

REQUEST FOR PROPOSALS
for a
Public Advocate
for The CITY OF PHILADELPHIA GAS COMMISSION

Issued by:
THE CITY OF PHILADELPHIA
Gas Commission ("THE GAS COMMISSION")

All Proposals must be submitted by electronic mail to gmcclendon@phlgc.net with a hard copy to Gemela McClendon, Executive Director, Philadelphia Gas Commission, 1515 Arch Street, 9th Floor, Philadelphia, PA 19102.

Proposals must be received no later than 5:00 p.m. Philadelphia, PA, local time, on July 1 , 2025.

City of Philadelphia Gas Commission
Christy Brady, Chair
Gemela McClendon, Executive Director
<https://phlgc.net>

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I. OVERVIEW

A. Introduction; Statement of Purpose

The purpose of this Request for Proposals ("RFP") is to enable the THE GAS COMMISSION to receive the professional services of a Public Advocate to represent the interests of residential customers of the Philadelphia Gas Works ("PGW") in matters before the Gas Commission.

B. Department Overview

Under the Philadelphia Home Rule Charter and various City Ordinances, the Gas Commission is the City agency which is responsible for overseeing the management and operation of PGW. Among its responsibilities, the Gas Commission must review and approve PGW's annual Operating Budgets, review and make recommendations to City Council regarding PGW's annual Capital Budgets, and review and approve and/or make recommendations to Council regarding PGW's gas purchase agreements, real estate transactions and short-term borrowings. In acting on such matters, the Gas Commission strives to responsibly balance the interests of the City, PGW, and PGW customers.

C. Background

For the past 38 years, the Gas Commission has retained the professional services of a law firm or legal services organization to serve as a "Public Advocate" in Gas Commission proceedings, to ensure that the views and interests of PGW's customer base were represented. The Public Advocate has automatic intervenor status in matters before the Gas Commission. The Public Advocate is responsible for providing professional services (including the participation of experts it retains as subcontractors) pursuant to a general consultant agreement, performance of which is reviewed and supervised by the Gas Commission's Executive Director ("ED"). The Gas Commission's current Provider Agreement for a Public Advocate expires as of August 31, 2025.

D. Request for Proposals

The Gas Commission seeks Proposals from qualified law firms or legal services organizations whose attorneys are licensed to practice law, in good standing, in Pennsylvania with: at least five (5) years demonstrated expertise and relevant experience in public utility law/regulatory issues and proceedings; familiarity and/or experience with PGW, the Gas Commission and applicable laws, regulations, and procedures; and a working relationship with relevant expert(s) on gas distribution utility issues. This is NOT a request for legal representation of the City, Gas Commission, or PGW's residential customers, but rather legal advocacy for the interests of the Small User class. The Gas Commission anticipates contracting with only one Applicant.

E. General Disclaimer of the Gas Commission

This RFP does not commit the Gas Commission to award a contract. This RFP and the process it describes are proprietary to THE GAS COMMISSION and are for the sole and exclusive benefit of the Gas Commission. No other party, including any Applicant, is intended to be granted any rights hereunder. Any response, including written documents and verbal communication, by any Applicant to this RFP, shall become the property of THE GAS COMMISSION and may be subject to public disclosure by THE GAS COMMISSION, or any authorized agent of THE GAS COMMISSION. THE GAS COMMISSION is not liable for any costs incurred by Applicants in preparing and submitting a Proposal in response to this RFP or for any costs and expenses incurred in meeting with, or making oral presentations to THE GAS COMMISSION if so requested.

II. SCOPE OF WORK

The Gas Commission's objective for this project is to receive full understanding of the interests of individual customers in proceedings before the Commission, enabling the Commission to reach appropriate decisions in a timely manner. This Scope of Work states requirements for the project, including the services and the tangible work products to be delivered, and the tasks the Commission has identified as necessary to meet those requirements. The Commission reserves the right, however, to modify specific requirements, based on changed circumstances, the proposal selection process, and/or contract negotiations with the Applicant(s) selected for negotiations, and to do so with or without issuing a revised RFP. The Applicant must provide in its proposal a detailed proposed scope of work showing how it will meet the project requirements stated in this Section.

a. Services and Tangible Work Products

i. Services

The Commission requires at least the services listed below, including the specific tasks and work activities described. Applicant's proposed scope of work should state in detail how it will carry out each task, including the personnel/job titles (as identified in subsection h, *Organizational and Personnel Requirements*) responsible for completing the task. For each service specified, the Applicant should propose criteria to determine when the tasks comprising the service are satisfactorily completed. Applicants may propose additional or revised tasks and activities, but should explain why each is necessary to achieve the project objectives.

- Coordinate evidence on behalf of Individual Customers
 - Collect information through investigation and outreach relevant to the best interests of individual customers collectively.
 - Review and coordinate the submission of all documents and other record evidence necessary for the Commission to understand the material interests of collective individual customers.
 - Participate in Proceedings and facilitate the participation and public input testimony of individual customers at Proceedings.
- Participate in Hearings on behalf of Individual Customers
 - Obtain and present testimony, including expert testimony, and other evidence and legal arguments and issues that may have a significant effect on individual customers.
 - Schedule, attend, and coordinate testimony, including expert testimony on behalf of the Small User class.
 - Question witnesses as necessary and appropriate.
 - Faithfully and equitably represent the Small User class across sizeable economic and social disparities.
- Otherwise represent the interests of the Small User class.
 - Represent the interests of the Small User class, which is all Residential Customers, Low-Income Customers, and Small Business Customers, as those terms are defined in Philadelphia Gas Works Gas Service Tariff, Supplement No. 174 to Gas Service Tariff-Pa P.U.C. No. 2, 173rd Revised Page No. 1 Cancelling 172nd Revised Page No. 2, Issued: November 27, 2024, Effective: December 1, 2024.
[CURRENT PGW Gas Services Tariff Through Supp 174 \(1Q GCR\) - effective Dec 1 2024 - FOR WEB POSTING \(rev\)\(119524333\).pdf](#)
 - Avoid conflicts of interest with other parties before the Commission.
 - Prepare and present any briefs, summaries or other filings on behalf of individual

customers as appropriate during Proceedings under the schedule set by the Commission or its Hearing Examiner, or as otherwise requested by the Commission; and respond as appropriate to those of others.

- Other required tasks:
 - Provide continuing assistance and advice throughout the life of the contract on matters related to Commission proceedings.
 - Attend Commission meetings and provide oral status reports as requested. The Commission typically schedules monthly meetings, canceling where there is no substantive business, and may add special meetings to vote on special matters before it.
- If the contract amount appears insufficient, then on timely request, the Commission will consider amending the contract to add funds.
- Although the Applicant may in its discretion take good-faith appeals from Commission decisions, the Services do not include such appeals and the Commission will not compensate the Applicant for such work.
- Unless otherwise agreed in writing, the Commission may renew the contract for similar services on similar terms.

ii. Tangible Work Products

The Commission requires completion and delivery of at least the tangible work products listed below. The proposed scope of work should state in detail how the Applicant will produce each work product, including the personnel/job titles (as identified in subsection h, *Organizational and Personnel Requirements*), that will be responsible for delivering the work product. For each work product, the Applicant should propose criteria for satisfactory completion and delivery. Applicants may propose additional or revised tangible work products, but should explain why each is necessary to achieve the project objectives.

- The Commission requires the completion and delivery of at least the tangible work products required by the services listed in subsection a.i, *Services*, above.
- Written testimony, evidence, and written legal arguments, summaries or other filings on behalf of individual customers as may be appropriate in order to enable the Commission to make timely and appropriate rate determinations.

b. Timetable

The Commission expects the Applicant to act in a manner consistent with enabling the Commission to fulfill its responsibilities competently and in a timely manner. Each Applicant should state in its proposal the number of days following the Commission's authorization to proceed under the contract by which it will be ready to start the work, including any mobilization time. Applicant's proposed scope of work should affirm that it will set and meet a detailed project schedule that will enable the Commission to complete each type of matter in a timely fashion, and should identify and explain any time period or circumstance in which the Commission might need to expect a different overall time of performance.

c. Hours and Location of Work

Outside of scheduled conferences, hearings, and meetings, services will generally be required during normal business hours, some on an on-call basis with some urgency though the Commission and Hearing Officer will attempt to respect the Applicant's schedule as well. Most Proceedings generally take place in the morning.

The Commission is currently anticipating continuing to hold conferences, hearings, and meetings on a hybrid basis via in-person meeting at 1515 Arch Street, 18th Floor Philadelphia, PA 19102, and via Zoom. Applicant is expected to attend in-person but should identify in its application any circumstances or times in which it would be unable to be in attendance.

The Commission does not pay overtime or a shift differential.

d. Monitoring; Security

By submission of a proposal in response to this RFP, the Applicant agrees that it will comply and cooperate with all contract and compliance monitoring and evaluation activities undertaken by the Commission, and with its security policies and requirements.

e. Reporting Requirements

The successful Applicant shall report to the Commission on a regular basis regarding the status of the project and its progress in providing the contracted services and/or products. At a minimum, the successful Applicant shall submit a monthly invoice detailing the services and/or products provided, the goals/tasks accomplished, and the associated costs. If hourly rates are charged, the invoice must also detail the number of hours, the hourly rate, and the individual who performed the service.

The Commission will not compensate the Applicant separately for reporting or invoicing.

f. Specific Performance Standards

The Commission expects that the contract resulting from this RFP will include performance and quality standards for the project, including but not limited to the following:

- Work completed as part of this Project must be completed in a timely fashion so as not to unnecessarily delay any Proceedings, and must be consistent with the Commission's regulations and all other applicable law.
- All written work product produced by the successful Applicant must be of a quality and nature that would be admissible in a court of law.

The Commission reserves the right to reject any item of work that does not meet the Commission's minimum standards of performance and quality, or that does not conform to the contract scope of work. The Commission shall not be obligated to pay for rejected work.

g. Cost Proposal

Applicants must state hourly rates for all personnel, identified by education level, skill set, experience level, and job title, who will perform work under any contract resulting from this RFP. The Commission can consider a proposal to utilize more than one individual, within the firm or as a subcontractor, if the Applicant demonstrates that the arrangement will be cost-effective and will not sacrifice quality or timeliness.

For each task necessary to perform a service, deliver a tangible work product, or accomplish a milestone identified in this RFP and/or the Applicant's proposed scope of work, the Applicant must state a firm estimate of the number of hours required to complete that task for each hourly rate that applies to each level of personnel identified to perform that task, as well as any expenses for which the Applicant would seek reimbursement. Applicants should propose a reimbursement rate for expert witnesses.

Any contract resulting from this RFP will provide for a not-to-exceed amount ("NTE amount") in the compensation section of the contract. The Commission's proposed NTE amount is One Hundred Fifty Thousand Dollars (\$150,000) per contract year.

h. Organizational and Personnel Requirements

The proposal must identify all personnel who will perform work on the project, by education level, skill set (described in detail), experience level, and job title. Resumes of all personnel so identified should be included in Applicant's proposal. The Commission expects the following with respect to the successful Applicant's organizational structure and personnel:

- Prior Experience: Applicants shall submit evidence that they have performed services similar to those specified in this RFP. Applicants should cite the exact name of each similar forum, the services and the dates performed and periods covered. At least two (2) references for the names of contracting personnel in similar forums are required. Applicants must notify the Commission and explain claims of any kind which may be pending against such work.
- Familiarity with Rate Standards: Applicants must have or develop a familiarity with the requirements of practice before the Commission. The selected Applicant should not charge the Commission to obtain such familiarity.
- Financial Capability: Each Applicant shall submit a copy of its company financial statements for the last year and provide evidence that it has the financial capability to perform the services being proposed on a cost reimbursable basis.
- Conflict of Interest: The Applicant must disclose any work that could impair Applicant's ability to perform or finance the required work, or as to which claims are pending or threatened for work of a similar nature, either completed or in progress. Applicant must also disclose and thoroughly explain any work performed within the previous four (4) years for the Gas Commission, PGW, or for any major PGW customer or customer group, or for any participant in a prior Proceeding. Any contract will require the Applicant to refrain from conflicts of interest under any applicable law and to disclose any that arise. The Applicant shall not coordinate or collaborate with other interest groups, including but not limited to PGW, major PGW customers, or competing customer advocacy entities, in preparing or presenting positions before the Commission. Any such coordination or collaboration within the past four (4) years must be disclosed in writing within the Proposal, detailing the nature, extent, and parties involved to ensure impartial representation of the Small User class

i. Technology Capabilities

In performing the work, the Applicant will need technology sufficient to perform the following:

- Send and receive emails with attachments
- Make and receive telephone calls and messages
- Create and edit Word documents
- Save Word documents in Portable Document Format (PDF)
- Review PDF documents
- Review and edit Excel spreadsheets
- Participate in conferences, hearings, and meetings via Zoom

III. PROPOSAL FORMAT, CONTENT, AND SUBMISSION REQUIREMENTS; SELECTION PROCESS

A. Proposal Format

Proposals submitted in response to this RFP must include a cover letter signed by the person authorized to issue the Proposal on behalf of the Applicant, and the following information, in the sections and order indicated:

1. Table of Contents

2. Introduction/Executive Summary

Provide an overview of the services being sought and proposed scope of services.

3. Applicant Profile

Provide a narrative description of the Applicant itself, including the following:

- a. Applicant's business identification information, including name, business address, telephone number, website address, and federal taxpayer identification number or federal employer identification number;
- b. A primary contact for the Applicant, including name, job title, address, telephone and fax numbers, and email address;
- c. A description of Applicant's business background, including, if not an individual, Applicant's business organization (corporation, partnership, LLC, for profit or not for profit, etc.), whether registered to do business in Philadelphia and/or Pennsylvania, country and state of business formation, number of years in business, primary mission of business, significant business experience, whether registered as a minority-, woman-, or disabled-owned business or as a disadvantaged business and with which certifying agency, and any other information about Applicant's business organization that Applicant deems pertinent to this RFP.

4. Understanding of Requested Professional Services

Provide a brief narrative statement that confirms Applicant's understanding of, and agreement to provide, the services and/or tangible work products necessary to achieve the objectives of the requested services that are the subject of this RFP. Applicant shall describe how the Applicant's business experience will benefit the delivery of services.

5. Proposed Scope of Work

Provide a proposed scope of work, including a cost proposal and project timetable (schedule), in accordance with *Section II, Scope of Work* of this RFP.

6. Statement of Qualifications; Relevant Experience

Provide a statement of qualifications and capability to perform the services sought by this RFP, including a description of relevant experience with services that are similar in nature, size and scope to that which are the subject of this RFP. If any minimum qualifications for performance are stated in this RFP, Applicant must include a statement confirming that Applicant meets such minimum requirements.

7. References

Provide at least three references, preferably for services that are similar in type, scope, size and/or value to the work sought by this RFP. If applicable, Applicant should provide references for professional

services and/or projects with other municipalities that are similar in size to the City of Philadelphia. For each reference, include the name, address and telephone number of a contact person.

8. Proposed Subcontractors

State the intention to use subcontractors to perform any portion of the work sought by this RFP. For each such subcontractor, provide the name and address of the subcontractor, a description of the work Applicant intends the named subcontractor to provide, and whether the subcontractor can assist with fulfilling goals for inclusion of minority, woman, or disabled-owned businesses or disadvantaged businesses as stated in Appendix B.

9. Requested Exceptions to Contract Terms

State exceptions, if any, to City Contract Terms that Applicant requests, including the reasons for the request and any proposed alternative language. (*See Section III.B* for more information.)

10. Office of Equal Opportunity - Solicitation for Participation and Commitment Form/Diversity Report of Nonprofit Organizations

As a separate document, Applicants that are a for-profit business must include a completed Solicitation for Participation and Commitment Form. The form is provided with Appendix B-1 to this RFP. If Applicant is a nonprofit organization, such applicants must include a completed "Diversity Report of Nonprofit Organizations" on the form provided with Appendix B-2 of this RFP. (*See Section III.C* for more information.)

11. Tax and Regulatory Status and Clearance Statement

Include a statement, in the form requested in Appendix C, attesting to Applicant's tax and regulatory compliance with the City. (*See Section III.D* for more information.)

12. Disclosure of Litigation; Disclosure of Administrative Proceedings

State, for the 5-year period preceding the date of this RFP, a description of any judicial or administrative proceeding that is material to Applicant's business or financial capability or to the subject matter of this RFP, or that could interfere with Applicant's performance of the work requested by this RFP, including, but not limited to, any civil, criminal or bankruptcy litigation; any debarment or suspension proceeding; any criminal conviction or indictment; and any order or agreement with or issued by a court or local, state or federal agency. For each such proceeding, state the name of the case or proceeding, the parties involved, the nature of the claims involved, its current status and the final disposition, if any. Provide the same information for any officer, director, principal, or partner of Applicant's organization, and for any subcontractor Applicant plans to use to perform the services described in this RFP.

13. Statement of Financial Capacity

Provide documentation demonstrating fiscal solvency and financial capability to perform the work sought by this RFP. Consider providing one or more of the following:

- General statement of the Applicant's financial condition;
- Applicant's most recent audited or unaudited financial statements;
- Disclosure of any bankruptcy filings over the past five years;
- Most recent IRS Form 990 (for non-profit organizations only).

14. Local Business Entity or Local Impact Certification. (Optional if applicable to Applicant)

If applicable, Applicant may elect to provide the certification statement in the form of Appendix D as to Applicant's status as a Local Business Entity or its local impact if awarded the contract. (*See Section*

III.G for more information.)

15. Disclosure Requirements

Disclose all information required under Chapter 17-1400 of the Philadelphia Code, including any local and state political campaign contributions, on the forms provided through eContract Philly. (See *Section III.H* for more information.)

16. Defaults

Provide a description, in detail, of any situation occurring within the past five (5) years in which the Applicant, or a joint venture or partnership of which Applicant was a part, defaulted or was deemed to be in noncompliance of any contractual obligations, explaining the issues involved in the default, the outcome, the actions taken by Applicant to resolve the matter. Also provide the name, title and telephone number of the party to the contract who asserted the event of default or noncompliance or the individual who managed the contract for that party.

B. Notice to Applicants to State Requested Exceptions to Contract Terms in Proposal

The City's standard contract terms and conditions for services of the type sought by this contracting opportunity (Contract Terms) are set forth in the General Provisions attached to this RFP as Appendix A. By submitting a proposal in response to this contract opportunity, the Applicant agrees that, except as provided herein, it will enter into a contract with Gas Commission containing substantially the Contract Terms.

Applicants must state clearly and conspicuously any modifications, waivers, objections or exceptions they seek ("Requested Exceptions") to the Contract Terms in a separate section of the Proposal entitled "Requested Exceptions to Contract Terms." For each Requested Exception, the Applicant must identify the pertinent Contract Term by caption and section number and state the reasons for the request. The Applicant must also propose alternative language or terms for each Requested Exception. Requested Exceptions to the City's Contract Terms will be approved only when the Gas Commission determines in its sole discretion that a Requested Exception makes business sense, does not pose unacceptable risk, and is in the best interest of the Gas Commission. By submitting its Proposal, the Applicant agrees to accept all Contract Terms to which it does not expressly seek a Requested Exception in its Proposal. The Gas Commission reserves the right, in its sole discretion, to evaluate and reject Proposals based in part on whether the Applicant's Proposal contains Requested Exceptions to Contract Terms, and the number and type of such requests and alternative terms proposed.

If, after the Gas Commission issues its Notice of Intent to Contract to an Applicant, the Applicant seeks Requested Exceptions to Contract Terms that were not stated in its Proposal, the Gas Commission may, in its sole discretion, deny the Requested Exceptions without consideration or reject the Proposal.

The Gas Commission reserves the right, in its sole discretion, (i) to waive any failure to comply with the terms of this Notice to Applicants if it determines it is in the best interest of the City to do so; and (ii) to require or negotiate terms and conditions different from and/or additional to the Contract Terms in any final contract resulting from this contract opportunity, without notice to other Applicants and without affording other Applicants any opportunity to revise their Proposals based on such different or additional terms.

C. Office of Economic Opportunity – Participation Commitment/Diversity Reports

Each Applicant is subject to the provisions of Mayoral Executive Order 01-2103-12, the City's Antidiscrimination Policy, and, except in the case of Applicants that are nonprofit organizations (see below), is required to exercise its "Best and Good Faith Efforts" in response to the ranges specified in the

Appendix B-1 portion of Appendix B, included with this RFP for participation by Minority Business Enterprises (“MBE”), Woman Business Enterprises (“WBE”) and Disabled Business Enterprises (“DSBE”) (collectively, “M/W/DSBE”) as those terms are defined in Executive Order 01-2103-12. Forms, instructions and special contract provisions for the Antidiscrimination Policy explain these requirements in more detail and are included in Appendix B-1 to this RFP. Applicants are required to complete and return with their Proposals the “Solicitation for Participation and Commitment Form” which is included in Appendix B-1. The City encourages Proposals from M/W/DSBE Applicants. M/W/DSBE Applicants, like all other Applicants, are required to submit a Proposal that is responsive to the Antidiscrimination Policy. The M/W/DSBE Applicant will receive credit towards the participation range for its certification category (i.e., MBE range, WBE range or DSBE range).

Mayoral Executive Order 01-2103-12 establishes different diversity-related policies and contract requirements for applicants that are nonprofit organizations. Applicants that are nonprofit organizations should refer to the special contract provisions and instructions attached to this RFP as Appendix B-2 by which nonprofit applicants are required to document their diversity policies. Included in Appendix B-2 is the form, “Diversity Report of Nonprofit Organizations,” which should be completed and returned with Proposals submitted by nonprofit Applicants.

D. The Philadelphia Tax and Regulatory Status and Clearance Statement

It is the policy of the Gas Commission to ensure that each contractor and subcontractor has all required licenses and permits and is current with respect to the payment of City taxes or other indebtedness owed to the City (including, but not limited to, taxes collected by the City on behalf of the School District of Philadelphia and billings for services rendered by PGW), and is not in violation of other regulatory provisions contained in the Philadelphia Code. To assist the City, through its Department of Revenue and Department of Licenses and Inspections, in determining this status, each Applicant is required to submit with its Proposal the certification statement entitled City of Philadelphia Tax and Regulatory Status and Clearance Statement which is attached to this RFP as Appendix C.

If the Applicant is not in compliance with the City’s tax and regulatory codes, an opportunity will be provided to enter into satisfactory arrangements with the City. If satisfactory arrangements cannot be made, Applicants will not be eligible for award of the contract contemplated by this RFP.

The selected Applicant will also be required to assist the City in obtaining the above information from its proposed subcontractors (if any). If a proposed subcontractor is not in compliance with City Codes and fails to enter into satisfactory arrangements with the City, the non-compliant subcontractor will be ineligible to participate in the contract contemplated by this RFP and the selected applicant may find it necessary to replace the non-compliant subcontractor with a compliant subcontractor. Applicants are advised to take these City policies into consideration when entering into their contractual relationships with proposed subcontractors.

If an Applicant or a proposed subcontractor is not currently in compliance with the City’s tax and regulatory codes, please contact the Revenue Department to make arrangements to come into compliance at 215-686-6600 or revenue@phila.gov.

Applicants need not have a City of Philadelphia Business Income and Receipts Tax Account Number (formerly Business Privilege Tax Account Number) and Commercial Activity License Number (formerly Business Privilege License Number) to respond to this RFP, but will, in most circumstances, be required

to obtain one or both if selected for award of the contract contemplated by the RFP.¹

Applications for a

Business Income and Receipts Tax Account Number or a Commercial Activity License² may be made on line by visiting the City of Philadelphia Business Services Portal at

<http://business.phila.gov/Pages/Home.aspx> and clicking on “Register Now.” If you have specific questions, call the Department of Revenue at 215-686-6600 for questions related to City of Philadelphia Business Income and Receipts Tax Account Number or the Department of Licenses and Inspections at 215-686-2490 for questions related to the Commercial Activity License.

E. Compliance with Philadelphia 21st Century Minimum Wage and Benefits Ordinance

Applicants are advised that any contract awarded pursuant to this RFP is a “Service Contract,” and the successful Applicant under such contract is a “Service Contractor,” as those terms are defined in Section 17-1302 of the Philadelphia Code. If such Service Contractor is also an “employer,” as that term is defined in Section 17-1302 (more than five employees), and is among the employers listed in Section 17-1303 of the Philadelphia Code, it is subject to the minimum wage and benefits provisions set forth in Chapter 17-1300 unless it is granted a waiver or partial waiver under Section 17-1304. These minimum wage and benefits provisions, which include possible minimum hourly wage, health care and sick leave benefits, are mandatory and must be provided to Applicant’s employees who perform work directly under the contract. Applicants are strongly encouraged to consult Chapter 17-1300 of the Philadelphia Code,³ the General Provisions attached as an Appendix to this RFP, and the About/Minimum Wage and Equal Benefits Ordinances Impacting Some City Contractors links on the eContract Philly home page for further details concerning the applicability of this Chapter, and obligations it imposes on certain City contractors. The successful Applicant’s failure to comply (absent an approved waiver) with the provisions of Chapter 17-1300, or any discrimination or retaliation by the successful Applicant against any employee on account of having claimed a violation of Chapter 17-1300 shall be a material breach of any Service Contract resulting from this RFP.

F. Certification of Compliance with Equal Benefits Ordinance

If this RFP is a solicitation for a “Service Contract” as that term is defined in Philadelphia Code Section 17-1901(4) (“A contract for the furnishing of services to or for the City, except where services are incidental to the delivery of goods. The term does not include any contract with a governmental agency.”), and will result in a Service Contract in an amount in excess of \$250,000, pursuant to Chapter 17-1900 of the Philadelphia Code, the successful Applicant shall, for any of its employees who reside in the City, or any of its employees who are non-residents subject to City wage tax under Philadelphia Code Section 19-1502(1)(b), be required to extend the same employment benefits the successful Applicant extends to spouses of its employees to life partners of such employees, absent a waiver by the City under Section 17-1904. By submission of their Proposals in response to this RFP, all Applicants so acknowledge and certify that, if awarded a Service Contract pursuant to this RFP, they will comply with the provisions of Chapter 17-1900 of the Philadelphia Code and will notify their employees of the employment benefits available to life partners pursuant to Chapter 17-1900. Following the award of a Service Contract subject to Chapter 17-1900 and prior to execution of the Service Contract by the City,

¹ Applicants that have a Business Privilege Tax Number should use that number, as it is automatically their Commercial Activity License Number, and need not apply for a new Commercial Activity License Number. Similarly, Applicants with a Business Privilege Tax Account Number should use that number as their Business Income and Receipts Tax Account Number.

² Commercial Activity Licenses are not typically required for non-profit organizations; however, Business Income and Receipts Tax Account Numbers typically are required.

³ A link to the Philadelphia Code is available on the City’s official web site, www.phila.gov.

The successful Applicant shall certify that its employees have received the required notification of the employment benefits available to life partners and that such employment benefits will actually be available, or that the successful Applicant does not provide employment benefits to the spouses of married employees. The successful Applicant's failure to comply with the provisions of Chapter 17-1900 or any discrimination or retaliation by the successful Applicant against any employee on account of having claimed a violation of Chapter 17-1900 shall be a material breach of the any Service Contract resulting from this RFP.

G. Local Business Entity or Local Impact Certification

Pursuant to Mayoral Executive Order No. 01-2104 -12, the Gas Commission will, in the selection of the successful Applicant, consider whether that Applicant has certified that either (1) Applicant meets the criteria stated in Section 17-109(3)(b) of the Philadelphia Code to qualify as a Local Business Entity or (2) in the performance of the resulting contract, Applicant will employ City residents, or perform the work in the City. Any Applicant who wishes to demonstrate its eligibility for this consideration shall do so by completing, executing and attaching to its application a completed Local Business Entity or Local Impact Certification, the form of which is attached to this RFP as Appendix D. The Applicant shall then also include in a separate section of the application, labeled "Local Business Entity or Local Impact Certification," a statement that the Applicant believes it has met the Local Business Entity or Local Impact criteria "as set forth in the attached Local Business Entity or Local Impact Certification." The Gas Commission shall deem it a positive factor where the Applicant has, in the City's sole discretion, met the Local Business Entity or Local Impact criteria.

H. Mandatory Online Application Requirements

You must apply by electronic submission in order to be eligible for award of the non-competitively bid contract opportunity described in this RFP; Proposals and any other related documents prepared in response to this RFP will not be considered unless they are filed, within the prescribed time period, through electronic mail sent to gmccleendon@phlgc.net. The posting of this RFP on the City of Philadelphia's Request for Proposals webpage for agencies associated with the City at <http://www.phila.gov/rfp/Pages/default.aspx> and on the Gas Commission's website at <https://www.phlgc.net> is also referred to as a Notice of Contracting Opportunity.

In the case of multiple business entities that if awarded a contract have formed, or intend to form a joint venture to perform the contract, a single business entity may file an application on behalf of all such business entities so long as (i) the filing business entity is or will be a member of the joint venture, (ii) the application is made in the name of the existing or proposed joint venture, (iii) documentation is submitted with the application identifying all business entities that comprise, or will comprise, the joint venture, and demonstrating a binding agreement among those business entities to perform the contract as the joint venture identified in the application (for a joint venture that has not yet been formed, documentation signed by each identified business entity evidencing a commitment to form the joint venture if awarded the contract is sufficient), and (iv) the non-filing business entities are eligible for award of a City contract and make the disclosures required by Chapter 17-1400 of the Philadelphia Code (described in greater detail below) within fourteen (14) days after the joint venture receives notice that it has been awarded the contract.

Pursuant to Chapter 17-1400 of the Philadelphia Code, Applicants are required to disclose their campaign contributions to political candidates and incumbents who are running for, or currently serving in, a local (Philadelphia) or state-wide elected office anywhere within the Commonwealth of Pennsylvania (federal campaign contributions are not included); any consultants used in responding to the RFP and contributions those consultants have made; prospective subcontractors; and whether Applicant or any

representative of Applicant has received any requests for money or other items of value or advice on particular firms to satisfy minority-, woman- or disabled-owned business participation goals from City employees. This information, as well as a Proposal or any other response document required, is part of the online application. For more information, please consult the reference materials found on the website, e- mail econtractphilly@phila.gov or call 215-686-4914.

Applicants are advised that under Chapter 17-1400 individuals and businesses that make campaign contributions in excess of the amounts set forth in Section 17-1404(1), as periodically adjusted, are ineligible to enter into a City contract or subcontract at any tier. Applicants should take this into consideration in electing to apply for this opportunity or in selecting subcontractors if awarded a contract to perform the work sought by this RFP.

At their option, Applicants may require that their subcontractors disclose to the Applicants, the subcontractors' campaign contributions to political candidates and incumbents who are running for, or currently serving in, a local (Philadelphia) or state-wide elected office anywhere within the Commonwealth of Pennsylvania (federal campaign contributions are not included). Disclosure forms may be found on the Disclosure/Eligibility – Subcontractor Disclosure tab on eContract Philly. Applicants are not required to submit these forms to the City.

Applicants who have failed to file complete applications – including the online disclosure forms required by the City of Philadelphia – through the designated online application process prior to the closing date and time will not be considered for the contract.

You are encouraged to start and complete your application as early as possible.

You are advised that any individual who signs and submits an application must be an authorized signatory of the Applicant, authorized to both bind the Applicant to its Proposal and to make the disclosures required to complete the City's application process. Therefore, signatories will be required to certify that they are the Applicant or are employees or officers of the Applicant duly authorized to execute the application and make disclosures on the Applicant's behalf; and they represent and covenant that, to the best of their knowledge after appropriate inquiry, all of the information and disclosures provided are true and contain no material misstatement or omissions.

I. Selection Process

This RFP is not a competitive bid subject to the requirement of Section 8-200 of the Philadelphia Home Rule Charter that award be made to the lowest responsible bidder. Cost to the City is a material factor, but it is not the sole, or necessarily the determining factor, in Proposal evaluation. The Gas Commission may, at its sole discretion, award a contract resulting from this RFP to a person or entity other than the responsible Applicant submitting the lowest price. If the Gas Commission chooses to award a contract, that contract will be awarded to the Applicant whose Proposal the Gas Commission determines, in its sole discretion, is the most advantageous to the Gas Commission and in the City's best interests.

The Gas Commission will base its selection on the following weighted criteria, split between a Price Score and a Technical Score, the Technical Score split into four subcategories, and a bonus category:

Price (30%)	-Anticipated long-term cost effectiveness. -Lower cost
Past Performance, Technical Ability, Experience (35%)	-Superior ability or capacity to meet particular requirements of the contract and needs of the Gas Commission and those it serves. -Superior skill and reputation, including timeliness and demonstrable results. -Superior experience of the Applicant and staff. -Absence of any conflicts of interest
M/W/DSBE Plan or EOP (15%)	Benefit of promoting long-term competitive development and allocation of experience to new or

	small businesses, including those owned by minority or disabled persons or by women.
Management Plan and Schedule (15%)	-Superior quality, efficiency and fitness of proposed solution for the Gas Commission. - Administrative and operational efficiency, requiring less oversight and administration.
Other (5%)	-Eligibility under Code provisions relating to campaign contributions. -Administrative and operational efficiency, requiring less City oversight and administration. -Meets prequalification requirements.

Total: 100%

Bonus:

Local Business Entity (5%)	Applicant's certification of its Local Business Entity/Local Impact Status
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If a contract is awarded pursuant to this RFP, in compliance with Section 17-1402 (c) of the Philadelphia Code, a notice will be published on the Gas Commission's website (go to <https://www.phlgc.net/contracting.html>) and on the City's Request for Proposals webpage for agencies associated with the City at <http://www.phila.gov/rfp/Pages/default.aspx>, listing the names of all Applicants and identifying the successful Applicant and the basis for the award to that Applicant. This notice will appear on these websites for at least one week before the contract is executed. In no event, however, shall the Gas Commission be obligated to debrief unsuccessful Applicants as to the basis for its decision not to award a contract to them.

IV. PROPOSAL ADMINISTRATION

A. Procurement Schedule

RFP Posted	June 3, 2025
Applicant Questions Due	June 16, 2025
Answers Posted on City's Additional RFPs and Gas Commission's Websites	June 23, 2025
Proposals Due	July 1, 2025
Applicant Selection	July 21, 2025
Contract Negotiation	July 2-August 12, 2025
Contract Execution	July 22, 2025
Commencement of Work	September 1, 2025

The above dates are estimates only and the Gas Commission reserves the right, in its sole discretion, to change this schedule. Notice of any changes in the due date for Applicant questions and the date for Proposal submission will be posted on the Gas Commission's website at <https://www.phlgc.net/contracting.html> and on the City's Additional Request for Proposals webpage at <http://www.phila.gov/rfp/Pages/default.aspx>. The other dates/times listed may be changed without notice to prospective Applicants.

B. Questions Relating to the RFP

All questions concerning this RFP must be submitted in writing via email to Gemela McClendon at gmcclendon@phlgc.net no later than **June 16, 2025 at 5:00 p.m.**, and may not be considered if not received by then. The Gas Commission will respond to questions it considers appropriate to the RFP and of interest to all Applicants, but reserves the right, in its discretion, not to respond to any question. Responses will be posted on the Gas Commission's website at <https://www.phlgc.net/contracting.html> and on the City's Request for Proposals webpage for agencies associated with the City at <http://www.phila.gov/rfp/Pages/default.aspx>. Responses posted on these websites become part of the RFP upon posting. The Gas Commission reserves the right, in its discretion, to revise responses to questions after posting, by posting the modified response. No oral response to any Applicant question by any City or Gas Commission employee or agent shall be binding on the City or in

any way considered to be a commitment by the City.

C. Term of Contract

It is anticipated that the initial term of the Contract shall commence on September 1, 2025 (the “Initial Term”) and, unless sooner terminated by the Gas Commission pursuant to the terms of the Contract, shall expire up to twelve months thereafter. The City may, at its sole option, amend the Contract to add up to four (4) additional successive one-year terms (“Additional Terms”). Except as may be stated otherwise in such amendment, the terms and conditions of this Contract shall apply throughout each Additional Term.

V. GENERAL RULES GOVERNING RFPS/PROPOSALS; RESERVATION OF RIGHTS AND CONFIDENTIALITY

A. Revisions to RFP

The Gas Commission reserves the right to change, modify or revise the RFP at any time. Any revision to this RFP will be posted on the Gas Commission’s website and on the City’s Additional RFPs webpage (as referenced above) with the original Opportunity Details. It is the Applicant’s responsibility to check these websites frequently to determine whether additional information has been released or requested.

B. City Employee Conflict Provision

City of Philadelphia and PGW employees and officials are prohibited from submitting a Proposal in response to this RFP. No Proposal will be considered in which a City employee or official or PGW employee or official has a direct or indirect interest.

C. Proposal Binding

By submitting its Proposal, each Applicant agrees that it will be bound by the terms of its Proposal for a minimum of 180 calendar days from the application deadline for this RFP. An Applicant’s refusal to enter into a contract which reflects the terms and conditions of this RFP or the Applicant’s Proposal may, in the Gas Commission’s sole discretion, result in rejection of Applicant’s Proposal.

D. Contract Preparation Fee

Pursuant to Chapter 17-700 of the Philadelphia Code, the successful Applicant must generally pay a contract preparation fee. Regulations promulgated by the City Solicitor currently establish the following schedule of fees for preparation of the initial contract and subsequent amendments, based upon the amounts involved and whether the successful Applicant is a for-profit or nonprofit entity:

<u>Amount of Contract or Amendment</u>	<u>For-Profit Fees</u>		<u>Non-Profit Fees</u>	
	<u>Contract</u>	<u>Amendment</u>	<u>Contract</u>	<u>Amendment</u>
\$0-\$30,000	\$50	\$50	\$50	\$50
\$30,001-\$100,000	\$200	\$170	\$100	\$85
\$100,001-\$500,000	\$500	\$340	\$200	\$170
\$500,001-\$1,000,000	\$900	\$520	\$300	\$260
Over \$1,000,000	\$1,500	\$1,000	\$500	\$500

In its discretion, the City of Philadelphia Law Department may grant a full or partial waiver of any of the above fees in exceptional cases for good cause shown, such as violation of a grant covenant.

Governmental entities are exempt from the fees. The Law Department reserves the right to collect up to twice the stated fee if extensive negotiation is required to reach a final contract with the successful Applicant.

E. Reservation of Rights

By submitting its response to this notice of contract opportunity as posted on the Gas Commission and City's websites, the Applicant accepts and agrees to this Reservation of Rights. The term “notice of contract

opportunity,” as used herein, means this RFP and includes all information posted on the Gas Commission's and the City's websites in relation to this “New Contract Opportunity” as published on these websites, including, without limitation, the information posted for this opportunity on the “Contracting Opportunities” page of the Gas Commission's website and on the "Request for Proposals" page of the City's website, and including in addition to this RFP, any other document linked to these pages or otherwise displayed on or linked to this notice of contract opportunity.

1. This Notice of Contract Opportunity

The Gas Commission reserves and may, in its sole discretion, exercise any one or more of the following rights and options with respect to this notice of contract opportunity:

- a. to reject any and all Proposals and to reissue this notice of contract opportunity at any time prior to execution of a final contract;
- b. to issue a new notice of contract opportunity with terms and conditions substantially different from those set forth in this or a previous notice of contract opportunity;
- c. to issue a new notice of contract opportunity with terms and conditions that are the same or similar as those set forth in this or a previous notice of contract opportunity in order to obtain additional Proposals or for any other reason the Gas Commission determines to be in the Gas Commission's best interest;
- d. to extend this notice of contract opportunity in order to allow for time to obtain additional Proposals prior to the notice of contract opportunity application deadline or for any other reason the Gas Commission determines to be in the Gas Commission's best interest;
- e. to supplement, amend, substitute or otherwise modify this notice of contract opportunity at any time prior to issuing a notice of intent to contract to one or more Applicants;
- f. to cancel this notice of contract opportunity at any time prior to the execution of a final contract, whether or not a notice of intent to contract has been issued, with or without issuing, in the Gas Commission's sole discretion, a new notice of contract opportunity for the same or similar services;
- g. to do any of the foregoing without notice to Applicants or others, except such notice as the City, in its sole discretion, elects to post on eContractPhilly.

2. Proposal Selection and Contract Negotiation

The City reserves and may, in its sole discretion, exercise any one or more of the following rights and options with respect to Proposal selection:

- a. to reject any Proposal if the Gas Commission, in its sole discretion, determines the Proposal is incomplete, deviates from or is not responsive to the requirements of this notice of contract opportunity, does not comply with applicable law (including, without limitation, Chapter 17-1400 of the Philadelphia Code), is conditioned in any way, or contains ambiguities, alterations or items of work not called for by this notice of contract opportunity, or if the Gas Commission determines it is otherwise in the best interest of the City or the Gas Commission to reject the Proposal;
- b. to reject any Proposal if, in the Gas Commission's sole judgment, the Applicant has been delinquent or unfaithful in the performance of any contract with the City or with others; is delinquent, and has not made arrangements satisfactory to the City, with respect to the payment of City taxes or taxes collected by the City on behalf of the School District of Philadelphia, or other indebtedness owed to the City; is not in compliance with City regulatory codes applicable to Applicant; is financially or technically incapable; or is otherwise not a responsible Applicant;
- c. to waive any defect or deficiency in any Proposal, including, without limitation, those identified in subsections(a) and (b) preceding, if, in the Gas Commission's sole judgment, the defect or deficiency is not material to the Proposal;
- d. to require, permit or reject, in the Gas Commission's sole discretion, amendments (including, without limitation, information omitted), modifications, clarifying information, and/or corrections to their Proposals by some or all of the Applicants at any time following Proposal submission and before the execution of a final contract;
- e. to issue a notice of intent to contract and/or execute a contract for any or all of the items in any

Proposal, in whole or in part, as the Gas Commission, in its sole discretion, determines to be in the Gas Commission or City's best interest;

- f. to enter into negotiations with any one or more Applicants regarding price, scope of services, or any other term of their Proposals, and such other contractual terms as the Gas Commission may require, at any time prior to execution of a final contract, whether or not a notice of intent to contract has been issued to any Applicant and without reissuing this notice of contract opportunity;
 - g. to enter into simultaneous, competitive negotiations with multiple Applicants or to negotiate with individual Applicants, either together or in sequence, and to permit or require, as a result of negotiations, the expansion or reduction of the scope of services or changes in any other terms of the submitted Proposals, without informing other Applicants of the changes or affording them the opportunity to revise their Proposals in light thereof, unless the Gas Commission, in its sole discretion, determines that doing so is in the Gas Commission's best interest;
 - h. to discontinue negotiations with any Applicant at any time prior to the execution of a final contract, whether or not a notice of intent to contract has been issued to the Applicant, and to enter into negotiations with any other Applicant, if the Gas Commission, in its sole discretion, determines it is in the best interest of the Gas Commission to do so;
 - i. to rescind, at any time prior to the execution of a final contract, any notice of intent to contract issued to an Applicant, and to issue or not issue a notice of intent to contract to the same or a different Applicant and enter into negotiations with that Applicant, if the Gas Commission, in its sole discretion, determines it is in the best interest of the Gas Commission to do so.
 - j. to elect not to enter into any contract with any Applicant, whether or not a notice of Intent to Contract has been issued and with or without the reissuing this notice of contract opportunity, if the Gas Commission determines that it is in the Gas Commission's best interest to do so;
 - k. to require any one or more Applicants to make one or more presentations to the Gas Commission at the Gas Commission's offices or other location as determined by the Gas Commission, at the Applicant's sole cost and expense, addressing the Applicant's Proposal and its ability to achieve the objectives of this notice of contract opportunity;
 - l. to conduct on-site investigations of the facilities of any one or more Applicants (or the facilities where the Applicant performs its services);
 - m. to inspect and otherwise investigate projects performed by the Applicant, whether or not referenced in the Proposal, with or without consent of or notice to the Applicant;
 - n. to conduct such investigations with respect to the financial, technical, and other qualifications of each Applicant as the Gas Commission, in its sole discretion, deems necessary or appropriate; and,
 - o. to do any of the foregoing without notice to Applicants or others, except such notice as the Gas Commission, in its sole discretion, elects to post on eContractPhilly.
3. Miscellaneous

- a. Interpretation; Order of Precedence. In the event of conflict, inconsistency or variance between the terms of this Reservation of Rights and any term, condition or provision contained in any notice of contract opportunity, the terms of this Reservation of Rights shall govern.
- b. Headings. The headings used in this Reservation of Rights do not in any way define, limit, describe or amplify the provisions of this Reservation of Rights or the scope or intent of the provisions, and are not part of this Reservation of Rights.

F. Confidentiality and Public Disclosure

The successful Applicant shall treat all information obtained from the Gas Commission which is not generally available to the public as confidential and/or proprietary to the Gas Commission. The successful Applicant shall exercise all reasonable precautions to prevent any information derived from such sources from being disclosed to any other person. The successful Applicant agrees to indemnify and hold harmless the Gas Commission and City, its officials and employees, from and against all liability, demands, claims, suits, losses, damages, causes of action, fines and judgments (including attorney's fees) resulting from any use or disclosure of such confidential and/or proprietary information by the successful Applicant or any person acquiring such information, directly or indirectly, from the successful Applicant.

By submission of a Proposal, Applicants acknowledge and agree that the City, as a municipal corporation, is subject to state and local public disclosure laws and, as such, is legally obligated to disclose to the public documents, including Proposals, to the extent required thereunder. Without limiting the foregoing sentence, the City's legal obligations shall not be limited or expanded in any way by an Applicant's assertion of confidentiality and/or proprietary data

APPENDIX A

**THE CITY OF PHILADELPHIA PROFESSIONAL SERVICES CONTRACT
GENERAL PROVISIONS FOR GENERAL CONSULTANT SERVICES**

[see following pages]



THE CITY OF PHILADELPHIA

PROFESSIONAL SERVICES CONTRACT

GENERAL PROVISIONS

FOR

GENERAL CONSULTANT SERVICES

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GENERAL PROVISIONS

ARTICLE I: DEFINITIONS

- 1.1. **ADA** has the meaning set forth in Section 14.5 (Americans with Disabilities Act) below.
- 1.2. **Additional Services and Materials** has the meaning set forth in Section 3.3 (Additional Services and Materials; Change in Scope of Services) below.
- 1.3. **Additional Term** has the meaning set forth in Section 2.2 (Additional Terms) below.
- 1.4. **Amendment** means a written modification or change to any Contract Document signed by both Parties and, as to the City, approved by the Law Department.
- 1.5. **Applicable Law** means all applicable present and future federal, state or local laws, ordinances, executive orders, rules, regulations and all court orders, injunctions, decrees and other official interpretations thereof of any federal, state or local court, administrative agency or governmental body, including the City, the Commonwealth and the United States of America. Applicable Law includes, without limitation, the Charter, the Code, all public health guidance issued or promulgated by the City, and the specific laws set forth in Article XIV (Additional Representations and Covenants of Provider Relating to Certain Applicable Laws) below, each as amended from time to time.
- 1.6. **Applicant** means a Person who has filed an application to be awarded a Non-Competitively Bid Contract.
- 1.7. **Appropriated Fiscal Year** has the meaning set forth in Section 5.3 (Crossing Fiscal Years) below.
- 1.8. **Certification of Restrictions on Lobbying**, if required in the Contract Documents, means a certificate concerning lobbying referenced in or made part of the Contract Documents.
- 1.9. **Charter** means the Philadelphia Home Rule Charter, as it may be amended from time to time.
- 1.10. **City** means The City of Philadelphia, a corporation and body politic existing under the laws of the Commonwealth, and includes its various executive and administrative departments, agencies, boards and commissions, including the Department and City Council. The City is a City of the First Class under the laws of the Commonwealth.
- 1.11. **City Council** means the Council of The City of Philadelphia, as described in Article II of the Charter. City Council is the legislature of the City.
- 1.12. **City Data** means any and all records, documents and data furnished by the City to Provider in relation to the work required under the Contract; and all deliverables, work product(s), items of work and other Materials created by Provider as part of, or to perform work required under, the Contract. “City Data” does not, however, include any information that was known to Provider, prior to the commencement of its performance of the Contract, free of any obligation to keep it confidential; is proprietary to Provider; was generally known to the public at the time of receipt by Provider, or becomes generally known to the public through no act or omission of

Provider; or was independently developed by Provider, unrelated to work performed for the City, and without knowledge or use of any information obtained from the City.

1.13. **Code** means The Philadelphia Code of Ordinances, as it may be amended from time to time.

1.14. **Commonwealth** means the Commonwealth of Pennsylvania.

1.15. **Consultant** has the meaning set forth in Section 17-1401 of the Code.

1.16. **Contract** means the agreement of the Parties evidenced by the Contract Documents. References to this “Contract” shall mean this Contract as the same may be in effect at the time such reference becomes operative.

1.17. **Contract Cost Principles** means the “City of Philadelphia Contract Cost Principles and Guidelines,” as amended from time to time. This document specifies the Department’s guidelines for the qualitative and quantitative evaluation of contract services and materials, the determination of allowable costs, and the standards to determine the allowability of individual cost items. Copies are available from the Department upon request.

1.18. **Contract Documents** means these General Provisions, the Provider Agreement, and any and all other documents or exhibits incorporated by reference in either the General Provisions or the Provider Agreement, and any and all Amendments to any of these documents.

1.19. **Contributions** has the meaning set forth in the Pennsylvania Election Code (25 P.S. § 3241).

1.20. **Department** means the department, board, commission or agency of the City of Philadelphia defined as the Department in the introductory paragraph of the Provider Agreement or Amendment.

1.21. **Event of Default** means an event defined and identified in or pursuant to Section 11.1 (Events of Default) below.

1.22. **Event of Insolvency** means (a) the filing of a voluntary petition by or for Provider under the Federal Bankruptcy Code or any similar state or federal law; (b) the filing of an involuntary petition against Provider under the Federal Bankruptcy Code or any similar state or federal law which remains undismissed for a period of forty-five (45) days; (c) Provider’s making of an assignment for the benefit of creditors; (d) the appointment of a receiver for Provider or for the property or assets of Provider, if such appointment is not vacated within forty-five (45) days thereafter; (e) Provider’s participation as a bankrupt, insolvent, or party in liquidation in any other proceeding under any bankruptcy or insolvency law or liquidation law, voluntary or otherwise; (f) Provider’s inability to pay its obligations as they mature; or (g) Provider’s insolvency as otherwise defined under any Applicable Law.

1.23. **Fiscal Year** means the fiscal year of the City, which starts on July 1 of the preceding calendar year and expires on the following June 30.

1.24. **General Provisions** means this document, entitled “The City of Philadelphia Professional Services Contract General Provisions for General Consultant Services,” which contains the standard provisions required by the City in its consultant professional services contracts, and all exhibits or documents identified or incorporated in these General Provisions, as it or they may be amended from time to time.

1.25. **Initial Term** has the meaning set forth in Section 2.1 (Initial Term) below.

1.26. **Interpretation; Number; Gender.** The words “herein,” “hereof,” “hereunder” and other words of similar import refer to this Contract as a whole, including all of the Contract Documents, and not to any particular article, section, subsection or clause contained in the Contract Documents. Unless the context requires otherwise, words used in the singular shall be construed to include the plural and vice versa, and pronouns of any gender shall be deemed to include the masculine, feminine and neuter genders.

1.27. **Materials** means any and all reports, records, documents, documentation, information, supplies, plans, original drawings, specifications, computations, sketches, renderings, arrangements, videos, pamphlets, advertisements, statistics, and other data, computer tapes, computer software, and other tangible work product or materials prepared, developed or obtained by Provider in connection with the Services, directly or through a Subcontractor, and supplied to the City or at the City’s direction pursuant to this Contract.

1.28. **Non-Competitively Bid Contract** has the meaning set forth in Section 17-1401 of the Code.

1.29. **Party** means either the City or Provider; “Parties” means the City and Provider.

1.30. **Person** means any individual, sole proprietorship, association, company, firm, partnership, limited partnership, joint venture, corporation, limited liability company or other form of entity or association recognized at law.

1.31. **Provider** means the Party providing Services and Materials to or at the direction of the City under the Contract.

1.32. **Provider Agreement** means the instrument by that name, part of the Contract Documents, which sets forth terms, covenants and conditions specific to Provider’s initial engagement.

1.33. **Responsible Official** means the director, commissioner or other head of the Department.

1.34. **Scope of Services** means the portion(s) of the Contract Documents, typically attached as an exhibit or as exhibits, setting forth the Services to be rendered and Materials to be provided under this Contract, the time frames within which the Services are to be rendered and the Materials are to be provided, and other requirements Provider must satisfy in rendering the Services and providing the Materials.

1.35. **Services** means the work to be performed under this Contract as specified in the Contract Documents.

1.36. **Subcontract** means a contract made between Provider and a Subcontractor providing for the completion of some part or parts of the Services or Materials by a Subcontractor.

1.37. **Subcontractor** means a Person performing under a contract with Provider some part of the Services or Materials.

1.38. **Suspension Notice** means notice of full or partial suspension of the Contract served by the City on Provider pursuant to Section 13.1 (Termination or Suspension for Any Reason) below.

1.39. **Suspension Period** has the meaning set forth in Section 13.4 (Suspension) below.

1.40. **Term** means the Initial Term and any Additional Term.

1.41. **Termination Notice** means notice of full or partial termination of the Contract served by the City on Provider pursuant to Section 13.1 (Termination or Suspension for Any Reason) below.

ARTICLE II: TERM

2.1. **Initial Term.** The initial term (“Initial Term”) of this Contract is set forth in Section 2.1 of the Provider Agreement. The Initial Term cannot exceed one (1) year without authorization by ordinance of City Council.

2.2. **Additional Terms.**

(a) The City may, at its sole option, amend this Contract to add one (1) or more terms (each an “Additional Term”), such that the Initial Term and all Additional Terms combined do not exceed five (5) years, unless otherwise expressly set forth in the Provider Agreement. No Additional Term can exceed one (1) year without authorization by ordinance of City Council. The City is expected to give Provider thirty (30) days’ written notice of its intent to amend this Contract to add an Additional Term prior to each Additional Term.

(b) In addition, the City may amend the Contract to add one or more Additional Terms to maintain necessary Services and Materials for the City pending the procurement process for a new contract for additional services and materials or solely to complete existing work.

(c) There shall be no liability or penalty to the City for electing not to amend the term of this Contract to add one or more Additional Terms.

(d) At the City’s request, Provider shall promptly execute a Contract Document providing for an Additional Term. Unless otherwise stated in the Provider Agreement or in any Amendment, the same terms and conditions applicable in the Contract Documents prior to the Amendment shall apply in each Additional Term.

(e) Each Additional Term shall be subject to the availability of funds appropriated by City Council for such Additional Term. Each Amendment for an Additional Term of this Contract is a separate contract between the City and Provider.

ARTICLE III: PROVIDER’S DUTIES AND COVENANTS

3.1. **Performance Requirements.** Provider shall provide all Services and Materials in accordance with this Contract and applicable professional standards. All payments to Provider are contingent upon satisfactory performance of the terms and conditions set forth in this Contract, as determined in the sole discretion of the Responsible Official.

3.2. **Compliance with Applicable Law.** Provider shall comply with the requirements of all Applicable Law with respect to Provider’s activities, Services, Materials and facilities used in connection with any aspect of this Contract. Provider shall inform the Responsible Official, in writing, of any notices of violations of any Applicable Law within forty-eight (48) hours of Provider’s receipt thereof and shall correct any violations within the time prescribed by law, or immediately in the case of any emergency.

3.3. **Additional Services and Materials; Change in Scope of Services.** At any time during the Term of this Contract, the City may, by written change order or request delivered by notice to Provider, make changes to the Scope of Services under this Contract, and the Parties will, if

appropriate, negotiate an adjustment in compensation, subject to the availability of funds appropriated by City Council, if necessary. Provider shall not commence to perform or provide, and the City shall not pay for, any services or materials not included in this Contract (the "Additional Services and Materials") unless and until Provider receives written pre-authorization (by change order or other request) from the Responsible Official that specifies the Additional Services and Materials to be provided. In no event shall the rates charged by Provider for said Additional Services and Materials exceed the lowest of (a) Provider's then current standard rates for such Services or Materials; (b) such rates as the City and Provider may have negotiated for this Contract, as set forth in the Contract Documents; or (c) the lowest rate or rates that Provider may then be charging to other purchasers of like services and materials. If Provider requests changes to the Scope of Services, Provider must demonstrate to the satisfaction of the City, in its sole discretion, that the changes are necessary and not due to the acts or omissions of Provider. The City shall not pay Provider additional compensation above the limit set forth in the Provider Agreement unless a written Amendment to this Contract increasing the applicable limit is duly executed by the Parties. The City shall have no responsibility or liability whatsoever for any fee, or for costs incurred by Provider for any services, materials or other costs or expenses, other than the Services and Materials and any duly approved Additional Services and Materials.

3.4. **Responsibility.**

(a) Notwithstanding the acceptance and approval by the City of any Services performed or Materials provided, Provider shall continue to be responsible for the professional quality, technical accuracy and the coordination of all Materials and Services provided by Provider under this Contract. Provider shall, without additional compensation, correct any errors, defects, deficiencies or omissions in Provider's Materials and Services.

(b) The City's review, approval or acceptance of, or payment for, any of the Materials and Services required under this Contract shall not constitute any representation, warranty, or guaranty by the City as to the substance or quality of the matter reviewed, approved or accepted and shall not be construed to operate as a waiver or estoppel of any of the City's rights or privileges under this Contract or of any cause of action arising out of the performance of this Contract. No Person shall have any right to rely in any way on the City's review, approval or acceptance of Provider's Services or Materials. Provider shall be and remain liable in accordance with this Contract and Applicable Law for all damages to the City caused by Provider or the Services or Materials provided by Provider. Review, approval or acceptance by the City or the Responsible Official under this Contract shall not constitute approval otherwise required by any City department, board, commission or other regulatory agency in the exercise of such department's, board's, commission's or agency's independent regulatory authority or police powers under Applicable Law.

(c) Without limiting Provider's responsibility as set forth above, if any act or omission of Provider or error or deficiency or omission in the Services or Materials provided by Provider requires any change in the Scope of Services or any portion thereof, Provider shall promptly complete such change at no additional cost to the City.

3.5. **Relationship with the City.** Neither Provider's personnel nor any Subcontractor personnel shall be employees of the City. Provider shall notify the City of any Provider personnel or any Subcontractor personnel who have any employment or other contractual relationship or agency relationship with the City.

3.6. **Time Frame for Submissions.** Provider shall perform any and all Services and shall submit any and all Materials required by this Contract within the time frames set forth in the Scope of Services attached as an exhibit to the Provider Agreement or as mutually agreed upon in writing by the City and Provider. Absent any such written time frames, Provider shall perform its obligations under this Contract diligently and promptly and before the scheduled expiration of the Term.

3.7. **Prompt Payment by Provider.** Provider shall pay promptly all Persons which have furnished labor or supplies in connection with the Services, the Materials or this Contract, including, without limitation, Subcontractors and suppliers. Provider will pay Subcontractors within the time period required under Section 14.3 (Executive Order 01-21: Minority, Woman and Disabled Business Enterprise Participation) below, to the extent it applies. Provider shall provide, upon request of the City, reasonable evidence that these Persons have been fully and timely paid.

3.8. **Sales and Use Tax.** The City is not subject to federal, state or local sales or use taxes or federal excise tax. Provider hereby assigns to the City all of its right to and title and interest in any sales or use tax that may be refunded as a result of any materials, including any Materials, purchased or services, including any Services, rendered in connection with this Contract. Unless directed otherwise by the City, Provider shall not file a claim for any sales or use tax refund subject to this assignment. Provider authorizes the City, in its own name or the name of Provider, to file a claim for a refund of any sales or use tax subject to this assignment.

3.9. **Subcontracts.**

(a) Provider shall not delegate or enter into any Subcontract for the performance of any of its obligations under this Contract, in whole or in part, without on each occasion first obtaining the written consent of the Responsible Official.

(b) Provider shall submit to the Responsible Official copies of all proposed Subcontract(s) to be entered into by Provider, along with Provider's written request for the City's consent. All such Subcontracts must specify, effective on the date of the Subcontract, that:

(1) Work performed by Subcontractor shall be in conformity with the terms of this Contract.

(2) Nothing contained in such Subcontract shall be construed to impair the rights of the City under this Contract.

(3) The City's consent to or approval of any Subcontract shall not create any obligation of the City to any Subcontractor.

(4) Nothing contained in such Subcontract, or under this Contract, shall create any obligation of the City to any Subcontractor.

(5) The City is expressly designated a third-party beneficiary of the Subcontract.

(6) Upon request by the City, at the City's sole option, and upon receipt of written notice from the City stating that this Contract between the City and Provider has been terminated, Subcontractor shall continue to perform its obligations under the Subcontract for the benefit of the City in conformity with the terms and conditions of this Contract, provided the City pays Subcontractor for the Services rendered and Materials provided by Subcontractor from and after the date of the termination of this Contract between the City and Provider at the same rate or in

the same amount as set forth in the Subcontract for those Services and Materials provided by Subcontractor after such date of termination.

(7) Subcontractor shall be bound by the same terms, covenants and conditions as Provider under this Contract, including, without limitation, confidentiality, maintenance and preservation of records, and audit by government representatives.

(8) Subcontractor presently, fully and unconditionally assigns, transfers and sets over to the City all of Subcontractor's right to and title and interest in any sales and use tax which may be refunded as a result of a claim for refund for any materials purchased in connection with the Subcontract or this Contract, and otherwise has all obligations to the City that Provider has pursuant to Section 3.8 (Sales and Use Tax) above.

(9) Subcontractor shall not be indebted to the City and shall have all obligations to the City that Provider has pursuant to Subsection 4.1(f) (No Indebtedness to the City) and Subsection 4.1(g) (Commercial Activity License) below.

(10) Subcontractor shall comply with Chapter 17-400 (Payment or Reimbursement of Employee Expenses Associated with the Use of Exclusionary Private Organizations) of the Code and shall have all obligations to the City and to Provider that Provider has pursuant to Section 14.2 (Chapter 17-400 of The Philadelphia Code: Exclusionary Private Organizations) below.

(11) Subcontractor shall comply with Section 17-104 (Prerequisites to the Execution of City Contracts) of the Code and shall have all obligations to the City that Provider has pursuant to Sections 14.6 (Northern Ireland) and 14.8 (Business, Corporate and Slavery Era Insurance Disclosure) below.

(12) Subcontractor shall comply with Chapter 17-1300 (Philadelphia 21st Century Minimum Wage and Benefits Standard) of the Code to the extent it is applicable to a Subcontractor that is also a Service Contractor (as defined in Chapter 17-1300) providing Services under the Subcontract, and to subcontractors at any tier that are also Service Contractors providing Services under this Contract. Provider shall notify its Subcontractors of these provisions; shall expressly incorporate this paragraph and Section 14.10 (Chapter 17-1300 of The Philadelphia Code: Philadelphia 21st Century Minimum Wage and Benefits Standard) below, with appropriate adjustments for the identity of the parties, in each Subcontract; and shall require its Subcontractors to include such terms in any lower-tier subcontract that is, or may become, covered by Chapter 17-1300.

(13) Subcontractor is and shall remain eligible for contracts with the City subject to Chapter 17-1400 (Non-Competitively Bid Contracts; Financial Assistance) of the Code, and shall have all obligations to Provider that Provider has to the City pursuant to Section 14.11 (Chapter 17-1400 of The Philadelphia Code: Contributions and Other Mandatory Disclosures) below.

(c) No Subcontract shall relieve Provider of any obligation under this Contract. Provider shall be as fully responsible for the acts and omissions of its Subcontractors and Persons either directly or indirectly employed or retained by them as it is for the acts and omissions of Provider and Persons directly or indirectly employed or retained by Provider.

(d) Any purported Subcontract made in violation of this Section 3.9 or of any other section in this Contract shall be null and voidable, at the City's option, and Provider shall itself be deemed to have made the commitments required of that Subcontractor under Section 3.9(b) hereof.

(e) City-Related Agencies. If Provider is a City-Related Agency, as defined in Section 17-1401 of the Code, then:

(1) Provider shall abide by the provisions of Chapter 17-1400 (Non-Competitively Bid Contracts; Financial Assistance) of the Code in awarding any Subcontract(s) pursuant to this Contract as though such Subcontracts were directly subject to the provisions of Chapter 17-1400, except that the exception set forth at Section 17-1406(8) shall apply to Provider as if Provider were listed in that subsection.

(2) Unless approved by the City to the contrary, any approvals required by Chapter 17-1400 of the Code to be performed by the City Solicitor shall be performed by Provider's General Counsel; any approvals required to be performed by the Director of Finance shall be performed by Provider's Chief Financial Officer; and any approvals required to be performed by the Mayor shall be performed by Provider's Executive Director.

ARTICLE IV: PROVIDER'S REPRESENTATIONS AND WARRANTIES

4.1. **Provider's Representations and Warranties.** Provider makes the following representations and warranties upon which the City has relied as a material consideration for the execution and delivery by the City of this Contract, including, but not limited to, those set forth in this Article IV. The representations and warranties stated below shall continue throughout the Term of this Contract. In the event any representation or warranty is or becomes untrue or inaccurate, Provider shall promptly give notice thereof to the City, specifying the manner in which said representation or warranty is untrue or inaccurate. ***False statements to the City in or in connection with this Contract, in or pursuant to any representation or warranty made in this Article IV or otherwise, are subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities, which may include fines and imprisonment.***

(a) Good Standing. If Provider is not an individual, Provider is a business corporation, limited liability company, partnership, limited partnership or other business entity duly organized, validly existing and in good standing under the laws of the state of its incorporation or organization. Provider is duly licensed, qualified and in good standing in the Commonwealth and in all jurisdictions in which it conducts business activities relating in any way to the performance of the Services and delivery of the Materials under this Contract, including, but not limited to, the jurisdiction in which Provider is organized. If Provider is a not-for-profit corporation or otherwise an entity determined to be tax-exempt pursuant to Section 501(c) of the Internal Revenue Code by the Internal Revenue Service, then Provider has procured, and shall maintain in full force and effect, all consents and approvals necessary in connection with such tax-exempt and non-profit status.

(b) Authority to Act. Provider has full legal power and authority to execute and deliver this Contract, and provide the Services and Materials as set forth herein. Provider has duly authorized by all necessary actions the execution and delivery of this Contract on behalf of Provider by the individual or individuals signing the Provider Agreement or any Amendment. This Contract is the legal, valid and binding obligation of Provider, enforceable against Provider in accordance with the terms set forth herein. The execution and delivery of this Contract by Provider will not result in a default under or a breach or violation of (1) Provider's certificate or articles of incorporation or bylaws, partnership agreement, limited liability company operating agreement or other pertinent organizational documents, as applicable; (2) any Applicable Law or any judgment, decree order, license, permit or other instrument or obligation to which Provider is now a party or

by which Provider may be bound or affected; and (3) Provider's tax-exempt status, if applicable. No further consent, approval or authorization is required of any regulatory authority or governmental agency, or of any shareholder, partner, member, manager or other party related to Provider.

(c) No Litigation Preventing Performance. There is no litigation, claim, consent order, settlement agreement, arbitration, agency proceeding, investigation, challenge or other proceeding pending or threatened against Provider, its properties or business or any individuals acting on Provider's behalf, including, without limitation, Subcontractors, in which any Person seeks to enjoin or prohibit Provider from entering into or performing its obligations under this Contract.

(d) Requisite Licensure and Qualifications. Provider and all Persons acting on Provider's behalf, including, without limitation, Subcontractors, in connection with the Services and Materials under this Contract, possess and, at all times during the Term of this Contract, shall possess all licenses, certifications, qualifications or other credentials required in accordance with Applicable Law and the terms of this Contract, to perform the Services and provide the Materials. Provider shall provide the City with copies of all licenses, credentials and certifications required under this Section 4.1 within five (5) days of request by the City.

(e) No Adverse Interests. Except as disclosed in writing and approved in advance by the Responsible Official, neither Provider nor any of its directors, officers, members, partners, employees, agents, or Subcontractors has any interest, or will acquire any interest, directly or indirectly, that would or may conflict in any manner or degree with the performance or rendering of the Services and Materials.

(f) No Indebtedness to the City. Provider and any and all entities controlling Provider, under common control with Provider or controlled by Provider are not currently indebted to the City, and will not at any time during the Term of this Contract (including any Additional Term(s)) 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. Provider shall remain current during the Term of this Contract under all such agreements and payment plans and shall inform the Responsible Official in writing of Provider's receipt of any notices of delinquent payments under any such agreement or payment plan within five (5) days after receipt. In addition to any other rights or remedies available to the City at law or in equity, Provider acknowledges that any breach or failure to conform to this representation, warranty, and covenant may, at the option of the City, result in the withholding of payments otherwise due to Provider under this Contract or any other agreement with the City under which the City may then owe payment of any kind, and, if such breach or failure is not resolved to the City's satisfaction within a reasonable time frame specified by the City in writing, may result in the offset of any such indebtedness against said payments or the termination of this Contract for default (in which case Provider shall be liable for all excess costs and other damages resulting from the termination), or both.

(g) Commercial Activity License. If Provider is a "business" as defined in Section 19-2601 of the Code, Provider has and shall maintain during the Term of this Contract, a valid, current Commercial Activity License, issued by the City's Department of Licenses and Inspections, to do business in the City.

(h) Non-Suspension; Debarment. Provider and all individuals acting on Provider's behalf, including, without limitation, Subcontractors, are not under suspension or debarment from doing business with the Commonwealth, any other state, or the federal government, or any department, agency or political subdivision of any of the foregoing. If Provider cannot so warrant, then Provider shall submit to the Responsible Official a full, complete written explanation as to why Provider cannot so warrant. Provider shall reimburse the City for the reasonable cost of investigation incurred by the City or the Commonwealth of Pennsylvania Office of Inspector General for investigation of Provider's compliance with the terms of this or any other contract between Provider and the City which results in the suspension or debarment of Provider. Such costs shall include, but are not limited to, salaries of investigators, including overtime, travel and lodging expenses, expert witness and documentary fees and attorney fees and expenses. Except for its own costs, Provider shall not be responsible for costs of investigations that do not result in the suspension or debarment of Provider or a Subcontractor.

(i) Additional Representations and Warranties. The enumeration of representations and warranties in this Article IV does not negate or limit Provider's other representations, warranties, and covenants under the Contract, including elsewhere in the General Provisions.

ARTICLE V: COMPENSATION

5.1. **Certification of Available Funds**. Provider acknowledges that payments under this Contract, and the City's obligation to make such payments, shall not exceed the amount certified by or on behalf of the City's Director of Finance as available for this Contract. A copy of the form signed by the Office of the Director of Finance showing the amount of currently available funds will be attached to the fully executed Contract returned to Provider. During the Initial Term and any Additional Term(s) of this Contract, the City reserves the right to fund any remaining balance of this Contract amount in varying amounts from time to time as funds become available, not to exceed in total the maximum amount stated in this Contract. Provider agrees that the City shall not be obligated to fund this Contract except out of funds certified by or on behalf of the City's Director of Finance as currently available, even if those funds are less than the maximum amount stated in this Contract. If sufficient funds are not certified as available at any time, the City may exercise its options described in Section 5.2 (Unavailability of Funds) below.

5.2. **Unavailability of Funds**. If funding for this Contract from any source is not obtained and continued at an aggregate level sufficient to allow for payment for the Services performed and Materials delivered under this Contract, the City may exercise one of the following options without liability or penalty to the City:

- (a) Terminate this Contract effective upon a date specified in a Termination Notice; or
- (b) Continue this Contract by reducing, through written notice to Provider, the amount of this Contract and Services and Materials, consistent with the nature, amount and circumstances of available funding.

The City's exercise of either option under this Section 5.2 shall not affect any obligations or liabilities of either Party accruing prior to such termination or reduction of Services or Materials. Provider shall be compensated in accordance with the terms of this Contract for Services and Materials satisfactorily performed and delivered prior to such termination or modification of this Contract under this Section 5.2.

5.3. **Crossing Fiscal Years.** If any portion of the compensation set forth in this Contract is to be paid in any City fiscal year following the fiscal year in which the Initial Term or any Additional Term of this Contract commences (in either case, "Appropriated Fiscal Year"), Provider understands and agrees that the portion of the compensation under this Contract payable with City funds for any period following the Appropriated Fiscal Year is subject to the discretion of City Council as to future appropriations. If, for any reason, funds for any such portion of the compensation are not appropriated by City Council in any Fiscal Year following the Appropriated Fiscal Year, this Contract and the City's liability under this Contract shall automatically terminate at the end of the then current Appropriated Fiscal Year; provided, however, that Provider shall be compensated in accordance with the terms of this Contract for Services and Materials satisfactorily performed and delivered prior to the end of the then current Appropriated Fiscal Year, subject to the other provisions of this Article V.

5.4. **Allowability of Cost Items.** All payments by the City under this Contract are subject to the limitations on the allowability of cost items imposed by the Contract Cost Principles.

5.5. **Reimbursement.** The Provider shall promptly reimburse the City for all sums paid to the Provider by the City as a result of any inaccurate, false, fictitious or fraudulent billings, invoices, contract overcharges, overpayments, and the like, and any costs which are incurred by the City as a result.

ARTICLE VI: AUDITS; INSPECTION RIGHTS; RECORDS

6.1. **City Audit.** From time to time during the Term, and for a period of five (5) years after the expiration or termination of this Contract, the City may audit any and all aspects of Provider's performance under this Contract, including, but not limited to, its billings and invoices. Audits may be conducted by representatives, agents or contractors of the City, including the Department, or other authorized City representatives, including, without limitation, the City Controller. If requested by the City, Provider shall submit to the City all vouchers or invoices presented for payment pursuant to this Contract, all cancelled 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 Contract. All books, invoices, vouchers, records, reports, cancelled checks and other materials shall be subject to periodic review or audit by the City.

6.2. **Inspection.** All Services and Materials shall be subject to inspection and review by City, state and federal representatives, as may be applicable, or their designees, at the offices of Provider in the City, or in another location with the City's consent. Provider shall cooperate with all City, state and federal inspections and reviews conducted in accordance with the provisions of this Contract. Such inspection and review of Provider's 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 consumers, review of staffing ratios and job descriptions, and meetings with any of Provider's staff members who are either directly or indirectly involved in providing Services or Materials.

6.3. **Availability of Records.** Provider shall make available, in the City at reasonable times during the Term of this Contract and for the period set forth in Section 6.4 (Retention of Records) below, all records pertaining to this Contract for the purpose of inspection, audit or reproduction by any authorized representative (including any agent or contractor and the City Controller) of the

City, the Commonwealth of Pennsylvania Auditor General, and any other federal and state auditors, as may be applicable.

6.4. **Retention of Records.** Provider shall retain all records, books of account and documentation pertaining to this Contract for the period set forth in Section 6.1 (City Audit) above. If any litigation, claim or audit is commenced prior to expiration of said five (5) 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 if Applicable Law requires a longer period, then the records shall be retained for such longer period.

6.5. **Audits Pursuant to Section 6-400 of the Home Rule Charter.** Any Provider that is an Agency, as defined in Section 6-400 (Auditing Department) of the Charter, shall permit the City Controller to audit its affairs as authorized in Section 6-400 during the Initial Term or any Additional Term. Under Section 6-400, an Agency is any entity that a) receives funds from the City; and either b) is created by, or whose board of directors is in whole or part appointed by, one or more City officials or bodies, or c) is organized pursuant to legal authority granted to it by City ordinance.

ARTICLE VII: ASSIGNMENT

7.1. **Assignment by Provider.** Provider shall not assign this Contract, or any part of this Contract, or delegate performance of this Contract (other than to its own work forces), without obtaining the prior written consent of the Responsible Official. The decision whether to consent to an assignment, the timing of consent, if any, and conditions to such consent, if any, shall each be in the City's sole discretion. In the event Provider desires to assign payments under the Contract to a third party pursuant to a secured interest under the Uniform Commercial Code, the City must receive written statutory notice of the assignment which will remain in effect until the City receives written notice by Provider's assignee that the payment assignment has been released. Provider agrees to cooperate with the City in effectuating the direction of its payments to a third party which will include Provider's execution of a release in favor of the City in the form of a "Payment Directive." Any consent to the assignment of any monies to be paid under this Contract shall not relieve Provider from the faithful performance of any of its obligations under this Contract or change any of the terms and conditions of this Contract. Any purported assignment in violation of this Section shall be void and of no effect. The City's consent to an assignment shall not release the assignor from any liability accrued or thereafter accruing under this Contract. Any assignment or purported assignment shall be in writing and shall contain an express assumption by the assignee of all liability accrued or thereafter accruing under this Contract. Consent by the City to any assignment shall not be deemed a course of conduct, dealing or performance with respect to any other assignment or proposed assignment. For purposes of this Section 7.1, an assignment includes the acquisition of Provider, or a controlling interest therein, through a corporate or other merger, and the appointment of a receiver or bankruptcy trustee, and the transfer of this Contract or Provider in any bankruptcy or other insolvency proceeding.

7.2. **Applicability to Event of Insolvency.** A receiver or trustee of or for Provider in any federal or state bankruptcy, insolvency or other proceedings concerning Provider shall comply with the requirements set forth in Section 7.1 (Assignment by Provider) above.

7.3. **Personal Services.** Provider acknowledges that the Services and Materials are the personal services of Provider and the City shall have no obligation to accept performance by a third party without the Responsible Official's prior and express written consent.

ARTICLE VIII: INDEPENDENT CONTRACTOR; INDEMNIFICATION; LITIGATION COOPERATION

8.1. **Independent Contractor.** Provider is an independent contractor and shall not in any way or for any purpose be deemed or intended to be an employee or agent of the City. Neither Provider nor its agents, employees or Subcontractors shall in any way represent that they are acting as employees, officials or agents of the City.

8.2. **Indemnification.** Provider shall indemnify, defend and hold harmless the City and its officers, employees and agents from and against any and all losses, costs (including, but not limited to, litigation and settlement costs and counsel fees and expenses), claims, suits, actions, damages, liability and expenses, occasioned wholly or in part by Provider's act or omission or negligence or fault or the act or omission or negligence or fault of Provider's agents, Subcontractors, independent contractors, suppliers, employees or servants in connection with this Contract, including, but not limited to, those in connection with loss of life, bodily injury, personal injury, damage to property, contamination or adverse effects on the environment, intentional acts, failure to pay any Subcontractors and suppliers, any breach of this Contract, loss of data, data security breach, and any infringement or violation of any proprietary right (including, but not limited to, patent, copyright, trademark, service mark and trade secret).

8.3. **Litigation Cooperation.** If, at any time, the City becomes involved in a dispute or receives notice of a claim or is involved in litigation concerning the Services and Materials provided under this Contract, the resolution of which requires the services or cooperation of Provider, and Provider is not otherwise obligated to indemnify and defend the City pursuant to the provisions of Section 8.2 (Indemnification) above, Provider agrees to provide such services and to cooperate with the City in resolving such claim or litigation as Additional Services and Materials under Section 3.3 (Additional Services and Materials; Change in Scope of Services) above.

8.4. **Notice of Claims.** If Provider receives notice of a legal claim against it in connection with this Contract, Provider shall submit appropriate written notice of such claim to its insurance carrier within the time frame required for submission of claims by the applicable insurance policy and, within ten (10) business days of receipt of notice of the claim, to the Responsible Official.

ARTICLE IX: INSURANCE

9.1. **Insurance Policies.** Unless otherwise approved by the City's Risk Management Division in writing, Provider shall, at its sole cost and expense, procure and maintain, or cause to be procured and maintained, in full force and effect, the types and minimum limits of insurance specified below, or such greater amounts or additional coverages set forth elsewhere in the Contract, covering Provider's performance of the Services and the delivery of the Materials. Provider shall procure, or cause to be procured, all insurance from reputable insurers admitted to do business on a direct basis in the Commonwealth or otherwise acceptable to the City. All insurance herein, except Professional Liability insurance, shall be written on an "occurrence" basis and not a "claims-made" basis. In no event shall Provider perform any Services or other work until Provider has delivered or caused to be delivered to the City's Risk Management Division the required evidence of insurance coverages. All insurance coverages shall provide for at least thirty (30) days' prior written notice to be given to the City in the event coverage is materially changed, cancelled or non-renewed. The City, its officers, employees and agents, shall be named as additional insureds on the General Liability Insurance policy. Provider shall also deliver or cause

to be delivered to the City an endorsement stating that the coverage afforded the City and its officers, employees and agents, as additional insureds, will be primary to any other coverage available to them and that no act or omission of the City, its officers, employees or agents shall invalidate the coverage.

(a) Workers' Compensation and Employers' Liability:

(1) Workers' Compensation: Statutory Limits.

(2) Employers' Liability: \$100,000 Each Accident - Bodily Injury by Accident; \$100,000 Each Employee - Bodily Injury by Disease; and \$500,000 Policy Limit - Bodily Injury by Disease.

(3) Other states' insurance including Pennsylvania.

(b) General Liability Insurance:

(1) Limit of Liability: \$1,000,000 per occurrence combined single limit for bodily injury (including death) and property damage liability; \$1,000,000 advertising injury; \$2,000,000 general aggregate and \$1,000,000 aggregate for products and completed operations. The City may require higher limits of liability if, in the City's sole discretion, the potential risk warrants.

(2) Coverage: Premises operations; blanket contractual liability; personal injury liability; products and completed operations; independent contractors, employees and volunteers as insureds; cross liability; and broad form property damage (including completed operations).

(c) Automobile Liability Insurance:

(1) Limit of Liability: \$1,000,000 per occurrence combined single limit for bodily injury (including death) and property damage liability.

(2) Coverage: Owned, non-owned and hired vehicles.

(d) Professional Liability Insurance:

(1) Limit of Liability: \$1,000,000 with a deductible not to exceed \$50,000.

(2) Coverage: Errors and omissions including liability assumed under Contract.

(3) Professional Liability Insurance may be written on a claims-made basis provided that coverage for occurrences happening during the performance of the Services required under this Contract shall be maintained in full force and effect under the policy or "tail" coverage for a period of at least two (2) years after completion of the Services.

9.2. **Self-Insurance.** Provider may self-insure any of the coverages required under this Contract only with the prior written approval of the Responsible Official and the City's Risk Manager. If Provider wants to self-insure any of the coverages listed above, it shall submit to the Responsible Official and the City's Risk Management Division, prior to Provider's commencement of Services or delivery of any Materials hereunder, a certified copy of Provider's most recent audited financial statement and such other evidence of its qualifications to act as self-insurer (e.g., state approval) as the Responsible Official or the City's Risk Manager may request. If the City grants such approval, Provider understands and agrees that the City, its officers, employees and agents shall be entitled to receive the same coverages and benefits under Provider's self-insurance program that they would have received had the insurance requirements set forth above been satisfied by a reputable insurer admitted and duly authorized to do business in the

Commonwealth or otherwise acceptable to the City. If at the time of commencement of any Term of this Contract, Provider self-insures its professional liability or workers' compensation and employers' liability coverage, Provider may, in lieu of the foregoing, furnish to the City a current copy of the state certification form for self-insurance or a current copy of the State Insurance Commissioner's letter of approval, whichever is appropriate. The insurance (including self-insurance) requirements set forth herein are not intended and shall not be construed to modify, limit or reduce the indemnifications made in this Contract by Provider to the City, or to limit Provider's liability under this Contract to the limits of the policies of insurance (or self-insurance) required to be maintained by Provider hereunder.

9.3. **Evidence of Insurance Coverage.** Certificates of insurance evidencing the required coverages must specifically reference the City contract number for which they are being submitted. The original certificates of insurance must be submitted to the City's Risk Manager at the following address:

The City of Philadelphia
Office of the Director of Finance
Division of Risk Management
1515 Arch Street, 14th Floor
Philadelphia, PA 19102-1579
(Fax No.: 215-683-1705)

A copy of the certificates of insurance shall be submitted to the Responsible Official at the address of the Department set forth in the Notice Section of the Provider Agreement. Both submissions must be made at least ten (10) days before work begins and at least ten (10) days before each Additional Term. The City, in its sole discretion, may waive the ten (10) day requirement for advance documentation of coverage in situations where such waiver will benefit the City. The actual endorsement adding the City as an additional insured must specifically reference the City contract number and be submitted to the City's Risk Management Division at the above address. The City reserves the right to require Provider to furnish certified copies of the original policies of all insurance required under this Contract at any time upon ten (10) days' written notice to Provider.

9.4. **Fidelity Bond; Crime Insurance.** When required elsewhere in the Contract Documents, Provider shall, at its sole cost and expense, obtain and maintain during the Initial Term and any Additional Term(s) of this Contract, a fidelity bond in an amount equal to the greater of (a) Ten Thousand Dollars (\$10,000) or (b) the amount specified elsewhere in the Contract Documents, covering Provider's employees who have financial responsibilities related to the receipt and disbursement of funds under this Contract. In lieu of a fidelity bond, Provider may obtain coverage for crime insurance with limits that are the greater of (a) \$10,000 or (b) the amount specified in the Provider Agreement. The fidelity bond or crime insurance, whichever is obtained by Provider, shall name the City as a beneficiary. Evidence of the existence of the fidelity bond or crime insurance shall be submitted to the City prior to the commencement of Services in conformity with the requirements of Section 9.3 (Evidence of Insurance Coverage) above.

**ARTICLE X: OWNERSHIP OF MATERIALS;
PROPRIETARY INFORMATION; CONFIDENTIALITY**

10.1. Ownership of Materials.

(a) Subject to Applicable Law, all Materials shall be the sole and absolute property of the City and the City shall have title thereto and unrestricted use thereof. To the extent that any Materials relating to this Contract developed by or for Provider embody a copyrightable work, including, but not limited to, a “compilation” as that term is used in 17 U.S.C. § 101, as amended from time to time, the City and Provider agree that such copyrightable work(s) shall be considered as one or more “works made for hire” by Provider for the City, as that term is used in 17 U.S.C. §§ 101 and 201(b), as amended from time to time. To the extent that any Materials relating to this Contract developed by or for Provider embody one or more copyrightable works but are neither a “compilation” nor any other form of “work made for hire,” Provider hereby assigns, and agrees to execute instruments evidencing such assignment, all copyrights in all of such works to the City. Provider shall cause all Materials developed or produced by Provider and any Subcontractor in connection with this Contract which embody a copyrightable work to bear the following designation: “© ____ The City of Philadelphia” [complete then current year in blank line].

(b) Provider shall make available to the City, upon the City’s request, a copy of any Materials prepared by or for Provider in performance of this Contract, at no cost to the City.

(c) All computer programs, tapes and software developed under this Contract shall be compatible with specifications set by the Department.

(d) Provider hereby grants, and shall require its Subcontractors to grant, to the City a royalty-free, nonexclusive and irrevocable right to publish, translate, reproduce, deliver, perform and authorize others to do so, all studies, media, curricula, reports and other Materials not owned by the City under this Contract but which relate to the performance of the Services, Materials or this Contract; provided, however, that Provider shall not be required to grant such right to the City with respect to any Materials for which Provider would be liable to pay compensation to third parties because of such grant.

10.2. Non-Disclosure and Destruction of Data. Provider and its employees, agents, Subcontractors, suppliers, and any person or entity acting on its behalf (a) will maintain in strict confidence all City Data; (b) will not, without the City’s written permission, issue, divulge, disclose, publish, communicate, or distribute any City Data to any person or entity except as may be strictly necessary to perform under the Contract; (c) will not, without the City’s written permission, in any way use any City Data for their businesses, research, or other advantage or gain (except as may be strictly necessary to perform under the Contract), including, without limitation, any use of City Data in any presentation, demonstration, or proposal to perform work, to the City or to others, that may be conducted or created as part of their business activities or otherwise; and (d) except as required by Applicable Law, will immediately upon termination of the Contract return all City Data to the City, destroy any and all copies of any City Data that are in their possession, whether on paper or in electronic or other form and, if requested by the City in writing, will certify in writing that there has been full compliance with this Section 10.2. See also Section 14.9 (Terms and Conditions Relating to Protected Health Information).

ARTICLE XI: EVENTS OF DEFAULT

11.1. **Events of Default.** Each of the following shall be an Event of Default by Provider under this Contract:

- (a) Failure by Provider to comply with any provision of this Contract.
- (b) Occurrence of an Event of Insolvency with respect to Provider.
- (c) Falseness or inaccuracy of any warranty or representation of Provider contained in this Contract or in any other document submitted to the City by Provider.
- (d) Any act, omission, or misrepresentation which renders Provider ineligible for a City contract or renders the Contract voidable under Chapter 17-1400 of the Code.
- (e) Misappropriation by Provider of any funds provided under this Contract or failure by Provider to notify the City upon discovery of any misappropriation.
- (f) A violation of law which results in a guilty plea, a plea of *nolo contendere*, or conviction of a criminal offense by Provider, its director, employee or agent (1) directly or indirectly relating to this Contract or the Services or Materials provided under this Contract, whether or not such offense is ultimately adjudged to have occurred; or (2) which adversely affects the performance of this Contract.
- (g) Indictment of or other issuance of formal criminal charges against Provider, its director, employee or agent for any criminal offense or any other violation of Applicable Law directly relating to this Contract or Services or Materials, or which adversely affects Provider's performance of this Contract in accordance with its terms, whether or not such offense or violation is ultimately adjudged to have occurred.
- (h) Debarment or suspension of Provider or any agent, employee or Subcontractor of Provider under a federal, state or local law, rule or regulation.

11.2. **Notice and Cure.** The City agrees that the City will not exercise any right or remedy provided for in Section 12.1 (The City's Remedies) below because of any Event of Default unless the City shall have first given written notice of the Event of Default to Provider, and Provider, within a period of ten (10) days thereafter, or such additional cure period as the City may authorize, shall have failed to correct the Event of Default; provided, however, that no such notice from the City shall be required nor shall the City permit any period for cure if:

- (a) Provider has temporarily or permanently ceased providing Services and Materials.
- (b) The Event of Default creates an emergency which requires, as determined by the City in the City's sole discretion, immediate exercise of the City's rights or remedies.
- (c) The City has previously notified Provider in the preceding twelve (12) month period of any Event of Default under this Contract.
- (d) An Event of Default occurs as described in Section 11.1(e), 11.1(f) or 11.1(h) above.
- (e) Provider has failed to obtain or maintain any insurance or bond required under this Contract.

Nothing contained in this Section 11.2 shall limit the City's rights under Article XII (Remedies) below.

ARTICLE XII: REMEDIES

12.1. **The City's Remedies.**

(a) In the event Provider has committed or permitted an Event of Default and has been notified thereof in accordance with Section 11.2 (Notice and Cure) above, then the City may, but shall not be obligated to, take any or all of the following actions without further notice to or demand on Provider and without waiving or releasing Provider from any of its obligations under this Contract:

(1) Perform (or cause a third party to perform) this Contract, in whole or in part, including, without limitation, obtaining or paying for any required insurance or performing other acts capable of performance by the City. Provider shall be liable to the City for all sums paid by the City and all expenses incurred by the City (or a third party) pursuant to this Section 12.1(a)(1), together with interest at the highest legal rate permitted in the Commonwealth thereon from the date the City or its agent incurs such costs. The City shall not in any event be liable for inconvenience, expense or other damage incurred by Provider by reason of the City's performance or paying such costs or expenses, and the obligations of Provider under this Contract shall not be altered or affected in any manner by the City's exercise of its rights under this Section 12.1.

(2) Withhold payment of, or offset against, any funds payable to or for the benefit of Provider.

(3) Collect, foreclose or realize upon any bond, collateral, security or insurance provided by or on behalf of Provider.

(4) Exercise any other right the City has or may have at law, in equity, or under this Contract.

(b) In the event Provider has committed or permitted an Event of Default and has been notified thereof in accordance with Section 11.2 (Notice and Cure) above, then the City may, but shall not be obligated to, without waiving or releasing Provider from any of its obligations under this Contract, terminate or suspend this Contract in whole or in part, as set forth more fully in Article XIII (Termination and Suspension) below. In the event of partial termination or suspension, Provider shall continue the performance of this Contract to the extent not terminated or suspended.

(c) The Services and Materials purchased from Provider are unique and not otherwise readily available. Accordingly, Provider acknowledges that, in addition to all other remedies to which the City is entitled, the City shall have the right, to the fullest extent permitted under Applicable Law, to enforce the terms of this Contract without limitation, by a decree of specific performance or by injunction restraining a violation, or attempted or threatened violation, of any provision of this Contract.

12.2. **Concurrent Pursuit of Remedies; No Waiver.** The City may exercise any or all remedies set forth in this Article XII, each of which may be pursued separately or in conjunction with such other remedies as the City in its sole discretion shall determine. No extension or indulgence granted by the City to Provider shall operate as a waiver of any of the City's rights in connection with this Contract. The rights and remedies of the City as described in this Article XII and as described elsewhere in this Contract shall not be exclusive and are in addition to any other rights or remedies available to the City under this Contract at law or in equity.

ARTICLE XIII: TERMINATION AND SUSPENSION

13.1. **Termination or Suspension for Any Reason.** In addition to its rights under Articles V (Compensation) and XII (Remedies) above, the City shall have the right to terminate this Contract or suspend Provider's performance under this Contract at any time during the Term of this Contract, in whole or in part, for any stated reason, including, without limitation, the convenience of the City. The City shall give written notice to Provider of any full or partial termination or suspension, stating the reason(s) for its action, setting forth the effective date of the termination or suspension and describing any partial termination or suspension.

13.2. **Provider's Responsibilities Upon Termination or Suspension.**

(a) Upon the City's service of a Termination Notice or a Suspension Notice under any provision of this Contract, Provider and its agents, employees and Subcontractors, shall:

(1) Take immediate action in an orderly manner to discontinue Services and Materials, and demobilize work forces to minimize the incurrence of costs; and

(2) Upon request by the City by notice to Provider, collect, assemble and transmit to the City all Materials in such state of completion as may exist as of the effective date of the termination or suspension. All such Materials shall be clearly labeled and indexed to the satisfaction of the Responsible Official and delivered to the Responsible Official by Provider on or before the date set forth in the Termination Notice for delivery of the Materials or, if no such date is set forth in the Termination Notice, then before the effective date of termination set forth in the Termination Notice. Provider waives and releases any and all right to any retaining or charging liens or similar right or remedy in favor of Provider.

(b) The City's termination or suspension of this Contract shall not affect any obligations or liabilities of either Party accruing prior to the effective date of such termination or suspension.

(c) There shall be no liability, cost or penalty to the City for termination or suspension of this Contract.

13.3. **Payment of Provider Upon Termination or Suspension.**

(a) Upon termination or suspension of this Contract by the City for an Event of Default, Provider shall be entitled to payment of such an amount, to be determined by the City and subject to audit, as shall compensate it for the work satisfactorily performed prior to the termination date; provided, however, that:

(1) Provider is not entitled to be compensated for termination expenses or for anticipated profits, unabsorbed or underabsorbed overhead, or unperformed Services; and

(2) The City may deduct from any amount due and payable to Provider prior to the termination date, but withheld or not paid, the total amount of fees, costs or additional expenses incurred by the City in order to satisfactorily complete the Services and Materials required to be performed by Provider under this Contract, including the expense of engaging another provider for this purpose, and such other damages, costs, losses and expenses of the City as may be incurred or result from such termination for an Event of Default.

(b) In the event of termination or suspension of this Contract by the City for the City's convenience, Provider shall be paid such an amount as shall compensate Provider for the portion of the Services satisfactorily performed and Materials satisfactorily delivered prior to the date of

termination. The City shall not pay Provider any amount for Provider's termination or suspension expenses or anticipated profits, unabsorbed or underabsorbed overhead or unperformed Services and Materials not satisfactorily delivered.

(c) In no event shall Provider be entitled to payment beyond the maximum amounts set forth elsewhere in the Contract.

13.4. **Suspension.**

(a) Suspension after an Event of Default, or pending investigatory or criminal proceedings concerning an event that would constitute an Event of Default if resolved contrary to the interests of Provider or a Person for which Provider may be responsible, shall not constitute a waiver or release of any liability of Provider for such Event of Default or any of the City's damages or other remedies arising out of such Event of Default; nor shall such suspension be deemed an election of remedies in derogation of any other remedy.

(b) Provider acknowledges that the City shall have the right, in its sole discretion, to suspend Provider's performance in the event City Council does not appropriate funds enabling payment for the performance of this Contract.

(c) If the City issues a Suspension Notice to Provider, such suspension shall continue from the effective date specified in the Suspension Notice until a date specified in the Suspension Notice which shall be not more than one hundred eighty (180) days after the effective date (the "Suspension Period"). On or prior to the expiration of the Suspension Period, the City shall either terminate this Contract by giving a Termination Notice pursuant to Section 13.1 (Termination or Suspension for Any Reason) above; or issue a new Suspension Notice; or by notice to Provider, instruct Provider to resume the delivery of Services and Materials pursuant to this Contract upon the expiration of the Suspension Period. The City may exercise its right to amend the Contract to add an Additional Term without waiving the suspension; but in the absence of the City's notice of intent to enter into such amendment, Provider shall terminate Services and Materials at the end of the Term even if the Suspension Period has not yet expired.

(d) After issuing a Suspension Notice, the City shall pay any invoices submitted by Provider for Services rendered prior to the commencement of the Suspension Period or otherwise payable by the City to Provider under this Contract, subject to all the City's rights and remedies against Provider, including, but not limited to, its rights of set off and its right to review and accept Services and Materials prior to payment therefor.

ARTICLE XIV: ADDITIONAL REPRESENTATIONS AND COVENANTS OF PROVIDER RELATING TO CERTAIN APPLICABLE LAWS

In addition to the representations, warranties, and covenants made by Provider in Article IV (Provider's Representations and Warranties) above and elsewhere in the General Provisions and other Contract Documents, Provider further represents, warrants and covenants that, to the extent of their applicability to Provider, Provider is in compliance with the laws, ordinances, regulations and executive orders described below. By executing this Contract, Provider thereby certifies to such compliance. Provider further certifies that the representations, warranties, and covenants provided pursuant to this Article XIV shall continue to remain true throughout the Term of this Contract and for any other period of time required by such laws. *False statements to the City in or in connection with this Contract, in or pursuant to any representation or covenant made in this Article XIV or otherwise, are subject to the penalties of 18 Pa. C.S. § 4904 relating to*

unsworn falsification to authorities, which may include fines and imprisonment. In the event said representations, warranties, and covenants are or become untrue or inaccurate, Provider shall promptly give notice thereof to the City, specifying the manner in which said representation, warranty, or covenant is untrue or inaccurate. The provisions of this Article XIV are not intended to limit the applicability of the other provisions of this Contract, including, without limitation, Provider's agreement to comply with all Applicable Law.

14.1. **Non-Discrimination; Fair Practices.** In performing this Contract, Provider must comply with the terms of the Charter, the Fair Practices Ordinance (Chapter 9-1100 of the Code) and Mayor's Executive Order No. 04-86, as they may be amended from time to time. In addition, to the extent those provisions do not explicitly prohibit or cover certain types of discriminatory conduct, in performing this Contract, Provider has broader obligation under this Contract. In connection with providing any service or fulfilling any duty under this Contract, Provider shall not discriminate or permit discrimination against any individual 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; domestic or sexual violence victim status; or Acquired Immune Deficiency Syndrome ("AIDS") status. In the event of any breach of this Section 14.1, the City may, in addition to any other rights or remedies available under this Contract, at law or in equity, suspend or terminate this Contract forthwith.

14.2. **Chapter 17-400 of The Philadelphia Code: Exclusionary Private Organizations.**

(a) In accordance with Chapter 17-400 of the Code, Provider 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, constitutes, without limiting the applicability of Articles XI (Events of Default) and XII (Remedies) above, a substantial breach of this Contract entitling the City to all rights and remedies provided in this Contract or otherwise available at law or in equity.

(b) Provider agrees to cooperate with the Commission on Human Relations of the City (the "Commission") in any manner which the Commission deems reasonable and necessary for the Commission to carry out its responsibilities under Chapter 17-400 of the Code. Provider's failure to so cooperate shall constitute, without limiting the applicability of Articles XI (Events of Default) and XII (Remedies) above, a substantial breach of this Contract entitling the City to all rights and remedies provided in this Contract or otherwise available at law or in equity.

14.3. **Executive Order 01-21: Minority, Woman and Disabled Business Enterprise Participation.** In accordance with Executive Order 01-21 (the "Antidiscrimination Policy"), the City, acting through its Office of Economic Opportunity ("OEO"), has established an antidiscrimination policy that relates to the solicitation and participation of Minority Business Enterprises ("MBE"), Woman Business Enterprises ("WBE"), and Disabled Business Enterprises ("DSBE") (collectively, "M/W/DSBE") in City contracts. The purpose of this Antidiscrimination Policy is to ensure that all businesses desiring to do business with the City have an equal opportunity to compete by creating access to the City's procurement process and meaningfully increasing opportunities for the participation by M/W/DSBEs in City contracts at all tiers of contracting, as prime contractors, subcontractors and joint venture partners. In furtherance of this

policy, the City will, from time to time, establish participation ranges for City contracts and City Related Special Projects. Provider agrees to comply with the requirements of the Antidiscrimination Policy by exercising its Best and Good Faith Efforts to include M/W/DSBEs in its contract, and where participation ranges are established by OEO, Provider agrees, without limitation, to submit documentation responsive to each of the participation ranges established for the Contract.

(a) General Requirements. In furtherance of the purposes of the Antidiscrimination Policy, Provider agrees to the following:

(1) Provider, if it has achieved participation commitments with M/W/DSBEs, represents that it has entered into legally binding agreement(s) (“M/W/DSBE Subcontract(s)”) with M/W/DSBEs as participants under this Contract for the services and in the dollar amount(s) and percentage(s) as specified in the M/W/DSBE Participation Exhibit to this Contract (the “Contract Commitment(s)”).

(2) Provider shall secure the prior written approval of the OEO before making any changes or modifications to any Contract Commitments made by Provider herein, including, without limitation, substitutions for its MBEs, WBEs and/or DSBEs, changes or reductions in the services provided by its M/W/DSBE participants, or changes or reductions in the dollar amounts and/or percentage value paid to its M/W/DSBE participants.

(3) Unless otherwise specified in a M/W/DSBE Subcontract between Provider and its M/W/DSBE participant, as described in Section 14.3(a)(1) above, Provider shall, within five (5) business days after receipt of a payment from the City for services performed under the Contract, deliver to its M/W/DSBE participant its proportionate share of such payment for services performed by the M/W/DSBE participant. In connection with payment of its M/W/DSBE participants, Provider agrees to fully comply with the City’s electronic payment reporting process, the Contract Compliance Reporting System (referred to as “CCRS” or “B2G”) which is an electronic payment verification system; failure to verify payment in this system may result in withholding of payments.

(4) Provider shall, in the event of an increase in units of work and/or compensation under the Contract, increase its Contract Commitment(s) with its M/W/DSBE participants proportionately, which increase shall be reflected in the M/W/DSBE Subcontract(s) described in Section 14.3(a)(1) above. OEO may from time to time request documentation from Provider evidencing compliance with this provision.

(5) Provider shall submit, within the time frames prescribed by the City, any and all documentation the City may request, including, but not limited to, copies of M/W/DSBE Subcontracts, participation summary reports, M/W/DSBE participant invoices, telephone logs and correspondence with M/W/DSBE participants, cancelled checks and certification of payments. Provider shall maintain all documentation related to this Section 14.3 for a period of five (5) years from the date of Provider’s receipt of final payment under the Contract.

(6) Provider agrees that the City may, in its sole discretion, conduct periodic reviews to monitor Provider’s compliance with the terms of this Antidiscrimination Policy.

(7) Provider agrees that in the event the City determines that Provider has failed to comply with any of the requirements of this Antidiscrimination Policy, including substantial compliance with any Contract Commitment, the City may, in addition to any other rights and

remedies it may have under the Contract which includes termination of the Contract, exercise one or more of the following remedies which shall be deemed cumulative and concurrent:

(A) Debar Provider from proposing on and/or participating in any future contracts for a maximum period of three (3) years.

(B) Withhold payment(s) or any part thereof until corrective action is taken. If corrective action is not taken to the satisfaction of OEO, the City may, without institution of a lawsuit, deduct money in an amount equal to the M/W/DSBE shortfall, which amount shall be collected and considered not as a penalty, but as liquidated damages for Provider's failure to comply with the Contract.

(8) No privity of contract exists between the City and any M/W/DSBE participant identified herein and the City does not intend to give or confer upon any such M/W/DSBE participant(s) any legal rights or remedies in connection with the subcontracted services pursuant to the Antidiscrimination Policy or by reason of this Contract except such rights or remedies that the M/W/DSBE participant may seek as a private cause of action under any legally binding contract to which it may be a party. The remedies enumerated above are for the sole benefit of the City and the City's failure to enforce any provision or the City's indulgence of any non-compliance with any provision hereunder, shall not operate as a waiver of any of the City's rights in connection with this Contract nor shall it give rise to actions by any third parties including identified M/W/DSBE participants.

(b) Special Requirements Applicable to Non-Profit Providers. In the event Provider is a non-profit, the Contract may not be subject to M/W/DSBE participation ranges, but Provider shall demonstrate its compliance with the Antidiscrimination Policy by providing annually to OEO the following information:

(1) A statement identifying the race, gender, disability status and ethnic composition of its workforce and board of directors;

(2) A list of the non-profit's five highest dollar value M/W/DSBE suppliers of products and services; and

(3) The non-profit's written "equal opportunity statement," an assurance of the non-profit's efforts to maintain a diverse workforce and board of directors and operate a fair and effective supplier diversity program.

(c) Criminal Liability for Fraudulent or False Statements. Provider hereby verifies that all information submitted to the City in connection with the Antidiscrimination Policy is true and correct and is notified that the submission of false information is subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities, which may include payment of a fine of at least \$1,000 and a term of imprisonment of not more than two (2) years. Provider also acknowledges that under 18 Pa.C.S. § 4107.2(a)(4), it is a felony in the third degree, punishable by a term of imprisonment of not more than seven (7) years in addition to the payment of any fines or restitution, if, under this Contract, Provider fraudulently obtains public moneys reserved for or allocated or available to minority business enterprises or women's business enterprises.

14.4. **Federal Laws**. Provider shall comply with the provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d - 2000d.7), Section 504 of the Federal Rehabilitation Act of 1973 (29 U.S.C. § 794), the Age Discrimination Act of 1975 (42 U.S.C. §§ 6101 - 6107), Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681), and 45 C.F.R. Part 92, as they may be

amended from time to time, which together prohibit discrimination on the basis of race, color, national origin, sex, handicap, age and religion.

14.5. **Americans with Disabilities Act.** Provider understands and agrees that no individual with a disability shall, on the basis of the disability, be excluded from participation in this Contract or from providing Services or Materials under this Contract. By executing and delivering this Contract, Provider covenants to comply with all provisions of the Americans with Disabilities Act (42 U.S.C. §§ 12101-12213) (the “ADA”), and all regulations promulgated thereunder, as the ADA and regulations may be amended from time to time, which are applicable (a) to Provider; (b) to the benefits, Services, Materials, activities, facilities and programs provided in connection with this Contract; (c) to the City or the Commonwealth; (d) to the benefits, services, activities, facilities and programs of the City or the Commonwealth; and (e) if any funds under this Contract are provided by the federal government, to federal funds, benefits, services, activities, facilities and programs applicable to this Contract. Without limiting the applicability of the preceding sentence, Provider shall comply with the “General Prohibitions Against Discrimination” (28 C.F.R. Part 35.130), and all other regulations promulgated under Title II of the ADA, as they may be amended from time to time, which are applicable to the benefits, services, facilities, programs and activities provided by the City through contracts with outside contractors.

14.6. **Northern Ireland.**

(a) In accordance with Section 17-104 of the Code, Provider (including any parent company, subsidiary, exclusive distributor or company affiliated with Provider) (1) confirms that it does not have, and agrees that it will not have at any time during the Term of this Contract, any investments, licenses, franchises, management agreements or operations in Northern Ireland; and (2) agrees that no product to be provided to the City under this Contract will originate in Northern Ireland, unless Provider has implemented the fair employment principles embodied in the MacBride Principles.

(b) In the performance of this Contract, Provider agrees that it will not use any suppliers, Subcontractors or subconsultants at any tier (1) who have (or whose parent, subsidiary, exclusive distributor or company affiliate have) any investments, licenses, franchises, management agreements or operations in Northern Ireland; or (2) who will provide products originating in Northern Ireland unless said supplier, Subcontractor or subconsultant has implemented the fair employment principles embodied in the MacBride Principles.

(c) Provider agrees to cooperate with the City’s Director of Finance in any manner which the said Director deems reasonable and necessary to carry out the Director’s responsibilities under Section 17-104 of the Code. Provider expressly understands and agrees that any false certification or representation in connection with this Section 14.6 and any failure to comply with the provisions of this Section 14.6 shall constitute a substantial breach of this Contract entitling the City to all rights and remedies provided in this Contract or otherwise available at law (including, but not limited to, Section 17-104 of the Code) or in equity.

14.7. **Limited English Proficiency.** Provider understands and agrees that no individual who is limited in English language proficiency shall be denied access to Services provided under this Contract on the basis of that limitation. As a condition of accepting and executing this Contract, Provider shall comply with all provisions of Title VI of the Civil Rights Act of 1964, Executive Order No. 12250 of the President of the United States, Mayor’s Executive Order No. 04-01, and all regulations promulgated thereunder, as the Act and regulations may be amended from time to

time, which are applicable (a) to Provider; (b) to the benefits, services, activities and programs provided in connection with this Contract; (c) to the City, or the Commonwealth; and (d) to the benefits, services, activities and programs of the City or of the Commonwealth, and if any funds under this Contract are provided by the federal government, which are applicable to the federal government and its benefits, services, activities and programs. Without limiting the applicability of the preceding sentence, Provider shall comply with 45 C.F.R. 80 et. seq. and all other regulations promulgated under Title VI of the Civil Rights Act of 1964, as they may be amended from time to time, which are applicable to the benefits, services, programs and activities provided by the City through contracts with outside contractors. If Provider will have any public-facing interactions under this Contract, Provider agrees to complete, on a yearly basis, the Annual Report Worksheet for Contractors and Grantees, to be provided by the Department.

14.8. Business, Corporate and Slavery Era Insurance Disclosure.

(a) In accordance with Section 17-104(2) of the Code, Provider shall complete an affidavit certifying and representing that Provider (including any parent company, subsidiary, exclusive distributor or company affiliated with Provider) has searched any and all records of Provider or any predecessor company regarding records of investments or profits from slavery or slaveholder insurance policies during the slavery era. The names of any slaves or slaveholders described in those records must be disclosed in the affidavit.

(b) Provider expressly understands and agrees that any false certification or representation in connection with this Section 14.8 and/or any failure to comply with the provisions of this Section 14.8 shall constitute a substantial breach of this Contract entitling the City to all rights and remedies provided in this Contract or otherwise available at law, including, but not limited to, Section 17-104 of the Code, or in equity and the Contract will be deemed voidable.

14.9. Terms and Conditions Relating to Protected Health Information.

(a) The City is a “hybrid entity” as defined in 45 CFR §164.103 and has designated certain portions of the City as “Covered Units” that perform covered functions and are subject to the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations (“HIPAA”). The Covered Units are listed on the City’s website at <http://www.phila.gov/privacypolicy/>. The City may, at any time, modify its list of Covered Units without providing notice outside of the website. Other parts of the City may also be subject to HIPAA to the extent they provide services to a Covered Unit or another covered entity involving the creation, receipt, maintenance, or transmission of protected health information.

(b) To meet its obligations under HIPAA, the City requires its business associates to agree to the Terms and Conditions Relating to Protected Health Information (“City PHI Terms”) posted on the City’s website (<https://www.phila.gov/privacypolicy/>). The City PHI Terms are hereby incorporated in this Section 14.9 as if fully set forth herein.

(c) Provider is subject to, and shall comply with, the City PHI Terms if: (i) the Contract contains language affirming that Provider is subject to the City PHI Terms or that Provider is the City’s business associate; or (ii) Provider, directly or through an agent or Subcontractor, performs functions or provides services that make it the City’s “business associate” as defined in 45 CFR § 160.103 (regardless of whether the Contract expressly affirms such relationship).

14.10. Chapter 17-1300 of The Philadelphia Code: Philadelphia 21st Century Minimum Wage and Benefits Standard.

(a) If Provider or any Subcontractor at any tier is an Employer subject to the requirements of Chapter 17-1300 of the Code, as that term is defined in Section 17-1302 and described in Section 17-1303 of the Code, then, absent a waiver, during the Initial Term and any Additional Term, in addition to any applicable state and federal requirements, it shall provide and cause any subcontractors at any tier that are also Employers to provide their respective covered Employees, as that term is defined in Section 17-1302 of the Code, with at least the minimum wage standard and minimum benefits standard and notice thereof, as required under Applicable Law. A summary of the current requirement is as follows:

(1) Term of Contract and Effective Date of Minimum Wage Rates.

(A) For contracts with a term of one year or less, the rate applicable on the effective date of the contract is the rate for the entire term of the contract.

(B) For renewals and amendments with a term of one year or less, the rate applicable on the effective date of the renewal or amendment is the rate for work performed during the term of the renewal or amendment and remains the rate throughout the term of the renewal or amendment.

(C) For contracts, renewals and amendments with a term longer than one year, the applicable rate on the effective date of the contract shall apply until the next June 30. On the next July 1, the new rate effective on that July 1 date shall apply during the period from July 1 through the following June 30. Each July 1, the rate may increase.

(2) Minimum Wage Rates. Absent a waiver, an Employer subject to Chapter 17-1300 shall pay each Employee an hourly wage, excluding benefits, equal to:

Effective Date between July 1, 2022, and June 30, 2023, \$15.00; and

Effective Date starting July 1, 2023, and thereafter, \$15.00 multiplied by the CPI Multiplier, provided that the minimum wage shall not be less than the previous year's minimum wage. The CPI Multiplier is calculated annually by the City's Director of Finance by dividing the most recently published Consumer Price Index for all Urban Consumers All Items Index for Philadelphia, Pennsylvania ("CPI-U"), by the most recently published CPI-U as of July 1, 2022. The current minimum hourly wage applicable to City contractors and subcontractors is posted on the City's website (at <https://philawx.phila.gov/econtract/> at the bottom of the page).

(3) Minimum Benefits. Absent a waiver, if the Employer is subject to Chapter 17-1300, to the extent the employer provides health benefits to any of its employees, the Employer shall 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 Employer. The Employer shall also provide to each covered Employee at least the minimum number of earned sick leave days required by Section 17-1305(2) of the Code.

(b) Absent a waiver, if Provider is subject to Chapter 17-1300, Provider shall promptly provide to the City all documents and information as the City may require verifying its compliance and that of all covered Employers providing Services under the Contract with the requirements of Chapter 17-1300. Each covered Employer shall notify each affected Employee what wages and benefits are required to be paid pursuant to Chapter 17-1300.

(c) Absent a waiver, if Provider is subject to Chapter 17-1300, Provider shall take such steps as are necessary to notify its covered Subcontractors of the requirements of this Section 14.10 and to cause such covered Subcontractors to notify lower-tier covered subcontractors of these requirements, including, without limitation, by incorporating this Section 14.10, with appropriate adjustments for the identity of the parties, in its Subcontracts with such covered Subcontractors.

(d) A Provider or Subcontractor at any tier subject to Chapter 17-1300 that fails to comply with these provisions may, after notice and a hearing before the Director of Finance or such other officer or agency designated by the Mayor, be suspended from receiving financial assistance from the City or from bidding on and/or participating in future City contracts, whether as a prime contractor or a subcontractor, for up to three (3) years. City Council may also initiate a similar suspension or debarment process. Such suspension or debarment shall be in addition to any of the other sanctions or remedies set forth in Chapter 17-1300 or this Contract.

(e) Without limiting the applicability of Articles XI (Events of Default) and XII (Remedies) above, the failure of a Provider or Subcontractor at any tier subject to Chapter 17-1300 to comply with these provisions shall constitute a substantial breach of this Contract entitling the City to all rights and remedies provided in this Contract or otherwise available at law or in equity.

(f) Provider's covered Employees shall be deemed third-party beneficiaries of Provider's representation, warranty, and covenant to the City under this Section 14.10 only, and the covered Employees of a Subcontractor at any tier that is also a covered Employer performing Services directly or indirectly under a Subcontract at any tier shall be deemed third-party beneficiaries of their Employer's representation, warranty, and covenant to Provider or such Subcontractors at any tier, as the case may be, under this Section 14.10.

(g) The City may grant a partial or total waiver of Chapter 17-1300 based on specific stipulated reasons elaborated in Section 17-1304 of the Code.

14.11. Chapter 17-1400 of The Philadelphia Code: Contributions and Other Mandatory Disclosures.

(a) Provider confirms on behalf of itself and its Subcontractor(s) that no contribution(s) have been made and agrees that none shall be made during the Term of this Contract by Provider, any Subcontractor, or any party from which a contribution can be attributed to Provider or Subcontractor that would render Provider or Subcontractor, as applicable, ineligible to apply for or enter into a Non-Competitively Bid Contract under the provisions of Sections 17-1404(1) and 17-1405 of the Code; and that disclosures made as part of its application to receive a Non-Competitively Bid Contract contain no material misstatements or omissions. Breach of this covenant shall constitute an Event of Default and render the Contract voidable at the City's option and shall make Provider liable for liquidated damages to the City in the amount of ten percent (10%) of the maximum payments to Provider allowed under the Contract, regardless whether actually paid. The City may exercise any or all of the remedies set forth in this Section 14.11, each of which may be pursued separately or in conjunction with such other remedies as the City in its sole discretion shall determine. No extension or indulgence granted by the City to Provider shall operate as a waiver of any of the City's rights in connection with this Contract. The rights and remedies of the City as described in this Section 14.11, and as described elsewhere in this Contract, shall not be exclusive and are in addition to any other rights or remedies available to the City under this Contract at law or in equity.

(b) Provider shall, during the Initial Term of the Contract, any Additional Term, and for one year thereafter, disclose any contribution of money or in-kind assistance that Provider, or any Consultant utilized by Provider in connection with this Contract, has made, or any individual or entity has made if such contributions can be attributed to Provider, or such Consultant pursuant to the attribution rules of Section 17-1405 of the Code, during such time period to a candidate for nomination or election to any elective City office or to an individual who holds such office, or to any political committee or party in the City, or to any group, committee or association organized in support of any such candidate, office holder, political committee or party, and the date and amount of such contribution.

(1) It shall not be a violation of this Section 14.11(b) if Provider fails to disclose a contribution made by a Consultant because Provider was unable to obtain such information from the Consultant, provided Provider demonstrates that it used reasonable efforts to attempt to obtain such information, including, at a minimum:

(A) Entering into a written agreement with the Consultant for such Consultant's services, before the filing of the application for the Contract, and before the Consultant communicated with a City department or office, official or employee on behalf of Provider;

(B) Including in such agreement a provision requiring the Consultant to provide Provider in a timely manner with all information required to be disclosed under the provisions of Chapter 17-1400 of the Code, and providing, in effect, that the agreement will be terminated by Provider if the Consultant fails to provide all required information on a timely basis and that no further payments, including payments owed for services performed prior to the date of termination, will be made to the Consultant by or on behalf of Provider as of the date of such termination;

(C) Communicating regularly with the Consultant concerning the Consultant's obligations to provide timely information to permit Provider to comply with the provisions of Chapter 17-1400 of the Code; and

(D) Invoking the termination provisions of the written agreement in a full and timely manner.

(c) Provider shall, during the Initial Term of the Contract, any Additional Term, and for one year thereafter, disclose the name and title of each City officer or employee who, during such time period, asked Provider, any officer, director or management employee of Provider, or any Person representing Provider, to give money, services, or any other thing of value (other than a Contribution as defined in Section 17-1401 of the Code) to any Person, and any payment of money, provision of services, or any other thing of value (other than such a Contribution) given to any Person in response to any such request. Provider shall also disclose the date of any such request, the amount requested, and the date and amount of any payment made in response to such request.

(d) Provider shall, during the Initial Term, and any Additional Term, of the Contract disclose the name and title of each City officer or employee who directly or indirectly advised Provider, any officer, director or management employee of Provider, or any Person representing Provider that a particular Person could be used by Provider to satisfy any goals established in the Contract for the participation of minority, women, disabled or disadvantaged business enterprises. Provider shall also disclose the date the advice was provided, and the name of such particular Person.

(e) The disclosures required by Sections 14.11(b), (c) and (d) shall be made utilizing the online disclosure update process through Provider's eContract Philly account which can be accessed on the City's website at <https://philawx.phila.gov/econtract/>. Such disclosures shall be timely made before the statutory deadline for the reporting period in which any disclosable event occurred. The disclosure reporting schedule is set forth in Section 17-1402(1)(e)(.5) of the Code. In the case of updates to political contributions made by Provider required by Section 14.11(b), the attribution rules of Section 17-1405 of the Code shall apply to determine what contributions must be disclosed under this provision as contributions of Provider or of a Consultant. Provider is advised that any individual who submits an update on eContract Philly must be an authorized signatory of Provider, authorized to make the required updated disclosures.

(f) Reports generated automatically by the online process for the updated disclosures required by Sections 14.11(b), (c) and (d) will be automatically forwarded to the President and Chief Clerk of Council, and to the Mayor, Director of Finance, Procurement Department and the Department of Records.

(g) Provider represents and covenants that the Provider's disclosures required by Section 17-1402(1)(b) of the Code contain no material misstatements or omissions. Breach of this representation and covenant shall render the contract voidable at the City's option and shall subject the Provider to liquidated damages to the City in the amount of ten percent (10%) of the total value of the payments to be made to Provider under the Contract. For contracts valued above the formal bidding threshold applicable under Section 17-1406(5)(a) or (b) of the Code, material misstatements or omissions in disclosures pursuant to 17-1402(1)(b)(.4) shall not constitute a breach of this representation and covenant unless Provider has made a material misstatement or omission of such disclosures in at least one additional City contract.

14.12. Gifts. Provider (including for purposes of this Section 14.12 its principals, officers, employees, and Subcontractors) shall comply with all Applicable Law restricting gifts to City officers and employees, including but not limited to 65 Pa. C.S. § 1103, Section 20-604 of the Code, and Executive Order 10-16 or any successor. Specifically:

(a) Pursuant to Executive Order 10-16, Provider shall not offer, make, or render any payment, subscription, advance, forbearance, rendering or deposit of money, services, entertainment, invitation, food, drink, travel, lodging or anything of value to any City officer or employee, unless consideration of equal or greater value is received, from any person who, at the time or within twelve (12) months preceding the time such a gift is received:

(1) Is seeking, or has sought, official action from the officer or employee;

(2) Has operations or activities regulated by the officer's or employee's agency, department, office, board or commission, or, in the case of gifts to members of the Mayor's Cabinet, has operations or activities that are regulated by any agency, department, 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 the officer or employee, which the officer or employee could substantially affect by official action.

(b) Additionally, Provider shall not permit any person that engages in lobbying on behalf of Provider for economic consideration, and is registered as such, pursuant to the requirements of Section 20-1202 of the Code or any other Applicable Law, including any attorney-

at-law while engaged in lobbying, to offer or give a gift of any value to any City officer or employee.

(c) Provider understands and agrees that if it offers anything of value to a City official or employee under circumstances where the receipt of such item would violate the provisions of Executive Order 10-16 or any other Applicable Law, Provider shall be subject to sanctions with respect to future City contracts. Such sanctions may range from disqualification from participation in a particular contract to debarment, depending on the nature of the violation.

(d) If solicited for gifts or gratuities by City officials or employees, Provider must report each such incident to the appropriate authorities, including, but not limited to, the City's Board of Ethics and Office of the Inspector General. All City employees offered gifts or gratuities in violation of Executive Order 10-16 must also report the gifts or offers to the appropriate authorities. Properly documented gifts to the City itself may be permissible as outlined in Section 7 of Executive Order 10-16.

14.13. Chapter 17-1900 of The Philadelphia Code: Equal Benefits Ordinance.

(a) Unless Provider is a government agency, this is a "Service Contract" as that term is defined in Section 17-1901(4) of the Code. If the Service Contract is in an amount in excess of \$250,000, then pursuant to Chapter 17-1900 of the Code, Provider shall, for any of its employees who reside in the City, or any of its employees who are non-residents subject to City wage tax under Section 19-1502(1)(b) of the Code, extend the same employment benefits that Provider extends to spouses of its employees to life partners of such employees. Provider certifies that (1) it is in compliance with the requirements of Chapter 17-1900; (2) its employees have been notified of the employment benefits available to life partners pursuant to Chapter 17-1900; and (3) such employment benefits are currently, or will be made available within the time required by Section 17-1902(2), or that Provider does not provide employment benefits to the spouses of married employees.

(b) Provider acknowledges and agrees that the following terms are included in this Contract:

(1) Provider shall notify its employees of the employment benefits available to life partners pursuant to Chapter 17-1900 of the Code.

(2) Noncompliance by Provider with the requirements of Chapter 17-1900 of the Code shall be a material breach of this Contract.

(3) Discrimination or retaliation by Provider against any employee on account of having claimed a violation of Chapter 17-1900 of the Code shall be a material breach of this Contract.

(4) In addition to any other rights and remedies available to the City pursuant to this Contract at law or in equity, a material breach of this Contract related to Chapter 17-1900 of the Code may result in the suspension or debarment of Provider from participating in City contracts for up to three (3) years.

(c) An overview offering guidance on the applicability of, and requirements placed on City contractors by Chapter 17-1900 of the Code is available on the City's website (at <https://philawx.phila.gov/econtract/> under the "About" link) (see "Minimum Wage and Equal Benefits Ordinances Impacting Some City Contractors").

14.14. **Appropriations Act.** If this Contract is funded in whole or part by federal grant funding appropriated by the Health Resources and Services Administration (HRSA), Provider shall comply with the Department of Defense and Labor, Health and Human Services, and Education Appropriations Act, 2019 and Continuing Appropriations Act, 2019, Division B, Pub. L. 115-245, as may be amended from time to time, which, among other things, restricts the use of federal grant funds for abortions and health benefits coverage that includes coverage of abortion.

ARTICLE XV: MISCELLANEOUS

15.1. **Governing Law.** This Contract shall be deemed to have been made in Philadelphia, Pennsylvania. This Contract and all disputes arising under this Contract shall be governed, interpreted, construed and determined in accordance with the laws of the Commonwealth, without giving effect to principles of Pennsylvania law concerning conflicts of laws.

15.2. **Amendments; Waiver.** This Contract may not be amended, supplemented, altered, modified or waived, in whole or in part, except by a written Amendment signed by the Parties. Except to the extent that the Parties may have otherwise agreed in writing in an Amendment, no waiver, whether express or implied, by either Party of any provision of this Contract shall be deemed: (a) to be a waiver by that Party of any other provision in this Contract; or (b) to be a waiver by that Party of any breach by the other Party of its obligations under this Contract. Any forbearance by a Party in seeking a remedy for any noncompliance or breach by the other Party shall not be deemed to be a waiver of rights and remedies with respect to such noncompliance or breach.

15.3. **Integration.** The Contract Documents forming this Contract, including the Provider Agreement and the General Provisions and the exhibits incorporated by reference therein, contain all the terms and conditions agreed upon by the Parties, constitute the entire agreement among the Parties pertaining to the subject matter hereof, and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, of the Parties (except to the extent specifically set forth herein). No other prior or contemporaneous agreements, covenants, representations or warranties, oral or otherwise, regarding the subject matter of this Contract shall be deemed to exist or to bind any Party or to vary any of the terms contained in this Contract.

15.4. **No Joint Venture.** The Parties do not intend to create, and nothing contained in this Contract shall be construed as creating, a joint venture arrangement or partnership between the City and Provider with respect to the Services or the Materials.

15.5. **No Third-Party Beneficiaries.** With the exception of the remedy provided to third-party beneficiaries by Section 14.10(f) above, nothing in this Contract, express or implied, is intended or shall be construed to confer upon or give to any Person, other than the Parties, any rights, remedies, or other benefits, including, but not limited to, third-party beneficiary rights, under or by reason of this Contract. This Contract shall not provide any third party with any remedy, claim, liability, reimbursement, cause of action or other right other than any such remedy, claim, etc. existing without reference to the term of or the existence of this Contract.

15.6. **Counterparts.** This Contract may be executed in one or more counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same instrument.

15.7. **Severability and Partial Invalidity.** The provisions of this Contract shall be severable. If any provision of this Contract or the application thereof for any reason or in any circumstance

shall to any extent be held to be invalid or unenforceable, the remaining provisions of this Contract and the application of such provision to Persons, or circumstances, other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each provision of this Contract shall be valid and enforceable to the fullest extent permitted by law.

15.8. **Survival.** Any and all provisions set forth in this Contract which, by its or their nature, would reasonably be expected to be performed after the termination of this Contract shall survive and be enforceable after such termination. Any and all liabilities, actual or contingent, which shall have arisen in connection with this Contract shall survive the expiration or earlier termination of this Contract, including, without limitation: Provider's representations, warranties, and covenants set forth in Article IV (Provider's Representations and Warranties) above; audit, inspection and record retention requirements set forth in Article VI (Audits; Inspection Rights; Records) above; Provider's obligation to indemnify, defend and hold harmless the City, its officers, employees and agents as set forth in Section 8.2 (Indemnification) above; the Parties' rights and obligations set forth in Article X (Ownership of Materials; Proprietary Information; Confidentiality) above; and Provider's continuing obligations related to Section 14.11 (Chapter 17-1400 of The Philadelphia Code: Contributions and Other Mandatory Disclosures) above.

15.9. **Determination of Disputes.** Any dispute arising between the City and Provider under or with respect to either Party's covenants, obligations, powers, rights or duties under this Contract shall be submitted to and decided by the Responsible Official or a designee. The Responsible Official or designee shall render and reduce to writing the decision and furnish a copy to Provider by notice under this Contract. In connection with any dispute under this Contract, the Responsible Official shall offer Provider an opportunity to offer evidence in support of its position concerning the subject matter of the dispute. This Section 15.9 shall not be construed to limit the benefit to the City of Articles XI (Events of Default) or XII (Remedies) above.

15.10. **Interpretation; Order of Precedence.** In the event of a conflict or inconsistency between the terms of the Contract Documents, the terms of the General Provisions shall govern, followed by the terms of the Provider Agreement, and lastly by any exhibit, attachment, or other document incorporated by reference into the Contract. The foregoing notwithstanding, the Provider Agreement or an Amendment may expressly supersede, create exception to, or otherwise modify the General Provisions by specific reference thereto in the Provider Agreement, an Amendment, or an exhibit to either specifically labeled for such purpose.

15.11. **Headings.** The titles, captions or headings of Articles, Sections and Exhibits or schedules in this Contract are inserted for convenience of reference only; do not in any way define, limit, describe or amplify the provisions of this Contract or the scope or intent of the provisions, and are not a part of this Contract.

15.12. **Statutes and Other Citations.** All statutory or other citations of law referenced in the Contract shall refer to the statute or citation referenced, as it may be amended or superseded from time to time.

15.13. **Days.** Any references to a number of days in this Contract shall mean calendar days unless this Contract specifies business days.

15.14. **Forum Selection Clause; Consent to Jurisdiction.** The Parties irrevocably consent and agree that any lawsuit, action, claim, or legal proceeding involving, directly or indirectly, any matter arising out of or related to this Contract, or the relationship created or evidenced thereby,

shall be brought exclusively in the United States District Court for the Eastern District of Pennsylvania or the Court of Common Pleas of Philadelphia County. It is the express intent of the Parties that jurisdiction over any lawsuit, action, claim, or legal proceeding shall lie exclusively in either of these two (2) forums. The Parties further irrevocably consent and agree not to raise any objection to any lawsuit, action, claim, or legal proceeding which is brought in either of these two (2) forums on grounds of venue or *forum non conveniens*, and the Parties expressly consent to the jurisdiction and venue of these two (2) forums. The Parties further agree that service of original process in any such lawsuit, action, claim, or legal proceeding may be duly effected by mailing a copy thereof, by certified mail, postage prepaid to the addresses specified in Section 5.1 (Notice) of the Provider Agreement.

15.15. **Waiver of Jury Trial.** Provider hereby waives trial by jury in any legal proceeding in which the City is a party and which involves, directly or indirectly, any matter (whether sounding in tort, contract or otherwise) in any way arising out of or related to this Contract or the relationship created or evidenced hereby. This provision is a material consideration upon which the City relied in entering into this Contract.

15.16. **Notices.** All notices, demands, requests, waivers, consents, approvals or other communications which are required or may be given under this Contract shall be in writing and shall be deemed to have been duly made (a) when received or refused if delivered by hand with receipt given or refused; (b) on the next business day if delivered by a nationally recognized overnight courier service (e.g., Federal Express or United Parcel Service); (c) on the date confirmed for delivery by electronic mail if delivered by electronic mail during business hours, otherwise at the beginning of the next business day; and (d) upon receipt or refusal of delivery if sent by certified or registered United States mail, return receipt requested. In each case, notices shall be sent to the addresses set forth in the section of the Provider Agreement entitled “Notice,” or to the address set forth in an Amendment, or to such other address as either Party may specify to the other by a notice complying with the terms of this Section 15.16.

APPENDIX B
(CONSISTING OF APPENDIX B-1 AND APPENDIX B-2)

CITY OF PHILADELPHIA
OFFICE OF ECONOMIC OPPORTUNITY
ANTIDISCRIMINATION POLICY-MINORITY, WOMAN AND DISABLED
OWNED BUSINESS ENTERPRISES

SPECIAL CONTRACT PROVISIONS, INSTRUCTIONS AND FORMS

CITY OF PHILADELPHIA
OFFICE OF ECONOMIC OPPORTUNITY
ANTIDISCRIMINATION POLICY-MINORITY, WOMAN AND DISABLED
OWNED BUSINESS ENTERPRISES
FORMS, INSTRUCTIONS AND SPECIAL CONTRACT PROVISIONS
Public Advocate for the City of Philadelphia]

APPENDIX B-1

[see following pages]

APPENDIX B-1

CITY OF PHILADELPHIA OFFICE OF ECONOMIC OPPORTUNITY ANTIDISCRIMINATION POLICY- MINORITY, WOMAN AND DISABLED OWNED BUSINESS ENTERPRISES FORMS, INSTRUCTIONS AND SPECIAL CONTRACT PROVISIONS (NON-COMPETITIVELY BID CONTRACTS)

Under the authority of Executive Order No. 03-12, the City of Philadelphia has established an antidiscrimination policy (“Policy”) relating to the participation of Minority (MBE), Woman (WBE) and Disabled (DSBE) Owned Business Enterprises in City contracts. Executive Order 03-12 is administered by the City’s Office of Economic Opportunity (“OEO”).

The purpose of this Policy is to provide equal opportunity for all businesses and to assure that City funds are not used, directly or indirectly, to promote, reinforce or perpetuate discriminatory practices. The City is committed to fostering an environment in which all businesses are free to participate in business opportunities without the impediments of discrimination and participate in all City contracts on an equitable basis. In accordance with the contracting requirements of the City, the City’s antidiscrimination policy is applicable to this Notice of Contracting Opportunity (hereinafter, “NOCO”).¹

For this NOCO, the City has not established ranges for the participation of MBEs, WBEs and/or DSBEs (collectively, “M/W/DSBEs”), but applicant is still required to exercise its Best and Good Faith Efforts to include M/W/DSBEs in its proposal. “Best and Good Faith Efforts” are those efforts, the scope, intensity and appropriateness of which are designed and performed to achieve meaningful participation of M/W/DSBEs in the work described by the NOCO. Applicant’s desire to self-perform all of the work does not excuse applicant from its exercise of Best and Good Faith Efforts. Solicitations and any commitments with M/W/DSBEs shall be designated on the Solicitation For Participation and Commitment Form. The submission of this form and any supporting documentation (more fully discussed below) is an element of responsiveness to the NOCO and failure to submit the required information will result in rejection of your proposal.

Applicant hereby verifies that all forms, information and documentation submitted to OEO are true and correct and is notified that the submission of false information by applicant is subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities which may include payment of a fine of at least \$1,000 and a term of imprisonment of not more than two years. Applicant also acknowledges that under 18 Pa.C.S. §4107.2 (a)(4) it is a felony in the third degree, punishable by a term of imprisonment of not more than seven years in addition to the payment of any fines or restitution, if, under any Contract awarded pursuant to this NOCO, applicant fraudulently obtains public moneys reserved for or allocated or available to minority business enterprises or women's business enterprises.

¹ The term “Notice of Contracting Opportunity,” shortened to the acronym “NOCO,” refers to the City’s contract solicitation documents and information posted on eContract Philly. Generally, these documents take the form of a Request for Proposals (RFP), Request for Qualifications (RFQ) or Request for Expression of Interest (RFI) and include any other document or information (for example, exhibits, appendices) related to the posting of the new contract opportunity.

A. M/W/DSBE PARTICIPATION

1. Only firms that are certified by an approved certifying agency² and identified in the OEO Certification Registry by the time of contract award will be counted for participation. An OEO Certification Registry is maintained by the OEO and is available online at www.phila.gov/OEO/directory. Firms owned and controlled by minority persons, women or disabled persons, which are certified as MBE, WBE, DSBE or DBE by an approved certifying agency may apply to the OEO for listing in its OEO Certification Registry.

2. Participation is counted only if the M/W/DSBE performs a commercially useful function (“CUF”). An M/W/DSBE performs a Commercially Useful Function when it performs a distinct element of a City Contract (as required by the services to be performed in accordance with the NOCO) which is worthy of the dollar amount of the M/W/DSBE’s participant agreement and the M/W/DSBE carries out its responsibilities by managing and supervising the services involved and actually self-performing at least twenty percent (20%) of the services of the participant agreement with its own employees. For suppliers, an M/W/DSBE performs a Commercially Useful Function when it is responsible for sourcing the material, negotiating price, determining quality and quantity, ordering the material and paying for it from its own funds. Commercial usefulness will be evaluated and determined by the OEO on a proposal by proposal basis as informed by prevailing industry standards and the M/W/DSBE’s NAIC codes.

3. In order to maximize opportunities for as many businesses as possible, a firm that is certified in two or more categories (e.g. MBE and WBE and DSBE or WBE and DSBE) will only be counted as either an MBE or WBE or DSBE. The firm will not be counted toward more than one category. Applicants will note with their submission which category, MBE or WBE or DSBE, is submitted for counting.

4. An MBE/WBE/DSBE submitting as the prime applicant is required, like all other applicants, to submit a proposal that is responsive to the Policy. In addition, the participation of an M/W/DSBE partner, as part of a joint venture created for this contract, may be counted only to the extent of the M/W/DSBE partner’s ownership interest in the joint venture in accordance with the following criteria:

- The MBE, WBE or DSBE partner(s) must be identified in the OEO Registry prior to contract award;
- The M/W/DSBE partner(s) must derive substantial benefit from the arrangement;
- The M/W/DSBE partner(s) must be substantially involved in all phases of the contract including planning, staffing and daily management;
- The business arrangement must be customary (i.e., each partner shares in the risk and profits of the joint venture commensurate with their ownership interest, contributes working capital and other resources, etc).

5. M/W/DSBE subcontractors must perform at least twenty percent (20%) of the total amount of work to be performed under the subcontract with their own employees.

² Approved certifying agencies are identified on the OEO webpage found at www.phila.gov/OEO. Applicant is strongly encouraged to search the Pennsylvania Unified Certification Program (“PaUCP”) Directory which offers a robust listing of DBEs; the PaUCP Directory is found at www.paucp.com.

6. In listing participation commitments on the Solicitation for Participation and Commitment Form, applicants are required to list a description of the services or supply effort, the dollar amount of the quotation, and percentage of the contract the participation represents. In calculating the percentage amount, applicants may apply the standard mathematical rules in rounding off numbers. The OEO reserves the right to request clarifying information from applicants in the event of an inconsistency or ambiguity in the Solicitation For Participation and Commitment Form.

B. RESPONSIVENESS

1. A proposal responsive to the Policy is one which contains documentary evidence of the applicant's exercise of Best and Good Faith Efforts. The applicant's Solicitation For Participation

and Commitment Form should include evidence of the M/W/DSBEs that have been solicited and any commitments to use M/W/DSBEs in performance of the contract. This form should be submitted with applicant's proposal but the City, at its sole discretion, may allow applicants to submit or amend the Solicitation For Participation and Commitment Form at any time prior to award. As an expression of Best and Good Faith Efforts, the Solicitation For Participation and Commitment Form must contain the following information:

- Documentation of all solicitations (regardless of whether commitments resulted therefrom) as well as all commitments made on the enclosed document entitled "Solicitation For Participation and Commitment Form". Applicants should only make actual solicitations of M/W/DSBEs whose services or materials are within the scope of this NOCO. Mass mailing of a general nature to M/W/DSBEs or similar methods will not be deemed solicitation, but rather will be treated as informational notification only. A reasonable period of time should be given to all solicited firms to ensure that they have sufficient time to adequately prepare their quotes/subproposals. The applicant's listing of a commitment with an M/W/DSBE constitutes a representation that the applicant has made a legally binding commitment to contract with such firm, upon receipt of a contract award from the City ("Contract Commitment").
- If the applicant has entered into a joint venture with an MBE, WBE and/or DSBE partner, the applicant is also required to submit along with the Solicitation For Participation and Commitment Form, a document entitled "Joint Venture Eligibility Information Form," available at OEO, for the City's review and approval of the joint venture arrangement.

2. In evaluating applicant's Best and Good Faith Efforts, OEO will review the scope, intensity and appropriateness of these efforts to ascertain whether they could reasonably be expected to achieve meaningful M/W/DSBE participation in this contract. Failure to submit the documentary evidence of Best and Good Faith Efforts will result in rejection of the proposal as nonresponsive, although the City, at its sole discretion, may allow applicants to submit or amend their submission at any time prior to award which may result in revision to applicant's participation commitments. The submission shall contain and discuss, at a minimum, the following:

- Provide reasons for not committing with any MBE/WBE/DSBEs that submitted a quote/subproposal, regardless of whether the quote/subproposal was solicited by applicant.

- Provide any additional evidence pertinent to applicant's conduct relating to this NOCO including sufficient evidence which demonstrates to the OEO that applicant has not engaged in discriminatory practices in the solicitation of and commitment with contract participants. In describing applicant's efforts to achieve meaningful M/W/DSBE participation, applicant may submit any corroborating documentation (e.g., copies of advertisements for participation).

The applicant's documentary evidence will be reviewed by the OEO to determine whether applicant exercised Best and Good Faith Efforts. Applicant's expressed desire to self-perform services with its own employees will not excuse applicant from exercising Best and Good Faith Efforts to include M/W/DSBEs in its proposal. OEO's review will include consideration of the following:

- Whether the applicant's actions were motivated by considerations of race or gender or disability. The OEO may investigate the applicant's contracting activities and business practices on similar public and private sector contracts. For example, if applicant rejects any M/W/DSBE based on price, applicant must fully document its reasons for the rejection and also demonstrate that applicant subjects non-M/W/DSBEs to the same pricing standards. OEO will investigate whether there was any attempt at good faith negotiation of price.
- Whether M/W/DSBEs were treated as equally as other businesses in the solicitation and commitment process. For example, the OEO will investigate whether M/W/DSBEs are given the same information, access to the plans and requirements of the contract and given adequate amount of time to prepare a quote/subproposal as others who were solicited by applicant. The OEO will also investigate whether M/W/DSBEs were accorded the same level of outreach as non-M/W/DSBEs, for example whether applicant short listed M/W/DSBEs for participation or solicited M/W/DSBEs at any pre-proposal meetings.
- Whether the applicant's contracting decisions were based upon policies which disparately affect M/W/DSBEs. OEO will ascertain whether applicant selected portions of work or material needs consistent with the capacity of available M/W/DSBE subcontractors and suppliers. OEO will consider whether applicant employed policies which facilitate the participation of M/W/DSBEs on City contracts such as segmentation of the contract or prompt payment practices.

3. After review of the applicant's submission and other information the OEO deems relevant to its evaluation, the OEO will make a written determination that will be forwarded to the awarding City Department.

- If the proposal is determined nonresponsive by the OEO, the applicant will be notified and may file a written appeal with the Executive Director of OEO within forty-eight (48) hours of the date of notification; the decision of the Executive Director shall be final.

C. RESPONSIBILITY

1. Upon award, the completed Solicitation For Participation and Commitment Form and accompanying documents regarding solicitation and commitments with MBEs, WBEs and DSBEs become part of the contract and the successful applicant is required to enter into legally binding agreement(s) ("M/W/DSBE Subcontract(s)") with its M/W/DSBE participants for the

services and in the dollar amount(s) and percentage(s) as so committed (the “Contract Commitment(s)”). M/W/DSBE percentage commitments are to be maintained throughout the term of the contract and shall apply to the total contract value (including amendments). Any change in commitment, including but not limited to substitutions for the listed firm(s), changes or reductions in the work and/or listed dollar/percentage amounts, must be pre-approved in writing by the OEO.

2. Unless otherwise specified in the M/W/DSBE Subcontract, the successful applicant shall, within five (5) business days after receipt of a payment from the City for services performed under the contract, deliver to its M/W/DSBE participants, their proportionate share of such payment for services performed (including the supply of materials). In connection with the payment of its M/W/DSBE participants, the successful applicant agrees to fully comply with the City’s payment reporting process which may include the use of electronic payment verification systems.

3. No privity of contract exists between the City and any M/W/DSBE participant identified in any contract resulting from this NOCO. The City does not intend to give or confer upon any such M/W/DSBE participant(s) any legal rights or remedies in connection with the subcontracted services pursuant to Executive Order 03-12 or by reason of any contract resulting from the NOCO except such rights or remedies that the M/W/DSBE subcontractor may seek as a private cause of action under any legally binding contract to which it may be a party.

4. If the OEO determines that the applicant has discriminated against a M/W/DSBE at any time during the term of the contract, the OEO may recommend to the Director of Finance the imposition of sanctions on the applicant including debarment of the applicant from submitting and/or participating in future City contracts for a period of up to three (3) years.

D. ACCESS TO INFORMATION

1. The OEO shall have the right to make site visits to the applicant’s place of business and/or job site and obtain documents and information from any applicant, subcontractor, supplier, manufacturer or contract participant that may be required in order to ascertain applicant’s responsiveness and responsibility.

2. Failure to cooperate with the OEO in its review may result in a recommendation to terminate the contract.

E. RECORDS AND REPORTS

1. The successful applicant shall maintain all books and records relating to its M/W/DSBE commitments (e.g. copies of quotations, subcontracts, joint venture agreement, correspondence, cancelled checks, invoices, telephone logs) for a period of at least three (3) years following acceptance of final payment from the City. These records shall be made available for inspection by the OEO and/or other appropriate City officials. The successful applicant agrees to submit reports and other documentation to the OEO as deemed necessary by the OEO to ascertain the successful applicant’s fulfillment of its M/W/DSBE commitments.

F. REMEDIES

1. The successful applicant's compliance with the requirements of Executive Order 03-12 is material to the contract. In the event the City determines that the successful applicant has failed to comply with any of the requirements of this Antidiscrimination Policy, including substantial compliance with any Contract Commitment, the City may, in addition to any other rights and remedies it may have under the Contract which includes termination of the Contract, exercise one or more of the following remedies which shall be deemed cumulative and concurrent:

- Debar successful applicant from proposing on and/or participating in any future contracts for a maximum period of three (3) years.
- Withhold from the contract payment(s) or any part thereof until corrective action is taken.

If corrective action is not taken to the satisfaction of OEO, the City may, without institution of a lawsuit, deduct money in an amount equal to the M/W/DSBE shortfall which amount shall be collected and considered not as a penalty but as liquidated damages for the successful applicant's failure to comply with the contract.

The remedies enumerated above are for the sole benefit of the City and City's failure to enforce any provision or the City's indulgence of any non-compliance with any provision hereunder, shall not operate as a waiver of any of the City's rights in connection with any contract resulting from this NOCO nor shall it give rise to actions by any third parties including identified M/W/DSBE participants.

APPENDIX B-2

SPECIAL ANTIDISCRIMINATION CONTRACT PROVISIONS, INSTRUCTIONS AND FORMS FOR APPLICANTS THAT ARE NONPROFIT ORGANIZATIONS

In response to the objectives of Executive Order 03-12, Applicants that are nonprofit organizations will be required to submit the following information to the Office of Economic Opportunity (OEO):

1. identification of the race, gender, disability status, and ethnic composition of the nonprofit Applicant's workforce;
2. identification of the race, gender, disability status, and ethnic composition of the nonprofit Applicant's board of directors or trustees;
3. a list of the nonprofit Applicant's five highest dollar value M/W/DSBE suppliers of products and services; and
4. the nonprofit Applicant's statement explaining its efforts to maintain a diverse workforce, a diverse board of directors and operate a fair and effective supplier diversity program.

Please use the attached form, "Diversity Report of Nonprofit Organizations," to submit this information, attaching additional pages as needed. This information should be submitted with the Applicant's proposal, but the City, at its sole discretion, may allow applicants to submit or amend this form at any time prior to award.

If a nonprofit organization is responding to a contract opportunity where ranges have been established for M/W/DSBE participation, in addition to the "Diversity Report of Nonprofit Organizations" form, a nonprofit Applicant must also complete and submit with its proposal the "Solicitation for Participation and Commitment" form included in this Appendix

APPENDIX B-2

SPECIAL ANTIDISCRIMINATION CONTRACT PROVISIONS, INSTRUCTIONS AND FORMS FOR APPLICANTS THAT ARE NONPROFIT ORGANIZATIONS

In response to the objectives of Executive Order 03-12, Applicants that are nonprofit organizations will be required to submit the following information to the Office of Economic Opportunity (OEO):

1. identification of the race, gender, disability status, and ethnic composition of the nonprofit Applicant's workforce;
2. identification of the race, gender, disability status, and ethnic composition of the nonprofit Applicant's board of directors or trustees;
3. a list of the nonprofit Applicant's five highest dollar value M/W/DSBE suppliers of products and services; and
4. the nonprofit Applicant's statement explaining its efforts to maintain a diverse workforce, a diverse board of directors and operate a fair and effective supplier diversity program.

Please use the attached form, "Diversity Report of Nonprofit Organizations," to submit this information, attaching additional pages as needed. This information should be submitted with the Applicant's Proposal, but the City, at its sole discretion, may allow applicants to submit or amend this form at any time prior to award.

[see following pages]

APPENDIX B-2
City of Philadelphia – Office of Economic Opportunity
Diversity Report of Nonprofit Organizations

1 DEMOGRAPHIC BREAKDOWN OF WORKFORCE								
Please provide the following demographic breakdown of your workforce by race/ethnicity/gender/ disability: <div style="text-align: right; padding-right: 10px;"> African American Asian/Pacific Islander Caucasian Disabled Hispanic Native American Other Total Number of Employees </div>				#	%	Males	#	%
						Females		
				2 DEMOGRAPHIC BREAKDOWN OF BOARD COMPOSITION				
Please provide the following demographic breakdown of your Board of Directors or Trustees by race/ethnicity/gender/disability: <div style="text-align: right; padding-right: 10px;"> African American Asian/Pacific Islander Caucasian Disabled Hispanic Native American Other Total Number of Directors or Trustees </div>				#	%	Males	#	%
						Females		
				3 SUPPLIER DIVERSITY				
Please check the appropriate box to indicate if you have a supplier diversity policy. If “no,” please explain on your letterhead.							Yes	No
If you maintain a supplier diversity policy, please attach a copy of your supplier diversity policy.								
Please identify below, your agency’s five (5) highest minority, woman, and/or disabled owned business suppliers of products or services, indicating your estimated annual expenditure(s) with the firm:								
Company Name		Company Address	Company Telephone	Minority	Woman	Disabled	Annual Expenditures	
1								
2								
3								
4								
5								
Signature:		Date:	Non-Profit Name:					

APPENDIX B-2
City of Philadelphia – Office of Economic Opportunity
SOLICITATION FOR PARTICIPATION AND COMMITMENT FORM

<i>SOLICITATION FOR PARTICIPATION AND COMMITMENT FORM (PROPOSAL)</i> <i>Minority (MBE), Women (WBE), and Disabled (DSBE) Business Enterprises</i>				<i>DEPARTMENT OF COMMERCE</i> <i>OFFICE OF ECONOMIC OPPORTUNITY (OEO)</i>				
RFP Title:			Name of Proposer:		Proposal Submission Date:			
List below ALL MBE/WBE/DSBEs that were solicited regardless of whether a commitment resulted therefrom. - Photocopy this form as necessary.								
<input type="checkbox"/> MBE	<input type="checkbox"/> WBE	<input type="checkbox"/> DSBE	Work to be Performed	Date Solicited		Commitment Made		Give Reason(s) If No Commitment
Company Name:				By Phone	By Mail	Yes <i>(If Yes, give date)</i>	NO	
Company Address:								
Contact Person:				Quote Received		Amount Committed To		
Telephone Number:				YES	NO	Dollar Amount:		
Fax #				\$				
OEO CERTIFICATION #						Percent of Total Proposal: %		
<input type="checkbox"/> MBE	<input type="checkbox"/> WBE	<input type="checkbox"/> DSBE	Work to be Performed	Date Solicited		Commitment Made		Give Reason(s) If No Commitment
Company Name:				By Phone	By Mail	Yes <i>(If Yes, give date)</i>	NO	
Company Address:								
Contact Person:				Quote Received		Amount Committed To		
Telephone Number:				YES	NO	Dollar Amount:		
Fax #				\$				
OEO CERTIFICATION #						Percent of Total Proposal: %		
<input type="checkbox"/> MBE	<input type="checkbox"/> WBE	<input type="checkbox"/> DSBE	Work to be Performed	Date Solicited		Commitment Made		Give Reason(s) If No Commitment
Company Name:				By Phone	By Mail	Yes <i>(If Yes, give date)</i>	NO	
Company Address:								
Contact Person:				Quote Received		Amount Committed To		
Telephone Number:				YES	NO	Dollar Amount:		
Fax #				\$				
OEO CERTIFICATION #						Percent of Total Proposal: %		

APPENDIX C

**CITY OF PHILADELPHIA TAX AND REGULATORY
STATUS AND CLEARANCE STATEMENT
FOR APPLICANTS**

[see following page]

APPENDIX C
**CITY OF PHILADELPHIA TAX AND REGULATORY
STATUS AND CLEARANCE STATEMENT
FOR APPLICANTS**

THIS IS A CONFIDENTIAL TAX DOCUMENT NOT FOR PUBLIC DISCLOSURE

This form must be completed and returned with Applicant's proposal in order for Applicant to be eligible for award of a contract with the City. Failure to return this form will disqualify Applicant's proposal from further consideration by the contracting department. Please provide the information requested in the table, check the appropriate certification option and sign below:

Please ENSURE that the Applicant Name and EIN on this form is IDENTICAL with your eContract Philly registration.

Applicant Name		
Contact Name and Title		
Street Address		
City, State, Zip Code		
Phone Number		
Federal Employer Identification Number or Social Security Number:		
Philadelphia Business Income and Receipts Tax Account Number (f/k/a Business Privilege Tax) (if none, state "none")*		
Commercial Activity License Number (f/k/a Business Privilege License) (if none, state "none")*		

_____ I certify that the Applicant named above has all required licenses and permits and is current, or has made satisfactory arrangements with the City to become current with respect to the payment of City taxes or other indebtedness owed to the City (including, but not limited to, taxes collected by the City on behalf of the School District of Philadelphia), and is not in violation, or has made satisfactory arrangements to cure any violation, or other regulatory provisions applicable to Applicant contained in The Philadelphia Code.

_____ I certify that the Applicant named above does not currently do business, or otherwise have an economic presence in Philadelphia. If Applicant is awarded a contract with the City, it promptly will take all steps necessary to bring it into compliance with the City's tax and other regulatory requirements.

Authorized Signature

Date

Print Name and Title

* You can apply for a City of Philadelphia Business Income and Receipts Tax Account Number or a Commercial Activity License on line after you have registered your business on the City's Business Services website located at <https://www.phila.gov/services/business-self-employment/register-a-business/> Click on "Register" or "Register Now" to register your business.

APPENDIX D

LOCAL BUSINESS ENTITY OR LOCAL IMPACT CERTIFICATION

[see following pages]

APPENDIX D
LOCAL BUSINESS ENTITY OR LOCAL IMPACT CERTIFICATION

Instructions: Applicants who seek as a positive factor in the City's consideration of their application that they meet the Local Business Entity or Local Impact criteria as provided in Mayoral Executive Order No. 04-12 should complete this Certification and return it with their application. Applicants providing this Certification should also include in a separate section of their application labeled "Local Business Entity or Local Impact Certification," a statement that the Applicant believes it has met the Local Business Entity or Local Impact criteria "as set forth in the attached Local Business Entity or Local Impact Certification." Check all appropriate certification options that are applicable to Applicant and sign below:

Applicant Name: _____

Local Business Entity Certification

___ I certify that the Applicant named above is a Local Business Entity because Applicant complies with the following criteria set forth in Section 17-109(3)(b) of the Philadelphia Code:

I. During the preceding 12 months, Applicant has filed a Business Income and Receipts Tax return with the City establishing that Applicant conducted business within the City within the calendar year preceding the filing of the return; and

II. During the preceding 18 months, Applicant:

A. Has continuously maintained a valid Commercial Activity License and all other licenses and permits necessary to conduct business with the City;

B. Has continuously occupied and staffed an office within the City, where business is conducted; and

(1) Applicant's principal place of business is located in the City; or

(2) Applicant continuously satisfied at least two of the three following requirements (*Check those applicable to Applicant*):

___ (a) More than 60% of Applicant's full-time employees are reported as Philadelphia Residents on the City of Philadelphia Annual Reconciliation of Employer Wage Tax;

___ (b) More than 50% of Applicant's full-time employees work in the City at least 60% of the time; or

___ (c) More than 75% of Applicant's gross receipts are reported on Applicant's Business and Income Receipt Tax return as Philadelphia receipts.

Local Impact Certification

___ I certify that in the performance of a contract resulting from this RFP, the Applicant named above will employ City residents.

___ I certify that in the performance of a contract resulting from this RFP, the Applicant will perform the work in the City.

Authorized Signature

Date

Print Name and Title

APPENDIX E

GUIDELINES FOR

OUTSIDE COUNSEL

[see following pages]

CITY OF PHILADELPHIA
DEPARTMENT GUIDELINES FOR OUTSIDE COUNSEL

The following procedures (the “Guidelines”) are to be followed by counsel for all matters funded by the City of Philadelphia (the “City”), subject to and to the extent permitted by the Pennsylvania Rules of Professional Conduct and other applicable law, unless otherwise advised by a contact person from the Department responsible for managing the representation (the “Department”).

I. MANAGEMENT BY DEPARTMENT

A Department official will be designated to manage your work relating to the specific case or project (the "Responsible Official"). You are expected to follow the Responsible Official's direction and keep him or her informed of all developments that arise as well as consult with him or her with respect to strategy and tactics.

II. STAFFING

The Department will generally approve payment for only one (1) attorney at a time from your firm to perform each task or function required in connection with a representation. Approval for multiple staffing at the same time of any task or function should be obtained in advance from the Responsible Official.

If lead or other counsel is designated by name in your engagement letter/contract, you must obtain the approval of the Responsible Official prior to allowing any other attorney to work on a representation.

III. CONFIDENTIALITY

The Provider Agreement to which these Guidelines are attached is for the express purpose of engaging legal counsel and, as such, shall be confidential and subject to the protection of the attorney-client privilege under the Pennsylvania Rules of Professional Conduct, Rule 1.6. The parties further anticipate that they will disclose certain confidential and proprietary information to each other in the course of this representation. You agree not to disclose such information without the City's informed prior written authorization to anyone other than the persons working on this specific matter. You shall use this information solely for the purposes of the representation and for no other purpose whatsoever.

IV. CORRESPONDENCE, PLEADINGS AND DOCUMENT PREPARATION

A. Correspondence

Copy the Responsible Official on all correspondence sent and received by the firm.

B. Pleadings

Send the Responsible Official copies of all pleadings received on our behalf by your firm from third parties, together with information regarding response dates, if applicable. Pleadings received by you from third parties which have immediate response dates should be hand delivered or faxed to the Responsible Official to permit both the Responsible Official and your firm sufficient time to respond. Obtain the Responsible Official's authorization prior to preparing pleadings and documents. All pleadings and documents shall be approved by the Responsible Official prior to filing. Advise the Responsible Official of the filing and service date(s) and provide him or her with a filed (date-stamped) copy of all pleadings.

C. Client Communications

Copy the Responsible Official on all written client communications and the Responsible Official may elect to be present (in person or by telephone) in all other client communications, unless otherwise authorized by the Responsible Official.

V. DISCOVERY

The prior approval of the Responsible Official is required for all discovery. The Responsible Official or a designee, with the approval of the City of Philadelphia Law Department (“Law Department”), will make all arrangements for interviews of City employees in connection with a legal matter. City personnel should generally not be contacted directly without the prior approval of their respective department head and the Law Department.

Document requests, interrogatories and other demands for discovery by opposing parties should be forwarded to the Responsible Official upon receipt by you, as it may be preferable to cooperatively develop the necessary responses together. When sending such requests for discovery, you should indicate any objections you may have to the discovery, as well as the response date, as indicated above.

The Law Department will often want to have someone from its office present during the deposition of City employees. Advise the Responsible Official of the date of the deposition as soon as possible or at least in a sufficient amount of time in order for the Responsible Official to provide the opportunity for a Law Department attorney to attend the deposition. The Law Department’s knowledge of City activities can be beneficial to you in preparing the witness and in the course of questioning by opposing parties. It is expected that only one lawyer from your firm will be present at these depositions, except with prior approval by the Responsible Official.

Do not waive the right of City personnel to review and sign their depositions, and do not enter into any stipulation to the contrary. When City documents are to be attached to such a deposition, the City may request a protective order to ensure that the confidential nature of the information is properly maintained.

Requests and stipulations for extensions of time to respond to discovery are to be negotiated and handled by your firm. Do not grant extensions of time to opposing parties when the Department is seeking discovery without the prior approval of the Responsible Official. The Responsible Official will advise you when extensions are needed in order to timely respond to requests made by opposing parties.

VI. LEGAL RESEARCH

The Provider shall bear all costs for legal research at its own expense. If Provider cannot bear such costs, it may request Westlaw login credentials from the Law Department by contacting its Assistant Director of Administration:

Bonny C. Lynch
Assistant Director of Administration
1515 Arch Street
Philadelphia, PA 19102
215-683-5242
Bonny.Lynch@phila.gov

VII. STATUS REPORTS

Keep the Responsible Official informed on the status of cases by advising in advance of all relevant dates, including in the case of litigation, dates for hearings, discovery and trial, and in the case of other types of legal matters, any negotiation or drafting sessions or other meetings.

In those instances when someone from the City is not present at a meeting, hearing, deposition or trial, you shall update the Responsible Official by telephone, when appropriate, and promptly provide a written report following the event.

VIII. NEGOTIATIONS, SETTLEMENTS AND APPEALS

The decision to try, settle or appeal a case rests with the City. Under no circumstances should your firm agree to settle a case on the City's behalf, or release any substantial right, or otherwise commit the City on any major issue without the prior approval of the Responsible Official.

When your firm has been authorized to engage in settlement discussions or other negotiations involving substantial issues, keep the Responsible Official fully and timely advised with written reports, and where appropriate, telephone reports.

IX. GENERAL CASE MANAGEMENT PRINCIPLES

A. Personnel

Avoid multiple representation at meetings, depositions, trials, etc. (unless otherwise preapproved); overstaffing (unauthorized persons are not permitted to work on a legal matter unless preapproved); rotating City assignments among attorneys unfamiliar with the assigned legal matter; or using City assignments to train your staff.

B. Media Policy

Do not discuss with the media (nor provide any information to the media regarding) any legal matter you are handling on behalf of the City without prior consultation with the Responsible Official and the City Solicitor or the City's Press Secretary.

C. Inter-Office Conferencing

Keep inter-office conferencing to the minimum necessary for personnel to effectively and efficiently manage a legal matter.

X. DIVERSITY

Executive Orders 03-12 establishes City policies and requirements relating to the meaningful participation of businesses owned by minority persons (MBE), women (WBE) and disabled persons (DSBE) in City contracts and the employment of a diverse workforce in connection with those contracts. The purpose of these policies is to combat historical discrimination on the basis of race, gender and disability, to provide equal opportunity for all businesses and individuals and to assure that City funds are not used directly or indirectly to promote, reinforce or perpetuate discriminatory practices. As a provider of services to the City, your firm is subject to these policies. As a demonstration of your shared commitment to these policies, you are encouraged to select lead counsel from a diverse pool of candidates within your firm and to consider M/W/DSBEs when subcontracting appropriate portions of these services.

XI. BILLING PRACTICES

A. Expenses

Obtain the prior approval of the Responsible Official with respect to all major disbursements made by your firm on the City's behalf, including expenses for outside investigators, expert witnesses, substantial duplication of documents and travel expenses. Estimates of all such expenses should be included in the budget, if one is requested by the Responsible Official. Rates for the personnel performing the subject Services also should not change during the pendency of the matter except with the Responsible Official's prior approval.

1. Expenses for meals and in-City travel for Philadelphia- based outside counsel will not be reimbursed by the City and attorneys may not bill for in-City travel time.
2. Expenses for out-of-town travel for which you expect the City to pay must be preapproved by the Responsible Official.
3. Generally, the Department will reimburse expenses incurred in connection with the Services only at cost; that is, the firm may not bill its expenses at a marked-up amount.
4. The City will not reimburse for expenses in excess of the rates shown below unless approved in advance by the Responsible Official.
5. The City does not reimburse expenses for legal research. If necessary, Provider may request Westlaw access from the Law Department (see Section V. Legal Research above).

EXPENSE

MAXIMUM

DESCRIPTION

ALLOWABLE CHARGE

COPIES

Photocopy (in house)	\$.15 per page
Document Binding	\$1.00 per booklet
Photocopy (outside service)	Invoice amount

MAIL/DELIVERY SERVICE

Federal Express, Express Mail, Other	Invoice amount (must Express
Delivery Service	apply discount, if available)
In-House Hand Delivery	No charge within City
Outside Hand Delivery	Invoice amount

COMMUNICATIONS

Long Distance Calls	Invoice amount
Calls From Car/Cellular Phones	Invoice amount Fax:
Incoming	No charge
Outgoing	\$1.00 per page
Postage	Actual amount

RESEARCH/DATA MANAGEMENT

Online Data Base Usage	Invoice amount (Westlaw, Lexis, Dialog, etc.) not reimbursed – if necessary, Provider must use the City’s provided Westlaw Password
Computer Usage (Litigation Support)	\$25.00 per hour
Reports, Searches, Certificates	Invoice amount
Filing, Recordation Fees	Invoice amount
Depositions, Transcripts, Service of Process	Invoice amount

TRAVEL

Travel (non-auto)	Invoice amount
Auto:	
Personal Car	\$.575 per mile
Firm Car	\$.575 per mile
Rental (economy car)	Invoice amount

OTHER

Staff Overtime	\$25.00 per hour
Outside Professional Services	Invoice amount
Other Misc. Cash Costs Incurred	Invoice amount on the City's Behalf

B. Billing Rates and Statements

All billings by your firm to the City for Services rendered and expenses incurred are to be fully itemized, sent to the Responsible Official monthly and should refer to the City Docket or matter number or description noted in the retention letter or contract. Each statement must set forth the time, by item, expended by each attorney and paralegal in your office, together with their hourly rates and a description of the work performed for each unit of time. Each disbursement shall be documented and appropriate receipts and justification maintained in your files, as well as a copy of same being attached to the firm's monthly billing.

Substantive materials pertaining to the legal matter to which the firm has been assigned should not be included with billing materials. Each legal matter should be billed on a separate invoice. Fees and disbursements are to be itemized separately on each invoice.

C. Unacceptable Billing Practices

The following are examples of what the City deems unacceptable billing practices:

1. Excessive, repetitive, unnecessary, duplicative revisions of pleadings, documents, correspondence, etc.
2. Unnecessarily rotating assignments to attorneys unfamiliar with the assignment.

3. Excessive inter-office conferencing.
4. Billing the City for administrative or ministerial tasks that are properly charged to the firm's overhead.
5. Billing for secretarial, word processing or other clerical time (unless preapproved by the Responsible Official).

XII. CONFLICTS OF INTEREST

By entering into the Provider Agreement to which these Guidelines are attached, you hereby represent and warrant that, having already performed an adequate and thorough inquiry, you have determined in your professional judgment that there are no actual or potential concurrent conflicts of interest with respect to this representation, unless otherwise disclosed with the City's prior approval. You shall promptly disclose to the City any actual or potential conflicts of interest that may arise during the course of this representation, and the City may thereafter, in its sole discretion, elect to either terminate the underlying Provider Agreement in accordance with the General Provisions, or waive any such actual or potential conflict and continue the representation. Should the City elect to continue the representation, you shall put into place an appropriate and effective firewall/screen for all persons assisting in this representation and shall submit a written description of the firewall/screen for the City's approval. The following procedures are to be followed by outside counsel unless otherwise advised by the Law Department attorney responsible for managing the representation.