



CITY OF PHILADELPHIA

PROFESSIONAL SERVICES CONTRACT

GENERAL CONSULTANT SERVICES

GENERAL PROVISIONS

TABLE OF CONTENTS

	Page(s)
Article I: Definitions	1
1.1 Amendment	1
1.2 Applicable Law.....	1
1.3 Certificate of Restrictions on Lobbying.....	1
1.4 The City	1
1.5 City of Philadelphia Contract Cost Principles and Guidelines	1
1.6 The Contract	2
1.7 The Contract Documents	2
1.8 The Department	2
1.9 Event of Default	2
1.10 Event of Insolvency	2
1.11 General Provisions.....	3
1.12 Materials	3
1.13 The Parties	3
1.14 Provider	3
1.15 The Provider Agreement.....	3
1.16 The Responsible Official	3
1.17 Scope of Services.....	3
1.18 Services.....	4
1.19 Subcontract	4
1.20 Subcontractor.....	4
1.21 Termination Notice.....	4
Article II: Term.....	4
2.1 Initial Term	4
2.2 Additional Terms.....	4
Article III: Provider’s Duties and Covenants.....	5
3.1 Performance Requirements.....	5
3.2 Compliance with Applicable Law	5

3.3	Additional Services and Materials.....	5
3.4	Change in Scope of Services and Materials.....	6
3.5	Responsibility.....	6
3.6	Subcontracts.....	7
3.7	Relationship with the City.....	9
3.8	Time Frame for Submissions.....	9
3.9	Prompt Payment by Provider.....	9
3.10	Sales and Use Tax.....	9
Article IV:	Provider’s Representations and Covenants.....	10
4.1	Provider’s Representations and Covenants.....	10
(a)	Good Standing.....	10
(b)	Authority to Act.....	10
(c)	Legal Obligation.....	10
(d)	No Litigation Preventing Performance.....	10
(e)	Requisite Licensure and Qualifications.....	11
(f)	No Adverse Interests.....	11
(g)	No Delinquencies.....	11
(h)	Business Privilege License.....	12
(i)	Subcontractor Licensure; Non-Delinquency.....	12
(j)	Non-Suspension; Debarment.....	12
Article V:	Compensation.....	13
5.1	Certification of Available Funds.....	13
5.2	Unavailability of Funds.....	13
5.3	Crossing Fiscal Years.....	14
Article VI:	Audits; Inspection Rights; Records.....	14
6.1	City Audit.....	14
6.2	Inspection.....	15
6.3	Availability of Records.....	15
6.4	Retention of Records.....	15
Article VII:	Assignment.....	16
7.1	Assignment By Provider.....	16
7.2	Applicability in Case of Bankruptcy or Insolvency.....	16
7.3	Personal Services.....	16
Article VIII:	Independent Contractor; Indemnification; Cooperation.....	16
8.1	Independent Contractor.....	16

8.2	Indemnification.....	17
8.3	Litigation Cooperation.....	17
8.4	Notice of Claims	17
Article IX: Insurance		18
9.1	Insurance.....	18
	(a) Workers' Compensation and Employers' Liability.....	18
	(b) General Liability Insurance	18
	(c) Automobile Liability	19
	(d) Professional Liability Insurance.....	19
9.2	Self-Insurance	19
9.3	Evidence of Insurance Coverage	20
9.4	Fidelity Bond	21
Article X: Ownership of Materials; Proprietary Information; Confidentiality		21
10.1	Ownership of Materials	21
10.2	Non-Disclosure.....	22
Article XI: Disputes.....		23
11.1	Disputes	23
Article XII: Events of Default		23
12.1	Events of Default.....	23
12.2	Notice and Grace	24
Article XIII: Remedies.....		25
13.1	The City's Remedies.....	25
13.2	Concurrent Pursuit of Remedies; No Waiver.....	26
Article XIV: Termination.....		27
14.1	Termination for Convenience.....	27
14.2	Responsibilities upon Termination.....	27
14.3	Payment of Provider upon Termination	27

Article XV: Specific Laws	28
15.1 Non-Discrimination.....	28
15.2 Fair Practices	29
15.3 The Philadelphia Code, Chapter 17-400.....	29
15.4 Executive Order 1-93.....	29
15.5 Federal Laws.....	31
15.6 [Intentionally Deleted].....	31
15.7 Americans With Disabilities Act.....	31
15.8 The Philadelphia Code, Section 17-104	32
Article XVI: Year 2000 Compliance	33
16.1 Year 2000 Compliant.....	33
16.2 Provider’s Representations and Warranties.....	34
16.3 Information Requests	34
Article XVII: Miscellaneous	35
17.1 Governing Law	35
17.2 Amendments;Waiver.....	35
17.3 Integration.....	35
17.4 No Joint Venture.....	35
17.5 No Third Party Beneficiaries	35
17.6 Counterparts.....	36
17.7 Number and Gender.....	36
17.8 Severability and Partial Invalidity	36
17.9 Survival.....	36
17.10 Interpretation; Order of Precedence.....	37
17.11 Headings	37
17.12 Citations.....	37
17.12 Days	37
17.14 Forum Selection Clause; Consent to Jurisdiction.....	37
17.15 Waiver of Jury Trial.....	38

GENERAL PROVISIONS

ARTICLE I: DEFINITIONS

1.1 **Amendment.**

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

1.2 **Applicable Law.**

“Applicable Law” means all applicable present and future court orders, injunctions and decrees, laws, ordinances, executive orders, rules, regulations, interpretations and requirements (including, without limitation, those relating to the environment, the Philadelphia Home Rule Charter, as amended from time to time, The Philadelphia Code, as amended from time to time, and the specific laws set forth in Article XV (Specific Laws) hereof, as amended from time to time), of any federal, state or local court, administrative agency or governmental body, including the City, the Commonwealth of Pennsylvania, and the United States.

1.3 **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.

1.4 **The City.**

The “City” means the City of Philadelphia, a body corporate and politic organized and existing under the laws of the Commonwealth of Pennsylvania, and shall encompass, without limitation, its various departments, agencies, boards and commissions, including the Department.

1.5 **City of Philadelphia Contract Cost Principles and Guidelines.**

“City of Philadelphia Contract Cost Principles and Guidelines,” means the

document named the “City of Philadelphia Contract Cost Principles and Guidelines,” as it may be amended from time to time, that specifies the Department’s guidelines for the qualitative and quantitative evaluation of contract services, the determination of allowable costs, and the standards to determine the allowability of individual cost items. (Copies are available from the Department upon request).

1.6 **The Contract.**

The “Contract” means all of the Contract Documents.

1.7 **The Contract Documents.**

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

1.8 **The Department.**

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

1.9 **Event of Default.**

“Event of Default” means those events defined and identified in Section 12.1 (Events of Default) hereof.

1.10 **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.

1.11 **General Provisions.**

“General Provisions” means this document, which contains the standard provisions required by the City in its general consultant professional services contracts, and any exhibits identified herein.

1.12 **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 or for Provider by a Subcontractor and supplied to the City by Provider or a Subcontractor in performance of the Contract.

1.13 **The Parties.**

The “Parties” means the City and Provider.

1.14 **Provider.**

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

1.15 **The Provider Agreement.**

The “Provider Agreement” means the agreement containing the terms specific to Provider's engagement.

1.16 **The Responsible Official.**

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

1.17 **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 the 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.

1.18 **Services.**

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

1.19 **Subcontract.**

“Subcontract” means a contract subordinate to the Contract, made between Provider and a Subcontractor.

1.20 **Subcontractor.**

“Subcontractor” means an individual or entity who/that has contracted with Provider for the performance of all or a part of the work or Services which Provider has contracted to perform under the Contract.

1.21 **Termination Notice.**

“Termination Notice” means the written notice from the City to Provider that informs Provider of the City’s intent to terminate the Contract.

ARTICLE II: TERM

2.1 **Initial Term.**

The initial term (“Initial Term”) of the Contract is set forth in the Provider Agreement. In no event shall the Initial Term exceed one (1) year.

2.2 **Additional Terms.**

The City may, at its sole option, amend the Contract to add on an annual basis up to three (3) successive one (1) year terms (“Additional Terms”), unless any shorter term (or terms) is specified in the Provider Agreement. Unless otherwise stated in the Provider Agreement, the same terms and conditions applicable in the Initial Term shall be applicable in the Additional Term(s).

The City shall give Provider thirty (30) days written notice of its intent to amend the Contract to add an Additional Term prior to each annual Additional Term. Each Additional Term shall be subject to councilmanic appropriation of funds. There shall be no liability or penalty to the City for electing not to amend the term of the Contract to add Additional Terms. Each Additional Term of the 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 the Contract and applicable professional standards. All payments to Provider are contingent upon satisfactory performance of the terms and conditions set forth in the Contract as determined by the Responsible Official.

3.2 Compliance with Applicable Law.

Provider shall comply with the requirements of all Applicable Law in the performance of the Contract. Provider shall inform the Responsible Official, in writing, of any notices of violations of any Applicable Law within forty-eight (48) hours of 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.

Provider shall not perform or provide, and shall not be paid for, any services or materials not included in the Contract (the "Additional Services and Materials") unless and until it receives written pre-authorization from the Responsible Official, which specifies the Additional Services and Materials to be performed and/or provided and the compensation to be paid for the Additional Services and Materials. In no event shall the rates charged by Provider for such Additional Services and Materials exceed Provider's then current standard rates. The City shall have no responsibility for any costs incurred by Provider for Additional Services and Materials not

specifically approved in advance and authorized in writing by the Responsible Official.

3.4 **Change in Scope of Services and Materials.**

At any time during the term of the Contract, the City may, by written change order or request, make changes to the Scope of Services under the Contract, and an equitable adjustment in compensation will be negotiated, in good faith, by the Parties if appropriate. If Provider requests changes to the Scope of Services, Provider must demonstrate to the satisfaction of the City that the changes are necessary and not due to the acts or omissions of Provider. Compensation to Provider beyond the monetary limits set forth in the Contract shall only be made if and when an Amendment to the Contract is duly executed by the Parties.

3.5 **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 furnished by Provider under the Contract. Provider shall, without additional compensation, correct or revise any errors or 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 the 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 the Contract or of any cause of action arising out of the performance of the Contract. No person or firm or entity shall rely in any way on such review, approval or acceptance by the City. Provider shall be and remain liable in accordance with the Contract and Applicable Law for all damages to the City caused by Provider. Review, approval or acceptance by the City or the Responsible Official under the Contract shall not constitute approval otherwise required by any of the City departments, boards, commissions, or other regulatory agencies in the exercise of their independent regulatory authority.

(c) Without limiting Provider's responsibility set forth above, such responsibility, by way of illustration shall include the following: If any act of Provider or error or deficiency or omission in the Materials submitted by Provider requires a change in the Scope of Services or any portion thereof, Provider shall promptly complete such change at no additional cost to the City.

3.6 **Subcontracts.**

(a) Provider shall not delegate or enter into any Subcontracts for the performance of its obligations under the Contract, in whole or in part, without on each occasion obtaining the prior 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 the Subcontractor shall be in accordance with the terms of the Contract;
- (2) nothing contained in such Subcontract shall be construed to impair the rights of the City under the 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 the 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 the Contract between the City and Provider has been terminated, the Subcontractor agrees that it will continue to perform its obligations under the Subcontract for the benefit of the City in accordance with the terms and conditions of the Contract, provided the City pays Subcontractor for the Services rendered and Materials provided by Subcontractor from and after the date of the termination of the Contract between the City and

Provider at the same rate or in the same amount as set forth in the Subcontract for Services and Materials after such date of termination;

- (7) the Subcontractor shall be bound by the same requirements as Provider including, without limitation, confidentiality, maintenance and preservation of records, and audit by government representatives, under the Contract;
- (8) the Subcontractor agrees (i) to assign and transfer to the City all of its rights to 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 the Contract, (ii) that, 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 (iii) that 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 the assignment;
- (9) the Subcontractor shall not be indebted to the City (to satisfy this requirement, Provider shall include subsection 4.1(g) (No Delinquencies) hereof, with appropriate adjustments for the identity of the parties, in all Subcontracts that are entered into for work to be performed pursuant to the Contract);
- (10) the Subcontractor shall comply with Chapter 17-400 of The Philadelphia Code (to satisfy this requirement, Provider shall include subsection 15.3 (a) (The Philadelphia Code, Chapter 17-400) hereof, with appropriate adjustments for the identity of the parties, in all Subcontracts that are entered into for work to be performed pursuant to the Contract); and
- (11) the Subcontractor shall comply with Section 17-104 of The Philadelphia Code (to satisfy this requirement, Provider shall include subsection 15.8 (b) (The Philadelphia Code, Section 17-104) hereof, with appropriate adjustments for the identity of the parties, in all Subcontracts that are entered into for work to be performed pursuant to the Contract).

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

(d) Any purported Subcontract in violation of this Section or of any other Section in the Contract shall be of no force and effect.

3.7 **Relationship with the City.**

Neither Provider's personnel nor any of Subcontractor's personnel shall be employees of the City. Provider shall notify the City of any of Provider's personnel or any of Subcontractor's personnel which have any contractual relationship or agency relationship with the City.

3.8 **Time Frame for Submissions.**

Provider shall perform any and all Services and shall submit any and all Materials required by the 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 the Contract diligently and promptly.

3.9 **Prompt Payment by Provider.**

Provider agrees to pay promptly all persons, firms, or corporations which have furnished labor or supplies in connection with the Services, the Materials or the Contract, including, without limitation, Subcontractors and suppliers. Provider shall provide, upon request of the City, evidence that these persons or entities have been fully paid.

3.10 **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 purchased in connection with the Contract and unless directed by the City, Provider shall not file a claim for any sales or use tax refund subject to this assignment. Provider authorizes the City, in its own name or the name of Provider, to file a claim for a refund of any sales or use tax subject to this assignment.

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

4.1 **Provider's Representations and Covenants.**

Provider makes the following representations and covenants upon which the City relies as an inducement to enter into the Contract:

(a) **Good Standing.**

If Provider is an entity, Provider is either: (1) a not-for-profit corporation or other entity determined to be tax exempt pursuant to section 501(c) of the Internal Revenue Code by the Internal Revenue Service; or (2) a business corporation, 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.

(b) **Authority to Act.**

Provider has full legal power and authority to enter into and perform the Contract and provide the Services and Materials without resulting in a default under or a breach or violation of (1) Provider's certificate or articles of incorporation or bylaws or other organizational documents, if applicable; (2) any Applicable Law or any 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.

(c) **Legal Obligation.**

The Contract has been duly authorized, executed and delivered by Provider, by and through persons authorized to execute the 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, 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, which seek to enjoin or prohibit Provider from entering into or performing its obligations under the Contract.

(e) **Requisite Licensure and Qualifications.**

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

(f) **No Adverse Interests.**

Except as disclosed in writing and approved 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 Delinquencies.**

Provider and any entities 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 the 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 the Contract with all such payments and shall inform the Responsible Official in writing of Provider's receipt of any notices of delinquent payments 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 and covenant may, at the option of the City, result in the withholding of payments otherwise due to Provider 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 and/or the termination of the Contract for default (in which case Provider shall be liable for all excess costs and other damages resulting from the termination). In addition, it is understood that false certification or representation is subject to prosecution under Title 18 Pa.C.S.A. § 4904.

(h) **Business Privilege License.**

If Provider is a "business" as defined in The Philadelphia Code, Section 19-2601, Provider has a valid business privilege license, issued by the City's Department of Licenses and Inspections, to do business in the City of Philadelphia.

(i) **Subcontractor Licensure; Non-Delinquency.**

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

The above representations and covenants shall continue during the Initial Term and any Additional Term(s) of the Contract. In the event said representations and covenants change, Provider shall be obligated to promptly notify the City of such change.

(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 by the Commonwealth of Pennsylvania, any other state, or the federal government. If Provider cannot so certify, then Provider shall submit to the Responsible Official a written explanation of why such certification cannot be made. Provider shall reimburse the City for the reasonable cost of investigation incurred

by the Commonwealth Office of Inspector General for investigation of Provider's compliance with 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, and expert witness and documentary fees. Provider shall not be responsible for investigative 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 the Contract may not exceed the amount that the City's Finance Department certifies as available for the Contract. A copy of the form signed by the Finance Department showing the amount of currently available funds will be attached to the fully executed Contract returned to Provider. During the Initial Term and any Additional Term(s) of the Contract, the City reserves the right to fund the balance of the Contract amount in varying amounts from time to time as funds become available, not to exceed in total the maximum amount stated in the Contract. Provider agrees that the City shall not be obligated to fund the Contract except out of funds certified by the Finance Department as currently available, even if those funds are less than the maximum amount stated in the 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) hereof.

5.2 Unavailability of Funds.

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

- (a) Terminate the Contract effective upon a date specified in a Termination

Notice; or

(b) Continue the Contract by reducing, through written notice to Provider, the amount of the 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 the Contract for Services and Materials satisfactorily performed and delivered prior to such termination under this Section.

5.3 Crossing Fiscal Years.

If any portion of the compensation set forth in the Contract is to be paid in any City fiscal year (July 1 - June 30) following the fiscal year in which the Initial Term or any Additional Term of the Contract commences (in either case, "Commencement FY"), Provider understands and agrees that the portion of the compensation under the Contract payable with City funds for the period following the Commencement FY is subject to appropriation by City Council. If, for any reason, funds for that portion of the compensation are not appropriated in any year, the Contract and the City's liability under the Contract shall automatically terminate at the end of the then current Commencement FY; provided, however, that Provider shall be compensated in accordance with the terms of the Contract for Services and Materials satisfactorily performed and delivered prior to the end of the then current Commencement FY.

ARTICLE VI: AUDITS; INSPECTION RIGHTS; RECORDS

6.1 City Audit.

From time to time during the Initial Term and any Additional Term(s) of the Contract, and for a period of five (5) years after termination of the Contract, the City may audit Provider's performance under the Contract. Audits may be conducted by representatives of the Department or other authorized City representatives including, without limitation, the City

Controller. If so requested, Provider shall submit to the City all vouchers or invoices presented for payment pursuant to the 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 the Contract. All books, invoices, vouchers, records, reports, cancelled checks and other materials shall be subject to periodic review and audit by the City.

6.2 **Inspection.**

All Services and Materials shall be subject to inspection and review by City, federal and state representatives or their designees. Provider shall cooperate with all City, state and federal inspections and reviews conducted in accordance with the provisions of the Contract. Such inspection and review of Provider's rendering of 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 staff members who are either directly or indirectly involved in providing Services and/or Materials.

6.3 **Availability of Records.**

Provider shall make available, within the City at reasonable times during the term of the Contract and for the period set forth in Section 6.4 (Retention of Records) hereof, all records pertaining to the Contract for the purpose of inspection, audit or reproduction by any authorized representative of the City, the Pennsylvania Auditor General, and any other federal and state auditors.

6.4 **Retention of Records.**

Provider shall retain all records, books of account and documentation pertaining to the Contract, for a period of five (5) years following termination of the Contract; however, if any litigation, claim or audit is commenced prior to expiration of the 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 or permits a longer period, then the records shall be retained for such longer period.

ARTICLE VII: ASSIGNMENT

7.1 Assignment By Provider.

Provider shall not assign the Contract, or any part of the Contract, or any right to any monies to be paid under the Contract, without on each occasion obtaining the prior written consent of the Responsible Official. In no case shall approval by the City of the assignment of any monies to be paid under the Contract relieve Provider from its obligations hereunder or change the remaining terms of the Contract. Any purported assignment in violation of this Article shall be of no effect.

7.2 Applicability in Case of Bankruptcy or Insolvency.

A receiver or trustee in any federal or state bankruptcy, insolvency or other proceedings shall comply with the requirements set forth in Section 7.1 (Assignment by Provider) hereof.

7.3 Personal Services.

Provider acknowledges that the Services 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; 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 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), 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, suppliers, employees or servants in connection with the 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 such Subcontractors and suppliers, any breach of the 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 the 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) hereof, Provider agrees to provide such services and to cooperate with the City in resolving such claim and/or litigation as an Additional Service and Material under Section 3.3 (Additional Services and Materials) hereof.

8.4 **Notice of Claims.**

If in connection with the Contract, Provider receives notice of a legal claim against it, Provider shall submit appropriate written notice of such claim to its insurance carrier within the time frame required for submission of claims by the carrier 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 Manager in writing, Provider shall, at its sole cost and expense, procure and maintain in full force and effect, covering the performance of the Services, the types and minimum limits of insurance specified below. All insurance shall be procured 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 the Professional Liability insurance, shall be written on an "occurrence" basis and not a "claims-made" basis. In no event shall work be performed until the required evidence of insurance has been furnished. The insurance 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 of Philadelphia, its officers, employees, and agents, shall be named as additional insureds on the General Liability Insurance policy. An endorsement is required 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 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 so warrants.

- (2) Coverage: Premises operations; blanket contractual liability; personal injury liability (employee exclusion deleted); 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 the 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 the 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 Manager, prior to the commencement of Services 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 and/or the City’s Risk Manager. In the event such approval is granted, it is understood and agreed 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 been satisfied by a reputable insurer admitted to do business in the Commonwealth of Pennsylvania or otherwise acceptable to the City. If at the time of commencement of the term of the Contract, Provider self-insures its professional liability and/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 the Contract by Provider to the City, or to limit Provider's liability under the 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 certificate of insurance must be submitted to the City's Risk Manager at the following address:

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 certificate of insurance shall be submitted to the Responsible Official at the address of the Department set forth in the Notice section of the Provider Agreement. Both submissions must be made at least ten (10) days before work is begun and at least ten (10) days before each Additional Term. The ten (10) day requirement for advance documentation of coverage may be waived in such situations where such waiver will benefit the City, but under no circumstances shall Provider actually begin work (or continue work, in the case of an Additional Term) without

providing the required evidence of insurance. The actual endorsement adding the City as an additional insured must specifically reference the City contract number and be submitted to the City's Risk Manager 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 the Contract at any time upon (10) days written notice to Provider.

9.4 **Fidelity Bond.**

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

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

10.1 **Ownership of Materials.**

(a) Subject to Applicable Law, all Materials shall be the sole and absolute property of the City and the City shall have title thereto and unrestricted use thereof. To the extent that any Materials relating to the 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 the 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 in connection with the Contract which embody a copyrightable work to bear the following designation:

“© _____ 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 the Contract, at no cost to the City.

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

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

10.2 **Non-Disclosure.**

During the Initial Term and any Additional Term(s) of the Contract and thereafter, except with the prior written consent of the Responsible Official, Provider will not:

(a) Issue, publish or divulge any Materials developed or used in the performance of the Services 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 the

Contract.

ARTICLE XI: DISPUTES

11.1 Disputes.

The Parties agree to use their best efforts to resolve disputes that may arise under the Contract by informal negotiation and cooperation. If the Parties are unable to resolve any dispute arising under the Contract through informal negotiation and the dispute is not disposed of by the terms of the Contract, unless the Parties mutually agree otherwise, the dispute shall be decided by the Responsible Official or his or her designee. Such decision shall be reduced to writing and a copy furnished to Provider in accordance with the Notice section of the Provider Agreement. The decision of the Responsible Official or the Responsible Official's designee shall be final and conclusive unless within five (5) calendar days from the date of receipt of the copy of the decision, Provider mails or otherwise furnishes to the designee a written appeal addressed to the Responsible Official. The decision of the Responsible Official or the Responsible Official's duly authorized designee for the determination of Provider appeals shall be final and conclusive unless determined otherwise by a court of competent jurisdiction. In connection with any appeal proceeding under this Article, Provider shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. However, this Article shall not be construed to limit the provisions of Articles XII (Events of Default) hereof or XIII (Remedies) hereof.

ARTICLE XII: EVENTS OF DEFAULT

12.1 Events of Default.

Each of the following shall be an Event of Default under the Contract:

- (a) Failure by Provider to comply with any provision of the 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 the Contract or in any other document submitted to the City by Provider.

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

(e) 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 the Contract or the Services or Materials provided, whether or not such offense is ultimately adjudged to have occurred or (2) which adversely affects the performance of the Contract.

(f) Indictment of or issuance of charges against Provider, its directors, employees or agents for any criminal offense or any other violation of Applicable Law directly relating to the Contract or Services or Materials or which adversely affects the performance of the Contract in accordance with its terms whether or not such offense or violation is ultimately adjudged to have occurred.

(g) Debarment or suspension under applicable federal, state or local law regulation.

12.2 **Notice and Grace.**

The City agrees that the City will not exercise any right or remedy provided for in Section 13.1 (The City's Remedies) hereof 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, in the City's sole discretion, immediate exercise of the City's rights or remedies;

(c) The City has previously notified the Provider in the preceding twelve-month period of any Event of Default under the Contract;

(d) An Event of Default occurs as described in 12.1(e) hereof or 12.1(f) hereof;

or

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

Nothing contained in this Section shall limit the City's rights under Article XIII (Remedies) hereof.

ARTICLE XIII: REMEDIES

13.1 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 12.2 (Notice and Grace) hereof, 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 the Contract:

(1) perform (or cause a third party to perform) the 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.

(i) 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 13.1(a)(1), together with interest at the highest legal rate permitted in the Commonwealth of Pennsylvania thereon from the date of the City's incurring of such costs. The City shall not in any event be liable for inconvenience, expense or other damage incurred by Provider by reason of such performance or paying such costs or expenses and the obligations of Provider under the Contract shall not be altered or affected in any manner by the City's exercise of its rights under this Section 13.1.

- (2) withhold, 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 it has or may have at law, in equity, or under the Contract.

(b) In the event Provider has committed or permitted an Event of Default and has been notified thereof in accordance with Section 12.2 (Notice and Grace) hereof, then the City may, but shall not be obligated to, without waiving or releasing Provider from any of its obligations under the Contract, terminate the Contract in whole or in part, as set forth more fully in Article XIV (Termination) hereof. In the event of partial termination, Provider shall continue the performance of the Contract to the extent not terminated. If the Contract is terminated, the City shall issue a written Termination Notice which shall set forth the effective date of the termination.

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

13.2 Concurrent Pursuit of Remedies; No Waiver.

(a) The City may exercise any or all of the remedies set forth in this Article XIII, each of which may be pursued separately or in connection with such other remedies as the City in its sole discretion shall determine. No extension or indulgence granted to Provider shall operate as a waiver of any of the City's rights in connection with the Contract.

(b) The rights and remedies of the City as described in this Article XIII and as described elsewhere in the Contract shall not be exclusive and are in addition to any other rights or remedies available to the City under the Contract at law or in equity.

ARTICLE XIV: TERMINATION

14.1 Termination for Convenience.

In addition to its rights under Articles V (Compensation) hereof and XIII (Remedies) hereof, the City shall have the right to terminate the Contract at any time during the term of the Contract, for any reason, including, without limitation, its own convenience. If the 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.

14.2 Responsibilities upon Termination.

(a) Upon receipt of a Termination Notice under any Article or Section of the General Provisions, Provider and its agents, employees and Subcontractors, shall

- (1) take immediate action in an orderly manner to discontinue Services and demobilize work forces to minimize the incurrence of costs.
- (2) collect, assemble and transmit to the City all Materials. 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. There will be no retaining or charging liens or the like in favor of Provider.

(b) Termination of the Contract shall not affect any obligations or liabilities of either party accruing prior to such termination.

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

14.3 Payment of Provider upon Termination.

(a) Upon termination of Provider by the City for an Event of Default, Provider shall be entitled to payment of 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 additional expenses incurred by the City in order to satisfactorily complete the work required to be performed by Provider under the 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 default.

(b) In the event of termination of Provider by the City for the City's convenience, Provider shall be paid an amount as shall compensate Provider for the portion of the Services satisfactorily performed and Materials satisfactorily delivered prior to the date of termination. No amount will be allowed for termination expenses or for anticipated profits, unabsorbed or underabsorbed overhead or unperformed Services.

ARTICLE XV: SPECIFIC LAWS

The provisions of this Article are not intended to limit the applicability of the other provisions of the Contract, including, without limitation, Provider's agreement to comply with all Applicable Law.

15.1 Non-Discrimination.

The Contract is entered into under the terms of the Philadelphia Home Rule Charter, as it may be amended from time to time, and in performing the Contract, Provider shall not discriminate or permit discrimination against any person because of race, color, religion, national origin, or sex. In the event of such discrimination, the City may, in addition to any other rights or remedies available under the Contract, at law or in equity, terminate the Contract forthwith.

15.2 **Fair Practices.**

Provider agrees, in performing the Contract, to comply with the provisions of the Fair Practices Ordinance of The Philadelphia Code (Chapter 9-1100) and the Mayor's Executive Order No. 4-86, as they may be amended from time to time, both of which prohibit, inter alia, discrimination against persons with AIDS in employment and services.

15.3 **The Philadelphia Code, Chapter 17-400.**

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

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

15.4 **Executive Order 1-93.**

(a) In accordance with Executive Order 1-93, as it may be amended from time to time, the City has established an anti-discrimination policy which relates to the solicitation and utilization of M-DBEs, W-DBEs, and DS-DBEs in City contracts. The purpose of Executive Order 1-93 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. In furtherance of this policy, the City may, from time to time, establish participation ranges which shall be set forth in the Provider Agreement; these ranges are a projection of the level of M-DBE, W-DBE and/or DS-DBE participation that should be attained on a contract, absent discrimination in the selection of contract participants. Where ranges are established by the City, Provider agrees to comply with the requirements of Executive Order 1-93, including, but not limited to, the submission of documentation responsive to each of the participation ranges established for the Contract.

(b) In furtherance of the purposes of Executive Order 1-93, Provider agrees to and will comply with the following:

- (1) Provider shall secure the prior written approval of the Minority Business Enterprise Council (“MBEC”), before making any changes or modifications to the Contract commitments made by Provider, including, without limitation, substitutions for its M-DBEs, W-DBEs and/or DS-DBEs (collectively, “DBE Subcontractors”), changes or reductions in services provided by its DBE Subcontractors, or changes or reductions in the dollar and/or percentage amounts of commitments with its DBE Subcontractors.
- (2) Provider shall, within five (5) business days after receipt of a payment from the City for Services performed under the Contract, deliver to its DBE Subcontractors the proportionate share of such payment for Services performed by its DBE Subcontractors.
- (3) Provider shall, in the event of an increase in units of service and/or compensation under the Contract, increase its commitments with its DBE Subcontractors proportionately. The MBEC may from time to time request documentation from Provider evidencing compliance with this provision.
- (4) 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 Subcontract(s) with DBE(s), participation summary reports, DBE Subcontractor invoices, telephone logs and correspondence with DBE Subcontractors, cancelled checks and certification of payments. Provider shall maintain all documentation

related to this Section 15.4 for a period of five (5) years from the date of Provider's receipt of final payment under the Contract.

- (5) Provider agrees that the City may, in its sole discretion, conduct periodic reviews to monitor Provider's compliance with the terms of this Section 15.4.
- (6) Provider agrees that in the event the Responsible Official determines that Provider has failed to comply with any of the requirements of this Section 15.4, the City may, in addition to any other rights and remedies it may have under the Contract, exercise one or more of the following remedies which shall be deemed cumulative and concurrent:
 - (i) Suspend Provider from proposing on and/or participating in any future contracts for a maximum period of three (3) years.
 - (ii) Recover as liquidated damages, one percent (1%) of the total dollar amount of the Contract, which amount shall include any increase by way of amendments to the Contract, for each one percent (1%) (or fraction thereof) of the shortfall in commitment(s) to Provider's DBE Subcontractors.

(c) It is understood that false certification or representation is subject to prosecution under Title 18 Pa.C.S. §§ 4107.2 and 4904.

15.5 **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.

15.6 **[Intentionally Deleted].**

15.7 **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 the Contract or from activities or Services

provided under the Contract. As a condition of accepting and executing the Contract, Provider shall comply with all provisions of the Americans With Disabilities Act (the "Act"), 42 U.S.C. §§12101 - 12213, 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, facilities and programs provided in connection with the Contract, (c) to the City, or the Commonwealth of Pennsylvania, and (d) to the benefits, services, activities, facilities and programs of the City or of the Commonwealth, and, if any funds under the Contract are provided by the federal government, which are applicable to the federal government and its benefits, services, activities, facilities and programs. 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 Americans With Disabilities Act," 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.

15.8 The Philadelphia Code, Section 17-104.

(a) In accordance with Section 17-104 of The Philadelphia Code, Provider by execution of the 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 the Contract (including any extensions thereof), any investments, licenses, franchises, management agreements or operations in Northern Ireland and (2) no product to be provided to the City under this Agreement will originate in Northern Ireland, unless Provider has implemented the fair employment principles embodied in the MacBride Principles.

(b) In the performance of the Contract, Provider agrees that it will not utilize any suppliers, Subcontractors or subconsultants at any tier (1) who have (or whose parent, subsidiary, exclusive distributor or company affiliate have) any investments, licenses, franchises,

management agreements or operations in Northern Ireland or (2) who will provide products originating in Northern Ireland unless said supplier, subconsultant or Subcontractor has implemented the fair employment principles embodied in the MacBride Principles.

(c) Provider agrees to cooperate with the City's Director of Finance in any manner which the said Director deems reasonable and necessary to carry out the Director's responsibilities under Section 17-104 of The Philadelphia Code. Provider expressly understands and agrees that any false certification or representation in connection with this Paragraph and/or any failure to comply with the provisions of this Paragraph shall constitute a substantial breach of the Contract entitling the City to all rights and remedies provided in the Contract or otherwise available in law (including, but not limited to, Section 17-104 of The Philadelphia Code) or equity. In addition, it is understood that false certification or representation is subject to prosecution under Title 18 Pa.C.S.A. § 4904.

ARTICLE XVI: YEAR 2000 COMPLIANCE

16.1 Year 2000 Compliant.

A system, process, or piece of equipment is "Year 2000 Compliant" if it can operate normally, and correctly process dates and date-related information, after midnight on December 31, 1999 without abnormal or unusual user intervention. This includes, but is not necessarily limited to, the following operations: accepting date input, providing date output, performing calculations and comparisons on dates or portions of dates, correctly accessing and processing date-dependent information, and correct date interpretation and manipulation for all valid dates; sequencing by date must produce normal results for all dates. A corporation, partnership, sole proprietor, or other entity is "Year 2000 Compliant" if all systems, processes, and pieces of equipment that are required for the normal conduct of its business and for the delivery of goods and services to its customers are Year 2000 Compliant.

16.2 **Provider's Representations and Warranties.**

Provider represents and warrants as follows:

(a) That it has undertaken a detailed review and assessment of all areas within its business and operations that are material to its ability to furnish the Services required under the Contract in accordance with the terms of the Contract (including but not limited to terms relating to delivery dates and performance schedules) and that it reasonably believes could be adversely affected by Provider's failure to be Year 2000 Compliant;

(b) That prior to the date in the first paragraph of the Provider Agreement, it was Year 2000 Compliant in all respects that are material to its ability to furnish the Services required under the Contract in accordance with the terms of the Contract (including, but not limited to, terms relating to delivery dates and performance schedules) and that it will remain Year 2000 Compliant in all such respects throughout the performance of the Contract; and

(c) That the City shall incur no cost additional to the compensation provided in this Contract on account of any action taken by Provider to become Year 2000 Compliant.

In the event that Provider exchanges electronic data with the City, Provider further represents and warrants that such exchange of data, the exchanged data, and any hardware or software interface with City computers that is required for such data exchange, will not cause any information system of the City to fail to be Year 2000 Compliant and will not adversely affect, directly or indirectly, any electronic information system of the City or cause errors or defects in date-dependent information processed by the system.

16.3 **Information Requests.**

Upon the written request of the Responsible Official, Provider shall furnish evidence sufficient to demonstrate that the foregoing representations and warranties are true and correct.

ARTICLE XVI: MISCELLANEOUS

17.1 **Governing Law.**

The Contract and all disputes arising under the Contract shall be governed, construed and decided in accordance with the laws of the Commonwealth of Pennsylvania.

17.2 **Amendments; Waiver.**

The Contract may not be changed, amended, augmented, rescinded, or discharged (other than by performance), 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, no waiver of any provision of the Contract shall be deemed: (a) to be a waiver of any other provision in the Contract; or (b) to be a waiver of any breach of the obligations under the 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.

17.3 **Integration.**

These General Provisions together with the other Contract Documents contain all the terms and conditions agreed upon by the Parties, and no other contract, oral or otherwise, regarding the subject matter of the Contract shall be deemed to exist or to bind any party hereto or to vary any of the terms contained in the Contract.

17.4 **No Joint Venture.**

The Parties do not intend to create, and nothing contained in the Contract shall be construed as creating, a joint venture arrangement or partnership between the City and Provider.

17.5 **No Third Party Beneficiaries.**

Nothing in the Contract, express or implied, is intended or shall be construed to confer upon or give to any person, firm, corporation, or legal entity, other than the Parties, any rights, remedies, or other benefits under or by reason of the Contract.

17.6 **Counterparts.**

The Contract may be executed simultaneously in multiple counterparts, each of which shall be deemed an original, but all of which taken together shall constitute but one and the same instrument.

17.7 **Number and Gender.**

Whenever the context requires, words used in the singular shall be construed to mean or include the plural and vice versa, and pronouns of any gender shall be deemed to include and designate the masculine, feminine or neuter gender.

17.8 **Severability and Partial Invalidity.**

The provisions of the Contract shall be severable. If any provision of the Contract or the application thereof for any reason or circumstances shall to any extent be held to be invalid or unenforceable, the remaining provisions of the Contract or the application of such provision to persons or entities other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each provision of the Contract shall be valid and enforceable to the fullest extent permitted by law.

17.9 **Survival.**

Any and all provisions set forth in the Contract which, by its or their nature, would reasonably be expected to be performed after the termination of the Contract shall survive and be enforceable after such termination. Any and all liabilities, actual or contingent, which shall have arisen in connection with the Contract; Provider's representations and covenants set forth in Article IV (Provider's Representations and Covenants) hereof; the obligation to indemnify, defend and hold harmless the City, its officers, employees and agents as set forth in Section 8.2 (Indemnification) hereof; and the rights and obligations set forth in Article X (Ownership of Materials; Proprietary Information; Confidentiality) hereof shall survive the termination or expiration of the Contract.

17.10 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.

17.11 Headings.

The headings in the Contract do not in any way define, limit, describe or amplify the provisions of the Contract or the scope or intent of the provisions, and are not a part of the Contract.

17.12 Citations.

All statutory or other citations of law referenced in the Contract shall refer to the statute referenced, as it may be amended or superseded from time to time.

17.13 Days.

Any references to a number of days in the Contract shall mean “calendar” days, unless business days are specified.

17.14 Forum Selection Clause; Consent to Jurisdiction.

The Parties agree that any lawsuit, action, claim, or legal proceeding involving, directly or indirectly, any matter arising out of or related to the 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 agree not to raise any objection to any lawsuit, action, claim, or legal proceeding which is brought in either of these two (2) forums, 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 the Notice section of the Provider Agreement.

17.15 **Waiver of Jury Trial.**

Provider hereby waives trial by jury in any legal proceeding involving, directly or indirectly, any matter (whether sounding in tort, contract or otherwise) in any way arising out of or related to the Contract or the relationship created or evidenced hereby. This provision is a material inducement for the City to enter into the Contract.