



Pittsburgh Water and Sewer Authority Request for Proposals (RFP)

Strategic Communications and Outreach, Media Training, and General
Communications Support

PWSA Project No. PWSA 2020-028-OPS

Issued: December 3, 2020

Proposals Due: December 23, 2020 at 4:00 p.m. Est

Contact: Susan Kemery, Sr. Contract Specialist

Late Proposals will not be accepted

Table of Contents

1. BACKGROUND.....	1
2. PURPOSE.....	1
3. CONTRACT TERM	2
4. SCHEDULE	2
5. PRE-PROPOSAL MEETING	2
6. INQUIRIES	2
7. PRESENTATIONS	3
8. NEGOTIATIONS	3
9. PROPOSAL WITHDRAWAL OR MODIFICATION.....	3
10. PUBLIC INFORMATION.....	4
11. SCOPE OF SERVICES.....	4
12. ATTACHMENTS	4
13. MANDATORY MINIMUM REQUIREMENTS.....	5
14. SUPPLIER DIVERSITY PROGRAM.....	5
15. NON-DISCRIMINATORY PRACTICES AND POLICIES.....	6
16. STATEMENT OF AFFILIATION	6
17. EXCLUDE SALES TAX	7
18. AFFIDAVIT UNDER PITTSBURGH CODE §161.22 (f)	7
19. PROJECT SCHEDULE	7

20. PROPOSAL COMPONENTS	8
21. REIMBURSABLE PROJECT EXPENSES	9
22. PROPOSAL EVALUATION.....	9
23. PROPOSAL SUBMISSION	9
24. PWSA’S RESPONSIBILITIES.....	10
25. CONDITIONS OF AWARD	11
26. NOTICE OF AWARD.....	11
27. DEBRIEFING OF UNSUCCESSFUL BIDDERS.....	11
28. NO CONTRACT WILL BE AWARDED TO PERSONS IN ARREARS TO PWSA.....	11
29. NOTICE TO PROCEED	11
30. AGREEMENT	12
31. INSURANCE REQUIREMENTS	12
32. INDEMNIFICATION.....	13
33. COMPLIANCE WITH ALL LAWS.....	14
34. INDEPENDENT CONSULTANT	14
35. SUBCONTRACTING AND ASSIGNMENT	14
36. CONFIDENTIALITY.....	14
37. OWNERSHIP RIGHTS.....	15
38. PAYMENT	15
39. SETTLEMENT OF DISPUTES OR CONTROVERSIES.....	16

40. TERMINATION	16
41. AUDIT	17
42. DISSEMINATION OF INFORMATION	17

PROJECT INTRODUCTION

1. BACKGROUND

General

The Pittsburgh Water and Sewer Authority (PWSA) currently serves 83,000 drinking water connections and 113,000 sewage service connections. In addition, PWSA also provides bulk water sales to municipalities including Reserve Township, Fox Chapel Borough, and Aspinwall Borough, along with being interconnected to several other regional water systems. PWSA's drinking water system consists of five reservoirs, two water treatment plants, 11 pump stations, 11 tanks, and approximately 1,000 miles of water lines. In addition, PWSA's sewer system is comprised of four booster pumping stations and approximately 1,200 miles of sewer lines. PWSA has about 350 employees across six locations with the main headquarters located at 1200 Penn Ave., Pittsburgh, PA, 15222.

In the past half-decade, PWSA has continuously increased long-overdue investment in its water, sewer, and stormwater systems to ensure reliable and quality service for all its customers. This increase in investment is paired with an increase in rates for its customers that will likely continue over the next several years.

There is a need to communicate how PWSA, as a public entity, is investing every ratepayer dollar back into the system and why these projects are necessary and positive given the decades of prior neglect.

2. PURPOSE

Through the issuance of this RFP, PWSA is seeking qualified public affairs agencies that are financially and technically qualified to assist in the development and implementation of a multi-pronged strategic communications and community outreach plan. The strategy would help to build awareness and educate ratepayers and the Pittsburgh community about the organizational changes that have recently occurred at PWSA while also building awareness about future rate increases and capital improvement projects taking place throughout our service area.

We are not the same organization that we were three years ago. In this time, we have drastically reduced lead levels, built organizational talent, have increased capital spending, and have expanded outreach and communications with customers and stakeholders. We must rebuild trust with our ratepayers and continuously demonstrate that we are taking water stewardship seriously.

Over the next year, several inter-connected initiatives and projects are underway that require greater communication and transparency with ratepayers, which over time will help to rebuild trust. These initiatives include future rate increases, establishing a new stormwater fee, and constructing several critical capital projects that will modernize our water and sewer systems.

The purpose of this communication strategy and outreach plan is to build awareness about the above initiatives, establish a community-wide understanding about their

importance to the future of our water infrastructure, and following through on our commitment to providing safe and reliable water services.

PWSA would like to retain a public affairs agency to assist in the development of the communication strategy while also providing needed communication support for internal communications, media training, graphic design, and video production. The scope of work included as Attachment 7 provides more details about needed communication services.

3. CONTRACT TERM

The term of this Agreement shall commence upon the Authority's issuance of a Notice to Proceed and shall continue for one year from the date of the issuance of the Notice to Proceed (the "Term"). Time is of the essence of this Agreement. Thereafter, this Agreement shall not renew, unless agreed upon in writing between the Parties. In the event that the Parties elect to renew the Agreement, the Contract may be extended for three additional one-year Term(s), or any portion thereof, if mutually agreed upon by the Parties in writing. For such renewal Term(s), Consultant agrees that pricing for option renewals shall be submitted to the Authority's Contract Administrator at least 60 days prior to the most current term renewal and shall not exceed 3% annually.

SOLICITATION SCHEDULE

4. SCHEDULE

Task	Date
Advertisement of RFP	12/3/20
Deadline for Questions	12/10/20
Proposals Due	12/23/20
Presentations/Interview	1/12/21 – 1/13/21
Project Award	January 2021

5. PRE-PROPOSAL MEETING

N/A – Preproposal Meeting not required.

6. INQUIRIES

This RFP will be administered by Susan Kemery, Sr. Contract Specialist. All questions pertaining to this RFP prior to selection shall be submitted via Bonfire Procurement Portal. Questions are due no later than December 10, 2020 at 4:00 p.m.

All communication of any nature with respect to this RFP shall be addressed to Susan Kemery, Sr. Contract Specialist. Prospective firms and their staffs are

prohibited from communicating with City and Authority officials, staff, and any Selection Committee member as well as members of City Council and Authority Board of Directors regarding this RFP or submittals. Such contact is prohibited from the time the RFP was released until the selection results are publicly announced. Violation of this provision may lead to disqualification of the firm's submittal for consideration.

7. PRESENTATIONS

PWSA reserves the right to shortlist any number of qualified Firms. The Selection Committee will notify the shortlisted Bidders via e-mail and/or phone in advance to allow time to arrange travel.

Shortlisted Firms may be invited to provide a brief in-person presentation or webinar. The shortlisted Firms will be asked to make formal presentation of their Proposals and respond to questions from the Selection Committee. All costs incurred by the Firm during the presentation shall be the responsibility of the Firm. Following the presentations or webinars, the Selection Committee will make the final selection.

8. NEGOTIATIONS

At the request of PWSA, the Bidder may be required to meet to review the scope of services. The meeting may include review and discussion of:

- Examples of similar work;
- Standards, specifications, manuals, and other practices to be used;
- Policies used by the Authority for the type of work involved;
- A contract in draft form;
- Methods of payment;
- Procedures for invoicing;
- Standard forms to be used;
- Fiscal requirements; and
- Items and/or services to be provided by PWSA.

Where appropriate, the Bidder will prepare a revised cost proposal for performing the required services. The Bidder's original or revised cost proposal shall be supported by a breakdown of the estimated workdays required to perform each of the services contained in the scope of work and the salary range for each of the classifications of personnel to be utilized. The Bidder's original or revised cost proposal must include supporting documentation for payroll additives, direct costs, indirect costs, fixed fee, and overhead. The Designated Chairperson may request further discussion and negotiation to determine the reasonableness of the firm's cost proposal.

9. PROPOSAL WITHDRAWAL OR MODIFICATION

A Bidder Respondent may withdraw or modify its proposal at any time prior to the due date as provided in this RFP, at which time proposals will be considered firm and become the property of the Authority.

10. PUBLIC INFORMATION

Respondent, by submittal of a proposal, acknowledges that all proposals may be considered public information in accordance with the Commonwealth of Pennsylvania Right to Know laws. Subject to award of this RFP, all or part of any submittal may be released to any person or organization who may request it. Therefore, Bidder shall specify in their Cover Letter if any portion of their submittal should be treated as proprietary and not releasable as public information. Respondents should be aware that all such requests may be subject to legal review and challenge. All information considered proprietary should be clearly indicated as such or not included in the response.

ATTACHMENTS

11. SCOPE OF SERVICES

The Bidder shall do all the work and furnish all supervision, labor, materials, equipment, tools and appurtenances necessary or proper for the performance and completion of the Scope of Services described in Attachment 7.

12. ATTACHMENTS

The following attachments are included as part of this request for proposals. All Bidders must review all attachments and complete where appropriate.

Attachment 1: Sample Professional Service Agreement
Attachment 2: Affidavit under Pittsburgh Code §161.22 (f)
Attachment 3: Supplier Diversity Program and Documents
Attachment 4: Addenda Acknowledgement Form
Attachment 5: Reference Form
Attachment 6: Schedule of Prices
Attachment 7: Scope of Services

REQUIREMENTS

13. MANDATORY MINIMUM REQUIREMENTS

Each Firm shall meet the mandatory minimum requirements. Failure to meet these requirements will cause the Firm's Proposal to be deemed non-responsive and will not be considered for award. The Bidder must:

- A. Have experience in areas of strategic communications and demonstrate success in using current community engagement tactics.
- B. Understand challenges facing water and sewer utilities and be aware of the benefits to public health and safety and the regional economy that are realized by investing in aging infrastructure.
- C. Be familiar with the political and social landscape of Pittsburgh.
- D. Provide graphic design and video production capability
- E. Work as a collaborative strategic partner that can assist with long-term communication needs and respond quickly to immediate and short-term projects with little notice.

14. SUPPLIER DIVERSITY PROGRAM

Minority Business Enterprise ("MBE"), Women Business Enterprise ("WBE"), Disadvantaged Small Business Enterprise ("DBE"), Small Business Enterprises ("SBE") and Veteran Business Enterprise ("VBE")/Service Disabled-Veteran Business Enterprises ("SDVBE") participation is requested in all PWSA contracts.

The PWSA requires that all Bidders demonstrate a good faith effort to obtain the participation of MBEs, WBEs, DBEs, SBEs, VBEs and/or SDVBEs in all work to be performed under PWSA contracts. Such participation may be demonstrated by utilization of MBE/WBE/DBE/SBE/VBE/SDVBE firms through the use of subcontracts with such firms in support services, supplies, etc. For many of the services, supplies and equipment for which the PWSA contracts, the PWSA recognizes that the current business pool does not include percentages of minorities, women, veterans, or service-disabled veterans. The PWSA, however, wishes to encourage MBE, WBE, SBE, DBE, VBE and/or SDVBE participation in all business pools.

It is therefore the current goal of the PWSA to encourage increased MBE, WBE, SBE, DBE, VBE and/or SDVBE participation in all business pools. The PWSA's current MBE, WBE, SBE, DBE, VBE and/or SDVBE goal is between ten percent (10%) and twenty-five percent (25%). The PWSA intends to monitor the progress closely, including revising the practices and procedures from time to time as conditions warrant.

- a. The dollar amount of the contract paid to MBEs along with the names and addresses of those MBEs.
- b. The dollar amount of the contract paid to WBEs along with the names and addresses of those WBEs.

- c. The dollar amount of the contract paid to DBEs along with the names and addresses of those DBEs.
- d. The dollar amount of the contract paid to SBEs along with the names and addresses of those SBEs.
- e. The dollar amount of the contract paid to VBE'S and/or SDVBE's along with the names and addresses of those VBE'S and/or SDVBE's.
- f. An explanation of any failure to achieve the goals represented prior to award of the contract.

This Section does not convey a requirement to meet MBE, WBE, DBE, SBE and VBE/SDVBE goals and final payment to Vendor shall not be withheld if the PWSA's goal is not achieved, unless Vendor fails to provide an explanation as to why the MBE, WBE, DBE, SBE and VBE/SDVBE goals were not met.

15. NON-DISCRIMINATORY PRACTICES AND POLICIES

Bidder shall not discriminate in its employment on the basis of race, color, religion, ancestry, national origin, place of birth, sex, age, disability, non-job-related handicap or sexual orientation. Bidder shall comply with the applicable provisions of the Pittsburgh Code, Title Six - Conduct, Article V - Discrimination, and any amendments thereto. Bidder shall also comply with the applicable provisions of Title I and Title II of the Americans with Disabilities Act, any amendments thereto and any regulations issued thereunder. Bidder shall incorporate in any subcontracts which may be permitted under the terms of this Agreement a requirement that said subcontractors also comply with the provisions of this Section.

Prior to the award, the Authority reserves the right to direct Bidder to submit a statement signed by an authorized officer or agent of any labor union or any agency referring workers or providing or supervising apprenticeship or other training, with which the Bidder deals, with supporting information to the effect that the signer's practices and policies do not discriminate on the grounds of race, sex, color, religion, ancestry, national origin or place of birth. In this statement the signer either will agree to cooperate affirmatively in the implementation of the policy and provisions of the Agreement and the MBE/WBE/VBE/SDVBE Solicitation and Commitment Statement or will agree that recruitment, employment, and the terms and conditions of employment under the Agreement shall be in accordance with the purposes and provisions of the Agreement. In the event that the union, or agency, shall refuse to execute such a statement, the Bidder shall so certify and set forth what efforts have been made to secure such a statement and such additional factual material as the Authority may require.

16. STATEMENT OF AFFILIATION

Successful Bidders must provide PWSA with a statement of affiliation. The statement of affiliation shall include:

- A. a description of the Bidder's qualifications and experience qualifications.
- B. a description of any contractual or business relationship with the City of Pittsburgh or PWSA within the past three years; and
- C. an identification of the Bidder's principals, owners, partners or shareholders, or if the Bidder is a public corporation, the officers, members of the board of directors and shareholders holding more than three percent of the corporate stock.

17. EXCLUDE SALES TAX

In computing Proposals, the Bidder shall not include amounts for Pennsylvania Sales or Use Tax on materials and equipment to be incorporated in facilities used directly in rendering public utility service pursuant to 61 PA Code § 31.11 – 31.16. The Bidder shall ascertain in advance whether such exemption is available, and the Bidder shall, in compliance with such regulation, furnish the supplier with an exemption certificate properly endorsed by PWSA.

The Bidder shall supply PWSA with a statement that Pennsylvania Sales or Use Tax on materials and equipment to be incorporated in facilities used directly in rendering public utility service has not been included in the computation of the proposal.

18. AFFIDAVIT UNDER PITTSBURGH CODE §161.22 (f)

The Bidder will also be required to submit an executed Affidavit of Consultant as required by Pittsburgh Code §161.22(f) which will state, under penalty of perjury, that neither they nor their company, corporation, partnership, or any affiliated individual is prohibited from entering a bid or participating in a City of Pittsburgh or a PWSA contract by reason of debarment or disqualification as defined by Pittsburgh Code §161.22(b). the firm shall be deemed to have represented and warranted that the Proposal is not made in connection with any competing firm submitting a separate response to this RFP and is in all respects fair and without collusion or fraud.

Furthermore, the firm certifies that neither it, any of its affiliates or subconsultants, nor any employees of any of the foregoing has bribed or lobbied, or attempted to bribe or lobby, an officer or employee of the City in connection with this RFQ.

19. PROJECT SCHEDULE

The following table provides a list of major milestones that need to be met in order to meet PWSA's need for this project. If the Bidder takes exception to any of these deadlines, Bidder must include any explanation as described in the proposal contents included in this proposal.

Milestone	Date
Approval of communication strategy and schedule	1 st Quarter 2021
Finalize outreach and engagement strategy pertaining to specific capital construction projects	2 nd Quarter 2021
Implement media training	3 rd Quarter 2021

Evaluate effectiveness of communication & outreach strategy	4 th Quarter 2021
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PROPOSAL FORMAT AND SUBMITTAL REQUIREMENTS

20. PROPOSAL COMPONENTS

Each response to this RFP shall include all sections described below and, in the order, listed. Failure to include all of the elements specified may be cause for rejection. While there is no page limit, proposals should be succinct and relevant to the scope of work.

A. Cover Letter: The Cover Letter must contain all of the following information

- 1) RFP Title
- 2) Offering firm's legal name, address, and telephone number
- 3) Contact person's name, address, telephone number, and email address
- 4) Confirmation that contact person can legally bind firm to agreements and commit the Bidder to the obligations outlined in this RFP

B. Table of Contents: Each proposal must include a table of contents that clearly indicates the location of the major sections of the proposal.

C. Firm Qualifications & References

- 1) Please provide an overview of your firm's qualifications and experience.
- 2) Three references for projects of similar scope. References must include a brief description of the project and outcome, a contact person along with their address, phone number, and email address. References must be provided using the Reference Form included with this RFP.

D. Project Team

- 1) Identify the primary team members and their roles in the project in an organizational chart.
- 2) Provide each person's name, title, summarized qualifications and related experience, and their resume.

E. Project Approach and Scope of Work: Detail the firm's approach to the Scope of Work attached to this RFP. Highlight alternative solutions, innovations, new technologies, or potential cost savings.

F. Required Statements: Bidder must prepare a Statement of Affiliation as described in this RFP. Bidder must also submit the following completed attachments included with this RFP.

- 1) Affidavit under Pittsburgh Code §161.22 (f)
- 2) Supplier Diversity Program Commitment Form
- 3) Addenda Acknowledgement Form

G. Exceptions: Should Bidder have any exceptions to the sample agreement included with this RFP, Bidder must include them with this proposal.

- H. Timeline:** Prepare a project timeline that reflects the project schedule described in this RFP and includes all meetings, major deliverables, and milestones. If Bidder believes there is a need for any changes to the project schedule, please explain why such changes are necessary.
- I. Schedule of Prices:** Complete the Schedule of Prices attached to this RFP in its entirety. Include all expenses such meals, travel, and other costs associated with each task. Note the reimbursable project expenses outlined in this RFP. The Authority does not reimburse for travel time.

21. REIMBURSABLE PROJECT EXPENSES

The Authority will reimburse for the following, documented expense charges during the course of the project: (a) photocopying at a cost up to a maximum of ten cents per page; (b) reasonable postage; (c) reasonable travel expense, including airline transportation not to exceed coach fares; (d) actual meal allowance not to exceed \$50.00 per day; (e) reasonable rental care expense; (f) reasonable hotel expense; (g) mileage for roundtrips greater than 50 miles; (h) parking expense; and (i) messenger delivery and air freight/courier expense. For all such charges, the Consultant shall provide documentation of the actual expense incurred as part of the invoice(s) submitted to the Authority. In the event that the Consultant does not submit such documentation, the Authority reserves the right to reject the charges set forth in the invoice(s).

22. PROPOSAL EVALUATION

This Contract will be awarded to the highest ranked Bidder, based on the evaluation criteria described herein.

Criteria	Points
Firm Qualifications & References	20
Project Team*	20
Project Approach and Scope of Work	30
Timeline	10
Schedule of Prices	10
Supplier Diversity Program - Participation Plan	10
Total	100

**Firms with a project manager/team located in Pittsburgh are given preference*

23. PROPOSAL SUBMISSION

Proposals will be received electronically via the Bonfire Procurement Portal. Proposals shall not be accepted in person, by U.S. Mail, by private courier service, via oral or e-mail communication, telephone, or fax transmission.

Proposals must be submitted in the format described in this RFP. To be considered, the proposal must respond to all requirements in the RFP. The contents of this RFP and your proposal shall become part of any contract(s) entered in to as a result of this RFP.

Submission of a Proposal indicates acceptance of the conditions in this RFP. Exceptions and assumptions shall be noted. The PWSA will not reimburse any expenses associated with this proposal. All proposals will become property of the PWSA and will remain firm and effective for 90 days from the closing date of this RFP. PWSA reserves the right to reject any or all Proposals, waive technicalities, and to be the sole judge of the suitability of the proposed services for its intended use and further specifically reserves the right to make the award of this Contract in the best interest of PWSA. Provisions of this RFP and the contents of the successful Proposals are considered available for inclusion in final contractual obligations. Prices quoted in the Proposal shall be firm for the duration of this Contract.

The Authority reserves the right to request additional information which, in the Authority's opinion, is necessary to assure that the proposer's competence, business organization, and financial resources are adequate to perform in accordance with this RFP and any resultant contract.

The Authority may make such investigation as it sees fit to determine the ability of the proposer to perform the work, and the proposer shall furnish the Authority all such information and data for this purpose as requested by the Authority. The Authority reserves the right to reject any proposal if the evidence submitted by, or investigation of, such proposer fails to satisfy the Authority that such proposer is properly qualified to carry out the obligations of the contract and to satisfactorily perform the work specified.

When asked, proposers shall also include their answers to the questions listed in this RFP using the same answering sequence as put forth in the RFP.

The Authority reserves the right to extend or postpone the date and time for accepting proposals through an addendum.

Issuance of this RFP does not constitute a commitment by The PWSA to award a contract. The opening of a proposal does not constitute the Authority's acceptance of the Bidder as a responsive and responsible Bidder. The PWSA reserves the right to reject any or all proposals received in response to this RFP, or to cancel this RFP if it is in the best interests of the Authority.

All proposals, responses, inquiries, or correspondence relating to or in reference to this RFP, and all electronic media, reports, charts, and other documentation submitted by supplier shall become the property of the Authority when received.

24. PWSA'S RESPONSIBILITIES

It is PWSA's responsibility to:

- A. Ensure appropriate PWSA representation to perform assigned activities, attend meetings, and answer questions

- B. Ensure that decisions are made in a timely manner
- C. Designate a Project Manager
- D. Provide access to all necessary information to successfully complete the project.
- E. Review, approve, and oversee implementation of all deliverables
- F. Ensure collaboration between PWSA staff and select public affairs firm

CONTRACT AWARD

25. CONDITIONS OF AWARD

The performance of this Contract shall be governed solely by the terms and conditions as set forth in the executed Contract.

26. NOTICE OF AWARD

The successful Bidder(s) will be notified by letter, giving Notice of Award, of PWSA's acceptance of their Proposal.

27. DEBRIEFING OF UNSUCCESSFUL BIDDERS

Upon written request made within 30 calendar days after Contract Award, the Procurement Department shall debrief any unsuccessful Bidder on PWSA's evaluation of his/her proposal, citing the deficiencies and weaknesses. Point-by-point comparisons with the proposals of others will not be made. Debriefings will not include discussions of information contained in other Bidders' proposals.

28. NO CONTRACT WILL BE AWARDED TO PERSONS IN ARREARS TO PWSA

The Contract will not be awarded to any corporation, firm or individual who is, from any cause, in arrears to PWSA.

29. NOTICE TO PROCEED

Upon execution of the Agreement by PWSA and the Bidder, PWSA shall issue Notice to Proceed to the Bidder. The successful Bidder shall not begin any work on this Contract until such time as a Notice to Proceed has been issued by PWSA.

CONTRACT REQUIREMENTS

30. AGREEMENT

Firms shall review and confirm its acceptance of the Professional Services Agreement attached to this solicitation. If a Bidder is unable to agree to any of the terms or conditions of the PSA in the form attached hereto, the Bidder must identify the provisions in question with their proposal and provide an explanation as to why the Bidder cannot comply with such provisions. The final executed Agreement will be mutually agreed upon by PWSA and the Consultant. PWSA reserves the right to renegotiate services deemed necessary to meet the needs of the program according to PWSA's priorities and goals. Renegotiated services outside the scope of the original contract shall require contract amendment prior to commencement of work.

31. INSURANCE REQUIREMENTS

Prior to the beginning of any Services under this Agreement, Consultant shall deliver to the Authority certificates of insurance evidencing the following minimum coverages:

- A. Workers compensation insurance at statutory limits and employer's liability insurance with limits of one million (\$1,000,000.00) dollars. Consultant will have attached to its policy an alternate employer endorsement naming the Authority and will provide a waiver of subrogation in favor of the Authority.
- B. Commercial general liability insurance with limits of one million (\$1,000,000.00) dollars each occurrence and two million (\$2,000,000.00) dollars in the aggregate and containing or endorsed to contain the following coverages: contractual liability; broad form property damage; personal/advertising injury; an endorsement including the Authority as an additional insured and containing no special limitation on the scope of protection afforded the additional insured; waiver of subrogation to the benefit of all additional insureds; no explosion, collapse or underground exclusion; and, for any claims related to the Services, provision that Consultant's insurance shall be primary and non-contributory and any insurance or self-insurance maintained by the Authority shall be excess of Consultant's insurance and not contribute with it.
- C. Automobile liability insurance with limits of one million (\$1,000,000.00) dollars per occurrence and in the aggregate for bodily injury and property damage. Such automobile liability insurance shall cover all owned automobiles as well as non-owned automobiles operated by Consultant. The policy shall be endorsed to include the Authority as an additional insured and to include waiver of subrogation to the benefit of additional insureds.
- D. Professional liability insurance with limits of one million (\$1,000,000.00) dollars per claim or occurrence and annual aggregate. The policy shall be endorsed to include a waiver of subrogation to the benefit of the Authority. If coverage is on a claims-made form, Consultant shall maintain continuous coverage or shall exercise an extended discovery period for at least two (2) years following the expiration or other termination of this Agreement.

Except where stated otherwise above, the policies or coverages required by this Section shall be maintained during the term of this Agreement. All insurance coverages must be placed with insurance carriers having an AM Best rating of A- or higher rating. Each required policy shall be endorsed to state that coverage shall not be suspended, voided, cancelled, reduced, or limits or certificate holder be deleted as an additional insured except after thirty (30) days' prior written notice, by certified mail, return-receipt requested, has been given to the Authority.

All deductibles and self-insured retentions under policies required by this Section 9 shall be the responsibility of Consultant. The failure of the Authority to pursue or obtain any certificate of insurance or endorsement or to point out any non-compliance of any certificate of insurance or endorsement shall not constitute a waiver of any of the insurance requirements of this Agreement or relieve Consultant of any of its obligations hereunder. Self-funded or other non-risk transfer insurance mechanisms are not acceptable to the Authority. If Consultant has such a program, full disclosure must be made to the Authority prior to any consideration being given. These insurance provisions are intended to be a separate and distinct obligation on the part of Consultant. The Authority's acceptance of insurance submitted by Consultant does not relieve or decrease in any way the liability of Consultant for performance under this Agreement.

32. INDEMNIFICATION

To the fullest extent permitted by law, Consultant shall indemnify, defend, and hold harmless the Authority, its officers, agents and employees, from and against liens, charges, claims, penalties, damages, demands, judgments, liabilities, losses and expenses for bodily injury, death or physical injury to tangible property, or the loss of use thereof, caused or allegedly caused by or arising from the performance of Consultant under this Agreement, but only to the extent caused or allegedly caused in part by the negligent acts or omissions of Consultant, its employees, agents or persons for whose acts Consultant may be liable.

To the fullest extent permitted by law, Consultant shall indemnify and hold harmless the Authority, its officers, agents and employees, from and against claims and damages arising out of or resulting from the performance of the professional services of Consultant under this Agreement, but only to the extent caused in whole or in part by the negligent acts or omissions of Consultant, its employees, agents or persons for whose acts Consultant may be liable.

To the fullest extent permitted by law, Consultant shall indemnify, save and hold harmless, and defend the Authority, its officers, agents and employees from all liens, charges, claims, demands, losses, costs, judgments, liabilities and damages of every kind and nature whatsoever, including, but not limited to, court costs and attorney's fees arising from or based upon any violation by Consultant of any applicable laws, regulations, ordinances or codes.

Consultant shall defend, indemnify and hold harmless the Authority, together with its managers, officers, agents, employees and affiliates, from and against any loss, liability, claim, damage (including incidental and consequential damages), expense (including costs of investigation, defense and attorneys' fees) or diminution of value, whether or not involving a third party claim, arising, directly or indirectly, from or in connection with Consultant's infringement on any intellectual property rights of any third party.

The defense and indemnification obligations accepted by Consultant under this Section shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by Consultant, or by Consultant's subcontractors or permitted assigns, pursuant to any applicable workers' compensation statute or disability benefit statute or any other employee benefit law, rule or regulation.

33. COMPLIANCE WITH ALL LAWS

Consultant shall fully obey and comply with all laws, ordinances and administrative regulations made in accordance therewith, which are or shall become applicable to the Services performed under the terms of the Agreement.

34. INDEPENDENT CONSULTANT

The Consultant is and will remain at all times an independent Consultant, and no provision of this Contract is intended to create any relationship of employment, joint venture, partnership, or agency between the Consultant and PWSA. The Consultant will have no authority to bind PWSA in any respect or otherwise execute any documents on behalf of PWSA pursuant to this Contract. The Consultant shall not be eligible to participate in any benefit plans, programs or arrangements made available to employees of PWSA.

35. SUBCONTRACTING AND ASSIGNMENT

None of the Services provided shall be subcontracted or assigned without the prior written approval of the Authority. Such approval or consent will not relieve Consultant of its obligations and Consultant shall remain responsible for any assigned and/or subcontracted obligations. The Authority reserves the right to object and require the replacement of any subconsultant who is hired or retained without the Authority's prior written consent. For any subcontracted Services agreed upon by the Authority in writing, such subcontractor shall be entirely and exclusively under the direction, supervision and control of Consultant.

36. CONFIDENTIALITY

Consultant will not release any information related to the Services or publish any reports or documents related to the Services without the prior written consent of the Authority, which may be withheld or conditioned as deemed appropriate by the Authority in its sole discretion.

Consultant will not, either during or after performance of the Services, except as required in the performance of the Services or with the prior written consent of the Authority, communicate or divulge to, or use for the benefit of Consultant or any other person, firm, association, or corporation, any confidential or proprietary information of the Authority, including but not limited to the project deliverable sand other data reviewed or developed during the performance of the Services.

Any information of a restricted nature provided by Consultant by the Authority's Project Manager or his or her designee during the term of this Agreement shall be handled in accordance with restrictions placed thereon by the Project Manager. Information or documents, written or electronic, given to or generated by Consultant during the term of this Agreement shall be considered restricted information and subject to dissemination restrictions as specified herein or by the Project Manager.

37. OWNERSHIP RIGHTS

All Data developed or created pursuant to this Agreement shall be the property of the Authority and the Authority shall have the full right to use such Data for any official purpose and in whatever manner deemed desirable and appropriate, including making it available to the general public. Such use shall be without any additional payment to or approval by Consultant. The Authority shall have unrestricted authority to publish, disclose, distribute and otherwise use, in whole or in part, any Data developed or prepared under the Agreement. However, any reuse of such Data by the Authority on any other project shall be at the sole risk of the Authority.

Consultant hereby relinquishes, or shall cause to be relinquished, any and all copyrights and/or privileges to Data developed or prepared under the Agreement without any additional payment to Consultant therefor. However, Consultant may use copies of Consultant's work products prepared pursuant to this project as part of its record of professional activity. Consultant shall not include in the Data any copyrighted matter unless Consultant obtains the written approval of the Project Manager of the Authority and provides said Project Manager with written permission of the copyright owner for Consultant to use such copyrighted matter in the manner provided herein.

Unless expressly permitted in writing, no Data developed or prepared, in whole or in part, under the Agreement shall be subject to a third party's copyright in the United States of America or in any other country. Further, unless expressly permitted in writing, Consultant, in rendering the Services, represents and warrants that it shall not infringe any intellectual property, brand identity, invention, discovery, development, improvement, innovation or trade secret rights of any third party.

38. PAYMENT

Consultant shall submit, on a monthly basis, properly detailed invoice(s) setting forth the Services performed, and any expenses incurred. Consultant's billed hourly rates shall be based upon the agreed upon hourly rates, if applicable, and for the Services actually performed and expenses actually incurred during the monthly billing cycle.

For any agreed upon subcontracted Services, Consultant shall bill for the portion of the subcontractor's Services performed during the monthly cycle. Consultant shall provide such supporting documentation or data as the Authority may reasonably require. The Payment terms are net 45 calendar days.

Consultant agrees that, unless authorized by the Authority in writing, Consultant shall not be reimbursed for travel time. Consultant shall claim compensation due and payable only when such time is spent in the performance of Services under this Agreement.

39. SETTLEMENT OF DISPUTES OR CONTROVERSIES

Should any dispute or controversy whatsoever arise between Consultant and the Authority with respect to the executed Agreement or any Services performed by Consultant or its subconsultants or permitted assigns pursuant to the Agreement, then the complaining party shall give the other party thirty (30) days' written notice of the complaining party's intent to resort to legal action. If Consultant chooses to pursue legal action against the Authority, it must commence such legal action within one (1) year of the accrual of any such alleged claim. In the event that Consultant brings and/or files a lawsuit against the Authority, and does not recover the entire amount sought and/or alleged in its lawsuit against the Authority, Consultant shall compensate the Authority for any and all attorneys' fees and costs incurred by the Authority to defend itself against the Consultant's lawsuit.

40. TERMINATION

Consultant shall have seven (7) days to cure an Event of Default. Should Consultant fail to remedy the Event of Default to the satisfaction of the Authority, the Authority shall have the right:

- A. to remedy the deficiency and deduct the cost thereof from any payment then or thereafter due to Consultant; and/or
- B. to terminate the Agreement and to complete the Services by whatever method the Authority deems expedient; and
- C. to pursue any other remedy available at law or equity

Upon receipt of a termination notice from the Authority, Consultant shall:

- A. stop the performance of all Services, except as may be necessary to carry out the termination
- B. either terminate or assign to the Authority, as the Authority may direct, any subcontracts or other contracts or purchase orders entered into by Consultant in performing the Services under this Agreement
- C. deliver to the Authority all documents prepared as part of the Services
- D. take such other action toward termination of the Services as the Authority may reasonably direct.

The Authority shall have the right to terminate this Agreement for its convenience upon ten (10) days written notice to Consultant whenever the Authority determines such termination to be in its own best interest. Upon its receipt of notice of a

termination for convenience, Consultant shall cease operations as directed by the Authority and shall take all actions as directed by the Authority for the preservation or protection of any of the products of the Services.

Upon a termination for the Authority's convenience, the Authority shall pay Consultant for all Services satisfactorily completed through the date of termination, less the sums Consultant shall have already been paid on account of the Services performed. The Authority shall not pay Consultant, and Consultant shall not be entitled to payment, for any Services not performed or for any anticipated profit for such non-completed Services.

41. AUDIT

At any time up to three years after the day of final payment, Consultant will provide the Authority with access to its records related, in any way, to the Program and/or this Agreement for inspection and audit.

42. DISSEMINATION OF INFORMATION

Consultant agrees to not release any information related to the Services or the performance of Services, nor publish any reports or documents related to the Services with the prior written consent of the Authority. Consultant agrees to hold all materials and information belonging to the Authority or the Authority's agents in the strictest confidence and not to make use thereof other than for the performance of its contractual obligations, to release it or to disclosure it to any other entity and/or individual. Any information of a restricted nature provided to Consultant by the Authority in the course of the Services shall be handled in accordance with the restrictions placed thereon by the Authority. Information or documents given to or generated by Consultant in the course of the Services shall be considered restricted information and subject to handling and dissemination restrictions as specified herein and/or as specified by the Authority.