

Independent Contractor Agreement for (Name of Contractor)



Independent Contractor Service Agreement

This Independent Contractor Service Agreement including all attachments (**Agreement**) is entered into by and between Philadelphia Energy Authority (**PEA**), a Pennsylvania municipal authority and [Contractor Name] (**Contractor**), a [state][type of entity], as of _____, 20__.

Background

A. PEA seeks systemic solutions to the City of Philadelphia's energy challenges and prioritizes projects and programs that support low- and moderate-income customers and will result in local job creation. PEA operates the Water and Sewer Service Line Protection Program (the **Program**) to provide emergency repair and replacement of service lines [and other ancillary services] for customers of the Philadelphia Water Department (**PWD**) in Philadelphia.

B. Contractor is engaged in the business of providing certain water and sewer service line protection services [and other ancillary services] .

C. PWD is a municipal water utility providing water supply, sewer and stormwater management services to residential, commercial and industrial customers in Philadelphia.

D. PEA desires to retain Contractor to perform the Services, as hereinafter defined, and Contractor has agreed to perform those Services, subject to and upon the terms and conditions of this Agreement.

Agreements

In consideration of the Background and the mutual promises made herein, the Parties, intending to be legally bound, agree as follows:

1. Definitions

Capitalized terms used in this Agreement have the meanings set forth below unless the context clearly indicates otherwise.

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Agreement is defined in the preamble.

City means the City of Philadelphia.

Confidential Information is defined in Section 12.

Contractor is defined in the preamble.

Customer means any recipient of [goods or] services under the Program.

Force Majeure Event is defined in Section 16.a.

Good Industry Practice means those practices, methods and acts that at any particular time, in the exercise of reasonable judgment, and consistent with current plumbing and septic construction industry practices, would have been expected to accomplish the desired result in the manner consistent with applicable Law, applicable Codes, and standards of reliability, safety, efficiency and environmental protection in effect at such time, including the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced plumbing or septic contractor engaged in the same type of undertaking under the same or similar circumstances.

Initial Term is defined in Section 2.

Party means either PEA or Contractor.

PEA is defined in the preamble.

PWD is defined in Paragraph A of the Background.

Program is defined in the Paragraph A of the Background.

Protection Program is defined in the Scope of Work.

Renewal Term is defined in Section 2.

Scope of Work is defined in Section 3.

Services is defined in Section 3.

Term is defined in Section 2.

2. Term of Agreement

This Agreement is effective as of the date in the preamble and will continue through **December 31, 2028** unless earlier terminated in accordance with its terms (the **Initial Term**). PEA shall have the option to renew this Agreement for **three** additional **two**-year terms; Such **two**-year extensions shall each be referred to as a “**Renewal Term**”, and together with the Initial Term, the “**Term**”.

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3. Services

Contractor shall perform the services (**Services**) as described in Attachment A (Scope of Work) (the **Scope of Work**).

4. Method of Performing Services

Except as specifically set forth in the Scope of Work:

- a. Contractor will determine the method, details, and means of performing the Services;
- b. Contractor will supply all services, supervision, labor, tools, material, equipment, supplies, miscellaneous materials, and machinery required to perform the Services; and
- c. Obtain and pay for, or require all subcontractors to obtain and pay for, all permits and licenses necessary for the completion and execution of the Projects including, if required, any permits or licenses required in connection with the Projects pertaining to or in connection with any hazardous material, lead, asbestos, or other regulated substance.

5. Payments

[Payment terms to be finalized during contracting process.]

6. Obligations of PEA

Subject to the provisions of Section 12 (Confidentiality), PEA agrees to provide information in its possession reasonably requested by Contractor for the performance of the Services and will otherwise use its reasonable efforts to cooperate with Contractor.

7. Customer Protections

a. *Privacy.* Any Customer contact information or other personal information supplied to Contractor as part of the Program may be used only for performing the Services in accordance with the Program and not for any other purposes. Contractor shall not share this Customer information with any third party.

b. *Photos and Recordings.* Contractor will not use or publish any photos or any audio or video recordings of a Customer without written consent from the Customer. If the photo or recording is of a Customer who is under 18 years old, Contractor must have written consent of the Customer's parent or guardian in order to use or publish any photos or recordings of PEA Customer.

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c. *Customer Satisfaction.* PEA may conduct satisfaction surveys with Customers and officers or other personnel of partners and subcontractors involved in the Program. If the results of these surveys show significant and/or repeated dissatisfaction with Contractor, this Agreement may be terminated. The Contractor will exercise a high level of service and perform the Services at all times in an ethical, professional, and courteous manner. Customer complaints regarding unprofessional behavior by the Contractor will be grounds for termination under the Agreement.

8. Job Posting and Reporting

Contractor must share all Philadelphia-based job postings with PEA so that PEA can help identify diverse candidates from the City of Philadelphia.

9. Reports and Meetings

Contractor shall provide to PEA regular reports as outlined below.

- a. Monthly Reports:
 - i. Enrollment and cancellation activity
 - ii. Customer cancellation reason
 - iii. Call volume and percentage of calls handled
 - iv. Aggregate customer satisfaction score
- b. Quarterly Reports
 - i. Aggregate estimated customer repair costs savings
 - ii. Number of claims originating from PWD Notices of Defect
 - iii. Time to claim completion (including permit delays)
 - iv. Repair contractor reports detailing M/W/DBE participation levels
 - v. Information regarding the replacement of lead water laterals for AWR customers. Such information shall include (i) address of replacement; (ii) portions of the water lateral replaced; and (iii) replacement material type

Any additional reporting between the Parties will be discussed on an as needed basis.

10. Contractor Marketing

Contractor may only use PEA's name and logos on marketing or advertising materials with prior approval from PEA.

11. Proprietary Rights

Contractor will deliver to Customer any warranties associated with appliances and/or equipment.

12. Confidentiality

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a. In providing Confidential Information to PEA, Contractor acknowledges that PEA is subject to the Pennsylvania Right-to-Know Law, (65 P.S. § 67.101 et seq.) and Contractor will segregate and mark Confidential Information it provides with the specific provision of the Right-to-Know Law that it believes provides an exemption from disclosure. Subject to PEA's obligations under the Right-to-Know Law, neither Party will disclose to any person or entity, directly or indirectly, without the prior written approval of the other, any Confidential Information relating to the other party obtained by virtue of this Agreement, except on a confidential basis to its business, legal and financial advisors or as required to be disclosed under applicable law or by legal process. "**Confidential Information**" will include, but not be limited to, software, technical processes and formulas, source or object code, product designs, sales cost and other unpublished financial information, program and business plans, revenues, usage rates, Customer data, and marketing data. Confidential Information does not include any information that is, (i) generally known or available to the public through no act of the receiving party, (ii) already known to the receiving party at the time of receiving the Confidential Information, (iii) independently developed by the receiving party; or (iv) furnished to the receiving party by a third party with the right to do so.

b. The receiving party may disclose Confidential Information when required to do so by law, a court of competent jurisdiction, any governmental agency having supervisory authority over the business of the disclosing party, or by any administrative body or legislative body (including a committee thereof) with jurisdiction to order either party to divulge, disclose or make accessible such information. Prior to making such required disclosure, the receiving party will promptly notify the disclosing party of its receipt of an order or similar directive, including a Right to Know Act appeal, potentially compelling disclosure so that the disclosing party may challenge such order, directive or appeal.

13. Standard of Care

a. If Contractor provides professional services under this Agreement, Contractor shall perform the Services in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care, skill, and diligence ordinarily exercised by members of the profession currently practicing under similar conditions.

b. The Contractor shall perform, or cause to be performed, its services in accordance with the specific standards, methods and requirements set forth in this Agreement, all applicable laws, rules, and regulations applicable to the Services, and Good Industry Practice. Contractor shall maintain all licenses required to perform the Services.

14. Insurance

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At all times during the Term of this Agreement, Contractor and its subcontractors, shall maintain in full force and effect, at their expense, a commonly available commercial general liability policy of insurance through a company or companies rated A- or above by A. M. Best providing coverages for workers' compensation, comprehensive automobile insurance and commercial general liability. In addition, Contractors providing professional services shall maintain all required professional liability insurance.

15. Indemnity

a. *Indemnity.* Contractor agrees, to the fullest extent permitted by law, to indemnify and hold harmless PEA, its affiliates, and their respective agents, employees, officers, directors, and owners, from and against all liabilities, costs, expenses, claims, disputes, damages, lawsuits, losses, or assessments (including reasonable attorney's fees) suffered or incurred in connection with any claim asserted related to Contractor's performance under this Agreement by any Party (regardless of the form of or forum in which such claim may be asserted) whether (1) caused by Contractor's negligent or willful act or omission, or that of anyone employed, retained, or utilized by Contractor or (2) based upon events or activities of Contractor during the rendering or performance of, or attempts to render or perform, the services for PEA in accordance with this Agreement.

b. *Payments.* Any amount reasonably required to be paid pursuant to the above shall be paid to PEA on demand and may, at PEA's option, be deducted from or offset against any debt, obligation, or liability of PEA to Contractor in such order as PEA deems advisable.

16. Force Majeure

a. *Force Majeure Event.* Neither Party shall be held responsible for delay or default caused by war, insurrection, acts of terrorism, strikes, lockouts, labor disputes, riots, terrorist acts or other acts of political sabotage, volcanoes, floods, earthquakes, fires, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, a change in law or regulation, unusually severe weather, or any other act or circumstance beyond PEA or Contractor's reasonable control and without fault or negligence of the Party (**Force Majeure Event**).

b. *Reasonable Efforts to Remove or Eliminate Force Majeure Event.* The Party affected by the Force Majeure Event shall make all reasonable efforts to remove or eliminate the cause of the Force Majeure Event and shall diligently pursue performance of its obligations under the Agreement after the Force Majeure Event ceases.

c. *Written Notice; Effect of Delay.* If there is a delay as a result of a Force Majeure Event, the Party delayed shall give written notice of the delay and the reason of the delay to the non-delayed Party within thirty days after the Party delayed learns of the Force Majeure Event. The Party delayed may request an extension of time up to the length of time of the delay due to a Force Majeure Event. Contractor shall not be entitled to additional compensation for delays that occur under this subsection.

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17. Representations of the Contractor

The Contractor represents and warrants that:

- a. it is duly organized and in good standing in the jurisdiction of its organization and, if not organized in the Commonwealth, is licensed to do business as a foreign corporation in the Commonwealth;
- b. it has the power, authority and legal right to enter into and perform this Agreement and the Contractor's execution and delivery of, and its performance under, this Agreement will not violate the Contractor's organizational documents or any judgment, order, law or regulation;
- c. no consent, permission or approval is required for the valid execution and delivery by the Contractor of this Agreement or for the Contractor's performance hereunder, except those that have been obtained; and
- d. this Agreement has been duly authorized, executed and delivered by the Contractor and constitutes a legal, valid and binding obligation of the Contractor, enforceable in accordance with its terms, except to the extent limited by bankruptcy or similar laws or by general equitable principles concerning remedies.

18. Termination for Convenience

- a. PEA and Contractor may terminate the Agreement at any time by mutual written consent.
- b. PEA may, at its sole discretion, terminate the Agreement, in whole or in part, upon no less than thirty days' written notice to Contractor. The Contractor should use the period between the notice and termination to wrap up existing work with a focus on completing deliverables already undertaken, rather than commencing new tasks unless otherwise directed by PEA.

19. Termination for Cause

- a. *For Cause by PEA.* PEA may terminate the Agreement, in whole or in part, immediately upon notice to Contractor, or at a later date as PEA may establish in its notice to Contractor, upon occurrence of any of the following events:
 - i. Federal or state laws, regulations, or guidelines are modified or interpreted in a way that the Services under the Agreement are prohibited.
 - ii. Contractor no longer holds a license or certificate that is required to perform the Services.
 - iii. Contractor materially breaches a covenant.
 - iv. Any representation or warranty made by Contractor in Section 17 is false or misleading in any material respect when made or when deemed made or repeated.
 - v. The insolvency, liquidation, or bankruptcy of Contractor.

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b. *For Cause by Contractor.* Contractor may terminate this Agreement immediately upon notice to PEA, or at such later date as Contractor may establish in its notice to PEA, upon occurrence of either of the following events:

- i. PEA does not make payments required under this Agreement.
- ii. PEA fails to perform any other material covenant or obligation set forth in this Agreement if that failure is not cured within thirty days after receipt of written notice from Contractor.

20. Remedies

In the event of termination pursuant to Section 19(a) or 19(b), the non-defaulting party shall have any remedy available to it in law or equity. If PEA terminates the Agreement and it is determined for any reason that Contractor is not in default under Section 19(a), then the rights and obligations of PEA and Contractor shall be the same as if the Agreement were terminated pursuant to Section 18(b) of the Agreement.

21. Closeout or Post-termination Procedures

Within sixty days prior to the Initial Term or Renewal Term, or in the event of termination of this Agreement pursuant to Section 18 or 19, as soon as practicable, the Parties shall negotiate in good faith the terms and conditions of a closeout agreement that will address outstanding issues regarding this Agreement, the Services and the resolution of any claims by either Party. Upon expiration or earlier termination of this Agreement for any reason, all rights and obligations of the parties shall cease, except:

- a. Obligations for the payment of money that accrue prior to the date of termination shall survive termination.
- b. Contractor shall deliver to PEA all materials or deliverables prepared for PEA during the Term of this Agreement.
- c. Contractor's obligation to indemnify PEA under Section 15 shall survive termination.
- d. The Parties' obligations under Section 12 (Confidentiality) shall survive termination.
- e. Contractor's obligation relating to Customer information under Sections 7(a) and 7(b) shall survive termination.

22. Audits, Inspection Rights, Records

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a. *Audits.* From time to time during the term of this Agreement and for a period of five years after termination of this Agreement, PEA may audit all aspects of the Contractor's performance under this Agreement, including but not limited to its billings and invoices, at Contractor's office. If so requested, Contractor shall submit to the requesting party all vouchers or invoices presented for payment pursuant to this Agreement, all canceled checks, work papers, books, records, and accounts upon which the vouchers or invoices are based, and any and all documentation and justification in support of expenditures or fees incurred pursuant to this Agreement. All books, invoices, vouchers, records, reports, canceled checks and other materials shall be subject to periodic review and audit by the City of Philadelphia. Notwithstanding the foregoing, Contractor shall not be required to maintain such documentation in excess of five years from the expiration or termination of this Agreement.

b. *Inspection.* All services and materials provided under this Agreement shall be subject to inspection and review by PEA and state and federal representatives. Contractor shall cooperate with all inspections and reviews conducted in accordance with the provisions of this Agreement. Such inspection and review of Contractor's rendering of services and materials, including without limitation, programs and facilities, shall be in the sole discretion of the inspecting or reviewing entity. Such inspection or review may include, without limitation, meetings with Customer, review of staffing ratios and job descriptions, verification of account accuracy, and meetings with any staff members who are either directly or indirectly involved in providing services and materials under this Agreement.

c. *Availability of Records.* Contractor shall make available at Contractor's office, during the term of this Agreement, all records pertaining to this Agreement for the purpose of inspection, audit, or reproduction by any authorized PEA representative, or the Pennsylvania Auditor General, and any other federal, state or City auditors.

d. *Retention of Records.* Contractor shall retain all records, books of account and documentation pertaining to this Agreement for a period of five years following expiration or termination of this Agreement; however, if any litigation, claim, or audit is commenced prior to expiration of said five year period, then the records shall be retained until all litigation, claims, or audit findings have been completely terminated or resolved, without right of further appeal, or applicable law requires a longer period, then the records shall be retained for such longer period.

23. Tax Indebtedness

a. *Certificates Required.* PEA does not wish to do business with tax delinquents or other businesses indebted to the City. In furtherance of this policy, the certifications below have been developed and shall form a part of the Agreement.

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b. *Contractor's Certification of Non-Indebtedness.* Contractor hereby certifies and represents that Contractor and any of Contractor's parent(s) and/or subsidiary(ies) are not currently indebted to the City and will not at any time during the term of the Agreement (including any extensions or renewals thereof) be indebted to the City, for or on account of any delinquent taxes (including, but not limited to, taxes collected by the City on behalf of the School District), water bills, sewer bills, liens, judgments, fees or other debts for which no written agreement or payment plan satisfactory to the City has been established.

c. *Subcontractor's Certification of Non-Indebtedness.* Contractor shall require any subcontractor(s) performing work in connection with the Agreement and any supplier(s) providing goods or material (together, a "Subcontractor") to be bound by the following provision, and Contractor shall cooperate fully with PEA in exercising the rights and remedies described below or otherwise available at law or in equity: "Subcontractor hereby certifies and represents that Subcontractor and any of Subcontractor's parent(s) and/or subsidiary(ies) are not currently indebted to the City and will not at any time during the term of this Agreement, including any extensions or renewals thereof, be indebted to the City, for or on account of any delinquent taxes (including, but not limited to, taxes collected by the City on behalf of the School District of Philadelphia), water bills, sewer bills, liens, judgments, fees or other debts for which no written agreement or payment plan satisfactory to the City has been established.

24. Nondiscrimination

a. Contractor must uphold the terms of the City Charter, the Fair Practices Ordinance Chapter 9-1100 of the Code) as they may be amended from time to time, and in performing this Agreement, Contractor shall not discriminate or permit discrimination against any individual because of race, color, religion, ancestry or national origin, sex, gender identity, sexual orientation, age or disability. Nor shall Contractor discriminate or permit discrimination against individuals in employment, housing and real property practices, and/or public accommodation practices whether by direct or indirect practice of exclusion, distinction, restriction, segregation, limitation, refusal, denial, differentiation or preference in the treatment of a person on the basis of actual or perceived race, ethnicity, color, sex, sexual orientation, gender identity, religion, national origin, ancestry, age, disability, marital status, source of income, familial status, genetic information or domestic or sexual violence victim status, Human Immunodeficiency Virus (HIV) infection, or engage in any other act or practice made unlawful under the Charter, Chapter 9-1100, the Executive Order, or under the nondiscrimination laws of the United States or the Commonwealth of Pennsylvania. In the event of any breach of these provisions, PEA may, in addition to any other rights or remedies available under this Agreement, at law or in equity, suspend or terminate this Agreement forthwith.

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b. In accordance with Chapter 17-400 of The Philadelphia Code, Contractor agrees that its payment or reimbursement of membership fees or other expenses associated with participation by its employees in an exclusionary private organization, insofar as such participation confers an employment advantage or constitutes or results in discrimination with regard to hiring, tenure of employment, promotions, terms, privileges or conditions of employment on the basis of race, color, sex, sexual orientation, religion, national origin or ancestry, shall constitute an event of default under the Agreement and shall entitle PEA to all rights and remedies as provided herein or otherwise available to PEA at law or in equity. Contractor agrees to include the immediately preceding sentence, with appropriate adjustments for the identity of PEA and Contractor, in all subcontracts which are entered into pursuant to the Agreement. Contractor further agrees to cooperate with the Commission on Human Relations of the City of Philadelphia in any manner which the said Commission deems reasonable and necessary for the Commission to carry out its responsibilities under Chapter 17-400 of the Philadelphia Code. Failure to so cooperate shall constitute an event of default under the Agreement entitling PEA to all rights and remedies as provided herein or otherwise available to PEA at law or in equity.

25. Philadelphia 21st Century Minimum Wage and Benefits Standard

Contractor must uphold the minimum wage standard and minimum benefits standard stated in Chapter 17-1300 of the Code and Executive Order 03-14. Chapter 17-1300 is accessible at [http://library.amlegal.com/nxt/gateway.dll/Pennsylvania/philadelphia_pa/title17contractsandprocurement/chapter17-1300philadelphia21stcenturymin?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:philadelphia_pa](http://library.amlegal.com/nxt/gateway.dll/Pennsylvania/philadelphia_pa/title17contractsandprocurement/chapter17-1300philadelphia21stcenturymin?f=templates$fn=default.htm$3.0$vid=amlegal:philadelphia_pa) and Executive Order 03-14 is accessible at <http://www.phila.gov/ExecutiveOrders/Executive%20Orders/EO%203-14.pdf>.

A summary of the requirements under Chapter 17-1300 and Executive Order 03-14 is as follows:

a. *Minimum Wage*

i. As of January 1, 2016, and during each year thereafter, provide their covered employees with an hourly wage, excluding benefits, that is no less than the result of multiplying \$12 by the then current CPI Multiplier as annually adjusted.

ii. For purposes of determining the minimum hourly wage required under (1) above, the CPI Multiplier is an annual calculation made by the City's Director of Finance to take effect as of January 1 of each year. The CPI Multiplier is calculated by dividing the most recently published Consumer Price Index for all Urban Consumers (CPI-U) All Items Index, Philadelphia, Pennsylvania, as of January 1st of each year, by the most recently published CPI-U as of January 1, 2015. The then-current minimum hourly wage applicable to City contractors and subcontractors will be posted on the City's web site.

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b. *Minimum Benefits*

i. To the extent Contractor (or its subcontractor under subcontract) provides health benefits to any of its employees, provide each full-time, non-temporary, non-seasonal covered Employee with health benefits at least as valuable as the least valuable health benefits that are provided to any other full-time employees of the Contractor (or its subcontractor); and

ii. Provide to each full-time, non-temporary, non-seasonal covered Employee at least the minimum number of earned sick leave days required by Code Section 17-1305(2).

iii. If covered, absent a waiver, Contractor shall promptly provide to PEA all documents and information as PEA may require verifying its and its subcontractors' compliance with the requirements of Chapter 17-1300 and Executive Order 03-14. Contractor and its subcontractors shall notify each affected employee what wages are required to be paid pursuant to Chapter 17-1300 and Executive Order 03-14.

iv. Absent a waiver, Contractor, as subject to Chapter 17-1300 and Executive Order 03-14, shall comply with all their requirements as they exist on the date when the Contractor enters into Agreement with PEA or when such Agreement is amended. Absent a waiver, Contractor shall also be responsible for the compliance of its subcontractors with the requirements of Chapter 17-1300 and Executive Order 03-14. Contractor shall take such steps as are necessary to notify its subcontractors of these requirements, including, without limitation, incorporating these requirements, with appropriate adjustments for the identity of PEA and Contractor, in its Subcontracts with such subcontractors. A Contractor or any of Contractor's subcontractors subject to Chapter 17-1300 and the Executive Order that fail to comply with their provisions may, after notice from PEA, be suspended from the Program or from bidding on and/or participating in future PEA contracts for up to three (3) years.

v. The Contractor's failure to comply, or the failure of Contractor's subcontractors to comply with the requirements of Chapter 17-1300 or Executive Order 03-14 shall constitute a substantial breach of this Agreement entitling PEA to all rights and remedies provided in this Agreement or otherwise available at law or in equity.

26. Ethics Requirements

To preserve the integrity of PEA employees and maintain public confidence in the competitive contracting system, PEA intends to vigorously enforce the various ethics laws as they relate to PEA employees in the bidding and execution of PEA contracts. Such laws are in three categories:

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a. *PEA Employee Interest in PEA Contracts.* In accordance with Section 10-102 of the Philadelphia Home Rule Charter, no proposal shall be accepted from, or contract awarded to, any PEA employee or official, or any firm in which a PEA employee or official has a direct or indirect financial interest. All Contractors are required to disclose any current PEA employees or officials who are employees or officials of the Contractor's firm, or who otherwise would have a financial interest in the contract.

b. *Conflict of Interest.* Both the State Ethics Act and the City Ethics Code prohibit a public employee from using his/her public office or any confidential information gained thereby to obtain financial gain for himself/herself a member of his/her immediate family, or a business with which he/she or a member of his/her immediate family is associated. "Use of public office" is avoided by the employee or official publicly disclosing the conflict and disqualifying himself/herself from official action in the matter, as provided in the Philadelphia Code Section 20-608.

c. *Executive Order 10-16: Gifts.*

i. Pursuant to Executive Order 10-16, no PEA officer or employee in the Executive and Administrative Branch may accept or receive a gift of any monetary value from a person who, at the time or within 12 months preceding the time a gift is received, (1) is seeking, or has sought, official action from that officer or employee; or (2) has operations or activities regulated by that officer's or employee's department, agency, office, board or commission, or, in the case of members of the Mayor's Cabinet, has operations or activities that are regulated by any department, agency, office, board or commission within the Executive and Administrative branch; or (3) has a financial or other substantial interest in acts or omissions taken by that officer or employee, which the officer or employee is able to affect through official action.

ii. Contractor understands and agrees that if it offers anything of value to a PEA official or employee under circumstances where the receipt of such item would violate the provisions of this Executive Order, Contractor shall be subject to sanctions with respect to future PEA contracts. Such sanctions may range from disqualification from participation in a particular contract to debarment, or loss of financial assistance, depending on the nature of the violation.

27. Chapter 17-1800 of the Philadelphia Code: Philadelphia Re-Entry Employment Program for Returning Citizens.

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Contractor agrees to identify potential job opportunities that may be available for “Returning Citizens,” as that term is defined in Code Section 19-2604(9), based on the matrix of job titles and work categories developed by the Personnel Director of the City of Philadelphia under Section 20-1702(2) of the Code and to report to PEA on Contractor’s employment practices and experience with respect to the hiring of Returning Citizens including (i) a quarterly tally of Returning Citizens hired and currently working, or an explanation as to why no Returning Citizens have been hired; and (ii) an explanation as to why any Returning Citizen who applied for employment was refused employment. These reports should be included in the Contractor’s regular reports, quarterly.

28. Miscellaneous

a. *Representatives:*

- i. Each Party shall appoint a representative who is authorized to act generally on its behalf.
- ii. Each Party shall provide notice to the other Party setting forth the name, address, day and night telephone numbers, and e-mail addresses of its representative.

b. *Notices.*

- i. Unless otherwise specifically provided in this Agreement, all notices, consents, waivers, authorizations and approvals given under this Agreement must be in writing and may be telecopied, delivered by hand, emailed, mailed by first class, registered mail (return receipt requested) or sent by FedEx or similar courier service and addressed as follows:

If to the Contractor:

With a copy to:

If to PEA:

With a copy to:

Emily Schapira

Alon Abramson

eschapira@philaenergy.org

aabramson@philaenergy.org

30 S. 15th St., Suite 801, Philadelphia
PA 19102

30 S. 15th St., Suite 801, Philadelphia
PA 19102

- ii. Each Party may change the address to which its communications are delivered by giving notice to the other Party. Any communication given in accordance with this Section will be deemed to have been given to a Party upon its receipt thereof.

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c. *Assignment.* Contractor shall not assign, sell, subcontract, dispose of or transfer rights or delegate its duties under this Agreement, and Contractor's rights under this Agreement may not be assigned or transferred by operation of law, change of control, or merger, either in whole or in part, without PEA's prior written consent.

d. *Counterparts.* This Agreement may be executed in any number of counterparts that, taken together, will constitute one and the same agreement.

e. *Headings.* Headings and subtitles used in this Agreement are for the purpose of convenience only, and no heading or subtitle may be construed to modify or be used to interpret the text of any section.

f. *Further Assurances.* The Parties shall execute and deliver all documents and perform all further acts that may be reasonably necessary to effectuate the provisions of this Agreement.

g. *Relationship of the Parties.* Contractor is an independent contractor. Nothing in this Agreement shall be interpreted to create a partnership or make Contractor a coventurer or an agent of PEA [except as specifically provided in the Scope of Work]. Employees, subcontractors or agents of Contractor shall not be deemed to be employees of PEA for any purpose.

h. *Governing Law.* This Agreement shall be deemed to have been made in Philadelphia, Pennsylvania. This Agreement and all disputes arising under this Agreement shall be governed, interpreted, construed and determined in accordance with the laws of the Commonwealth of Pennsylvania, without giving effect to principles of Pennsylvania law concerning conflicts of laws. Each Party consents to jurisdiction and venue in courts in the Commonwealth of Pennsylvania.

i. *Severability.* If any term or provision, or portions of any term or provision, is determined to be illegal, invalid, void, or unenforceable, the remaining terms and provisions of this Agreement shall remain in full force if the essential terms and conditions of this Agreement for each Party remain valid, binding, and enforceable.

j. *Amendment.* PEA and Contractor may not amend this Agreement unless the amendment is first reduced to writing and signed by PEA and Contractor. Any amendment is effective only in the specific instance and for the specific purpose identified in the amendment.

k. *Merger.* This Agreement, including any attached exhibits, constitutes the entire and integrated agreement between PEA and Contractor with respect to the [mention the Program] and supersedes all prior contracts, negotiations, representations or agreements, either written or oral. All prior and contemporaneous agreements between PGCC and Contractor on the matters contained in this Agreement are expressly merged and superseded by this Agreement.

l. *Benefit of this Agreement.* Nothing in this Agreement provides any benefit to any third party or entitles any third party to any claim, cause of action, remedy or right of any kind.

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m. *Compliance with Laws.* Contractor shall comply with all federal, state, and local laws, ordinances, rules, regulations, and executive orders applicable to the Contractor’s obligations to be performed under this Agreement. Contractor’s failure or neglect to comply with all applicable laws, ordinances, rules, or regulations shall not relieve the Contractor of these obligations or the requirements of this Agreement.

n. *Electronic Signatures.* The Parties acknowledge and agree that notwithstanding any law or presumption to the contrary, a telefaxed, electronic signature or signature that is transmitted electronically by either Party whether upon this Agreement or any related document shall be deemed valid and binding and admissible by either Party against the other as if same were an original ink signature.

Signatures

As evidence of their intent to be legally bound, the Parties have signed this Agreement as of the date set forth in the first paragraph.

Philadelphia Energy Authority

[Contractor]

By: _____
Emily Schapira
President and CEO

By: _____
[Name]
[Title]

[City of Philadelphia Business License No. or
EIN if Contractor is not required to hold a
Philadelphia Business License]:

Independent Contractor Agreement for (Name of Contractor)

Attachment A

Scope of Work

1. Marketing and Promotion.

Contractor will market and promote the Program to Customers through periodic marketing campaigns, the frequency and content of which will be determined by Contractor. In acquisition campaigns, Contractor will use commercially reasonable efforts to offer Customers a bundled water line protection product and sewer line protection product. In such marketing campaigns, Contractor may use any lawful and reasonable marketing or promotional methods of communication that are approved by PEA. Such methods of communication may include, without limitation, direct mail marketing, email marketing and telemarketing. Contractor's marketing and promotional responsibilities shall include strategic direction, planning, scheduling, creative design, creative production, printing, postage, telephone calls and email notices.

2. Customer Service.

Contractor shall handle all customer service activities related to the Services, including without limitation, the following:

- a. process enrollments of Customers in the Program;
- b. respond to telephone inquiries regarding enrollment and coverage;
- c. respond to customer service claim disputes;
- d. provide a toll-free telephone number that is available 24 hours a day, 365 days per year, with live onshore staff for all residential customer claims/requests for service;
- e. provide a toll-free telephone number that is available for Customer inquiries, applications for service, customer billing, and non-emergency calls during normal business hours, but no less than 45 hours per week;
- f. provide translation services for Customers, including a language line with a third-party provider;
- g. maintain a website for the Program describing the terms and costs of the Protection Products and permitting online enrollment; and
- h. enable Customers to able to track various aspects of their potential claims through various channels (i.e., phone calls, email, web) and report satisfaction or concerns with the claim service they receive from Contractor.

3. Claims Service.

- a. Contractor will administer all activities related to Customers' claims on the Protection Products, including:

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- i. receiving Protection Product claims
 - ii. making determinations on the acceptance or denial of all such claims,
 - iii. dispatching repair contractors to perform repair services for Customers in accordance with the Protection Product terms and conditions,
 - iv. maintaining claims file documentation, and
 - v. the timely resolution of the Protection Product claim disputes.
 - b. Contractor will handle covered claims from Customers in accordance with the following service levels:
 - i. A Customer will be contacted within [time to be confirmed] of setting up a claim and a site visit will be scheduled within 24 hours of setting up a claim, subject to Customer's availability;
 - ii. For each emergency repair, the repair contractor will complete the repair within 24 hours of receipt of all applicable permits; and
 - iii. All restoration work will be completed promptly following receipt of applicable permits and subject to weather conditions.

4. Repair Contractor Network.

- a. Contractor will establish, maintain and monitor the work of a vetted repair service network of local, licensed (including being licensed by the City of Philadelphia Department of Licenses and Inspections) and insured independent plumbing contractors to perform repair services for Customers. Subject to the Protection Product terms and conditions, the cost of all repair services provided by repair contractors shall be paid by Contractor, subject to the agreements between Contractor and its repair contractors. All repair contractors shall be deemed subcontractors of Contractor and only the repair contractors shall be permitted to perform the repair services for Customers.
- b. At least [to be confirmed] percent (XX%) of all claims pursuant to a Program in each year of the Term shall be serviced collectively by repair contractors meeting the requirements of the Minority Business Enterprises, Women Business Enterprises and/or Disabled Business Enterprises.
- c. Contractor will utilize commercially reasonable and fair business practices in its dealings with all repair contractors. Invoices that are submitted in accordance with requirements as established between Contractor and the repair contractors and approved by Contractor shall be paid by Contractor in a timely fashion.

5. Protection Products.

Contractor shall make available to Customers certain Protection Products that provide repair, replacement, or similar coverage for specified residential systems, equipment, or components, pursuant to the terms and conditions and fees approved by PEA as may be amended in accordance with this Agreement.

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- a. Commencing on the Effective Date, Protection Products with approved terms and conditions, attached hereto as Attachment B, may be offered to Customers.
- b. Contractor will consult with PEA before changing any of the terms and conditions of the Protection Products.
- c. At its own expense, PEA or its designated third-party consultant may perform quality assurance inspections of repairs with reasonable advanced notice and subject to the consent of the applicable Customer.
- d. Protection Products will provide the following features:
 - i. When a claim involves galvanized or lead pipe and the claim is covered under the Water Line Protection Product, the service line will be replaced.
 - ii. Site restoration for all repairs covered by any Protection Product will include:
 - Replacing and backfilling the original soil;
 - Mounding and raking of the dirt;
 - Seeding and placing straw over the area;
 - Reinstallation of soft landscaping and shrubbery;
 - Patching of private paved surfaces or sidewalks;
 - Restoration of public streets and sidewalks to their original condition in accordance with requirements of applicable law;
 - Sealing foundations at the place of repair (including stone foundations);
 - Concrete and brick repair to a reasonably similar pre-existing condition; and
 - Interior surface repair to a reasonable pre-existing condition, not including painting.
 - iii. Customers will be permitted to cancel the Protection Products at any time in accordance with the Protection Program's terms and conditions.
 - iv. Contractor will provide under each Protection Products that all covered repairs will be free from defects in material and workmanship for one year from the date of the repair. Contractor will provide a two (2) year warranty from defects in material and workmanship for concrete/brick repairs and such warranty will continue to be valid if the Customer cancels his/her Protection Product(s) during such period or if there is a change in ownership of the property during such period.
 - v. Contractor will provide an escalated complaint process for Customers.

6. Customer Fees.

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Contractor agrees that during the Initial Term, the Protection Product fees shall not exceed those specified in the fee schedule set forth on Attachment C. Prior to the start of any Renewal Term, if applicable, the Parties shall mutually agree to the Protection Product fees, the terms of which shall be set forth in an amendment hereto.

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Attachment B

Sample Terms and Conditions for Protection Products

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Attachment C

Protection Product Fee Schedule