

## PROFESSIONAL SERVICES AGREEMENT

THIS PROFESSIONAL SERVICES AGREEMENT (the "Agreement") is entered into as the \_\_\_\_ day of August, 2012, by and between the DELAWARE OFFICE OF THE GOVERNOR and DEPARTMENT OF LABOR, an agency of the State of Delaware, (collectively, the "State") and PUBLIC WORKS LLC ("Vendor").

### WITNESSETH:

WHEREAS, the State desires to obtain the services of Vendor to perform certain tasks, as set forth herein; and,

WHEREAS, Vendor desires to provide such services to the State on the terms set forth herein; and,

WHEREAS, the State, pursuant to Title 29 *Del. C.* §§6303A (14) and (15), and Vendor each represent and warrant that each party has full right, power and authority to enter into and perform under this Agreement.

NOW THEREFORE, in consideration of the premises and the mutual agreements hereinafter contained, the parties hereto agree as follows:

#### **1. Services.**

1.1 Vendor shall perform for the State the services (the "Scope of Work") specified in Appendix "A" attached hereto and made a part hereof.

1.2 The State may at any time, make changes in the Scope of Work. No services for which additional compensation may be charged by Vendor shall be furnished without the written authorization of the State. When the State desires any addition or deletion to the Scope of Work to be provided under this Agreement, it shall notify Vendor, who shall then submit to the State a "Change Order" for approval authorizing said change. The Change Order shall state whether the change shall cause an alteration in the price or the time required by Vendor for any aspect of its performance under this Agreement. Pricing of changes shall be consistent with those established within this Agreement.

1.3 Vendor will not be required to make changes to the Scope of Work that result in Vendor's costs exceeding the current unencumbered budgeted appropriations for the services. Any claim of either party for an adjustment under Section 1 of this Agreement shall be asserted in the manner specified in the writing that authorizes the adjustment.

## **2. Payment for Services and Expenses**

2.1 In consideration of the services provided for under this Agreement, the State agrees to pay Vendor a monthly fee of \$10,000 per month for each full month of services until December 31, 2012. Services after December 31, 2012 shall be provided at an hourly rate of \$200 unless the State elects in writing, prior to December 31, 2012, to continue services at the monthly fee of \$10,000. The fees paid pursuant to this subparagraph shall be known as the "Fee." The Fee shall include all fees for professional services and also shall include all expense reimbursement.

2.2 Payments shall not be disbursed by the State to Vendor until the Purchase Order covering the Fee has been approved by the Secretary of the Department of Finance of the State.

2.3 Upon approval of the Purchase Order, Vendor shall submit invoices detailing the services provided to the State on a monthly basis. The State agrees to pay those invoices within thirty (30) days of receipt. In the event the State disputes a portion of an invoice, the State agrees to pay the undisputed portion of the invoice within thirty (30) days of receipt and to provide Vendor a detailed statement of the State's position on the disputed portion of the invoice within thirty (30) days of receipt. The obligation of the State to pay any consideration to Vendor is subject to Section 15 hereof. All payments should be sent to Vendor at 1690 East Strasburg Road, West Chester, PA 19380.

2.4 The State shall not be liable for the payment of Federal, State and Local sales, use and excise taxes, or any similar taxes including any interest and penalties from any related deficiency, which may become due and payable as a consequence of this Agreement.

2.5 The State shall subtract from any payment made to Vendor all damages, costs and expenses caused by Vendor's negligence, resulting from or arising out of errors or omissions in Vendor's work product, which have not been previously paid to Vendor.

## **3. Term**

3.1 The effective date of this Agreement shall be the date a valid, executed Purchase Order (the "Purchase Order") has been approved by the Secretary of the Department of Finance of the State (the "Effective Date").

3.2 The term of this Agreement shall end on August 1, 2013, but may be extended upon mutual agreement of the parties for two additional one year terms (the "Term").

Any delay of services or change in sequence of tasks must be approved in writing by the State.

3.3 In the event that Vendor fails to complete the Scope of Work or any phase thereof within the time specified in this Agreement, or with such additional time as may be granted in writing by the State, or fails to prosecute the work, or any separable part thereof, with such diligence as will insure its completion within the time specified in this Agreement or any extensions thereof, the State shall suspend all payments to Vendor.

#### **4. Responsibilities of Vendor**

4.1 Vendor shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all services furnished by Vendor, its subcontractors and its and their principals, officers, employees and agents under this Agreement. In performing the specified services, Vendor shall follow practices consistent with generally accepted professional and technical standards.

4.2 It shall be the duty of Vendor to assure that all products of its effort are technically sound and in conformance with all pertinent Federal, State and Local statutes, codes, ordinances, resolutions and other regulations. Vendor will not produce a work product that violates or infringes on any copyright or patent rights. Vendor shall, without additional compensation, correct or revise any errors or omissions in its work products.

4.3 Permitted or required approval by the State of any products or services furnished by Vendor shall not in any way relieve Vendor of responsibility for the professional and technical accuracy and adequacy of its work. The State's review, approval, acceptance, or payment for any of Vendor's services herein shall not be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement, and Vendor shall be and remain liable in accordance with the terms of this Agreement and applicable law for all damages caused by Vendor's performance or failure to perform under this Agreement.

4.4 Vendor shall be solely responsible for providing workmen's compensation and unemployment insurance for its employees, as required by law. Vendor shall withhold and pay from the wages and other remuneration of its employees and from payments made to subcontractors or other payees all required Federal and State income taxes, OASDI and Hospitalization taxes, FUTA taxes, backup withholding or other amounts required by Federal or State law to be withheld from any such payments. Vendor shall timely file and provide to its employees and other payees Federal and State Forms W-2, 1099 or other information returns, as required by law.

4.5 Vendor agrees that it will not discriminate against any employee or applicant for employment because of race, creed, color, sex, or national origin. Vendor shall comply with all Federal and State laws, regulations and policies pertaining to the prevention of discriminatory employment practices. Failure to perform under this covenant constitutes a material breach of contract.

4.6 Vendor shall be responsible for providing liability insurance for its personnel.

4.7 Vendor agrees to bear at its own expense, the cost of obtaining and maintaining any permits and licenses and agrees to file in a timely manner all Delaware tax returns or other required tax filings and to pay any and all taxes when due. Vendor and all subcontractors agree to maintain during the entire term of this Agreement a valid Delaware Business License or Licenses under Part III of Title 30 of the Delaware Code and any local or municipal licenses required in any place in which Vendor does business in performing the Scope of Work under this Agreement.

4.8 With respect to any modification of the scope of services to be provided hereunder and with respect to any services to be provided during any extension of the Term, Vendor will prepare in advance a proposed itemized budget and an estimate of the total cost of the services to be provided for approval by the State.

4.9 Vendor will not use the State's name, either express or implied, in any of its advertising or sales materials without the State's express written consent or as permitted by section 8.1.

4.10 The rights and remedies of the State provided for in this Agreement are in addition to any other rights and remedies provided by law.

## **5. The State's Responsibilities**

5.1 The State agrees that its officers, employees or designated representatives will cooperate with Vendor in the performance of services under this Agreement and will be available for consultation with Vendor at such reasonable times with advance notice as to not conflict with their other responsibilities.

5.2 The services performed by Vendor under this Agreement shall be subject to review for compliance with the terms of this Agreement by the State's designated representatives. The State representatives may delegate any or all responsibilities under the Agreement to appropriate staff members, and shall so inform Vendor by written notice before the effective date of each such delegation.

5.3 The review comments of the State's designated representatives may be reported in writing as needed to Vendor. It is understood that the State's representatives' review comments do not relieve Vendor from the responsibility

for the professional and technical accuracy of all work delivered under this Agreement.

5.4 The State shall, without charge, furnish to or make available for examination or use by Vendor as it may request, any data which the State has available, including as examples only and not as a limitation:

- a. Copies of reports, surveys, records, and other pertinent documents;
- b. Copies of previously prepared reports, job specifications, surveys, records, ordinances, codes, regulations, other document, and information related to the services specified by this Agreement.

5.5 Vendor shall return any original data provided by the State.

5.6 The State shall assist Vendor in obtaining data on documents from public officers or agencies and from private citizens and business firms whenever such material is necessary for the completion of the services specified by this Agreement.

5.7 Vendor will not be responsible for accuracy of information or data supplied by the State or other sources to the extent such information or data would be relied upon by a reasonably prudent contractor.

5.8 The State agrees not to use Vendor's name, either express or implied, in any of its advertising or sales materials without Vendor's express written consent.

## **6. Employees**

6.1 Vendor has or will retain such employees or subcontractors as it may need to perform the services required by this Agreement. Such employees or subcontractors shall not be deemed to be an agent or employee of the State, the State or any other political subdivision of the State.

6.2 Except as the other party expressly authorizes in writing in advance, neither party shall solicit, offer work to, employ, or contract with, whether as a partner, employee or independent contractor, directly or indirectly, any of the other party's Personnel during their participation in the services or during the twelve (12) months thereafter. For purposes of this Section 6.2, "Personnel" includes any individual or company a party employed as a partner, member, director, employee or independent contractor and with which a party comes into direct contact in the course of the services.

## **7. Independent Contractor**

7.1 It is understood that in the performance of the services herein provided for, Vendor shall be, and is, an independent contractor, and is not an agent or employee of the State and shall furnish such services in its own manner and method except as required by this Agreement. Vendor shall be solely responsible for, and shall indemnify, defend and save the State harmless from all matters relating to the payment of its employees, including compliance with social security, withholding and all other wages, salaries, benefits, taxes, exactions, and regulations of any nature whatsoever.

7.2 Vendor acknowledges that it is liable for any and all losses, penalties, damages, expenses, attorney's fees, judgments, and/or settlements incurred by reason of injury to or death of any and all persons, or injury to any and all property, of any nature, arising out of Vendor's and any subcontractors, agents or employees employed by Vendor negligent performance under this Agreement, and particularly without limiting the foregoing, caused by, resulting from, or arising out of any act of omission on the part of Vendor and any subcontractors, agents or employees employed by Vendor in the negligent performance under this Agreement.

7.3 Vendor acknowledges that Vendor and any subcontractors, agents or employees employed by Vendor shall not, under any circumstances, be considered employees of the State, and that they shall not be entitled to any of the benefits or rights afforded employees of the State, including, but not limited to, sick leave, vacation leave, holiday pay, Public Employees Retirement System benefits, or health, life, dental, long-term disability or workers' compensation insurance benefits. The State will not provide or pay for any liability or medical insurance, retirement contributions or any other benefits for or on behalf of the State or any of its officers, employees or other agents.

7.4 As an independent contractor, Vendor has no authority to bind or commit the State. Nothing herein shall be deemed or construed to create a joint venture, partnership, fiduciary or agency relationship between the parties for any purpose.

## **8. Workproduct; Intellectual Property; Permissions**

8.1 Vendor agrees that, except as noted below, all materials, documents, products, reports, data and other information, whether finished, unfinished, or draft developed, gathered or compiled under this Agreement by Vendor (collectively, "Work Product") are the sole and exclusive property of the State and that they shall not be used by Vendor or by any other person or destroyed without the express written permission of the State. The State shall permit Vendor to use Work Product to promote Vendor services to other Vendor clients and prospective clients, provided that such use does not violate any law or contractual obligation. To the maximum extent permitted by applicable law, all Work Product shall constitute "work made for hire" by Vendor for the State within the meaning of 17 U.S.C. §101. Vendor agrees to execute, and to cause any of its subcontractors to execute, any and all documents reasonably requested

by the State that are required to transfer all ownership and rights in Work Product to the State and to cooperate with the State, should the State desire, at its own expense, to register or otherwise obtain protection under applicable federal copyright, trademark or patent laws for any Work Product. Upon termination of this Agreement, and upon receipt by Vendor of payment in full for services, Vendor shall promptly turn over to the State all work in progress, drafts, finished copy or other materials, research materials, data or other information, regardless of the manner or medium in which they are stored.

8.2 Vendor shall not be liable for damages, claims, and losses arising out of any reuse of any work products on any other project conducted by the State.

8.3 Except as otherwise provided herein, as to any work of authorship, material, device, design, process, trademark service mark or other intellectual property to be used in connection with the production of or incorporated into Workproduct or to be used otherwise in connection with its performance under this Agreement that Vendor does not own, Vendor will, to the extent required under law, without additional charge to the State, obtain any and all releases, permissions, licenses or other necessary authorizations under applicable Federal or State copyright, trademark, patent or other law (collectively, "Permissions") with respect to such work of authorship material, device, design, process, trademark service mark or other intellectual property. All such Permissions shall be granted to the State as well as to Vendor.

## **9. Audit; Record Access and Retention**

9.1 Vendor agrees to give the State, the Auditor of Accounts of the State of Delaware, any private firm of certified public accountants engaged by the State or the Auditor of Accounts of the State of Delaware, the Attorney General of the State of Delaware, or any of their duly authorized employees, agents or representatives access to any and all books, documents, papers and records of Vendor that are directly pertinent to this Agreement and Vendor's performance hereunder, for the purpose of making audits, examinations, investigations, copies, excerpts and transcriptions. Such access shall be granted by Vendor during its normal business hours, after receipt by Vendor of at least 24 hours advance notice of a request for such access, at its offices in West Chester, Pennsylvania, or at such other place or places agreed to by Vendor and the requesting person. For purposes of this section, the phrase "books, documents, papers and records of Vendor that are directly pertinent to this Agreement" shall mean books, documents, papers and records pertaining to all work performed for and job costs invoiced to the State, but such phrase shall exclude general records such as payroll records and other records of Vendor not pertaining to the work performed for, or the costs invoiced to, the State.

9.2 Vendor shall maintain all public records, as defined by 29 *Del. C.* §502(7), relating to this Agreement and its deliverables for the time and in the manner

specified by the Delaware Division of Archives, pursuant to the Delaware Public Records Law, 29 *Del. C.* Ch. 5.

9.3 Vendor agrees to retain such records for a period of three (3) years following the termination of this Agreement. The provisions of this section shall survive termination or cancellation of this Agreement.

## **10. Confidential Information**

To the extent permissible under 29 *Del. C.* §10001, *et seq.*, the parties to this Agreement shall preserve in strict confidence any information, reports or documents obtained, assembled or prepared in connection with the performance of this Agreement.

## **11. Warranty**

11.1 Vendor warrants that its services will be performed in a good and workmanlike manner. Vendor agrees to re-perform any work not in compliance with this warranty brought to its attention within a reasonable time after that work is performed.

11.2 Third-party products within the scope of this Agreement are warranted solely under the terms and conditions of the licenses or other agreements by which such products are governed. With respect to all third-party products and services purchased by Vendor for the State in connection with the provision of the Scope of Work, Vendor shall pass through or assign to the State the rights Vendor obtains from the manufacturers and/or vendors of such products and services (including warranty and indemnification rights), all to the extent that such rights are assignable.

## **12. Indemnification; Limitation on Liability**

12.1 Vendor shall hold harmless, indemnify and defend the State, the State and their respective officers, agents and employees (the "Indemnified Parties") from any and all losses, damages, costs, expenses, liabilities, obligations, fines, penalties, actions, judgments, suits, and causes of action, claims, demands and proceedings of any kind or description ("Claims") and all costs and expenses of any kind or nature, including, without limitation, all attorneys' fees, disbursements, court costs and any other costs of litigation related thereto arising out of, resulting from or directly or indirectly connected to the performance by Vendor of this Agreement, including, but not limited to Claims arising out of, resulting from or directly or indirectly connected to negligence, intentional misconduct, breach of contract, copyright infringement or other violation, patent infringement or other violation, trademark or service mark infringement or other violation of or by Vendor, its employees, subcontractors, or its agents.



12.2 In case any action shall be brought against the Indemnified Parties, or any of them, based upon any of the above and in respect of which indemnity may be sought against Vendor, the Indemnified Party or Parties shall promptly notify Vendor in writing, and Vendor shall assume the defense thereof, including the employment of counsel, the payment of all expenses and the right to negotiate and consent to settlement with the consent of the Indemnified Party or Parties, which consent shall not be unreasonably withheld or delayed. An Indemnified Party shall have the right to employ separate counsel in any such action and to participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of the Indemnified Party unless the employment of such counsel has been specifically authorized by Vendor, or unless the representation of both Vendor and the Indemnified Party would represent a conflict of interest. Vendor shall not be liable for any settlement of any such action effected without its consent, but if any such action is settled with the consent of Vendor, or if there be a final judgment for the plaintiff in any such action, Vendor agrees to indemnify and does hereby hold harmless the Indemnified Parties from and against any and all loss or liability by reason of such settlement or judgment. The provisions of this Section 12 shall survive the termination or cancellation of the Agreement.

### **13. Insurance**

13.1 During the Term of this Agreement, Vendor will maintain in force policies of insurance covering the risks and in the coverage amounts described in Appendix "B" attached hereto and specifically incorporated into this Agreement and made a part hereof.

13.2 Vendor shall provide twenty (20) days written notice of cancellation or material change of any policies.

13.3 In no event shall the State be named as an additional insured on any policy required under this agreement.

### **14. Termination**

14.1 Unless sooner terminated hereunder, this Agreement shall terminate at the end of the Term or any extension; provided however, that the provisions of this Agreement that survive this Agreement by their own terms shall continue in full force and effect.

14.2 In the event of any dispute or controversy between the State and Vendor arising under this Agreement, Vendor shall diligently continue to perform under this Agreement pending resolution of any such dispute or controversy.

14.3 This Agreement may be terminated in whole or in part by either party for cause in the event of substantial failure of the other party to fulfill its obligations

under this Agreement through no fault of the terminating party; but only after the other party is given:

- a. Not less than fifteen (15) calendar days written notice of intent to terminate; and
- b. An opportunity for consultation with the terminating party prior to termination.

14.4 This Agreement may be terminated in whole or in part by the State for its convenience, but only after Vendor is given:

- a. Not less than fifteen (15) calendar days written notice of intent to terminate; and
- b. An opportunity for consultation with the State prior to termination.

14.5 If termination for default or convenience is effected by the State, the State will pay Vendor that portion of the compensation which has been earned as of the effective date of termination but:

- a. No amount shall be allowed for anticipated profit on performed or unperformed services or other work, and
- b. Any payment due to Vendor at the time of termination may be adjusted to the extent of any additional costs occasioned to the State by reason of Vendor's default.
- c. Upon termination for default or convenience, the State may take over the work and prosecute the same to completion by agreement with another party or otherwise. In the event Vendor shall cease conducting business, the State shall have the right to make an unsolicited offer of employment to any employees of Vendor assigned to the performance of the Agreement, notwithstanding the provisions of Section 6.2.

14.6 If after termination for failure of Vendor to fulfill contractual obligations it is determined that Vendor has not so failed, the termination shall be deemed to have been effected for convenience.

14.7 The rights and remedies of the State and Vendor provided in this section are in addition to any other rights and remedies provided by law or under this Agreement.

14.8 In accordance with 29 *Del. C.* §6982(a)(2), the consideration paid to Vendor shall be adjusted to exclude significant sums determined by the State, in its sole discretion, to be attributable to inaccurate, incomplete or other noncurrent

wage rates and other factual unit costs permitted by Vendor in its proposal. If the consideration to be adjusted downward has already been paid, Vendor agrees to return such consideration to the State on demand. All such adjustments shall be made within one year following the termination of this Agreement. This provision shall survive termination of this Agreement for any reason.

#### **14.9 Gratuities.**

14.9.1 The State may, by written notice to Vendor, terminate this Agreement if it is found after notice and hearing by the State that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by Vendor or any agent or representative of Vendor to any officer or employee of the State with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending or making of any determinations with respect to the performance of this Agreement.

14.9.2 In the event this Agreement is terminated as provided in Section 14.9.1 hereof, the State shall be entitled to pursue the same remedies against Vendor it could pursue in the event of a breach of this Agreement by Vendor.

14.9.3 The rights and remedies of the State provided in Section 14.9 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

#### **15. Suspension**

The State may suspend performance by Vendor under this Agreement for such period of time as the State, at its sole discretion, may prescribe by providing written notice to Vendor at least 15 working days prior to the date on which the State wishes to suspend. Upon such suspension, the State shall pay Vendor its compensation, based on the percentage of the project completed and earned until the effective date of suspension, less all previous payments. Vendor shall not perform further work under this Agreement after the effective date of suspension. Vendor shall not perform further work under this Agreement after the effective date of suspension until receipt of written notice from the State to resume performance.

#### **16. Severability**

If any term or provision of this Agreement is found by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, the same shall not affect the other terms or provisions hereof or the whole of this Agreement, but such term or provision shall be deemed modified to the extent necessary in the court's opinion to render such term or provision enforceable, and

the rights and obligations of the parties shall be construed and enforced accordingly, preserving to the fullest permissible extent the intent and agreements of the parties herein set forth.

#### **17. Assignment; Subcontracts**

17.1 Any attempt by Vendor to assign or otherwise transfer any interest in this Agreement without the prior written consent of the State shall be void. Such consent shall not be unreasonably withheld.

17.2 Services specified by this Agreement shall not be subcontracted by Vendor, without prior written approval of the State.

17.3 Approval by the State of Vendor's request to subcontract or acceptance of or payment for subcontracted work by the State shall not in any way relieve Vendor of responsibility for the professional and technical accuracy and adequacy of the work. All subcontractors shall adhere to all applicable provisions of this Agreement.

17.4 Vendor shall be and remain liable for all damages caused by negligent performance or non-performance of work under this Agreement by Vendor, its subcontractor or its sub-subcontractor.

17.5 The compensation due shall not be affected by the State's approval of Vendor's request to subcontract.

#### **18. Force Majeure**

Neither party shall be liable for any delays or failures in performance due to circumstances beyond its reasonable control.

#### **19. Non-Appropriation of Funds**

19.1 Validity and enforcement of this Agreement is subject to appropriations by the General Assembly of the specific funds necessary for contract performance. Should such funds not be so appropriated the State may immediately terminate this Agreement, and absent such action this Agreement shall be terminated as to any obligation of the State requiring the expenditure of money for which no specific appropriation is available, at the end of the last fiscal year for which no appropriation is available or upon the exhaustion of funds.

19.2 Notwithstanding any other provisions of this Agreement, this Agreement shall terminate and the State's obligations under it shall be extinguished at the end of the fiscal year in which the State fails to appropriate monies for the ensuing fiscal year sufficient for the payment of all amounts which will then become due.

## **20. Assignment of Antitrust Claims**

As consideration for the award and execution of this contract by the State, Vendor hereby grants, conveys, sells, assigns, and transfers to the State all of its right, title and interest in and to all known or unknown causes of action it presently has or may now or hereafter acquire under the antitrust laws of the United States and the State of Delaware, relating to the particular goods or services purchased or acquired by the State pursuant to this contract.

## **21. Miscellaneous Provisions**

21.1 The captions of this Agreement are inserted only for the purpose of convenient reference and shall not be construed to define, limit or prescribe the scope or intent of this Agreement or any part thereof.

21.2 In performance of this Agreement, Vendor shall comply with all applicable Federal, State and Local laws, ordinances, codes and regulations. Vendor shall solely bear the costs of permits and other relevant costs required in the performance of this Agreement.

21.3 Neither this Agreement nor any appendix may be modified or amended except by the mutual written agreement of the parties. No waiver of any provision of this Agreement shall be effective unless it is in writing and signed by the party against which it is sought to be enforced.

21.4 The delay or failure by either party to exercise or enforce any of its rights under this Agreement shall not constitute or be deemed a waiver of that party's right thereafter to enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.

21.5 Vendor covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. Vendor further covenants, to its knowledge and ability, that in the performance of said services no person having any such interest shall be employed.

21.6 Vendor warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, or a percentage, brokerage or contingent fee. For breach or violation of this warranty, the State shall have the right to annul this Agreement without liability or at its discretion deduct from the Fee or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

21.7 This Agreement was drafted with the joint participation of both parties and shall be construed neither against nor in favor of either, but rather in accordance with the fair meaning thereof.

## **22. Notices**

22.1 All notices, reports or other written communication required or permitted hereunder shall be given in writing by certified or registered mail, return receipt requested, nationally recognized private courier (provided that written evidence of the date of delivery by such courier is available) or facsimile (provided that written evidence of the date of receipt of such facsimile transmission is available) to the addresses or facsimile telephone numbers set forth below, or to such other addresses or facsimile telephone numbers as the parties shall designate in writing, from time to time:

### If to the State:

Office of the Governor  
Attention: Policy Director  
Tatnall Building, 2<sup>nd</sup> Floor  
150 William Penn Street  
Dover, DE 19901  
Facsimile: (302) 739-2775

Delaware Department of Labor  
Attention: Deputy Secretary  
4425 North Market Street  
Wilmington, DE 19802  
Phone: (302) 761-8000

### If to Vendor

Public Works LLC  
Attention: Eric B. Schnurer  
Attention: 1690 East Strasburg Road  
West Chester, PA 19380  
Phone: (610) 296-9443

22.2 If notice is given by United States Mail, it shall be deemed given three (3) calendar days after the post-marked date thereof, or sooner if the return receipt so indicates; if by nationally recognized private courier, on the date delivered by such nationally recognized private courier, as confirmed by written evidence of such delivery, and if by facsimile on the date transmitted to the other party.

## **23. Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, except where Federal Law has precedence. Vendor consents to jurisdiction venue in the State of Delaware.

#### **24. Complete Agreement**

24.1 This agreement and its Appendices shall constitute the entire agreement between the State and Vendor with respect to the subject matter of this Agreement and shall not be modified or changed without the express written consent of the parties. The provisions of this agreement supersede all prior oral and written quotations, communications, agreements and understandings of the parties with respect to the subject matter of this Agreement.

24.2 If the scope of any provision of this Agreement is too broad in any respect whatsoever to permit enforcement to its full extent, then such provision shall be enforced to the maximum extent permitted by law, and the parties hereto consent and agree that such scope may be judicially modified accordingly and that the whole of such provisions of the Agreement shall not thereby fail, but the scope of such provision shall be curtailed only to the extent necessary to conform to the law.

24.3 Vendor may not order any product requiring a purchase order prior to the State's issuance of such order. Each Appendix, except as its terms otherwise expressly provide, shall be a complete statement of its subject matter and shall supplement and modify the terms and conditions of this Agreement for the purposes of that engagement only. No other agreements, representations, warranties or other matters, whether oral or written, shall be deemed to bind the parties hereto with respect to the subject matter hereof.

#### **25. Seal**

The parties hereto are executing this Agreement under seal, and acknowledge that this document is made under seal for the purpose of granting each party an extended period within which to enforce the terms of this Agreement.

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IN WITNESS WHEREOF, the parties hereto have executed and sealed this Agreement as of the date first above written.

WITNESS:

STATE OF DELAWARE  
OFFICE OF THE GOVERNOR

*Original on File*

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

*Original on File*

By: \_\_\_\_\_ (SEAL)  
Name: *M.A. Sartor*  
Title: *Counsel*

WITNESS:

PUBLIC WORKS, LLC

*Original on File*

✓ \_\_\_\_\_  
Name:

*Original on File*

By: \_\_\_\_\_ (SEAL)  
Name: Eric B. Schnurer  
Title: President



## **APPENDIX "A"**

### **TO PROFESSIONAL SERVICES AGREEMENT**

#### **SCOPE OF WORK**

The Vendor will work with the Office of the Governor, the Delaware Department of Labor, and other state government entities to develop strategies to expand and target workforce development opportunities for Delawareans. The Vendor will be expected to review current job creation and training programs and economic development programs, evaluate new proposals, and consider how the State might leverage available federal funding and programmatic assistance. The Vendor will evaluate systems or processes to align workforce development efforts with economic development strategies. The Vendor will also provide advice and assistance on the implementation of such proposals. The Vendor may also be asked to assist with development of other policy initiatives, including work not limited to workforce development and economic development. Although much of the work performed by the Vendor will be performed in cooperation with the relevant state agencies, work will be coordinated by, pre-approved by, and subject to the direction of the Office of the Governor.

**APPENDIX "B"**  
**TO PROFESSIONAL SERVICES AGREEMENT**  
**INSURANCE REQUIREMENTS**

Vendor shall maintain the following insurance during the term of this Agreement:

- A. Worker's Compensation and Employer's Liability Insurance in accordance with applicable law, and
- B. Miscellaneous Errors and Omissions - \$1,000,000.00 per occurrence/\$3,000,000 per aggregate
- C. Comprehensive General Liability - \$1,000,000.00 per occurrence, and
- D. Automotive Liability Insurance covering all automotive units used in the work with limits of not less than \$100,000 each person and \$300,000 each accident as to bodily injury and \$25,000 as to property damage to others.

Before any work is done, pursuant to this Agreement, copies of the Certificates of Insurance and/or insurance policies shall be provided to the State.