

**AGREEMENT OF SALE
BY AND BETWEEN
THE PHILADELPHIA PARKING AUTHORITY
AND**

PPA Contract No.

THIS AGREEMENT effective as of _____ day of _____, 2012 by and between **The Philadelphia Parking Authority**, an agency of the Commonwealth of Pennsylvania and a body corporate and politic, with its principal address at 3101 Market Street, Second Floor, Philadelphia, PA 19104 (the "**Authority**") and _____, a _____, with its primary place of business at _____ ("**Company**").

WITNESSETH:

WHEREAS, the Authority is a public body corporate and politic organized and existing under the Act of 2001, June 19, P.L. 287, No. 22, as amended; and

WHEREAS, the Authority, in the public interest, desires to purchase high-quality paper receipt stock to be used in its on and off-street parking meter kiosks ("Paper"); and

WHEREAS, in order to procure such Paper, the Authority issued a Request for Proposals "Paper Receipt Stock" Proposal No. PPAPAPERSTOCK.2012 on _____ (hereinafter "RFP"); and

WHEREAS, Company submitted a conforming Proposal to the RFP on _____ (hereinafter "Proposal") and is in the business of designing, producing and distributing Paper of the type that the Authority desires to purchase; and

WHEREAS, Company has proposed that it will design, develop, produce and provide the Paper; and

WHEREAS, after due consideration and deliberation within the Authority, Company was selected to provide the Paper upon the successful negotiation of this Agreement and assent of the Authority's Board; and

WHEREAS, the Authority desires to engage Company for such purposes.

NOW, THEREFORE, in consideration of the covenants and conditions contained herein, intending to be legally bound, the parties hereto hereby agree as follows:

1. SCOPE OF SERVICES.

The Authority hereby engages and Company hereby agrees to perform the following services ("Services"):

A. To furnish Paper in accordance with the Specifications detailed in the RFP, a true and correct copy of which is attached hereto as Exhibit "A" and incorporated throughout this Agreement, and Company's Proposal, a true and correct copy of which is attached hereto as Exhibit "B" and incorporated throughout this Agreement;

B. To adhere to all of the terms of the RFP, Proposal, and all terms and conditions of this Agreement; and

C. To coordinate the delivery and fulfillment of this Agreement with the Authority representative listed below, or if she is unavailable, with the Executive Director of the Authority or one of his Deputies.

**Katherine Rhoads
Philadelphia Parking Authority
3101 Market Street, 2nd Floor
Philadelphia, PA. 19104
Business Phone: 215.683.9669**

2. TERM

The Term of this Agreement shall commence on the date first written above and shall expire three (3) years thereafter whereupon it shall terminate automatically and without notice, unless terminated earlier as hereinafter provided. The Term of this Agreement may be extended by written mutual Addendum to this Agreement.

3. CONSIDERATION AND PAYMENT

A. The Authority agrees to pay and Company agrees to accept, as payment in full, a total purchase price for the Paper of _____.

B. The purchase price as established by this Agreement shall include all shipping and delivery costs associated with the fulfillment of the terms of this Agreement, as well as any tax, imposition, charge, duty or levy ("Tax") which may be imposed under any present or future law on the sale of the merchandise covered by this Agreement.

C. Company shall invoice the Authority upon delivery of the Paper to the Authority. All invoices shall be identified with a Purchase Order number supplied by the Authority and shall be submitted to:

**Accounts Payable
The Philadelphia Parking Authority
3101 Market Street, 2nd Floor
Philadelphia, PA 19104**

Company shall not invoice any Authority employee for any items supplied pursuant to the Agreement.

4. TERMS OF DELIVERY.

A. Delivery of the Paper shall be made by Company to the Authority within thirty (30) days of the date of this Agreement. Failure by Company to deliver the merchandise covered by this Agreement within the specified time shall constitute a breach of this Agreement and shall release the Authority from any and all liabilities or obligations hereunder.

B. THE TIME OF DELIVERY IS OF THE ESSENCE. IF A TENDER OF CONFORMING PAPER IS NOT MADE BY THE SCHEDULED DELIVERY DATE, COMPANY MAY, AT THE SOLE DISCRETION OF THE AUTHORITY, HAVE AN OPPORTUNITY TO MAKE A LATER CONFORMING TENDER. Company shall promptly notify the Authority in writing of any anticipated delay in the scheduled delivery date, and the Authority reserves the right, in order to maintain the scheduled delivery date, to require Company to expedite delivery by shipping via a speedier, alternate transport means. Additional costs attributable to such expedited delivery shall be paid by Company. Company shall be liable for all resulting damages to the Authority occasioned by delay in delivery. Delivery shall not be deemed to be complete until the Paper has been actually received and accepted by the Authority. Advance and excess shipments may at the Authority's option be rejected and returned to Company at Company's expense. Failure by Company to deliver the Paper covered by this Agreement within the specified time shall, at the Authority's sole discretion, constitute a breach of this Agreement and shall release the Authority from any and all liabilities or obligations hereunder.

C. Upon Delivery, the Paper shall be inspected by the Authority to assure conformity with the Authority's RFP. In the event that the Paper fails to be compatible in any way, the non-conforming Paper may be returned to Company with Company's obligation to take adequate remedial action as to the non-conforming Paper or replace such Paper with conforming Paper in either case, within fourteen (14) calendar days of rejection by the Authority, or the delivery of such non-conforming Paper in the first or any subsequent instance, shall be deemed, at the Authority's sole discretion, a breach of this Agreement by Company and shall release the Authority from any and all liabilities or obligations associated with this Agreement. The Authority's inspection, discovery of any breach of warranty, failure to make an inspection or failure to discover any breach of warranty shall not constitute a waiver of any of the Authority's rights or remedies whatsoever.

D. For purposes of this Agreement "Delivery" shall mean the normal business day of the Authority upon which the Paper is transferred to the physical and titular possession of the Authority.

E. The Authority shall have five (5) business days from the date of Delivery to reject non-conforming Paper.

5. LIQUIDATED DAMAGES

A. Upon the occurrence of an event, default or breach by Company, including the initial failure to meet the Terms of Delivery of conforming Paper as outlined in Section 4 of this Agreement, Company shall be liable for, and the Authority shall be entitled to recover, liquidated damages in the amount of ten percent (10%) of the unit price of the Paper. Thereafter, Company shall be liable for, and the Authority shall be entitled to recover, liquidated damages in the amounts listed above for every thirty (30) days that the Paper fails to meet the Terms of Delivery as outlined in Section 4 of this Agreement. The parties hereby agree and acknowledge that calculation of the damages from a breach would be difficult to estimate accurately and that the foregoing percentage is a reasonable approximation thereof and is intended as the fair allocation and liquidation of damages.

B. Company shall not be responsible for delay, non-delivery or default if occasioned by strikes, war, or riot, or any delay due to demands or embargoes of The United States Government, or any other government, or non-delivery or delays resulting directly or indirectly from an act of God including, but not limited to, fires, floods, or droughts, or delay as a result of insurrections, lockouts, or stoppage of labor or by refusal of any necessary license or government restrictions considered as "Force Majeure," or by any other unavoidable cause at any stage of manufacture or transit of the Paper beyond the Company's control.

6. RIGHTS AND REMEDIES

If an event or default occurs, the Authority shall, at its sole discretion, in addition to the right of cancellation and liquidated damages, be entitled to all remedies for a breach of contract set forth in the UCC and all other remedies available at law or in equity. Additionally, the Authority may, at its option:

- A. Refuse to accept delivery of the Paper;
- B. Refuse to accept a subsequent tender of substitute, conforming Paper;
- C. Return nonconforming or late delivered Paper to Company at Company's expense and, at the Authority's option, either recover all payments made therefore and expenses incident thereto, or at Company's expense, receive replacement therefore;
- D. Recover any advance payments from Company for undelivered Paper;
- E. Rework the Paper to make it conform to the warranties and charge Company for the expense thereof;

F. Use the Paper for a purpose other than the purpose originally intended and charge Company for the amount by which the purchase price exceeds the price of Paper normally required for such alternative purposes;

H. Have Company repair or replace defective Paper at Company's expense;

I. If defective Paper is repaired or replaced by the Authority or Company, charge Company for all costs and expenses of repairing or restoring non-defective Paper distributed as a consequence of repairing or replacing defective Paper.

J. If the Paper causes any harm or damage to any Authority property, charge Company for all costs and expenses of repairing or replacing such property.

The Authority shall be entitled to exercise any or all of the remedies specified above or each of such remedies in part, provided, however, that the Authority shall not be permitted to recover more than once for any part of a performance called for by these Terms and Conditions. NONE OF THE REMEDIES AVAILABLE TO THE AUTHORITY HEREUNDER MAY BE LIMITED EXCEPT TO THE EXTENT AND IN THE MANNER AGREED UPON BY THE AUTHORITY IN A SEPARATE AGREEMENT SPECIFICALLY DESIGNATING SUCH LIMITATION AND SIGNED BY AN AUTHORIZED REPRESENTATIVE OF THE AUTHORITY.

7. WARRANTIES

Company expressly warrants that all Paper purchased and delivered hereunder:

A. shall strictly conform in all respects with the Authority's descriptions and specifications incorporated herein,

B. shall strictly conform in all respects to any samples, drawings, specifications or other written documents presented to the Authority in connection with the sale of such Paper to the Authority,

C. shall be merchantable, fit for the purpose for which such Paper is intended, shall comply with industry standards and shall conform with the description of the product in the purchase order provided to Company,

D. shall be free from all defects, including latent defects, in workmanship and material design, and

E. shall strictly comply, at the time of delivery, with the U.S. Occupational Safety and Health Act of 1970, as amended, all rules, regulations and orders thereunder, and any successor provisions thereto.

In addition to the foregoing express warranties, the Paper purchased hereunder shall be subject to all warranties arising by operation of law. These warranties shall survive inspection,

delivery, acceptance, and payment, shall run to the Authority, its officers, agents, employees, successors, assigns, customers and users of the Paper and shall not be deemed to be exclusive.

Company hereby warrants that it has not taken any action that interferes with, or in any way nullifies, any applicable manufacturer's warranty.

7. NO SOLICITATION/CONFLICTS OF INTEREST

A. Company does hereby warrant and represent that the laws of the Commonwealth of Pennsylvania have not been violated as they relate to the procurement or performance of this Agreement by any conduct, including payment or giving of any fee, commission, compensation, gift, gratuity or consideration of any kind, directly or indirectly to any Authority employee, officer or Company.

B. To the best of the Company's knowledge, no Authority member or officer, and no employee of the Authority has any interest (whether contractual, non-contractual, financial or otherwise) in this transaction or in the business of Company. If such transaction comes to the knowledge of the Company at any time, a full and complete disclosure of such information shall be made to the Authority.

C. Company hereby acknowledges receipt and acceptance of the Authority's Conflict of Interest Policy.

8. CANCELLATION

The Authority may, by written notice to Company, cancel this agreement, or any part of it, **without affecting other parts**, upon the occurrence of any of the following events ("Events of Default"):

A. Company fails fully to perform any of its obligations under the Terms and Conditions, including without limitation, the timeliness of delivery, the conformity of Paper delivered or conformity with any express or implied warranty hereunder;

B. The commencement of an involuntary case or the filing of a petition against Company (i) seeking reorganization, arrangement, adjustment or composition of or in respect of Company under the Federal Bankruptcy Code as now or hereafter constituted, or under any other applicable Federal or state bankruptcy, insolvency, reorganization or other similar law, (ii) seeking the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator, or similar official of Company for any part of its property, or (iii) seeking the winding up or liquidation of its affairs, and such involuntary case or petition is not dismissed within thirty calendar days after the filing thereof;

C. The commencement by Company of a voluntary case or the institution by Company of proceedings to be adjudicated as bankrupt or insolvent, or the consent by it to the institution of bankruptcy or insolvency proceedings against it, under the Federal Bankruptcy Code as now or

hereafter constituted, or any other applicable Federal or state bankruptcy or insolvency or other similar law;

D. The consent by Company to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator, or other similar official of Company for any substantial part of its property;

E. The making by Company of any assignment for the benefits of creditors;

F. The admission by Company in writing of its inability to pay its debts generally as they become due or the failure of Company to generally pay its debts as such become due;

G. The taking of any corporate action by Company or its shareholder or Board of Directors or any committee thereof in furtherance of any of the foregoing; or

H. The Authority in its reasonable opinion believes that Company's ability to perform this Purchase Order is in danger or impaired.

In the event of such cancellation, the Authority shall have the rights and remedies set forth in Paragraph 6, *above*, and the Authority's sole liability to Company shall be for conforming Paper completed and delivered to the Authority in accordance with the Purchase Order. Whenever the Authority has the right to demand of Company adequate assurance of due performance, the Authority shall be the sole judge of the adequacy of assurance given by Company.

9. TERMINATION FOR CONVENIENCE OF AUTHORITY

The Authority and Company agree that this Agreement may be terminated by the Authority with or without cause upon thirty (30) days notice in writing by the Authority to Company. If the Agreement is terminated by the Authority, as provided herein, Company will be paid any compensation outstanding for the Services satisfactorily performed pursuant to Section 3 herein for the period prior to the date of termination. In such event, all memoranda, records, data, information and other documents prepared by Company shall become the property of the Authority and shall be forthwith delivered to the Authority. The payments to be made to the Company hereunder are the Company's sole remedy and right with respect to termination under this paragraph.

10. GENERAL TERMS AND CONDITIONS

A. Confidential Matters.

Company agrees that it will treat as confidential any information or document from the files of the Authority which may come into their possession in pursuit of its duties under this Agreement.

B. Maintenance of Records.

Company understands that certain records related to this Agreement may be public records pursuant to Pennsylvania’s Right-to-Know Law and Company must duly comply with demands made through the Authority for such records. 65 P.S. §67.101. Regardless of the impact of the Right-to-Know Law, Company shall maintain all data, records, memoranda, statements of services rendered, correspondence and copies thereof, in adequate form, detail and arrangement, for the Authority’s benefit for a minimum of seven (7) years following the termination or expiration of this Agreement. Thereafter, Company shall contact the Authority before disposing of any such materials and the Authority may direct that some or all of such materials be delivered to the Authority.

C. Assignment.

This Agreement may not be transferred or assigned by Company without the prior written consent of the Authority which consent may be withheld in the sole discretion of the Authority, any transfer or assignment made without the prior written consent of the Authority shall be void.

D. Non-Discrimination.

Company agrees to abide by all legal provisions regarding non-discrimination in hiring and contracting made applicable by federal, state, and local laws.

E. Notices.

Any notice or demand given by one party to the other under this Agreement shall be in writing and served by nationally recognized overnight courier service or sent by United States certified or registered mail return receipt requested, postage prepaid, or by overnight express delivery service or by courier service, against written receipt or signed proof of delivery addressed to the other party at the address set forth below, unless a party shall have provided written notice to the other identifying a new address for notice:

The Authority:

The Philadelphia Parking Authority
3101 Market Street
2nd Floor, West Wing Philadelphia, PA 19136
Philadelphia, PA 19104
Attn: Dennis G. Weldon, Jr.
General Counsel

The Company:

All notices shall be deemed given on the day after the notice was given to the courier or postal service.

Any party may alter the address to which communications are to be sent by giving notice of such change of address in conformity with the provisions of this Section. Notice shall be deemed to

be effective, if personally delivered, when delivered; if mailed, at midnight on the third business day after being sent by registered or certified mail; and if sent by nationally recognized overnight delivery service, on the date of delivery by such delivery service.

F. Governing Law.

This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania, without regard to its choice of law considerations. Exclusive venue for all claims arising from or relating to this Agreement shall be in the state or federal courts located in Philadelphia County, Pennsylvania; at the Authority's option, disputes shall be resolved in the Philadelphia Court of Common Pleas Commerce Court.

G. Jurisdiction.

Each party agrees (1) to submit to personal and exclusive jurisdiction, and (2) that venue is proper, in the Federal courts of the Eastern District of Pennsylvania and the Philadelphia Court of Common Pleas in connection with any dispute arising under or relating to this Agreement.

H. Trade Names, Trademarks and Trade Dress.

(a) Company agrees to comply with all the Authority instructions regarding the trade dress, packaging, trade names, trademarks, service marks or other indicia of source which shall appear on items to be delivered under this Agreement. Company further agrees that, after delivery of said item(s) to the Authority or a designated the Authority vendor, the Authority may modify the trade dress or packaging thereof, and/or replace, modify, or supplement any indicia of origin appearing thereon, to identify the Authority as the source of said item(s).

(b) Company shall not use any mark or trade name of the Authority or refer to the Authority in connection with any product, equipment, promotion, or publication without the prior written approval of the Authority.

I. Public Release of Information; Identification.

Company shall obtain the prior written approval of the Authority concerning the content and timing of news releases, articles, brochures, advertisements, speeches and other information releases concerning the work performed or to be performed hereunder by Company, its subCompanies or employees or consultants of either. Company agrees to give the Authority reasonable advance time for review of any material submitted to the Authority for approval. Company shall not affix or display its logo, name or otherwise advertise its identity on any part of the System without the prior written approval of the Authority.

J. Exhibits.

All Exhibits to this Agreement, the RFP, and Company's Proposal are hereby incorporated by reference into, and made a part of, this Agreement.

K. Interpretation.

The contracting parties acknowledge and agree that (i) each party reviewed and negotiated the terms and provisions of this Agreement and has contributed to it; and (ii) the rule of construction to the effect that any ambiguities are resolved against the drafting party shall not be employed in the interpretation of this Agreement, regardless of which party was generally responsible for the preparation of this Agreement.

L. Captions.

The Captions in this Agreement are for convenience only and are not a part of this Agreement and do not in any way define, limit, describe or amplify the terms and provisions of this Agreement or the scope or intent thereof.

M. General Indemnity.

Company, for itself, its successors, assigns, agents, and sub-Companies hereby agrees to indemnify, defend, hold harmless and defend The Philadelphia Parking Authority, the City of Philadelphia, and the Commonwealth of Pennsylvania and their agents, employees, representatives, officers and directors (the "Indemnified Parties") from and against any and all liability for losses, (including those related to business interruption), damage (including special, consequential and incidental) liabilities, claims, demands, causes of action or expense (including attorney's fees and expenses) for which the Indemnified Parties may be held liable by any reason of injury (including death or workers' compensation) to any person (including Company's employees) or damage to any property of whatsoever kind or nature arising out of or in any manner connected with the work to be performed for the Indemnified Parties (including, but not limited to, work performed for or on behalf of the Indemnified Parties), whether or not due in whole or in part to any act, omission, or negligence of the Indemnified Parties or any of their agents, employees, representatives, officers, directors, stockholders, subCompanies, third parties, or parent, subsidiary, and affiliated companies, whether known or unknown to the Indemnified Parties or Company. It is expressly understood and agreed that the indemnity contained in this paragraph covers claims by Company's employees. It is further expressly agreed that Company assumes the fullest extent of all obligations to indemnify and defend all parties whom the Indemnified Parties are obligated to indemnify and defend in the Indemnified Parties contract with others (whether or not such obligations may extend to items beyond those addressed in this Agreement). This obligation to indemnify, defend and hold harmless shall survive termination of this Agreement.

N. Order of Precedence.

In the event of an inconsistency between provisions of this Agreement, it shall be resolved by giving precedence in the following order: (1) the main body of this Agreement (not including Exhibits); (2) the RFP and (3) all other Exhibits. It is the Company's responsibility to study this Agreement and to report at once in writing to the Authority any errors, inconsistencies, discrepancies, omissions or conflicts discovered between any provisions of the Agreement. Any work performed by the Company prior to receiving a written response from the Authority with

respect to any alleged error, inconsistency, discrepancy, omission or conflict shall be at the Company's own risk and expense.

O. Entire Agreement.

This Agreement contains the entire agreement of the parties with respect to the matter covered by this Agreement. No other agreement, statement, representation, understanding or promise made by any party or by any employee, officer or agent of any party, that is not contained in this Agreement, shall be binding or valid. Any revisions, additions, and/or modifications of this Agreement must be set forth in writing and signed by all parties. In the event that any provision(s) of this Agreement conflict with any provision(s) of any Purchase Orders the provision(s) of the Agreement shall in all events control.

P. Risk of Loss.

Risk of loss for deliver of the Paper shall not pass to the Authority until received and accepted by the designated Authority representative.

Q. Specific Proposals.

It is understood that the Authority shall have the absolute discretion to accept, reject or modify any proposal or offer which Company may bring to the Authority's attention during the term of this Agreement.

R. Applicable Law and Venue.

All disputes arising in connection with this Agreement shall be interpreted and governed by the laws of the Commonwealth of Pennsylvania. The parties hereto irrevocably consent to the exclusive jurisdiction of the First Judicial District of Pennsylvania, being the Philadelphia Court of Common Pleas.

S. Right to Enter Agreement.

Contractor represents and warrants that it has the right to enter into this Agreement, to perform all of its obligations hereunder and grant the rights granted herein.

T. Taxes.

1. Company hereby certifies that neither it, nor any of its parent or subsidiary entities, is delinquent or overdue in the payment of any tax or fee to the City or County of Philadelphia or the Commonwealth of Pennsylvania. Company also certifies that its Philadelphia Business Privilege Tax ID. No. is: _____, and has attached a true, current, and correct copy of its Philadelphia Business Privilege License hereto. Company further certifies that its Federal Tax ID. No. is: _____.

2. As an agency of the Commonwealth of Pennsylvania, and a local government agency, the Authority is exempt from the payment of state and local sales and use and other taxes on material, equipment or other personal property. Company agrees that the fees, prices or rates stated in this Agreement (1) do not include any state or local taxes, surcharges or fees on the Authority in connection with this transaction, and (2) do include all other applicable taxes for which Company is liable. In the event Company's performance under this Agreement creates a tax liability, such taxes, including but not limited to, real estate taxes, school taxes, Use & Occupancy taxes, and sales taxes shall be the sole obligation of Company and Company shall maintain current accounts as to the payment of such taxes and be liable over to the Authority for any taxes assessed against the Authority as a result of Company's performance under this Agreement.

U. Waiver.

No term or provision hereof shall be deemed waived by the parties unless such waiver or consent shall be in writing signed by both parties. No breach shall be excused unless it is in writing signed by the non-breaching party.

IN WITNESS WHEREOF, and intending to be legally bound pursuant to the Uniform Written Obligations Act, 33 P.S. § 6, the parties have set their hands and seals on the date first above written.

The Philadelphia Parking Authority

Attest: _____

Print Name: _____

Print Title: _____

By: _____

Vincent J. Fenerty, Jr.
Executive Director

APPROVED AS TO FORM

By: _____
General Counsel's Office

Witness: _____

Print Name: _____

Print Title: _____

By: _____

Print Name: _____

Print Title: _____