



REQUEST FOR PROPOSALS
for a
CONSTRUCTION MANAGEMENT SERVICES
for The
CITY OF PHILADELPHIA

Issued by:
THE CITY OF PHILADELPHIA ("City")
DEPARTMENT OF PUBLIC PROPERTY
CAPITAL PROJECT DIVISION
PROJECT NO. 11-17-4523-01
New 22nd Police District Building
21st and 22nd and Diamond Streets
October 17, 2017

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.

Electronic proposals must be received no later than 5:00 p.m. Philadelphia, PA, local time, on November 21, 2017. In addition to the online submission, proposers **MUST** submit six (6) hard copies must be received on November 27, 2017 to the Department of Public Property Office, One Parkway Building, 1515 Arch Street, 11th Floor, Philadelphia, PA 19102 (Attention: Michelle Shuman).

Mandatory Pre-Proposal Conference:

Date: October 31, 2017

Time: 10:00am

Location: 1515 Arch St, 18th Floor, Philadelphia PA 19102

James F. Kenney, Mayor
Bridget Collins-Greenwald, Commissioner, Department of Public Property

Table of Contents

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

- II. Scope of Work
 - A. Project Details
 - B. Greenworks Philadelphia
 - C. Services and Tangible Work Products
 - D. Timetable
 - E. Hours and Location of Work
 - F. Monitoring; Security
 - G. Reporting Requirements
 - H. Cost Proposal
 - I. Organization and Personnel Requirements
 - J. Technology Capabilities
 - K. Percent for Art Program
 - 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/Diversity Reports
 - D. The Philadelphia Tax and Regulatory Status and Clearance Statement
 - E. Compliance with Philadelphia 21st Century Minimum Wage and Benefits Ordinance
 - F. Certification of Compliance with Equal Benefits Ordinance
 - G. Local Business Entity or Local Impact Certification
 - H. Mandatory Online Application Requirements
 - I. Selection Process

- IV. Proposal Administration
 - A. Procurement Schedule
 - B. Questions Relating to the RFP
 - C. Pre-Proposal Conference, Site Visits, Inspection of Materials
 - D. Interviews; Presentations
 - E. 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

Appendices

Appendix A – General Provisions and Provider Agreement

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

Appendix B-1 - applicable to for-profit businesses

Appendix B-2 – applicable to nonprofit organizations

Appendix C – City of Philadelphia Tax and Regulatory Status and Clearance Statement

Appendix D – Local Business Entity or Local Impact Certification

Appendix E – The Philadelphia Code Chapter 17-100, Procurement Contracts, Section 17-111

Appendix F – Certification of Site Visit

Appendix G – Statement of Acceptance

Appendix H – Fee Proposal Form – Lump Sum

Appendix I – Public Works Project Labor Agreements - Sample Project Labor Agreement

infostores

I. Project Overview

A. Introduction; Statement of Purpose

The City of Philadelphia's ("City"), Department of Public Property ("DPP") is soliciting Proposals from qualified firms interested in providing Construction Management Services for a New Building at the 22nd Police District. The site includes several parcels at 21st, 22nd and Diamond Street in North Philadelphia.

The successful Applicant is expected to provide construction management services related to the design and construction of this complex. Applicants must demonstrate extensive experience in managing the construction of law enforcement, including performing design reviews, construction oversight and administrative functions.

The City will be soliciting separate Request for Proposals for a Design Professional. Together this firm along with the Construction Manager will comprise the project team to represent the owner on this project.

- (1) The City is currently contracted with Hill International to provide design services for the 22nd Police District from conceptual through schematic design.

B. Department Overview

The Department of Public Property ("DPP") manages the physical infrastructure that supports City government operations. To this end, the Department is responsible for the acquisition, disposition, lease, design, construction, renovation, and maintenance of City properties.

The Capital Projects Division under DPP oversees the implementation plan for the construction and renovation of City-owned buildings, public facilities and infrastructure. Capital projects are financed by City general obligation bonds, self sustaining revenue bonds (in the case of the International and Northeast Airports and the Water Department), matched in some cases by state and federal grants as well as private funding.

C. Request for Proposals

DPP invites qualified firms to apply for this opportunity. DPP is seeking a construction management (CM) firm/ team with significant experience in the construction of similar public safety facilities. Applicants should also have experience in the construction of facilities that meet LEED (Leadership in Energy and Environmental Design) requirements. DPP anticipates selecting one applicant with which to contract.

This Request for Proposal ("RFP") provides information to enable applicants to electronically submit online through the City's website, www.phila.gov/contracts, a proposal for architectural, engineering, and/or specialized consulting services for the Department of Public Property ("DPP") for the City of Philadelphia ("City").

The selected applicant will execute a General Consultant Services contract which will consist of the Provider Agreement ("PA") and the General Provisions ("GP") set forth in Appendix A and the requirements contained in Section II: Scope of Work. The Commissioner of the Department of Public Property or her designee shall have complete charge and management of the contract

and shall be the source of authority, direction, and control of the project. The selected applicant and their sub-consultants will be ineligible to propose or bid on a contract for the construction of this project or any other service for this project exclusive of architectural, engineering and/or specialized consulting services. Please review these items in detail as exceptions or waivers to these documents are discouraged and could affect the selection process.

Project Information

(1) Project Number:	11-17-4523-01
Sponsor Agency:	Philadelphia Police Department
Project Name:	New Building at 22 nd Police District
Facility Names and Addresses:	22 nd Police District 21 st , 22 nd and Diamond St Philadelphia, PA 19121
Project Director:	Pedro Pinto, PE
Project Coordinator:	Michelle Shuman

D. 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. The City is not liable for any costs incurred by Applicants in preparing and submitting a proposal in response to this RFP or for any costs and expenses incurred in meeting with, or making oral presentations to the City if so requested.

II. Scope of Work

Goals and Intent of Project

The intent of this project is to design and construct a state-of-the-art building to house the 22nd Police District. This RFP is for Construction Management services for the project.

The Philadelphia Police Department

The Philadelphia Police Department (PPD) is the nation's fourth largest police department, with over 6600 sworn members and 800 civilian personnel. The PPD is the primary law enforcement agency responsible for serving Philadelphia County, extending over 140 square-miles in which approximately 1.5 million reside. Geographically, the Department is divided into twenty-two police districts (each headed by a captain), which comprise six police divisions (Northwest, Northeast, East, Central, Southwest, South - each headed by a Divisional Inspector), into two major sections of the city, Regional Operations Command North (ROC North) and Regional Operations Command South (ROC South), each headed by one Chief Inspector under Patrol Operations. Personnel are assigned to work in 55 different locations throughout Philadelphia, with the current Police Headquarters located in the 6th Police District, in Center City, at 750 Race Street.

Mission of the Police Department

Honor · Service · Integrity

To be a model of excellence in policing by working in partnership with the community and others to:

- Fight crime and fear of crime, including terrorism;
- Enforce laws while safeguarding the constitutional rights of all people;
- Provide quality service to all of our residents and visitors; and
- Create a work environment in which we recruit, train and develop an exceptional team of employees.

Existing Site Context

The site is located along the major neighborhood thoroughfare and north of several Philadelphia Housing Authority developments. The surrounding building stock is a mix of late 19th century rowhouses including the Diamond Street Historic District, newer townhouses, and vacant land, with commercial uses primarily along Diamond and 21st Streets. The site consists of several parcels separated by streets.

A. Project Details

(1) The Department's objectives for this project include the following:

- Protect the community by providing safe and secure temporary custody in a humane environment for alleged offenders;
- Provide an appropriate and safe environment in which law enforcement officials and administrative staff will be able to implement the strategies and initiatives of the department;

- Provide a welcoming building that serves as a resource to the community;
- Meet or exceed City goals for environmental sustainability;
- Support city-wide and district urban planning goals;
- Provide adequate parking for municipal and staff vehicles;

All Department of Public Property capital projects must be designed and constructed to require the minimal maintenance, and the maximum of durability for public use. Projects must also provide a safe and healthy environment that meets or exceeds code requirements and it must attain a high standard of energy efficiency through the life of the structure.

Additionally, this project should support the goals of the mayor as well as the missions of the police department:

- Philadelphia becomes one of the safest cities in America;
- The education and health of Philadelphians improve;
- Philadelphia is a place of choice;
- Philadelphia becomes the greenest and most sustainable city in America;
- Philadelphia government works efficiently and effectively with integrity and responsiveness.

The Applicant's proposed scope of work should address each objective specifically and describe in detail how the Applicant will achieve the objective, or how the Applicant will enable the Department to achieve the objective.

(2) General Description of Work Required

This project is new construction of a Police District building. The general scope of this contract includes but is not limited to the construction oversight for all construction related activities associated with the project. Those activities may include the following:

- Site Work (vehicular access/parking, pedestrian access, security, lighting, landscaping, stormwater management measures, drainage, utilities, also including grading / excavation, walkways, special access requirements, and fencing etc.).
- Exterior/ New Building
- Interior Space Planning, including Furniture, Fixtures and Equipment. Documentation and specification will be based on the City Office Standards, using City-approved furniture systems.
- Police District functions, including operations room, community and entry spaces, locker rooms and bathroom facilities, and administrative office spaces.
- Detention Component, including holding cells with suicide prevention features, equipment space and vehicular sallyport.
- Electrical and Telecommunications and Data Tracking Systems including CCTV and Special Photo Imaging Systems.
- Mechanical, including BAS Controls Systems, Plumbing and Fire Protection Systems.

In summary, the scope of work consists of performing construction management activities for the construction of the new 22nd Police District building (the Project). This contract includes all labor and materials required to perform day-to-day management of the construction process with the goal of creating a quality product on time and within budget. The Construction Manager

(CM) shall oversee all construction related aspects during the pre-construction, construction and post-construction phases for the project. The CM will represent the City in all aspects of value engineering of the design, and provide supervision of construction, construction inspections, construction quality control, construction scheduling and construction budget management.

The Construction Manager (CM) shall provide advice on site use and improvements, construction phasing, selection of materials, building systems, and equipment during the design phases along with a detailed site logistics plan and project phasing plan. The CM shall provide recommendations on construction feasibility, availability of materials and labor, time requirements for installation and construction, and factors related to construction costs including costs of alternative designs or materials and potential reuse of existing structures, equipment or systems.

The Construction Manager shall prepare construction cost estimates based on 50% complete Design Development Documents, 100% complete Design Development Documents and 95% complete Final Design Documents.

The Construction Manager shall check the construction design documents for completeness and coordination and make recommendations to the City and Design Professional for changes to improve the clarity of the documents. The CM shall perform constructability reviews continuously and issue constructability reports and comments to the City at 50% complete Design Development Documents, 100% complete Design Development Documents and 95% complete Final Design Documents.

The Construction Manager shall provide all services required for enhanced building commissioning as required by building codes and to meet a LEED Silver certification..

The Construction Manager shall assist the City in developing, and participating in, a value engineering (VE) process that analyzes the feasibility of alternative systems, equipment, and materials as well as identifying such alternative systems, equipment and materials of equivalent quality. The purpose of the VE is to bring the estimated construction cost within the project construction budget. This includes but is not limited to making proposals that are designed to reduce construction cost and enhance the project.

The Construction Manager shall assist in value engineering the design documents at the 100% completion of the Design Development Documents and 95% completion of the Final Design Documents.

The Construction Manager shall develop a master construction schedule in a critical path method format that tracks activities, resources, and durations to achieve substantial completion and project completion. The schedule needs to include realistic activity sequences (predecessors and successors), and duration allocations for labor and materials, processing of submittals, shop drawings and samples, and the delivery of products that require long lead time for procurement. The Construction Manager shall review and prepare comments on all designs and documentation necessary to modify and upgrade the existing buildings. This includes any modifications and improvements to the related mechanical, electrical, plumbing, fire protection and/or special systems that will be affected. This also includes providing the same services for any new structure proposed for construction at the site.

The Construction Manager shall provide all on-site coordination of inspection services to comply with the Department of Licenses & Inspections and IBC code special inspections and requirements for the project.

The Construction Manager shall provide all on-site coordination and inspection services to comply with the Philadelphia Water Department's Storm Water Management regulations and Fire Department's Fire Marshall requirements for the project.

The Construction Manager will assemble information from contractors relevant to fulfilling the requirements of the Economic Opportunity Program (EOP) during the construction phase of the project. This includes insuring that documents required from contractors are submitted to the Office of Economic Opportunity or their designee in a timely fashion and attending the monthly EOP meeting and updating the EOP committee on the progress of the construction.

In accordance with Executive Order 15-11, Public Works Project Labor Agreements (see Appendix 'I'), the Construction Manager will provide the City with complete management and monitoring of all activities required by this executive order. This includes, during the construction phase, providing written monthly reports on the progress and impact of the PLA on the project and assurance that the PLA goals, which guarantees against strikes, lockouts, slowdowns and similar actions, along with resolution of jurisdictional disputes and diversity goals are met.

A Percent for Art will be considered as a part of this project. The construction manager will assist with coordination of the artwork into the project. (This includes identification of optional sites for potential artwork and supervising all construction required to prepare locations for the installation) These efforts must be coordinated with the Office of Arts, Culture and Creative Economy.

(3) Budget

Estimated Construction Cost/Budget: \$11.5 million

The exact available budget should be confirmed with the DPP during design development.

This *Section II, Scope of Work* 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.

B. Greenworks Philadelphia

Consistent with the vision and framework set forth in *Greenworks Philadelphia*, it is the intent of the City to develop the project in a manner that is both energy efficient and environmentally responsible.

Sustainable Design, Construction and Operation Goals

The work shall integrate building materials and methods that promote environmental quality, economic vitality, and social benefit through the construction and operation of the built environment. The resulting project shall meet at a minimum the LEED™ Silver rating for buildings over 10,000 square feet (Appendix E: The Philadelphia Code, Section 17-111), with higher rating levels encouraged. The intent of the project is to optimize the quality and performance of the built environment, providing the highest level possible of operational efficiency, as well as comfort and support for building tenants and visitors.

Approach to Sustainable Design, Construction and Operations

Sustainable building design integrates building materials and methods that promote environmental quality, economic vitality, and social benefit through the design, construction and operation of the built environment. Sustainable design, construction and operations merges sound, environmentally responsible practices into one discipline that considers the environmental, economic and social effects of a building or built project together through the integrated design process. These sustainable aspects of the development process encompass the following broad topics: efficient management of energy and water resources, management of material resources and waste, protection of environmental quality, protection of health and indoor environmental quality, reinforcement of natural systems, and integrating the design approach.

For best results, sustainability should be clearly articulated as a guiding principle for project development, and incorporated into the project from the earliest stages. Sustainable design principles affect all phases of project development, from design, construction, operations and maintenance, to demolition and disposal. The Proposal shall describe the proposed approach to Sustainable Design and Construction. At a minimum, the proposal shall describe:

(1) **The approach to design integration for meeting objectives outlined in the project approach to Sustainable Design, Construction and Operations.**

Sustainability should be integrated into all phases of the design process, using an approach which balances social, economic, and environmental factors. Sustainability should be incorporated into the earliest design discussions with a sustainable design charrette to kick-off the project to ensure that all design and construction team members are familiar with sustainability concepts and basic sustainable building practice. The charrette acts as a group process to define and refine sustainable goals and priorities to aid in the design optimization process. Throughout the sustainable design process, collaborative, multi-disciplinary teams should explore opportunities to design integratively and serve multiple functions with individual design elements.

(2) **The approach to Life Cycle Cost Analysis for optimization of design features.**

This portion of design analysis should entail an inclusive approach to costing that encompasses planning, design, construction, operation and maintenance costs and finally any decommissioning or disassembly costs. Life Cycle Cost Analysis assesses issues, options, and tradeoffs related over the projected useful life of a project and looks at the net present value of design options as investments. The goal is to achieve the highest environmental performance possible at the lowest cost. In addition, the design team should conduct facility performance modeling in order to investigate the interrelationships of economic and environmental performance of various facility

systems. Performance modeling should define the boundaries of differing design scenarios to investigate trade-offs and optimize performance.

(3) **The rating which the facility will obtain utilizing the LEED (Leadership in Energy and Environmental Design) Rating System™.**

LEED™ stands for Leadership in Energy and Environmental Design, and is a voluntary, consensus-based, market-driven green building rating system. It is based on existing, proven technology and evaluates environmental performance from a "whole building" perspective. LEED™ is a self-certifying system designed for rating new and existing commercial, institutional, and multi-family residential buildings. It contains prerequisites and credits in five categories: Sustainable Site Planning, Improving Energy Efficiency, Conserving Materials and Resources, Embracing Indoor Environmental Quality, and Safeguarding Water. There are four rating levels: Certified, Silver, Gold, and Platinum.

(4) **The approach to protection of water resources.**

Water conserving methods should be considered in all aspects of the facility design, including indoor and outdoor water use. Potable water use should be minimized within the facility by appropriately sizing systems and using water efficient technologies and cascading water use systems. Alternative systems which harvest on-site flows should be considered. Site water flows should be maintained by minimizing erosion, encouraging infiltration, and utilizing innovative stormwater management techniques. Water quality should be protected by avoiding the use of toxic materials on the site during development and for future maintenance. Low impact landscaping and future Integrated Pest Management strategies should be implemented in order to protect water quality.

(5) **The approach to minimization of power usage during all project phases.**

Energy efficiency methods should be considered in all aspects of the facility design, including HVAC/Lighting needs. Energy efficiency strategies should maximize solar access and aim to harvest natural on-site energy resources. Building energy usage should reduce electricity consumption, eliminate unnecessary demand, and emphasize equipment efficiency and energy efficient control strategies.

(6) **The approach to management of material resources, including minimization of construction waste.**

The facility should be designed for adaptability and minimize material use with efficient planning and design detailing. Design should be low maintenance and specify durable materials. Crime and graffiti prevention should be considered. Sustainable materials that minimize environmental impact as well as re-used, salvaged materials and recycled content materials should be used. In addition, use materials with minimal packaging waste that is recyclable, and materials that are easily recycled once their useful life has ended. Waste reduction and recycling should be encouraged by recycling construction demolition and waste with a jobsite management plan, and with provision of easy access recycling stations and pick-up areas.

(7) **The approach to protection of indoor and outdoor environmental quality, and minimization of chemical usage during all project phases.**

The design of the facility should aim to reduce pollutant sources in both interior and exterior environments. For interior spaces, this affects the design of mechanical systems and the choice of interior materials, finishes, and adhesives. Ozone depleting chemicals in mechanical equipment and insulation should be avoided. The health of building occupants and construction workers/installers/maintenance staff should be protected. In addition, environmental protection of the site should be considered, including habitat

protection and environmental restoration. Environmental disturbance should be minimized during the construction process.

(8) The approach to regional design suitability.

The facility design should respond to local climatic and ecological context by incorporating solar patterns, wind patterns, hydrology and geology into design features. A regional design palette should be used for both plants and other materials. The site should be developed using ecological design principles to mimic natural systems functions. Benefits of vegetation should be maximized.

(9) The approach to other project specific sustainability issues.

The design should respond to other unique project specific sustainability issues, which may range from historic and cultural context and resource issues to facility adaptability (“loose fit – long life”) and sustainable community issues.

C. Services and Tangible Work Products

This *Section II.C, of the Scope of Work* 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.

This section is intended only as an overview of specific services to be provided by the applicant for this project(s). It should not be considered an exhaustive list:

Conceptual and Schematic Design phases have been completed by Hill International / The Sheward Partnership.

(1) Conceptual Design/ Programming Phase

a. Pre-Design Development

The Applicant shall validate the schematic design prepared by Hill International. The Construction Manager shall familiarize themselves with the existing program and meet with key stakeholders prior to the Design Development Phase.

During project development, the Construction Manager will work with the Design Professional and the City to develop the Project Schedule, the Construction Budget, and phasing alternatives (if any). The ultimate goal of this phase is to develop a design concept that will satisfy the functional program requirements of the User Agencies within the limits of the funds available. The Construction Manager will evaluate design elements for constructability, ease of maintenance, life cycle value and comparable cost.

- Review with the City, the Using Agency representative(s), and the Design Professional, the cost, schedule, and constructability of alternative programmatic and operational approaches of the Schematic Design.
- Develop a comprehensive budget for all construction costs including, but not limited to site work, exterior and interior construction, communication and data requirements, and special equipment.

- Prepare a project master construction schedule identifying milestones for the major activities of the project team, construction milestones, review periods, reporting requirements and the critical path.
- Provide all services for enhanced building commissioning as is generally required by current codes and to meet a minimum of LEED Silver certification. Submit separate allowance.

(2) Design Development and Final Construction Documentation Phases

a. Cost Control

- Review with the Design Professional, the Using Agency representative(s), and the City, the schedule and budget impact of design decisions as the project progresses, and identify opportunities for cost savings and operational efficiencies.
- Prepare independent cost estimates during the design development and construction documentation phases.
- Conduct and document value engineering analyses and alternate approaches for equipment, materials and labor.
- Revise and update the construction budget after design submission(s).
- Participate in reconciliation of cost estimates session for cost estimates prepared by the design team and the construction manager.

b. Schedule Control

- Prepare, monitor and update the project master construction schedule on a monthly basis. Identify activities that may present potential problems and cause delay; and work with the project team to make the appropriate adjustments.
- Provide a schedule that identifies long lead items and establishes availability of materials. Coordinate early preparation of the appropriate portions of the Design Professional's design documents if early purchase of long lead items is required.

c. Quality Control

- Review the design, construction drawings and specifications, and participate in the review of procedures to assure coordination of trade work for compliance with the Owner's Project Labor Agreement (PLA) requirements.
- Confirm and provide written documentation of the coordination of materials, equipment, security, hardware, communications and/or special systems specified for their intended use.
- While local custom and trade-union jurisdictional agreement do not control the scope of work, knowledge of factors in constructability and coordination of local trades are inherent in multiple prime public works construction. Construction will be competitively bid through the City's public works procurement process which must comply with the Commonwealth of Pennsylvania Separations Act. It is currently anticipated that the project will be separated at a minimum into the following bid packages:
 - General Construction/ Sitework
 - Mechanical Construction/ HVAC/ BAS
 - Plumbing Construction/ Fire Protection

- Electrical Construction/ Low Voltage Electronic Security/ Fire Alarm/ Telecommunications
- Prepare Cost Benefit Analyses as requested

d. Commissioning

- Construction Manager shall provide all services for enhanced building commissioning as is generally required by current codes and to meet a minimum of LEED Silver certification. Submit separate allowance.

e. Project Reporting

- Attend regular progress meetings with the City, the Using Agencies and the members of the Design Professional's Team to review the progress of the Project.
- Submit (6) six copies of monthly Project Reports to the City.
- Maintain job records, including all reports, regulatory applications, and copies of drawings and specifications.

(3) Bid and Award Phase

a. Bidding Administration

- Review all addenda in connection with the Bidding Documents on the City's behalf prior to issuance to contractors.
- Evaluate bid tabulations for validation of labor and materials costs, and comparison with the final estimated construction cost. Prepare bid reports as necessary to the City for evaluation during the construction bid phase.

(4) Construction Start-Up Phase

a. Construction Control Systems

- Work with the City to establish an approval system for contractor billing schedule and payments. Provide an overall projection of construction cash flow requirements and provide a written report to the City.
- Work with the City and the Design Professional to evaluate prime contractor's initial schedule of values and provide a written report to the City.
- Work with the City to vet all subcontractors and major material and equipment suppliers.
- Based on the coordinated construction schedule prepared by the prime contractors, develop and present to the City and the Design Professional the critical path method construction schedule, that incorporates all milestone dates for submittals, construction activities, delivery dates, furniture and equipment installation, move coordination and move-in.
- Finalize procedures with the Design Professional, Building Commissioning Agent, and the City for requests for information, change order requests, substitution requests, review of shop drawings and product data/ catalog cuts, review of all submittals, and review of mock-ups or construction samples and approvals.
- Work with the Design Professional and the City to establish the procedures and recording processes for prime contractor's submission of LEED information, including construction waste management plans, LEED progress reports, LEED

submittals submission of cost of materials, location of procurement, storage of materials and IAQ management plans.

- Establish procedures for the implementation of the Project Labor Agreement between the City and Prime Contractors. This includes meetings with local trade business agents or union representatives and all parties required to comply with the requirements of the executive order. Assure that all subcontractors execute the PLA “Letter of Assent” in order to participate on the project.

b. Construction Administration

- Develop administrative and documentation procedures with the Design Professional the City and Prime Contractors.
- Review proposed subcontractors and suppliers and provide comments and recommendations to the City.

(5) Construction Phase

a. Cost Control

- Review Prime Contractors’ and Vendors’ Requests for Payment, in both pencil copy format and final application for payment. Make written recommendations for payment amounts to the City.
- Review, analyze and provide written evaluation of all change order proposals. Make recommendations for payment, or non-payment, of all change order proposal requests to the City.
- Provide monthly update of contract cost for each prime contractor including cost for executed change orders, potential change orders, amounts paid to date and balance of contracts the City.
- Coordinate with the City specific plans to assemble and maintain all documentation regarding disputes and resolve cost disputes equitably, and expeditiously in the best interests of the City.

b. Schedule Control

- Review the Coordinated Construction Schedule submitted by the Prime Contractors indicating current status of completion for all activities tracked. Create and track overall construction schedule of all construction activities including all responsible parties and update monthly from information submitted by all parties. Provide recovery plan for all contractors who fall behind the approved construction schedule to the City.
- Review the Schedule for work not started or incomplete and identify corrective actions required to maintain the Schedule, provide written report to the City.
- Provide a Milestone Schedule and update on a monthly basis to the City.
- Provide additional reports as required to the City to aid in the corrective action decision-making process and adherence to the Project Schedule.

c. Construction Supervision

- Provide on-site staff to monitor the progress of the construction work, and provide inspection of work to assure that the work is being performed in accordance with the requirements of the contract documents.
- Attend and participate in bi-weekly on-site construction meetings.
- Coordinate the construction activities of the Prime Contractors and City's other contractors including, abatement, environmental, data and telecommunications systems and systems furniture installations.
- Monitor and document the construction activities of each Prime Contractor on a daily basis. This includes manpower and type of work being performed.
- Monitor project safety and review the safety programs of each of the Prime Contractors. Assure that contractors comply with safety and accident prevention provisions of the contracts, and make appropriate recommendations for safety improvements without accepting Contractors' responsibility for safety.
- Participate in the review of construction work and activities for conformance with the requirements of the Contract Documents during site visits by Design Professionals team and the City. This shall also include inspections by local or state representatives for code compliance. Provide report of visit(s).
- Assist the City in obtaining the professional services of surveyors, special consultants and testing laboratories, as necessary, and coordinate their services.
- Provide daily inspection reports (using City/DPP forms) for each prime contractor and their subcontractors.
- Provide assistance and coordination in the assembling of LEED information from each of the Prime Contractors.
- Provide assistance and coordination with information required for the commissioning of all systems defined in the commissioning plan for the project.

d. Project Administration

- Maintain an allowance/ budget for General Conditions that allocate funds for the project's miscellaneous direct costs related to the construction, expenditure is only upon approval by written authorization from the City's Project Manager or Project Director.
- With the City, establish an orderly system for maintaining all project records, including RFI's, submittals, request for change order proposals, change order logs, construction change directives and all other project documents and files. (Provide samples in proposal of how you plan to accomplish this objective)
- Expedite the Design Professional's submission and processing of shop drawings and material samples.
- Expedite the Building Commissioning Agent's submission and processing of shop drawing, operations and maintenance information and reports.
- Expedite the LEED consultant's submission and processing of project information and reports.
- Submit monthly Project Reports related to the construction process to the City.

e. Claims and Disputes

- Identify potential claims and disputes and report same to the City as they develop, and take initiatives to seek early resolution.
- In conjunction with the City, assemble and maintain documentation of disputed issues, and expedite implementation of contract resolution procedures.

- In conjunction with the City, coordinate with the city's Law Department or their legal designate to bring disputes to their ultimate resolution.

f. Commissioning

- Construction Manager shall provide all services for enhanced building commissioning as is generally required by current codes and to meet a minimum of LEED Silver certification. Submit separate allowance.

(6) Post-Construction/ Commissioning/Closeout Phase

a. Inspections

- Perform all Substantial Completion and Final Completion inspection activities and create a Construction Manager's Punchlist for each Prime Contract.
- Follow-up with each prime contractor on the progress of the Punchlist on a periodic basis.
- Review all Punch Lists and monitor completion or correction of all items.

b. Commissioning

The Construction Manager shall implement the Building Commissioning Plan. That plan shall result in full compliance with the LEED™ requirements established for the project. In particular it will include monitoring full initiation/ start-up of equipment, testing of equipment and systems, operational demonstrations, instructions and training of equipment and systems, confirmation that prime contractors have provided record documentation of all building systems.

- Track, measure and assure submission of all documents required of the commissioning plan by each Prime Contractor.
- Track, measure and prepare final documents from each Prime Contractor for (Minimum) LEED Silver Certification and assure final submission to USGBC.

c. Occupancy

- Assist the City in the coordination of a smooth transition of operating responsibility from construction staff to the move-in date and closeout of the project, including coordination of FFE delivery and installation.
- Setup and oversee all required equipment training for the City's building management or its third party designate.

(7) General Project Requirements

The following requirements apply to all architectural, engineering and related professional service contracts:

- a. The Applicant shall perform all services in an expeditious manner consistent with the interests of the City and of the highest professional quality. All work shall be in conformance with all applicable City of Philadelphia standards and requirements, including The Philadelphia Code, Section 17-111 (see Appendix E).
- b. The DPP Project Coordinator shall chair all design review, stakeholder, and construction progress meetings with administrative support by the applicant. Minutes shall be prepared by the Design Professional and distributed to all attendees. Construction Manager shall provide and keep logs of all submittals, RFIs, and change orders and shall be cognizant of

all schedule and budget updates. All logs shall be submitted to the the City at least monthly.

- c. Design Professional shall obtain sign-off of all utilities including PECO ACT 129 pre and final applications, government agencies having jurisdiction, using agencies, and coordinate with and/or present work to related or affected City agencies including the Office of Public Art (Art Commission), as required by the specific project(s).
- d. Construction cost estimates shall be provided as described in the Scope of Services of this RFP. Estimates shall be organized in accordance with CSI format and incorporate contingencies and escalation appropriate to the project schedule. Estimates must be presented for each Prime contract and for each Alternate (if applicable).
- e. The Design Professional shall accomplish the design services required under the contract so as to permit the award of a contract, pursuant to standard DPP practices, for the construction of the facilities designed at a price which does not exceed the estimate set forth in Section II.A.(3) (Budget) or as otherwise determined during schematic design. If bids or proposals for the construction contract are received that exceed the estimated cost by more than 10%, the Design Professional may be required to perform such redesign and other services as are necessary to permit contract award within the estimated cost. These additional services shall be performed at no increase in the price of this contract. The Design Professional shall not be required to perform such services at no additional cost when the unfavorable proposals or bids are the result of conditions beyond the Design Professional's reasonable control. (Lack of knowledge regarding bid climate does NOT constitute beyond reasonable control.)
- f. The DPP has a Division 0 and Division 1 master specification that is frequently revised and updated. The current version (available in Microsoft Word) will be provided by the DPP at the start of the Construction Documentation phase. The Master Specs must be fully coordinated and incorporated with the technical sections by the Design Professional as a complete coordinated Project Manual and resubmitted in Microsoft Word (without exception).
- g. The City of Philadelphia is required to competitively bid all jobs under the Pennsylvania State Separations Act. Therefore, Design Professionals must completely and accurately define construction documents into clear scopes of work for each required prime contractor. **All work described in the specifications must be non-proprietary unless specific approval from the Procurement Department has been obtained.**
- h. All work shall be reviewed and checked prior to submission to the DPP. Qualified design professionals not involved in the design work shall perform reviews. It shall be the responsibility of the Design Professional to thoroughly coordinate drawings representing the work of different disciplines (architectural, mechanical, electrical, plumbing, etc.). A quality control report shall be submitted by the design professional at the design development phase and at each stage of the construction documentation phase for assurances. The design professional shall provide a certification statement indicating he has performed a thorough review of the designs, plans, drawings, reports and specifications prepared by his design team.
- i. All work shall be performed by or reviewed and approved by architects and engineers registered to practice the appropriate discipline in the State of Pennsylvania.
- j. No asbestos abatement design is required on this project unless specifically noted in Section II. If required; environmental reviews must be coordinated through the DPP Project Coordinator with the DPP's Environmental Liaison. No asbestos containing materials of any kind may be specified or approved for any project.

- k. It is the City's intention to incorporate the latest developments in energy conservation and resource efficiency, as well as improve indoor air quality and minimizes environmental impacts in its design program wherever appropriate. The overall goals for sustainable materials and systems may include minimizing unwanted building or atmospheric emissions and/or non-reusable or recyclable waste. The Philadelphia High-Performance Building Renovation Guidelines will be available for your reference upon contract award.
- l. All designs produced under this program must be in accordance with the Americans with Disabilities Act, Title II.
- m. If property line delineation or survey is required, these services shall be provided by the City through the Streets Department unless specified otherwise in this RFP.
- n. Projects that are new construction greater than 10,000 s.f. or complete renovations affecting all systems of a building or site (mechanical, plumbing, and electrical systems) must be designed and constructed to meet a minimum of LEED Silver certification in accordance with The Philadelphia Code, Section 17-111 (see Appendix E).
- o. All products specified for inclusion in the scope of work for construction shall be Energy Star qualified products for all U.S. EPA – listed product categories. All electric motors over one (1) horsepower shall be National Electrical Manufacturers Association (NEMA) Premium labeled motors (see Appendix E).

D. Timetable

The Department anticipates that the work required under this RFP will be completed 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.

Anticipated Start Date (Notice to Proceed)	January 31, 2018
Design Phase	Nine (9) months
Bid Phase (from bid development to bid award)	Five (5) months
Construction Phase	Eighteen (18) months, approximately
Closeout Phase / Move	Three (3) months

E. Hours and Location of Work

State the hours of operation for the department and whether the successful applicant will need to provide services or develop or deliver products in accordance with or outside of these regular hours of operation. State specific departmental needs, such as avoiding interruptions during certain peak hours and avoiding inaccessibility during City holidays. If appropriate, state how many hours of work per week are expected and whether the department requires on-call service, either routine or emergency. If certain departmental personnel will be required, state their availability and location. If the department requires certain work to be performed on department

premises as opposed to the applicant's place of business, that should be stated and the location of the work identified.

F. 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.

G. 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.

Periodic progress reports shall be prepared describing accomplishments, decisions and overall progress made during the period. It shall contain updated project schedule and budget information and shall specifically include information regarding RFIs, change orders, submittals as well as the Design Professional's invoice status. Progress reports will be submitted with each payment request, or monthly, whichever represents the shorter duration.

H. Cost Proposal

Applicants must provide a detailed cost proposal, with a line-item breakdown of the costs for specific services and work products proposed. Cost proposals must be "fixed price" proposals. The proposed price must include all costs that will be charged to the City for the services and tangible work products the Applicant proposes to perform and deliver to complete the project and including, but not limited to, costs for the following, if the Department is to pay 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. Any contract resulting from this RFP will provide for a not-to-exceed amount in the compensation section of the contract.

Fee Proposal – separate enclosure – one copy

In the electronic submission, the fee proposal should be a separate document labeled "Fee Proposal". For the hard-copy submission, the fee proposal should be enclosed in a single, separate envelope, clearly marked as such, a lump sum fee for performing its scope of services for the project. Use the form attached as an appendix to this RFP.

This lump sum fee is to include all costs that will be charged to the City for the services and tangible work products the Applicant proposes to perform and deliver to complete the project and including, but not limited to, costs for the following, if the Department is to pay 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; all incidental costs relating to the project i.e. telephone, copies, faxes, mailing, courier service, technology (computer) related overhead, photographs and transportation, as well as printing and duplication of drawings and specs as is generally required by the project as deliverables; and all other work proposed. Any contract resulting from this RFP will provide for a not-to-exceed amount in the compensation section of the contract.

An allowance can be made for any specialized direct costs, which must be authorized by the DPP and will be reimbursed on the basis of actual expenses incurred. These extra expenses may include specially requested multiple printings of drawings sized 24"X 36" or above, binding and copying of multiple specifications, specialized testing and/or specialized subcontractors. Copies of receipts must be submitted for reimbursement. No extra allowance will be permitted for travel or any type of travel or transportation expenses, within the City or from the Applicant's office to City offices or the job site.

Lump sum fee must cover all phases of the project as described in Section II, unless noted otherwise by the City of Philadelphia. The Applicant shall identify all major tasks to be provided under each phase. To support and justify the lump sum quotations and for information purposes, include a breakdown by phase and task of hours and hourly rates for all personnel, including subcontractors, proposed for the project. The City reserves the right to utilize this information for the purpose of (i) developing a payment schedule that fairly allocates the applicable lump sum fee of the Applicant selected for contract award and (ii) setting fees for any additional services (i.e., beyond the scope of the executed contract) that may be requested by the City. An adjustment in rates will not be considered unless the project runs past the contract limit.

Applicants are encouraged to provide any alternates in the allowance section of the lump sum proposal form that may reduce the cost or accelerate the schedule to ensure completion of the project (i.e. early sitework/demolition package).

I. 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, and job title. Resumes of all personnel so identified should be included in Applicant's proposal.

J. Technology Capabilities

All drawings for design submissions shall be prepared using AutoCAD Systems. All submissions to the DPP shall be compatible with AutoCAD LT Version 2016 and in accordance with the AIA "CAD Layer Guidelines" and CSI guidelines for page numbering format (only). Milestone submissions should be provided for City review (8 sets maximum). The City shall provide any further additional printing of bid packages. Final drawings shall be provided on mylar (not paper) as well as electronically (saved as both .pdf and .dwg on CD-ROM).

K. Percent for Art Program

Pursuant to the Vision Plan for Arts, Culture and the Creative Economy presented by the Mayor's Cultural Advisory Council, it is the intent of the City to maximize the effectiveness of the Percent for Art Program. Processes shall follow and projects shall be developed, in a manner

that is reflective of Public Art industry best practices, as indicated by the Office of Arts, Culture and the Creative Economy.

L. Available Information

Site plan. When completed, Philadelphia Police Department design guidelines document and schematic design drawings will be made available to the selected applicant.

infostores

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

A. Proposal Format

Proposals submitted in response to this RFP must include a cover letter signed by the person authorized to issue the proposal on behalf of the Applicant. **In addition to the electronic submissions detailed in Section III.H below, Applicants must also deliver six (6) hardcopies** in letter size, stapled, three-ring, or spiral-bound format. Conform the organization of your proposal to the following order and divisional sectioning, separated by index tabs for easy reference. Proposers are reminded to be clear and concise in their response. The proposal shall be of a quality appropriate to the level of the project for which you are proposing.

In addition to electronic and written proposals, prospective applicants and their prospective subcontractors consultants may be required to give verbal presentations and to meet with the selection committee for interviews and discussion.

Proposals submitted in response to this RFP must include the following information, in the sections and order indicated:

1. Table of Contents
2. Introduction/Executive Summary
Provide an overview of the services being sought and proposed scope of services.
3. Applicant Profile
Provide a narrative description of the Applicant itself, including the following:
 - a. Applicant's business identification information, including name, business address, telephone number, website address, and federal taxpayer identification number or federal employer identification number;
 - b. A primary contact for the Applicant, including name, job title, address, telephone and fax numbers, and email address;
 - c. A description of Applicant's business background, including, if not an individual, Applicant's business organization (corporation, partnership, LLC, for profit or not for profit, etc.), whether registered to do business in Philadelphia and/or Pennsylvania, country and state of business formation, number of years in business, primary mission of business, significant business experience, whether registered as a minority-, woman-, or disabled-owned business or as a disadvantaged business and with which certifying agency, and any other information about Applicant's business organization that Applicant deems pertinent to this RFP.
 - d. Include a brief history of the firm, including number of years in business, primary mission of business, significant business experience, the overall firm organization and management structure, its goals and objectives, and a statement of its design philosophy.
4. 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.

The Applicant shall provide a brief narrative that demonstrates understanding of the project, i.e. project's goals and objectives, issues and complexities, nature and scope of the work involved. Additionally, a brief description of the proposed design approach, techniques for problem solving, and work plan is required along with a description of computer hardware and software to be utilized. The City encourages plans that incorporate the use of resource and energy efficient design alternatives. Any expanded narrative addressing alternative approaches, adequacy of budget allocation and/or key design issues is encouraged and will be evaluated in its response to the stated project goals.

5. Proposed Scope of Work

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

The Applicant shall provide a proposed sequence of activities and schedule, which demonstrates how the firm's approach will meet the stated objectives of the project within the time allotted for the design phase. The schedule may include ideas and concepts not included in the scope of services, but which may be beneficial to the City. The schedule should be in the form of a bar chart and include the entire design phase. Major deliverables, key milestones and decision dates should be included in the schedule. City review periods should also be noted.

6. Statement of Qualifications; Relevant Experience

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

Provide narrative and visual descriptions (photographs and/or renderings) of projects designed by the Applicant or other members of the project team, which are **related** to the project for which the Proposal is being submitted. **Projects specifically relevant to the proposed project are much more important than quantity of experience.**

The successful Applicant will be required to retain the services of a LEED consultant in its proposal however; it does not need to be a separate entity. Information on the projects that have been certified, or staff that have been accredited, shall be included for consideration. Interested firms should familiarize themselves with Appendix E of this proposal on LEED certified projects. In order to be considered qualified Applicants must have completed as lead design professional, at least one LEED certified project in the past five years which has received certification from the U.S. Green Building Council. Applicants can demonstrate experience with LEED projects either through their own firm staffing or through a consultant specializing in LEED certification projects.

The following information (as a minimum) should be included for each related project (though omission will not disqualify your proposal):

- (a) Project Name
- (b) Client (corporation, public agency, etc.)

- (c) General physical characteristics
- (d) Special features, accomplishments or problems (including LEED Certification, energy and resource efficient design experience)
- (e) Construction value
- (f) Project team and specific services provided by Applicant team members.
- (g) Dates of service
- (h) Approximate contract value
- (i) Individual references. Include contact names, addresses and telephone numbers. A minimum of one reference shall be included for each project. If applicable, Applicant should provide references for projects with other municipalities that are similar in size to the City of Philadelphia.

7. Project Team Organization and Team Resumes

The Applicant shall identify any joint venture partners or their associates by listing the firm, address and telephone/fax numbers and contact person. If a joint venture or association between firms is proposed, describe the contractual relationship.

The proposal shall include a description of the proposed team in both narrative and chart form. The proposal should clearly indicate the relationship, roles and responsibilities of each organization and individual team member. **Key positions/individuals should be specifically identified by name and title, with narrative describing their respective areas of expertise, responsibility and reporting.**

For each key team member, describe prior experience as it relates to the technical requirements of this project and the individual's position on the project team. Describe all relevant professional experience, academic degrees earned, professional licenses and awards, any special skills and supplementary training relevant to the requirements of this project.

Any proposed project staff that are not full-time employees of one of the corporate team members shall be clearly identified. Briefly describe their employment arrangement and availability for this project.

8. 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.

9. Proposed Subcontractors

State the intention to use subcontractors to perform any portion of the work sought by this RFP. For each such subcontractor, provide the name and address of the subcontractor, a description of the work Applicant intends the named subcontractor to provide, and whether the subcontractor can assist with fulfilling goals for inclusion of minority, woman, or disabled-owned businesses or disadvantaged businesses as stated in Appendix B. Note that if subcontractors at any tier may perform services arising directly out of a City contract resulting from this RFP, Applicants must inform them of the City's

minimum wage and benefits requirements and must require them to comply with such requirements. (See Section III.E for more information.)

10. Certification of Site Visit:

The Applicant shall certify that he has visited the site(s) of the proposed projects and understands the site-specific issues, which will impact both design and construction. Use the form attached as an appendix to this RFP.

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

As a separate document, Applicants must include a completed Solicitation for Participation and Commitment Form when responding to an RFP that contains ranges for the participation of M/W/DSBEs. The form is provided with Appendix B-1 to this RFP. If Applicant is a nonprofit organization, such applicants must include a completed "Diversity Report of Nonprofit Organizations" on the form provided with Appendix B-2 of this RFP. If the Nonprofit Organization is responding to an RFP that contains ranges, in addition to the Diversity Report of Nonprofit Organizations, it must also submit a Solicitation for Participation and Commitment Form. (See Section III.C for more information.)

12. Tax and Regulatory Status and Clearance Statement

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

13. 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.

14. 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).

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

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

16. Disclosure Requirements

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

17. 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.

18. Statement of Acceptance

This section must include a statement verifying that the Applicant has read and accepts the Professional Services Contract, General Provisions and Provider Agreement and this Request For Proposal. Use the form attached as an appendix to this RFP.

19. 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.)

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

The City's standard contract terms and conditions for services of the type sought by this contracting opportunity (Contract Terms) are set forth in the General Provisions attached to this RFP as Appendix A. By submitting a proposal in response to this contract opportunity, the Applicant agrees that, except as provided herein, it will enter into a contract with 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 and state the reasons for the request. The Applicant must also propose alternative language or terms for each Requested Exception. Requested Exceptions to the City's Contract Terms will be approved only when the 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.

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

Each Applicant is subject to the provisions of Mayoral Executive Order 03-12, the City's Antidiscrimination Policy for participation by Minority Business Enterprises ("MBE"), Woman Business Enterprises ("WBE") and Disabled Business Enterprises ("DSBE") (collectively, "M/W/DSBE") as those terms are defined in Executive Order 03-12. While there are no specific participation ranges established for this RFP, Applicants are required to exercise their "Best and Good Faith Efforts" to provide meaningful opportunities for the participation of M/W/DSBEs in their proposals. Forms, instructions and special contract provisions which explain the requirements of the Antidiscrimination Policy for City contracts in more detail are included in Appendix B-1 to this RFP. Appendix B-1 includes the "Solicitation for Participation and Commitment Form" which Applicants should complete and return with their proposal if Applicant has solicited and/or made commitments to use M/W/DSBEs as part of its proposal. M/W/DSBEs are also encouraged to respond directly to this RFP.

If Applicant is a nonprofit organization, Mayoral Executive Order 03-12 requires nonprofit Applicants to document their diversity policies. Applicants that are nonprofit organizations should refer to the special contract provisions and instructions attached to this RFP as Appendix B-2. Included in Appendix B-2 is the form, "Diversity Report of Nonprofit Organizations," which should be completed and returned with proposals submitted by nonprofit Applicants even if a nonprofit Applicant is also submitting a "Solicitation for Participation and Commitment" form.

D. The Philadelphia Tax and Regulatory 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 submit with its proposal the certification statement entitled City of Philadelphia Tax and Regulatory Status and Clearance Statement which is attached to this RFP as Appendix C.

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

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

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

Applicants need not have a City of Philadelphia Business Income and Receipts Tax Account Number (formerly Business Privilege Tax Account Number) and Commercial Activity License Number (formerly Business Privilege License Number) to respond to this RFP, but will, in most circumstances, be required to obtain one or both if selected for award of the contract contemplated by the RFP.¹ Applications for a Business Income and Receipts Tax Account Number or a Commercial Activity License² may be made on line by visiting the City of Philadelphia Business Services Portal at <http://business.phila.gov/Pages/Home.aspx> and clicking on "Register Now." If you have specific questions, call the Department of Revenue at 215-686-6600 for questions related to City of Philadelphia Business Income and Receipts Tax Account Number or the Department of Licenses and Inspections at 215-686-2490 for questions related to the Commercial Activity License.

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

Applicants are advised that any contract awarded pursuant to this RFP is a "Service Contract," and the successful Applicant under such contract is a "Service Contractor," as those terms are defined in Chapter 17-1300 of the Philadelphia Code ("Philadelphia 21st Century Minimum Wage and Benefits Standard Ordinance") Any Subcontractor (as defined in the General Provisions attached as an Appendix to this RFP), and any sub-subcontractor at any tier proposed to perform services sought by this RFP, is also a "Service Contractor" for purposes of Chapter 17-1300. If any such Service Contractor (i.e. Applicant and subcontractors at any tier) is also an "Employer," as that term is defined in Section 17-1302 (more than five employees), and is among the Employers listed in Section 17-1303 of the Code, then during the term of any resulting contract, it is subject to the minimum wage and benefits provisions set forth in Chapter 17-1300 unless it is granted a waiver or partial waiver under Section 17-1304. Absent a waiver, these minimum wage and benefits provisions, which include a minimum hourly wage that is adjusted annually based on the CPI, health care and sick leave benefits, are mandatory and must be provided to Applicant's employees or the employees of any subcontractor at any tier who perform services related to the City contract resulting from this RFP. Applicants and any subcontractors at any tier proposed by Applicants are strongly encouraged to consult Chapter 17-

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

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

1300 of the Philadelphia Code,³ the General Provisions, and the About/Minimum Wage and Equal Benefits Ordinances Impacting Some City Contractors links on the eContract Philly home page for further details concerning the applicability of this Chapter to, and obligations it imposes on certain City contractors and subcontractors at any tier. In addition to the enforcement provisions contained in Chapter 17-1300, the successful Applicant's failure or the failure of any subcontractor at any tier to comply (absent an approved waiver) with the provisions of Chapter 17-1300, or any discrimination or retaliation by the successful Applicant or Applicant's subcontractors at any tier against any of their employees on account of having claimed a violation of Chapter 17-1300, shall be a material breach of any Service Contract resulting from this RFP. By submitting a proposal in response to this RFP, Applicants acknowledge that they understand, and will comply with the requirements of Chapter 17-1300, and will require the compliance of their subcontractors at any tier if awarded a contract pursuant to this RFP. Applicants further acknowledge that they will notify any subcontractors at any tier proposed to perform services related to this RFP of the requirements of Chapter 17-1300.

F. Certification of Compliance with Equal Benefits Ordinance

If this RFP is a solicitation for a "Service Contract" as that term is defined in Philadelphia Code Section 17-1901(4) ("A contract for the furnishing of services to or for the City, except where services are incidental to the delivery of goods. The term does not include any contract with a governmental agency."), and will result in a Service Contract in an amount in excess of \$250,000, pursuant to Chapter 17-1900 of the Philadelphia Code (*see* footnote 3 for online access to the Philadelphia Code), the successful Applicant shall, for any of its employees who reside in the City, or any of its employees who are non-residents subject to City wage tax under Philadelphia Code Section 19-1502(1)(b), be required to extend the same employment benefits the successful Applicant extends to spouses of its employees to life partners of such employees, absent a waiver by the City under Section 17-1904. By submission of their Proposals in response to this RFP, all Applicants so acknowledge and certify that, if awarded a Service Contract pursuant to this RFP, they will comply with the provisions of Chapter 17-1900 of the Philadelphia Code and will notify their employees of the employment benefits available to life partners pursuant to Chapter 17-1900. Following the award of a Service Contract subject to Chapter 17-1900 and prior to execution of the Service Contract by the City, the successful Applicant shall certify that its employees have received the required notification of the employment benefits available to life partners and that such employment benefits will actually be available, or that the successful Applicant does not provide employment benefits to the spouses of married employees. The successful Applicant's failure to comply with the provisions of Chapter 17-1900 or any discrimination or retaliation by the successful Applicant against any employee on account of having claimed a violation of Chapter 17-1900 shall be a material breach of the any Service Contract resulting from this RFP. Further information concerning the applicability of the Equal Benefits Ordinance, and the obligations it imposes on certain City contractors is contained in the General Provisions attached to this RFP and the About/Minimum Wage and Equal Benefits Ordinances Impacting Some City Contractors links on the eContract Philly home page.

³ A link to the Philadelphia Code is available on the City's official web site, www.phila.gov. Click on "City Code and Charter," located to the bottom right of the Welcome page under the box "Transparency."

G. Local Business Entity or Local Impact Certification

Pursuant to Mayoral Executive Order No. 04 -12, the City Department will, in the selection of the successful Applicant, consider whether that Applicant has certified that either (1) Applicant meets the criteria stated in Section 17-109(3)(b) of the Philadelphia Code to qualify as a Local Business Entity or (2) in the performance of the resulting contract, Applicant will employ City residents, or perform the work in the City. Any Applicant who wishes to demonstrate its eligibility for this consideration shall do so by completing, executing and attaching to its application a completed Local Business Entity or Local Impact Certification, the form of which is attached to this RFP as Exhibit D. The Applicant shall then also include in a separate section of the application, labeled “Local Business Entity or Local Impact Certification,” a statement that the Applicant believes it has met the Local Business Entity or Local Impact criteria “as set forth in the attached Local Business Entity or Local Impact Certification.” The City Department shall deem it a positive factor where the Applicant has, in the City’s sole discretion, met the Local Business Entity or Local Impact criteria.

H. Mandatory Online Application Requirements

You must apply 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.⁴ The posting of this RFP on eContract Philly is also referred to as a Notice of Contracting Opportunity.

The City requires that any Applicant who establishes an account on eContract Philly and utilizes that account for the purpose of responding to a particular contract opportunity is the same individual or business entity that, if awarded the contract, will enter into and perform the resulting contract with the City. Except in the case of joint ventures, applications posted on eContract Philly from Applicants that purport to be filing an application on behalf of another individual or business entity will not be considered, even if the other business entity is an affiliate of the Applicant.

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

⁴ The eContract Philly website is compatible with Internet Explorer, Google Chrome and Apple Safari; but the site is not presently compatible with Mozilla Firefox.

Pursuant to Chapter 17-1400 of the Philadelphia Code, Applicants are required to disclose their campaign contributions to political candidates and incumbents who are running for, or currently serving in, a local (Philadelphia) or state-wide elected office anywhere within the Commonwealth of Pennsylvania (federal campaign contributions are not included); any consultants used in responding to the RFP and contributions those consultants have made; prospective subcontractors; and whether Applicant or any representative of Applicant has received any requests for money or other items of value or advice on particular firms to satisfy minority-, woman- or disabled-owned business participation goals from City employees. This information, as well as a proposal or any other response document required, is part of the online application. For more information, please consult the reference materials found on the website, e-mail econtractphilly@phila.gov or call 215-686-4914.

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

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

Applicants who have failed to file complete applications to the correct opportunity – 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.

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. It is your responsibility to make sure that you have signed and submitted your complete application to the correct contract opportunity established for this RFP.

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). Please be advised that the eContract Philly website will not accept documents larger than 8 MB. If you have documents larger than 8 MB, you must separate them into smaller documents in order to successfully upload them to the system. 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.

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

I. Selection Process

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

The City of Philadelphia 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
 - Understanding of and commitment to design excellence, expressed in dignified forms, urban spaces which enrich the city, and interior and exterior spaces that will inspire pride in city architecture
 - Commitment to safety and accessibility beyond code compliance
2. Eligibility under Code provisions relating to campaign contributions
3. Superior prior experience of Applicant and staff
 - Experience on prior City of Philadelphia projects
 - Demonstrated capability to provide unique and innovative solutions to problems
 - LEED Certification/experience and sustainable design experience, including tasks described in the Scope of Work and Greenworks sections of this RFP
4. Superior quality, efficiency and fitness of proposed solution for City Department
5. Superior skill and reputation, including timeliness and demonstrable results
 - Ability to balance innovative design and traditional operating practices, including tested, durable materials and ease of maintenance and operation
 - Demonstrated experience and capability to complete all design work within established schedule and budget
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
 - Details of fee proposal

9. Administrative and operational efficiency, requiring less City oversight and administration
10. Anticipated long-term cost effectiveness
 - A cost effective design approach that fully considers life cycle analysis in the selection of materials and systems
11. Meets prequalification requirements
 - Experience
 - Financial Capability
12. Applicant's certification of its Local Business Entity/Local Impact status pursuant to Executive Order 04-12

If a contract is awarded pursuant to this RFP, in compliance with Section 17-1402 (c) of the Philadelphia Code, a notice will be published on the City's eContract Philly website (go to <http://www.phila.gov/contracts> and click on eContract Philly) listing the names of all Applicants and identifying the successful Applicant and the basis for the award to that Applicant. This notice will appear on the City's website for at least one week before the contract is executed. In no event, however, shall the City Department or City Agency issuing this RFP be obligated to debrief unsuccessful Applicants as to the basis for its decision not to award a contract to them.

infostores

IV. Proposal Administration

A. Procurement Schedule

RFP Posted	<i>October 17, 2017</i>
Mandatory Pre-Proposal Meeting	<i>October 31, 2017, 10am 1515 Arch St, 18th Floor</i>
Optional Site Visit	<i>Schedule With Project Coordinator</i>
Applicant Questions Due	<i>November 7, 2017</i>
Answers Posted on eContract Philly Website	<i>November 14, 2017</i>
Proposals Due Online	<i>November 21, 2017 @ 5:00 P.M. Phila., PA local time November</i>
Proposals Due – hard copies	<i>November 27, 2017 @ 5:00 P.M. Phila., PA local time November</i>
Applicant Interviews, Presentations	<i>TBD</i>
Applicant Selection	<i>December 21, 2017</i>
Contract Execution	<i>January 31, 2018</i>
Commencement of Work	<i>January 31, 2018</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.

B. Questions Relating to the RFP

All questions concerning this RFP must be submitted in writing via email to the Project Coordinator no later than November 7, 2017, 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.

C. Pre-Proposal Conference, Site Visits, Inspection of Materials

A pre-proposal meeting to review the requirements of this RFP will be held in Philadelphia, Pennsylvania on October 31, 2017, starting at 10:00 am at the following location: 1515 Arch St, 18th floor, Philadelphia, PA 19102. Attendance at the pre-proposal meeting is mandatory.

The City believes that attendance at the pre-proposal meeting is essential for successful participation in this RFP procurement and expects every Applicant to attend. The City reserves the right, in its sole discretion, to reject without evaluation the proposal of any Applicant that does not attend the meeting.

D. Interviews; Presentations

The City reserves the right to determine whether interviews will be necessary. The purpose of the interview is to further document the proposer's ability to provide the required services, and to impart to the Evaluation Committee an understanding of how specific services will be furnished. The proposed lead principal, as well all other key personnel proposed to provide the services must be present and participate in the interview. The interview will be evaluated on the basis of whether it substantiates the characteristics and attributes claimed by the proposer in its written response to this RFP and any other information requested by the Evaluation Committee prior to the interview. All costs associated with the development, preparation, travel, attendance and participation in the interviews and/ or presentations are the responsibility of the Applicant.

E. Term of Contract

It is anticipated that the initial term of the Contract shall commence on January 31, 2018 (the "Initial Term") and, unless sooner terminated by the City pursuant to the terms of the Contract, shall expire up to thirty-six (36) months thereafter, on January 30, 2021. 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.

infostores

V. General Rules Governing RFPs/Proposals; Reservation of Rights and Confidentiality

A. 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.

B. 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.

C. Proposal Binding

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

D. Contract Preparation Fee

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

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

In its discretion, the Law Department may grant a full or partial waiver of any of the above fees in exceptional cases for good cause shown, such as violation of a grant covenant. Governmental entities are exempt from the fees. The Law Department reserves the right to collect up to twice the stated fee if extensive negotiation is required to reach a final contract with the successful Applicant.

E. Reservation of Rights

By submitting its response to this notice of contract opportunity as posted on the 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 School District of Philadelphia, or other indebtedness owed to the City; is not in compliance with City regulatory codes applicable to Applicant; is financially or technically incapable; or is otherwise not a responsible Applicant;

- (c) to waive any defect or deficiency in any proposal, including, without limitation, those identified in subsections(a) and (b) preceding, if, in the 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.

F. 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

**THE CITY OF PHILADELPHIA PROFESSIONAL SERVICES CONTRACT
GENERAL PROVISIONS FOR ARCHITECTURAL AND ENGINEERING SERVICES**

infostores



THE CITY OF PHILADELPHIA
PROFESSIONAL SERVICES CONTRACT
GENERAL PROVISIONS
FOR
ARCHITECT AND ENGINEER 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 Charter	1
1.10 City	1
1.11 City Council	2
1.12 Code	2
1.13 Construction Documents	2
1.14 Consultant	2
1.15 Contract	2
1.16 Contract Cost Principles	2
1.17 Contract Documents	2
1.18 Contributions	2
1.19 Department	2
1.20 Event of Default	3
1.21 Event of Insolvency	3
1.22 Fiscal Year	3
1.23 General Provisions	3
1.24 Interpretation; number, gender	3
1.25 Materials	3
1.26 Non-Competitively Bid Contract	3
1.27 Party; Parties	3
1.28 Person	4
1.29 Provider	4
1.30 Provider Agreement	4
1.31 Provider's Fee	4
1.32 Responsible Official	4
1.33 Scope of Services	4
1.34 Services	4
1.35 Standard Contract Requirements	4
1.36 Subcontract	4

1.37	Subcontractor	4
1.38	Suspension Notice	4
1.39	Suspension Period	4
1.40	Term	5
1.41	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.....	6
3.3	Additional Services and Materials; Change in Scope of Services	6
3.4	Responsibility.....	7
3.5	Subcontracts	8
3.6	Relationship with the City.....	10
3.7	Time Frame for Submissions	10
3.8	Prompt Payment by Provider	10
3.9	Sales and Use Tax	10
3.10	Permits and Approvals	10
3.11	Meetings	11
Article IV:	Provider’s Representations, Warranties and Covenants	11
4.1	Provider’s Representations, Warranties and Covenants	11
(a)	Good Standing	11
(b)	Authority to Act	11
(c)	Legal Obligation	11
(d)	No Litigation Preventing Performance	12
(e)	Requisite Licensure and Qualifications	12
(f)	No Adverse Interests.....	12
(g)	No Indebtedness to the City.....	12
(h)	Commercial Activity License	12
(i)	Subcontractor Licensure; No Indebtedness to the City.....	13
(j)	Non-Suspension; Debarment	13
Article V:	Compensation	13
5.1	Certification of Available Funds	13
5.2	Unavailability of Funds.....	13
5.3	Crossing Fiscal Years.....	14
5.4	Allowability of Cost Items	14

Article VI: Audits; Inspection Rights; Records	14
6.1 City Audit.....	14
6.2 Inspection	14
6.3 Availability of Records	15
6.4 Retention of Records	15
6.5 Audits Pursuant to Section 6-400 of the Home Rule Charter	15
Article VII: Assignment	15
7.1 Assignment By Provider	15
7.2 Applicability in Case of Bankruptcy or Insolvency.....	15
7.3 Personal Services.....	16
Article VIII: Independent Contractor; Indemnification; Litigation Cooperation	16
8.1 Independent Contractor	16
8.2 Indemnification	16
8.3 Litigation Cooperation	16
8.4 Notice of Claims	16
Article IX: Insurance	16
9.1 Insurance	16
(a) Workers' Compensation and Employers' Liability	17
(b) General Liability Insurance	17
(c) Automobile Liability.....	17
(d) Professional Liability Insurance	17
9.2 Self-Insurance	18
9.3 Evidence of Insurance Coverage	18
Article X: Ownership of Materials; Proprietary Information; Confidentiality	19
10.1 Ownership of Materials.....	19
10.2 Non-Disclosure.....	20
Article XI: Events of Default	20
11.1 Events of Default.....	20
11.2 Notice and Cure.....	21
Article XII: Remedies	21
12.1 The City's Remedies	21
12.2 Concurrent Pursuit of Remedies; No Waiver.....	22

Article XIII: Termination and Suspension	23
13.1 Termination or Suspension for Convenience.....	23
13.2 Provider Responsibilities upon Termination or Suspension.....	23
13.3 Payment of Provider upon Termination or Suspension.....	23
13.4 Suspension.....	24
Article XIV: Additional Representations and Covenants of Provider Relating to Certain Applicable Laws	24
14.1 Non-Discrimination; Fair Practices.....	25
14.2 Chapter 17-400 of the Philadelphia Code: Exclusionary Private Organizations.....	25
14.3 Executive Order 03-12: Minority, Woman and Disabled Business Enterprise Participation.....	25
(a) General Requirements.....	26
(b) Special Requirements Applicable to Non-Profit Providers.....	27
(c) Criminal Liability for Fraudulent or False Statements.....	28
14.4 Federal Laws.....	28
14.5 Americans With Disabilities Act.....	28
14.6 Northern Ireland.....	28
14.7 Limited English Proficiency.....	29
14.8 Business, Corporate and Slavery Era Insurance Disclosure.....	29
14.9 Protected Health Information.....	30
14.10 Chapter 17-1300 of The Philadelphia Code: Philadelphia 21 st Century Minimum Wage and Benefits Standard.....	30
14.11 Chapter 17-1400 of The Philadelphia Code: Contributions and Other Mandatory Disclosures.....	33
14.12 Executive Order 03-11: Gifts.....	35
14.13 Chapter 17-1900 of The Philadelphia Code: Equal Benefits Ordinance.....	35
Article XV: Miscellaneous	36
15.1 Governing Law.....	36
15.2 Amendments; Waiver.....	36
15.3 Integration.....	36
15.4 No Joint Venture.....	37
15.5 No Third Party Beneficiaries.....	37
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.....	38
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

infostores

GENERAL PROVISIONS

ARTICLE I: DEFINITIONS

1.1 **ADA.** “ADA” shall have the meaning set forth in Section 3.1(d) (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) 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 Charter (as defined below), as amended from time to time, the Code (as defined below), as amended from time to time, and each of the specific laws set forth in Article XIV (Additional Representations and Covenants of Provider Relating to Certain Applicable Laws) below, each as amended from time to time.

1.7 **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 **Charter.** The “Charter” means the Philadelphia Home Rule Charter, as it may be amended from time to time.

1.10 **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 (defined below). The City is a City of the First Class under the laws of the Commonwealth of Pennsylvania.

1.11 **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.

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

1.13 **Construction Documents.** “Construction Documents” means all final drawings, plans and specifications as the same may be modified from time to time subject to the City's approval of such modification or modifications, if applicable.

1.14 **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.

1.15 **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.

1.16 **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).

1.17 **Contract Documents.** The “Contract Documents” means these General Provisions, the Standard Contract Requirements, the Provider Agreement, and any and all other documents or exhibits incorporated by reference in the General Provisions, the Standard Contract Requirements, or the Provider Agreement, and any and all Amendments to any of these documents.

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

1.19 **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.

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

1.21 **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.

1.22 **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.

1.23 **General Provisions.** “General Provisions” means these “The City of Philadelphia Professional Services Contract General Provisions for Architect and Engineer Services”, which contain the standard provisions required by the City in its architect and engineer professional services contracts, and any exhibits identified in these General Provisions.

1.24 **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.

1.25 **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. "Materials" includes the Construction Documents.

1.26 **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 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).

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

1.28 **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.

1.29 **Provider**. “Provider” means the entity or individual providing Services and Materials to the City as defined in the heading of the Provider Agreement.

1.30 **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.

1.31 **Provider's Fee**. “Provider's Fee” shall have the meaning set forth in Section 4.1 of the Provider Agreement.

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

1.33 **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.

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

1.35 **Standard Contract Requirements**. “The Standard Contract Requirements” means the document named "The City of Philadelphia Standard Contract Requirements for Public Works Contracts", as it may be amended from time to time, which specifies the City's standard contract requirements for Public Works Contracts, which is incorporated herein by reference (copies are available from the Department upon request).

1.36 **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.

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

1.38 **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.

1.39 **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.

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

1.41 **Termination Notice.** “Termination Notice” means a written notice from the City to Provider pursuant to Section 13.1 below terminating this Contract.

ARTICLE II: TERM

2.1 **Initial Term.** The Term of this Contract is set forth in Section 2.1 of the Provider Agreement.

2.2 **Additional Terms.** The City may, at its sole option, amend this Contract to add up to three (3) additional and successive one (1) year terms (“Additional Terms”). Unless otherwise stated in the Provider Agreement, the same terms and conditions applicable in the Provider Agreement 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. In addition to the requirements set forth in the Scope of Services attached as an exhibit to the Provider Agreement and to the requirements set forth elsewhere in this Contract, Provider shall:

(a) Prepare all drawings for design submissions using AutoCAD Systems, latest edition, or such other edition as determined by the City and in accordance with the American Institute of Architects (“AIA”) “CAD Layer Guidelines” or such other guidelines as determined by the City. Final drawings shall be provided on mylar as well as in electronic format. In addition to providing submissions in accordance with Section 3.7 (Time Frame for Submissions) below, Provider shall furnish four (4) sets of sealed plans (per site) for permitting purposes and permit applications, each with required supporting documentation;

(b) Where applicable, prepare complete bidding specifications using standard Construction Specification Institute (“CSI”) format or such other format as determined by the City. Specifications shall be provided in hard copy and in electronic format compatible with Microsoft Word, latest edition;

(c) Incorporate the latest developments in energy conservation measures into its design where applicable as determined by the City;

(d) All work described in any Construction Document shall comply with the Americans With Disabilities Act (“ADA”), 42 U.S.C. §§ 12101-12213 and all applicable regulations promulgated thereunder (provided, however, that this subsection 3.1(d) does not limit the applicability of Section 3.2 (Compliance with Applicable Law)) below;

(e) When required by the Department, furnish progress reports with each payment request, or monthly, whichever represents the shorter period, describing accomplishments, decisions and overall progress made during the period covered by the report and including the most recent project schedule;

(f) Obtain sign-off of all utility service providers, government agencies having jurisdiction, and using agencies, as required by the specific project;

(g) Furnish construction cost estimates with the final submission of Construction Documents for each design phase, which shall be organized in accordance with CSI format and incorporate contingencies and escalations appropriate to the design development and project schedule;

(h) Have all Services and Materials performed by or reviewed, approved and sealed by architects and engineers duly licensed to practice in the Commonwealth of Pennsylvania. In addition, Provider covenants and agrees that it shall ensure that each Construction Document delivered by or on behalf of Provider under this Contract shall be duly sealed by a duly licensed architect or engineer, and, further, Provider shall with each such Construction Document, give its certificate, by a duly licensed architect or engineer, certifying that such Construction Document is in conformity with the requirements of this Contract;

(i) Coordinate the Services and Materials to be provided under the Contract and review and check all Services and Materials prior to submission to the City; and

(j) Where applicable, complete the Services and Materials required under the Contract to permit the award of a contract for the construction of the project at a price which does not exceed the construction budget. If all responsible and responsive bids for the construction contract exceed the construction budget, Provider shall perform such redesign and other Services as are necessary to permit contract award within the construction budget. These redesign services shall be performed at no additional cost to the City.

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;

(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 Chapter 17-400 of the Code (to satisfy this requirement, Provider shall include subsection 14.2 (a) (Chapter 17-400 of the Code) 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 Code (to satisfy this requirement, Provider shall include subsection 14.6 (b) (Section 17-104 of the Code) 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).

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

(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 in Subsection 17-1401(9) of the Code, Provider shall abide by the provisions of Chapter 17-1400 of the Code in awarding any contract(s) pursuant to this Contract as though such contracts were directly subject to the provisions of Chapter 17-1400, except that the exception set forth in 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 Chapter 17-1400 of the Code 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 events before the scheduled expiration of the Term. If any portion of the work remains uncompleted after the date specified in the written time frame(s), for each and every day that any portion of the work remains uncompleted, the Responsible Official shall deduct from the monies due Provider, the actual direct expenses incurred by the City and for supervision during this period (supervision shall be deducted at 20% of the cost). Should such a delay be due to causes which Provider considers extraordinary or beyond his control, he may give timely notice thereof in writing to the Responsible Official, who may in his sole discretion make due allowance for such delay.

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.

3.10 **Permits and Approvals.** As part of its Services, Provider shall, on a timely basis, prepare, file for and procure any and all permits and approvals which may be required from all appropriate entities and shall ensure that all Services and Materials are in accordance with all Applicable Laws. Provider shall attend all meetings and prepare such documentation as may be necessary to ensure the granting of required permits and approvals. Such permits and approvals to be procured may, depending on the project, include, but are not limited to, those required by: (1) the Art Commission, the Historic Commission and the Fairmount Park Commission; (2) the Department of Licenses and Inspections, including zoning, building and use permits; (3) PECO Energy, the Philadelphia Gas Works, Bell Atlantic and other utility companies as may be required; (4) the Water Department, the Streets Department and other City departments, including the Zoning Board, as may be required; (5) state and federal environmental agencies; and (6) other City, state and federal agencies as may be required for the Services to be performed under the Contract.

3.11 **Meetings.** During all phases of the performance of the Services covered by the Contract, Provider shall attend meetings as requested by the Department. Provider shall prepare and distribute minutes of such meetings upon and in conformity with the request of the City.

ARTICLE IV: PROVIDER'S REPRESENTATIONS, WARRANTIES AND COVENANTS

4.1 **Provider's Representations, Warranties 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. The representations, warranties and covenants stated below 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.

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

(i) **Subcontractor Licensure; No Indebtedness to the City.** Each Subcontractor, if any, holds a valid, current Commercial Activity 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.

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 Term 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 Term 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 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.** Except through a Subcontract, 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 the Bidder or 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. 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 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.

ARTICLE X: OWNERSHIP OF MATERIALS; PROPRIETARY INFORMATION; CONFIDENTIALITY

10.1 Ownership of Materials.

(a) Subject to Applicable Law, and subsection 10.1(e) below, 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 and to others authorized by the City a royalty-free, nonexclusive and irrevocable right to publish, translate, reproduce, deliver and perform all studies, media, curricula, reports and other Materials delivered and 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 or others with respect to any Materials for which Provider would be liable to pay compensation to third parties because of such grant.

(e) Materials shall be furnished to the City and others as requested by the City in accordance with the schedule set forth in this Contract or upon completion or termination of this Contract, whichever occurs first. The City shall have the right to utilize any and all of the aforesaid items in the event the City expands or makes an addition to the project associated with the Services or Materials, corrects any deficiencies in the project associated with Services or

Materials, makes any renovations or repairs to the project associated with the Services or Materials, completes the project associated with Services or Materials after the termination of the Contract, or for future design use other than the construction of another facility which is substantially the same as the project associated with Services or Materials covered by the Contract. The City shall not use the Materials for construction of another facility other than the project associated with Services without the prior written approval of Provider.

10.2 **Non-Disclosure.** During the Term 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 Chapter 17-1400 of the Code;

(e) Misappropriation by Provider of any funds provided under this Contract or failure by Provider to notify the City upon discovery of any misappropriation;

(f) A violation of law which results in a guilty plea, a plea of nolo contendere, or conviction of a criminal offense by Provider, its 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 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 and, recognizing that the remedy at law for any breach or threatened breach by Provider would be inadequate, and that such breach or threatened breach would cause such immediate and permanent damage as would be irreparable, and the exact amount of which the Parties would be unable to ascertain, Provider agrees that in the event of breach or threatened breach, in addition to any and all other legal or equitable remedies which may be available, the City may enforce the terms of this Contract by a decree of specific performance and may obtain temporary or permanent injunctive relief, or both, without the necessity of proving damages by reason of any such breach or threatened breach of this Contract; and to the extent permitted under applicable statutes and rules of procedure, a temporary injunction may be granted immediately upon the commencement of any suit and without notice.

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 Initial Term or any Additional Term(s) 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 (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 and 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: ADDITIONAL REPRESENTATIONS AND COVENANTS OF PROVIDER RELATING TO CERTAIN APPLICABLE LAWS

In addition to the representations, warranties, and covenants made by Provider in Article IV, Provider further represents, warrants, and covenants that, to the extent of their applicability to Provider, Provider is in compliance with the laws, ordinances, regulations and executive orders described below. By executing this Contract, Provider thereby certifies to such compliance. Provider further certifies that the representations, warranties, and covenants provided pursuant to this Article shall continue to remain true throughout the Term of this Contract or any other period of time required by such laws. In the event said representations, warranties, and covenants are or become untrue or inaccurate, Provider shall promptly give notice thereof to the City, specifying the manner in which said representation, warranty, or

covenant is untrue or inaccurate. The provisions of this Article 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 Charter, the Fair Practices Ordinance (Chapter 9-1100 of the Code) and the Mayor's Executive Order No. 04-86 (the "Executive Order"), as they 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, ancestry or national origin, sex, gender identity, sexual orientation, age or disability. Nor shall Provider discriminate or permit discrimination against individuals in employment, housing and real property practices, and/or public accommodation practices whether by direct or indirect practice of exclusion, distinction, restriction, segregation, limitation, refusal, denial, differentiation or preference in the treatment of a person on the basis of actual or perceived race, ethnicity, color, sex, sexual orientation, gender identity, religion, national origin, ancestry, age, disability, marital status, source of income, familial status, genetic information or domestic or sexual violence victim status, or Human Immunodeficiency Virus (HIV) infection, or engage in any other act or practice made unlawful under the Charter, Chapter 9-1100, the Executive Order, or under the nondiscrimination laws of the United States or the Commonwealth of Pennsylvania. In the event of any breach of 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 Chapter 17-400 of The Philadelphia Code: Exclusionary Private Organizations.

(a) In accordance with Chapter 17-400 of the Code, Provider agrees that its payment or reimbursement of membership fees or other expenses associated with participation by its employees in an exclusionary private organization, insofar as such participation confers an employment advantage or constitutes or results in discrimination with regard to hiring, tenure of employment, promotions, terms, privileges or conditions of employment on the basis of race, color, sex, sexual orientation, religion, national origin or ancestry, constitutes, without limiting the applicability of Articles XI (Events of Default) and XII (Remedies) above, a substantial breach of this Contract entitling the City to all rights and remedies provided in this Contract or otherwise available at law or in equity.

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

14.3 Executive Order 03-12: Minority, Woman and Disabled Business Enterprise Participation. In accordance with Executive Order 03-12 (the "Antidiscrimination Policy"), the City, acting through its Office of Economic Opportunity ("OEO"), has established an antidiscrimination policy that relates to the solicitation and participation of Minority Business

Enterprises (“MBE”), Woman Business Enterprises (“WBE”), and Disabled Business Enterprises (“DSBE”) (collectively, “M/W/DSBE”) in City contracts. The purpose of this Antidiscrimination Policy is to ensure that all businesses desiring to do business with the City have an equal opportunity to compete by creating access to the City’s procurement process and meaningfully increasing opportunities for the participation by M/W/DSBEs in City contracts at all tiers of contracting, as prime contractors, subcontractors and joint venture partners. In furtherance of this policy, the City will, from time to time, establish participation ranges for City Contracts and City Related Special Projects. Provider agrees to comply with the requirements of the Antidiscrimination Policy by exercising its Best and Good Faith Efforts to include M/W/DSBEs in its contract, and where participation ranges are established by OEO, Provider agrees, without limitation, to submit documentation responsive to each of the participation ranges established for the Contract.

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

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

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

(3) Unless otherwise specified in the M/W/DSBE Subcontract between the Provider and its M/W/DSBE participant as described in (a) (1) above, Provider shall, within five (5) business days after receipt of a payment from the City for services performed under the Contract, deliver to its M/W/DSBE participant, its proportionate share of such payment for services performed by the M/W/DSBE participant. In connection with payment of its M/W/DSBE participants, Provider agrees to fully comply with the City’s payment reporting process which may include the use of electronic payment verification systems.

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

(5) Provider shall submit, within the time frames prescribed by the City, any and all documentation the City may request, including, but not limited to, copies of M/W/DSBE Subcontracts, participation summary reports, M/W/DSBE participant invoices, telephone logs and correspondence with M/W/DSBE participants, cancelled checks and

certification of payments. Provider shall maintain all documentation related to this Section for a period of five (5) years from the date of Provider's receipt of final payment under the Contract.

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

(7) Provider agrees that in the event the City determines that Provider has failed to comply with any of the requirements of this Antidiscrimination Policy, including substantial compliance with any Contract Commitment, the City may, in addition to any other rights and remedies it may have under the Contract which includes termination of the Contract, exercise one or more of the following remedies which shall be deemed cumulative and concurrent:

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

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

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

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

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

(2) a list of the nonprofit's five highest dollar value M/W/DSBE suppliers of products and services; and

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

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

14.4 **Federal Laws.** Provider shall comply with the provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d - 2000d.7), Section 504 of the Federal Rehabilitation Act of 1973 (29 U.S.C. § 794), the Age Discrimination Act of 1975, (42 U.S.C. §§ 6101 - 6107), Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681), and 45 C.F.R. Part 92, as they may be amended from time to time, which together prohibit discrimination on the basis of race, color, national origin, sex, handicap, age and religion.

14.5 **Americans With Disabilities Act.** Provider understands and agrees that no individual with a disability shall, on the basis of the disability, be excluded from participation in this Contract or from providing Services or Materials under this Contract. By executing and delivering this Contract, Provider covenants to comply with all provisions of the ADA and all regulations promulgated thereunder, as the ADA and regulations may be amended from time to time, which are applicable (a) to Provider; (b) to the benefits, Services, Materials, activities, facilities and programs provided in connection with this Contract; (c) to the City, or the Commonwealth 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 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 Code. Provider expressly understands and agrees that any false certification or representation in connection with this Section 14.6 (Section 17-104 of the Code) and any failure to comply with the provisions of this Section 14.6 (Section 17-104 of the Code) shall constitute a substantial breach of this Contract entitling the City to all rights and remedies provided in this Contract or otherwise available at law (including, but not limited to, Section 17-104 of the Code) or in equity. In addition, Provider understands that false certification or representation is subject to prosecution under Title 18 Pa.C.S.A. § 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 of Philadelphia's Executive Order entitled "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 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 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” as defined in the regulations issued pursuant to the federal Health Insurance Portability and Accountability Act of 1996 (“HIPAA”). The City’s business activities include both (1) functions which make the City a Covered Entity, and, therefore, subject to HIPAA, and (2) functions that are not subject to HIPAA. In accordance with 45 CFR §164.105(a)(2)(iii)(D), the City has designated certain departments and units of the City as health care components that must comply with HIPAA (“Covered Components”). The Covered Components of the City as of August 1, 2013 include: Ambulatory Health Services, a unit of the Philadelphia Department of Public Health (“PDPH”); the Office of Behavioral Health and Intellectual disAbility Services; the Philadelphia Nursing Home (a unit of PDPH); the Benefits Administration Unit of the Office of Human Resources; Emergency Medical Services (a unit of the Philadelphia Fire Department); and the Philadelphia Public Health Laboratory (a unit of PDPH). This list is subject to change, and any department or unit 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 Section 14.9.

(b) To the extent (1) this Contract is entered into by the City for or on behalf of a Covered Component and/or requires the performance of services that will be delivered to or used by a Covered Component (whether or not the City department or unit through which the City entered the Contract is a Covered Component), and (2) Provider is a “Business Associate” of the City, as defined in 45 CFR §160.103, Provider shall comply with the City’s Terms and Conditions Relating to Protected Health Information (“City PHI Terms”) posted on the City’s website (at <https://secure.phila.gov/eContract/> under the “About” link). The City PHI Terms are hereby incorporated in this Section 14.9 as if fully set forth herein. (A printed version of the City PHI Terms, in the City’s sole discretion, also may be attached to this Contract.)

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

(a) Provider is a “Service Contractor” in that by virtue of entering into this Contract, Provider has entered into a “Service Contract,” as those terms are defined in Chapter 17-1300 of the Code. Any Subcontract between Provider and a Subcontractor to perform Services under this Contract is a “Service Contract” and such Subcontractors are also “Service Contractors” for purposes of Chapter 17-1300 as are any subcontract and subcontractor at any

tier providing Services under this Contract. (Chapter 17-1300 is accessible at <http://www.amlegal.com/library/pa/philadelphia.shtml>.) If such Service Contractor (Provider or any subcontractor at any tier) is also an "Employer," as that term is defined in Section 17-1302 (more than 5 employees), and further described in Section 17-1303 of the Code, then absent a waiver, during the Initial Term and any Additional Term, in addition to any applicable state and federal requirements, Provider shall provide, and shall enter into Subcontracts and otherwise cause any subcontractors at any tier that are also Service Contractors to provide, their respective covered Employees (persons who perform work for a covered Employer that arises directly out of a Service Contract), with at least the minimum wage standard and minimum benefits standard, and required notice thereof, stated in federal and state law and in Chapter 17-1300 of the Code. A summary of the current requirements is as follows:

(1) Minimum Wage.

(.a) for the period through December 31, 2014, provide covered Employees with an hourly wage, excluding benefits, that is no less than \$10.88/hour;

(.b) as of January 1, 2015, provide their covered Employees with an hourly wage, excluding benefits, that is no less than \$12/hour;

(.c) commencing as of January 1, 2016, for wages to be provided on and after January 1 of each year during which the Initial Term and any Additional Term is in effect, provide their covered Employees with an hourly wage, excluding benefits, that is no less than the result of multiplying \$12 by the then current CPI Multiplier as annually adjusted. For purposes of determining the minimum hourly wage required, the CPI Multiplier is calculated annually by the City's Director of Finance by dividing the most recently published Consumer Price Index for all Urban Consumers (CPI-U) as of each January 1 by the CPI-U most recently published as of January 1, 2015. The then current minimum hourly wage applicable to City contractors and subcontractors will be posted on the City's web site.

(2) Minimum Benefits.

(.a) to the extent an Employer provides health benefits to any of its employees, provide each full-time, non-temporary, non-seasonal covered Employee with health benefits at least as valuable as the least valuable health benefits that are provided to any other full-time employees of the Employer; and

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

(3) Generally. Notwithstanding the above requirements, to the extent a change in law would require an increase in wages or benefits under Chapter 17-1300 (for example, an increase in the federal minimum wage to \$9.00/hour, which would increase the required City minimum wage to \$13.50 due to the Chapter's requirement of 150% of the federal

minimum wage), such new requirement will take effect only at the start of an Additional Term, if any, commencing on or after the date of the new legal requirement.

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

(c) Absent a waiver, a Provider subject to Chapter 17-1300 shall comply with all of its requirements as they exist on the date when the Provider entered into this Contract with the City or into an amendment thereto. Provider shall take such steps as are necessary to notify its Subcontractors of these requirements, and to cause such Subcontractors to notify lower-tier subcontractors that are Service Contractors of these requirements, including, without limitation, by incorporating this Section 14.10, with appropriate adjustments for the identity of the parties, in its Subcontracts with such Subcontractors. A Provider or subcontractor at any tier subject to Chapter 17-1300 that fails to comply with these provisions may, after notice and hearing before the Director of Finance or such other officer or agency designated by the Mayor, be suspended from receiving financial assistance from the City or from bidding on and/or participating in future City contracts, whether as a prime contractor or a subcontractor, for up to three (3) years. City Council may also initiate a similar suspension or debarment process. Such suspension or debarment shall be in addition to any of the other sanctions or remedies set forth in Chapter 17-1300 or this Contract.

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

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

(f) The Office of Labor Standards may grant a partial or total waiver of Chapter 17-1300 based on specific stipulated reasons elaborated in Section 17-1304 of the Code. An overview offering guidance on the applicability of, and requirements placed on City contractors and subcontractors by Chapter 17-1300 of the Code is available on the City's website at <https://secure.phila.gov/eContract/> under the "About" link; see "Minimum Wage and Equal Benefits Ordinances Impacting Some City Contractors."

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

(a) Provider confirms on behalf of itself and its Subcontractor(s) that no contribution(s) have been made and agrees that none shall be made during the Term of this Contract, and any Additional Term, 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 Sections 17-1404(1) and 17-1405 of the Code; and that disclosures made as part of its application to receive a Non-Competitively Bid Contract contain no material misstatements or omissions. Breach of this covenant shall constitute an event of default and render the Contract voidable at the City's option, and, as to contributions made by or attributable to Provider, 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 Section 14.11 (Contributions and Other Mandatory Disclosures), each of which may be pursued separately or in conjunction with such other remedies as the City in its sole discretion shall determine. No extension or indulgence granted by the City to Provider shall operate as a waiver of any of the City's rights in connection with this Contract. The rights and remedies of the City as described in this Section 14.11, and as described elsewhere in this Contract, shall not be exclusive and are in addition to any other rights or remedies available to the City under this Contract at law or in equity.

(b) Provider shall, during the term of the Contract, any Additional Term, and for one year thereafter, disclose any contribution of money or in-kind assistance the Provider, Subcontractor or any Consultant utilized by Provider in connection with this Contract, has made, or any individual or entity has made if such contributions can be attributed to Provider, or such Subcontractor or Consultant pursuant to the attribution rules of Section 17-1405, 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.

(c) It shall not be a violation of Section 14.11(b) above 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 Chapter 17-1400 of the Code, 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 Chapter 17-1400; and

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

(d) The Provider shall, during the Term of the Contract, any Additional Term, and for one year thereafter, disclose the name and title of each City officer or employee who, during such time period, asked 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.

(e) The Provider shall during the Term, and any Additional 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. The Provider shall also disclose the date the advice was provided, and the name of such particular Person.

(f) The disclosures required by Sections 14.11(b), (d) and (e) shall be made utilizing the online disclosure update process through Provider's eContract Philly account which can be accessed on the City's website at www.phila.gov/contracts by clicking on eContract Philly. Such disclosures shall be made within five (5) business days of the action or event requiring Provider to update its disclosures. In the case of updates to political contributions made by Provider required by Section 14.11(b), 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. Provider is advised that any individual who submits an update on eContract Philly must be an authorized signatory of the Provider, authorized to make the required updated disclosures.

(g) Reports of the updated disclosures required by Sections 14.11(b), (d) and (e) shall be forwarded to the President and Chief Clerk of Council, and to the Mayor, Finance Director, Procurement Department, and the Department of Records.

14.12 Executive Order 03-11: Gifts.

(a) Pursuant to Executive Order 03-11, 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, invitation, food, drink or loan, unless consideration of equal or greater value is conveyed in return, 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.

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

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

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

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

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

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

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

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

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.** With the exception of the remedy provided to third party beneficiaries by Section 14.10(e), 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).

Contract Number _____

City of Philadelphia
_____ Department

PROVIDER AGREEMENT

(Architect and Engineer Services)

THIS PROVIDER AGREEMENT is made as of the ____ day of _____
20 , by and between the City of Philadelphia (the “City”), acting by and through its
_____ Department (the “Department”), and _____
_____ (“Provider”), a _____, with its principal
place of business at _____.

BACKGROUND

The City and Provider desire that Provider render various professional services to the City, in accordance with the provisions of the Provider Agreement, the City of Philadelphia Professional Services Contract Architect and Engineer Services General Provisions, as revised January, 2006 (the "General Provisions") and all of the other documents and exhibits which together constitute the Contract Documents as defined in the General Provisions. A copy of the General Provisions is attached hereto and incorporated herein by reference.

In consideration of the mutual obligations set forth herein, and intending to be legally bound, the City and Provider covenant and agree as follows:

ARTICLE I: GENERAL TERMS

- 1.1 The Background is incorporated by reference herein.
- 1.2 Capitalized terms shall have the meanings set forth in the General Provisions.

ARTICLE II: TERM

2.1 Term.

The term of this Contract shall commence on _____ and shall terminate on _____ unless terminated earlier in accordance with the terms of the Contract.

ARTICLE III: SERVICES AND MATERIALS

3.1 Services and Materials.

Provider shall perform the Services and provide the Materials described in **Exhibit PA-1**, which is attached hereto and incorporated herein by reference. All Services shall be performed and Materials provided within the schedule outlined in **Exhibit PA-1**.

ARTICLE IV: COMPENSATION

4.1 Amount.

As compensation for the Services and Materials rendered and provided, the City covenants and agrees to pay to Provider _____ ("Provider's Fee").

4.2 Manner of Payment.

(a) Payment shall be made after Provider's timely submission of invoices to the Responsible Official, in the number, form and content acceptable to the Responsible Official, accompanied by such additional supporting data and documentation as the Responsible Official may require. All payments to Provider are contingent upon satisfactory performance of the terms and conditions of this Contract. Provider shall submit its final invoice not more than sixty (60) days from completion of the Services and delivery of Materials. All payments to Provider shall be by checks drawn by the City Treasurer.

(b) Subject to the submission of monthly invoices as set forth in section 4.2(a) above, payment to Provider by the City for Services and Materials satisfactorily performed shall be made as follows:

- (1) Fifteen percent (15%) upon completion and approval of schematic design;
- (2) Thirty-five percent (35%), inclusive of previous payment, upon completion and approval of preliminary design;
- (3) Sixty-five percent (65%), inclusive of previous payments, upon completion and approval of the Construction Documents;
- (4) Seventy-five percent (75%), inclusive of previous payments, following completion of all Services required of Provider during the City's bid/award process;
- (5) Eighty-five percent (85%), inclusive of previous payments, at forty percent (40%) completion of construction;
- (6) Ninety-five percent (95%), inclusive of previous payments, at eighty percent (80%) completion of construction;
- (7) One hundred percent (100%), inclusive of previous payments, at substantial completion of construction, unless the Responsible Official or his/her designee determines that further work is required of Provider in connection with punch list items.

In the event the City elects to terminate this Contract for the convenience of the City pursuant to Section 13.1 of the General Provisions following completion and approval of the Construction Documents or if the City elects to delay commencement of the bidding process for more than six (6) months following the date of the City's approval of the Construction Documents for reasons beyond the control of Provider and which is not because of Provider's fault or negligence, the payment made under Section 4.2(b)(3) above shall be increased from sixty-five percent (65%) to seventy percent (70%).

(c) Subject to the City's prior written approval, Provider may elect to receive monthly progress payments for each phase of the aforesaid Services and Materials based on the actual percentage of work completed for each phase (regardless of the amount of time spent by Provider), as determined by the Department; provided, however, that no more than eighty percent (80%) of the total compensation due for each phase shall be paid before the completion of such phase. Provider must submit monthly invoices in accordance with section 4.2(a) above. The City reserves the right to require Provider to submit certified payrolls or other documentation in order to determine the appropriateness of any progress payments to Provider.

(d) Provider's Fee hereunder shall include full payment for all costs and expenses associated with the Services and Materials provided under this Contract, including, but not limited to, the following:

- (1) Expense of all travel, lodging and transportation in connection with the Services and Materials, as well as all telephone and other communication expenses;
- (2) Filing fees for required permits and approvals including, but not limited to, filing fees for zoning and/or use registration permits, building permits, variances, and, if requested by the Department, preliminary plan examination, from authorities having jurisdiction over the Services (Note: Any additional fees to be paid to such authorities for the actual permits will not be the responsibility of Provider);
- (3) Expense of reproductions, postage and handling of drawings, specifications, and other documents;
- (4) Expense of overtime work requiring higher than regular rates unless authorized in writing by the City as an additional service under Section 3.3 of the General Provisions (Additional Services and Materials);
- (5) Expense of renderings, models and mock-ups included in the Provider's proposal at the request of the City;
- (6) Expense of additional insurance coverage, including professional liability insurance, requested by the City in excess of that normally carried by Provider and Provider's Subcontractors;

(7) Expense of computer-aided design and drafting equipment time when used in connection with the Services.

(e) Notwithstanding anything in this Contract to the contrary, the sum of any and all payments to Provider hereunder shall in no event exceed the sum of _____.

ARTICLE V: MISCELLANEOUS PROVISIONS

5.1 **Notice.**

Any notice required or permitted to be given under the Contract shall be given in writing and shall be personally delivered by hand with receipt obtained, by a national overnight express carrier (such as Federal Express), by facsimile, or sent by registered or certified United States mail, return receipt requested, addressed as follows:

IF TO THE CITY

Attn.:

(Fax No.: _____)

IF TO PROVIDER:

Attn:

(Fax No.: _____)

5.2 **Interpretation; Order of Precedence.**

In the event of a conflict or inconsistency between the terms of this Provider Agreement and any term, condition or provision contained in any exhibit hereto, or any attachment to such exhibit (including without limitation, any proposal of Provider), the terms of this Provider Agreement shall control.

5.3 **Other Provisions** [NOTE -- delete the heading "Other Provisions" if not applicable & insert "Section 5.3 intentionally deleted."]

Other provisions, including, without limitation, OEO participation commitments and any exceptions or modifications to the General Provisions of the Contract, are set forth in the following Exhibits attached hereto, and incorporated herein by reference:

(a) **Exhibit PA-___:**

(a) **Exhibit PA-___:**

5.4 **Acknowledgement of the General Provisions.**

Provider specifically acknowledges that Provider has read and understands the terms and conditions contained in the General Provisions and acknowledges that by executing this Provider Agreement, Provider shall be legally bound by all of the terms of this Contract, including, but not limited to, those set forth in the General Provisions.

IN WITNESS WHEREOF, the Parties hereto, intending to be legally bound by all of the Contract Documents, have caused the Contract to be executed by their respective duly authorized officers as of the date in the heading of this Provider Agreement.

APPROVED AS TO FORM
SHELLEY R. SMITH, CITY SOLICITOR

THE CITY OF PHILADELPHIA
Through: The _____ Department

Per _____
[Insert Attorney's name]
[Insert Attorney's title]

By: _____

Title: _____

CORPORATE SEAL:

PROVIDER

By: _____
President or Vice-President

Attest: _____

Title: _____
(Ass't) Secretary or (Ass't) Treasurer

EXHIBIT PA-1
SERVICES AND MATERIALS TO BE PERFORMED BY PROVIDER

SCHEDULE

Provider shall complete the following work within the number of calendar days specified:

- (a) Schematic design work within ___ calendar days after receiving written direction to proceed from the Department.
- (b) Preliminary design work within ___ calendar days after receiving written approval of schematic design work from the Department.
- (c) Final Construction Documents within ___ calendar days after receiving written approval of preliminary design work from the Department.
- (d) Other work products and services within the number of calendar days as specified by the Department.

infostores

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

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

SPECIAL CONTRACT PROVISIONS, INSTRUCTIONS AND FORMS

infostores

APPENDIX B-1
CITY OF PHILADELPHIA
OFFICE OF ECONOMIC OPPORTUNITY
ANTIDISCRIMINATION POLICY- MINORITY, WOMAN AND DISABLED OWNED BUSINESS
ENTERPRISES
FORMS, INSTRUCTIONS AND SPECIAL CONTRACT PROVISIONS
(NON-COMPETITIVELY BID CONTRACTS)

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

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

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

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

A. M/W/DSBE PARTICIPATION

1. Only firms that are certified by an approved certifying agency² and identified in the OEO Certification Registry by the time of contract award will be counted for participation. An OEO Certification Registry is maintained by the OEO and is available online at www.phila.gov/OEO/directory. Firms owned and

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

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

controlled by minority persons, women or disabled persons, which are certified as MBE, WBE, DSBE or DBE by an approved certifying agency may apply to the OEO for listing in its OEO Certification Registry.

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

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

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

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

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

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

B. RESPONSIVENESS

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

- Documentation of all solicitations (regardless of whether commitments resulted

therefrom) as well as all commitments made on the enclosed document entitled "Solicitation For Participation and Commitment Form". Applicants should only make actual solicitations of M/W/DSBEs whose services or materials are within the scope of this NOCO. Mass mailing of a general nature to M/W/DSBEs or similar methods will not be deemed solicitation, but rather will be treated as informational notification only. A reasonable period of time should be given to all solicited firms to ensure that they have sufficient time to adequately prepare their quotes/subproposals. The applicant's listing of a commitment with an M/W/DSBE constitutes a representation that the applicant has made a legally binding commitment to contract with such firm, upon receipt of a contract award from the City ("Contract Commitment").

- If the applicant has entered into a joint venture with an MBE, WBE and/or DSBE partner, the applicant is also required to submit along with the Solicitation For Participation and Commitment Form, a document entitled "Joint Venture Eligibility Information Form," available at OEO, for the City's review and approval of the joint venture arrangement.

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

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

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

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

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

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

C. RESPONSIBILITY

1. Upon award, the completed Solicitation For Participation and Commitment Form and accompanying documents regarding solicitation and commitments with MBEs, WBEs and DSBEs become part of the contract and the successful applicant is required to enter into legally binding agreement(s) ("M/W/DSBE Subcontract(s)") with its M/W/DSBE participants for the services and in the dollar amount(s) and percentage(s) as so committed (the "Contract Commitment(s)"). M/W/DSBE percentage commitments are to be maintained throughout the term of the contract and shall apply to the total contract value (including amendments). Any change in commitment, including but not limited to substitutions for the listed firm(s), changes or reductions in the work and/or listed dollar/percentage amounts, must be pre-approved in writing by the OEO.

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

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

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

D. ACCESS TO INFORMATION

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

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

E. RECORDS AND REPORTS

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

F. REMEDIES

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

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

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

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

ANTIDISCRIMINATION POLICY SOLICITATION FOR PARTICIPATION AND COMMITMENT FORM
 Minority (MBE), Woman (WBE), Disabled (DSBE) and Disadvantaged (DBE) Business Enterprises¹

DEPARTMENT OF COMMERCE
OFFICE OF ECONOMIC OPPORTUNITY (OEO)

Bid Number or Proposal Title:		Name of Bidder/Proposer:				Bid/RFP Opening Date:	
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"/> DSBE <input type="checkbox"/> M-DBE <input type="checkbox"/> W-DBE		Work or Supply Effort to be Performed	Date Solicited		Commitment Made		Give Reason(s) If No Commitment
Company Name			By Phone	By Mail	Yes (If Yes, give date)	NO	
Address							
Contact Person			Quote Received		Amount Committed To		
Telephone Number Fax Number			YES²	NO	Dollar Amount		
Email Address					\$		
OEO REGISTRY #	CERTIFYING AGENCY			Percent of Total Bid/RFP			
				%			
<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> DSBE <input type="checkbox"/> M-DBE <input type="checkbox"/> W-DBE		Work or Supply Effort to be Performed	Date Solicited		Commitment Made		Give Reason(s) If No Commitment
Company Name			By Phone	By Mail	Yes (If Yes, give date)	NO	
Address							
Contact Person			Quote Received		Amount Committed To		
Telephone Number Fax Number			YES²	NO	Dollar Amount		
Email Address					\$		
OEO REGISTRY #	CERTIFYING AGENCY			Percent of Total Bid/RFP			
				%			
<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> DSBE <input type="checkbox"/> M-DBE <input type="checkbox"/> W-DBE		Work or Supply Effort to be Performed	Date Solicited		Commitment Made		Give Reason(s) If No Commitment
Company Name			By Phone	By Mail	Yes (If Yes, give date)	NO	
Address							
Contact Person			Quote Received		Amount Committed To		
Telephone Number Fax Number			YES²	NO	Dollar Amount		
Email Address					\$		
OEO REGISTRY #	CERTIFYING AGENCY			Percent of Total Bid/RFP			
				%			

1. If Bidder/Proposer makes solicitation(s) and commitment(s) with a DBE, Bidder/Proposer shall indicate which class type, M-DBE or W-DBE, is submitted for credit.
 2. Attach all quotations to this form.

APPENDIX B-2

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

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

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

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

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

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

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

APPENDIX C

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

THIS IS A CONFIDENTIAL TAX DOCUMENT NOT FOR PUBLIC DISCLOSURE

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

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

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

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

Authorized Signature

Date

Print Name and Title

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

APPENDIX D

LOCAL BUSINESS ENTITY OR LOCAL IMPACT CERTIFICATION

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

Applicant Name: _____

Local Business Entity Certification

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

I. During the preceding 12 months, Applicant has filed a Commercial Activity or Business Privilege tax return with the City establishing that Applicant conducted business within the City within the calendar year preceding the filing of the return; and

II. During the preceding 18 months, Applicant:

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

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

C. Satisfies at least one of the following requirements (*Check those applicable to Applicant*):

___ (1) More than half of Applicant’s full-time employees work in the City at least 60% of the time;

___ (2) More than 50 of Applicant’s full-time employees work in the City at least 60% of the time; or

___ (3) Applicant’s principal place of business is located in the City.

Local Impact Certification

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

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

Authorized Signature

Date

Print Name and Title

APPENDIX E

The Philadelphia Code Chapter 17-100, Procurement Contracts

§ 17-111. Energy Efficiency and Environmental Design in Construction of Buildings.[30.1](#)

(1) *Purpose.* The purpose of this Section is to improve the City's capacity to design, construct and operate City buildings that meet high standards for environmental stewardship and demonstrate City leadership in the area by meeting those standards in connection with large City construction projects. The City is undertaking this initiative to underscore the importance of building high performance green buildings that are responsible and healthy places to live and work and to encourage similar development by private developers within the City.

(2) *Definitions.* The following definitions shall apply to this Section:

(a) *Expenditure of Primarily City Capital Dollars.* A circumstance in which more than 50% of the funding for design and construction of a project is based on authorization set forth in the City's annual capital budget appropriations ordinance for expenditure by any City department.

(b) *U.S. Green Building Council.* The organization that has developed and published the LEED Rating System to measure the energy and environmental performance of a building.

(c) *Large City Public Works Project.* New construction or major renovation of 10,000 or more gross square feet of enclosed and conditioned building space.

(d) *LEED Rating System for New Construction and Major Renovation.* The Leadership in Energy and Environmental Design Rating System developed by the U.S. Green Building Council that establishes performance standards for new construction and major renovation of commercial, institutional and high-rise residential buildings.

(e) *Major Renovation.* Major HVAC renovation, significant building envelope modification and major interior rehabilitation that in total directly affect more than 50% of the gross floor area of an enclosed and conditioned building space.

(f) *New Construction.* Design and construction of a new building or ground-up addition to an existing building.

(g) *Silver-level LEED Rating.* A Silver-level rating based on the LEED Rating System for New Construction and Major Renovation in effect on the date that a City project is registered with the Green Building Certification Institute, with at least 5 points earned in the category of Energy and Atmosphere.

(h) *Green Building Certification Institute.* The organization that administers project certification for commercial and institutional buildings under the LEED Green Building Rating System.

(3) *Contract Requirements.*

(a) Every City contract for the design or construction of a large City public works project that, based on the characteristics of the project, is capable of meeting the minimum program requirements for the LEED Rating System for New Construction and Major Renovation, and that involves the expenditure of primarily City capital dollars, shall include requirements intended to ensure that the finished project will achieve a silver-level LEED rating.

(4) *Regulations.* The City Planning Commission, subject to the approval of the Director of Finance, is authorized to promulgate such regulations as are necessary and appropriate for the implementation of this Section, including (i) regulations allowing contract requirements pursuant to Section 3(a) to be based on attainment of alternative standards for integrated design and high performance that are similar to LEED standards; (ii) exceptions where strict compliance with the terms of this Ordinance would prohibit the use of federal or state funding in connection with a particular project; and (iii) exceptions for specific projects where strict conformance with the terms of this Ordinance will conflict with other City priorities, such as historic preservation goals, or where attainment of LEED certification will cause overall life-cycle project costs to exceed by more than 10% the expected life-cycle costs of a similar project for which certification is not sought.

(5) The Philadelphia City Planning Commission shall prepare and provide to Council an annual summary of the status of City projects that are subject to the terms of this Ordinance.

Notes

[30.1](#) Added, Bill No. 080025 (approved December 16, 2009). Section 2 of Bill No. 080025 provides: “This Ordinance shall become effective for bids advertised on or after January 1, 2010.”