

# PROFESSIONAL SERVICE AGREEMENT

This Professional Service Agreement (the “**Agreement**”) made this \_\_ day of [MONTH], 2011 (the “**Effective Date**”), by and between the Fund For Philadelphia, Inc., a Pennsylvania non-profit corporation located at City Hall, Room 708, Philadelphia, PA 19107 (the “**Fund**”) and [NAME], a [STATE] corporation located at [ADDRESS] (referred to herein as “**Contractor**”).

## **Background**

**WHEREAS**, the Fund is the organizer of the Philadelphia Marathon and desires to engage Contractor to serve as the [ROLE/TITLE] for the Philadelphia Marathon, Half-Marathon, Kids Fun Run, Rothman Institute 8K, and the Health & Fitness Expo (the “**Marathon**”); and;

**WHEREAS**, Contractor has represented to the Fund that it is capable of performing the Services (defined below) for the Marathon, and Contractor desires to accept such engagement; and

**WHEREAS**, the Fund and Contractor desire to set forth in this Agreement certain terms and conditions applicable to this engagement.

**NOW THEREFORE** in consideration of the mutual promises herein contained and intending to be legally bound hereby, the parties agree as follows:

**1. Subject of Agreement.** The Fund agrees to engage Contractor to provide, and Contractor agrees to provide to the Fund the services (“**Services**”) set forth in one or more Work Orders, which Work Orders (as defined below) shall be attached to this Agreement as Exhibit A and made a part hereof. This Agreement sets forth the general terms and conditions applicable to each Work Order. All such Work Orders shall be in writing, and shall be effective only when signed by both parties. References to this Agreement shall include any Work Orders in effect from time to time.

**2. Work Orders.** A “**Work Order**” is a project description that refers to this Agreement, describes work and identifies the Services to be done pursuant to this Agreement. Each Work Order shall identify the Services, Deliverables, compensation, facilities, and other resources to be provided by Contractor and by the Fund for development of the Work Product (defined below) specified therein. “**Deliverables**” means the items described in a Work Order that Contractor shall deliver to the Fund, or designated individual, as required by the Services.

**3. Format and Terms of Work Orders.** Each Work Order shall substantially conform to the following format:

a) The Work Order shall be entitled “WORK ORDER No. [\_\_\_] UNDER MASTER SERVICES AGREEMENT DATED [MONTH] \_\_, 2011”, and shall include a provision for the dated signatures of authorized representatives of both parties. The contents of the Work Order shall be included in the body of the Work Order and in such additional and separately signed attachments as the parties deem appropriate.

b) The principal terms of the Work Order shall generally include, but not be limited to the following:

- i. A description of the Services to be performed and reasonably detailed specifications of the expected Work Product;
- ii. The project director to whom Contractor will report progress on day-to-day work;
- iii. The date for commencement of the Services and date of completion;
- iv. The agreed upon total compensation for the Services and whether the Services are provided on a fixed-fee basis or on a time and materials basis;
- v. A detailed description of the responsibilities, if any, of the Fund to assist Contractor in the performance of the Services, including a list of the employees of the Fund who shall assist Contractor in rendering the Services;
- vi. A list of Equipment (defined below) and facilities (if any) to be provided by Contractor;
- vii. A list of Equipment and facilities (if any) to be provided by the Fund;
- viii. Any expenses which shall be paid by the Fund;
- ix. A schedule for the performance of the Services and receipt of Deliverables (if any), together with a description of the Deliverables;
- x. Such other terms and conditions relating to the Services as the parties hereto agree.

**4. Schedule; Time of Essence.** Contractor acknowledges and agrees that, unless otherwise indicated in the Work Order, *time is of the essence in meeting the deadlines for completion of the Services set forth therein*. Contractor shall commit and utilize sufficient resources to successfully perform the Services and submit the Deliverables on the schedule set forth in the Work Order. Each party shall promptly notify the other party of any circumstances, when and as they arise, that reasonably may be anticipated to result in a material deviation from such schedule.

**5. Review; Acceptance.** The Fund shall have the right to review and accept the Services and all of the Deliverables hereunder. Upon completion by Contractor of each Deliverable or Service, Contractor shall notify the Fund of such completion and promptly deliver such Deliverables for review and acceptance. Contractor shall deliver such Deliverables to the Fund, unless otherwise set forth in the Work Order.

**6. Fees.** The Fund shall pay to Contractor a fee for the Services performed pursuant to this Agreement. The Work Order shall specify whether the Services are provided on a fixed-fee basis or on a time and materials basis. The Fund shall have no obligation to pay any amount or to reimburse contractor for expenses in excess of those set forth in the Work Order. All payments to Contractor are contingent upon satisfactory performance of the terms of this Agreement and the applicable Work Order and acceptance of the Services and Deliverables pursuant to Section 5 (labeled “**Review; Acceptance**”).

**7. Offset.** The Fund reserves the right to withhold or offset against any funds payable to Contractor for any Invoice (defined below) for which the Fund asserts a discrepancy exists or for the Contractor’s failure to satisfactorily perform the terms of this Agreement or for non-acceptance of the Services or Deliverables as set forth in Section 5, as determined solely by the Fund.

8. **Taxes.** The Fund shall be responsible for payment of such federal, state or local sales or use taxes now or hereafter levied on the payments made by the Fund to Contractor for the Services. Contractor shall be responsible for payment of taxes due on the net income received by Contractor hereunder. Contractor shall provide to the Fund prompt notice of the imposition of any such taxes for which the Fund is responsible hereunder, and shall permit the Fund the right to challenge such taxes.

9. **Level of Skill.** Contractor shall perform the Services in a workmanlike and professional manner, and with a level of skill, diligence, care, and expertise commensurate with that of a skilled contractor in the area of the Services the Contractor has been hired to perform.

10. **Place of Work.** Contractor shall perform the Services hereunder at its offices, or any location designated by the Fund from time to time (the “**Site**”). The Fund is not under any obligation to provide any other services or materials to Contractor except as otherwise provided in the previous sentence or a Work Order.

11. **Equipment.** The City of Philadelphia (the “**City**”), through the Fund, may from time to time, furnish to Contractor laptop computers or other equipment (collectively, “**Equipment**”) for use in performing the Services hereunder. The City retains all right, title, and interest in and to the Equipment, and Contractor shall be responsible for any damage to, or theft or loss of, the Equipment while in the possession of Contractor. Contractor shall use the Equipment solely for the performance of the Services hereunder, and promptly return the Equipment to the Fund upon the earlier of the termination of this Agreement or request by the Fund. Contractor shall (i) refrain from transferring, sharing, or disclosing the Equipment (or software, information or other content contained therein furnished by the City or the Fund) to or with any third party; and (ii) keep the Equipment free of any liens, security interests, and other encumbrances.

12. **Reporting.** The Fund shall advise Contractor of the project manager to whom Contractor will report progress on day-to-day work (the “**Supervisor**”). The Fund shall also, when applicable, advise Contractor of the identities of the other personnel appointed by the Fund to assist Contractor with the Services. The Fund and Contractor shall develop appropriate administrative procedures for performance of work at the Site, including a schedule for submission by Contractor to the Fund of periodic status reports regarding the progress of the Services.

13. **Work Permits.** Contractor shall be responsible for securing work permits, licenses, and any other documents that may be required by the City and any governmental authority for its performance of the Services hereunder.

14. **Insurance Coverage.**

- a) Notwithstanding any other workers’ compensation or insurance policies that may be maintained by the Fund, Contractor shall carry and maintain in force, at all times relevant hereto, insurance of the types and minimum coverage amounts as follows, it being understood, however, that the setting forth of the following minimum amounts is not to be construed as either a limitation of Contractor’s obligation to defend, indemnify and hold the Fund harmless or Contractor’s right to obtain additional coverage and higher liability limits as Contractor deems necessary or desirable:

- i. Commercial General Liability Insurance (including products liability, completed operations and contractual liability coverages) with minimum limits of \$1 million combined single limit, and combined bodily injury and property damage per occurrence, and \$2 million in the aggregate; and
  - ii. Automobile Liability Insurance with minimum limits of \$1 million per occurrence combined single limit.
- b) The foregoing policies of insurance shall (i) be in the name of Contractor or an affiliate of Contractor (provided that Contractor is listed as a named insured), (ii) be primary as to any insurance maintained by the Fund, (iii) include the Fund as an additional insured and the Contractor shall provide any endorsements necessary for the Fund to be an additional insured, and (iv) be placed with insurers licensed to conduct business in the Commonwealth of Pennsylvania.
- c) Contractor shall furnish to the Fund, upon execution of this Agreement, and from time to time as and when requested by the Fund, an insurance certificate evidencing each of the foregoing policies of insurance. Contractor shall provide thirty (30) days prior written notice to the Fund in the event of cancellation of any such policies.
- d) The parties acknowledge and agree that neither the non-receipt by the Fund of any of the foregoing certificates of insurance, nor the failure of the Fund to make subsequent demands for them shall be deemed a waiver by the Fund of Contractor's insurance obligations set forth herein.

**15. Representation, Warranty, and Covenant by Contractor.** Contractor represents, warrants, and covenants to the Fund that (a) it is knowledgeable with regard to the requirements necessary to provide the Services to the Fund; (b) has the appropriate level of skill and expertise in order to complete the Services; (c) the performance of the Services, and delivery of Deliverables and Work Product created by Contractor hereunder will not violate or infringe upon the rights of any third party, including (i) proprietary information and non-disclosure rights, or (iii) contractual rights; (d) the performance of the Services shall not violate any applicable law, rule, or regulation; and (e) it has the power and authority to enter this Agreement.

**16. Indemnification.** Contractor shall indemnify, defend, and hold the Fund and its respective officers, directors, employees, agents and representatives (collectively "**Indemnitees**"), harmless from and against any and all damages, losses, liabilities, obligations, claims, litigation, demands, suits, judgments, costs, or expenses, including without limitation reasonable attorneys' fees ("**Claim(s)**") to the extent such Claims (a) arise wholly or in part by Contractor's negligent performance of its obligations under this Agreement; or (b) arise from any matter directly caused by the Contractor or from a breach of any warranty or representation made by Contractor hereunder. Contractor shall also indemnify Indemnitees against any damage to their premises, Equipment, or items located on such premises, caused by Contractor. Contractor's obligations under this Section 16 shall survive the termination of this Agreement for any reason. The Fund agrees to give Contractor prompt notice of any such Claim, and shall, to the extent the Fund is not adversely affected, cooperate fully with Contractor in defense and settlement of such Claim.

**17. Limitation of Liability.** IN NO EVENT SHALL THE FUND BE LIABLE TO CONTRACTOR FOR ANY INCIDENTAL, SPECIAL, EXEMPLARY OR

CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF INCOME, DATA, PROFITS, REVENUE OR BUSINESS INTERRUPTION, OR OTHER ECONOMIC LOSS, WHETHER OR NOT CONTRACTOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND WHETHER ANY CLAIM FOR RECOVERY IS BASED ON THEORIES OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR OTHERWISE. NOTWITHSTANDING ANY OTHER PROVISIONS OF THIS AGREEMENT, IN NO EVENT SHALL THE FUND'S AGGREGATE LIABILITY TO CONTRACTOR AND ANY THIRD PARTY HIRED BY CONTRACTOR IN CONNECTION WITH THIS AGREEMENT EXCEED THE TOTAL COMPENSATION PAID UNDER THE APPLICABLE WORK ORDER BY THE FUND TO CONTRACTOR UNDER THIS AGREEMENT, REGARDLESS OF THE FORM OR THEORY OF THE CLAIM OR ACTION.

The City has no liability under this Agreement and the Contractor releases the City from all liability under this Agreement. Contractor will look solely to the Fund for payment for Services and permitted expenses, and agrees that the City (or any division of the foregoing) has no payment obligation to Contractor.

**18. Confidentiality.** Contractor acknowledges that it is likely to receive Confidential Information in connection with this Agreement and its performance of the Services. Contractor shall protect the Confidential Information with the same degree of care as each would use for its own confidential and proprietary information of a similar nature, but not less than reasonable care. All Confidential Information shall be used solely for the purpose of performing the Services and the terms of this Agreement. “**Confidential Information**” means all non-public information in whatever form transmitted, whether written, electronic, oral or otherwise, relating to the Fund, or City, including, without limitation, business plans, specifications, design plans, drawings, software, financial data, data, prototypes, and other business and technical information provided by or related to the Fund, or City.

**19. Term.** This Agreement will become effective on the Effective Date and will continue in effect until terminated as provided herein or by written agreement signed by both parties.

**20. Termination for Breach.** Either party may terminate this Agreement if the other party is in material breach of any material term or condition of this Agreement and fails to cure such breach within thirty (30) calendar days after receipt of written notice of the same (which notice shall contain a description of the breach in reasonable detail).

**21. Termination for Convenience.** The Fund shall have the right to terminate performance of the Services under this Agreement or any Work Order at any time for convenience upon written notice to Contractor. Subject to Section 5, in the event of termination under this Section 21 for Services performed under a fixed fee arrangement, the Fund shall pay to Contractor such additional amounts, if any, as may be required for Contractor to have received from the Fund in total compensation a percentage of the fixed fee set forth in this Agreement equal to the percentage of the Services completed and accepted by the Fund. Subject to Section 5, in the event of termination under this Section 21 for Services performed under a time and materials arrangement, the Fund shall pay Contractor for Services provided by Contractor up to the date of termination. Upon termination of this Agreement, Contractor shall promptly deliver to the Fund all Work Product created by Contractor for the Fund thereunder, whether or not complete. “**Work Product**” means the reports, analyses, materials, and other documents or

Deliverables that Contractor develops for or provides to the Fund under this Agreement and any Work Order.

**22. Return of Materials.** All materials and other Confidential Information provided to Contractor together with all copies thereof, shall be returned by Contractor to the Fund within thirty (30) days of written request by the Fund or completion or termination of the Services for the Work Order pursuant to which Contractor received such materials and Confidential Information from the Fund.

**23. Notice.** Any notice required or permitted to be given under this Agreement must be in writing and shall be given by a national overnight express courier, by facsimile or sent by registered or certified U.S. mail, return receipt requested, addressed as follows:

If to the Fund:

Ed Fischer  
Room 708 City Hall  
Philadelphia, PA 19107  
Fax #215-686-2161

cc: Melanie Johnson  
City Representative & Chairperson  
Fund for Philadelphia, Inc.  
Fax 215-683-2099

If to Contractor:

[ADDRESS]

**24. Independent Contractor.** It is the intention of the parties that Contractor shall be an independent contractor and not an employee, agent, joint venture, or partner of the Fund. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between the Fund and Contractor.

**25. Taxes; Benefits.** The Fund and Contractor acknowledge and agree that Contractor is not the Fund's employee. The Fund shall not take any action or provide Contractor with any benefits or commitments inconsistent with any of such undertakings by Contractor. In particular, the Fund will not provide vacation, health, dental or unemployment insurance, or profit sharing to Contractor, or withhold FICA (Social Security) or taxes of any kind from payments to Contractor.

**26. Waivers.** Any delay or forbearance by either party in exercising any right hereunder shall not be deemed a waiver of that right.

**27. Venue and Jurisdiction.** This Agreement will be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania, without regard to conflicts of law principles. In the event of any dispute arising under or related to this Agreement, the parties shall be subject to the exclusive jurisdiction of the United States District Court for the Eastern District of Pennsylvania, and in the event that such court is without subject matter jurisdiction, the Court of Common Pleas of Philadelphia County. Each party hereby consents to the personal jurisdiction of such courts over them in any such action.

**28. Conflict in Terms.** In the event of any conflict between this Agreement and the express terms of any Work Order, the terms of this Agreement shall control as to all matters within the scope of Services described in the Work Order.

**29. Entire Agreement.** This Agreement together with all exhibits and Work Orders constitute the entire agreement between the parties concerning the subject matter hereof and supersedes all prior or contemporaneous understandings whatsoever. This Agreement may be altered or amended only by a writing executed by all the parties hereto.

**IN WITNESS WHEREOF**, the parties have caused this Professional Service Agreement to be executed as of the Effective Date.

**FUND FOR PHILADELPHIA, INC.**  
(the "Fund")

[ENTITY]  
(the "Contractor")

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: Melanie Johnson

Name:

Title: Chairperson, Fund for Philadelphia, Inc.

Title:

## Exhibit A

### WORK ORDER NO. 1 UNDER MASTER SERVICES AGREEMENT DATED [MONTH] \_\_, 2011

This Work Order No. 1 under the Master Services Agreement dated [Month] \_\_, 2011 (the "Agreement"), is between the Fund for Philadelphia, Inc. ("Fund") and [NAME/ENTITY] ("Contractor") and is dated as of this \_\_\_ day of \_\_\_\_\_ 2011. This Work Order is a Work Order as defined in, and is subject to the terms of, the Agreement. Capitalized terms not defined herein shall have the meanings set forth in the Agreement.

1. **Description of Assignment.** The Philadelphia Marathon is an annual event hosted by the City on the third Sunday of November each year - over 20,000 people from around the world participate. The 2011 Marathon will be held from November 19 - 21, 2011 ("**Marathon Weekend**"). The Marathon is sanctioned by the USA Track & Field Association. The Marathon consists of three (3) days of events, and kicks-off with a Health & Fitness Expo on November 19, 2011, at the Philadelphia Convention Center.
2. **Services to be Performed.** Contractor shall perform the duties of [Name of Role] for the Marathon. The [Name of Role] will [insert a description of the services to be performed by Contractor] (the "**Services**").
3. **Authorized Start Date.** The Contractor shall begin the Services on [DATE].
4. **Target Completion Date.** Contractor shall provide the Services until [DATE] (the "**Completion Date**") unless terminated earlier by either party.
5. **The Project Supervisor.** The Services shall be supervised by [NAME OF SUPERVISOR] (the "**Supervisor**").
6. **Review; Acceptance.** Acceptance of the Services is determined by the Supervisor. The Supervisor shall notify the Contractor within ten (10) days of receipt of any Deliverable whether such Deliverable is acceptable. If a Deliverable is not acceptable, Contractor shall have five (5) days to revise such Deliverable in order to make the Deliverable acceptable to the Supervisor. If the Deliverable is not then acceptable, then the Supervisor may, at its sole option: 1) allow the Contractor more time to revise the Deliverable after providing the Contractor with a list of deficiencies; or 2) reject the Deliverable.
7. **Compensation Amount.** The Services shall be completed on a fixed fee basis. The total amount of compensation is [AMOUNT OF COMPENSATION]. It is understood that the Contractor will work the number of hours per week necessary to satisfactorily perform the Services and complete the Deliverables by the Completion Date.
8. **Frequency of Invoicing/Payments.** Contractor shall submit invoices to the Supervisor on the second and fourth Thursday of each calendar month by 5 pm (the "**Invoice**"). Each Invoice shall detail the Services provided, Work Product created, and Deliverables completed for the period of payment. Payments to Contractor shall be made only after the Supervisor approves such Invoice.
9. **Location of Services.** The Services shall be performed at [INSERT LOCATION] the Site.
10. **Expenses Related to the Services.** All expenses incurred will be the sole responsibility of the Contractor.

- 11. Deliverables and Reporting.** The Contractor shall provide all Deliverables on the schedule set forth by the Supervisor from time to time, and shall provide reports and updates to the Supervisor as requested.
- 12. Counterparts.** The parties agree that this Work Order may be signed in counterparts and delivered by facsimile.

**IN WITNESS WHEREOF**, the parties have caused this Work Order to be executed by their duly authorized officers as of the Effective Date.

**FUND FOR PHILADELPHIA, INC.**  
(the "Fund")

**CONTRACTOR**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: Melanie Johnson

Name: [Type/Print Name]

Title: Chairperson, Fund for Philadelphia, Inc.

Title: [Insert Title if Applicable]