



**REQUEST FOR PROPOSALS
for a
Callowhill-Chinatown North Strategic Plan
for the
CITY OF PHILADELPHIA**

Issued by:
CITY OF PHILADELPHIA ("City")
Philadelphia City Planning Commission

All Proposals must be submitted electronically through the eContract Philly online application process at www.phila.gov/contracts, choose eContract Philly. Applicants who have failed to file complete applications through the eContract Philly online application process will not be considered for the contract.

Proposals must be received no later than 5:00 p.m. Philadelphia, PA, local time, on Thursday, 10 November 2011.

Michael A. Nutter, Mayor
Alan Greenberger, FAIA, Deputy Mayor of Economic Development
Gary J. Jastrzab, Executive Director, Philadelphia City Planning Commission

Table of Contents

- I. Project Overview
 - A. Introduction / Statement of Purpose
 - B. Department Overview
 - C. Project Background
 - D. Request for Proposals
 - E. General Disclaimer of the City of Philadelphia

- II. Scope of Work
 - A. Project Details
 - B. Services and Tangible Work Products
 - C. Milestones
 - D. Timetable
 - E. Hours of Work
 - F. Monitoring; Security
 - G. Reporting Requirements
 - H. Specific Performance Standards
 - I. Cost Proposal
 - J. Organization and Personnel Requirements
 - K. Resources and Technology
 - L. Available Information

- III. Proposal Format, Content, and Submission Requirements; Selection Process
 - A. Proposal Format
 - B. Notice to Applicants to State Requested Exceptions to Contract Terms in Proposal
 - C. Office of Economic Opportunity – Participation Commitment
 - D. The Philadelphia Tax Status and Clearance Statement
 - E. Mandatory Online Application Requirements
 - F. Selection Process

- IV. Proposal Administration
 - A. Procurement Schedule
 - B. Questions Relating to the RFP
 - C. Interviews; Presentations
 - D. Term of Contract

- V. General Rules Governing RFPs/Proposals; Reservation of Rights, Confidentiality and Public Disclosure
 - A. Revisions to RFP
 - B. City Employee Conflict Provision
 - C. Proposal Binding
 - D. Contract Preparation Fee
 - E. Reservation of Rights
 - F. Confidentiality and Public Disclosure

Crr gpf legu

Appendix A – General Provisions

Appendix B – Office of Economic Opportunity, Antidiscrimination Policy – Minority, Woman and Disabled Owned Business Enterprises Solicitation for Participation and Commitment Form

Appendix C – City of Philadelphia Tax Status and Clearance Statement

Appendix D – City of Philadelphia Cost Principles

I. Project Overview

1. Introduction / Statement of Purpose

The general goals of the Callowhill-Chinatown North Strategic Plan are to better incorporate the Callowhill-Chinatown North area with its surrounding neighborhoods, and to attract investment to a transitioning area of Center City with a strategic approach that stresses clear end products and consensus building between community members, public agencies, and the private sector. The study will address:

- A. Redevelopment of vacant and underutilized properties to strengthen the Callowhill-Chinatown North community and its surrounding neighborhoods
- B. Connections to neighboring communities and regional assets such as the Delaware Waterfront, Avenue of the Arts and Pennsylvania Convention Center
- C. Reuse options for significant, vacant buildings
- D. Vehicular traffic needs and existing transit infrastructure
- E. Public investments needed to facilitate development
- F. Varying community interests
- G. Market conditions for industrial, commercial, and housing sectors
- H. Affordable housing opportunities
- I. Commercial development
- J. Options to integrate future recreational uses of the Reading Viaduct with the surrounding communities
- K. Land use and zoning changes
- L. Sustainable development and design

2. Department Overview

The Philadelphia City Planning Commission (PCPC) is responsible for guiding the orderly growth and development of the City of Philadelphia. The 1951 *Home Rule Charter* defines the powers and duties of the Commission to include the preparation of a comprehensive plan and its modifications; the capital program and budget; proposed zoning ordinances and amendments; and, regulations concerning the subdivision of land.

The Home Rule Charter also specifies that the City Planning Commission be composed of nine members. In addition to the Managing Director, Director of Finance, and Director of Commerce, who serve as ex-officio members, the Mayor appoints six individuals to serve on the Commission. Of the six appointed members, one must be an architect, one must be an urban planner, one must be a traffic engineer, one must be an attorney experienced in land use issues, and two must be representatives of Philadelphia community groups that participate in land use issues.

The staff of PCPC has several divisions. The Community Planning Division contributes to the comprehensive plans done by the office and steers the more-detailed neighborhood planning. Planners in this division act as liasons between various community groups and PCPC, providing expertise and advice for development and coordinating projects that involve multiple City agencies. Planners in the Community Planning Division are assigned to geographic areas. The

project manager for the Callowhill-Chinatown North Strategic Plan will be Laura M. Spina, the Center City Planner.

3. Project Background

The Callowhill neighborhood stretches from the Delaware River to Broad Street, between Vine and Spring Garden Streets. Like the Old City neighborhood to the south, Callowhill developed from the late 18th and early 19th centuries, with residences and industrial buildings tied to waterfront commerce on the eastern end, and late 19th century industrial complexes to the west. The neighborhood was the home to a variety of industries, such as automobile manufacturing (especially along North Broad Street), printing, and textiles.

The Reading Railroad viaduct dominates the western portion of the district. This V-shaped, elevated railway snakes through the neighborhood from Fairmount Avenue down to Vine Street, with a spur that leads to Broad Street. Used for both freight (carrying goods and cargo from the large industrial buildings on Broad Street and the west) and passengers (heading to the Reading Terminal on Market Street), the viaduct is a unique remnant of the area's industrial past.

The landscape of the Callowhill area changed dramatically in the mid-20th century. The construction of Interstate 95 demolished much of the early 19th century properties in the east, virtually cutting off the area from the waterfront. Interstate 676 forged a channel between the Callowhill neighborhood and those to the south, with a tangled web of highway ramps at the southeastern corner of the neighborhood. These highways isolated the Callowhill area, making this neighborhood disconnected from the urban fabric of the city especially from the commercial uses along the Delaware River and the intact neighborhoods of Old City and Chinatown.

The City saw this easy access to highways as a transformative opportunity for the Callowhill area. In 1967, it created the Callowhill Industrial District with the hope of luring new industrial companies. East of 8th Street, the City removed many of the smaller streets and demolished buildings to create mega-blocks to help facilitate the larger footprints needed by new manufactories.

The Industrial District met with moderate success. Many of the companies that settled in the area catered to the Center City market, especially food-centered industries tied to Chinatown. However, much of the land that was created became nothing more than parking lots, accommodating at least 2,500 cars between 2nd Street and 9th Street. The industrial businesses that opened in the area in the 1970s are slowly relocating or going out of business. Many of the uses moving into the area are not heavy industrial in use, but specialize in wholesale trade, cater to the surrounding neighborhoods or provide medical services that are more compatible to residential uses.

The middle section of the neighborhood has seen an influx of new residential development, mainly for the growing Chinatown community, and the area is often referred to as "Chinatown North." Many of the properties to the west have been demolished to create parking lots and historic industrial buildings have been converted to loft residences providing a mix of uses throughout the neighborhood. Just to the south of Vine Street, the construction of the

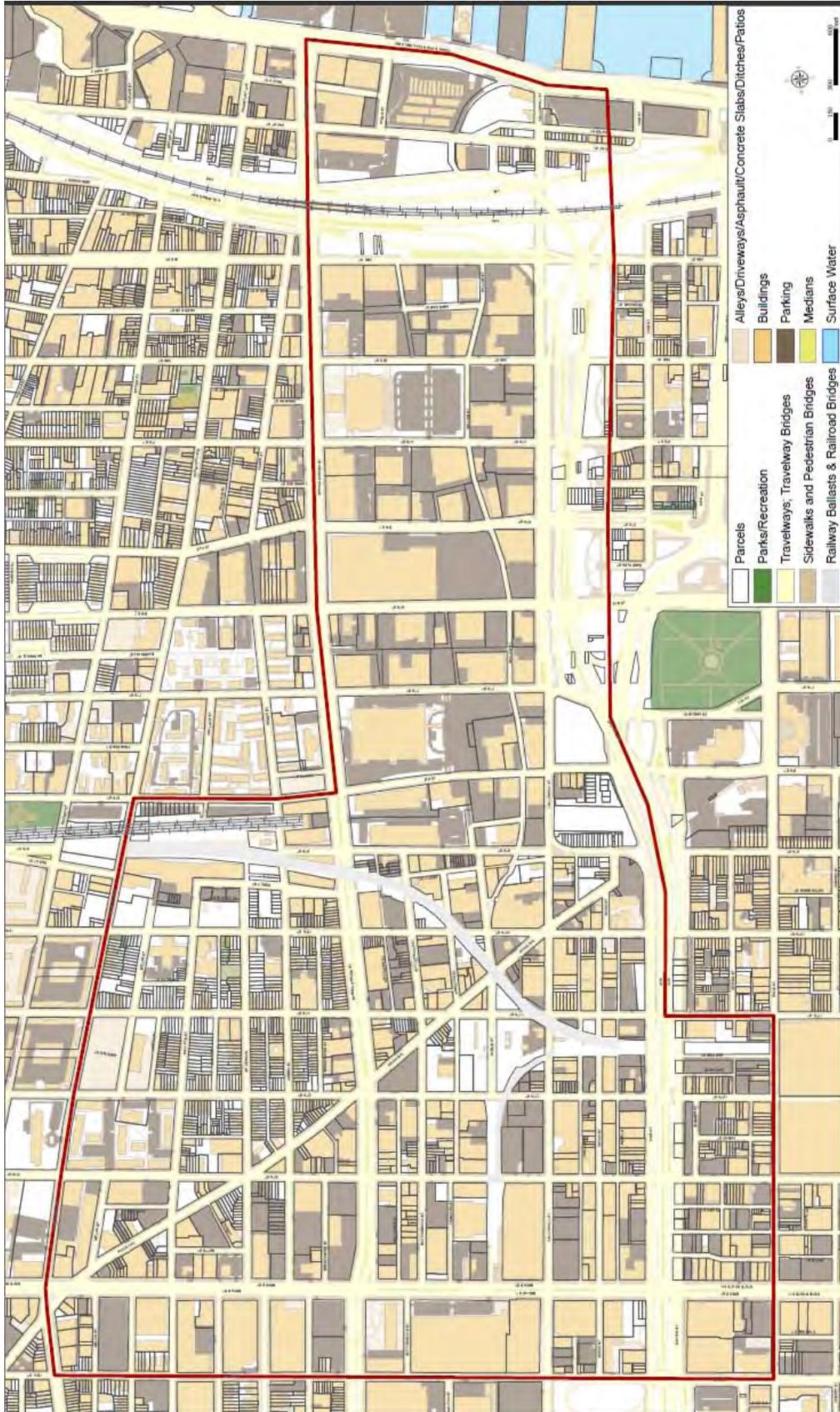
Pennsylvania Convention Center has spurred a rise of visitors and tourists to the area.

The Callowhill-Chinatown North neighborhood is an area with a variety of interests.

Stakeholders include:

- City of Philadelphia – Planning Commission (PCPC), Streets Department, Mayors Office of Transportation and Utilities (MOTU), Redevelopment Authority (RDA), Dept. of Parks & Recreation, Philadelphia Industrial Development Corp. (PIDC), Commerce Department, Water Department (PWD)
- Transportation Agencies – PennDOT, SEPTA
- Community Groups – Callowhill Neighborhood Association, Philadelphia Chinatown Development Corp, Asian Americans United, Chinatown Town Watch, Northern Liberties, West Poplar NAC, Old City Civic Association, Rivers Edge Community Association, Logan Square Neighborhood Association, Spring Garden Civic Association
- Other organizations – Delaware River Waterfront Corporation, Center City District, Avenue of the Arts Inc, Reading Viaduct Project, Pennsylvania Environmental Council
- Elected Officials – Councilman Frank DiCicco, Councilman Darrell Clarke, State Rep. Mike O’Brien, State Rep. Curtis Thomas, State Senator Larry Farnese

Below is the map of the proposed Callowhill-Chinatown North Strategic Plan.



4. Request for Proposals

The Philadelphia City Planning Commission (PCPC) is requesting proposals from various urban planning firms to develop the Callowhill-Chinatown North Strategic Plan. The teams responding to this RFP should include members that have experience in urban planning, transportation planning, historic preservation, sustainability planning and landscape design.

5. General Disclaimer of the City

This RFP does not commit the City of Philadelphia to award a contract. This RFP and the process it describes are proprietary to the City and are for the sole and exclusive benefit of the City. 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 City and may be subject to public disclosure by the City, or any authorized agent of the City.

II. Scope of Work

This Section II states requirements for the project, including the services and the tangible work products to be delivered, and the tasks the Department has identified as necessary to meet those requirements. The Department reserves the right, however, to modify specific requirements, based on changed circumstances (such as a change in business or technical environments), the proposal selection process, and 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 II.

1. Project Details

The tasks envisioned for this study are outlined below. Proposers may suggest, as part of their submission and presentation, different approaches, refinements, and improvements to the tasks provided that they are in keeping with the overall purpose of the study. We anticipate this study is likely to take ten (10) months to complete from the execution of the contract with a selected consultant team, but respondents should include time to complete each task and the study as a whole with their proposal.

Task 1: Existing Conditions Report

- A. The consultant shall obtain and review all existing information regarding the study area to include information provided by the Philadelphia City Planning Commission and other City agencies.
- B. The consultants will conduct an existing conditions report that will identify physical and economic characteristics of the area including:
 - a. Property ownership;
 - b. Current zoning and allowed uses and activity;
 - c. Infrastructure;

- d. Historic resources, designated and potential;
 - e. Environmental concerns including Phase 1 environmental analysis;
 - f. Building conditions;
 - g. Traffic patterns and street configurations;
 - h. Transportation access;
 - i. Recent or current revitalization initiatives and development proposals;
 - j. Description and/or definition of retail trade area for the site and analysis of housing and industrial markets, including key demographic measures such as household incomes, and market power;
 - k. Sub-areas of either similar land use or development patterns.
- C. Consultant is expected to denote relevant regulatory considerations, such as historic designation by city, state, and/or federal agencies, as well as any historic tax or other economic programs.
 - D. In conducting the existing conditions analysis, the consultants will interview a minimum of five (5) stakeholders.
 - E. Based on this initial input, the consultant will conduct a Strengths, Weaknesses, Opportunities and Threats analysis.

Task 2: Conceptual Land Use Plan

- A. The conceptual plan brings together the natural land-use patterns as established in Task 1, the community's desired uses and guiding principles for the redevelopment.
- B. Using Task 1 to roughly define boundaries and sub-zones within the study area, the conceptual plan links actual uses to these sub-zones including ones that would be appropriate to preserve as industrial and what would be appropriate for redevelopment.
- C. The second element of Task 2 will be to clearly define the guiding planning principles that will shape the zoning remapping. These should include best practices and community concerns (e.g. re-establishing the street grid, improved streetscape amenities, access to open space).

Task 3: Recommendations

- A. The consultant should develop a potential market-driven reuse/rezoning scenario illustrated by graphics to include color plans.
 - a. Consultant should analyze the need and describe recommendation changes to the existing zoning classification using graphics to support these recommendations for rezoning land in the study area.
 - b. Scenarios may be supported by a hypothetical development program or explanation of potential uses under each zoning classification or remapping recommendation.
 - c. Land use layout should consider actual requirements of users including typical building size, massing, historic potential, access, circulation, loading, parking, land buffer, stormwater management, etc., and incorporation of the principles of the existing Philadelphia Zoning Code and Comprehensive Plan.
 - d. Street and traffic recommendations should evaluate pedestrian and vehicular safety and the potential for recreating the urban grid pattern.

- e. Consultant should use economic factors, where necessary, to explain the impact of proposed remapping recommendations, such as costs to implement, infrastructure costs, potential affordable housing and potential job creation.
 - f. Consultant should suggest any sustainable development opportunities, including those supported by incentive programs.
 - g. Conceptual plans for access and integration of the Reading Viaduct should be developed as a part of the land use scenarios.
- B. The consultant will support the Steering Committee in their analysis of community/public input to refine recommendations.

Task 4: Community Engagement and Outreach

- A. A maximum of three (3) public meetings will be held, one (1) per phase. The first will be an existing conditions meeting, to get community input into the needs of the neighborhood and surrounding communities. The second will present the conceptual land-use plan as informed by existing conditions and the third shall be a reuse/remapping presentation along with other general recommendations.
- B. The Consultant will support the Planning Commission by participating in and making presentations during these public meetings.
- C. A minimum of 8 (eight) steering committee meetings and five (5) stakeholder interviews will take place during the planning process. The consultant is required to be in attendance at these meetings and help prepare any presentations.

2. Services and Tangible Work Products

1. Services

The Department requires at least the services as stated above, 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 Section J, *Organizational and Personnel Requirements*) responsible for completing the task and the number of hours they will work on each 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.

2. Tangible Work Products

The Department 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 Section J, *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.

- A narrative that presents and explains the study area's physical and economic characteristics supported by appropriate statistical analysis and graphic descriptions. The narrative should discuss the study area's limitations and opportunities in light of its physical and economic characteristics. (Task 1)
- An interim phase report with graphics (Task 2)
- Graphics and a narrative presenting possible land reuse scenario and proposed zoning changes in a PDF/PowerPoint presentation (Task 2)
- Graphics and a narrative presenting Task1, Task2, and Task 3 in a PDF/PowerPoint presentation
- A final report with supporting graphics in the form of an original and five copies in print, plus an electronic copy that can be printed and posted on the PCPC website (Tasks 1, 2 and 3)

The comprehensive final report should be organized according to the assigned tasks to include a conditions analysis, conceptual plans including possible land use scenarios, and final recommendations for the study area. The product should be in a form to present in various community meetings. These documents and the data therein will become the property of the Philadelphia City Planning Commission.

3. Milestones

The Department anticipates the work for this project will be organized into at least the milestones, i.e. or groups of tasks, services and/or work products, as listed below. For each milestone, the Applicant should propose criteria to determine when the milestone has been satisfactorily completed. Applicants may propose additional or revised milestones, or a project structure that does not rely on milestones, but should explain their reasons for the structure proposed and how it will facilitate completion of the work.

- Completion of the Existing Conditions Report
- Completion of the Conceptual Land Use Plan
- Completion of the Recommendations Section
- Completion of the Final Report

The Department reserves the right to condition payments on the satisfactory completion of the specified milestones, tasks, services and/or work products listed above. In addition to describing how each proposed milestone will be accomplished, the scope of work proposed by Applicant should identify the milestones the Applicant proposes as payment milestones and the amount it proposes for each milestone payment. Applicants may propose alternative means of payment, but should explain their reasons for the alternative and how it will facilitate completion of the work.

4. Timetable

The Department anticipates that the work required under this RFP will be completed within approximately 40 weeks after project start and according to the approximate schedule in the table below, based on the Department's identification of critical milestones and tasks. The scope of

work proposed by Applicant should include a detailed project schedule that identifies all tasks, activities, deliverables, and milestones the Applicant proposes to carry out for the project and a time of completion (measured from project start date) for each. The Applicant should state the number of days following the Department’s authorization to proceed under the City contract by which it will be ready to start the work, including any mobilization time. If the Applicant proposes a different overall time of performance, it should state its reasons.

Task 1	Existing Conditions Report	15 weeks
Task 2	Conceptual Land Use Plan	10 weeks
Task 3	Recommendations	15 weeks
Task 4	Community Engagement and Outreach	Throughout project time period

5. Hours of Work

The required public meetings will be held in the evening to reach the most constituents as possible. All other work for the project may take place during normal business hours.

6. Monitoring; Security

By submission of a Proposal in response to this RFP, the Applicant agrees that it will comply with all contract monitoring and evaluation activities undertaken by the City of Philadelphia, and with all security policies and requirements of the City.

7. Reporting Requirements

The successful Applicant shall report to the City of Philadelphia 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 applicant will work directly with the Project Manager to ensure that the project remains on time and on budget. Reports to the Project Manager should occur each week. The project will also have a Steering Committee and the Applicant will be responsible for reporting at these meetings as well.

8. Specific Performance Standards

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

- Quality and breadth of expertise of the team members proposed
- Number of hours dedicated to the project by firm principals
- Quality of graphics and writing in submitted reports and presentations

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

9. Cost Proposal

Applicants must provide a detailed Cost Proposal, as described in Section III.A., *Proposal Format*, of this RFP, under the heading *Cost Proposal*. Cost Proposals must be "fixed price" proposals. The proposed price must include all costs that will be incurred for the completion of the project, including, but not limited to, costs for the following, if the Department is to reimburse for them: employee compensation and fringe benefits; communication; printing; administrative expenses; bonding; acquisition of real estate; rent, utilities, maintenance and security related to real estate; travel (reimbursable only at rates approved by the Department and in accordance with current City policies), which can be obtained from the Department; project management; development; testing; implementation; maintenance; training; and all other work proposed. Applicants are advised that any contract resulting from this RFP will provide for a not-to-exceed amount in the compensation section of the contract.

Funding for the Callowhill-Chinatown North Strategic Plan comes from a Community Development Block Grant from the Office of Housing and Urban Development and a generous matching grant from the William Penn Foundation. The total monies for the project include \$200,000 plus any in-kind donation from the staff of the Philadelphia City Planning Commission.

10. Organization 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, job title and number of hours to be dedicated to the project. Resumes of all personnel so identified should be included in Applicant's proposal. The Department expects the following with respect to the successful Applicant's organizational structure and personnel:

- Staff experienced in urban planning
- Staff experienced in transportation planning
- Staff experienced in historic preservation
- Staff experienced in landscape architecture
- Staff experienced in public speaking and presentations

11. Resources and Technology

The staff of the PCPC will be a significant partner in the overall study effort. Major in-kind contributions of the City agencies shall include:

- A. Policy direction and project coordination
- B. Community and stakeholder outreach efforts
- C. Arrangement of meeting dates and facilities
- D. Preparation and distribution of meeting agendas and summaries
- E. Provision of base information including property ownership, current zoning, land use, and recent and current plans
- F. Requests for GIS data including zoning, parcels, infrastructure, building footprints, public facilities, etc.
- G. Selection of Steering Committee members and scheduling of stakeholder interviews
- H. Reproduction of meeting materials, interim and final reports and presentation graphics beyond what is described in Section II.A.2
- I. Placement of appropriate outreach materials, reports, and studies on the PCPC website
- J. Draft ordinance language and official map of the zoning remapping for any Philadelphia City Council bill.

12. Available Information

The Philadelphia City Planning Commission has recent studies of the Callowhill-Chinatown North area:

Chinatown Neighborhood Plan including Callowhill Neighborhood, Kise Straw & Kolodner, December 2004
Callowhill Area Land Use and Esiting Conditions Analysis, PCPC, Summer 2008
Callowhill Industrial National Register Historic District, Powers & Company, 2009
Callowhill Noble Street Alignment Study, PCPC, Summer 2011

III. Proposal Format, Content, and Submission Requirements; Selection Process

Proposals must be posted on the City's website through eContract Philly. Five hard-copies must also be sent to the Philadelphia City Planning Commission. Address proposals to:

Laura M. Spina, Senior Planner
Philadelphia City Planning Commission
1515 Arch Street, 13th floor
Philadelphia, PA 19102

Like the electronic version, all hard-copies must be received by 5:00 p.m. on Thursday, November 10, 2011.

1. 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, presented in the order indicated:

1. Introduction/Executive Summary

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

2. 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 (FEIN);
- 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.

3. Project Understanding

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 project that is the subject of this RFP. Applicant shall describe how the Applicant's business experience will benefit the project.

4. 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.

5. 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 projects that are similar in nature, size and scope to that which is the subject of this RFP.

6. References

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

7. Office of Economic Opportunity Participation

Each Respondent is subject to the provisions of Mayoral Executive Orders 02-05 and 14-08 and is required to respond to the ranges specified in Appendix B of 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 Orders 02-05 and 14-08. The City's Antidiscrimination Policy for City contracts is explained in more detail in Appendix B to this RFP. Respondents are required to complete and include in their proposals the "Solicitation for Participation and Commitment Form" which, together with instructions for completion of the form, is also included in Appendix B.

8. 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).
9. Solicitation for Participation and Commitment Form
Include a completed Solicitation for Participation and Commitment Form (see Section III.C for more information). The form is provided as Appendix B to this RFP.
10. Tax Status and Clearance Statement
Include a completed City of Philadelphia Tax Status and Clearance Statement on the form attached as Appendix C to this RFP (see Section III.D for more information).
11. 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.
12. 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)
13. 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.G for more information).

14. 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.

2. 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 an appendix. 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 the City 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, state the reasons for the request, and propose alternative language or terms. Requested Exceptions to the City's Contract Terms will be approved only when the City determines in its sole discretion that a Requested Exception makes business sense, does not pose unacceptable risk to the City, and is in the best interest of the City. 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 City 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 City 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 City may, in its sole discretion, deny the Requested Exceptions without consideration or reject the proposal.

The City 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.

3. Office of Economic Opportunity – Participation Commitment

Each Applicant is subject to the provisions of Mayoral Executive Orders 02-05 and 14-08 and is required to respond to the ranges specified in an appendix 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 Orders 02-05 and 14-08. The City's Antidiscrimination Policy for City Contracts explains these requirements in more detail in an appendix to this RFP. Applicants are required to complete and include in their proposals the "Solicitation for Participation and Commitment Form" which, together with instructions for completion of the form, is also included in the appendix.

Pursuant to Executive Orders 02-05 and 14-08, OEO has reviewed the above subject project and has determined that the opportunity ranges that exist for minority, women and disabled businesses are as follows:

MBE 20% - 25%

and/or

WBE 20% - 25%

Potential Opportunities:

- Urban Management / Planning Consultant
- Transportation Consultant
- Historic Preservation Consultant
- Landscape Design

4. The Philadelphia Tax Status and Clearance Statement

It is the policy of the City of Philadelphia 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 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 complete and return with its proposal, a City of Philadelphia Tax Status and Clearance Statement Form (included with this RFP as an appendix).

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 within a week of being notified of their non-compliance, 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 arrangement to come into compliance at 215-686-6600 or revenue@phila.gov.

Applicants need not have a City of Philadelphia Business Privilege Tax Account Number and 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. Applications for a Business Privilege Tax Account Number or a Business Privilege License¹ 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 Your Business." If you have specific questions, call the Department of Revenue at 215-686-6600 for questions related to City of Philadelphia Business Privilege Tax Account Number or the Department of Licenses and Inspections at 215-686-2490 for questions related to the Business Privilege License.

5. Mandatory Online Application Requirements

You must apply online 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 eContract Philly, which can be accessed on the City's website at www.phila.gov/contracts by clicking on eContract Philly. The posting of this RFP on eContract Philly is also referred to as a Notice of Contracting Opportunity.

Applicants and their subcontractors are required to disclose their campaign contributions to local and state political candidates and incumbents; 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, are 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 who have failed to file complete applications – including the online disclosure forms – through the eContract Philly online application process prior to the closing date and time will not be considered for the contract.

¹ Business Privilege Licenses are not required for non-profit organizations, however, Business Privilege Tax Account Numbers typically are required.

You are encouraged to start and complete your online application on eContract Philly as early as possible. Please be aware that internet connection speed depends on a variety of factors including: configuration of your computer, configuration of your business or home network, the condition of the wiring at your location, network or internet congestion (available bandwidth). Please prepare and plan accordingly to ensure a timely submission. Your proposal and other application documents will not be considered submitted until you sign the application and click on the “submit” button at the conclusion of the eContract Philly process.

You can begin uploading (or attaching) your proposal and other application materials at any time. It is especially prudent for you to start uploading your attachments earlier if you have a large number of attachments (e.g. over five documents) or larger-sized attachments (e.g. above 5 MB). Until you sign and submit your application, your materials are not accessible to any staff with the City of Philadelphia. Once you have signed and submitted your application, your application is accessible only to appropriate contract staff within the City of Philadelphia.

6. Selection Process

The City will base its selection on criteria that include, but are not limited to:

1. Superior ability or capacity to meet particular requirements of contract and needs of City Department and those it serves
2. Eligibility under Code provisions relating to campaign contributions
3. Superior prior experience of Applicant and staff
4. Superior quality, efficiency and fitness of proposed solution for City Department
5. Superior skill and reputation, including timeliness and demonstrable results
6. Special benefit to continuing services of incumbent, such as operational difficulties with transition or needs of population being served
7. 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
8. Lower cost
9. Administrative and operational efficiency, requiring less City oversight and administration
10. Anticipated long-term effectiveness
11. Meets prequalification requirements

IV. Proposal Administration

1. Procurement Schedule

RFP Posted	<i>15 October 2011</i>
Applicant Questions Due	<i>27 October 2011</i>
Answers posted on eContract Philly website	<i>31 October 2011</i>
Proposals Due	<i>10 November 2011</i>
Applicant Interviews, Presentations	<i>2nd week in December</i>
Applicant Selection	<i>26 December 2011</i>
Contract Award and Execution	<i>15 January 2012</i>
Commencement of Work	<i>23 January 2012</i>

The above dates are estimates only and the City reserves the right, in its sole discretion, to change this schedule. Notice of changes in the Pre-Proposal Meeting date/time or location, the due date for Applicant questions, and the date for Proposal Submission will be posted on the City's website at www.phila.gov/contracts (click on *eContract Philly*). The other dates/times listed may be changed without notice to prospective Applicants.

2. Questions Relating to the RFP

All questions concerning this RFP must be submitted in writing via email to Laura M. Spina, City Planner, Philadelphia City Planning Commission, laura.spina@phila.gov no later than 5:00 p.m. on **27 October 2011** and may not be considered if not received by then. The City 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 City's website at www.phila.gov/contracts (click on *eContract Philly* and go to the Opportunity Details page for this notice of contracting opportunity). Responses posted on the City's website become part of the RFP upon posting. The City 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 employee or agent shall be binding on the City or in any way considered to be a commitment by the City.

3. Interviews; Presentations

The Selection Committee will review all of the proposals received and will create a short-list of the most eligible and capable applicants. The Applicants chosen on the short-list will be asked to make presentations to the Selection Committee to help it make its final selection.

4. Term of Contract

It is anticipated that the initial term of the Contract shall commence on **23 January 2012** (the "Initial Term") and, unless sooner terminated by the City pursuant to the terms of the Contract, shall expire up to twelve months thereafter, on **22 January 2013**. The City may, at its sole option, amend the Contract to add up to three (3) 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

1. Revisions to RFP

The City reserves the right to change, modify or revise the RFP at any time. Any revision to this RFP will be posted on eContract Philly with the original Opportunity Details. It is the Applicant's responsibility to check the eContract Philly website frequently to determine whether additional information has been released or requested.

2. City Employee Conflict Provision

City of Philadelphia 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 has a direct or indirect interest.

3. 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 City's sole discretion, result in rejection of Applicant's proposal.

4. Contract Preparation Fee

Pursuant to §17-701 of The Philadelphia Code, the successful Applicant will be required to pay a contract preparation fee unless waived by the Law Department. Section 17-702 establishes the following schedule for contract preparation fees, based upon the amount of the contract.

Amount of Contract		Contract Preparation Fee
\$0-\$20,000		\$0
\$20,001-\$50,000		\$120
\$50,001-\$100,000		\$170
\$100,001-\$250,000		\$260
\$250,001-\$500,000		\$340
\$500,001-\$1,000,000		\$520
Over \$1,000,000		\$1,000

5. Reservation of Rights

By submitting its response to this notice of contract opportunity as posted on the eContract Philly web site ("eContractPhilly"), 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 eContract Philly in relation to this “New Contract Opportunity” as published on eContract Philly, including, without limitation, the information posted for this opportunity on the “Detailed Information for Opportunity” page, in the eContractPhilly “Opportunity List,” and including in addition to this RFP, any other document linked to the Detailed Information for Opportunity Page or otherwise displayed on or linked to this notice of contract opportunity.

1. This Notice of Contract Opportunity

The City 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 City determines to be in the City’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 City determines to be in the City’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 City’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 City, 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 City determines it is otherwise in the best interest of the City to reject the proposal;
- (b) to reject any proposal if, in the City’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 City 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 1) and 2) preceding, if, in the City's sole judgment, the defect or deficiency is not material to the proposal;
 - (d) to require, permit or reject, in the City'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 City, in its sole discretion, determines to be in the 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 City 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 City, in its sole discretion, determines that doing so is in the City'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 City, in its sole discretion, determines it is in the best interest of the City 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 City, in its sole discretion, determines it is in the best interest of the City 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 City determines that it is in the City's best interest to do so;
 - (k) to require any one or more Applicants to make one or more presentations to the City at the City's offices or other location as determined by the City, 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 City, 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 City, 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.

B. Confidentiality and Public Disclosure

The successful Applicant shall treat all information obtained from the City which is not generally available to the public as confidential and/or proprietary to the City. 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 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
General Provisions
for
General Consultant Services



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

TABLE OF CONTENTS

	Page(s)
Article I: Definitions	1
1.1 ADA	1
1.2 Additional Services and Materials	1
1.3 Additional Term, Additional terms	1
1.4 Appropriated Fiscal Year	1
1.5 Amendment	1
1.6 Applicable Law	1
1.7 Applicant	1
1.8 Certification of Restrictions on Lobbying.....	1
1.9 City	1
1.10 City Council	2
1.11 Consultant	2
1.12 Contract	2
1.13 Contract Cost Principles.....	2
1.14 Contract Documents	2
1.15 Contributions.....	2
1.16 Department	2
1.17 Event of Default	2
1.18 Event of Insolvency.....	3
1.19 Fiscal Year	3
1.20 General Provisions	3
1.21 Initial Term.....	3
1.22 Interpretation; Number; Gender	3
1.23 Materials.....	3
1.24 Non-Competitively Bid Contract	3
1.25 Party; Parties	4
1.26 Person	4
1.27 Provider	4
1.28 Provider Agreement	4
1.29 Responsible Official.....	4
1.30 Scope of Services	4
1.31 Services	4
1.32 Subcontract.....	4

1.33	Subcontractor	4
1.34	Suspension Notice	4
1.35	Suspension Period	4
1.36	Term	5
1.37	Termination Notice	5
Article II:	Term	5
2.1	Initial Term.....	5
2.2	Additional Terms.....	5
Article III:	Provider’s Duties and Covenants	5
3.1	Performance Requirements	5
3.2	Compliance with Applicable Law.....	5
3.3	Additional Services and Materials; Change in Scope of Services	5
3.4	Responsibility.....	6
3.5	Subcontracts	7
3.6	Relationship with the City.....	9
3.7	Time Frame for Submissions	9
3.8	Prompt Payment by Provider	9
3.9	Sales and Use Tax	9
Article IV:	Provider’s Representations and Covenants.....	10
4.1	Provider’s Representations and Covenants.....	10
(a)	Good Standing	10
(b)	Authority to Act.....	10
(c)	Legal Obligation	10
(d)	No Litigation Preventing Performance	10
(e)	Requisite Licensure and Qualifications	11
(f)	No Adverse Interests.....	11
(g)	No Indebtedness to the City.....	11
(h)	Business Privilege License	11
(i)	Subcontractor Licensure; No Indebtedness to the City	11
(j)	Non-Suspension; Debarment	12
(k)	Contributions	12
(l)	Executive Order 02-04: Gifts.....	14
Article V:	Compensation	15

5.1	Certification of Available Funds.....	15
5.2	Unavailability of Funds.....	15
5.3	Crossing Fiscal Years.....	16
5.4	Allowability of Cost Items.....	16
Article VI:	Audits; Inspection Rights; Records.....	16
6.1	City Audit.....	16
6.2	Inspection.....	17
6.3	Availability of Records.....	17
6.4	Retention of Records.....	17
6.5	Audits Pursuant to Section 6-400 of the Home Rule Charter.....	17
Article VII:	Assignment.....	17
7.1	Assignment By Provider.....	17
7.2	Applicability in Case of Bankruptcy or Insolvency.....	18
7.3	Personal Services.....	18
Article VIII:	Independent Contractor; Indemnification; Litigation Cooperation.....	18
8.1	Independent Contractor.....	18
8.2	Indemnification.....	18
8.3	Litigation Cooperation.....	18
8.4	Notice of Claims.....	19
Article IX:	Insurance.....	19
9.1	Insurance.....	19
	(a) Workers' Compensation and Employers' Liability.....	19
	(b) General Liability Insurance.....	20
	(c) Automobile Liability.....	20
	(d) Professional Liability Insurance.....	20
9.2	Self-Insurance.....	20
9.3	Evidence of Insurance Coverage.....	21
9.4	Fidelity Bond.....	21
Article X:	Ownership of Materials; Proprietary Information; Confidentiality.....	22
10.1	Ownership of Materials.....	22
10.2	Non-Disclosure.....	23

Article XI: Events of Default	23
11.1 Events of Default.....	23
11.2 Notice and Cure.....	24
Article XII: Remedies	24
12.1 The City’s Remedies	24
12.2 Concurrent Pursuit of Remedies; No Waiver.....	25
Article XIII: Termination and Suspension	26
13.1 Termination or Suspension for Convenience	26
13.2 Provider Responsibilities upon Termination or Suspension	26
13.3 Payment of Provider upon Termination or Suspension	27
13.4 Suspension.....	27
Article XIV: Terms and Conditions Relating to Certain Applicable Laws	28
14.1 Non-Discrimination; Fair Practices.....	28
14.2 The Philadelphia Code, Section 17-400.....	28
14.3 Minority, Woman and Disabled Business Enterprise Participation.....	29
(a) Executive Orders 02-05 and 14-08	29
(b) The Philadelphia Code, Section 17-1402	32
14.4 Federal Laws	32
14.5 Americans With Disabilities Act	32
14.6 Northern Ireland	33
14.7 Limited English Proficiency	33
14.8 Business, Corporate and Slavery Era Insurance Disclosure	34
14.9 Protected Health Information.....	34
14.10 Philadelphia 21st Century Minimum Wage and Benefits Standard.....	35
Article XV: Miscellaneous	36
15.1 Governing Law.....	36
15.2 Amendments;Waiver.....	36
15.3 Integration	36
15.4 No Joint Venture	36
15.5 No Third Party Beneficiaries	36
15.6 Counterparts	37
15.7 Severability and Partial Invalidity.....	37
15.8 Survival	37

15.9	Determination of Disputes	37
15.10	Interpretation; Order of Precedence	37
15.11	Headings.....	37
15.12	Statutes and Other Citations.....	38
15.13	Days.....	38
15.14	Forum Selection Clause; Consent to Jurisdiction	38
15.15	Waiver of Jury Trial	38
15.16	Notices.....	38

GENERAL PROVISIONS

ARTICLE I: DEFINITIONS

1.1 **ADA.** “ADA” shall have the meaning set forth in Section 14.5 (Americans with Disabilities Act) below.

1.2 **Additional Services and Materials.** “Additional Services and Materials” shall have the meaning set forth in Section 3.3 (Additional Services and Materials; Change in Scope of Services) below.

1.3 **Additional Term, Additional Terms.** “Additional Term” and “Additional Terms” shall have the meanings set forth in Section 2.2 (Additional Terms) below.

1.4 **Appropriated Fiscal Year.** “Appropriated Fiscal Year” shall have the meaning set forth in Section 5.3 (Crossing Fiscal Years) below.

1.5 **Amendment.** “Amendment” means a written modification or change to any Contract Document signed by both Parties.

1.6 **Applicable Law.** “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 Philadelphia Home Rule Charter, as amended from time to time, The Philadelphia Code, as amended from time to time, and the specific laws set forth in Article XIV (Terms and Conditions Relating to Certain Applicable Laws) below hereof, each as amended from time to time.

1.7 **Applicant.** “Applicant” means a Person who has filed an application to be awarded a Non-Competitively Bid Contract.

1.8 **Certification of Restrictions on Lobbying.** “Certification of Restrictions on Lobbying,” if required in the Provider Agreement, means a certificate in the form attached to the Provider Agreement.

1.9 **City.** The “City” means The City of Philadelphia, a corporation and body politic

existing under the laws of the Commonwealth of Pennsylvania, and includes its various executive and administrative departments, agencies, boards and commissions, including the Department and its legislature, City Council. The City is a City of the First Class under the laws of the Commonwealth of Pennsylvania.

1.10 **City Council.** “City Council” means the Council of The City of Philadelphia, as described in Article II of the Philadelphia Home Rule Charter, as it may be amended from time to time. City Council is the legislature of the City.

1.11 **Consultant.** “Consultant” means any Person used by Provider to assist in obtaining a Non-Competitively Bid Contract through direct or indirect communication by such Person with any City Agency or any City officer or employee, if the communication is undertaken by such Person in exchange for, or with the understanding of receiving payment from the Provider or any other Person; provided, however, that “Consultant” shall not include a full-time employee of the Provider.

1.12 **Contract.** The “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.

1.13 **Contract Cost Principles.** The “Contract Cost Principles,” means the “City of Philadelphia Contract Cost Principles and Guidelines,” as it may be amended from time to time, which 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).

1.14 **Contract Documents.** The “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.

1.15 **Contributions.** “Contributions” shall have the meaning set forth in the Pennsylvania Election Code, 25 P.S. Section 3241.

1.16 **Department.** The “Department” means the department, board, commission or agency of the City of Philadelphia defined as the Department in the heading of the Provider Agreement.

1.17 **Event of Default.** “Event of Default” means those events defined and identified in Section 11.1 (Events of Default) of these General Provisions.

1.18 **Event of Insolvency.** “Event of Insolvency” means (a) the filing of a voluntary

petition by Provider under the Federal Bankruptcy Code or any similar state or federal law; or (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; or (c) Provider's making of an assignment for the benefit of creditors; or (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; or (e) any other proceeding under any bankruptcy or insolvency law or liquidation law, voluntary or otherwise; or (f) Provider proves unable to pay its obligations as they mature; or (g) Provider is insolvent as otherwise defined under any Applicable Law.

1.19 **Fiscal Year.** "Fiscal Year" means the fiscal year of the City, which commences on July 1 of each calendar year and expires on June 30 of the next succeeding calendar year.

1.20 **General Provisions.** "General Provisions" means these "The City of Philadelphia Professional Services Contract General Provisions for General Consultant Services", which contains the standard provisions required by the City in its general consultant professional services contracts, and any exhibits identified in these General Provisions.

1.21 **Initial Term.** "Initial Term" shall have the meaning set forth in Section 2.1 (Initial Term) below.

1.22 **Interpretation; Number, Gender.** The words "herein" "hereof" and "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. Whenever the context requires, 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.

1.23 **Materials.** "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 or developed by Provider in connection with the Services, or for Provider by a Subcontractor in connection with the Services, and supplied to the City by Provider or its Subcontractor pursuant to this Contract.

1.24 **Non-Competitively Bid Contract.** "Non-Competitively Bid Contract" means a contract for the purchase of goods or services to which the City or a City Agency is a party that is not subject to the lowest responsible bidder requirements of Section 8-200 of The Philadelphia Home Rule Charter, including, but not limited to, a Professional Services Contract, and any renewal of such a contract (other than a renewal term pursuant to an option to renew contained in an executed contract).

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

1.26 **Person.** “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.

1.27 **Provider.** “Provider” means the Person providing Services and Materials to the City as defined in the heading of the Provider Agreement.

1.28 **Provider Agreement.** The “Provider Agreement” means the instrument, part of the Contract Documents, which sets forth the terms, covenants and conditions specific to Provider’s engagement.

1.29 **Responsible Official.** The “Responsible Official” means the director, commissioner or other head of the Department.

1.30 **Scope of Services.** “Scope of Services” means the document(s) attached as an exhibit (or as exhibits) to the Provider Agreement, which set(s) 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.

1.31 **Services.** “Services” means the work to be performed under this Contract as specified in the Provider Agreement.

1.32 **Subcontract.** “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.

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

1.34 **Suspension Notice.** “Suspension Notice” means a written notice from the City to Provider pursuant to Section 13.1 (Termination or Suspension for Convenience) below suspending Provider’s performance under this Contract.

1.35 **Suspension Period.** “Suspension Period” means the period designated by the City in a Suspension Notice during which the City has suspended Provider’s performance under this Contract.

1.36 **Term.** “Term” has the meaning set forth in Section 2.1 (Initial Term) of the

Provider Agreement.

1.37 **Termination Notice.** “Termination Notice” means a written notice from the City to Provider pursuant to Section 13.1 (Termination or Suspension for Convenience) below terminating this Contract.

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. In no event shall the Initial Term exceed one (1) year.

2.2 **Additional Terms.** The City may, at its sole option, amend this Contract to add on an annual basis up to three (3) successive one (1) year terms (“Additional Terms”), unless any shorter term (or terms) is specified in the Provider Agreement. Unless otherwise stated in the Provider Agreement, the same terms and conditions applicable in the Initial Term shall be applicable in the Additional Term(s). The City shall give Provider thirty (30) days written notice of its intent to amend this Contract to add an Additional Term prior to each annual Additional Term. Each Additional Term shall be subject to appropriation of funds by City Council for such Additional Term. There shall be no liability or penalty to the City for electing not to amend the term of this Contract to add Additional Terms. Each Additional Term of this Contract shall be deemed to constitute a separate contract, whose term shall not exceed one (1) year.

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 by the Responsible Official in his or her sole discretion.

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 appropriation of funds therefor 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 Provider Agreement, 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 pay Provider additional compensation above the limit set forth in the Provider Agreement only if and when an Amendment to this Contract 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 **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 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 shall be 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 agrees that it will 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, under this Contract;
- (8) Subcontractor shall, effective on the date of the Subcontract,

presently, fully and unconditionally assign, transfer and set over to the City all of Subcontractor's right, title and interest in and to 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 Subcontractor shall covenant and agree that, (i) other than as directed by the City, it will not file a claim for refund for any sales or use tax which is the subject of this assignment; and (ii) the City, in its own name or in the name of Subcontractor, may file a claim for a refund of any sales or use tax covered by this assignment;

- (9) Subcontractor shall not be indebted to the City (to satisfy this requirement, Provider shall include Subsection 4.1(g), "No Indebtedness to the City," below, with appropriate adjustments for the identity of the parties, in all Subcontracts that are entered into for work to be performed pursuant to this Contract);
- (10) Subcontractor shall comply with Section 17-400 of The Philadelphia Code (to satisfy this requirement, Provider shall include Subsection 14.2 (a), The Philadelphia Code, Section 17-400, below, with appropriate adjustments for the identity of the parties, in all Subcontracts that are entered into for work to be performed pursuant to this Contract); and
- (11) Subcontractor shall comply with Section 17-104 of The Philadelphia Code (to satisfy this requirement, Provider shall include subsection 14.6 (b) (The Philadelphia Code, Section 17-104) below, with appropriate adjustments for the identity of the parties, in all Subcontracts that are entered into for work to be performed pursuant to this Contract).

(c) No permitted 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 or of any other Section in this Contract shall be null and void.

(e) City-Related Agencies.

- (1) If Provider is a City-Related Agency, as defined at Philadelphia Code Subsection 17-1401(9), Provider shall abide by the provisions of Philadelphia Code Section 17-1400 in awarding any contract(s)

pursuant to this Contract as though such contracts were directly subject to the provisions of Section 17-1400, except that the exception set forth at Subsection 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 the Philadelphia Code Section 17-1400 to be performed by the City Solicitor shall be performed by Provider by its General Counsel; any approvals required to be performed by the Director of Finance shall be performed by Provider by its Chief Financial Officer; and any approvals required to be performed by the Mayor shall be performed by Provider by its Executive Director.

3.6 **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.

3.7 **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 in any and all event before the scheduled expiration of the Term.

3.8 **Prompt Payment by Provider.** Provider agrees to 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 shall provide, upon request of the City, reasonable evidence that these Persons have been fully and timely paid.

3.9 **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, title and interest in any sales or use tax which may be refunded as a result of any materials, including any Materials, purchased or services, including any Services, rendered in connection with this Contract and 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.

**ARTICLE IV: PROVIDER'S
REPRESENTATIONS AND COVENANTS**

4.1 **Provider's Representations and Covenants.** Provider makes the following representations, warranties and covenants upon which the City has relied as a material consideration for the execution and delivery by the City of this Contract:

(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 of Pennsylvania 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. 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 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) **Legal Obligation.** This Contract has been duly authorized, executed and delivered by Provider, by and through individuals duly authorized to execute this Contract on behalf of Provider, and constitutes the legal, valid and binding obligation of Provider, enforceable against Provider in accordance with its terms.

(d) **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.

(e) **Requisite Licensure and Qualifications.** Provider and all of the 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 within five (5) days of request by the City.

(f) **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 or employees, 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.

(g) **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. In addition, Provider understands that false certification, representation or warranty by it is subject to prosecution under Title 18 Pa.C.S.A. § 4904.

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

(i) **Subcontractor Licensure; No Indebtedness to the City.** Each

Subcontractor, if any, holds a valid, current Business Privilege License to do business in the City, if required by Applicable Law. To the best of Provider's knowledge, information and belief, the representations made in any Subcontract that Subcontractor is not indebted to the City are true and correct.

(j) **Non-Suspension; Debarment.** Provider and all of the individuals acting on Provider's behalf including, without limitation, Subcontractors, are not under suspension or debarment from doing business with the Commonwealth of Pennsylvania, 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. Provider shall not be responsible for costs of investigations which do not result in Provider's suspension or debarment.

(k) **Contributions.** In accordance with Section 17-1402 of The Philadelphia Code, Provider represents on behalf of itself and its Subcontractor(s) that no contribution(s) have been made and none shall be made during the term of the Contract by Provider, any Subcontractor, or any party from which a contribution can be attributed to the Provider or Subcontractor, that would render the Provider or Subcontractor, as applicable, ineligible to apply for or enter into a Non-Competitively Bid Contract under the provisions of Philadelphia Code Sections 17-1404(1) and 17-1405; 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 the Provider liable for liquidated damages to the City in the amount of ten percent (10%) of the maximum payments to the Provider allowed under the Contract, regardless whether actually paid. The City may exercise any or all of the remedies set forth in this Subsection 4.1(k) (Contributions), 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 Subsection 4.1(k) (Contributions) 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.

- (1) Pursuant to the attribution rules of Section 17-1405, Provider shall, during the term of the Contract and for one year thereafter, disclose any contribution of money or in-kind assistance the Provider, Subcontractor or any Consultant has made during such time period to a candidate for nomination or election to any public office in the

Commonwealth of Pennsylvania or to an individual who holds such office, or to any political committee or state party in the Commonwealth of Pennsylvania, or to any group, committee or association organized in support of any such candidate, office holder, political committee or state party, and the date and amount of such contribution.

- a) Such disclosure shall be made on a form provided by the Department awarding the Contract, and the form shall be signed and filed with such Department within five (5) business days of the contribution. The Department receiving the disclosure form shall forward copies to the President and Chief Clerk of Council, and to the Mayor, Finance Director, Procurement Department, and the Department of Records. The attribution rules of Section 17-1405 shall apply to determine what contributions must be disclosed under this provision as contributions of the Provider or of a Consultant.
- b) It shall not be a violation of Subsection 4.1(k)(1) if Provider fails to disclose a contribution made by a Consultant because the Provider was unable to obtain such information from the Consultant, provided the Provider demonstrates that it used reasonable efforts to attempt to obtain such information, including, at a minimum:
 - 1) 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 the Provider;
 - 2) Including in such agreement a provision requiring the Consultant to provide the Provider in a timely manner with all information required to be disclosed under the provisions of Philadelphia Code Section 17-1400, and providing, in effect, that the agreement will be terminated by the 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 the Provider as of the date of such termination;

- 3) Communicating regularly with the Consultant concerning the Consultant's obligations to provide timely information to permit the Provider to comply with the provisions of Philadelphia Code Section 17-1400; and
 - 4) Invoking the termination provisions of the written agreement in a full and timely manner.
- (2) The Provider shall, during the Term of the Contract and for one year thereafter, disclose the name and title of each City officer or employee who, during such time period, asked the Provider, any officer, director or management employee of the Provider, or any Person representing the Provider, to give money, services, or any other thing of value (other than a Contribution as defined in Section 17-1401) to any Person, and any payment of money, provision of services, or any other thing of value (other than a Contribution as defined in Section 17-1401) given to any Person in response to any such request. The 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.
- a) Such disclosure shall be made on a form provided by the Department awarding the contract, and the form shall be signed and filed with the Department within five (5) business days after a request was made or a payment in response to a request was made, as the case may be.
 - b) The Department receiving the disclosure form shall forward copies to the President and Chief Clerk of Council, and to the Mayor, Finance Director, Procurement Department, and the Department of Records.

The above representations, warranties and covenants shall continue throughout the Term of this Contract. 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.

(1) **Executive Order 02-04: Gifts.**

(a) Pursuant to Executive Order 02-04, no official or employee in the Executive and Administrative Branch of the City shall solicit or accept, directly or indirectly, anything of value, including any gift, gratuity, favor, entertainment or loan from any of the following sources:

- 1) A person seeking to obtain business from, or who has financial relations with the City;
- 2) A person whose operations or activities are regulated or inspected by any City agency;
- 3) A person engaged, either as principal or attorney, in proceedings before any City agency or in court proceedings in which the City is an adverse party;
- 4) A person seeking legislative or administrative action by the City; or
- 5) A person whose interests may be substantially affected by the performance or nonperformance of the official's or employee's official duties.

(b) 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 this Executive Order, 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.

ARTICLE V: COMPENSATION

5.1 **Certification of Available Funds.** Provider acknowledges that payments under this Contract 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 Finance Department 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 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.

5.3 **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.

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

ARTICLE VI: AUDITS; INSPECTION RIGHTS; RECORDS

6.1 **City Audit.** From time to time during the Initial Term and any Additional Term(s) of this Contract, 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, federal and state 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 a period of five (5) years following expiration or termination of this Contract; however, 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 of the Philadelphia Home Rule 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 at the City's sole discretion. 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 provision 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 (Assignment by Provider), 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 in Case of Bankruptcy or 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, 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, 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.** 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, 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 of Pennsylvania 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 additional 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 not self-insure any of the coverages required under this Contract without the prior written approval of the Responsible Official and the City's Risk Manager. In the event that 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 may be requested by the Responsible Official or the City's Risk Manager. In the event 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 of Pennsylvania or otherwise acceptable to the City. If at the time of commencement of the 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
Finance Department
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 is begun 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, but under no circumstances shall Provider actually begin work (or continue work, in the case of an Additional Term) without providing the required evidence of insurance. 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.** When required by the City, 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 in the Provider Agreement, 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.** During the Initial Term and any Additional Term(s) of this Contract and thereafter, except with the prior written consent of the Responsible Official, Provider will not:

(a) Issue, publish or divulge any Services or Materials developed or used in the performance of this Contract in any public statement, thesis, writing, lecture or other verbal or written communication; or

(b) Disclose, or use to its advantage or gain, confidential information of any nature acquired from the City or acquired as a result of Provider's activities in connection with this Contract.

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 the Provider ineligible for a City contract or renders the contract voidable under Philadelphia Code Section 17-1400;

(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 directors, employees, or agents (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 directors, employees or agents 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; and/or

(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 11.1(e) above or 11.1(f) above;
or

(e) Provider has failed to obtain or maintain the insurance or any bond required under this Contract.

Nothing contained in this Section 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, 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 of Pennsylvania 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; (The City's Remedies).

- (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; or
- (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. If this Contract is terminated, the City shall issue a written Termination Notice which shall set forth the effective date of the termination.

(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 of the remedies set forth in this Article XII (Remedies), 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 (Remedies) 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 Convenience.** 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, for any reason, including, without limitation, the convenience of the City. If this Contract is terminated solely for the City's convenience, the City shall issue a written Termination Notice, which shall set forth the effective date of the termination. If this Contract is suspended solely for the City's convenience, the City shall issue a written Suspension Notice, which shall set forth the effective date of the suspension.

13.2 Provider Responsibilities Upon Termination or Suspension.

(a) Upon the City's transmission 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) no allowance shall be included for termination expenses or for anticipated profits, unabsorbed or underabsorbed overhead, or unperformed Services; and
- (2) the City shall 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.

13.4 **Suspension.** Suspension of Provider's performance under this Contract after an Event of Default 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. Provider acknowledges that the City shall have the right, at its sole discretion, to suspend Provider's performance in the event City Council does not appropriate funds for the performance of this Contract. In the event that 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 and eighty (180) days after the effective date (such period, 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 a Suspension for Convenience) above, 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. 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 of 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: TERMS AND CONDITIONS RELATING TO CERTAIN APPLICABLE LAWS

The provisions of this Article 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.** This Contract is entered into under the terms of the Philadelphia Home Rule Charter, as it may be amended from time to time, and in performing this Contract, Provider shall not discriminate or permit discrimination against any individual because of race, color, religion or national origin. In addition, Provider shall, in performing this Contract, comply with the provisions of the Fair Practices Ordinance of The Philadelphia Code (Chapter 9-1100) and the Mayor's Executive Order No. 04-86 (prohibiting discrimination on the basis of Human Immunodeficiency Virus infection), as each may be amended from time to time and which, as applicable, prohibit, among other things, discrimination against individuals in employment, housing and real property practices, and/or public accommodation practices whether by direct or indirect practice of exclusion, distinction, restriction, segregation, limitation, refusal, denial, differentiation or preference in the treatment of a person on the basis of actual or perceived race, ethnicity, color, sex, sexual orientation, gender identity, religion, national origin, ancestry, age, disability, marital status, source of income, familiar status, genetic information or domestic or sexual violence victim status, or other act or practice made unlawful under Chapter 9-1100 or under the nondiscrimination laws of the United States or the Commonwealth of Pennsylvania. In the event of any breach of this Section 14.1 (Non-Discrimination; Fair Practices), 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 **The Philadelphia Code, Section 17-400.**

(a) In accordance with Section 17-400 of The Philadelphia Code, as it may be amended from time to time, 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 in any manner which the Commission deems reasonable and necessary for the Commission to carry out its responsibilities under Section 17-400 of The Philadelphia 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 **Minority, Woman and Disabled Business Enterprise Participation.**

(a) **Executive Orders 02-05 and 14-08.** In accordance with Executive Orders 02-05 and 14-08 (the "Antidiscrimination Policy"), the City, acting through its Office of Economic Opportunity ("OEO"), has established an antidiscrimination policy that relates to the solicitation and inclusion 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, 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.

(1) In furtherance of the purposes of the Antidiscrimination Policy, Provider agrees to the following:

- a) Provider, if it has achieved participation commitments with M/W/DSBEs, represents that it has entered into legally binding agreement(s) with M/W/DSBEs as participants under this Contract ("Participant Agreement(s)") 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)").
- b) Provider shall secure the prior written approval of the Office of Economic Opportunity ("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 Subcontractors, or changes or reductions in the dollar and/or

percentage amounts paid to its M/W/DSBE Subcontractors.

- c) Unless otherwise specified in a Participant Agreement as described in (1) (a) above, Provider shall, within five (5) business days after receipt of a payment from the City for work performed under the Contract, deliver to its M/W/DSBE Subcontractors the proportionate share of such payment for services performed by its M/W/DSBE Subcontractors. In connection with payment of its M/W/DSBE Subcontractors, Provider agrees to fully comply with the City's payment reporting process which may include the use of electronic payment verification systems.
- d) 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 Subcontractors proportionately, which increase shall be reflected in the Participant Agreement(s). OEO may from time to time request documentation from Provider evidencing compliance with this provision.
- e) 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 Participant Agreements, participation summary reports, M/W/DSBE Subcontractor invoices, telephone logs and correspondence with M/W/DSBE Subcontractors, cancelled checks and certification of payments. Provider shall maintain all documentation related to this Section for a period of five (5) years from the date of Provider's receipt of final payment under the Contract.
- f) 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.
- g) 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:

- 1) Debar Provider from proposing on and/or participating in any future contracts for a maximum period of three (3) years.
 - 2) Recover as liquidated damages, i.e., without institution of a civil lawsuit, one percent (1%) of the total dollar amount of the Contract, which amount shall include any increase by way of amendments to the Contract, for each one percent (1%) (or fraction thereof) of the shortfall in Contract Commitment(s) to Provider's M/W/DSBE Subcontractors.
- h) No privity of contract exists between the City and any M/W/DSBE Subcontractor identified herein and the City does not intend to give or confer upon any such M/W/DSBE Subcontractor(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 Subcontractor 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 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 Subcontractors.
- (2) In the event the Provider is a non-profit, the Contract is not subject to M/W/DSBE participation ranges, but Provider shall demonstrate its compliance with the Antidiscrimination Policy in the following manner:
- a) Provide to the OEO annually, a written diversity program identifying the race, gender and ethnic composition of its board of directors, its employment profile, a list of all vendors that the non-profit does business with in its M/W/DSBE procurement program (e.g., "M/W/DSBE Supplier Diversity Program") and a statement of the geographic area(s) where its services are most concentrated; and

b) Demonstrate, to the OEO's satisfaction, that the non-profit's organization makes appropriate efforts to maintain a diverse workforce and board of directors and operates a fair and effective M/W/DSBE procurement program.

(3) It is understood that false certification or representation made in connection with this Antidiscrimination Policy may be subject to prosecution under Title 18 Pa.C.S. Sections 4107.2 and 4904.

(b) **The Philadelphia Code Section 17-1402.** In accordance with Section 17-1402 (f) of The Philadelphia Code, the Provider shall during the Term of the Contract, disclose the name and title of each City officer or employee who directly or indirectly advised the Provider, any officer, director or management employee of the Provider, or any Person representing the Provider that a particular Person could be used by the Provider to satisfy any goals established in the Contract for the participation of minority, women, disabled or disadvantaged business enterprises.

(1) The Provider shall also disclose the date the advice was provided, and the name of such particular Person.

(2) Such disclosure shall be made on a form provided by the Department awarding the contract, and the form shall be signed and filed with the Department within five business days after the Provider was so advised.

The Department receiving the disclosure form shall forward copies to the President and Chief Clerk of Council, and to the Mayor, Finance Director, Procurement Department, and the Department of Records.

14.4 **Federal Laws.** Provider shall comply with the provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. Sections 2000d - 2000d.7), Section 504 of the Federal Rehabilitation Act of 1973 (29 U.S.C. Section 794), the Age Discrimination Act of 1975, (42 U.S.C. Sections 6101 - 6107), Title IX of the Education Amendments of 1972 (20 U.S.C. Section 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 (the "ADA"), 42 U.S.C. §§12101 - 12213, 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 of Pennsylvania; (d) to the

benefits, services, activities, facilities and programs of the City or of the Commonwealth; and (e) if any funds under this Contract are provided by the federal government, which are applicable to the federal government and its 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 Philadelphia Code, Provider by execution of this Contract certifies and represents that (1) Provider (including any parent company, subsidiary, exclusive distributor or company affiliated with Provider) does not have, and will not have at any time during the Term of this Contract (including any extensions of the Term), any investments, licenses, franchises, management agreements or operations in Northern Ireland and (2) 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, subconsultant or Subcontractor 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 Philadelphia Code. Provider expressly understands and agrees that any false certification or representation in connection with this Section 14.6 (The Philadelphia Code, Section 17-104) and any failure to comply with the provisions of this Section 14.6 (The Philadelphia Code, Section 17-104) 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 Philadelphia Code) or in equity. In addition, Provider understands that false certification or representation is subject to prosecution under Title 18 Pa.C.S.A. Section 4904.

14.7 **Limited English Proficiency.** Provider understands and agrees that no individual who is limited in his or her 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, the President of the United States of America Executive Order No. 12250, the

Mayor of the City's City of Philadelphia "Access to Federally Funded City Programs and Activities for Individuals with Limited English Proficiency" dated September 29, 2001, 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 of Pennsylvania, 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.

14.8 **Business, Corporate and Slavery Era Insurance Disclosure.** In accordance with Section 17-104 of The Philadelphia Code, the Provider, after execution of this Agreement, will complete an affidavit certifying and representing that the Provider (including any parent company, subsidiary, exclusive distributor or company affiliated with Provider) has searched any and all records of the 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.

The Provider expressly understands and agrees that any false certification or representation in connection with this Paragraph and/or any failure to comply with the provisions of this Paragraph shall constitute a substantial breach of this Agreement entitling the City to all rights and remedies provided in this Agreement or otherwise available in law (including, but not limited to, Section 17-104 of The Philadelphia Code) or equity and the contract will be deemed voidable. In addition, it is understood that false certification or representation is subject to prosecution under Title 18 Pa.C.S.A. Section 4904.

14.9 **Protected Health Information**

(a) The City of Philadelphia is a "Covered Entity" under the federal Health Information Portability and Accountability Act (HIPAA). The City has designated the following certain City agencies as covered healthcare components of the City ("Covered Components"): The Ambulatory Health Services Unit of the Department of Public Health (DPH), the Office of Behavioral Health/Intellectual Disability Services (OBH/IDS), the Riverview Home managed by the Office of Supportive Housing, the Philadelphia Nursing Home managed by DPH, the Benefits Administration Unit of the Office of Human Resources, and the Emergency Medical Services Unit of the Philadelphia Fire Department. This list is subject to change, and any component of the City that the City in the future determines to be a Covered Component under HIPAA shall be deemed to be a Covered Component for purposes of this Subarticle 14.9.

(b) To the extent this Contract (i) is entered into with the City acting on behalf of a Covered Component, and/or (ii) requires the performance of services that will be delivered to or

used by a Covered Component of the City (whether or not the City agency issuing the Contract is a Covered Component) and (iii) Provider is a Business Associate with respect to the City, Provider shall comply with the City's "Terms and Conditions Relating to Protected Health Information" posted on the City's website (at <https://secure.phila.gov/eContract/> under the "About" link) ("City PHI Terms"). The City PHI Terms are hereby incorporated in this Subarticle 14.9 as if fully set forth herein. (A printed version of the City PHI Terms, in the City's sole discretion, may also be attached to this Contract.)

14.10 Philadelphia 21st Century Minimum Wage and Benefits Standard. If Provider is an Employer, as defined at Philadelphia Code Section 17-1303, with the exclusion of subcontractors and their employees, Provider shall comply with the minimum compensation standards by providing its employees with an hourly wage, excluding benefits, at least 150 percent of the federal minimum wage, and to extent the Provider provides health benefits to any of its employees, the Provider shall provide each full-time, non-temporary, non-seasonal covered employee health benefits at least as valuable as the least valuable health benefits that are provided to any other full-time employees of the Provider, as more fully set forth at Philadelphia Code Chapter 17-1300. The Provider shall promptly provide to the City all documents and information verifying its compliance with the requirements of Chapter 17-1300. Furthermore, Provider shall notify each affected employee what wages are required to be paid pursuant to Chapter 17-1300.

Prior to commencement of the contract's term or execution by the City, each Provider subject to Chapter 17-1300 will certify to the satisfaction of the City that its employees are paid the minimum wage standard as provided by Chapter 17-1300.

A Provider subject to Chapter 17-1300 shall comply with all its requirements as they exist on the date when the Provider entered into its agreement with the City or when such agreement is amended. A Provider subject to Chapter 17-1300 who fails to comply with its provisions may, after notice and hearing before the Finance Director 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 for up to three (3) years. Furthermore, the Council may, by resolution adopted after a public hearing, determine that there are reasonable grounds to believe that an employer subject to Chapter 17-1300 has failed to comply with its provisions, and that if such failure is established, then debarment would be an appropriate remedy for such failure. A copy of any such adopted resolution shall be forwarded to the Finance Director, or such other officer or agency designated by the Mayor, who shall without undue delay provide appropriate notice and opportunity for hearing, and after such hearing, make a final determination as to whether there has been a violation of Chapter 17-1300 and whether debarment, as provided by Chapter 17-1300, should be imposed. Such debarment shall be in addition to any of the other sanctions or remedies set forth in Chapter 17-1300. The debarment procedure by Council resolution shall be in addition to any other procedure for debarment established under Chapter 17-1300.

The Office of Labor Standards may grant a partial or total waiver of Section 17-1300 based on specific stipulated reasons elaborated in Section 17-1304 of the Philadelphia Code.

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 of Pennsylvania, 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.** 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, along with the following: Provider's representations, warranties and covenants set forth in Article IV (Provider's Representations, Warranties and Covenants) 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; and the Parties' rights and obligations set forth in Article X (Ownership of Materials; Proprietary Information; Confidentiality) 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 his or her designee. The Responsible Official or his or her designee shall render and reduce to writing his or her 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 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 these General Provisions and the terms of the Provider Agreement, the terms of these General Provisions shall control, except to the extent (if any) that the Provider Agreement contains an express change, by specific reference, to the General Provisions.

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 receipt by facsimile if delivered by facsimile; 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 Section 5.1 (Notice) of the Provider Agreement, 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 (Notices).

APPENDIX B

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 Orders No. 02-05 and 14-08, 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 14-08 disestablished the Minority Business Enterprise Council and transferred its administrative functions under Executive Order 02-05 to the 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").²

The Office of Economic Opportunity has approved the following projected ranges of participation for this NOCO which serve as a guide in determining each applicant's responsibility:

MBE - 20% - 25%

and/or

WBE - 20% - 25%

These ranges represent the percentage of MBE, WBE and/or DSBE (collectively, "M/W/DSBE") participation that should be attained by M/W/DSBEs from business opportunities existing in the available market absent discrimination in the solicitation and selection of these businesses. These ranges are based upon an analysis of factors such as the size and scope of the contract and the availability of certified M/W/DSBEs to perform various elements of the contract. The submission of a Solicitation For Participation and Commitment 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 the 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. Section 4904 relating to unsworn falsification to authorities.

A. M/W/DSBE PARTICIPATION

² 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.

1. Only firms that are certified by an approved certifying agency³ or identified in the OEO Certification Registry at the time of contract award will be credited toward the participation ranges on City contracts. 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. If applicant or applicant's subcontractor(s) is certified by an approved certifying agency, a copy of that certification should be included with the proposal.

2. No applicant that seeks to meet the participation range(s) for participation by entering into subcontracts with any M/W/DSBE subcontractor shall be considered to meet the range(s) if the M/W/DSBE subcontractor does not perform a commercially acceptable function ("CAF"). A M/W/DSBE is considered to perform a CAF when it engages in meaningful work or supply effort that provides for a distinct element of the subcontract (as required by the work to be performed in accordance with the NOCO), where the distinct element is worthy of the dollar amount of the subcontract and where the M/W/DSBE carries out its responsibilities by actually performing, managing and supervising the work involved. The OEO may evaluate the amount of work subcontracted, industry practices and any other relevant factors in determining whether the M/W/DSBE is performing a CAF. If it is determined during the review of your Solicitation and Commitment Form that the work described on the Form does not constitute a CAF, your proposal may be rejected.

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 credited toward one participation range as either an MBE or WBE or DSBE. The firm will not be credited toward more than one category. Applicants will note with their submission which category, MBE or WBE or DSBE, is submitted for credit.

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 and will only receive credit toward the relevant participation ranges (e.g., MBE range or WBE range or DSBE range) for the amount of its own work or supply effort on this NOCO. In addition, the participation of an M/W/DSBE partner, as part of a joint venture created for this contract, may be credited towards the participation ranges 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 cost of the subcontract (not including the cost of materials, equipment or supplies incident to the performance of the subcontract) with their own employees.

6. In listing participation commitments on the Solicitation for Participation and Commitment Form, applicants are required to list a detailed description of the work 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.

³ Approved certifying agencies are identified on the OEO webpage found at www.phila.gov/OEO.

B. RESPONSIVENESS

1. A proposal responsive to the Policy is one which contains documentary evidence of the M/W/DSBEs that have been solicited and that will be used by the applicant on the contract, if awarded; where the proposal satisfies the M/W/DSBE participation ranges for that contract, the applicant is rebuttably presumed not to have discriminated in its selection of contract participants.

2. Applicants must submit documentary evidence of MBE, WBE and DSBEs who have been solicited and with whom commitments have been made in response to the participation ranges included in this NOCO. Failure to submit the Solicitation For Participation and Commitment Form will result in the rejection of the proposal as nonresponsive, although 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. 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 work 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.
- 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.

3. If Applicant does not fully meet each of the range(s) for participation established for this NOCO, applicant must explain what efforts the applicant made to achieve the M/W/DSBE participation ranges. Applicant must demonstrate, through the submission of documentary evidence, that it took all necessary steps and made reasonable efforts to achieve the M/W/DSBE participation ranges, even if these efforts were not fully successful. OEO will evaluate the scope, intensity and appropriateness of these efforts to ascertain whether they could reasonably be expected to achieve M/W/DSBE participation commensurate with the ranges. Failure to submit the documentary evidence will result in rejection of the proposal as nonresponsive, although the City, at its sole discretion, may allow applicants to submit or amend their evidentiary submission at any time prior to award. 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 participation within the ranges, 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 ascertain whether discrimination has occurred in the solicitation or selection of contract participants. The 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.

4. 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 OEO within forty-eight (48) hours of the date of notification. The decision of the OEO may be appealed in writing within forty-eight (48) hours of the date of the OEO's decision to the Chief Operating Officer of the Commerce Department or his/her designee whose decision 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. 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. The successful applicant shall, within five (5) business days after receipt of a payment from the City for work performed under the contract, deliver to its M/W/DSBE subcontractors the proportionate share of such payment for work performed (including the supply of materials) by its M/W/DSBE subcontractors. In connection with payment of its M/W/DSBE subcontractors, 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 subcontractor identified in any contract resulting from this NOCO. The City does not intend to give or confer upon any such M/W/DSBE subcontractor(s) any legal rights or remedies in connection with the subcontracted services under Executive Orders 2-05 and 14-08 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. 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 Orders 2-05 and 14-08, including the fulfillment of any M/W/DSBE commitments, is material to the contract. Any failure to comply with these requirements constitutes a substantial breach of the contract. It is further understood and agreed that in the event the City determines that the successful applicant hereunder has failed to comply with these requirements the City may, in addition to any other rights and remedies the City may have under the contract, any bond filed in connection therewith or at law or in equity, exercise one or more of the following remedies, as deemed applicable, which shall be deemed cumulative and concurrent:

a. Withhold payment(s) or any part thereof until corrective action is taken.

b. Terminate the contract, in whole or in part.

c. Suspend the successful applicant from proposing/bidding and/or participating in any future City contracts for a period of up to three (3) years.

d. Recover as liquidated damages, one percent of the total dollar amount of the contract for each one percent (or fraction thereof) of the commitment shortfall. (NOTE: The "total dollar amount of the contract" shall include approved change orders, amendments and for requirements contracts shall be based on actual quantities ordered by the City. For Concessions, the "total dollar amount of the contract" shall mean the Concession Fee paid to the City.)

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 subcontractors.

Should you have any questions related to the Contract Provisions, please call Deneen Wilson, OEO at (215) 683-2080 or facsimile (215) 683-2085.

ANTIDISCRIMINATION POLICY SOLICITATION FOR PARTICIPATION AND COMMITMENT FORM
 Minority (MBE), Woman (WBE), Disabled (DSBE) and Disadvantaged (DBE) Business Enterprises

DEPARTMENT OF COMMERCE OFFICE OF ECONOMIC OPPORTUNITY (OEO)		Name of Bidder/Proposer:		Bid/RFP Opening Date:
Bid Number or Proposal Title: Calhoun-Chinatown North Strategic Plan		List below ALL MBE/WBE/DBE/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"/> DBE <input type="checkbox"/> M-DBE <input type="checkbox"/> W-DBE	Work or Supply Effort to be Performed By Phone <input type="checkbox"/> YES <input type="checkbox"/> NO Date solicited	Commitment Made Yes (P/w \$/ask) <input type="checkbox"/> NO <input type="checkbox"/>	Give Reason(s) if No Commitment	
Company Name Address Contact Person Telephone Number Fax Number Email Address OEO REGISTRY # CERTIFYING AGENCY	Quote Received YES: <input type="checkbox"/> NO <input type="checkbox"/> Dollar Amount \$ Percent of Total Bid/RFP %	Amount Committed To Dollar Amount \$ Percent of Total Bid/RFP %		
<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> DBE <input type="checkbox"/> M-DBE <input type="checkbox"/> W-DBE	Work or Supply Effort to be Performed By Phone <input type="checkbox"/> YES <input type="checkbox"/> NO Date solicited	Commitment Made Yes (P/w \$/ask) <input type="checkbox"/> NO <input type="checkbox"/>	Give Reason(s) if No Commitment	
Company Name Address Contact Person Telephone Number Fax Number Email Address OEO REGISTRY # CERTIFYING AGENCY	Quote Received YES: <input type="checkbox"/> NO <input type="checkbox"/> Dollar Amount \$ Percent of Total Bid/RFP %	Amount Committed To Dollar Amount \$ Percent of Total Bid/RFP %		
<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> DBE <input type="checkbox"/> M-DBE <input type="checkbox"/> W-DBE	Work or Supply Effort to be Performed By Phone <input type="checkbox"/> YES <input type="checkbox"/> NO Date solicited	Commitment Made Yes (P/w \$/ask) <input type="checkbox"/> NO <input type="checkbox"/>	Give Reason(s) if No Commitment	
Company Name Address Contact Person Telephone Number Fax Number Email Address OEO REGISTRY # CERTIFYING AGENCY	Quote Received YES: <input type="checkbox"/> NO <input type="checkbox"/> Dollar Amount \$ Percent of Total Bid/RFP %	Amount Committed To Dollar Amount \$ Percent of Total Bid/RFP %		

**APPENDIX C
CITY OF PHILADELPHIA TAX 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. The City of Philadelphia, acting through its Department of Revenue and the Department of Licenses and Inspections, will utilize the information contained in the completed form to review the tax and Philadelphia Code compliance records of the person and/or entity identified below as part of the proposal evaluation process and will report their findings to the Contracting Department and the City’s authorized investigatory agents. By signing the certification statement below as Applicant or an authorized representative of Applicant, you represent that Applicant is current and in compliance with, or has made or intends to make satisfactory arrangements with the City to come into compliance with the tax and regulatory provisions of The Philadelphia Code.

Applicant Name	
Contact Name and Title	
Street Address	
City, State, Zip Code	
Phone Number	
Federal Employer Identification Number or Social Security Number:	
Philadelphia Business Privilege Tax Account Number (if none, state “none”) ⁴	
Business Privilege License Number (if none, state “none”) ⁵	

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, of other regulatory provisions applicable to Applicant contained in The Philadelphia Code.

Authorized Signature

Date

Print Name

⁴ To apply for a City of Philadelphia Business Privilege Tax Account Number, please go to <http://business.phila.gov/Pages/Home.aspx> and click on “Register Your Business.”

⁵ To apply for a Business Privilege License, please go to <http://business.phila.gov/Pages/Home.aspx> and click on “Obtain a Business Privilege License” or “Register Your Business.”

Appendix F

CITY OF PHILADELPHIA COST PRINCIPLES

Contract Cost Principles and Guidelines

Introduction

The City of Philadelphia Contract Cost Principles and Guidelines is designed to serve as a manual for City departments entering into professional service contracts, contracts which are not competitively bid through the procurement process but are either awarded directly by the department or competitively solicited and awarded using a request for proposal (**RFP**). Professional services are defined as the labor, time and effort provided by particular professionals or organizations such as legal, engineering or accounting firms or health and human services providers to deliver a specific product or service sought by the City.

The manual begins with a General Information and Definition chapter, which contains some basic definitions, defines different types of contracts as well as the meaning of the term “service unit costs”.

The Cost Principles and Guidelines chapter discusses general guidelines for determining what types of costs should be allowable and establishes standards for the allowability of individual cost items such as entertainment, fund raising, and travel. Departmental staff involved in contracting should find this section an especially useful guide. This chapter also includes definitions of direct and indirect cost and explains two methods for allocating indirect costs.

The Standard Budget Format chapter explains how to use the standard contract budget format shown in the appendices. The contract budget format was developed to serve as a model for the type of cost information that should be requested from contractors. This chapter also discusses how to calculate service unit cost.

For a listing of what is contained in the other sections of this manual, please consult the index [on the next two pages](#).

Index

Section I *General Information and Definitions*

- A. Scope of Services
- B. Types of Contracts
 - 1. Fixed Price Contracts
 - 2. Cost Reimbursement Contracts
 - 3. Contingency Contracts
- C. Service Unit Cost

Section II *Cost Principles and Guidelines*

- A. Direct Costs
- B. Indirect Costs
 - 1. Simplified Allocation Method
 - 2. Multiple Allocation Base Method
- C. Basic Guidelines for Allowability of Costs
 - 1. Factors Affecting Allowability
 - 2. Reasonable Costs
- D. Standards for Selected Cost Items
 - 1. Acquisition of Real Estate
 - 2. Advertising Cost
 - 3. Bonding Costs
 - 4. Communication Costs
 - 5. Employee Compensation
 - 6. Entertainment Costs
 - 7. Equipment Costs
 - 8. Fines and Penalties
 - 9. Fringe Benefits Rate Calculation
 - 10. Fund Raising and Public Relations
 - 11. General Administrative Expense
 - 12. Gifts, Contributions and Donations
 - 13. Insurance Costs
 - 14. Interest Costs

Index (cont'd)

15. Losses Incurred Under Other Contracts
 16. Maintenance, Custodial and Repair Costs
 17. Material and Supplies Costs
 18. Memberships, Subscriptions and Professional Activity Costs
 19. Printing Costs
 20. Professional Services Cost
 21. Rental Costs
 22. Security Costs
 23. Taxes
 24. Training and Educational Costs
 25. Travel Costs
 26. Utilities
- E. Deviations from Cost Principles
- F. Fringe Benefits Rate Calculation

Section III Standard Budget Format

- A. Budget Preparation
- B. Contract Budget Format
- C. Personnel Budget Format
- D. Indirect Expenditures
- E. Service Unit Calculation

Section IV Payment Procedures

- A. Documentation
- B. Timing and Terms of Payment

Section V Rules on Tax Delinquent Contractors

Section VI Business Privilege License Requirements

Section VII Monitoring and Reporting Requirements

Section VIII Audit Requirements

General Information and Definitions

Scope of Service

A professional services contract must clearly state the work to be performed or the results to be achieved such as reports, documents, task completed, units of service to be provided, or other forms of work products. The work products or performance expectations must be clearly defined by the appropriate City department contracting officer.

Each contract with measurable deliverables should include a timetable and implementation schedule for the work to be performed. The schedule should include benchmarks and due dates. Contracts providing services to a client population (where there is no clear deliverable) should specify percentages, outcomes, success rates, or any other element(s) that the contracting department will use to measure the contractor's effectiveness.

Types of Contracts

Fixed Price Contracts

Place responsibility on the contractor to perform the defined scope of services at a price, or at an hourly or daily rate, which is established in advance and which cannot be adjusted upward after the contract begins even if the contractor experiences changes in its cost structure which increase the Contractor's expenses. There are at least four types of fixed price contracts: **a) fixed fee, b) hourly, c) per diem, and d) capitation**. In addition each of these may also include a provision for reimbursement of out-of-pocket expenses as referenced in section (e), below. Hourly, capitation, and per diem contracts are also referred to as "**fee-for-service**" contracts.

Fixed price contracts, other than per diem contracts where the rate is based on cost reimbursement, will not require a budgetary submission showing a line-item breakdown of all costs composing the fixed price or lump sum amount. These contracts will require a budget showing the calculation of the contract amount; e.g., hourly rates for contract employees and hours to be spent on the contract project. In addition, departments may determine if they will require a cost allocation plan for the indirect costs subsumed in the hourly, per diem or capitation rate or lump sum charge. **If the charge for indirect costs is a separate item in the contract cost, then the contractor must submit a cost allocation plan or letter of assurance from CPA firm accepting the cost allocation plan methodology.** The reimbursement of out-of-pocket costs, which are not included in the fixed price, is governed by the allowability guidelines in the Cost Principles and Guidelines.

All departments entering into fixed price contracts (fixed fee, hourly, per diem or capitation) must prepare an annual plan by April 30 explaining the department's procedures for determining the appropriateness of the cost of each type of fixed price contract. Departments must describe the steps taken to ensure that the City is paying a fair and reasonable amount for the services performed. Verification of price may be accomplished by ensuring adequate competition (both formal and informal), using a comparison of prices for similar projects, ensuring conformance with market rates, or performing an in-house analysis of the project to establish an estimate of cost.

Each department's plan must list the types of fixed price contracts into which the department anticipates entering in the upcoming fiscal year and the anticipated number of each type. Each **type** of fixed price contract should have its own plan for evaluation. These plans may differ by division or unit in the department and, in such cases, each division or unit should submit its own plan. The plan(s) must be maintained on file in the department and be approved by the department Commissioner or agency head, or designee.

a) Fixed fee contracts

Establish a fixed price for the work to be provided, which will not change regardless of how much time is spent by the contractor to complete the job. Contracts of this type should be employed when the quantity of services to be provided is known beforehand and the services are clearly defined in terms of products to be delivered (“**deliverables**”), such as preparation of reports, installation of new computer systems, or design of buildings.

b) Hourly contracts

Establish in advance an hourly rate for the services to be provided. The total amount ultimately paid to the contractor will, therefore, depend on the number of hours worked. For Example, if a City department retains a data processing consultant to provide assistance to the City when needed throughout the year, it should use an hourly contract because it is difficult to estimate what the department’s demand for those services will be in advance. Hourly contracts are also used in cases where there is a clear deliverable and the amount of hours to be worked can be reasonably estimated. In the latter case, departments may want to fix a maximum number of billable hours for the completion of the deliverable. In any event, if an hourly contract is employed, the Department, for purposes of cost control, must establish a maximum number of hours that can be billed to the City during the contract period.

c) Per diem contracts

Are used in instances where the contractor is providing service to a client population (such as the homeless or abused children) and the quantity of the services to be provided will vary depending on the needs and the number served of the client population.

The per diem is a daily rate per client served for a particular type of care. A per diem contract may cover several different types of care each with a separate daily rate.

d) Capitation contracts

Establish a fixed fee per client served. This will not change regardless of the amount of services provided to the client (such as the number of days of treatment). However, the ultimate value of the capitation contract will vary depending on the number of clients served. An example of a capitation contract is the contract between the City and health maintenance organizations (HMOs) to provide health services to City employees. The monthly cost per employee is fixed in advance, but the total value of the contract will depend on the number of employees enrolled throughout the year.

e) Any of the foregoing contracts

May combine a cost reimbursement feature in the fixed fee arrangements. This type of contract allows for the reimbursement of allowable out-of-pocket costs in addition to the professional services, which are recognized on an hourly or fixed fee basis. Out-of-pocket costs, which are eligible for reimbursement, are those costs which are not included in the hourly or fixed fee and which are directly and specifically related to the provision of the services provided under the contract. Examples of this type of cost include communications expenses (including messenger service), copying and printing expenses, and specialized materials and supplies. Departments may want to restrict the types of allowable out-of-pocket expenses as well as the maximum amount reimbursable.

Cost Reimbursement Contracts

Provide for payment of allowable costs incurred in contract performance pursuant to an approved line-item budget. This type of contract establishes at the outset an estimated cost of performance of the contract and a dollar ceiling which the contractor may not exceed (except at the contractor's own expense). In some cost reimbursement contracts, the contract provides for payment to the contractor of an agreed fixed fee or profit in addition to reimbursement of allowable incurred costs. This type of contract, which is a variation of a cost reimbursement contract, is referred to as a **Cost Plus Fixed Fee Contract**.

The following provisions shall apply to cost reimbursement contracts and to the portion of any fixed price contract, which contemplates reimbursement for out-of-pocket costs:

- a. Costs may be reimbursed only if they are recognized as allowable and allocable under Cost Principles and Guidelines chapter.
- b. The contractor may make no change to its budget that increases the total contract amount or that reduces the level of services to be provided. Any movement of funds from personnel into another line item, no matter the amount, must receive prior written approval. Departments may require more stringent notification and approval guidelines for the movement of funds within a budget if desired or if required by non-City funding sources. All changes must be reflected in a revised budget submitted within 10 days of the end of each fiscal quarter.

Contingency Fee Contracts

Establish an arrangement whereby a contractor collects revenue or reduces costs on the City's behalf and is paid a percentage of the revenue collected or of the amount of cost reduction. The final value of the contract will depend upon the total amount of revenue collected or the total amount of cost reduction during the term of the contract.

A contingency fee contract should only be used (a) after the contracting department completes a cost/benefit analysis demonstrating that a contingency fee contract will be more advantageous to the City than a fixed contract or (b) when the risk to the contractor is sufficiently high to render a fixed fee contract inappropriate.

Service Unit Cost

Cost accountability is an essential element of compliance with the guidelines concerning professional service contracts for the City of Philadelphia. The City desires to know not only the total cost of a program or contract but also how many clients or citizens are served by the contract and what the cost is per client or citizen. In the case of contracts which are costed at an hourly or per diem rate, this calculation is a relatively easy process. In the case of contracts which call for the delivery of a set job or report, the cost per unit is simply the cost per job or per report.

However, contracts in which compensation is based on a program budget may present a problem in determining a service unit cost since the unit of service may not be clearly defined. It is the intent of the City to quantify these costs wherever possible. If the contract objective or outcome is not quantifiable, some measure of service level and the effectiveness of service delivery must be identified. An example of a measurable, but not quantifiable, service objective may be “the percentage decrease in the rate of new AIDS cases within a target population” for a contract for AIDS Community Outreach and Education.

If more than one objective or end product is required as part of the terms of the contract, then each of these objectives must be stated separately in measurable terms. Each service objective or outcome must be clearly defined so that the City can properly evaluate the effectiveness of program service delivery.

It is important to note that the cost per service unit is only one of a number of factors that the City will use to evaluate the effectiveness of a program. However, clearly defining the stated objective of the contract and maintaining accurate cost records by service objectives will allow the City to make an informed judgment as to the worthiness and credibility of a contract. A discussion of how to calculate service unit costs, together with examples, is included in the Standard Budget Format Section.

Cost Principles and Guidelines

This section will define direct costs and indirect costs and will provide a method for calculating an indirect cost rate and allocating indirect costs among several contracts. Included are general guidelines for determining whether costs are allowable and for determining whether costs are *reasonable and necessary*. The City's Cost Principles and Guidelines do not relieve the contractor of responsibility for following regulations and restrictions imposed by the funding source for contracts that are funded by a non-City source. **Whenever a non-City funding source's regulation or requirements are more restrictive than the City's Contract Cost Principles and Guidelines, the non-City funding sources regulations and requirements must prevail.** This section also establishes standards for determining the allowability of specific cost items which are usually included in a contract.

Direct Costs

Direct costs are those costs that can be specifically identified with a particular project or contract and are to be charged directly to the contract.

An example of a direct cost is the salaries and fringe benefits of personnel which can be directly attributed to a particular contract. However, salaries and fringe benefits may not always be treated as a direct cost. Salaries and benefits of executive officers and administrative employees may be considered as an indirect cost in cases where no system exists for tracking how much of their time is spent on each of the organization's contracts.

Any cost incurred that has been treated as an indirect cost cannot also be included as a direct cost. All costs specifically identified with other contracts of the organization are direct costs of those projects and may not be charged to the contract in question either directly or indirectly.

Indirect Costs

Indirect costs are any costs which are not directly identified with a single contract but which are allocated among multiple contracts or funding sources.

Indirect costs must not duplicate any cost separately identified in the line-item budget as a direct cost. Indirect costs must be fully described and documented by a cost allocation plan. A letter of assurance from a CPA firm accepting the contractor's cost allocation plan methodology may be substituted for the submission of the plan.

This letter must be submitted at the time of the contract budget submission. However, the contracting department may require the submission of the contractor's indirect cost allocation plan in addition to the CPA firm's letter of assurance. Both the direct costs and indirect costs shall exclude capital expenditures except as referenced in Maintenance, Custodial and Repair Costs, and, Rental Costs.

An example of an indirect cost is general administrative expense. If an organization administers several contracts, it can allocate general administrative expenses among the different contracts or funding sources proportionately. The percentage allocated to each contract or funding source will ultimately depend on the method of allocation used.

Following is a discussion of two methods for allocating indirect costs: 1) the simplified allocation method and 2) the multiple allocation base method.

Simplified Allocation Method

Where an organization's major functions benefit from its indirect costs to approximately the same degree, the allocation of indirect costs may be accomplished by (1) separating the organization's total costs for the base period as either direct or indirect and (2) dividing the total allowable indirect costs by an equitable distribution base, which consists of salaries and fringe benefits. The result of this process is an indirect cost rate which is used to distribute indirect costs to individual contracts. The rate should be expressed as the percentage of the total amount of allowable indirect costs to the base.

Some non-profit organizations treat all costs as direct costs except general administrative expenses. These organizations generally separate their costs into two basic categories: (1) direct functions and (2) general administrative expenses. Joint costs such as rental costs, operation and maintenance of facilities, telephone expenses and the like are prorated individually as a direct cost to each category and to each contract, or other activity using a base most appropriate to the particular cost being prorated.

Under this method, indirect costs consist exclusively of general administrative expenses.

The following is an example of a simplified allocation method. In this case indirect costs are distributed based on the percentage that contract salary and fringe benefits are of the total salaries and fringe benefits of the agency.

Example 1: Base = Salaries and Fringe Benefits

a. Total agency salaries and fringe benefits:	200,000
b. Contract salary and fringe benefits:	50,000
c. Contract indirect cost rate (b/a):	25%
d. Total agency indirect costs	75,000
e. Contract indirect cost (c x d):	18,750

Multiple Allocation Base Method

Where an organization's indirect costs benefit its major functions in varying degrees, such costs must be accumulated into separate cost groupings. Each grouping is to be allocated individually to function by means of a base which best measures the relative benefits. Actual conditions must be taken into account in selecting the base to be used in allocating the expenses in each grouping. When an allocation can be made by assignment of a cost grouping directly to the function benefited, the allocation shall be made in that manner. When the expenses in a grouping are more general in nature, the allocation should be made through the use of a selected base which produces results that are equitable to both the City and the organization.

In general, any cost element or cost-related factor associated with the organization's work is potentially adaptable for use as an allocation base provided that (1) it can readily be expressed in terms of dollars or other quantitative measures and (2) it is common to the benefiting functions during the base period.

An example of a multiple allocation base for personnel expenditures could be "number of employees." An example of a base for purchasing expenditures could be "number of requisitions processed."

Listed below are examples of a multiple allocation base method. In this example the base for the personnel department is the number of employees, while the base for the purchasing department is the number of requisitions processed.

Example 1: Base = Number of Employees in Agency

a.	Total number of employees in agency:	100
b.	Number of employees assigned to City contract:	20
c.	Contract indirect cost rate (b/a):	20%
d.	Total agency cost for personnel:	\$60,000
e.	Contract indirect cost for personnel: (c x d):	\$12,000

Example 2: Base = Number of Requisitions Processed by Agency

a.	Total number of requisition processed:	30
b.	Number of requisitions processed for City contract:	10
c.	Contract indirect cost rate (b/a):	33.3%
d.	Total Agency cost for purchasing	\$15,000

In this case the total indirect cost would be \$17,000, comprised of \$12,000 in personnel costs and \$5,000 in purchasing costs. Note that in this example the percentage for indirect purchasing costs is greater than that for indirect personnel costs. This method should be used when indirect costs vary and where there are sufficient data and reliable bases to justify the use of more than one base.

Basic Guidelines for Allowability of Costs

The cost principles and procedures in this Section shall be used to determine the allowability of incurred costs for the purpose of reimbursement of costs under the contract terms and conditions. Any deviation from these cost principles must be in accordance with the provisions in the **Deviations** Section.

Factors Affecting Allowability

The tests of allowability of costs under these principles are:

They must be reasonable.

They must be assigned to contract agreements under the standards and methods provided herein.

They must be accorded consistent treatment through application of generally accepted accounting principles appropriate to the circumstances.

They must conform to any limitations or exclusions set forth in these principles or in the contract agreement as to types or amounts of cost items.

They must be permitted under the provisions of the contract.

Reasonable Costs

A cost may be considered reasonable if the nature of the goods or services acquired and the amount involved reflect the action that a prudent person would have taken under the circumstances prevailing at the time the decision to incur the cost was made. Major considerations involved in the determination of the reasonableness of a cost are:

Whether the cost is of a type generally recognized as necessary for the operation or performance of the project or program under the terms and conditions of the contract.

The restraints or requirements imposed by such factors as generally accepted sound business practices and federal, state and City laws and regulations.

Whether the actions taken with respect to the incurrence of the cost are considered prudent and consistent with established practices and policies of the business, industry, profession or service being contracted.

Whether the cost amount is within a reasonable range of current market prices.

Whether there exists a significant deviation from established practices which may unjustifiably increase the costs of the contract.

Standards for Selected Cost Items

Listed below are selected budgetary cost items, a description of such costs, their allowability and required documentation. However, no cost item included in these Guidelines will be considered allowable unless it is specifically approved by the City in the actual terms and conditions of the contract entered into by the City and the contractor. It should be noted that each type of expense can be either direct or indirect depending on whether it can be directly associated with a particular contract.

For all cost items included in a contract, the minimum required documentation is the contractor's original invoice. Any additional supporting documentation is noted specifically within the cost category description listed below. Supporting documentation is to be maintained by the contractor on site unless the contracting department requires that it be submitted with the contractor's invoice.

Although the following list is extensive, it is not meant to be exhaustive. For cost items which are not specifically covered by the categories below, clarification and determination of allowability must be obtained in writing from the Deputy Director of Finance for Accounting and Administration.

Acquisition of Real Estate

Costs incurred for the acquisition of real estate are allowable only if approved in advance and in writing by the City, and only to the extent allowed by the Commonwealth's funding agency and the terms of any applicable grant or funding agreement and associated regulations. The City may require that the contractor refund all or a portion of the funding in the event that the contractor fails to keep the acquired property in service for non-profit uses consistent with the purpose of the funding for a period of time to be determined by the City. In this case, the City may require that the contractor execute and deliver such documents and instruments as the City may require, including, without limitation, reimbursement agreements, deed restrictions and prohibitions on junior liens or mortgages.

Advertising Costs

Advertising costs mean the cost of media services and associated costs. Media advertising includes magazines, newspapers, brochures, radio and television programs, direct mail, exhibits and the like. Advertising costs are generally unallowable unless specifically required by law or regulation or approved by the City as provided for in the terms and conditions of the contract. Advertising to recruit individuals to fill staff vacancies or for outreach purposes is allowable if approved by the City. When printed or audio/visual material is approved by the City and prepared and used for public consumption, the material must state that the material was paid for by the City of Philadelphia.

Required documentation will be the contractor's original invoice which denotes that the advertising was related to the specific project or award.

Bonding Costs

Costs of bonding required or approved by the City are allowable. In certain cases the City requires assurance against financial loss to itself or others by reason of performance or default of the contractor.

Required documentation will be copies of bond documents and premiums paid to bonding and insurance companies. These expenses may be included in an indirect cost calculation, but if they are, they should not be included as a direct cost line item.

Communication Costs

Costs incurred for telephone services, local and long-distance telephone calls, telegrams, radiograms, fax transmissions, postage and the like are allowable. Required documentation will be the contractor's original invoice, supported by detail which indicates which charges relate to the specific project or award. If the detailed bills are too voluminous, a special listing should be provided which summarizes communication costs associated with the project on contract award. Any communication costs which are included in the indirect cost rate calculation cannot also be included as a direct cost line item.

Employee Compensation

Compensation for personnel costs includes wages, salaries and fringe benefits. Salaries must be supported by a detailed list of all personnel, their job classifications titles, their annual salaries, their hourly rate where applicable, the amount of time they worked on the contracted project, and the amount of time they worked on other projects. Salary costs must be supported by daily time and attendance and payroll distribution records.

Certain salary expenses such as those for administrative personnel may be included in the indirect cost calculation. If this is the case, these costs may not be included as a direct cost line item(s).

Fringe benefit costs shall be limited to the following: employer contribution to Social Security (FICA) and Medicare taxes, employer expenses for Workers' Compensation insurance, health insurance (including vision, prescription, and dental), life insurance, unemployment insurance, disability insurance, and pension costs. Costs are allowable as either a direct cost of the contract provisions or as an indirect cost.

The maximum for fringe benefits shall not exceed the percentage of salary as established annually by the Office of the Director of Finance. The instructions for determination of this percentage, including a reference table, are contained in the section, Fringe Benefits Rate Calculation.

For an assessment of the reasonableness of salaries, prevailing industry standards should be used as a guideline wherever possible.

Entertainment Costs

Costs of amusement, diversion, social activities, entertainment, ceremonials and any costs relating thereto, such as meals, lodging, rentals, transportation and gratuities are generally unallowable. Exceptions may be made when such costs are directly related to the service being delivered and when such costs are incurred for the direct benefit of the program clients or participants. Costs must be specifically justified as a direct cost and approved as a line item in the budget.

Equipment Costs

Equipment means an article of nonexpendable, tangible, personal property having a useful life of more than two years and an acquisition cost of \$500 or more per unit.

Acquisition cost means the net invoice unit price of an item of equipment including the cost of modification, attachments, accessories or auxiliary apparatus necessary to make it useable for the purpose for which it was acquired. Ancillary charges such as freight, insurance and installation may be included in the acquisition cost. **Equipment expenditures are unallowable as indirect costs.**

The full cost of the equipment is allowable if the use of the equipment is solely in support of the City contract and is included as part of the approved budget.

If an agency bills the City for the full cost of equipment, then this equipment will become the property of the City at the termination of the contract or program.

Required documentation will be the contractor's original invoice, supported by detail which indicates which charges are related to the specific project or contract. At a minimum, a physical inventory must be taken at the end of each contract period and, when required by the contracting department, be submitted with the final invoice.

Leased equipment may be charged as a direct cost when normal usage does not warrant its purchase or when renting is a less expensive option. The rental charge shall be prorated depending on the portion of usage in support of the City contract **Rental**.

If the equipment purchased by the contractor is not for the sole purpose of the City contract, then the contractor may receive compensation in the form of a use allowance. In order to apply the use allowance method, the purchase price must be divided by the useful life established for the equipment to arrive at a yearly amount. The amount must then be allocated to the City on a percentage basis in accordance with the portion of usage for that contract.

The following is an example of how to apply the use allowance:

- a. Purchase price of copying machine: \$10,000
- b. Useful life: 5 years
- c. Use allowance per year: \$10,000 divided by 5 years = \$2,000
- d. City contract as a % of total equipment use: 25%
- e. Portion of yearly use allowance to be applied to City contract = \$ 500

Charges for use allowances must be supported by the contractor's original invoices, and adequate property records. At a minimum, a physical inventory must be taken at the end of each contract period and, when required by the contracting department, be submitted with the final invoice.

Equipment purchases are intended for use by the contractor in providing services to the City and should not be bought solely for use by City employees working in conjunction with the contractor as a mechanism to circumvent procurement regulations or City Charter provisions.

Fines and Penalties

Costs resulting from failure of the contractor to comply with federal, state and City laws and regulations are unallowable, including financial awards pursuant to arbitration, settlement or dispute resolution.

Fringe Benefits Rate Calculation

The Allowable Fringe Benefit Rate is to be calculated based on the contractor's average employee salary using the following method.

Total Cost of Salaries Divided by Total Number of Employees = Average Salary

If there are part-time workers employed, an equivalent number of full-time employees should be calculated.

TABLE OF MAXIMUM ALLOWABLE FRINGE BENEFIT RATES

Average Salary	Allowable Rate
\$15,000	53.53%
\$17,500	47.79%
\$20,000	43.48%
\$22,500	40.13%
\$25,000	37.46%
\$27,500	35.26%
\$30,000	33.44%
\$32,500	31.89%

If average salary exceeds \$35,000, the maximum allowable rate is 31.05%.

Example:

Total Salaries \$750,000

Number of Employees or
Equivalent Number of
Full-Time Employees 30

Average Salary: $\frac{\$750,000}{30} = \$ 25,000$

Maximum Allowable Fringe Benefit Rate = 37.46%

Fund Raising and Public Relations

Costs of organized fund raising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred solely to raise capital or obtain contributions are unallowable.

General Administrative Expense

Administrative expenses not directly attributable to the contract are allowable only as an indirect cost.

Gifts, Contributions and Donations

Gifts, contributions and donations to any individual or organization are unallowable.

Insurance Costs

Insurance includes insurance which the organization is required to carry under the terms of the contract and any other insurance which the organization maintains in connection with the general conduct of its operations. Costs of insurance required and maintained pursuant to the terms and conditions of the contract and which is maintained solely for the contract are allowable as a direct cost. All other insurance costs may only be charged as an indirect cost. Required documentation will be copies of paid premium invoices and, upon request, copies of the insurance policies themselves.

Interest Costs

Costs incurred for interest on borrowed capital are unallowable. Interest paid for funds borrowed from a lending institution or endowment fund may be considered an allowable expense in the case where funds are borrowed to meet the actual cash flow requirements of a contracted program and to the extent that the City is eligible for reimbursement from a non-City funding source. It must be documented that the actual cash flow requirements are such that obligations could not be met and that the loan was obtained at the lowest interest rate available as evidenced by quotations from three potential lending sources.

Losses Incurred Under Contracts

A loss incurred under *this* or any other contract is unallowable.

Maintenance, Custodial and Repair Costs

Normal maintenance, custodial and repair costs necessary for the upkeep of property acquired and maintained for the purpose of the program are allowable as a direct or an indirect cost. Custodial and maintenance costs for the upkeep of space may be included as part of a rental charge. If the cost of maintenance, custodial or repair services is included in the lease or rental payment, it is allowable to the extent that the additional lease or rental payment amount reflects the actual costs of the services. These services may be purchased separately, if they are offered at a lesser cost. If these services are purchased separately, documentation showing that this was the most economical method for the provision of these services must be provided. Capital costs to maintain or improve a site which is used for direct services to clients and that are reimbursable from a non-City funding source are allowable in accordance with the funding source's regulations and guidelines if prior written approval is granted by the City. Upon completion of the capital improvements, the site cannot be used for any other purpose unless prior written approval has been granted by the City.

Costs must be appropriately documented for reimbursement.

Material and Supplies Costs

Costs incurred for purchased materials and supplies directly related to the performance of the contract or for basic client care are allowable.

Such costs should be charged at their actual prices after deducting all cash discounts, trade discounts, rebates and allowances received by the organization. Delivery charges may be included as a proper part of material cost.

Required documentation will be the contractor's original invoice indicating purchase of supplies and any other supporting packing slips, delivery tickets and receiving reports.

Memberships, Subscriptions and Professional Activity Costs

Costs for membership in civic, business, technical and professional organizations and subscriptions to civic, business, technical and professional publications are generally unallowable except when directly related to the program and contract performance and specifically approved by the City. Costs of meetings and conferences are generally unallowable except when directly related to program and contract performance and specifically approved by the City.

Printing

Printing costs are allowable as long as they are required in completing the assigned contract. Such costs should be treated as direct costs if they are directly associated with the project. They may be treated as indirect costs, however, if they are incurred in overall general administrative functions or are minor in total costs.

When printed materials, such as brochures, pamphlets, or informational flyers, are prepared and used for public consumption, the material must state that it was funded by the City of Philadelphia, unless pre-printed material is purchased in support of a program.

Required documentation will be the contractor's original invoice, supported by copies of invoices from the printing firm or, if the printing is done within the organization, any internal work order forms which indicate the cost incurred.

Professional Services

Professional services such as legal, accounting, auditing, architecture, engineering, medical and therapeutic services rendered by members of a particular profession who are not employees of the contractor agency are allowable when justifiable for programmatic or administrative reasons and part of the approved contract budget.

A written agreement is required and shall state the services to be provided, the rate of compensation and the method of payment. Copies of all invoices submitted and paid shall be maintained as well as time records indicating the hours worked on the particular project.

The contractor must receive prior written approval of any subcontractors by the contracting department.

Rental Costs

Rental costs of land, building, equipment and other personal property are allowable provided that the rates are reasonable in light of such factors as rental costs of comparable facilities and market conditions in the area. Rental costs may not exceed fair market rental value unless pre-approved in writing by the City and reimbursable from a non-City funding source. The location of all rental properties and the cost per square foot must be listed in the supporting detail of the budget.

The type of equipment that is being rented must be listed and, if the equipment is under a lease purchase agreement, the value of the equipment at the end of the lease as well as the monthly charge must be listed.

Mortgaged real estate which is already owned by a contractor is allowable as a rental cost. The amount charged shall be prorated in relationship to the percentage of space used for the contracted program and shall be the lesser of the fair market rental value of the space or the actual monthly cost including down payment, principal and interest, major repairs and renovations calculated over the length of the mortgage unless otherwise approved by the contracting department.

A continuing participation allowance for the use of space in debt-free real estate owned by an agency is allowable if reimbursable as stipulated in the applicable non-City funding source's regulations and guidelines. This allowance must be accounted for in a restricted fund and may be used solely for services for which the City has contracted and in accordance with the guidelines and restrictions in the City's Cost Principles and Guidelines.

Security Costs

The cost to provide security services such as night guards for a building which is used for program-related functions is allowable. In situations where only part of the building is being used to provide services under a City contract, the total charge shall be prorated in direct relation to the amount of space used by the contracted program to determine the allowable amount. Required documentation will be copies of all invoices paid and time records indicating the number of hours the service was provided.

Security cost may be included as part of a rental charge. If the cost of security is included in lease or rental payments, it is allowable to the extent that the additional lease or rental payment amount reflects the actual cost of the service. This service may be purchased separately if it is offered at a lesser cost. If this service is purchased separately, documentation showing that this was the most economical method for the provision of this service must be provided.

Taxes

Taxes which the contractor is required to pay are generally unallowable. The exceptions are wage taxes included in gross salaries and state and local sales taxes incurred for the acquisition of materials, supplies and equipment. Taxes paid for the acquisition of land or buildings are unallowable except for transfer taxes to the extent to which they are reimbursable from a non-City funding source.

Training and Education Costs

Training and education costs are generally unallowable unless required to maintain licensing or certification necessary in the performance of the contract services. Training which is deemed essential both to meet the contract objectives and to improve measurably the delivery of services may be considered allowable, but the specific content of training must be approved by the department as a direct cost line item in the contract budget. Training for existing contractor staff to meet new state or federal education requirements is an allowable expense. **Training to enhance the professional skills of contractor staff to meet contract requirements is unallowable.** Appropriate documentation is required for cost reimbursement.

Travel Costs

Travel costs are the expenses for transportation, lodging, meals and other related items incurred by employees who are in travel status for the organization and are allowable only when they are directly attributable to the specific work of the contract. Such costs will only be reimbursed in accordance with the rates established by the City in its Administrative Board Rule No. 2.

Required documentation will be copies of all invoices from airlines, travel agencies, trains and bus companies as well as copies of validated tickets. If air or train travel is required, all accommodations must be coach.

Utilities

The cost of utilities such as heat, electric, water, sewage and fuel necessary for the operation of a building which is used for program related functions are allowable. In situations where only part of the building is being used to provide services under a City contract, the total amount shall be prorated to the contracted program to determine the allowable amount. All costs must be fully documented.

Utility costs may be included as part of a rental charge. If utility costs are included in lease or rental payments, they are allowable to the extent that the additional lease or rental payment amount reflects the actual cost of the utilities. Utility service may be purchased separately if it is offered at a lesser cost. If this service is purchased separately, documentation showing that this was the most economical method for the provision of this service must be provided.

Deviations from Cost Principles

When the best interest of the City would be served by a deviation or when these cost principles are found to be inconsistent with state or federal funding rules and regulations, the City may authorize a deviation from the cost principles set forth herein, provided that all costs are reasonable, lawful, allocable and accounted for in accordance with generally accepted accounting principles. A written request for a deviation must be submitted to the Accounting Bureau, Office of the Director of Finance for approval.

Standard Budget Format

Budget Preparation

Following is a sample budget format (Appendix A) to be used for all contract budget submissions. For contracts that include direct personnel costs, a sample personnel format follows (Appendix B). For contracts that include indirect costs, a sample format follows (Appendix C). Some sample budget items have been included for illustrative purposes only. Each department will make its own determination as to what items should appropriately be included on a contract budget submission. Though there may be some deviation from the form, it is mandatory that all budget submissions contain the information shown on the form and required in the accompanying guidelines. The guidelines are in no way meant to limit the budget information requested for the contractor. Budget formats required by non-City funding sources or budget formats developed by an individual department may be substituted for the attached format, provided the budget information contained therein meets the minimum standards required in Appendices A, B, and C. Departments are to ensure that budgets contain all information deemed necessary to justify fully all contract expenses. Per diem contracts, where the rate is based on cost reimbursement, are expected to contain the requested budget detail in order to determine those contractor expenses that have been used to calculate the per diem charge.

The guidelines in the Basic Guidelines and Standards for Selected Cost Items Section contain definitions and specific cost items which are allowable and should be referred to when constructing a contract budget. Each budget item and the accompanying information that must be provided is also explained in the guidelines.

It is required that the amounts of all funding sources for every item on the contract budget be shown, as well as the total cost of the item. The percentage of the total cost which is being charged to the contract must also be shown. Additional columns should be added for items that receive funding from more than one City contract so that there is one column for each. The specific contract should be identified at the top of each column.

The Cost Principles and Guidelines section contains an explanation of the determination of direct and indirect costs and methods for calculating indirect expenses. There is flexibility in determining whether a particular expense will be considered as direct or indirect. Each item included as an indirect cost must be listed on the budget with the amounts of all other funding sources shown. The base chosen and the calculation used for indirect cost must also be shown on the budget or certified as discussed in **Indirect Costs**. Some budgets may be very simple and require only one section of the sample format. This is acceptable as long as all required information is provided. For example, a contract that consists of only a charge for personnel on an hourly basis will use only Sections I and V of the budget format, accompanied by the personnel detail sheet. The budget for a per diem contract, which will need to show all the components that go into the calculation of the per diem charge, will most likely require Sections I through V of the budget format. The budget for cost reimbursement contracts will consist of all sections of the budget format that contain reimbursable expenses.

Contract Budget Format

DIRECT EXPENDITURES

SECTION I

	CONTRACT FUNDING	OTHER CITY FUNDS	APPENDIX A OTHER FUNDS	TOTAL COST
PERSONNEL (see attached for details)				
SALARIES	\$34,750		\$69,250	\$104,000
FRINGE BENEFITS	\$ 5,219		\$10,939	\$ 16,158
TOTAL	\$39,969	\$0	\$80,189	\$120,158

SECTION II

SUB-CONTRACT COSTS (.listed by contractor name)

<u>NAME</u>	<u>SERVICE TO BE PROVIDED</u>			
J.J. Hughes, Inc.	accounting	(prorated at _ %)	\$ 5,000	\$ 5,000
	TOTAL		\$ 5,000	\$ 5,000

SECTION III

OPERATING EXPENSES (prorate if applicable)

RENT (see attached documentation)	20%	\$ 6,000	\$24,000	\$30,000
UTILITIES (list items)				
COMMUNICATION EQUIPMENT (list items 1 telephone)	20%	\$ 34	\$ 136	\$ 170
OFFICE SUPPLIES		\$ 54		\$ 54
TRAVEL		\$ 235		\$ 235
OTHER (Specify)				
PRINTING		\$ 295		\$ 295
TOTAL		\$ 6,618	\$0	\$24,136

SECTION IV

EQUIPMENT

<u>PURCHASE</u>				
<i>(list items and quantity)</i>				
2 LASER PRINTERS		\$ 300		\$ 300
2 WORK STATIONS		\$ 900		\$ 900
TOTAL		\$ 1,200	\$0	\$ 1,200
<u>LEASE/RENTAL</u>				
<i>(list items & quantity)</i>				
1 COPY MACHINE (\$___/mo.)	(prorated at %)	\$ 100	\$ 300	\$ 400
TOTAL		\$ 100	\$0	\$ 300

SECTION V

TOTAL DIRECT EXPENDITURES	\$52,887	\$0	\$104,625	\$157,512
TOTAL INDIRECT EXPENDITURES (see attached)	\$18,155	\$0	\$ 81,845	\$100,000
TOTAL EXPENDITURES (DIRECT & INDIRECT)	\$71,042	\$0	\$186,470	\$257,512

SERVICE UNITS TO BE PROVIDED (include description)

Cataloging of books:	1,500
CONTRACT COST PER SERVICE UNIT:	\$ 47.36

Personnel Budget Format

PERSONNEL

APPENDIX B

Name	Position	% Of Time On Project	Contract Fringe Benefit Cost <small>(show detail below)</small>	Annual Salary	Contract Funding	Other City Funds	Other Fund	Total Contract Personnel Costs
Mary Brown	Librarian	50%	\$4,004	\$ 55,000	\$ 27,500		\$27,500	\$31,504
John Doe	Secretary	25%	\$1,010	\$ 24,000	\$ 6,000		\$18,000	\$ 7,010
Emily Jones	Payroll Clerk	5%	\$ 206	\$ 25,000	\$ 1,250		\$23,750	\$ 1,456
TOTAL			\$5,219	\$104,000	\$ 34,750	\$0	\$69,250	\$39,969

FRINGE BENEFITS (Specify)

**COST PER EMPLOYEE
PER MONTH**

Health Insurance	\$300
Pension Contribution	\$ 6
Group Life Insurance	\$ 11

TOTAL **\$317**

FICA 7.65% of salary

NAME	POSITION	RATE PER HOUR	CONTRACT HOURS	PER WEEK	CONTRACT COST
Mary Brown	Librarian	21.00	1,500	20	\$31,504
John Doe	Secretary	\$11.68	600	10	\$ 7,010
Emily Jones	Payroll Clerk	\$14.56	100	2	\$ 1,456
TOTAL					\$39,969

Indirect Expenditures

List items included

	Annual Salary	Annual Fringe Benefits	Total Salary + Fringe	Contract Indirect Rate	Contract Funding	Other City Funds	Other Funds	Total Cost
Personnel								
General Counsel	\$60,000	\$ 9,750	\$ 69,750	18.15%	\$12,663		\$57,087	\$ 69,750
Purchasing Agent	\$26,000	\$ 4,250	\$ 30,250	18.15%	\$ 5,492		\$24,758	\$ 30,250
TOTAL	\$86,000	\$14,000	\$100,000	18.15%	\$18,155	\$0	\$81,845	\$100,000

TOTAL AGENCY INDIRECT COSTS: \$100,000

Show base and calculation used

Base: Salaries and fringe benefits

- a) Total agency salaries and fringe benefits \$220,158
- b) Contract salary and fringe benefits: \$ 39,969
- c) Contract indirect cost rate (b/a): 18.15%
- d) Total agency indirect costs: \$100,000
- e) Contract indirect cost (c x d): \$ 18,155

Service Unit Calculation

For the purpose of these principles, service unit cost is defined as the cost of the most basic unit or units of service defined in the contract. If the most basic unit of service is not clearly defined in the contract, then it must be defined by the contracting department as part of this calculation process. As noted before, not all contract objectives are able to be quantified in this manner, but wherever possible a cost per service unit is to be calculated. Every contract, including those that do not lend themselves to the calculation of service unit cost, must maintain a description of its measurable objectives as discussed in [The General Information and Definitions Section](#).

The method for calculating service unit cost is as follows:

Name of Basic Unit of Service _____

1. Total Allowable Expenditures for Basic Service Units
2. Estimated Number of Basic Service Units
3. Estimated Cost per Service Unit (#1 divided by #2)

An example of how to calculate the Basic Service Unit Cost is as follows:

Basic Unit of Service: (1) Brochure Produced

- | | | |
|----|------------------------------------|-------------|
| 1. | Total Allowable Expenditures: | \$50,000.00 |
| 2. | Estimated Number of Service Units: | 200,000.00 |
| 3. | Estimated Cost Per Service Unit: | \$.25 |

If the contract entails more than one service objective, the service unit cost must be calculated proportionately for each objective. The contracting department must determine what portion of the total contract budget is allotted for each service being performed. If, for example, a department enters into a \$500,000 contract for residential and outpatient drug and alcohol treatment, it must first determine the allocation of the \$500,000 between the two service components, residential and outpatient treatment, before the service unit cost can be calculated. The calculation is as follows:

Basic Unit of Service: (1) Day of Residential Treatment

- | | | |
|----|------------------------------------|-----------|
| 1. | Total Allowable Expenditures: | \$400,000 |
| 2. | Estimated Number of Service Units: | 2,000 |
| 3. | Estimated Cost Per Service Unit: | \$200 |

Basic Unit of Service: (1) Session of Outpatient Counseling

- | | | |
|----|------------------------------------|-----------|
| 1. | Total Allowable Expenditures: | \$100,000 |
| 2. | Estimated Number of Service Units: | 2,000 |
| 3. | Estimated Cost Per Service Unit: | \$50 |

Departments are not required to use the above methods for service unit cost calculation, but any method used must be explained and the basic unit of service must be clearly identified.

Payment Procedures

Documentation required for payments pursuant to all types of Contracts

Invoices for reimbursement shall be submitted in sufficient detail for proper pre-audit and post-audit review. Supporting documentation, as referenced in the section on standards for allowable costs, is to be maintained by the contractor on site unless the contracting department requires that it be submitted with the invoice. Departments may require additional documentation as deemed necessary to justify expenditures. Invoices against a program budget contract must be submitted in the same format as the contract budget and should show contract status as measured against program benchmarks. Per diem contracts and contracts based on deliverables must specify percentage of completion, outcomes, day of care or other service elements which indicate services rendered.

The contract shall establish payment terms and shall specify that payments to the contractor are contingent upon satisfactory performance under the terms of the contract and as determined solely by the City.

Timing and Terms of Payment

Payments to the contractor are contingent upon satisfactory performance under the terms of the contract and as determined solely by the City, subject to the availability of funds and cash reserves. Reimbursement payment schedules involve payment of allowable costs after they have been expended by the contracting party and verified by the contracting department. Timely payment is contingent upon timely receipt of proper invoices from the contractor.

Advance payments will be permitted only if approved by the City and included in the contract terms, and will be approved only for non-profit organizations for new program start-up costs, or if a non-City funding source mandates that such payments be made. Recovery of these payments must be made prior to the end of the contract period. The method of recovery of advance must be stipulated in the terms of the contract, and portions of the advance may be deducted from submitted invoices on a monthly or quarterly basis.

Prohibition against use of Tax Delinquent Contractors

No contract shall be entered into or amended and no invoices shall be paid to a contractor known by the City to be indebted to it, 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), liens, judgment, fees or other debts, unless the contractor has entered into an agreement or payment plan with the Revenue Department to eliminate the outstanding delinquencies. Each contract shall include a representation of non-delinquency language, or in cases of delinquency, representation that a payment agreement has been made with the City. The representation also includes language that the contractor's breach of this provision may result in the withholding of payments for services rendered in performance of the contract. There is a similar requirement that non-delinquency representations be included in all subcontracts. Providers will be required to separately represent that any subcontractor is not indebted to the City.

Business Privilege License Requirements

No contract shall be entered into with a contractor who does not have a City Business Privilege License (BPL). As stipulated in the Philadelphia Code, Section 19-2602, Subsection 1, a BPL is required of any person or corporation engaged in any business within the city limits of Philadelphia whether or not such person or corporation maintains a place of business within Philadelphia. The license is issued for a one-time fee of \$250. Before applying for a BPL, a City tax account number must be obtained from the Philadelphia Department of Revenue, located in the Public Service Concourse of the Municipal Services Building, 1401 JFK Boulevard, where application forms are available. Application forms for the BPL are available from the Department of Licenses and Inspections, License Issuance Unit, located in the Public Service Concourse of the Municipal Services Building, 1401 JFK Boulevard.

Monitoring and Reporting Requirements

The contracting department has the right at any time, with no prior notification, to evaluate compliance with the contract provisions. The contracting department shall have access to all contractor records necessary to evaluate compliance, such as time sheets and case records, and shall have the right to interview all of the contractor's staff and its clients in instances where the contractor provides services to third parties.

The contractor must submit progress reports to the contracting department within the first 90 days after the contract begins and at least every three months thereafter for the duration of the contract. It is preferable, however, to require monthly reporting by a contractor on its progress in achieving the timetable for deliverables and/or service level goals.

Audit Requirements

In order to permit the City to monitor effectively compliance with its professional services contract cost principles, the City will require certain audit standards of its contractors. Each contractor who is providing services under a Cost Reimbursement Contract or a Per Diem Contract where the rate is based on cost reimbursement must agree to make available to the City of Philadelphia upon request its books and records for inspection by representatives of the Office of the Director of Finance, the City Controller and the department to which it is under contract concerning charges, fees and costs for the individual contract. Contractors providing services under other types of contracts such as Fixed Fee and Contingency Fee contracts must agree to make available for inspection any records and financial documents related to the City contract.

In addition, contractors who are determined to be subrecipients of federal, state or city awards will have audit requirements communicated to them by the contracting department. Subrecipients expending over \$300,000 of federal awards in a fiscal year must submit a single audit in compliance with the City of Philadelphia's Subrecipient Audit Guide. Subrecipients expending under \$300,000 of federal awards in a fiscal year may not require a single audit and should refer to the Office of Director of Finance's Standard Accounting Procedure G 5-2, "Subrecipient's Audit Requirements." Single audit reports are due within 120 days of the subrecipient's fiscal year end year end date and program audit reports (non-single audits) are due within 120 days of the contract period's ending date. These statements are to be prepared by an Independent Public Accountant who is qualified under the provisions of Government Auditing Standards (Yellow Book - 1994 Revision). The IPA is to be engaged in accordance with the procurement provisions of OMB Circular A-110 entitled "Grants and Agreements with Institutions of Higher Learning, Hospitals, and Other Non-Profit Organizations". The Philadelphia City Controller's Office will assess auditor qualifications in accordance with section 103.10 of the Audit Guide. **For further details on sub-recipient audit requirements, refer to the City's Sub-recipient Audit Guide, which is issued by the Office of the Director of Finance.**

Audit requirements may be placed on contractors who are not sub-recipients either when required by a federal or state funding source or at the discretion of the department to which it is under contract. Such audit requirements must be included in the contract.

Costs associated with audits of subrecipients are reimbursable through federal or Pennsylvania Department of Public Welfare grant programs only if the amount of subrecipient grant-related expenditures exceed \$300,000 during the contract year or the contractor's fiscal year. However, lesser scope audit services are reimbursable when used by the City to monitor the grant expenditures of subrecipients with expenditures less than \$300,000.

For contracts in which payment is made on a reimbursement method, the contractor must maintain, and be prepared to provide upon request, adequate documentation including invoices, receiving reports, packing slips, delivery tickets, time records, personnel files and any other internal records which may be required to verify all costs actually incurred. If during the course of a review or audit, discrepancies are discovered or there is insufficient documentation to substantiate some costs, the City will reserve the right to retain a portion of any future contract amounts or to recover any payments made in excess of services delivered until such discrepancies are resolved or the required documentation is provided.

For contracts which call for delivery of a final report or completion of a designated task, a portion of the amount due the contractor will be retained until the final report has been received and accepted by the department and, if deemed necessary, the Office of the Director of Finance and/or the City Controller.

Contracts calling for completion of a set task will be subject to review by inspectors of the City or by its consultants. A portion of any balance due may be retained if the inspection uncovers discrepancies or incomplete work.

If the contract is partially or fully funded by federal or state grants, or if there are federal or state regulations which govern implementation and completion of a contract, and these grants or regulations require that certain reports or inspections be completed or performed, these reports will be required in addition to the reports required by the City.