

THE RECOVERY ACT IN PHILADELPHIA

ANNEX A



Recovery
CITY OF PHILADELPHIA
LIFE • LIBERTY • AND YOU™

THE CITY OF PHILADELPHIA

AUGUST 2010

Annex A.

- 1. Roles and Responsibilities**
- 2. Grant Template for submission to Steering Committee**
- 3. OEO Liaison List**
- 4. Addendum to Contract for Non-Competitive Bid Contracts**
- 5. Addendum to Contract for Competitive Sealed Bid**
- 6. Biannual Certification**
- 7. OMB Full Time Equivalent Guidance**

DRAFT AUDIT, CONTROL AND COMPLIANCE ROLES AND FUNCTIONS FOR ARRA

To ensure accountability and compliance with the myriad of new and existing federal, state and City rules for the American Recovery and Reinvestment Act (ARRA) the Inspector General and Chief Integrity Officer, working in partnership with the Recovery Office are developing a proactive control and compliance program that all three offices will adhere to and act within. This paper clarifies the roles and remit of the respective Offices in the exercise of their duties.

In this context the role of the **Recovery Office** is to:

- Provide guidance, technical assistance and quality assurance to City officials in fulfilling their federal, state and City obligations, most notably through quarterly 1512 reporting;
- Coordinate and centralize requests to City officials, including on the control and compliance program, with the aim of minimizing burdens
- Working with officials to identify and remove barriers to delivery (red-tape) so as to help the City spend both expeditiously and wisely;
- Monitor and report on performance of ARRA grants to the Project Team, Steering Committee and other senior leaders in the City;
- To lead and support the provision of training for all ARRA project and grant managers;
- To identify and manage risks to the Recovery Program and implementation of individual grants.

The role of the **Integrity Office**, whose functions will largely be fulfilled by the Deputy Integrity Officer, Adam Telem, is to:

- Provide guidance and support to Grant Managers in maintaining robust, complete and reliable files and records for reporting and auditing purposes;
- Assist Grant Managers in assessing and ensuring that vendors and sub-recipients remain compliant with their respective contracts, including OEO ranges and performance, and 1512 reporting requirements notably FTE counting ;
- Support the Recovery Office in providing guidance, technical assistance, and quality assurance for quarterly 1512 reporting. This means Adam will be the person coordinating the 1512 quarterly reporting on Maari's behalf;
- To work with Policy Managers to take a proactive approach to identify risk factors across the program and how these can be best avoided, managed or mitigated;
- To support the Recovery Office in accelerating contracting processes where deemed necessary by both the Recovery Office and relevant Policy Manager;
- Periodic site visits will be performed at decentralized locations (including sub-recipients) and checks performed to ensure compliance with City and federal ARRA rules.
- To provide outreach and training to all project managers in fraud prevention and detection.

- Assisting Grant managers to comply with any applicable close-out requirements when established by the federal authorities.

The role of the **Inspector General’s Office**, whose functions will largely be fulfilled by the Chief Financial Investigator, Cara Lindsey, is to:

- To assist in the provision of guidance for Policy and Grant Managers in maintaining robust and reliable files and records for audit purposes;
- To work with Policy Managers to take a proactive approach to identifying financial control issues with their grants and advising on corrective action. In this capacity Cara will be looking to ensure:
 - Transactions are properly recorded and accounted for to:
 - (i) permit the preparation of reliable financial statements and Federal reports
 - (ii) Maintain accountability over assets
 - (iii) Demonstrate compliance with laws, regulations and other compliance requirements
 - Transactions are executed in compliance with laws, regulations and the provisions of contract or grant agreements that could have a direct and material effect on a Federal program and other laws and regulations that are identified in A-133 compliance supplement
- Periodic site visits will be performed at decentralized locations (including sub-recipients) and checks performed to determine only eligible individuals or organizations receive assistance under Federal award programs
- To provide outreach and training to all project managers in fraud prevention and detection.
- Assisting Grant managers to comply with any applicable close-out requirements when established by the federal authorities

And, acting in accordance with the **Chief Integrity Officer** and **Inspector General’s** independent roles Adam and Cara have the ability to;

- Monitor and investigate any complaints and reporting of possible fraud;
- Undertake a review/investigation of any grant, at any time and provide officials with written confirmation of compliance and/or corrective action to take;
- Report any misconduct and control and compliance issues to the Recovery Officer, Chief Integrity Officer and Inspector General.

City of Philadelphia
American Recovery and Reinvestment Act (ARRA) of 2009
(Insert Agency Name Here)
Program Summary

Program Name: ____

Point of Contact: ____

Program Description

Information on the project should be included here. Information includes 1) the grant name, 2) the program that these funds will be applied to, 3) the maximum amount of funds applied for, 4) the funds you have been awarded, 5) and points of contact.

1) 2) 3) 4) 5)

Rationale

What was the thought process in applying for the funds for this program?

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Project Objectives/What are your plans for these funds?

Provide a brief, concise list of what the project is to accomplish.

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Job Creation

Provide the anticipated number of jobs this program is expected to create.

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Office of Economic Opportunity Department Liaison List

Last Updated: July 20, 2010

If you do not find your department listed below, please contact Alice Dungee (alice.dungee@phila.gov, 215-686-6397).

Julie Simmons, julie.simmons@phila.gov, 215-683-2083

- Department of Behavioral Health
- Office of Housing and Community Development
- Department of Human Services
- Department of Licenses and Inspections
- Department of Public Health
- Office of Supportive Housing
- Philadelphia Prisons Systems
- Procurement Department
- Department of Parks and Recreation (Recreation and Fairmount Park)
- Streets Department
- Free Library

Chevelle Harrison, chevelle.harrison@phila.gov, 215-683-2078

- Board of Pensions and Retirement
- City Treasurer's Office
- Finance Department
- Law Department
- Managing Director's Office
- Revenue
- Office of Risk Management
- Office of Sustainability
- Water Department
- Water Revenue
- Division of Technology

Danielle Snead, danielle.snead@phila.gov 215-683-2082

- Bureau of Revision of Taxes
- Philadelphia City Planning Commission
- Fire Department
- Mayor's Office of Community Services
- Office of Human Resources / Personnel
- Office of Fleet Management
- Police Department
- Department of Public Property
- Records
- Cultural Bond Projects
- Philadelphia Industrial Development Corporation- Naval Yard Development

Deneen Wilson, deneen.wilson@phila.gov 215-683-2080

- Division of Aviation
- City Representative's Office
- Commerce Department

**ADDENDUM TO CONTRACT
SUPPLEMENTAL TERMS AND CONDITIONS FOR ARRA FUNDED NON-
COMPETITIVELY BID CONTRACTS**

Background

The City of Philadelphia (the “City”) has entered into a certain grant agreement (the “Grant Agreement”) with the Commonwealth of Pennsylvania (the “Commonwealth”) or the federal government to carry out services and/or provide materials specified therein pursuant to the ARRA, as defined herein, subject to certain terms and conditions. This Contract between Provider and the City is funded in whole or in part with funds received by the City under the Grant Agreement, under and subject thereto. In carrying out services and/or providing materials funded with ARRA funds under this Contract, Provider shall comply with all applicable provisions of the Grant Agreement, a copy of which is incorporated herein and made a part hereof by reference, and any Applicable Law(s) referenced therein. Copies of the full Grant Agreement are available upon request. The following terms and conditions shall supplement the General Provisions, as defined herein, and any other Contract Document evidencing this Contract.

1. **Definitions.** The following definitions shall apply to this Addendum:

A. “ARRA” or “Act” means the American Recovery and Reinvestment Act of 2009, Pub. Law 111-5.

B. “ARRA Funds” means funds expended or obligated from appropriations authorized by the ARRA.

C. “Authorized Parties” has the meaning set forth in Paragraph 5 of this Addendum.

D. Capitalized terms not defined in this Addendum shall have the meaning attributed to them in the General Provisions.

2. **Prohibition on Use of ARRA Funds.** Provider acknowledges that it is familiar with the ARRA and the expenditures authorized under that Act to be paid for with ARRA Funds. Provider, for itself and its Subcontractor(s), agrees that no ARRA funds paid to Provider under this Contract shall be used for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool, or for any other item, or activity prohibited by the ARRA.

3. **Prohibition Against Misuse of Funds, Dishonest Practices and other Forms of Misconduct.** Provider agrees, for itself and any Subcontractor(s) engaged by Provider, that the following best practices and ethical standards shall govern the performance of work and the provision of any services or materials under this Contract:

(A) All compensation paid under this Contract shall only be used to reimburse for actual, bona fide work, services or materials authorized by, and provided pursuant to this Contract or any Amendment thereto.

(B) All payments made by Provider to any Subcontractor(s) or other entities in any way related to this Contract shall be made only for bona fide services or materials provided in the ordinary course of such Subcontractor’s business and shall be supported

by invoices and related documentation. Such invoices shall provide sufficient detail to determine the nature, scope or quantity of the services or materials. Subject to prior City approval, Provider may utilize brokers or middle persons to arrange for work, services, supplies, goods, materials or equipment in furtherance of this Contract; however Provider shall not utilize any brokers or middle persons that are not acting in the ordinary course of their bona fide ongoing business concerns in brokering such services or materials. Provider shall inform all Subcontractors and other entities receiving payments under this Contract that such payments will be publicly disclosed and will be subject to possible investigation and audit as provided in Paragraph 5 of this Addendum.

(C) Provider will adhere to the highest standards of ethics, transparency and accountability in the performance of this Contract and will make best efforts to ensure that such standards are upheld by Provider's principals, directors, employees, Subcontractors and agents. Provider will immediately report any suspected acts of fraud, corruption, abuse, conflict of interest, bribery or similar misconduct involving ARRA funds under this Contract to the Inspector General of the City of Philadelphia. By way of illustration and not in limitation of the ethical standards to be upheld in the performance of this Contract, the following are examples of conduct that will be considered in violation of such standards:

- (i) Attempts to bribe City employees or officials;
- (ii) Submission of inflated or otherwise fraudulent invoices;
- (iii) Falsification of any documents or records related to this Contract;
- (iv) Fraud by Contract personnel to gain business advantage;
- (v) Collusive purchasing practices by personnel on this Contract;
- (vi) Theft or embezzlement of City funds by Contract personnel;
- (vii) Use of Contract funds to pay ghost employees or ghost Subcontractors;
- (viii) Provider collusion with City employees or officials;
- (ix) Actions that constitute a false claim under the U.S. False Claims Act, 31 U.S.C. Section 3729 *et seq.*

4. **Reporting Requirements / Maintenance of Records.** Provider understands and acknowledges that the City must comply with all current and future reporting requirements established by the ARRA and the federal or Commonwealth of Pennsylvania agencies having jurisdiction over ARRA Funds. Provider agrees that it will cooperate with the City and provide to the City any data and information necessary to comply with ARRA Section 1512 as well as, in addition, any other information requested by the City.

5. **Investigation, Audit and Access to Records.** Provider acknowledges and agrees that the Commonwealth of Pennsylvania, the United States Comptroller General or representative, the appropriate Inspector General appointed under Section 3 or 8G of the United States Inspector General Act of 1978, the Inspector General of the City of Philadelphia, the Chief Integrity Officer of the City of Philadelphia and/or their designees, or any other person appointed by the Mayor of the City of Philadelphia to a position relating to the promotion and assurance of integrity, ethics, transparency and accountability in the City's contracting process ("Authorized Parties") shall have the same rights of investigation and access to Provider's records as are set forth in the

General Provisions pertaining to Provider's obligations to maintain and provide access to contract-related documents. Provider shall fully cooperate with any investigation related to this Contract initiated by any of the Authorized Parties. By way of supplementation and not in limitation of these rights, the investigative, audit and review rights and privileges held by the Authorized Parties in fulfilling their responsibilities to promote integrity in the City's contracting process shall include the following:

(A) Access to any records of Provider, or those of its Subcontractors, and any state or local agency administering this Contract that pertain or relate to this Contract; and

(B) Access to interview any officer, director, employee or agent of the Provider or any of its Subcontractors, at their place of employment or at such other reasonable location as the Authorized Parties shall determine.

6. **Invoice Retention.** In addition to any records retention requirement provided in the General Provisions, Provider shall maintain all invoices related to this Contract for a period of five (5) years following expiration or termination of this Contract. Such invoices shall provide sufficient detail to determine what the Provider has purchased and the scope or quantity of the services or materials. However, if any litigation, claim or audit is commenced prior to expiration of said five (5) year period, then the invoices 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 invoices shall be retained for such longer period.

7. **Events of Default.** In addition to Events of Default set forth in the General Provisions, violations of any of the provisions of this Addendum shall constitute an Event of Default entitling the City to pursue, in its sole discretion, the remedies set forth in the General Provisions or such remedies as are available at law or in equity. In addition, misuse of Contract proceeds or other acts in violation of Paragraphs 2, 3, 4 and 5 of this Addendum shall entitle the City to pursue, in its sole discretion, the additional remedies set forth in Paragraph 8 of this Addendum pertaining to the City's recovery of liquidated damages. In the interest of promoting timely compliance with the requirements of the ARRA and protecting the integrity of any investigation initiated by the Authorized Parties, Provider shall not have the opportunity of notice and cure as is otherwise provided under this Contract for violations of the provisions of Paragraphs 2, 3 and 5 of this Addendum.

8. **Liquidated Damages.** In addition to all remedies available to the City under this Contract or at law and in equity, the City shall have the additional remedies provided in this Paragraph in connection with Events of Default for violation of the provisions contained in Paragraphs 2, 3, 4 and 5 of this Addendum. Provider acknowledges that ensuring the use of ARRA Funds in compliance with the ARRA (Paragraphs 2 and 4) and promoting the integrity of the City's contracting process (Paragraphs 3 and 5) are important objectives to the City and that misuse of proceeds paid to Provider, and any Subcontractor under this Contract, or other improper conduct by Provider, and any Subcontractor, in violation of these provisions, poses a risk of damages incurred by the City that are unpredictable or incapable of precise measurement (for example, loss of future federal and state funds, damage to the City's reputation; damage to the morale of City employees; reduced participation by the business community in City contracts). Therefore, Provider and the City agree that the following calculations of damages shall serve as liquidated damages, and not a penalty, intended as a reasonable forecast of just

compensation for which Provider shall be liable to the City for any Event of Default arising under Paragraphs 2, 3, 4 or 5, as the case may be, of this Addendum:

A. If Provider is determined to have made payments or committed acts or omissions in violation of Paragraphs 2, 3, 4 or 5 of this Addendum, then Provider shall pay liquidated damages to the City in the aggregate amount of ten percent (10%) of the amount of compensation authorized under this Contract and any Change Order or Amendment thereto.

B. The amount of liquidated damages due under this Paragraph 8 shall not exceed Fifty Thousand Dollars (\$50,000); except that this limitation shall not apply if the City is determined to be ineligible for future funds by any federal or Commonwealth of Pennsylvania agency having jurisdiction over ARRA Funds, for the failure to meet any ARRA-related obligation, in whole or in part because of Provider's failure to perform its obligations under Paragraphs 2, 3, 4 or 5 of this Addendum.

C. In addition to the payment of liquidated damages provided above, if it is determined that Provider has violated the provisions contained in Paragraph 2, 3, 4 or 5 of this Addendum, Provider shall reimburse the City for the City's costs of any investigation and/or prosecution undertaken or initiated by the Authorized Parties, and shall repay to the City the full amount of funds misused or inadequately documented.

D. In the case of any damages for which Provider is liable under this Paragraph 8, the City may apply the amount of such damages as a credit against pending or future invoices under this Contract, and may declare any such damages not so credited to be immediately due and payable to the City.

9. **Wage Rate Requirements.** Provider agrees that it and any Subcontractors shall comply with ARRA Section 1606 and that, notwithstanding any other provision of law and in a manner consistent with other provisions of ARRA, all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the federal government pursuant to ARRA and shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the United States Secretary of Labor in accordance with Subchapter IV of Chapter 31 of Title 40, United States Code (Davis-Bacon Act). It is understood that the Secretary of Labor has the authority and functions set forth in Reorganization Plan Numbered 14 or 1950 (64 Stat. 1267; 5 U.S.C. App) and Section 3145 of Title 40, United States Code.

10. **Whistleblower Protection.** Provider agrees that both it and any subcontractors shall comply with Section 1553 of the ARRA, which prohibits all non-federal contractors from discharging, demoting or otherwise discriminating against any employee for disclosures by the employee that the employee reasonably believes are evidence of (1) gross mismanagement of a contract relating to ARRA funds; (2) gross waste of ARRA funds; (3) a substantial and specific danger to public health or safety related to the implementation or use of ARRA funds; (4) an abuse of authority related to implementation or use of ARRA funds; or (5) a violation of law, rule or regulation related to an agency contract (including the competition for or negotiation of a contract) awarded or issued relating to ARRA funds. Provider agrees that it and any subcontractors shall post notice of the rights and remedies available to employees under Section 1553 of Title XV of Division A of the ARRA.

11. **Current and Future Requirements.** Provider understands and acknowledges that the federal recovery funding process is still evolving and that new requirements for

ARRA compliance may be forthcoming from the federal government, the Commonwealth and/or the City. In such event, any such new requirement(s) will automatically become a material part of this Addendum. Provider hereby agrees that both it and any Subcontractors will be bound by and shall comply with all current ARRA requirements, whether or not specifically set forth herein and any such future requirements during the term hereof without the necessity of either party executing any further legal instrument(s).

12. **Required Use of American Iron, Steel and Other Manufactured Goods.**

Provider agrees that in accordance with ARRA, Section 1605, neither it nor its subcontractors will use ARRA funds for a project for the construction, alteration, maintenance or repair of a public building or public work unless all of the iron, steel and manufactured goods used in the project are produced in the United States in a manner consistent with United States obligations under international agreements. This requirement may be waived only by the ARRA granting federal department as set forth in ARRA Section 1605.

13. **Availability of Funding.** Provider acknowledges that Services or Materials supported with temporary federal funds made available by the ARRA will not be continued with Commonwealth of Pennsylvania or City financed appropriations once the temporary ARRA funds are expended.

14 . **Effect of this Addendum.** Except as provided by this Addendum, the remaining terms and conditions of this Contract shall be and remain in full force and effect. In the event of any conflict between the terms and conditions stated in this Addendum and the terms and conditions stated elsewhere in this Contract, the terms and conditions stated in this Addendum shall prevail.

**ADDENDUM TO CONTRACT
SUPPLEMENTAL TERMS AND CONDITIONS FOR ARRA FUNDED
CONTRACTS SUBJECT TO COMPETITIVE SEALED BID BY CITY'S
PROCUREMENT DEPARTMENT**

Background

The City of Philadelphia (the "City") has entered into a certain grant agreement (the "Grant Agreement") with the Commonwealth of Pennsylvania (the "Commonwealth") or the federal government to carry out services and/or provide materials specified therein pursuant to the ARRA, subject to certain terms and conditions. This Contract is funded in whole or in part with funds received by the City under the Grant Agreement, under and subject thereto. In carrying out services and/or providing materials funded with ARRA funds under this Contract, Contractor shall comply with all applicable provisions of the Grant Agreement, a copy of which is incorporated herein and made a part hereof by reference and any Applicable Law(s) referenced therein to the extent applicable. Copies of the full Grant Agreement are available upon request.

1. **Definitions.** The following definitions shall apply to this Addendum:
 - A. "ARRA" or "Act" means the American Recovery and Reinvestment Act of 2009, Pub. Law 111-5.
 - B. "ARRA Funds" means funds expended or obligated from appropriations authorized by the ARRA.
 - C. "Authorized Parties" has the meaning set forth in Paragraph 5 of this Addendum.
 - D. Capitalized terms not defined in this Addendum shall have the meaning attributed to them in the General Provisions.

2. **Prohibition on Use of ARRA Funds.** Contractor acknowledges that it is familiar with the ARRA and the expenditures authorized under that Act to be paid for with ARRA Funds. Contractor, for itself and its Subcontractor(s), agrees that no ARRA funds paid to Contractor under this Contract shall be used for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool, or for any other item, or activity prohibited by the ARRA.

3. **Prohibition Against Misuse of Funds, Dishonest Practices and other Forms of Misconduct.** Contractor agrees, for itself and any Subcontractor(s) engaged by Contractor, that the following best practices and ethical standards shall govern the performance of work and the provision of any services or materials under this Contract:
 - (A) All compensation paid under this Contract shall only be used to reimburse for actual, bona fide work, services or materials authorized by, and provided pursuant to this Contract or any Amendment thereto.
 - (B) All payments made by Contractor to any Subcontractor(s) or other entities in any way related to this Contract shall be made only for bona fide services or materials provided in the ordinary course of such Subcontractor's business and shall be supported

by invoices and related documentation. Such invoices shall provide sufficient detail to determine the nature, scope or quantity of the services or materials. Subject to prior City approval, Contractor may utilize brokers or middle persons to arrange for work, services, supplies, goods, materials or equipment in furtherance of this Contract; however Contractor shall not utilize any brokers or middle persons that are not acting in the ordinary course of their bona fide ongoing business concerns in brokering such services or materials. Contractor shall inform all Subcontractors and other entities receiving payments under this Contract that such payments will be publicly disclosed and will be subject to possible investigation and audit as provided in Paragraph 5 of this Addendum.

(C) Contractor will adhere to the highest standards of ethics, transparency and accountability in the performance of this Contract and will make best efforts to ensure that such standards are upheld by Contractor's principals, directors, employees, Subcontractors and agents. Contractor will immediately report any suspected acts of fraud, corruption, abuse, conflict of interest, bribery or similar misconduct involving ARRA funds under this Contract to the Inspector General of the City of Philadelphia. By way of illustration and not in limitation of the ethical standards to be upheld in the performance of this Contract, the following are examples of conduct that will be considered in violation of such standards:

- (i) Attempts to bribe City employees or officials;
- (ii) Submission of inflated or otherwise fraudulent invoices;
- (iii) Falsification of any documents or records related to this Contract;
- (iv) Fraud by Contract personnel to gain business advantage;
- (v) Collusive purchasing practices by personnel on this Contract;
- (vi) Theft or embezzlement of City funds by Contract personnel;
- (vii) Use of Contract funds to pay ghost employees or ghost Subcontractors;
- (viii) Contractor collusion with City employees or officials;
- (ix) Actions that constitute a false claim under the U.S. False Claims Act, 31 U.S.C. Section 3729 *et seq.*

4. **Reporting Requirements / Maintenance of Records.** Contractor understands and acknowledges that the City must comply with all current and future reporting requirements established by the ARRA and federal or Commonwealth of Pennsylvania agencies having jurisdiction over ARRA Funds. Contractor agrees that it will cooperate with the City and provide to the City the data and information necessary to comply with ARRA Section 1512 as well as, in addition, any other information requested by the City.

5. **Investigation, Audit and Access to Records.** Contractor acknowledges and agrees that the Commonwealth of Pennsylvania, the United States Comptroller General or representative, the appropriate Inspector General appointed under Section 3 or 8G of the United States Inspector General Act of 1978, the Inspector General of the City of Philadelphia, the Chief Integrity Officer of the City of Philadelphia and/or their designees, or any other person appointed by the Mayor of the City of Philadelphia to a position relating to the promotion and assurance of integrity, ethics, transparency and accountability in the City's contracting process ("Authorized Parties") shall have the same rights of investigation and access to Contractor's records as are set forth in the Contract pertaining to Contractor's obligations to maintain and provide access to contract-related documents. Contractor shall fully cooperate with any investigation related to this Contract initiated by any of the Authorized Parties. By way of

supplementation and not in limitation of these rights, the investigative, audit and review rights and privileges held by the Authorized Parties in fulfilling their responsibilities to promote integrity in the City's contracting process shall include the following:

(A) Access to any records of Contractor, or those of its Subcontractors, and any state or local agency administering this Contract that pertain or relate to this Contract; and

(B) Access to interview any officer, director, employee or agent of the Contractor or any of its Subcontractors, at their place of employment or at such other reasonable location as the Authorized Parties shall determine.

6. **Invoice Retention.** In addition to any records retention requirement otherwise provided in the Contract, Contractor shall maintain all invoices related to this Contract for a period of five (5) years following expiration or termination of this Contract. Such invoices shall provide sufficient detail to determine what the Contractor has purchased and the scope or quantity of the services or materials. However, if any litigation, claim or audit is commenced prior to expiration of said five (5) year period, then the invoices 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 invoices shall be retained for such longer period.

7. **Events of Default.** In addition to Events of Default otherwise set forth in the Contract, violations of any of the provisions of this Addendum shall constitute an Event of Default entitling the City to pursue, in its sole discretion, the remedies set forth in the Contract or such remedies as are available at law or in equity. In addition, misuse of Contract proceeds or other acts in violation of Paragraphs 2, 3, 4 and 5 of this Addendum shall entitle the City to pursue, in its sole discretion, the additional remedies set forth in Paragraph 8 of this Addendum pertaining to the City's recovery of liquidated damages. In the interest of promoting timely compliance with the requirements of the ARRA and protecting the integrity of any investigation initiated by the Authorized Parties, Contractor shall not have the opportunity of notice and cure as is otherwise provided under this Contract for violations of the provisions of Paragraphs 2, 3 and 5 of this Addendum.

8. **Liquidated Damages.** In addition to all remedies available to the City under this Contract or at law and in equity, the City shall have the additional remedies provided in this Paragraph in connection with Events of Default for violation of the provisions contained in Paragraphs 2, 3, 4 and 5 of this Addendum. Contractor acknowledges that ensuring the use of ARRA Funds in compliance with the ARRA (Paragraphs 2 and 4) and promoting the integrity of the City's contracting process (Paragraphs 3 and 5) are important objectives to the City and that misuse of proceeds paid to Contractor, and any Subcontractor under this Contract, or other improper conduct by Contractor, and any Subcontractor, in violation of these provisions, poses a risk of damages incurred by the City that are unpredictable or incapable of precise measurement (for example, loss of future federal and state funds, damage to the City's reputation; damage to the morale of City employees; reduced participation by the business community in City contracts). Therefore, Contractor and the City agree that the following calculations of damages shall serve as liquidated damages, and not a penalty, intended as a reasonable forecast of just compensation for which Contractor shall be liable to compensate the City for any Event of Default arising under Paragraphs 2, 3, 4 or 5, as the case may be, of this Addendum:

A. If Contractor is determined to have made payments or committed acts or omissions in violation of Paragraphs 2, 3, 4 or 5 of this Addendum, then Provider shall pay liquidated damages to the City in the aggregate amount of ten percent (10%) of the amount of compensation authorized under this Contract and any Change Order or Amendment thereto.

B. The amount of liquidated damages due under this Paragraph 8 shall not exceed Fifty Thousand Dollars (\$50,000); except that this limitation shall not apply if the City is determined to be ineligible for future funds by any federal or Commonwealth of Pennsylvania agency having jurisdiction over ARRA Funds, for the failure to meet any ARRA-related obligation, in whole or in part because of Contractor's failure to perform its obligations under Paragraphs 2,3,4 or 5 of this Addendum.

C. In addition to the payment of liquidated damages provided above, if it is determined that Contractor has violated the provisions contained in Paragraph 2, 3, 4 or 5 of this Addendum, Contractor shall reimburse the City for the City's costs of any investigation and/or prosecution undertaken or initiated by the Authorized Parties, and shall repay to the City the full amount of funds misused or inadequately documented.

D. In the case of any damages for which Contractor is liable under this Paragraph 8, the City may apply the amount of such damages as a credit against pending or future invoices under this Contract, and may declare any such damages not so credited to be immediately due and payable to the City.

9. **Wage Rate Requirements.** Contractor agrees that it and any of its Subcontractors shall, to the extent applicable, comply with ARRA Section 1606 and that, notwithstanding any other provision of law and in a manner consistent with other provisions of ARRA, all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the federal government pursuant to ARRA and shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the United States Secretary of Labor in accordance with Subchapter IV of Chapter 31 of Title 40, United States Code (Davis-Bacon Act). It is understood that the Secretary of Labor has the authority and functions set forth in Reorganization Plan Numbered 14 or 1950 (64 Stat. 1267; 5 U.S.C. App) and Section 3145 of Title 40, United States Code.

10. **Whistleblower Protection.** Contractor agrees that both it and any subcontractors shall comply with Section 1553 of the ARRA, which prohibits all non-federal contractors from discharging, demoting or otherwise discriminating against any employee for disclosures by the employee that the employee reasonably believes are evidence of (1) gross mismanagement of a contract relating to ARRA funds; (2) gross waste of ARRA funds; (3) a substantial and specific danger to public health or safety related to the implementation or use of ARRA funds; (4) an abuse of authority related to implementation or use of ARRA funds; or (5) a violation of law, rule or regulation related to an agency contract (including the competition for or negotiation of a contract) awarded or issued relating to ARRA funds. Contractor agrees that it and any subcontractors shall post notice of the rights and remedies available to employees under Section 1553 of Title XV of Division A of the ARRA.

11. **Current and Future Requirements.** Contractor understands and acknowledges that the federal recovery funding process is still evolving and that new requirements for ARRA compliance may be forthcoming from the federal government, the

Commonwealth and/or the City. In such event, any such new requirement(s) will automatically become a material part of this Addendum. Contractor hereby agrees that both it and any Subcontractors will be bound by and shall comply with all current ARRA requirements, whether or not specifically set forth herein and any such future requirements during the term hereof without the necessity of either party executing any further legal instrument(s).

12. Required Use of American Iron, Steel and Other Manufactured Goods.

Contractor agrees that in accordance with ARRA, Section 1605, neither it nor its subcontractors will use ARRA funds for a project for the construction, alteration, maintenance or repair of a public building or public work unless all of the iron, steel and manufactured goods used in the project are produced in the United States in a manner consistent with United States obligations under international agreements. This requirement may be waived only by the ARRA granting federal department as set forth in ARRA Section 1605.

Subsections I and II below apply in the alternative:

1. The following shall apply for Projects using ARRA funds for the construction, alteration, maintenance, or repair of a public building or public work when:

- the estimated value of the project is less than \$7,443,000; or
- the procurement is being conducted by local governments and municipalities; or
- the specific item being procured is not covered under the World Trade Organization Agreement on Government Procurement or other international procurement agreement. (e.g. mass transit or highway procurements, dredging service procurements, or national defense-related procurements).

(a) Requirement. All iron, steel, and other manufactured goods used as construction material for the construction, alteration, maintenance, or repair of a public building or public work must be produced in the United States. This requirement shall be applied in a manner that is consistent with the laws and agreements of the United States and the Commonwealth of Pennsylvania.

(b) Definitions.

1. "Building or work" means construction, maintenance, alteration, or repair. The terms include, without limitation, buildings, structures, and improvements of all types, such as bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, canals, dredging, shoring, rehabilitation and reactivation of plants, scaffolding, drilling, blasting, excavating, clearing, and landscaping. The manufacture or furnishing of materials, articles, supplies, or equipment (whether or not a Federal or State agency acquires title to such materials, articles, supplies, or equipment during the course of the manufacture or furnishing, or owns the materials from which they are manufactured or furnished) is not "building" or "work" within the meaning of this definition unless conducted in connection with and at the site of such building or work as is described in the foregoing sentence, or under the United States Housing Act of 1937 and the Housing Act of 1949 in the construction or development of the project.

2. "Construction material" means an article, material, or supply brought to the construction site by the Contractor or any Subcontractor for incorporation into the

building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

3. "Domestic construction material" means:

(i) An unmanufactured construction material mined or produced in the United States; or

(ii) A construction material manufactured in the United States.

4. "Foreign construction material" means a construction material other than a domestic construction material.

5. "Manufactured good or product" means a good or product used as construction material in a project that is the result of processing materials by way of machinery and/or labor that produce a substantially different article. Where the basic character, function, or kind of material processed remains the same, it is not manufactured.

6. "Manufactured construction material" means any construction material that is not manufactured construction material".

7. "Public building or public work" means building or work, the construction, alteration, maintenance, or repair of which is carried on directly by authority of, or with funds of, a Federal agency to serve the interest of the general public regardless of whether title thereof is in a Federal agency.

8. "Steel" means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

9. "Unmanufactured construction material" means raw material brought to the construction site for incorporation into the building or work that has not been:

(i) Processed into a specific form and shape; or

(ii) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

10. "United States" means the 50 States, the District of Columbia,

(c) Domestic preference.

1. This Contract implements Section 1605 of ARRA, by requiring that all iron, steel, and other manufactured goods used as construction material in the project are produced in the United States.

2. The Contract shall use only domestic construction material in performing this project, except as provided in paragraph (c)(3) and (c)(4) of this term and condition.

3. This requirement does not apply to the construction material or components listed by the Government as follows:

[City to list applicable excepted materials or indicate "none"]

4. The award official may add other foreign construction material to the list in paragraph (c)(3) of this requirement if the Federal government determines that:

(i) The cost of domestic construction material would be unreasonable.
The cost of domestic iron, steel, or other manufactured goods used

as construction material in the project is unreasonable when the cumulative cost of such material will increase the cost of the overall project by more than 25 percent;

- (ii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or
- (iii) The application of the restriction of section 1605 of ARRA to a particular construction material would be inconsistent with the public interest.

(d). Request for determination of inapplicability of Section 1605 of ARRA.

1. (i) Any request to use foreign construction material in accordance with paragraph (c)(4) of this clause shall include adequate information for Government evaluation of the request, including-

(a) A description of the foreign and domestic construction materials;

(b) Unit of measure;

(c) Quantity;

(d) Price;

(e) Time of delivery or availability;

(f) Location of the construction project;

(g) Name and address of the proposed supplier; and

(h) A detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (b)(4) of this clause.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed price comparison table in the format in paragraph (e) of this clause.

(iii) The price of construction material shall include all delivery costs to the construction site and any applicable duty.

(iv) Any request for a determination submitted after award shall explain why the Contractor could not reasonably foresee the need for such determination and could not have requested the determination before award. If the recipient does not submit a satisfactory explanation, the award official need not make a determination.

2. If the Federal government determines after award that an exception to section 1605 of ARRA applies, the award official will amend the award to allow use of the foreign construction material. When the basis of the exception is non-availability or public interest, the amended award shall reflect adjustment of the award amount or redistribution of budgeted funds, as appropriate, to cover costs associated

with acquiring or using the foreign construction material. When the basis for the exception is the unreasonable price of a domestic construction material, the award official

shall adjust the award amount or redistribute budgeted funds, as appropriate, by at least the differential established in 2 CFR 176.11 O(a).

3. Unless the Federal government determines that an exception to section 1605 of ARRA applies, use of foreign construction material is noncompliant with section 1605 of ARRA. (e) Data. To permit evaluation of requests under paragraph (d) of this clause based on unreasonable cost, the Recipient shall include the following information and any applicable supporting data based on the survey of suppliers:

Foreign and Domestic Construction Materials Price Comparison

Construction Material Description	Unit of Measure	Quantity	Price (Dollars)*
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Item 1:

Foreign construction material Domestic construction material

Item 2:

Foreign construction material Domestic construction material

1. [List name, address, telephone number, email address, and contact for suppliers surveyed. Attach copy of response; !f oral, attach summary.]
2. [Include other applicable supporting information.]
3. [* Include all delivery costs to the construction site.]

II. The following shall, in addition to the Pennsylvania Steel Products Procurement Act, 73 P.S. Sections 1881-1887, apply for Projects using ARRA funds for the construction, alteration, maintenance, or repair of a public building or public work with an estimated value of \$7,443,000 or more:

(a) Requirement. All iron and steel used in the construction, reconstruction, alteration or repair of a public building or public work must be manufactured in the United States. All other manufactured goods used as construction material for the construction, alteration, maintenance, or repair of a public building or public work must be produced in the United States or a designated country. This requirement shall be applied in a manner that is consistent with the laws and agreements of the United State and the Commonwealth of Pennsylvania.

(b) Definitions. As used in this Contract:

1. "Building or work" includes, without limitation, buildings, structures, and improvements of all types, such as bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, canals, dredging, shoring, rehabilitation and reactivation of plants, scaffolding, drilling, blasting, excavating, clearing, and landscaping. The manufacture or furnishing of materials, articles, supplies, or equipment (whether or not a Federal or State agency acquires title to such materials, articles, supplies, or equipment during the course of the manufacture or furnishing, or owns the materials from which they

are manufactured or furnished) is not "building" or "work" within the meaning of this definition unless conducted in connection with and at the site of such building or work as is described in the foregoing sentence, or under the United States Housing Act of 1937 and the Housing Act of 1949 in the construction or development of the project.

2. "Construction material" means iron, steel, and other manufactured goods used as construction material brought to the construction site by the Contractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

3. "Designated country" means: Aruba, Australia, Austria, Belgium, Bulgaria, Chile, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, and United Kingdom.

4. "Designated country construction material" means a construction material that

(i) Is wholly the growth, product, or manufacture of a designated country; or

(ii) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a designated country into a new and different construction material distinct from the materials from which it was transformed.

5. "Domestic construction material" means:

(i) An unmanufactured construction material mined or produced in the United States; or

(ii) A construction material manufactured in the United States.

6. "Foreign construction material" means a construction material other than a domestic construction material.

7. "Manufactured construction material" means any construction material that is not unmanufactured construction material."

8. "Public building or public work" means building or work, the construction, alteration, maintenance, or repair of which, as defined

herein, is carried on directly by authority of, or with funds of, a Federal agency to serve the interest of the general public regardless of whether title thereof is in a Federal agency.

9. "Steel" means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

10. "Unmanufactured construction material" means raw material brought to the construction site for incorporation into the building or work that has not been—

- (i) Processed into a specific form and shape; or
- (ii) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

11. "United States" means the 50 States, the District of Columbia, and outlying areas including:

- (i) Commonwealths: (a) Puerto Rico; (b) The Northern Mariana Islands;
- (ii) Territories: (a) American Samoa; (b) Guam; (c) U.S. Virgin Islands; and
- (iii) Minor outlying islands: (a) Baker Island; (b) Howland Island; (c) Jarvis Island; (d) Johnston Atoll; (e) Kingman Reef; (f) Midway Islands; (g) Navassa Island; (h) Palmyra Atoll; (i) Wake Atoll.

(c) Construction materials.

1. This Contract implements:

(i) Section 1605(a) of the American ARRA, by requiring that all iron, steel, and other manufactured goods used as construction material in the project are produced in the United States; and

(ii) Section 1605(d), which requires application of the Buy American requirement in a manner consistent with U.S. obligations under international agreements. The restrictions of section 1605 of ARRA do not apply to designated country construction materials. The Buy American requirement in section 1605 shall not be applied where the iron, steel or manufactured goods used as construction material in the project are from a Party to an international agreement that obligates the recipient to treat the goods and services of that Party the same as domestic goods and services, or where the iron, steel or manufactured goods used as construction material in the project are from a least developed country. This obligation shall only apply to projects with an estimated value of \$7,443,000 or more.

2. The Contractor shall use only domestic or designated country construction material in performing the work funded in whole or part with

this award, except as provided in paragraphs (c)(3) and (c)(4) of this document.

3. The requirement in paragraph (c)(2) of this term and condition does not apply to the construction materials or components listed by the Government as follows:

[City to list applicable excepted materials or indicate "none"]

4. The City may add other construction material to the list in paragraph (c)(3) of this award term and condition if the Federal government determines that:

- (i) The cost of domestic construction material would be unreasonable. The cost of domestic iron, steel, or other manufactured goods used as construction material in the project is unreasonable when the cumulative cost of such material will increase the overall cost of the project by more than 25 percent;
- (ii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality; or
- (iii) The application of the restriction of section 1605 of ARRA to a particular construction material would be inconsistent with the public interest.

(d) Request for determination of inapplicability of section 1605 of ARRA or the Buy American Act.

1. (i) Any request to use foreign construction material in accordance with paragraph (c) (4) of this document shall include adequate information for Government evaluation of the request, including-

- (a) A description of the foreign and domestic construction materials;
 - (b) Unit of measure;
 - (c) Quantity;
 - (d) Price;
 - (e) Time of delivery or availability;
 - (j) Location of the construction project;
 - (g) Name and address of the proposed supplier; and
 - (h) A detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph(c)(4) of this clause.
- (ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed price comparison table in the format in paragraph (e) of this clause.
- (iii) The price of construction material shall include all delivery costs to the construction site and any applicable duty.
- (iv) Any request for a determination submitted after award shall explain why the recipient could not reasonably foresee the need for such determination and could not have requested the determination

before award. If the recipient does not submit a satisfactory explanation, the award official need not make a determination.

2. If the Federal government determines after award that an exception to section 1605 of ARRA applies and the award official will amend the award to allow use of the foreign construction material. When the basis of the exception is non-availability or public interest, the amended award shall reflect adjustment of the award amount or redistribution of budgeted funds, as appropriate, to cover costs associated with acquiring or using the foreign construction material. When the basis for the exception is the unreasonable price of a domestic construction material, the award official shall adjust the award amount or redistribute budgeted funds, as appropriate, by at least the differential established in paragraph (c)(4)(i) of this Contract.
3. Unless the Federal government determines that an exception to the section 1605 of ARRA applies, use of foreign construction material other than designated country construction material is noncompliant with the applicable Act.

(e) Data. To permit evaluation of requests under paragraph (d) of this clause based on unreasonable cost, the applicant shall include the following information and any applicable supporting data based on the survey of suppliers:

FOREIGN AND DOMESTIC CONSTRUCTION MATERIALS PRICE COMPARISON

Construction Material Description	Unit Measure	of Quantity	Price (Dollars) *
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Item 1:

Foreign construction material
Domestic construction material

Item 2:

Foreign construction material
Domestic construction material

[List name, address, telephone number ,email address, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.]
[Include other applicable supporting information.]
[* Include all delivery costs to the construction site).]

13. **Availability of Funding.** Contractor acknowledges that Services or Materials supported with temporary federal funds made available by the ARRA will not be continued with Commonwealth of Pennsylvania or City financed appropriations once the temporary ARRA funds are expended.

14. **Effect of this Addendum.** Except as provided by this Addendum, the remaining terms and conditions of this Contract shall be and remain in full force and effect. In the event of any conflict between the terms and conditions stated in this Addendum and the terms and conditions stated elsewhere in this Contract, the terms and conditions stated in this Addendum shall prevail.

EMPLOYEE CERTIFICATION

I, _____, hereby certify that the hours I reported as funded by the American Recovery and Reinvestment Act (ARRA) for period of time commencing _____ and ending _____ (the "Reporting Period") are accurate and complete. I further certify that I have spent 100% of my time working on ARRA activities during the Reporting Period. I have submitted timesheets evidencing the hours reported to my supervisor in accordance with my department's standard operating procedures and all such timesheets were approved.

Signature

Date

Attachment A. ARRA Jobs Worksheet for Quarterly Reporting

PREFERRED

STEP 1: Calculate Quarterly Hours in a Full-Time Schedule.

- Start by determining the standard hours in a full-time work week schedule as illustrated below. This example uses 40 hours, but other standards are possible.
- Multiply this amount by 13 weeks to determine the quarterly number of hours for full-time work:

$$40 \text{ Hours in full-time work week} \times 13 \text{ weeks per year} = 520 \text{ Total Quarterly Hours}$$

STEP 2: Calculate the Full Time Equivalent (FTE) for this Quarter.

- Determine the number of hours worked in positions funded by the Recovery Act within the current quarter. For example, a full-time employee working 40 hours per week during the entire quarter will work 520 hours in the quarterly reporting period.
- Divide this number by the "Quarterly Hours in a Full-Time Schedule" number calculated in STEP 1. This calculation should be performed for each employee working under Recovery Act funding within the reporting quarter (add each together to calculate an FTE total):

$$\frac{520 \text{ Hours Worked and Funded by Recovery Act}}{520 \text{ Quarterly Hours in a Full-Time Schedule}} = 1.0 \text{ FTE}$$

For this example, the FTE figure "1.0" should be reported within the "Number of Jobs" data field in FederalReporting.gov.

(If Needed) Reflect Partial ARRA Funding.

- Count all hours worked on the project. In this example, a total of 260 hours were worked on the project and the total number of quarter hours in a full time schedule is 520 hours. The recipient determines the amount of hours, by employee, funded by the Recovery Act (in this case, 50%) and totals only those hours.
- Calculate FTE:

$$\frac{260 \text{ Hours Worked}}{520 \text{ Quarterly Hours in a Full-Time Schedule}} = 0.5 \text{ FTE}$$

For this example, the FTE figure "0.5" should be reported within the "Number of Jobs" data field in FederalReporting.gov.

OR the recipient does not have the information by employee, but knows the overall percentage of the work hours funded by the Recovery Act (in this case, 50%).

Calculate FTE:

$$\frac{520 \text{ Hours Worked}}{520 \text{ Quarterly Hours in a Full-Time Schedule}} = 1 \text{ FTE}$$

$$1 \text{ FTE} \times 50\% = 0.5 \text{ FTE}$$

For this example, the FTE figure "0.5" should be reported within the "Number of Jobs" data field in FederalReporting.gov.