PROPOSALS
LEGAL ADVISOR - WATER
CITY OF READING, PENNSYLVANIA



RFP TIMETABLE

Release Date of the RFP: March 3, 2014

Deadline for Question Submission: 3:00 p.m. (EST), March 11, 2014

Proposal Due Date: 3:00 p.m. (EST), March 19, 2014

Proposals are to be delivered to: Tammi Reinhart, Purchasing Coordinator
815 Washington Street, Room 2-45
Reading, PA 19601
Email: Tammi.Reinhart@readingpa.org
Telephone: 610-655-6207

PROFESSIONAL SERVICES

The Mayor and City Council of the City of Reading are soliciting competitive sealed proposals from qualified vendors to provide legal advisory services in support of the long-term lease or concession of the City of Reading's water system, as defined in the Scope of Services included herein. The contract will be awarded to the law firm(s) offering the best combination of merit and price, as determined by the City. The term of the Contract shall commence on the Effective Date and shall end on the earlier to occur of (i) the date that the Project reaches financial close or (ii) the date that the City notifies the Contractor in writing that the City will no longer pursue the Project (hereinafter the Expiration Date), subject to the other provisions of the Contract. 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 the City 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. The City reserves the right, upon notice to the Contractor, to extend the term of the Contract for up to two (2) one-year renewals upon the same terms and conditions. Each renewal period must be acted upon separately.

PROPOSAL SUBMISSION

The original proposal and six (6) copies as well as an electronic copy shall be submitted in a sealed envelope that shall plainly indicate on it the title of the proposal and the date for receiving. This shall be delivered to the City Purchasing Coordinator, Room 2-45, City Hall, 815 Washington Street, Reading, PA 19601 until 3:00 p.m., prevailing time on Wednesday, March 19, 2014. The envelope shall be clearly labeled as **Legal Advisor-Water**. The price proposal and six (6) copies shall be enclosed in a separate sealed envelope within the proposal package.

Proposals received at the Office of the Purchasing Coordinator after the hour specified will not be considered.

Only one copy of the Acknowledgement of Addenda, Certificate of Non-Collusion, Non-Discrimination Statement and Certificate of Non-Indebtedness to the City of Reading is required.

Proposers are advised that there is a twenty (20) page limitation for proposals, excluding appendices, and are advised to be concise in the amount of information they submit.

The outer envelope enclosing any materials submitted in response to this RFP shall be addressed as follows:

FROM: Proposer Name/Address
TO: Tammi Reinhart, Purchasing Coordinator
815 Washington Street, Room 2-45
Reading, PA 19601
RFP FOR: Legal Advisor - Water

Proposer shall be responsible for informing any commercial delivery service, if used, of all delivery requirements for ensuring that the information required in the item above, appears on the outer envelope used by such service.

PRE-PROPOSAL CONFERENCE

There will be no pre-proposal meeting.

PROPOSER'S CLARIFICATION

By submitting a proposal, the proposer certifies that the RFP has been fully read and that the proposer understands the proposal method and has full knowledge of the scope, nature and quality of work to be performed. All questions must be sent in electronically no later than 3:00 p.m. on March 11, 2014 to:

Tammi Reinhart, Purchasing Coordinator
815 Washington Street, Room 2-45
Reading, PA 19601
Tammi.Reinhart@readingpa.org

INSURANCE

The Successful Proposer, at the time of execution of the contract, shall also furnish the City with insurance certificates of adequate limits, as later indicated, to protect the City of Reading, its agents, and employees, from any litigation involving Worker's Compensation, Public Liability and Property Damage, involved in the work. All subcontractors must also furnish copies of their liability insurance and Worker's Compensation Insurance certificates to the City. No subcontractor will be allowed to perform any work under this contract by the City unless such certificates are submitted to and approved by the City beforehand.

WORKERS' COMPENSATION AND PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE

The status of the Proposer in the work to be performed is that of any independent Proposer and as such, he shall properly safeguard against any and all injury or damage to the public, to public and private property, materials and things, and as such he alone shall be responsible for any and all damage, loss or injury to persons or property that may arise, or be incurred, in or during the conduct or progress of said work without regard to whether or not the Proposer, sub-contractors, agents, or employees have been negligent, and the Proposer shall keep the City free and discharged of and from any and all responsibility and liability therefore of any sort or kind. The Proposer shall assume all responsibility for risks or casualties of every description, for any or all damage, loss or injury to persons or property arising out of the nature of the work from the action of the elements, or from any unforeseen or unusual difficulty, including all legal defense costs incurred by the City. The Proposer shall assume and be liable for all blame and loss of whatsoever nature by reason of neglect or violation of any Federal, State, County or Local laws, regulations, or ordinances; the Proposer shall indemnify and save harmless the City from all suits or actions at law of any kind whatsoever in connection with this work and shall if required by the City, produce evidence of settlement of any such action before final payment shall be made by the City. Proposer's Liability Insurance Certificate shall include the save harmless clause and shall be filed with the City.

The Proposer shall maintain such insurance as will protect the proposer from claims under worker's compensation acts and from claims for damages because of bodily injury, including death, and property damage, which may arise from and during operations under this Contract, whether such operations be by him/her, by any subcontractor or anyone directly or indirectly employed by either

of them. Proposer's liability insurance shall be in the names of the Proposer and the City as their respective interests may appear. Each policy and Certificate of Insurance shall contain an endorsement naming the City of Reading as additionally insured. Certificates of such insurance shall be filed with the City.

The minimum amount of liability insurance to be maintained by the Contractor during the life of the contract shall be as follows:

Comprehensive General Liability – for bodily injury and property damage – including any liability normally covered by a general liability policy with limits of not less than \$1,000,000 per occurrence and \$2,000,000 in the annual aggregate.

Professional Liability – in minimum amounts of \$1,000,000 per occurrence and \$2,000,000 aggregate.

Prior to commencement of performance of this Agreement, Contractor shall furnish to the City a certificate of insurance evidencing all required coverage in at least the limits required herein, **naming the City of Reading, its elected officials, agents, and employees as additional insureds under the Comprehensive General Liability coverage**, and providing that no policies may be modified or cancelled without thirty (30) days advance written notice to the City. Such certificate shall be issued to: ***City of Reading, 815 Washington Street, Reading, PA 19601***. All policies shall be in effect with companies holding an A.M. Best rating of "A-" or better and shall be licensed to do business in the Commonwealth of Pennsylvania. Such companies shall also be acceptable to the City.

Please forward a certificate of insurance verifying these insurance requirements.

All subcontractors performing work under this contract must furnish to the City a copy of their Certificate Of Insurance for Workers' Compensation and liability for bodily injury and property damage.

EQUAL EMPLOYMENT OPPORTUNITY

During the performance of this Contract, the Proposer agrees as follows:

The Proposer will not discriminate against any employees or applicant for employment because of race, color, religion, sex, or national origin. The Proposer will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Proposer agrees to post in conspicuous places, available to employees and applicants for employment, notices which may be provided by the City setting forth the provisions of this nondiscrimination clause.

The Proposer will, in all solicitations or advertisements for employees placed by or on behalf of the Proposer, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

In the event of the Proposer's noncompliance with the non-discrimination clauses of this Contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole, or in part and the Proposer may be declared ineligible for further City contracts.

The Proposer will include the provisions of these paragraphs in every subcontract or purchase order unless exempted.

EMPLOYMENT OF CERTAIN PERSONS PROHIBITED

No person who, at the time, is serving sentence in a penal or correctional institution shall be employed on the work covered by this Contract.

ALTERATIONS OR MODIFICATIONS

This contract will be under the direct supervision of the City or its authorized representatives. Any alterations or modifications of the work performed under this contract shall be made only by written agreement between the Proposer and the City authorized representatives and shall be made prior to commencement of the altered or modified work. No claims for extra work or materials shall be allowed unless covered by written agreement.

SUBCONTRACTS

The Proposer will not be allowed to subcontract work under this contract unless written approval is granted by the City. The Subproposer, as approved, shall be bound by the conditions of the contract between the City and the Proposer. The authorization of a Subproposer is to perform in accordance with all terms of the contract and Specifications. All required notices, work orders, directives, and requests for emergency services will be directed to the Proposer. All directions given to the Subproposer in the field shall bind the Proposer as if the notice had been given directly to the Proposer.

RIGHT TO AUDIT RECORDS

The City shall be entitled to audit the books and records of a proposer or any sub-proposer to the extent that such books and records relate to the performance of such contract or sub-contract. Such books and records shall be maintained by the proposer for a period of three (3) years from the date of final payment under the prime contract and by the sub-proposer for a period of three (3) years from the date of final payment under the sub-contract unless a shorter period is otherwise authorized in writing.

DISSEMINATION OF INFORMATION

During the term of the resulting contract, the successful proposer may not release any information related to the services or performance of services under the contract, nor publish any report or documents relating to the City, the account or performance of services under the agreement without prior written consent of the City; and shall indemnify and hold harmless the City, its officers, agents, and employees from all liability which may be incurred by reason of dissemination, publication and distribution, or circulation, in any manner whatsoever, of any information, data, documents, or material pertaining to the City, the account or the contract by the proposer or its agents or employees.

BUSINESS PRIVILEGE TAX

The City of Reading imposes a Business Privilege License at \$55.00 per calendar year. In addition, a Business Privilege Tax is imposed at the service rate of 2-1/4 mills upon the gross receipts attributable to business conducted within the City of Reading.

PERMITS/LICENSES

The Proposer shall, at its expense, pay all fees and procure all necessary licenses and permits needed to conduct the work required under the terms of this contract. The Proposer shall give any and all necessary formal notices required in conjunction with the lawful prosecution of the work of this contract.

OBSERVANCE OF LAWS, ORDINANCES AND REGULATIONS

The Proposer at all times during the term of this contract shall observe and abide by all Federal, State, and Local laws which in any way affect the conduct of the work and shall comply with all decrees and orders of courts of competent jurisdiction. The Proposer shall comply fully and completely with any and all applicable State and Federal statutes, rules and regulations as they relate to hiring, wages, and any other applicable conditions of employment.

WITHDRAWAL OF PROPOSALS

Proposers will be given permission to withdraw any proposals after they have been received by the City's Purchasing Coordinator at his/her office, provided said request is in writing and properly signed or by telegram and is received at least two (2) hours prior to the time and date set for the opening. Request by telegram must be confirmed in writing, properly signed, which must be delivered within twenty-four (24) hours of the time and date set for the opening. No proposals may be withdrawn for a period of ninety (90) days following the formal opening and receipt of proposals by the City of Reading.

PROPOSAL REJECTION

The City of Reading reserves the right to reject any or all proposals and to accept or reject any part of any proposal. It also reserves the right to waive any technical defects or minor irregularities, which in its discretion, is in the best interest of the City.

EXECUTION OF CONTRACT

The successful Proposer shall, within ten (10) calendar days after mailing of contract documents by the City to the Principal, enter into contract with the City.

The contract, when executed, shall be deemed to include the entire agreement between the parties; the Proposer shall not base any claim for modification of the contract upon any prior representation or promise made by the representatives or the City, or other persons. All attachments are considered as part of this document.

CONTRACT TERMINATION

The City shall have the right to terminate a contract or part thereof before the work is completed in the event:

- A. Previous unknown circumstances arise making it desirable in the public interest to void the contract.
- B. The proposer is not adequately complying with the specifications.
- C. The proposer refuses, neglects or fails to supply properly trained or skilled supervisory personnel and/or workers or proper equipment.
- D. The proposer, in the judgment of the City, is unnecessarily or willfully delaying the performance and completion of the work.
- E. The proposer refuses to proceed with work when and as directed by the City.
- F. The proposer abandons the work.

SCOPE OF SERVICES

The major objectives of the City in seeking legal advisory services are to procure the services of a firm(s) that will:

- A. Provide the City with legal advice related to leasing and operating the Reading Water System including the filter plant, water storage and distribution facilities, including Lake Ontelaunee;
- B. Prepare solicitations and contracts for any consultants/advisors that are retained by the City in the course of procuring the long-term lease or concession of the City of Reading water system;
- C. Prepare an ensuing Request for Qualifications (RFQ) and related documents to identify the parties interested in leasing or investing in the Reading Water System;
- D. Identify parameters and confidentiality requirements for the due diligence period between the issuance of the RFQ and a future Request for Proposals (RFP);
- E. Prepare an ensuing Request for Proposals (RFP) and related documents necessary to procure the long-term lease or concession of the City of Reading water system;
- F. Prepare the terms and conditions of the concession lease;

- G. Assist in awarding the concession lease;
- H. Provide other legal advice or analysis regarding the project noted above as may be requested by the City of Reading.

PROPOSAL PROCEDURES AND REQUIREMENTS

Evaluation Process

The evaluation committee shall be comprised of a minimum of five (5) persons qualified to evaluate the components of this solicitation.

Evaluation Committee Procedures

- A. All proposals received on or before the proposal due date and time at the location specified herein will be evaluated to determine whether they meet all of the minimum submission requirements set forth herein.
- B. Only those proposals meeting all of the minimum submission requirements will be evaluated, rated and ranked by applying the evaluation criteria set forth herein.
- C. The evaluation committee will make a determination to: (1) recommend award of a contract based on initial proposals; or (2) conduct discussions/negotiations with all or a “short list” of proposing firms (“proposers”). In the case that the determination is made to conduct discussions/negotiations with all or a “short list” of proposers:
 - The City may require proposers to give oral and/or visual presentations in support of their proposals or to exhibit or otherwise demonstrate the information contained therein.
 - Upon completion of the discussions/negotiations, the evaluation committee may request that all proposers still under consideration for award submit a best and final offer by a common due date and time.
 - The evaluation committee will evaluate, rate and rank the best and final offers by applying the evaluation criteria set forth herein.
- D. Contract award is subject to City Council approval.

Minimum Submission Requirements

All proposals received on or before the proposal due date and time at the location specified herein will be evaluated to determine whether they meet the minimum submission requirements set forth herein. Proposals failing to meet **all** of the minimum submission qualification requirements listed below shall not be considered further for award.

- A. The proposer shall:
 - 1. Have a minimum of three years of experience in providing comparable legal

advisory services on P3s and energy transactions. This may include company experience and management and staff experience, provided that any management and staff members noted must be part of the proposed project staff.

2. Demonstrate past engagements with a scope similar to that described herein.
3. Provide at least three business or governmental references.
4. Meet the qualifications noted herein.

B. The proposal shall be responsive to the following minimum submission requirements:

1. Cover Letter
2. Technical Proposal
3. Statement of Qualifications
4. Price Proposal
5. Acknowledgment of Addenda
6. Certificate of Non-Collusion
7. Certificate of Non-Indebtedness to the City of Reading

Evaluation Criteria and Relative Weights

The evaluation committee shall evaluate and rate all proposals meeting the minimum submission requirements by applying the evaluation criteria listed below. The contract award will be based on the best combination of merit and price as determined by the City.

Merit shall be determined as follows:

- A. Technical Proposal – 55%
- A. Statement of Qualifications – Experience and Capability – 45%

PROPOSAL PACKAGE

The proposal package shall contain the following:

Proposal Cover Letter

The proposer shall submit a cover letter transmitting its proposal package to the City. The cover letter shall be signed and dated by an individual authorized to enter into a contract with the City on behalf of the proposer. The cover letter shall include:

- A. The proposer's name, address and Federal Employer ID Number.
- B. Name, title, telephone number, and email address of the individual who is authorized to commit the proposer to a contract.
- C. Name, title, telephone number, and email address of the individual who is to be contacted regarding the content of the proposal, if different from above.
- D. The name, address and Federal Employer ID Number of the subcontractor(s), if applicable.
- E. The signature of the individual authorized to commit the proposer to the proposal.

Technical Proposal

The technical proposal is a clear, concise narrative that addresses the proposer's overall concept and incorporates all requirements specified in SECTION II - SCOPE OF SERVICES. At a minimum, the following information shall be included:

- A. Description of the services to be provided.
- B. Description of how the proposer will meet the City's goals.
- C. The technical proposal may include any other information the proposer deems relevant.

Statement of Qualifications

The statement of qualifications is a presentation of the qualifications and experience of the proposer's organization and the staff that will be providing the services. At a minimum, the following shall be included:

- A. List projects with which the proposer has served in an advisory capacity during the last three years, at a minimum, and note which projects were water and sewer or energy-focused. Please describe the proposer's role in providing legal services and provide specific examples of the expertise and experience related to the provision of said legal services.
- B. Show an organization chart with names and titles, including the name of the day-to-day primary legal advisor(s). Please also designate the individual(s) who would provide primary backup support.
- C. List personnel to be assigned to the project, including each person's function on the project and a brief description of his/her qualifications and professional experience as applicable for specific tasks in SECTION II - SCOPE OF SERVICES. A detailed resume of each individual shall be submitted and may be included in an appendix.
- D. Provide at least three references for clients who have worked with the primary individual(s) who will work for the City. Include name and contact person, with phone number and email address.
- E. Describe the proposer's professional relationships with the City, if any.
- F. Disclose any conflict of interest:
 1. Any material financial relationships that the proposer or any firm employee has with any financial advisory firms, investment banks or law firms or other persons or entities that may create a conflict of interest or the appearance of a conflict of interest in acting as legal advisor to the City;
 2. Any family relationship that any employee of the proposer has with the City (or officer, employee or member thereof) that may create a conflict of interest or the appearance of a conflict of interest in acting as legal advisor to the City and;

3. Any other matter that the proposer believes may create a conflict of interest or the appearance of a conflict of interest in acting as a legal advisor to the City.
- G. Please describe any procedures the proposer either has, or would adopt, to assure the City that a conflict of interest would not exist for the proposer in the future.
1. State whether or not, in the past ten years, the proposer or any of its partners, directors, officers or employees or anyone acting on its behalf, has ever been indicted or otherwise charged in connection with any criminal matter, which is still pending, or has ever been convicted of any crime or offense arising directly or indirectly from the conduct of the proposer's business, or whether any of the proposer's partners, directors, officers or employees or persons exercising substantial policy discretion has ever been indicted or otherwise charged in connection with any criminal matter, which is still pending, or has ever been convicted of any crime or offense involving legal or financial misconduct or fraud, and, if so, please describe any such indictments, charges or convictions and surrounding circumstances in detail.
 2. Identify all adverse determinations against the proposer or any of its partners, directors, officers or employees or persons acting on its behalf, with respect to actions, proceedings, claims or complaints concerning violations of Federal, State or City equal opportunity laws or regulations and a statement that the proposer is in compliance with all applicable Federal, State or City equal opportunity laws or regulations.
 3. Describe any litigation or administrative proceedings to which the proposer is a party, which, if decided in an adverse manner, would either materially impair the proposer's ability to perform the services enumerated herein and for which this RFP was issued or materially affect the proposer's financial condition.

If applicable, a like statement of qualifications of each subcontractor shall be included.

In addition, the proposer may submit any other materials that will allow the City to better evaluate the organization (e.g., letters of reference/recommendation, awards, etc.). Such materials, as well as item "G" above may be included in an appendix.

Price Proposal

The price proposal is a presentation of the details of the proposer's offering price. These costs shall be shown for the full contract term.

With regard to fees, the City has a strong preference for an hourly billing structure. Indicate

whether such a fee arrangement is acceptable and provide a fee schedule and hourly estimate for each activity related to the project.

If an hourly billing structure is not acceptable, provide an alternative price proposal. The price proposal must contain the cost for the entire project and cost breakdowns by task or major activity related to the project.

Please include an estimate of expenses relative to total fees.

The selected firm(s) will be required to provide detailed hourly billing information monthly, sorted by assignment, as a basis for keeping track of advisory fees as they accrue and for planning for workload and advisory costs in subsequent periods. Indicate whether the proposer has internal accounting and billing systems that would make such detailed invoicing possible.

The Price Proposal shall be submitted in a separate, sealed envelope, clearly labeled "Price Proposal."

The price proposal shall be irrevocable for one hundred eighty (180) days from the date of the opening of price proposal.

The proposer's authorized representative must sign the price proposal.

GENERAL INFORMATION

Status of Information

- A. The City shall not be bound by any oral or written information released prior to the issuance of the RFP.
- B. The City shall not be bound by any oral or written representations, statements, or explanations other than those made herein, in City written responses to consultant inquiries, or in formal written addenda to this RFP.

Communication with the Agency

Proposers are advised that, from the date this RFP is issued until the award of the contract, no contact with City or other personnel related to this solicitation is permitted, except as shall be authorized by the City's designated contact person.

Questions Regarding the RFP

- A. All inquiries regarding this solicitation shall be emailed to the City's designated, contact person by 3:00 P.M. (EST) on March 11, 2014, indicating "LA-Water RFP Question" in the subject line.

- B. To receive responses to any questions submitted, please register the proposer and the proposer's representative contact with the City by providing an email address to the City's designated contact person. Responses will also be posted on the City's website: www.Readingpa.gov.

Addenda to the RFP

- A. The City shall issue responses to inquiries related to substantive issues and any other corrections or amendments to the RFP that it deems necessary prior to the proposal due date in the form of written addenda. Such addenda will be posted on the City's website: www.Readingpa.gov.
- B. It is the proposer's responsibility to assure receipt of all addenda. The proposer should verify with the City's designated contact person prior to submitting a proposal that all addenda have been received. Proposers shall acknowledge the number of addenda received as part of their proposals.

Subcontracting

If any part of the work covered by the RFP is to be subcontracted, the proposer shall identify the subcontractor by furnishing its corporate name and the names of its officers. Any subcontracts are subject to approval as set forth in the City's General Provisions Governing Contracts for Consultants, Professional and Technical Services. The selected proposer will be responsible for all work covered herein and is the sole contact regarding contractual matters.

Modified Proposals

- A. The proposer may submit a modified proposal to replace all or any portion of a previously submitted proposal up until the proposal due date and time and, if applicable, up until the due date and time set for the submission of best and final offers.
- B. The evaluation committee shall consider only the latest, timely-submitted proposal.

Confidential/Proprietary Information

The proposer shall specifically identify those portions of the proposal deemed to be confidential, proprietary information, or trade secrets and provide any justification why such material, upon request, should not be disclosed by the City.

Such information deemed by the proposer to be confidential/proprietary shall be easily separable from the non-confidential/non-proprietary sections of the proposal.

The City is subject to the provisions of the Pennsylvania Right to Know Law (RTKL), relating to public access to agency records. The City accepts no responsibility for disclosure of information designated as exempt from disclosure, but the City does intend to evaluate, on a case by case basis, whether exemption from disclosure applies at such time as a RTK request is made to the City for examination of such a proposal.

Costs Incurred by Proposers

The City shall not be liable for any costs incurred by proposers in the preparation of proposals or for any work performed in connection therewith.

Discussions/Negotiations/Best and Final Offers

The City reserves the right to award a contract on the basis of initial offers received, without discussions. Therefore, each initial offer should contain the proposer's best terms from a technical and cost standpoint.

The City reserves the right to enter into discussions/negotiations with one or more proposers and to request the submission of best and final offers from those proposers, who after the conclusion of such discussions/negotiations, are still under consideration for award. No proposer shall have any rights against the City arising from an invitation to enter into discussions/negotiations or to submit a best and final offer.

Proposer Acceptance of RFP & Contract Provisions

The submission of a proposal signifies that the proposer intends to compete for the award of the particular contract and that the proposer understands and accepts that the terms and conditions specified herein, and the General Provisions Governing Contracts for Consultants, Professional and Technical Services shall become part of the final contract.

Contract Award

The City reserves the right to award the contract to other than the proposer offering the lowest overall cost.

The contract(s) resulting from this solicitation shall be awarded to the qualified proposer(s) whose proposal(s) offers the best combination of merit and price as determined by the City, based on the evaluation factors set forth herein.

RFP Postponement/Cancellation

The City reserves the right to postpone or cancel this RFP and to reject all proposals.

Compliance Information and Equal Employment Opportunity Requirements

The successful proposer shall comply with any equal employment opportunity requirements applicable to the City. Non-compliance with any of the provisions will result in the disqualification or rejection of a proposal at the City's sole discretion.

The City will only contract with firms, which do not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability, marital status, sexual orientation or citizenship status with respect to all

employment decisions. The City encourages proposals from women-owned and minority-owned businesses and from small and City-based businesses.

Limitations of Liability

The issuance of this RFP does not commit the City to award a contract or to pay any costs incurred by proposers in the preparation and submission of proposals. The City reserves the right to:

Reject any or all proposals received in response to this RFP;

Award contracts to more than one vendor;

Not award a contract;

Award a contract without any discussion with proposers;

Retain a successful proposer for only a portion of the Scope of Services;

Accept a proposal other than the proposal offering the lowest price;

Waive or modify any irregularities in proposals received after prior notification to the proposers;

Adjust any proposed prices for the purpose of evaluation, based upon a determination that selection of the proposal will incur additional costs to the City;

Consider proposals or modifications received at any time before the award is made, if such is in the best interest of the City;

Request clarification and/or additional information from the proposers during the evaluation process; and

Utilize any and all ideas submitted in the proposals received, unless those ideas are covered by legal patent or proprietary rights and the patent or those rights are indicated by the proposers.

Exceptions to RFP

Any deviation from the legal or technical requirements contained herein must be stated in the proposal and separately listed and referenced on a separate sheet attached to the proposal and entitled "Exceptions". Failure to list exceptions separately in the "Exceptions" attachment shall be deemed to constitute consent to all such terms and conditions herein and shall constitute a binding waiver by the proposer of all exceptions not listed. A general exception or reservation to the legal or technical terms and conditions shall be deemed a nullity and may also result in the City rejecting the proposal as non-responsive.

The contract to be entered into shall incorporate the terms in the City's General Provisions Governing Contracts for Consultants, Professional and Technical Services. Submission of a proposal constitutes consent to these standard terms and conditions. Any exceptions must be explicitly stated in the proposal and separately listed in the attachment entitled "Exceptions."

Contract Negotiations

Upon selection, the successful proposer will be invited to negotiate a contract with the City. The contents of the selected proposal, together with the RFP, may be incorporated into and made part of the final contract. Should negotiations fail to result in a signed contract within a reasonable period of time as defined by the City, the City reserves the right to terminate negotiations and select another proposer, issue a new RFP, or take any other action consistent with the best interests of the City.

The City will not consider execution of the proposer's standard contract. The City will review the proposer's standard contract and provide the initial draft of the contract it expects to negotiate with the proposer. If the proposer believes that negotiation of a contract will be difficult because of the proposer's corporate policy or for other reasons, then the City should be contacted prior to the preparation of the response to this RFP.

The City's standard contract template is included with this RFP as Attachment A.

Compensation

Based upon direct labor hours and expenses, the proposal must include the rate for each position to be used in providing the services. It also must include the percentage of overhead the offeror proposes to charge. Cost charged for overhead must be allowable.

The City of Reading intends to execute a contract with the successful offeror, which provides for the furnishing of technical services based upon: (1) direct labor hours at specified fixed hourly rates, including direct and indirect labor, overhead, and profit; and (2) expenses at cost. The proposal shall contain a "not to exceed" total cost figure.

Provide a fee schedule with a breakdown of rates for individual personnel and all reimbursable expenses.

Provide mark-up percentage for all sub-consultants.

Selection Committee and Procedure for Review Of Proposals

A Selection Committee will be established to review and evaluate all proposals submitted in response to this Request for Proposals (RFP). The Committee shall conduct a preliminary evaluation of all proposals based on the information provided. The Committee will first review each proposal for compliance with the minimum qualifications and mandatory requirements of the RFP. Failure to comply with any mandatory requirements may disqualify a proposal.

The City reserves the right to reject any and all proposals and to waive minor irregularities. The City further reserves the right to seek new proposals when such a procedure is reasonably in the best interest of the City to do so.

Identify all Reimbursable Expenses.

NON-COLLUSION AFFIDAVIT INSTRUCTIONS FOR NON-COLLUSION AFFIDAVIT

This Non-Collusion Affidavit is material to any contract pursuant to this bid. According to the Pennsylvania Antibid-Rigging Act, 73 P.S. 1611 et seq., governmental agencies may require Non-Collusion Affidavits to be submitted together with proposals.

This Non-Collusion affidavit must be executed by the member, officer, or employee of the proposer who is authorized to legally bind the proposer.

Bid/Proposal rigging and other efforts to restrain competition, and the making of false sworn statements in connection with the submission of proposals are unlawful and may be subject to criminal prosecution. The person who signs the Affidavit should examine it carefully before signing and assure himself or herself that each statement is true and accurate, making diligent inquiry, as necessary, of all other persons employed by or associated with the proposer with responsibilities for the preparation, approval, or submission of the bid.

In the case of a proposal submitted by a joint venture, each party to the venture must be identified in the proposal documents, and an Affidavit must be submitted separately on behalf of each party.

The term "complementary bid/proposal" as used in the Affidavit has the meaning commonly associated with that term in the RFP process, and includes the knowing submission of proposals higher than the proposal of another firm, any intentionally high or noncompetitive proposal, and any form of proposal submitted for the purpose of giving a false appearance of competition.

Failure to file an Affidavit in compliance with these instructions will result in disqualification of the proposal.

NON-COLLUSION AFFIDAVIT

State of _____

County of _____

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

He/She is _____ of the Proposer that has
(Owner, Partner, Officer, Representative or Agent)
submitted the attached Proposal;

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

Such Proposal is genuine and is not a collusive or sham Proposal;

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

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

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

I state that _____ understands
(Name of Firm)

and acknowledges that the above representations are material and important, and will be relied on by the City of Reading in awarding the Contract(s) for which this Bid is submitted. I understand and my firm understands that any misstatement in this Affidavit is and shall be treated as fraudulent concealment from the City of Reading of the true facts relating to the submission of bids for this Contract.

(Name and Company Position) _____

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

Notary Public

My Commission Expires:

NON DISCRIMINATION STATEMENT

The undersigned hereby certifies that it shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, handicap, familial status, or national origin. The undersigned shall take affirmative action to insure that applicants for employment are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, handicap, familial status, or national origin.

BIDDER

TITLE

PROVIDER’S CERTIFICATION OF NON-INDEBTEDNESS TO THE CITY OF READING

Provider hereby certifies and represents that Provider and Provider "parent company(ies) and subsidiary(ies) are not currently indebted to the City of Reading (the "City"), and will not at any time during the term of this Contract (including any extensions or renewals thereof) be indebted to the City, for or on account of any delinquent taxes, liens, judgments, fees or other debts for which no written agreement or payment plan satisfactory to the City has been established. In addition to any other rights or remedies available to the City at law or in equity, Provider acknowledges that any breach or failure to conform to this certification may, at the option of the City, result in the withholding of payments otherwise due to Provider and, if such breach or failure is not resolved to the City" s satisfaction within a reasonable time frame specified by the City in writing, may result in the offset of any such indebtedness against said payments and/or the termination of this Contract for default (in which case Provider shall be liable for all excess costs and other damages resulting from the termination).

Name of Provider

By: _____ Authorized Signatory

Title: _____ President or Vice President

Attest: _____

Attachment A

CONTRACT FOR PROFESSIONAL CONSULTING SERVICES

This agreement is made and entered into as of the _____ of _____, 2014 (the "Effective Date") between the **City of Reading** (hereinafter referred to as the "City") and **VENDOR** (hereinafter referred to as the "Contractor").

In consideration of the mutual covenants and conditions herein contained the parties agree as follows:

1. SCOPE OF WORK

Commencing on the Effective Date, the Contractor shall provide services to the City in connection with the potential concession and lease by the City of its water system (the "Project"), including, but not limited to:

- (i) Provide the City with legal advice related to leasing and operating the Reading Water System including the filter plant, water storage and distribution facilities, including Lake Ontelaunee;
- (ii) Prepare solicitations and contracts for any consultants/advisors that are retained by the City in the course of procuring the long-term lease or concession of the City of Reading Water System;
- (iii) Prepare an ensuing Request for Qualifications (RFQ) and related documents to identify the parties interested in leasing or investing in the Reading Water System;
- (iv) Identify parameters and confidentiality requirements for the due diligence period between the issuance of the RFQ and a future Request for Proposals (RFP);
- (v) Prepare an ensuing Request for Proposals (RFP) and related documents necessary to procure the long-term lease or concession of the City of Reading Water System;
- (vi) Prepare the terms and conditions of the concession lease;
- (vii) assist in awarding the concession lease; and
- (viii) Provide other legal advice or analysis regarding the project noted above as may be requested by the City of Reading.

2. DELIVERABLES

The Contractor would be responsible for drafting the related procurement documents (RFQs and RFPs); the concession and lease agreement; various related project agreements and financing agreements; opinions (but excluding opinions on City information set forth in the Concessionaire's securities disclosure documents) and certificates; and other related agreements, instruments or documents in connection with the consummation of the Project.

3. TERM OF CONTRACT

The term of the Contract shall commence on the Effective Date and shall end on the earlier to occur of (i) the date that the Project reaches financial close or (ii) the date that the City notifies the Contractor in writing that the City will no longer pursue the Project (hereinafter the Expiration Date), subject to the other provisions of the Contract. 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 the City 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. The City reserves the right, upon notice to the Contractor, to extend the term of the Contract for up to two (2) one-year renewals upon the same terms and conditions. Each renewal period must be acted upon separately.

4. INDEPENDENT CONTRACTOR

In performing the services required by the Contract, the Contractor will act as an independent contractor and not as an employee or agent of the City.

5. 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.

6. ENVIRONMENTAL PROVISIONS

In the performance of the Contract, the Contractor shall minimize pollution and shall strictly comply with all applicable environmental laws and regulations.

7. COMPENSATION/EXPENSES

The Contractor shall be required to perform the specified services at the price(s) quoted in the Contract, Appendix A. 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 the City. The Contractor shall not be allowed or paid travel or per diem expenses except as specifically set forth in the Contract.

8. INVOICES

The Contractor shall submit monthly invoices to the City for services performed during each billing period. Invoices shall be forwarded to the following contact and address:

City Solicitor
City of Reading
815 Washington Street
Reading, PA 19601

Each invoice shall be under cover of a letter on **VENDOR** letterhead and itemized listing the services performed by date, hours worked, and by rate.

9. PAYMENT

a. The City shall put forth reasonable efforts to make payment by the required payment date set forth in Appendix A. 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 "Provide Service and Bill To" address if a date on which payment is due is not specified in the Contract (a "proper" invoice is not received until the City 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. Payment should not be construed by the Contractor as acceptance of the service performed by the Contractor. The City 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 the City may set off the amount of any state tax liability or other obligation of the Contractor or its subsidiaries to the City against any payments due the Contractor under any contract with the City.

10. TAXES

The City is exempt from all excise taxes imposed by the Internal Revenue Service and has accordingly registered with the Internal Revenue Service to make tax free purchases. With the exception of purchases of the following items, no exemption certificates are required and none will be issued: undyed diesel fuel, tires, trucks, gas guzzler emergency vehicles, and sports fishing equipment. The City is also exempt from Pennsylvania state sales tax, local sales tax, public transportation assistance taxes and fees and vehicle rental tax. The Pennsylvania 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.

11. RESERVED

12. PATENT, COPYRIGHT, AND TRADEMARK INDEMNITY

The Contractor warrants that it is the sole owner or author of, or has entered into a suitable legal agreement concerning either: a) the design of any product or process provided or 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 the City under the contract. The Contractor shall defend any suit or proceeding brought against the City on account of any alleged patent, copyright or trademark infringement in the United States of any of the products provided or used in the performance of the Contract. This is upon condition that the City shall provide prompt notification in writing of such suit or proceeding; full right, authorization and opportunity to conduct the defense thereof; and full information and all reasonable cooperation for the defense of same. As principles of governmental or public law are

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

13. OWNERSHIP RIGHTS

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

14. ASSIGNMENT OF ANTITRUST CLAIMS

The Contractor and the City 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 the City. As part of the consideration for the award of the Contract, and intending to be legally bound, the Contractor assigns to the City 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.

15. RESERVED

16. AUDIT PROVISIONS

The City shall have the right, at reasonable times and at a site designated by the City, 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 the City and/or their authorized representatives.

17. DEFAULT

a. The City may, subject to the provisions of Paragraph 18, Force Majeure, 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 Paragraph 19, Termination Provisions) the whole or any part of this Contract for any of the following reasons:

- 1) Failure to begin work within the time specified in the Contract 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 terms;
- 3) Unsatisfactory performance of the work;
- 4) Failure or refusal to remove material, or remove and replace any work rejected as defective or unsatisfactory;
- 5) Discontinuance of work without approval;
- 6) Failure to resume work, which has been discontinued, within a reasonable time after notice to do so;
- 7) Insolvency or bankruptcy;
- 8) Assignment made for the benefit of creditors;

- 9) 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;
- 10) Failure to protect, to repair, or to make good any damage or injury to property; or
- 11) Breach of any provision of this Contract.

b. If the Contract is terminated as provided in Subparagraph a. above, the City, in addition to any other rights provided in this paragraph, may require the Contractor to transfer title and deliver immediately to the City in the manner and to the extent directed by the Issuing Office, such partially completed work, including, where applicable, reports, working papers and other documentation, as the Contractor has specifically produced or specifically acquired for the performance of such part of the Contract as has been terminated. Except as provided below, payment for completed work accepted by the City shall be at the Contract price. Except as provided below, payment for partially completed work including, where applicable, reports and working papers, delivered to and accepted by the City shall be in an amount agreed upon by the Contractor and Contracting Officer. The City 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 the City against loss.

c. The rights and remedies of the City 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.

d. The City's failure to exercise any rights or remedies provided in this paragraph shall not be construed to be a waiver by the City of its rights and remedies in regard to the event of default or any succeeding event of default.

e. If the Contract is terminated as provided in Subparagraph a. above, the City agrees to pay 100% of the Contractor's legal fees incurred up to that date.

18. 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 the City 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 the City may reasonably request. After receipt of such notification, the City may elect either to cancel the Contract 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, the City by notice to the Contractor, may suspend all or a portion of the Contract.

19. TERMINATION PROVISIONS

The City has the right to terminate this Contract for any of the following reasons. Termination shall be effective upon written notice to the Contractor.

a. TERMINATION FOR CONVENIENCE: The City shall have the right to terminate the Contract for its convenience if the City 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: The City's obligation to make payments during any City fiscal year succeeding the current fiscal year shall be subject to availability and appropriation of funds. When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal year period, the City shall have the right to terminate the contract. The contractor shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the supplies or services delivered under this contract. Such reimbursement shall not include loss of profit, loss of use of money, or administrative or overhead costs. The reimbursement amount may be paid from any appropriations available for that purpose.

c. TERMINATION FOR CAUSE: The City shall have the right to terminate the Contract for Contractor default under Paragraph 17, Default, upon written notice to the Contractor. The City shall also have the right, upon written notice to the Contractor, to terminate the Contract for other cause as specified in this Contract or by law. If it is later determined that the City erred in terminating the Contract for cause, then, at the City's discretion, the Contract shall be deemed to have been terminated for convenience under the Subparagraph 19.a.

20. 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.

b. 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.

21. ASSIGNABILITY AND SUBCONTRACTING

a. Subject to the terms and conditions of this Paragraph 21, 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.

22. NONDISCRIMINATION/SEXUAL HARASSMENT CLAUSE

During the term of the Contract, the Contractor agrees as follows:

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, by reason of gender, race, creed, or color, discriminate against any citizen of this City 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 against or intimidate any employee involved in the manufacture of supplies, the performance of work, or any other activity required under the contract on account of gender, race, creed, or color.

c. The Contractor and each subcontractor shall establish and maintain a written sexual harassment policy and shall inform their employees of the policy. The policy must contain a notice that sexual harassment will not be tolerated and employees who practice it will be disciplined.

d. The Contractor and each subcontractor shall not discriminate by reason of gender, race, creed, or color against any subcontractor or supplier who is qualified to perform the work to which the contract relates.

e. 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.

23. CONTRACTOR INTEGRITY PROVISIONS

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

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 Contractor employee activity with the City and City employees, and which is distributed and made known to all Contractor employees.

c. **Contractor, its affiliates, agents and employees shall not influence, or attempt to influence, any City employee to breach the standards of ethical conduct for City employees set forth in the *Public Official and Employees Ethics Act, 65 Ph.C.'s. §§1101 et seq.*; the *State Adverse Interest Act, 71 P.S. §776.1 et seq.*; or to breach any other state or federal law or regulation.**

d. Contractor, its affiliates, agents and employees shall not offer, give, or agree or promise to give any gratuity to a City official or employee or to any other person at the direction or request of any City official or employee.

e. Contractor, its affiliates, agents and employees shall not offer, give, or agree or promise to give any gratuity to a City official or employee or to any other person, the acceptance of which would violate any statute, regulation, statement of policy, management directive or any other published standard of the City or Commonwealth of Pennsylvania (the "Commonwealth").

f. Contractor, its affiliates, agents, employees, or anyone in privity with him or her shall not accept or agree to accept from any person, any gratuity in connection with the performance of work under the contract, except as provided in the contract.

h. Contractor shall not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material on this project, unless the financial interest is disclosed to the City in writing and the City consents to Contractor's financial interest prior to City's execution of the contract. Contractor shall disclose the financial interest to the City 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.

i. Contractor, its affiliates, agents and employees shall not disclose to others any information, documents, reports, data, or records provided to, or prepared by, Contractor under this contract without the prior written approval of the City, except as required by the *Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104*, or other applicable law or as otherwise provided in this contract. Any information, documents, reports, data, or records secured by Contractor from the City or a third party in connection with the performance of this contract shall be kept confidential unless disclosure of such information is:

- 1) Approved in writing by the City prior to its disclosure; or
- 2) Directed by a court or other tribunal of competent jurisdiction unless the contract requires prior City approval; or
- 3) Required for compliance with federal or state securities laws or the requirements of national securities exchanges; or
- 4) Necessary for purposes of Contractor's internal assessment and review; or
- 5) Deemed necessary by Contractor in any action to enforce the provisions of this contract or to defend or prosecute claims by or against parties other than the City; or
- 6) Permitted by the valid authorization of a third party to whom the information, documents, reports, data, or records pertain; or
- 7) Otherwise required by law.

j. Contractor certifies that neither it nor any of its officers, directors, associates, partners, limited partners or individual owners has been officially notified of, charged with, or convicted of any of the following and agrees to immediately notify the City contracting officer in writing if and when it or any officer, director, associate, partner, limited partner or individual owner has been officially notified of, charged with, convicted of, or officially notified of a governmental determination of any of the following:

1) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property.

2) Commission of fraud or a criminal offense or other improper conduct or knowledge of, approval of or acquiescence in such activities by Contractor or any affiliate, officer, director, associate, partner, limited partner, individual owner, or employee or other individual or entity associated with:

a) obtaining;

b) attempting to obtain; or

c) performing a public contract or subcontract.

Contractor's acceptance of the benefits derived from the conduct shall be deemed evidence of such knowledge, approval or acquiescence.

3) Violation of federal or state antitrust statutes.

4) Violation of any federal or state law regulating campaign contributions.

5) Violation of any federal or state environmental law

6) Violation of any federal or state law regulating hours of labor, minimum wage standards or prevailing wage standards; discrimination in wages; or child labor violations.

7) Violation of the *Act of June 2, 1915 (P.L. 736, No. 338)*, known as the *Workers' Compensation Act, 77 P.S. 1 et seq.*

8) Violation of any federal, state, or City law prohibiting discrimination in employment.

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

10) Any other crime involving moral turpitude or business honesty or integrity.

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

k. When Contractor has reason to believe that any breach of ethical standards as set forth in law or in these provisions has occurred or may occur, including but not limited to contact by a City officer or employee which, if acted upon, would violate such ethical standards, Contractor shall immediately notify the City contracting officer or City Solicitor in writing.

l. 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.

m. Contractor shall cooperate with the City Solicitor in its investigation of any alleged City employee breach of ethical standards and any alleged Contractor non-compliance with these provisions. Contractor agrees to make identified Contractor employees available for interviews at reasonable times and places. Contractor, upon the inquiry or request of the City Solicitor, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the City Solicitor 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 refers to or concern this contract.

n. For violation of any of these Contractor Integrity Provisions, the City 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 the City. These rights and remedies are cumulative, and the use or non-use of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those the City may have under law, statute, regulation, or otherwise.

o. For purposes of these Contractor Integrity Provisions, the following terms shall have the meanings found in this Paragraph.

1) "Confidential information" means information that a) is not already in the public domain; b) is not available to the public upon request; c) is not or does not become generally known to Contractor from a third party without an obligation to maintain its confidentiality; d) has not become generally known to the public through an act or omission of Contractor; or e) has not been independently developed by Contractor without the use of confidential information of the City.

2) "Consent" means written permission signed by a duly authorized officer or employee of the City, provided that where the material facts have been disclosed, in writing, by pre-qualification, bid, proposal, or contractual terms, the City shall be deemed to have consented by virtue of execution of this contract.

3) "Contractor" means the individual or entity that has entered into this contract with the City, including those directors, officers, partners, managers, and owners having more than a five percent interest in Contractor.

4) "Financial interest" means:

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

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

5) "Gratuity" means tendering, giving or providing anything of more than nominal monetary value including, but not limited to, cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind.

6) "Immediate family" means a spouse and any unemancipated child.

7) "Non-bid basis" means a contract awarded or executed by the City with Contractor without seeking bids or proposals from any other potential bidder or offeror.

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

24. CONTRACTOR RESPONSIBILITY PROVISIONS

a. The Contractor certifies, for itself and all its subcontractors, that as of the date of its execution of this Bid/Contract, that neither the Contractor, nor any subcontractors, nor any suppliers are under suspension or debarment by the City or any governmental entity, instrumentality, or authority and, if the Contractor cannot so certify, then it agrees to submit, along with its Bid, a written explanation of why such certification cannot be made.

b. The Contractor also certifies, that as of the date of its execution of this Bid/Contract, it has no tax liabilities or other City obligations.

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 the City if, at any time during the term of the Contract, it becomes delinquent in the payment of taxes, or other City obligations, or if it or any of its subcontractors are suspended or debarred by the City, the Commonwealth, the federal government, or any other state or governmental entity. Such notification shall be made within 15 days of the date of suspension or debarment.

d. The failure of the Contractor to notify the City of its suspension or debarment by the City, Commonwealth, any other state, or the federal government shall constitute an event of default of the Contract with the City.

e. The Contractor agrees to reimburse the City for the reasonable costs of investigation incurred by the City Solicitor for Investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the

Commonwealth, which 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.

25. 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 the City of Reading through contracts with outside contractors.

b. The Contractor shall be responsible for and agrees to indemnify and hold harmless the City of Reading from all losses, damages, expenses, claims, demands, suits, and actions brought by any party against the City of Reading as a result of the Contractor's failure to comply with the provisions of subparagraph a above.

26. COVENANT AGAINST CONTINGENT FEES

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City 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.

27. APPLICABLE LAW

This Contract shall be governed by and interpreted and enforced in accordance with the laws of the City and of the Commonwealth (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 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.

28. INTEGRATION

The Contract, including all referenced documents, constitutes the entire agreement between the parties. No agent, representative, employee or officer of either the City 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. All such amendments will be made using the appropriate City form.

29. CHANGE ORDERS

The City reserves the right to issue change orders 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 (which changes individually or in the aggregate do not alter the overall scope of the Contract); 3) to notify the Contractor that the City 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 order shall be in writing signed by the Contracting Officer. The change order shall be effective as of the date appearing on the change order, unless the change order 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 upon the Contractor's reasonable satisfaction that its additional fees and expenses, if any, shall be paid by the City. Any dispute by the Contractor in regard to the performance required under any change order shall be handled through Paragraph 20, "Contract Controversies".

For purposes of this Contract, "change order" is defined as a written order signed by the Contracting Officer directing the Contractor to make changes authorized under this clause.

30. RIGHT TO KNOW LAW 8-K-1532

a. The Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104, ("RTKL") applies to this Contract.

b. If the City 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 the City.

c. Upon written notification from the City 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 the City, 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 the City reasonably believes is Requested Information and may be a public record under the RTKL; and
2. Provide such other assistance as the City 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 the City 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. The City will rely upon the written statement from the Contractor in denying a RTKL request for the Requested Information unless the City determines that the Requested Information is clearly not protected from disclosure under the RTKL. Should the City 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 the City'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 the City harmless for any damages, penalties, costs, detriment or harm that the City may incur as a result of the Contractor's failure, including any statutory damages assessed against the City.

g. The City 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 Commonwealth of Pennsylvania 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 City or 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 the City for any legal expenses incurred by the City as a result of such a challenge and shall hold the City harmless for any damages, penalties, costs, detriment or harm that the City may incur as a result of the Contractor's failure, including any statutory damages assessed against the City, 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 the City'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.

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IN WITNESS WHEREOF, the **CITY OF READING**, and **CONTRACTOR** have caused this Contract to be executed on the date and year first above written.

CONTRACTOR

CITY OF READING

By: _____

By: _____

Title: _____

Mayor

Date: _____

WITNESS

WITNESS

Appendix A

Please list all proposed project costs here.