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**REQUEST FOR PROPOSALS  
for a  
Recovery House Transformation Initiative  
for The  
CITY OF PHILADELPHIA**

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Issued by:  
THE CITY OF PHILADELPHIA (“City”)  
OFFICE OF BEHAVIORAL HEALTH AND INTELLECTUAL disABILITY SERVICES

**All proposals must be submitted electronically to Amanda David, Special Advisor to the  
Office of Deputy Commissioner at [DBHIDS.GrantsProcurements@phila.gov](mailto:DBHIDS.GrantsProcurements@phila.gov)  
Proposals must be received no later than 5:00 p.m. Philadelphia, PA, local time,  
on Wednesday, October 2 , 2019 by 5pm.**

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***Mandatory Pre-Proposal Conference:***

Date: Friday, September 13, 2019

Time: 9:30am– 11:00am

Location: 1101 Market Street, Main Conference Room, 7th Floor, Philadelphia, PA 19107

Conference Call: 1-800-563-3974; Access Code 6855476#

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James F. Kenney, Mayor  
David T. Jones, Commissioner, DBHIDS

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## **I. Project Overview**

### **A. Introduction; Statement of Purpose**

The Request for Proposals is being issued by the Philadelphia Department of Behavioral Health and Intellectual disAbility Services (DBHIDS or Department) Office of Addiction Services (OAS) in order to increase the number of safe, affordable, supportive housing for individuals in recovery from a Substance Use Disorder (SUD) and to develop a contractual agreement with currently operating recovery houses to become certified by the Pennsylvania Alliance of Recovery Residences (PARR) network and have the potential to become an OAS Funded Recovery House. PARR ensures that recovery oriented residences meets the needs of individuals in substance use recovery while also assuring that the quality of services meets the standards of the National Alliance of Recovery Residences (NARR).

In order to increase the availability of safe, decent, and affordable recovery-oriented housing for Philadelphia citizens in treatment for and recovery from substance use disorders, DBHIDS is offering up to 20 grants of \$25,000 each to assist currently operating recovery houses in pursuit of membership in the Pennsylvania Alliance of Recovery Residences network and have the potential to become an OAS funded recovery house. Recovery house providers can apply for up to two grants, if major repairs are needed to bring the residence to standard, totalling \$50,000. The funds may be used for modifications to the residence, repairs/upgrades on the building, licensing fees and furniture purchases. The recovery houses selected for this one-time grant opportunity must agree to maintain the PARR Standards for a minimum of five years. After the recovery house has been PARR certified, the operator will be able to apply to be part of the DBHIDS recovery house network (See Appendix F).

In order to become PARR certified, the residence must have a certificate of occupancy. PARR standards include, but are not limited to, ensuring that recovery residences are legally run, abide by all local safety and fire codes, offer life skills development, encourage residents to attend recovery support services including treatment and mutual support groups, work with individuals to ensure that each person has a personalized goal plan. Once a residence obtains a PARR certification, PARR will refer individuals to the residence, and provide support to the recovery house owner/operator. PARR will also provide technical assistance with writing RFPs.

### **B. Department Overview**

DBHIDS is comprised of the Office of Behavioral Health which includes Mental Health and Substance Use Recovery Services and Intellectual disAbility Services (IDS). DBHIDS contracts with Community Behavioral Health (CBH) to administer behavioral health care services for the City's more than 700,000 individuals eligible for Medical Assistance under Pennsylvania's HealthChoices behavioral health mandatory managed care program. This integrated behavioral health system annually serves more than 100,000 people who are eligible for Medical Assistance, as well as those who are uninsured or underinsured. The Department has a long history of providing innovative and groundbreaking services in Philadelphia for people in recovery, family members, providers and communities and has become a national model for delivering behavioral health care services in the public sector.

We envision a Philadelphia where every individual can achieve health, well-being, and self-determination. The mission of DBHIDS is to educate, strengthen and serve individuals and community so that all Philadelphians can thrive. This is accomplished using a population health approach with an emphasis on recovery and resilience-focused behavioral health services and on self-determination for individuals with intellectual disabilities. Working with an extensive network of providers, DBHIDS provides services to persons recovering from mental health and/or substance use, individuals with intellectual disabilities, and families to ensure that they receive high quality services which are accessible, effective and appropriate.

This program will be administered by and receive oversight from OAS. The mission of the OAS Services is to plan, fund, and monitor substance abuse prevention, intervention, treatment and recovery support services in Philadelphia. DBHIDS envisions a Philadelphia where every individual can achieve health, well-being, and self-determination.

### **C. Request for Proposals**

DBHIDS is looking for applicants who currently own and/or operate a recovery house in Philadelphia who would like to obtain PARR certification and become eligible for OAS recovery house network funding. DBHIDS is specifically seeking to fund recovery houses that are:

- Currently providing services for individuals in substance use recovery
- Paying a living wage to its employees
- Recovery Houses must meet the following requirements, including:
  - Acceptable use of these funds include: modifications to the building, repairs and upgrades to systems needed, licensing fees, furniture purchases. Estimates for work to be completed and invoices for completed work/purchases must be submitted to DBHIDS;
  - Recovery house operators must own the residence or have leases for a minimum of 5 years with an option to renew the lease for at least 5 years;
  - Recovery houses must accept individuals participating in Medication Assisted Treatment (MAT).
  - Recovery houses must have a demonstrated history and ongoing connection with the community and community organizations.

### **D. General Disclaimer of the City**

This RFP does not commit the City of Philadelphia to award a contract. This RFP and the process it describes are proprietary to the City and are for the sole and exclusive benefit of the City. No other party, including any Applicant, is intended to be granted any rights hereunder. Any response, including written documents and verbal communication, by any Applicant to this RFP, shall become the property of the City and may be subject to public disclosure by the City, or any authorized agent of the City. The City is not liable for any costs incurred by Applicants in preparing and submitting a proposal in response to this RFP or for any costs and expenses incurred in meeting with or making oral presentations to the City if so requested.

## II. Scope of Work

### A. Project Details

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

- Recovery houses selected for this project must obtain the PARR certification and maintain it for up to 5 years.
- Recovery houses selected for this project must allow DBHIDS and PARR staff to visit the house to verify the work that was completed.
- Licensed and insured contractors must be used for repairs completed on the house. Recovery houses selected for this project must submit a copy of their PARR certification to DBHIDS once obtained.
- Once PARR certification is obtained, recovery houses may be considered for OAS funding, when funding is available.
- Recovery houses must have a demonstrated history and ongoing connection with the community and community organizations.

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

This *Section II, Scope of Work* states requirements for the project, including the services and the tangible work products to be delivered, and the tasks the Department has identified as necessary to meet those requirements. The Department reserves the right, however, to modify specific requirements, based on changed circumstances (such as a change in business or technical environments), the proposal selection process, and contract negotiations with the Applicant(s) selected for negotiations, and to do so with or without issuing a revised RFP. The Applicant must provide in its proposal a detailed proposed scope of work showing how it will meet the project requirements stated in this Section II.

### B. Tangible Work Products

The Department requires completion and delivery of at least the tangible work products listed below. The proposed scope of work should state in detail how the Applicant will produce each work product, including the personnel/job titles (as identified in Section G, *Organizational and Personnel Requirements*), that will be responsible for delivering the work product. For each work product, the Applicant should propose criteria for satisfactory completion and delivery. Applicants may propose additional or revised tangible work products but should explain why each is necessary to achieve the project objectives.

Tangible Work Products must include:

- Estimates for work to be completed must be submitted and invoices for completed work/purchases must be submitted to DBHIDS.
- Recovery houses selected for this project must obtain the PARR certification and maintain it for up to 5 years.
- Recovery houses selected for this project must allow DBHIDS, PARR and other relevant City staff to visit the house to verify the work that was completed.

- Recovery houses selected for this project must submit a copy of their PARR certification to DBHIDS once obtained.
- Recovery houses selected for this project should comply with City and State regulations regarding recovery houses.

### **C. Timetable**

The Department anticipates that the work required under this RFP will be completed within approximately 12 weeks after project start and according to the approximate schedule in the table below, based on the Department's identification of critical milestones and tasks. The scope of work proposed by Applicant should include a detailed project schedule that identifies all tasks, activities, deliverables, and milestones the Applicant proposes to carry out for the project and a time of completion (measured from project start date) for each. The Applicant should state the number of days following the Department's authorization to proceed under the City contract by which it will be ready to start the work, including any mobilization time. If the Applicant proposes a different overall time of performance, it should state its reasons. The Department expects the recovery house to be able to meet DBHIDS and PARR standards within 90 days of the contract award.

### **D. Monitoring; Security**

By submission of a proposal in response to this RFP, the Applicant agrees that it will comply with all contract monitoring and evaluation activities undertaken by the City of Philadelphia, and with all security policies and requirements of the City. OAS staff will visit the home to ensure that the recovery house is compliant with the standards set forth in the contract.

### **E. Reporting Requirements**

The successful Applicant shall report to the City of Philadelphia on a regular basis regarding the status of the project and its progress in providing the contracted services and/or products. At a minimum, the successful Applicant shall submit a monthly invoice detailing the services and/or products provided, the goals/tasks accomplished, and the associated costs. If hourly rates are charged, the invoice must also detail the number of hours, the hourly rate, and the individual who performed the service.

### **F. Cost Proposal**

Applicants must provide a detailed cost proposal, with a line-item breakdown of the costs for specific services and work products proposed. Cost proposals must be "fixed price" proposals. The proposed price must include all costs that will be charged to the City for the services and tangible work products the Applicant proposes to perform and deliver to complete the project and including, but not limited to, costs for the following, if the Department is to pay for them: employee compensation and fringe benefits; communication; printing; administrative expenses; bonding; acquisition of real estate; rent, utilities, maintenance and security related to real estate; travel (reimbursable only at rates approved by the Department and in accordance with current City policies, which can be obtained from the Department); project management; development; testing; implementation; maintenance; training; and all other work proposed. Any contract resulting from this RFP will provide for a not-to-exceed amount in the compensation section of the contract.



## **G. Organization and Personnel Requirements**

The proposal must identify lead personnel who will be responsible for ensuring that the residence meets DBHIDS and PARR standards. The Department expects the following with respect to the successful Applicant's organizational structure and personnel:

- The owner/operator must submit estimates of the work to be completed and invoices showing payment.
- Contractors completing repairs should be licensed and insured; copies of license and insurance should be submitted to OAS.
- The owner/operator must submit a current staff roster.
- Recovery houses must have a demonstrated history and ongoing connection with the community and community organizations.
- Recovery houses selected for this project should comply with City and State regulations regarding recovery houses.

## **H. Alternative Solutions**

If an Applicant offers options and/or alternative solutions that are not requested in this RFP or are not included in its proposed prices, the Applicant must provide the following information for each:

- A detailed description of the option/alternative solution (including, but not limited to, all features, functionality, and/or services that will be unavailable if the option/alternative is not purchased);
- If not included in the proposed prices, a full explanation of the rationale for not including;
- Detailed cost information for each option/alternative, in accordance with the cost proposal requirements of the RFP.

## **I. Available Information**

Because of the successful DBHIDS transformation initiative over the last decade (2005-2015), people with behavioral health conditions and intellectual disabilities now not only live in communities but are *a part of* their communities. As the natural continuation of the transformation of Philadelphia's behavioral health and intellectual disability service system, DBHIDS has now adopted a population health approach.

Population health refers to the health of an entire community. Traditional approaches to health care center around individuals who are already experiencing a health-related condition. Population health approaches take a much broader view, seeking to improve the health status of everyone in a community, not just those who are sick. By providing excellent clinical care as well as community-level interventions and services, **population health approaches help to create communities in which every member—not just those who seek out health services—can thrive.**

As DBHIDS worked in communities to help them better support people in its system, it became clear that many communities are themselves distressed, grappling with violence, poverty,

inadequate housing, and other threats to health, well-being, and self-determination. It also has become clear that many people in need of support are not being reached or being reached too late. As a result, DBHIDS has initiated a population health approach to increase capacity within the community to promote and deliver appropriate population based interventions and support so that over time, communities experience less illness and its associated consequences.

The current national attention to population health confirms that Philadelphia's population health approach is appropriate. The U.S. healthcare environment is already moving in this direction in an effort to contain costs and achieve better outcomes. Acknowledgement is growing locally, nationally, and internationally that promoting optimum health among a whole population can't be achieved within a narrow paradigm built primarily to manage diagnosed conditions. To break the cycle of escalating costs, health systems are increasingly focusing resources on prevention and early intervention. Because of DBHIDS' longstanding commitment to promoting recovery, resilience, and self-determination, Philadelphia is well positioned to be a leader in the nation's next health transformation. The thrust of Philadelphia's behavioral health initiatives are shifting from addressing illness and disability one person at a time to promoting optimum health, wellness, and self-determination throughout the population.

The population health approach challenges us to continue to enhance efforts to improve the health of all Philadelphians. This approach challenges us to expand our efforts beyond pilot projects and special initiatives and embed these principles into the culture of our entire system. It challenges us to consistently broaden our scope to include *all* people in a population, not just those seeking our services. It challenges us to prevent behavioral health conditions and developmental delays from developing or progressing, to equip individuals with the skills and opportunities to make their own choices and build meaningful lives in their communities, and to move even more out of program settings and deeper into the community to address the social and environmental circumstances that have shaped people's lives. We must learn from the innovative work the city has already started and be even bolder, shifting the *intention* of our work from addressing illness and disability one person at a time to promoting optimum health, wellness, and self-determination throughout the whole population.

Health providers and payers use a variety of approaches to improve the health of a population. Some approaches, known as population health management, prioritize identifying and providing services to members of a population who have complex, chronic, or very costly conditions. A key goal of population health management efforts is to control costs, often through existing managed care strategies such as reducing avoidable emergency department visits. Other population health approaches are more akin to public health interventions in that they include broad-based interventions (such as flu shots) that benefit *all* members of a defined population, not just those seeking health services. These two major population health frameworks both use data-driven decision making and focus on health outcomes. DBHIDS's approach to population health builds on many years of focus on community health; thus, our approach is consistent with a public health framework.

The essence of the DBHIDS population health approach is as follows:

1. **Attend to the needs of the whole population, not just those seeking services.** Population health approaches emphasize community-level outcomes, not just outcomes for individuals with particular diagnoses. A key benefit of a population health approach is its focus on keeping people well so that, over time, communities experience less illness and its associated consequences.
2. **Promote health, wellness and self-determination.** Health is much more than the absence of illness or management of symptoms. There is a fundamental difference between providing targeted interventions to address illness versus promoting wellness and quality of life.
3. **Provide early intervention and prevention.** There will always be a need for access to high-quality clinical care, supports, and services. A population health approach provides such care and also works to screen for and prevent the onset or progression of conditions which improves outcomes and better utilizes resources.
4. **Address the social determinants of health.** Poor health and health disparities don't result from medical conditions alone. Chronic stress, toxic environments, limited access to nutritious foods, inadequate housing, social isolation, and numerous other nonmedical factors contribute to poor outcomes. A population health approach seeks to address these factors to reduce health disparities and safeguard everyone's right to optimum health and self-determination.
5. **Empower individuals and communities to keep themselves healthy.** Healthcare providers can't shoulder the entire responsibility for healthy communities. A population health approach not only educates but also empowers and motivates people to take responsibility for promoting their own health and wellness.

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

#### A. Proposal Format

Proposals submitted in response to this RFP must include a cover letter signed by the person authorized to issue the proposal on behalf of the Applicant, and the following information, in the sections and order indicated:

1. Table of Contents
2. Introduction/Executive Summary  
Provide an overview of the services being sought and proposed scope of services.
3. Applicant Profile  
Provide a narrative description of the Applicant itself, including the following:
  - a. Applicant's business identification information, including name, business address, telephone number, website address, and federal taxpayer identification number or federal employer identification number;
  - b. A primary contact for the Applicant, including name, job title, address, telephone and fax numbers, and email address;
  - c. A description of Applicant's business background, including, if not an individual, Applicant's business organization (corporation, partnership, LLC, for profit or not for profit, etc.), whether registered to do business in Philadelphia and/or Pennsylvania, country and state of

business formation, number of years in business, primary mission of business, significant business experience, whether registered as a minority-, woman-, or disabled-owned business or as a disadvantaged business and with which certifying agency, and any other information about Applicant's business organization that Applicant deems pertinent to this RFP.

d. A description of the Applicant's demonstrated and ongoing connection with the community and community organizations.

#### 4. Project Understanding

Provide a brief narrative statement that confirms Applicant's understanding of, and agreement to provide, the services and/or tangible work products necessary to achieve the objectives of the project that is the subject of this RFP. Applicant shall describe how the Applicant's business experience will benefit the project.

#### 5. Proposed Scope of Work

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

#### 6. Statement of Qualifications; Relevant Experience

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

#### 7. References

Provide at least three references, preferably for projects that are similar in type, scope, size and/or value to the work sought by this RFP. If applicable, Applicant should provide references for projects with other municipalities that are similar in size to the City of Philadelphia. For each reference, include the name, address and telephone number of a contact person.

#### 8. Requested Exceptions to Contract Terms

State exceptions, if any, to City Contract Terms that Applicant requests, including the reasons for the request and any proposed alternative language. (*See* Section III.B for more information.)

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

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

#### 10. Tax and Regulatory Status and Clearance Statement

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

#### 11. Proposed Subcontractors

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

#### 12. Disclosure of Litigation; Disclosure of Administrative Proceedings

State, for the 5-year period preceding the date of this RFP, a description of any judicial or administrative proceeding that is material to Applicant's business or financial capability or to the subject matter of this RFP, or that could interfere with Applicant's performance of the work requested by this RFP, including, but not limited to, any civil, criminal or bankruptcy litigation; any debarment or suspension proceeding; any criminal conviction or indictment; and any order or agreement with or issued by a court or local, state or federal agency. For each such proceeding, state the name of the case or proceeding, the parties involved, the nature of the claims involved, its current status and the final disposition, if any. Provide the same information for any officer, director, principal, or partner of Applicant's organization, and for any subcontractor Applicant plans to use to perform the services described in this RFP.

#### 13. Statement of Financial Capacity

Provide documentation demonstrating fiscal solvency and financial capability to perform the work sought by this RFP. Consider providing one or more of the following:

- General statement of the Applicant's financial condition;
- Applicant's most recent audited or unaudited financial statements;
- Disclosure of any bankruptcy filings over the past five years;
- Most recent IRS Form 990 (for non-profit organizations only).

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

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

#### 15. LGBTQ-Owned Business Data Collection (Optional if applicable to Applicant and/or Applicant's proposed subcontractors)

As part of the City's commitment to diversity, equity and inclusion in all aspects of City procurement, the City is collecting data to identify the number of companies beneficially owned and controlled by Lesbian, Gay, Bisexual, Transgender and Queer persons who wish

to do business with the City (collectively, “LGBTQ businesses”). The data will be used to identify the number of LGBTQ businesses currently doing business with the City. It will also assist in efforts to include LGBTQ certified businesses into the City’s vendor database. Response to this form is voluntary. (See Section III. H for more information)

#### 16. Defaults

Provide a description, in detail, of any situation occurring within the past five (5) years in which the Applicant, or a joint venture or partnership of which Applicant was a part, defaulted or was deemed to be in noncompliance of any contractual obligations, explaining the issues involved in the default, the outcome, the actions taken by Applicant to resolve the matter. Also provide the name, title and telephone number of the party to the contract who asserted the event of default or noncompliance or the individual who managed the contract for that party.

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

The City’s standard contract terms and conditions for services of the type sought by this contracting opportunity (Contract Terms) are set forth in the General Provisions attached to this RFP as Appendix A. By submitting a proposal in response to this contract opportunity, the Applicant agrees that, except as provided herein, it will enter into a contract with the City containing substantially the Contract Terms.

For any contract awarded for work to be performed on or after July 1, 2019 the City has instituted a policy of making all of its payments under the contract through electronic deposits into the awarded entity’s designated bank account. Before any City payments are made, the awarded entity will be required to supply the City with the information necessary for the City to initiate electronic payments by completing one of the electronic payment processing enrollment forms available on the City’s vendor portal at <https://secure.phila.gov/finance/vendorpayments>. Applicants awarded a contract before July 1, 2019 are encouraged to complete one of the electronic payment processing enrollment forms before the conversion to electronic payments becomes mandatory. The City intends to stop issuing paper checks.

Applicants must state clearly and conspicuously any modifications, waivers, objections or exceptions they seek (“Requested Exceptions”) to the Contract Terms in a separate section of the proposal entitled “Requested Exceptions to Contract Terms.” For each Requested Exception, the Applicant must identify the pertinent Contract Term by caption and section number and state the reasons for the request. The Applicant must also propose alternative language or terms for each Requested Exception. Requested Exceptions to the City’s Contract Terms will be approved only when the City determines in its sole discretion that a Requested Exception makes business sense, does not pose unacceptable risk to the City, and is in the best interest of the City. By submitting its proposal, the Applicant agrees to accept all Contract Terms to which it does not expressly seek a Requested Exception in its proposal. The City reserves the right, in its sole discretion, to evaluate and reject proposals based in part on whether the Applicant’s proposal contains Requested Exceptions to Contract Terms, and the number and type of such requests and alternative terms proposed.

**If, after the City issues its Notice of Intent to Contract to an Applicant, the Applicant seeks Requested Exceptions to Contract Terms that were not stated in its proposal, the City may,**

**in its sole discretion, deny the Requested Exceptions without consideration or reject the proposal.**

The City reserves the right, in its sole discretion, (i) to waive any failure to comply with the terms of this Notice to Applicants if it determines it is in the best interest of the City to do so; and (ii) to require or negotiate terms and conditions different from and/or additional to the Contract Terms in any final contract resulting from this contract opportunity, without notice to other Applicants and without affording other Applicants any opportunity to revise their proposals based on such different or additional terms.

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

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

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

### **D. The Philadelphia Tax and Regulatory Status and Clearance Statement**

It is the policy of the City of Philadelphia to ensure that each contractor and subcontractor has all required licenses and permits and is current with respect to the payment of City taxes or other indebtedness owed to the City (including, but not limited to, taxes collected by the City on behalf of the School District of Philadelphia), and is not in violation of other regulatory provisions contained in the Philadelphia Code. To assist the City, through its Department of Revenue and Department of Licenses and Inspections, in determining this status, each Applicant is required to submit with its proposal the certification statement entitled City of Philadelphia Tax and Regulatory Status and Clearance Statement which is attached to this RFP as Appendix C.

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

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

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

Applicants need not have a City of Philadelphia Business Income and Receipts Tax Account Number (formerly Business Privilege Tax Account Number) and Commercial Activity License Number (formerly Business Privilege License Number) to respond to this RFP, but will, in most circumstances, be required to obtain one or both if selected for award of the contract contemplated by the RFP.<sup>1</sup> Applications for a Business Income and Receipts Tax Account Number or a Commercial Activity License<sup>2</sup> may be made on line by visiting the City of Philadelphia Business Services Portal at <http://business.phila.gov/Pages/Home.aspx> and clicking on "Register Now." If you have specific questions, call the Department of Revenue at 215-686-6600 for questions related to City of Philadelphia Business Income and Receipts Tax Account Number or the Department of Licenses and Inspections at 215-686-2490 for questions related to the Commercial Activity License.

#### **E. Compliance with Philadelphia 21<sup>st</sup> Century Minimum Wage and Benefits Ordinance**

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

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

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



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

#### **F. Certification of Compliance with Equal Benefits Ordinance**

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

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<sup>3</sup> A link to the Philadelphia Code is available on the City's official web site, [www.phila.gov](http://www.phila.gov). Click on "City Code and Charter," located to the bottom right of the Welcome page under the box "Transparency."

Wage and Equal Benefits Ordinances Impacting Some City Contractors links on the eContract Philly home page.

### **G. Local Business Entity or Local Impact Certification**

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

### **H. LGBTQ Applicant Opportunity Data**

As part of the City’s commitment to diversity, equity and inclusion in all aspects of City procurement, the City is collecting data to identify the number of companies beneficially owned and controlled by Lesbian, Gay, Bisexual, Transgender and Queer persons who wish to do business with the City (collectively, “LGBTQ businesses”). The data will be used to identify the number of LGBTQ businesses currently doing business with the City. It will also assist in efforts to include LGBTQ certified businesses into the City’s vendor database. Response to this form is voluntary.

### **I. Selection Process**

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

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

1. Superior ability or capacity to meet particular requirements of contract and needs of the Department and those it serves
2. Eligibility under Code provisions relating to campaign contributions
3. Superior prior experience of Applicant and staff
4. Superior quality, efficiency and fitness of proposed solution for City Department
5. Superior skill and reputation, including timeliness and demonstrable results
6. Special benefit to continuing services of incumbent, such as operational difficulties with transition or needs of population being served

7. Benefit of promoting long-term competitive development and allocation of experience to new or small businesses, including those owned by minority or disabled persons or by women
8. Lower cost
9. Administrative and operational efficiency, requiring less City oversight and administration
10. Anticipated long-term cost effectiveness
11. Meets prequalification requirements
12. Applicant's certification of its Local Business Entity/Local Impact status pursuant to Executive Order 04-12

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

#### **IV. Proposal Administration**

##### **A. Procurement Schedule**

RFP Posted	September 4, 2019
Pre-Proposal Meeting	September 13, 2019
Applicant Questions Due	September 16, 2019
Answers Posted on <a href="http://www.phila.gov/rfp">www.phila.gov/rfp</a>	September 18, 2019
Applications Due	October 2, 2019

The above dates are estimates only and the City reserves the right, in its sole discretion, to change this schedule. Notice of changes in the pre-proposal meeting date/time or location, the due date for Applicant questions, and the date for proposal submission will be posted on the City's website at [www.phila.gov/rfp](http://www.phila.gov/rfp) (click on *RFPs Online*). The other dates/times listed may be changed without notice to prospective Applicants.

##### **B. Questions Relating to the RFP**

All questions concerning this RFP must be submitted in writing via email to Amanda David at [DBHIDS.GrantsProcurements@phila.gov](mailto:DBHIDS.GrantsProcurements@phila.gov) no later than September 16, 2019 at 5pm and may not be considered if not received by then. The City will respond to questions it considers appropriate to the RFP and of interest to all Applicants, but reserves the right, in its discretion, not to respond to any question. Responses will be posted on the City's website at [www.phila.gov/rfp](http://www.phila.gov/rfp) (click on *RFPs Online*). Responses posted on the City's website become part of the RFP upon posting. The City reserves the right, in its discretion, to revise responses to questions after posting, by posting the modified response. No oral response to any Applicant question by any City employee or agent shall be binding on the City or in any way considered to be a commitment by the City.

### **C. Pre-Proposal Conference**

A pre-proposal meeting to review the requirements of this RFP will be held in Philadelphia, Pennsylvania on September 13, 2019 starting at 9:30am to 11am at the following location: 1101 Market Street, Main Conference Room, 7th Floor, Philadelphia, PA 19107 . Attendance at the pre-proposal meeting is mandatory. Applicants who are unable to attend the meeting in person must participate through the telephone bridge that will be available during the meeting. The teleconference number is 1-800-563-3974; Access Code 6855476#

### **D. Term of Contract**

It is anticipated that the initial term of the Contract shall commence October 21, 2019 (the “Initial Term”) and, unless sooner terminated by the City pursuant to the terms of the Contract, shall expire on June 30, 2020. The City may, at its sole option, amend the Contract to add up to three (3) additional successive one-year terms (“Additional Terms”). Except as may be stated otherwise in such amendment, the terms and conditions of this Contract shall apply throughout each Additional Term.

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

### **A. Revisions to RFP**

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

### **B. City Employee Conflict Provision**

City of Philadelphia employees and officials are prohibited from submitting a proposal in response to this RFP. No proposal will be considered in which a City employee or official has a direct or indirect interest.

### **C. Proposal Binding**

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

### **D. Contract Preparation Fee**

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

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

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

#### **E. Reservation of Rights**

By submitting its response to this notice of contract opportunity as posted on the eContract Philly web site (“eContractPhilly”), the Applicant accepts and agrees to this Reservation of Rights. The term “notice of contract opportunity,” as used herein, means this RFP and includes all information posted on eContract Philly in relation to this “New Contract Opportunity” as published on eContract Philly, including, without limitation, the information posted for this opportunity on the “Detailed Information for Opportunity” page, in the eContractPhilly “Opportunity List,” and including in addition to this RFP, any other document linked to the Detailed Information for Opportunity Page or otherwise displayed on or linked to this notice of contract opportunity.

##### **1. This Notice of Contract Opportunity**

The City reserves and may, in its sole discretion, exercise any one or more of the following rights and options with respect to this notice of contract opportunity:

- (a) to reject any and all proposals and to reissue this notice of contract opportunity at any time prior to execution of a final contract;
- (b) to issue a new notice of contract opportunity with terms and conditions substantially different from those set forth in this or a previous notice of contract opportunity;
- (c) to issue a new notice of contract opportunity with terms and conditions that are the same or similar as those set forth in this or a previous notice of contract opportunity in order to obtain additional proposals or for any other reason the City determines to be in the City’s best interest;
- (d) to extend this notice of contract opportunity in order to allow for time to obtain additional proposals prior to the notice of contract opportunity application deadline or for any other reason the City determines to be in the City’s best interest;
- (e) to supplement, amend, substitute or otherwise modify this notice of contract opportunity at any time prior to issuing a notice of intent to contract to one or more Applicants;
- (f) to cancel this notice of contract opportunity at any time prior to the execution of a final contract, whether or not a notice of intent to contract has been issued, with or without issuing, in the City’s sole discretion, a new notice of contract opportunity for the same or similar services;

(g) to do any of the foregoing without notice to Applicants or others, except such notice as the City, in its sole discretion, elects to post on eContractPhilly.

## 2. Proposal Selection and Contract Negotiation

The City reserves and may, in its sole discretion, exercise any one or more of the following rights and options with respect to proposal selection:

(a) to reject any proposal if the City, in its sole discretion, determines the proposal is incomplete, deviates from or is not responsive to the requirements of this notice of contract opportunity, does not comply with applicable law (including, without limitation, Chapter 17-1400 of the Philadelphia Code), is conditioned in any way, or contains ambiguities, alterations or items of work not called for by this notice of contract opportunity, or if the City determines it is otherwise in the best interest of the City to reject the proposal;

(b) to reject any proposal if, in the City's sole judgment, the Applicant has been delinquent or unfaithful in the performance of any contract with the City or with others; is delinquent, and has not made arrangements satisfactory to the City, with respect to the payment of City taxes or taxes collected by the City on behalf of the School District of Philadelphia, or other indebtedness owed to the City; is not in compliance with City regulatory codes applicable to Applicant; is financially or technically incapable; or is otherwise not a responsible Applicant;

(c) to waive any defect or deficiency in any proposal, including, without limitation, those identified in subsections(a) and (b) preceding, if, in the City's sole judgment, the defect or deficiency is not material to the proposal;

(d) to require, permit or reject, in the City's sole discretion, amendments (including, without limitation, information omitted), modifications, clarifying information, and/or corrections to their proposals by some or all of the Applicants at any time following proposal submission and before the execution of a final contract;

(e) to issue a notice of intent to contract and/or execute a contract for any or all of the items in any proposal, in whole or in part, as the City, in its sole discretion, determines to be in the City's best interest;

(f) to enter into negotiations with any one or more Applicants regarding price, scope of services, or any other term of their proposals, and such other contractual terms as the City may require, at any time prior to execution of a final contract, whether or not a notice of intent to contract has been issued to any Applicant and without reissuing this notice of contract opportunity;

(g) to enter into simultaneous, competitive negotiations with multiple Applicants or to negotiate with individual Applicants, either together or in sequence, and to permit or require, as a result of negotiations, the expansion or reduction of the scope of services or changes in any other terms of the submitted proposals, without informing other Applicants of the changes or affording them the opportunity to revise their proposals in light thereof, unless the City, in its sole discretion, determines that doing so is in the City's best interest;

(h) to discontinue negotiations with any Applicant at any time prior to the execution of a final contract, whether or not a notice of intent to contract has been issued to the Applicant, and to enter into negotiations with any other Applicant, if the City, in its sole discretion, determines it is in the best interest of the City to do so;

(i) to rescind, at any time prior to the execution of a final contract, any notice of intent to contract issued to an Applicant, and to issue or not issue a notice of intent to contract to

the same or a different Applicant and enter into negotiations with that Applicant, if the City, in its sole discretion, determines it is in the best interest of the City to do so;

(j) to elect not to enter into any contract with any Applicant, whether or not a notice of Intent to Contract has been issued and with or without the reissuing this notice of contract opportunity, if the City determines that it is in the City's best interest to do so;

(k) to require any one or more Applicants to make one or more presentations to the City at the City's offices or other location as determined by the City, at the Applicant's sole cost and expense, addressing the Applicant's proposal and its ability to achieve the objectives of this notice of contract opportunity;

(l) to conduct on-site investigations of the facilities of any one or more Applicants (or the facilities where the Applicant performs its services);

(m) to inspect and otherwise investigate projects performed by the Applicant, whether or not referenced in the proposal, with or without consent of or notice to the Applicant;

(n) to conduct such investigations with respect to the financial, technical, and other qualifications of each Applicant as the City, in its sole discretion, deems necessary or appropriate; and,

(o) to do any of the foregoing without notice to Applicants or others, except such notice as the City, in its sole discretion, elects to post on eContractPhilly.

### 3. Miscellaneous

(a) Interpretation; Order of Precedence. In the event of conflict, inconsistency or variance between the terms of this Reservation of Rights and any term, condition or provision contained in any notice of contract opportunity, the terms of this Reservation of Rights shall govern.

(b) Headings. The headings used in this Reservation of Rights do not in any way define, limit, describe or amplify the provisions of this Reservation of Rights or the scope or intent of the provisions, and are not part of this Reservation of Rights.

### **F. Confidentiality and Public Disclosure**

The successful Applicant shall treat all information obtained from the City which is not generally available to the public as confidential and/or proprietary to the City. The successful Applicant shall exercise all reasonable precautions to prevent any information derived from such sources from being disclosed to any other person. The successful Applicant agrees to indemnify and hold harmless the City, its officials and employees, from and against all liability, demands, claims, suits, losses, damages, causes of action, fines and judgments (including attorney's fees) resulting from any use or disclosure of such confidential and/or proprietary information by the successful Applicant or any person acquiring such information, directly or indirectly, from the successful Applicant.

By submission of a proposal, Applicants acknowledge and agree that the City, as a municipal corporation, is subject to state and local public disclosure laws and, as such, is legally obligated to disclose to the public documents, including proposals, to the extent required thereunder. Without limiting the foregoing sentence, the City's legal obligations shall not be limited or expanded in any way by an Applicant's assertion of confidentiality and/or proprietary data.

**APPENDIX A**

**THE CITY OF PHILADELPHIA PROFESSIONAL SERVICES CONTRACT  
GENERAL PROVISIONS FOR BEHAVIORAL HEALTH SERVICES**





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

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

**SPECIAL CONTRACT PROVISIONS, INSTRUCTIONS AND FORMS**

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

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

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

**MBE Ranges     -     Good Faith Efforts**

**WBE Ranges     -     Good Faith Efforts**

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

Applicant hereby verifies that all forms, information and documentation submitted to OEO are true and correct and is notified that the submission of false information by applicant is subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities which may include payment of a fine of at least \$1,000 and a term of imprisonment of not more than two years. Applicant also acknowledges that under 18 Pa.C.S. §4107.2 (a)(4) it is a felony in the

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

third degree, punishable by a term of imprisonment of not more than seven years in addition to the payment of any fines or restitution, if, under any Contract awarded pursuant to this NOCO, applicant fraudulently obtains public moneys reserved for or allocated or available to minority business enterprises or women's business enterprises.

## **A. M/W/DSBE PARTICIPATION**

1. Only firms that are certified by an approved certifying agency<sup>2</sup> and identified in the OEO Certification Registry by the time of contract award will be counted for participation. An OEO Certification Registry is maintained by the OEO and is available online at [www.phila.gov/OEO/directory](http://www.phila.gov/OEO/directory). Firms owned and controlled by minority persons, women or disabled persons, which are certified as MBE, WBE, DSBE or DBE by an approved certifying agency may apply to the OEO for listing in its OEO Certification Registry.

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

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

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

- The MBE, WBE or DSBE partner(s) must be identified in the OEO Registry prior to contract award;
- The M/W/DSBE partner(s) must derive substantial benefit from the arrangement;
- The M/W/DSBE partner(s) must be substantially involved in all phases of the contract including planning, staffing and daily management;

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

- The business arrangement must be customary (i.e., each partner shares in the risk and profits of the joint venture commensurate with their ownership interest, contributes working capital and other resources, etc).

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

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

## **B. RESPONSIVENESS**

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

- Documentation of all solicitations (regardless of whether commitments resulted therefrom) as well as all commitments made on the enclosed document entitled "Solicitation For Participation and Commitment Form". Applicants should only make actual solicitations of M/W/DSBEs whose services or materials are within the scope of this NOCO. Mass mailing of a general nature to M/W/DSBEs or similar methods will not be deemed solicitation, but rather will be treated as informational notification only. A reasonable period of time should be given to all solicited firms to ensure that they have sufficient time to adequately prepare their quotes/subproposals. The applicant's listing of a commitment with an M/W/DSBE constitutes a representation that the applicant has made a legally binding commitment to contract with such firm, upon receipt of a contract award from the City ("Contract Commitment").
- If the applicant has entered into a joint venture with an MBE, WBE and/or DSBE partner, the applicant is also required to submit along with the Solicitation For Participation and Commitment Form, a document entitled "Joint Venture Eligibility Information Form," available at OEO, for the City's review and approval of the joint venture arrangement.

2. In evaluating applicant's Best and Good Faith Efforts, OEO will review the scope, intensity and appropriateness of these efforts to ascertain whether they could reasonably be expected to achieve meaningful M/W/DSBE participation in this contract. Failure to submit the documentary evidence of Best and Good Faith Efforts will result in rejection of the proposal as

nonresponsive, although the City, at its sole discretion, may allow applicants to submit or amend their submission at any time prior to award which may result in revision to applicant's participation commitments. The submission shall contain and discuss, at a minimum, the following:

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

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

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

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

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

### **C. RESPONSIBILITY**

1. Upon award, the completed Solicitation For Participation and Commitment Form and accompanying documents regarding solicitation and commitments with MBEs, WBEs and DSBEs become part of the contract and the successful applicant is required to enter into legally binding agreement(s) (“M/W/DSBE Subcontract(s)”) with its M/W/DSBE participants for the services and in the dollar amount(s) and percentage(s) as so committed (the “Contract Commitment(s)”). M/W/DSBE percentage commitments are to be maintained throughout the term of the contract and shall apply to the total contract value (including amendments). Any change in commitment, including but not limited to substitutions for the listed firm(s), changes or reductions in the work and/or listed dollar/percentage amounts, must be pre-approved in writing by the OEO.
2. Unless otherwise specified in the M/W/DSBE Subcontract, the successful applicant shall, within five (5) business days after receipt of a payment from the City for services performed under the contract, deliver to its M/W/DSBE participants, their proportionate share of such payment for services performed (including the supply of materials). In connection with the payment of its M/W/DSBE participants, the successful applicant agrees to fully comply with the City’s payment reporting process which may include the use of electronic payment verification systems.
3. No privity of contract exists between the City and any M/W/DSBE participant identified in any contract resulting from this NOCO. The City does not intend to give or confer upon any such M/W/DSBE participant(s) any legal rights or remedies in connection with the subcontracted services pursuant to Executive Order 03-12 or by reason of any contract resulting from the NOCO except such rights or remedies that the M/W/DSBE subcontractor may seek as a private cause of action under any legally binding contract to which it may be a party.
4. If the OEO determines that the applicant has discriminated against a M/W/DSBE at any time during the term of the contract, the OEO may recommend to the Director of Finance the imposition of sanctions on the applicant including debarment of the applicant from submitting and/or participating in future City contracts for a period of up to three (3) years.

### **D. ACCESS TO INFORMATION**

1. The OEO shall have the right to make site visits to the applicant’s place of business and/or job site and obtain documents and information from any applicant, subcontractor, supplier, manufacturer or contract participant that may be required in order to ascertain applicant’s responsiveness and responsibility.
2. Failure to cooperate with the OEO in its review may result in a recommendation to terminate the contract.

## **E. RECORDS AND REPORTS**

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

## **F. REMEDIES**

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

- Debar successful applicant from proposing on and/or participating in any future contracts for a maximum period of three (3) years.
- Withhold from the contract payment(s) or any part thereof until corrective action is taken.

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

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



**APPENDIX B-1**  
**City of Philadelphia – Office of Economic Opportunity**  
**Diversity Report of Nonprofit Organizations**

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

## **APPENDIX B-2**

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

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

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

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

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

## **APPENDIX B-2**

### **SPECIAL ANTIDISCRIMINATION POLICY FOR SOLICITATION AND COMMITMENT FORM**

Please see the form attached to this RFP titled “ Antidiscrimination Policy Solicitation for Participation and Commitment Form”

## APPENDIX C

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

#### THIS IS A CONFIDENTIAL TAX DOCUMENT NOT FOR PUBLIC DISCLOSURE

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

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

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

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

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Date

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

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Print Name and Title

## APPENDIX D

### LOCAL BUSINESS ENTITY OR LOCAL IMPACT CERTIFICATION

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

**Applicant Name:** \_\_\_\_\_

#### **Local Business Entity Certification**

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

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

II. During the preceding 18 months, Applicant:

- A. Has continuously maintained a valid Commercial Activity or Business Privilege License and all other licenses and permits necessary to conduct business with the City;
- B. Has continuously occupied an office within the City, where business is conducted; and
- C. Satisfies at least one of the following requirements (*Check those applicable to Applicant*):

- \_\_\_ (1) More than half of Applicant's full-time employees work in the City at least 60% of the time;
- \_\_\_ (2) More than 50 of Applicant's full-time employees work in the City at least 60% of the time; or
- \_\_\_ (3) Applicant's principal place of business is located in the City.

#### **Local Impact Certification**

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

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

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name and Title

## APPENDIX E LGBTQ APPLICANT DATA FORM

As part of the City's commitment to diversity, equity and inclusion in all aspects of City procurement, the City is collecting data to identify the number of companies beneficially owned and controlled by Lesbian, Gay, Bisexual, Transgender and Queer persons who wish to do business with the City (collectively, "LGBTQ businesses"). The data will be used to identify the number of LGBTQ businesses currently doing business with the City. It will also assist in efforts to include LGBTQ certified businesses into the City's vendor database. Response to this form is voluntary.

Applicant Name:

Bid or Opportunity #:

1. Is Applicant's business beneficially owned and controlled by persons who self-identify as Lesbian, Gay, Bisexual, Transgender or Queer? ☐ Yes ☐ No

2. Is Applicant's business currently certified as a Lesbian, Gay, Bisexual, Transgender, Business Enterprise (LGBTBE) by the National LGBT Chamber of Commerce (NGLCC) through their local Philadelphia affiliate, the Independence Business Alliance (IBA)? ☐ Yes ☐ No

a. If yes, Applicant is currently certified by NGLCC/IBA as an LGBTBE, is Applicant's business also certified by any other third party certifying agency such as Eastern Minority Supplier Development Council (ESMDC), Pennsylvania Unified Certification Program (PAUCP), Disability:IN or Women's Business Enterprise National Council (WBENC)? ☐ Yes ☐ No

b. If yes please identify the name of the certifying agency and category of certification (e.g., MBE, WBE, DSBE, DBE).

Certifying Agency:

Certification Category:

2. For this contracting opportunity, are any of Applicant's subcontractors certified by NGLCC/IBA? Yes ☐ No ☐

If yes, how many subcontractors are certified as LGBTBE? \_\_\_\_\_

Please list all by business name below.

## **APPENDIX F**

### **DBHIDS Recovery House Network**

#### **Benefits of Joining the DBHIDS Recovery House Network**

DBHIDS provides the following benefits to recovery houses within its Network:

- Steady funding stream from government source not relying on private pay.
- Receive daily referrals from DBHIDS that have been screened for appropriateness. (Recovery house can deny referrals based on valid reasons. For example, resident needs to be in a different part of town because of drug use in said area.)
- System monitoring includes monthly technical assistance visits and bi-annual compliance review visits.
- Access to DBHIDS Recovery House Network on-call line during nights and weekends for assistance with problem solving and support.
- Access to a broad range of training opportunities through DBHIDS and the Behavioral Health Training and Education Network (BHTEN).
- Input into decisions affecting recovery houses in Philadelphia by participating in the bi-monthly program director meeting.
- Increased quality and credibility due to meeting high level of standards.
- Ability to be part of a mentorship program, with accredited programs aiding and sharing their knowledge and expertise.
- Stay abreast of current trends and issues affecting recovery houses.
- Have ongoing opportunity to be part of an active, knowledgeable network of providers.



**APPENDIX G**

**RFP COVER PAGE**

DEPARTMENT OF BEHAVIORAL HEALTH AND INTELLECTUAL DISABILITY SERVICES  
(DBHIDS)

**RECOVERY HOUSE TRANSFORMATION INITIATIVE**

CORPORATE NAME OF  
APPLICANT ORGANIZATION\_\_\_\_\_

CORPORATE ADDRESS\_\_\_\_\_

CITY\_\_\_\_\_ STATE\_\_\_\_\_ ZIP\_\_\_\_\_

MAIN CONTACT PERSON\_\_\_\_\_

TITLE\_\_\_\_\_ TELEPHONE # \_\_\_\_\_

E-MAIL ADDRESS\_\_\_\_\_ FAX # \_\_\_\_\_

\_\_\_\_\_  
SIGNATURE OF OFFICIAL AUTHORIZED TITLE  
TO BIND APPLICANT TO A PROVIDER AGREEMENT

\_\_\_\_\_  
TYPED NAME OF AUTHORIZED OFFICIAL IDENTIFIED ABOVE

DATE SUBMITTED \_\_\_\_\_

**ANTIDISCRIMINATION POLICY SOLICITATION FOR PARTICIPATION AND COMMITMENT FORM**  
**Minority (MBE), Woman (WBE), Disabled (DSBE) and Disadvantaged (DBE) Business Enterprises<sup>1</sup>**

DEPARTMENT OF COMMERCE OFFICE OF ECONOMIC OPPORTUNITY (OEO)									
<b>Bid Number or Proposal Title:</b>				<b>Name of Bidder/Proposer:</b>				<b>Bid/RFP Opening Date:</b>	
List below ALL MBE/WBE/DBE/DSBEs that were solicited regardless of whether a commitment resulted therefrom. - Photocopy this form as necessary.									
<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> DSBE <input type="checkbox"/> M-DBE <input type="checkbox"/> W-DBE		Work or Supply Effort to be Performed	Date Solicited		Commitment Made		Give Reason(s) If No Commitment		
Company Name			By Phone	By Mail	Yes (If Yes, give date)	NO			
Address									
Contact Person			Quote Received		Amount Committed To				
Telephone Number      Fax Number			YES <sup>2</sup>	NO	Dollar Amount				
Email Address					\$				
OEO REGISTRY #    CERTIFYING AGENCY					Percent of Total Bid/RFP				
					%				
<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> DSBE <input type="checkbox"/> M-DBE <input type="checkbox"/> W-DBE		Work or Supply Effort to be Performed	Date Solicited		Commitment Made		Give Reason(s) If No Commitment		
Company Name			By Phone	By Mail	Yes (If Yes, give date)	NO			
Address									
Contact Person			Quote Received		Amount Committed To				
Telephone Number      Fax Number			YES <sup>2</sup>	NO	Dollar Amount				
Email Address					\$				
OEO REGISTRY #    CERTIFYING AGENCY					Percent of Total Bid/RFP				
					%				
<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> DSBE <input type="checkbox"/> M-DBE <input type="checkbox"/> W-DBE		Work or Supply Effort to be Performed	Date Solicited		Commitment Made		Give Reason(s) If No Commitment		
Company Name			By Phone	By Mail	Yes (If Yes, give date)	NO			
Address									
Contact Person			Quote Received		Amount Committed To				
Telephone Number      Fax Number			YES <sup>2</sup>	NO	Dollar Amount				
Email Address					\$				
OEO REGISTRY #    CERTIFYING AGENCY					Percent of Total Bid/RFP				
					%				

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

2. Attach all quotations to this form.

09/2010

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

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

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

**MBE Ranges     -     Good Faith Efforts**

**WBE Ranges     -     Good Faith Efforts**

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

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

#### **A. M/W/DSBE PARTICIPATION**

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

1. Only firms that are certified by an approved certifying agency<sup>2</sup> and identified in the OEO Certification Registry by the time of contract award will be counted for participation. An OEO Certification Registry is maintained by the OEO and is available online at [www.phila.gov/OEO/directory](http://www.phila.gov/OEO/directory). Firms owned and controlled by minority persons, women or disabled persons, which are certified as MBE, WBE, DSBE or DBE by an approved certifying agency may apply to the OEO for listing in its OEO Certification Registry.

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

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

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

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

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

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

## **B. RESPONSIVENESS**

1. A proposal responsive to the Policy is one which contains documentary evidence of the applicant's exercise of Best and Good Faith Efforts. The applicant's Solicitation For Participation

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

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

- Documentation of all solicitations (regardless of whether commitments resulted

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

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

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

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

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

- Whether the applicant's actions were motivated by considerations of race or gender or disability. The OEO may investigate the applicant's contracting activities and business practices on similar public and private sector contracts. For example, if applicant rejects any M/W/DSBE based on price, applicant must fully document its reasons for the rejection and also demonstrate that applicant subjects non-M/W/DSBEs to the same pricing standards. OEO will investigate whether there was any attempt at good faith negotiation of price.

- Whether M/W/DSBEs were treated as equally as other businesses in the solicitation and commitment process. For example, the OEO will investigate whether M/W/DSBEs are given the same information, access to the plans and requirements of the contract and given adequate amount of time to prepare a quote/subproposal as others who were solicited by applicant. The OEO will also investigate whether M/W/DSBEs were accorded the same level of outreach as non-M/W/DSBEs, for example whether applicant short listed M/W/DSBEs for participation or solicited M/W/DSBEs at any pre-proposal meetings.

- Whether the applicant's contracting decisions were based upon policies which

disparately affect M/W/DSBEs. OEO will ascertain whether applicant selected portions of work or material needs consistent with the capacity of available M/W/DSBE subcontractors and suppliers. OEO will consider whether applicant employed policies which facilitate the participation of M/W/DSBEs on City contracts such as segmentation of the contract or prompt payment practices.

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

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

## **C. RESPONSIBILITY**

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

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

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

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

## **D. ACCESS TO INFORMATION**

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

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

## **E. RECORDS AND REPORTS**

1. The successful applicant shall maintain all books and records relating to its M/W/DSBE commitments (e.g. copies of quotations, subcontracts, joint venture agreement, correspondence, cancelled checks,

invoices, telephone logs) for a period of at least three (3) years following acceptance of final payment from the City. These records shall be made available for inspection by the OEO and/or other appropriate City officials. The successful applicant agrees to submit reports and other documentation to the OEO as deemed necessary by the OEO to ascertain the successful applicant's fulfillment of its M/W/DSBE commitments.

## **F. REMEDIES**

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

- Debar successful applicant from proposing on and/or participating in any future contracts for a maximum period of three (3) years.
- Withhold from the contract payment(s) or any part thereof until corrective action is taken. If corrective action is not taken to the satisfaction of OEO, the City may, without institution of a lawsuit, deduct money in an amount equal to the M/W/DSBE shortfall which amount shall be collected and considered not as a penalty but as liquidated damages for the successful applicant's failure to comply with the contract.

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



**THE CITY OF PHILADELPHIA**  
**PROFESSIONAL SERVICES CONTRACT**  
**GENERAL PROVISIONS**  
**FOR**  
**OFFICE OF BEHAVIORAL**  
**HEALTH/INTELLECTUAL DISABILITY SERVICES**



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## GENERAL PROVISIONS

### ARTICLE I: DEFINITIONS

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

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

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

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

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

1.6 **Applicable Law**. “Applicable Law” means all applicable present and future federal, state or local laws, ordinances, executive orders, rules, regulations and all court orders, injunctions, decrees and other official interpretations thereof of any federal, state or local court, administrative agency or governmental body, including the City, the Commonwealth and the United States of America. Applicable Law includes, without limitation, the Charter (as defined below), as amended from time to time, the Code (as defined below), as amended from time to time, and each of the specific laws set forth in Article XIV (Additional Representations and Covenants of Provider Relating to Certain Applicable Laws) below, each as amended from time to time.

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

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

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

1.10 **City**. The “City” means The City of Philadelphia, a corporation and body politic existing under the laws of the Commonwealth of Pennsylvania, and includes its various

executive and administrative departments, agencies, boards and commissions, including the Department, and its legislature, City Council (defined below). The City is a City of the First Class under the laws of the Commonwealth of Pennsylvania.

1.11 **City Council.** “City Council” means the Council of The City of Philadelphia, as described in Article II of the Charter. City Council is the legislature of the City.

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

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

1.14 **Contract.** The “Contract” means the agreement of the Parties evidenced by the Contract Documents. References to this “Contract” shall mean this Contract as the same may be in effect at the time such reference becomes operative.

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

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

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

1.18 **Department.** The “Department” means the Office of Behavioral Health/Intellectual disAbility Services (also referred to as “OBH/IDS”) of the City.

1.19 **Director.** The “Director” means the Director of the Office of Behavioral Health/Intellectual disAbility Services of the City.

1.20 **Event of Default.** “Event of Default” means those events defined and identified in Section 12.1 (Events of Default) of these General Provisions.

1.21 **Event of Insolvency.** “Event of Insolvency” means (a) the filing of a voluntary petition by Provider under the Federal Bankruptcy Code or any similar state or federal law; or (b) the filing of an involuntary petition against Provider under the Federal Bankruptcy Code or any similar state or federal law which remains undismissed for a period of forty-five (45) days; or (c) Provider’s making of an assignment for the benefit of creditors; or (d) the appointment of a receiver for Provider or for the property or assets of Provider, if such appointment is not vacated within forty-five (45) days thereafter; or (e) any other proceeding under any bankruptcy or insolvency law or liquidation law, voluntary or otherwise; or (f) Provider proves unable to pay its obligations as they mature; or (g) Provider is insolvent as otherwise defined under any Applicable Law.

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

1.23 **Fixed Assets.** “Fixed Assets” means equipment, furnishings, and vehicles with an expected useful life of more than two (2) years and initial unit purchase price exceeding Five Hundred Dollars (\$500.00), except as otherwise mandated by Applicable Law, federal or state funding sources or grant requirements.

1.24 **General Provisions.** “General Provisions” means these “The City of Philadelphia Professional Services Contract General Provisions for the Office of Behavioral Health/Intellectual disAbility Services”, which contain the standard provisions required by the City in its professional services contracts for the Office of Behavioral Health/Intellectual disAbility Services, and any exhibits identified in these General Provisions.

1.25 **Independent Audit Report.** “Independent Audit Report” means a report prepared by a Certified Public Accountant who, pursuant to AICPA Professional Standards, is not (a) a member of the board of Provider, (b) an officer or employee of Provider, or (c) a partner, director, officer or employee of a partnership, corporation or association who is a member of the board of Provider, or a director, officer or employee of Provider.

1.26 **Initial Term.** “Initial Term” shall have the meaning set forth in Section 2.1 (Initial Term) below.

1.27 **Interpretation; number, gender.** The words “herein” “hereof” and “hereunder” and other words of similar import refer to this Contract as a whole, including the all of the Contract Documents, and not to any particular article, section, subsection or clause contained in the Contract Documents. Whenever the context requires, words used in the singular shall be construed to include the plural and vice versa, and pronouns of any gender shall be deemed to include the masculine, feminine and neuter genders.

1.28 **Materials.** “Materials” means any and all reports, records, documents, documentation, information, supplies, plans, original drawings, specifications, computations, sketches, renderings, arrangements, videos, pamphlets, advertisements, statistics, and other data, computer tapes, computer software, and other tangible work product or materials prepared or developed by Provider in connection with the Services, or for Provider by a Subcontractor in



connection with the Services, and supplied to the City by Provider or its Subcontractor pursuant to this Contract.

1.29 **Modification Notice.** “Modification Notice” means written notice from the City to Provider that informs Provider of the City’s intent to modify the maximum daily rate, number of days of care or units of services under this Contract. The Modification Notice operates as an Amendment to this Contract.

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

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

1.32 **Person.** “Person” means any individual, sole proprietorship, association, company, firm, partnership, limited partnership, joint venture, corporation, limited liability company or other form of entity or association recognized at law.

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

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

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

1.36 **Scope of Services.** “Scope of Services” means the document(s) attached as an exhibit (or as exhibits) to the Provider Agreement, which set(s) forth the Services to be rendered and Materials to be provided under this Contract, the time frames within which the Services are to be rendered and the Materials are to be provided, and other requirements Provider must satisfy in rendering the Services and providing the Materials.

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

1.38 **Subcontract.** “Subcontract” means a contract made between Provider and a Subcontractor providing for the completion of some part or parts of the Services or Materials by a Subcontractor.

1.39 **Subcontractor**. "Subcontractor" means a Person performing under a contract with Provider some part of the Services or Materials.

1.40 **Subrecipient Audit Guide**. "Subrecipient Audit Guide" means the document entitled "City of Philadelphia Subrecipient Audit Guide" which specifies the City's audit requirements, as amended from time to time. (Copies are available in the Office of the Director of Finance of the City).

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

1.42 **Suspension Period**. "Suspension Period" means the period designated by the City in a Suspension Notice during which the City has suspended Provider's performance under this Contract.

1.43 **Term**. "Term" has the meaning set forth in Section 2.1 (Initial Term) of the Provider Agreement.

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

## **ARTICLE II: TERM**

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

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

## **ARTICLE III: PROVIDER'S DUTIES AND COVENANTS**

3.1 **Performance Requirements**. Provider shall provide all Services and Materials in accordance with this Contract and applicable professional standards. All payments to Provider are contingent upon satisfactory performance of the terms and conditions set forth in this Contract, as determined by the Director in his or her sole discretion.

**3.2 Compliance with Applicable Law.** Provider shall comply with the requirements of all Applicable Law with respect to Provider's activities, Services, Materials and facilities used in connection with any aspect of this Contract. Provider shall inform the Director, in writing, of any notices of violations of any Applicable Law within forty-eight (48) hours of Provider's receipt thereof, and shall correct any violations within the time prescribed by law, or immediately in the case of any emergency.

**3.3 Additional Services and Materials; Change in Scope of Services.** Except as set forth in Section 5.7 below, any time during the Term of this Contract, the City may, by written change order or request delivered by notice to Provider, make changes to the Scope of Services under this Contract, and the Parties will, if appropriate, negotiate an adjustment in compensation, subject to appropriation of funds therefore by City Council, if necessary. Provider shall not commence to perform or provide, and the City shall not pay for, any services or materials not included in this Contract (the "Additional Services and Materials") unless and until Provider receives written pre-authorization (by change order or other request) from the Director that specifies the Additional Services and Materials to be provided. In no event shall the rates charged by Provider for said Additional Services and Materials exceed the lowest of (a) Provider's then current standard rates for such Services or Materials, (b) such rates as the City and Provider may have negotiated for this Contract, as set forth in the Provider Agreement, or (c) the lowest rate or rates that Provider may then be charging to other purchasers of like Services and Materials. If Provider requests changes to the Scope of Services, Provider must demonstrate to the satisfaction of the City, in its sole discretion, that the changes are necessary and not due to the acts or omissions of Provider. The City shall pay Provider additional compensation above the limit set forth in the Provider Agreement only if and when an Amendment to this Contract is duly executed by the Parties. The City shall have no responsibility or liability whatsoever for any fee, or for costs incurred by Provider for any services, materials or other costs or expenses, other than the Services and Materials and any duly approved Additional Services and Materials.

**3.4 Responsibility.**

(a) Notwithstanding the acceptance and approval by the City of any Services performed or Materials provided, Provider shall continue to be responsible for the professional quality, technical accuracy and the coordination of all Materials and Services provided by Provider under this Contract. Provider shall, without additional compensation, correct any errors, defects, deficiencies or omissions in Provider's Materials and Services.

(b) The City's review, approval or acceptance of, or payment for, any of the Materials and Services required under this Contract shall not constitute any representation, warranty or guaranty by the City as to the substance or quality of the matter reviewed, approved or accepted and shall not be construed to operate as a waiver or estoppel of any of the City's rights or privileges under this Contract or of any cause of action arising out of the performance of this Contract. No Person shall have any right to rely in any way on the City's review, approval or acceptance of Provider's Services or Materials. Provider shall be and remain liable in accordance with this Contract and Applicable Law for all damages to the City caused by Provider or the Services or Materials provided by Provider. Review, approval or acceptance by the City or the Director under this Contract shall not constitute or be construed to constitute

approval otherwise required by any City department, board, commission, or other regulatory agency in the exercise of such department's, board's, commission's or agency's independent regulatory authority or police powers under Applicable Law.

(c) Without limiting Provider's responsibility as set forth above, if any act or omission of Provider or error or deficiency or omission in the Services or Materials provided by Provider requires any change in the Scope of Services or any portion thereof, Provider shall promptly complete such change at no additional cost to the City.

### **3.5 Subcontracts.**

(a) Provider shall not delegate or enter into any Subcontract for the performance of any of its obligations under this Contract, in whole or in part, without on each occasion first obtaining the written consent of the Director.

(b) Provider shall submit to the Director copies of all proposed Subcontract(s) to be entered into by Provider, along with Provider's written request for the City's consent. All such Subcontracts must specify that:

(1) work performed by Subcontractor shall be in conformity with the terms of this Contract;

(2) nothing contained in such Subcontract shall be construed to impair the rights of the City under this Contract;

(3) the City's consent to or approval of any Subcontract shall not create any obligation of the City to any Subcontractor;

(4) nothing contained in such Subcontract, or under this Contract, shall create any obligation of the City to any Subcontractor;

(5) the City shall be expressly designated a third party beneficiary of the Subcontract;

(6) upon request by the City (at the City's sole option) and upon receipt of written notice from the City stating that this Contract between the City and Provider has been terminated, Subcontractor agrees that it will continue to perform its obligations under the Subcontract for the benefit of the City in conformity with the terms and conditions of this Contract, provided the City pays Subcontractor for the Services rendered and Materials provided by Subcontractor from and after the date of the termination of this Contract between the City and Provider at the same rate or in the same amount as set forth in the Subcontract for those Services and Materials provided by Subcontractor after such date of termination;

(7) Subcontractor shall be bound by the same terms, covenants and conditions as Provider under this Contract; including, without limitation, confidentiality,



maintenance and preservation of records, and audit by government representatives, under this Contract;

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

(9) Subcontractor shall not be indebted to the City (to satisfy this requirement, Provider shall include subsection 4.1(g) (No Indebtedness to the City) below, with appropriate adjustments for the identity of the parties, in all Subcontracts that are entered into for work to be performed pursuant to this Contract);

(10) Subcontractor shall comply with Chapter 17-400 of the Code (to satisfy this requirement, Provider shall include subsection 14.2 (a) (Chapter 17-400 of the Code) below, with appropriate adjustments for the identity of the parties, in all Subcontracts that are entered into for work to be performed pursuant to this Contract); and

(11) Subcontractor shall comply with Section 17-104 of the Code (to satisfy this requirement, Provider shall include subsection 14.6 (b) (Section 17-104 of the Code) below, with appropriate adjustments for the identity of the parties, in all Subcontracts that are entered into for work to be performed pursuant to this Contract).

(12) Subcontractor shall comply with Section 14.11 below, if applicable.

(13) Subcontractor shall comply with Chapter 17-1300 of the Code to the extent it is applicable to a Subcontractor that is also a Service Contractor (as defined in Chapter 17-1300) providing Services under the Subcontract, and to subcontractors at any tier that are also Service Contractors providing Services under this Contract. To satisfy these requirements, Provider shall notify its Subcontractors of these provisions; shall incorporate this paragraph and Section 14.13 below, with appropriate adjustments for the identity of the parties, in each Subcontract; and shall require its Subcontractors to include such terms in any lower-tier subcontract that is, or may become, covered by Chapter 17-1300.

(14) Subcontractor is not and shall not become suspended or debarred by the Commonwealth, any other state, or the federal government throughout the term of the Subcontract.

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

(d) Any purported Subcontract made in violation of this Section or of any other Section in this Contract shall be null and void.

(e) **City-Related Agencies.**

(1) If Provider is a City-Related Agency, as defined in Subsection 17-1401(9) of the Code, Provider shall abide by the provisions of Chapter 17-1400 of the Code in awarding any contract(s) pursuant to this Contract as though such contracts were directly subject to the provisions of Chapter 17-1400, except that the exception set forth in Subsection 17-1406(8) shall apply to Provider as if Provider were listed in that subsection.

(2) Unless approved by the City to the contrary, any approvals required by Chapter 17-1400 of the Code to be performed by the City Solicitor shall be performed by Provider by its General Counsel; any approvals required to be performed by the Director of Finance shall be performed by Provider by its Chief Financial Officer; and any approvals required to be performed by the Mayor shall be performed by Provider by its Executive Director.

**3.6 Relationship with the City.** Neither Provider's personnel nor any Subcontractor personnel shall be employees of the City. Provider shall notify the City of any Provider personnel or any Subcontractor personnel who have any employment or other contractual relationship or agency relationship with the City.

**3.7 Time Frame for Submissions.** Provider shall perform any and all Services and shall submit any and all Materials required by this Contract within the time frames set forth in the Scope of Services attached as an exhibit to the Provider Agreement or as mutually agreed upon in writing by the City and Provider. Absent any such written time frames, Provider shall perform its obligations under this Contract diligently and promptly and in any and all events before the scheduled expiration of the Term.

**3.8 Substance Abuse.** If this Contract is funded in whole or in part by the Commonwealth Office of Drug and Alcohol Programs, Provider shall adhere to the provisions set forth in "The Substance Abuse Prevention and Treatment Block Grant Requirements/Prohibitions/Restrictions", which, in such case, is attached as an Exhibit to the Provider Agreement.

**3.9 Prompt Payment by Provider.** Provider agrees to pay promptly all Persons which have furnished labor or supplies in connection with the Services, the Materials or this Contract, including, without limitation, Subcontractors and suppliers. Provider shall provide, upon request of the City, reasonable evidence that these Persons have been fully and timely paid.

**3.10 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, including any Materials, purchased or services, including any Services, rendered in connection with this Contract and unless directed otherwise by the City, Provider shall not file a claim for any sales or use tax

refund subject to this assignment. Provider authorizes the City, in its own name or the name of Provider, to file a claim for a refund of any sales or use tax subject to this assignment.

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

4.1 **Provider's Representations and Covenants.** Provider makes the following representations, warranties and covenants upon which the City has relied as a material consideration for the execution and delivery by the City of this Contract. The representations, warranties and covenants stated below shall continue throughout the Term of this Contract. In the event said representations, warranties and covenants are or become untrue or inaccurate, Provider shall promptly give notice thereof to the City, specifying the manner in which said representation, warranty or covenant is untrue or inaccurate.

(a) **Good Standing.** If Provider is not an individual, Provider is a business corporation, limited liability company, partnership, limited partnership or other business entity duly organized, validly existing and in good standing under the laws of the state of its incorporation or organization. Provider is duly licensed, qualified and in good standing in the Commonwealth of Pennsylvania and in all jurisdictions in which it conducts business activities relating in any way to the performance of the Services and delivery of the Materials under this Contract, including, but not limited to, the jurisdiction in which Provider is organized. If Provider is a not-for-profit corporation or otherwise an entity determined to be tax exempt pursuant to Section 501(c) of the Internal Revenue Code by the Internal Revenue Service, then Provider has procured, and shall maintain in full force and effect, all consents and approvals necessary in connection with such tax-exempt and non-profit status.

(b) **Authority to Act.** Provider has full legal power and authority to execute and deliver this Contract, and provide the Services and Materials as set forth herein. Provider has duly authorized by all necessary actions the execution and delivery of this Contract on behalf of Provider by the individual or individuals signing the Provider Agreement. This Contract is the legal, valid and binding obligation of Provider, enforceable against Provider in accordance with the terms set forth herein. The execution and delivery of this Contract by Provider will not result in a default under or a breach or violation of (1) Provider's certificate or articles of incorporation or bylaws, partnership agreement, limited liability company operating agreement or other pertinent organizational documents, as applicable; (2) any Applicable Law or any judgment, decree order, license, permit or other instrument or obligation to which Provider is now a party or by which Provider may be bound or affected; and (3) Provider's tax exempt status, if applicable. No consent, approval or authorization is required of any regulatory authority or governmental agency, or of any shareholder, partner, member, manager or other party related to Provider.

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



(d) **No Litigation Preventing Performance.** There is no litigation, claim, consent order, settlement agreement, arbitration, agency proceeding, investigation, challenge or other proceeding pending or threatened against Provider, its properties or business or any individuals acting on Provider's behalf, including, without limitation, Subcontractors, in which any Person seeks to enjoin or prohibit Provider from entering into or performing its obligations under this Contract.

(e) **Requisite Licensure and Qualifications.** Provider and all of the Persons acting on Provider's behalf, including, without limitation, Subcontractors, in connection with the Services and Materials under this Contract, possess and, at all times during the Term of this Contract, shall possess all licenses, certifications, qualifications or other credentials required in accordance with Applicable Law and the terms of this Contract, including without limitation all licenses required for eligibility to receive Medical Assistance or other third party reimbursement, to perform the Services and provide the Materials. Provider shall provide the City with copies of all licenses, credentials and certifications required under this Section within five (5) days of request by the City.

(f) **No Adverse Interests.** Except as disclosed in writing and approved in advance by the Director, neither Provider nor any of its directors, officers, members, partners or employees, has any interest, or will acquire any interest, directly or indirectly, that would or may conflict in any manner or degree with the performance or rendering of the Services and Materials.

(g) **No Indebtedness to the City.** Provider and any and all entities controlling Provider, under common control with Provider or controlled by Provider are not currently indebted to the City, and will not at any time during the Term of this Contract (including any Additional Term(s)) be indebted to the City, for or on account of any delinquent taxes (including, but not limited to, taxes collected by the City on behalf of the School District of Philadelphia), water bills, sewer bills, liens, judgments, fees or other debts for which no written agreement or payment plan satisfactory to the City has been established. Provider shall remain current during the Term of this Contract under all such agreements and payment plans, and shall inform the Director in writing of Provider's receipt of any notices of delinquent payments under any such agreement or payment plan within five (5) days after receipt. In addition to any other rights or remedies available to the City at law or in equity, Provider acknowledges that any breach or failure to conform to this representation, warranty and covenant may, at the option of the City, result in the withholding of payments otherwise due to Provider under this Contract or any other agreement with the City under which the City may then owe payment of any kind, and, if such breach or failure is not resolved to the City's satisfaction within a reasonable time frame specified by the City in writing, may result in the offset of any such indebtedness against said payments or the termination of this Contract for default (in which case Provider shall be liable for all excess costs and other damages resulting from the termination), or both. In addition, Provider understands that false certification, representation or warranty by it is subject to prosecution under Title 18 Pa.C.S.A. § 4904.

(h) **Commercial Activity License.** If Provider is a "business" as defined in Section 19-2601 of the Code, Provider has and shall maintain during the Term of this Contract, a



valid, current Commercial Activity License, issued by the City's Department of Licenses and Inspections, to do business in the City.

(i) **Subcontractor Licensure; No Indebtedness to the City.** Each Subcontractor, if any, holds a valid, current Commercial Activity License to do business in the City, if required by Applicable Law. To the best of Provider's knowledge, information and belief, the representations made in any Subcontract that Subcontractor is not indebted to the City are true and correct.

(j) **Non-Suspension; Debarment.** Provider and all of the individuals acting on Provider's behalf including, without limitation, Subcontractors, are not under suspension or debarment from doing business with the Commonwealth of Pennsylvania, any other state, or the federal government, or any department, agency or political subdivision of any of the foregoing. If Provider cannot so warrant, then Provider shall submit to the Responsible Official a full, complete written explanation as to why Provider cannot so warrant. Provider shall reimburse the City for the reasonable cost of investigation incurred by the City or the Commonwealth of Pennsylvania Office of Inspector General for investigation of Provider's compliance with the terms of this or any other contract between Provider and the City which results in the suspension or debarment of Provider. Such costs shall include, but are not limited to, salaries of investigators, including overtime, travel and lodging expenses, expert witness and documentary fees and attorney fees and expenses. Provider shall not be responsible for costs of investigations which do not result in Provider's suspension or debarment.

## **ARTICLE V: COMPENSATION**

**5.1 Certification of Available Funds.** Provider acknowledges that payments under this Contract shall not exceed the amount certified by or on behalf of the City's Director of Finance as available for this Contract. A copy of the form signed by the Finance Department showing the amount of currently available funds will be attached to the fully executed Contract returned to Provider. During the Initial Term and any Additional Term(s) of this Contract, the City reserves the right to fund any remaining balance of this Contract amount in varying amounts from time to time as funds become available, not to exceed in total the maximum amount stated in this Contract. Provider agrees that the City shall not be obligated to fund this Contract except out of funds certified by or on behalf of the City's Director of Finance as currently available, even if those funds are less than the maximum amount stated in this Contract. If sufficient funds are not certified as available at any time, the City may exercise its options described in Section 5.2 (Unavailability of Funds) below.

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

(a) Terminate this Contract effective upon a date specified in a Termination Notice; or

(b) Continue this Contract by reducing, through written notice to Provider, the amount of this Contract and Services and Materials, consistent with the nature, amount and circumstances of available funding.

The City's exercise of either option under this Section shall not affect any obligations or liabilities of either Party accruing prior to such termination or reduction of Services or Materials. Provider shall be compensated in accordance with the terms of this Contract for Services and Materials satisfactorily performed and delivered prior to such termination or modification of this Contract under this Section.

**5.3 Crossing Fiscal Years.** If any portion of the compensation set forth in this Contract is to be paid in any City fiscal year following the fiscal year in which the Initial Term or any Additional Term of this Contract commences (in either case, "Appropriated Fiscal Year"), Provider understands and agrees that the portion of the compensation under this Contract payable with City funds for any period following the Appropriated Fiscal Year is subject to the discretion of City Council as to future appropriations. If, for any reason, funds for any such portion of the compensation are not appropriated by City Council in any Fiscal Year following the Appropriated Fiscal Year, this Contract and the City's liability under this Contract shall automatically terminate at the end of the then current Appropriated Fiscal Year; provided, however, that Provider shall be compensated in accordance with the terms of this Contract for Services and Materials satisfactorily performed and delivered prior to the end of the then current Appropriated Fiscal Year.

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

**5.5 Advances.** The City will make cash advances only to the extent set forth in the Provider Agreement. Any advance to Provider shall be repaid by Provider to the City by reducing subsequent monthly payments by the City to Provider during or before the last quarter by a proportionate amount of the advance. The entire advance amount must be repaid no later than June 30th of the current fiscal year.

**5.6 Income From Contract Funds.** Provider shall provide a written report to the City accounting for all income derived either directly or indirectly by Provider from the use of funds paid to Provider under this Contract or with respect to any activities of Provider in connection with this Contract, including but not limited to sale, publication, registration fees, interest, program service fees, and service charges on fees. If required by the City, at the City's sole discretion, Provider shall use all such income to set off against and reduce payments to Provider otherwise due under this Contract.

**5.7 Maximum Daily Rate, Days of Care and/or Units of Service.** The City shall not compensate Provider for any increases in the maximum daily rate, number of days of care or units of service set forth in the Provider Agreement without the prior written approval of the Director. By execution of this Contract, Provider agrees that the City may modify, upon issuance of a Modification Notice to Provider, the maximum daily rate, number of days of care

or units of service that the City agrees to purchase under this Contract. In the event the maximum daily rate, number of days of care or units of service are increased, the date of such increase shall be the date stated in the Modification Notice. Any decrease in the maximum daily rate, number of days of care or units of service shall be made upon issuance of a Modification Notice not less than thirty (30) days prior to the effective date of such decrease.

## **ARTICLE VI: AUDITS; INSPECTION RIGHTS; RECORDS**

6.1 **City Audit.** From time to time during the Initial Term and any Additional Term(s) of this Contract, and for a period of five (5) years after the expiration or termination of this Contract, the City may audit any and all aspects of Provider's performance under this Contract, including but not limited to its billings and invoices. Audits may be conducted by representatives, agents or Contractors of the City, including the Department, or other authorized City representatives including, without limitation, the City Controller. If requested by the City, Provider shall submit to the City all vouchers or invoices presented for payment pursuant to this Contract, all cancelled checks, work papers, books, records and accounts upon which the vouchers or invoices are based, and any and all documentation and justification in support of expenditures or fees incurred pursuant to this Contract. All books, invoices, vouchers, records, reports, cancelled checks and other materials shall be subject to periodic review or audit by the City.

6.2 **Inspection.** All Services and Materials shall be subject to inspection and review by City, federal and state representatives, as may be applicable, or their designees, at the offices of Provider in the City, or in another location with the City's consent. Provider shall cooperate with all City, state and federal inspections and reviews conducted in accordance with the provisions of this Contract. Such inspection and review of Provider's Services and Materials, including, without limitation, programs and facilities, shall be in the sole discretion of the inspecting or reviewing entity. Such inspection or review may include, without limitation, meetings with consumers, review of staffing ratios and job descriptions, and meetings with any of Provider's staff members who are either directly or indirectly involved in providing Services or Materials.

6.3 **Availability of Records.** Provider shall make available, in the City at reasonable times during the Term of this Contract and for the period set forth in Section 6.4 (Retention of Records) below, all records pertaining to this Contract for the purpose of inspection, audit or reproduction by any authorized representative (including any agent or Contractor and the City Controller) of the City, the Commonwealth of Pennsylvania Auditor General, and any other federal and state auditors, as may be applicable.

6.4 **Retention of Records.** Provider shall retain all records, books of account and documentation pertaining to this Contract for a period of five (5) years following expiration or termination of this Contract; however, if any litigation, claim or audit is commenced prior to expiration of said five (5) year period, then the records shall be retained until all litigation, claims or audit findings have been completely terminated or resolved, without right of further appeal, or if Applicable Law requires a longer period, then the records shall be retained for such longer period.



## 6.5 Independent Audit.

(a) **Combined City Contracts That Total Less Than \$300,000 in a Fiscal Year.** If requested by the City, Provider shall submit to the City an Independent Audit Report prepared and certified by a Certified Public Accountant (CPA) acceptable to the City. The Independent Audit Report shall be prepared in accordance with the following audit requirements:

(1) Provider shall ensure that a final audit of the financial transactions relating to each City contract shall be performed in compliance with all requirements of the Subrecipient Audit Guide, which is incorporated in this Contract by reference. This audit shall verify that all invoiced costs are actual, authorized and eligible for reimbursement in accordance with each City contract's requirements.

(2) Provider agrees to make full and prompt refund to the City of amounts of money which result from audit exceptions due to Provider's performance hereunder, or result from non-compliance with Applicable Law and this Contract, including, without limitation, the Contract Cost Principles.

(3) The City reserves the right to disallow fees paid by Provider for audit services under this Contract if the final audit report is not submitted in the manner and within the time frame prescribed in this Section or if subsequent review of audit work papers discloses deficiencies in required performance.

(4) Provider shall submit all audit documentation, as described above, pertaining to this Contract no later than one hundred twenty (120) days after the end of the Term of this Contract, unless a different time is approved, in writing, in accordance with City's audit policies promulgated by the Deputy Mayor's Office for Health and Opportunity, which are incorporated in this Contract by reference. Provider's failure to submit the audit documentation in the time required shall be a basis for withholding processing of invoices for payment, and other remedies the City has at its discretion in accordance with this Contract and the City's audit policies.

(b) **Combined City Contracts That Total \$300,000 or More in a Fiscal Year.** Provider shall submit to the City an Independent Audit Report prepared and certified by a Certified Public Accountant (CPA) acceptable to the City. The Independent Audit Report shall be prepared in accordance with the following audit requirements:

(1) Provider shall ensure that an audit of the financial transactions relating to each City contract shall be performed.

(a) For subrecipients, the audit shall be in compliance with all requirements of the Subrecipient Audit Guide, which is incorporated in this Contract by reference. This audit shall verify that all invoiced costs are actual, authorized and eligible for reimbursement in accordance with this Contract's requirements.

(b) For Vendors, these examinations shall be conducted in accordance with the American Institute of Certified Public Accountants' Statements on Standards for Attestation Engagements (SSAE), Section 601, *Compliance Attestation*. The initial SSAE,

Section 601, compliance examination shall be completed for the official annual reporting period of this Contract and conducted annually thereafter. The independent auditor shall issue a report on its compliance examination, as defined in SSAE, Section 601.

(c) For Vendor-Service Organizations, these examinations shall be conducted in accordance with SSAE, Section 601. The Provider shall also ensure that an independent auditor performs an audit of its policies and procedures applicable to the processing of transactions. The audit shall be performed in accordance with the Statement on Auditing Standards 70 (SAS 70), *Reports on the Processing of Transactions by Service Organizations*, which is incorporated in this Contract by reference. The initial SAS 70 audit shall be completed for the official annual reporting period of this Contract and conducted annually thereafter. The independent auditor shall issue reports on its compliance examination, as defined in the SSAE, Section 601, and on the policies and procedures placed in operation and the tests of operating effectiveness, as defined in SAS 70.

(d) Providers shall adhere to all other auditing requirements imposed by state and/or federal legislation and regulation, including but not limited to audit submission timelines, on funding source(s) that Provider receives through this Contract, if the funding source(s) are comprised of state and/or federal funds.

(2) Provider agrees to make full and prompt refund to the City of amounts of money which result from audit exceptions due to Provider's performance hereunder, or result from non-compliance with Applicable Law and this Contract, including, without limitation, the Contract Cost Principles.

(3) The City reserves the right to disallow fees paid by Provider for audit services under this Contract if the final audit report is not submitted in the manner and time frame prescribed in this Section or if subsequent review of audit work papers discloses deficiencies in required performance.

(4) Provider shall submit all audit documentation, as described above, pertaining to this Contract no later than one hundred twenty (120) days after the end of the Term of this Contract, unless a different time is approved, in writing, in accordance with City audit policies promulgated by the Deputy Mayor's Office for Health and Opportunity or designee, which are included in this Contract by reference. Provider's failure to submit the audit documentation in the time required shall be a basis for withholding processing of invoices for payment, and other remedies the City has at its discretion in accordance with this Contract and the City's audit policies.

**6.6 Audits Pursuant to Section 6-400 of the Home Rule Charter.** Any Provider that is an Agency, as defined in Section 6-400 of the Charter, shall permit the City Controller to audit its affairs as authorized in Section 6-400 during the Initial Term or any Additional Term. Under Section 6-400, an Agency is any entity that a) receives funds from the City, and either b) is created by, or whose board of directors is in whole or part appointed by, one or more City officials or bodies; or c) is organized pursuant to legal authority granted to it by City ordinance.

## ARTICLE VII: ASSIGNMENT

7.1 **Assignment by Provider.** Provider shall not assign this Contract, or any part of this Contract, or delegate performance of this Contract (other than to its own work forces), without obtaining the prior written consent of the Director. The decision whether to consent to an assignment, the timing of consent (if any), and conditions to such consent, if any, shall each be at the City's sole discretion. Any consent to the assignment of any monies to be paid under this Contract shall not relieve Provider from the faithful performance of any of its obligations under this Contract or change any of the terms and conditions of this Contract. Any purported assignment in violation of this provision shall be void and of no effect. The City's consent to an assignment shall not release the assignor from any liability accrued or thereafter accruing under this Contract. Any assignment or purported assignment shall be in writing and shall contain an express assumption by the assignee of all liability accrued or thereafter accruing under this Contract. Consent by the City to any assignment shall not be deemed a course of conduct, dealing or performance with respect to any other assignment or proposed assignment. For purposes of this Section 7.1 (Assignment by Provider), an assignment includes the acquisition of the Provider, or a controlling interest therein, through a corporate or other merger, and the appointment of a receiver or bankruptcy trustee, and the transfer of this Contract or Provider in any bankruptcy or other insolvency proceeding.

7.2 **Applicability in Case of Bankruptcy or Insolvency.** A receiver or trustee of or for Provider in any federal or state bankruptcy, insolvency or other proceedings concerning Provider shall comply with the requirements set forth in Section 7.1 (Assignment by Provider) above.

7.3 **Personal Services.** Provider acknowledges that the Services and Materials are the personal services of Provider and the City shall have no obligation to accept performance by a third party without the Director's prior and express written consent.

## ARTICLE VIII: INDEPENDENT CONTRACTOR; INDEMNIFICATION; LITIGATION COOPERATION

8.1 **Independent Contractor.** Provider is an independent Contractor and shall not in any way or for any purpose be deemed or intended to be an employee or agent of the City. Neither Provider nor its agents, employees or Subcontractors shall in any way represent that they are acting as employees, officials or agents of the City.

8.2 **Indemnification.** Provider shall indemnify, defend and hold harmless the City, its officers, employees and agents, from and against any and all losses, costs (including, but not limited to, litigation and settlement costs and counsel fees and expenses), claims, suits, actions, damages, liability and expenses, occasioned wholly or in part by Provider's act or omission or negligence or fault or the act or omission or negligence or fault of Provider's agents, Subcontractors, independent contractors, suppliers, employees or servants in connection with this Contract, including, but not limited to, those in connection with loss of life, bodily injury, personal injury, damage to property, contamination or adverse effects on the environment, intentional acts, failure to pay any Subcontractors and suppliers, any breach of this Contract, and



any infringement or violation of any proprietary right (including, but not limited to, patent, copyright, trademark, service mark and trade secret).

**8.3 Litigation Cooperation.** If, at any time, the City becomes involved in a dispute or receives notice of a claim or is involved in litigation concerning the Services and Materials provided under this Contract, the resolution of which requires the services or cooperation of Provider, and Provider is not otherwise obligated to indemnify and defend the City pursuant to the provisions of Section 8.2 (Indemnification) above, Provider agrees to provide such services and to cooperate with the City in resolving such claim or litigation as Additional Services and Materials under Section 3.3 (Additional Services and Materials; Change in Scope of Services) above.

**8.4 Notice of Claims.** If Provider receives notice of a legal claim against it in connection with this Contract, Provider shall submit appropriate written notice of such claim to its insurance carrier within the time frame required for submission of claims by the applicable insurance policy and, within ten (10) business days of receipt of notice of the claim, to the Director.

## **ARTICLE IX: INSURANCE**

**9.1 Insurance.** Unless otherwise approved by the City's Risk Management Division in writing, Provider shall, at its sole cost and expense, procure and maintain, or cause to be procured and maintained, in full force and effect, the types and minimum limits of insurance specified below, covering Provider's performance of the Services and the delivery of the Materials. Provider shall procure, or cause to be procured, all insurance from reputable insurers admitted to do business on a direct basis in the Commonwealth of Pennsylvania or otherwise acceptable to the City. All insurance herein, except Professional Liability insurance, shall be written on an "occurrence" basis and not a "claims-made" basis. In no event shall Provider perform any Services or other work until Provider has delivered or caused to be delivered to the City's Risk Management Division the required evidence of insurance coverages. All insurance coverages shall provide for at least thirty (30) days prior written notice to be given to the City in the event coverage is materially changed, cancelled, or non-renewed. The City, its officers, employees, and agents, shall be named as additional insureds on the General Liability Insurance policy. Provider shall also deliver or cause to be delivered to the City an endorsement stating that the coverage afforded the City and its officers, employees and agents, as additional insureds, will be primary to any other coverage available to them and that no act or omission of the City, its officers, employees or agents shall invalidate the coverage.

### **(a) Workers' Compensation and Employers' Liability.**

(1) Workers' Compensation: Statutory Limits

(2) Employers' Liability: \$100,000 Each Accident - Bodily Injury by Accident; \$100,000 Each Employee - Bodily Injury by Disease; and \$500,000 Policy Limit - Bodily Injury by Disease.

(3) Other states insurance including Pennsylvania.

**(b) General Liability Insurance.**

(1) Limit of Liability: \$1,000,000 per occurrence combined single limit for bodily injury (including death) and property damage liability; \$1,000,000 advertising injury; \$2,000,000 general aggregate and \$1,000,000 aggregate for products and completed operations. The City may require higher limits of liability if, in the City's sole discretion, the potential risk warrants.

(2) Coverage: Premises operations; blanket contractual liability; personal injury liability; products and completed operations; independent contractors, employees and volunteers as additional insureds; cross liability; and broad form property damage (including completed operations).

**(c) Automobile Liability Insurance.**

(1) Limit of Liability: \$1,000,000 per occurrence combined single limit for bodily injury (including death) and property damage liability.

(2) Coverage: Owned, non-owned, and hired vehicles.

**(d) Professional Liability Insurance.**

(1) Health Care Providers subject to the Medical Care Availability and Reduction of Error (MCARE) Act, as amended:

(.a) Hospital and Nursing Homes including officers and employees: \$1,000,000 each occurrence, \$4,000,000 annual aggregate

(.b) Individuals and Professional Corporations: \$1,000,000 each occurrence; \$3,000,000 annual aggregate

(2) All Health Care and Human Services Providers not subject to the MCARE Act, as amended: \$1,000,000 each occurrence; \$3,000,000 annual aggregate.

Professional Liability Insurance may be written on a claims-made basis provided that coverage for occurrences happening during the performance of the Services required under this Agreement shall be maintained in full force and effect under the policy or "tail" coverage for a period of at least two (2) years after completion of the Services.

**9.2 Self-Insurance.** Provider may not self-insure any of the coverages required under this Contract without the prior written approval of the Director 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 Director and the City's Risk Management Division, prior to Provider's commencement of Services or delivery of any Materials hereunder, a certified copy of Provider's most recent audited financial statement, and such other evidence of its qualifications to act as self-insurer (e.g. state approval) as may be requested by the Director or the City's Risk Manager. In the



event the City grants such approval, Provider understands and agrees that the City, its officers, employees and agents shall be entitled to receive the same coverages and benefits under Provider's self-insurance program that they would have received had the insurance requirements set forth above been satisfied by a reputable insurer admitted and duly authorized to do business in the Commonwealth of Pennsylvania or otherwise acceptable to the City. If at the time of commencement of the Term of this Contract, Provider self-insures its professional liability or workers' compensation and employers' liability coverage, Provider may, in lieu of the foregoing, furnish to the City a current copy of the state certification form for self-insurance or a current copy of the State Insurance Director's letter of approval, whichever is appropriate. The insurance (including self-insurance) requirements set forth herein are not intended and shall not be construed to modify, limit or reduce the indemnifications made in this Contract by Provider to the City, or to limit Provider's liability under this Contract to the limits of the policies of insurance (or self-insurance) required to be maintained by Provider hereunder

**9.3 Evidence of Insurance Coverage.** Certificates of insurance evidencing the required coverages must specifically reference the City contract number for which they are being submitted. The original certificates of insurance must be submitted to the City's Risk Manager at the following address:

The City of Philadelphia  
Finance Department  
Division of Risk Management  
1515 Arch Street, 14<sup>th</sup> Floor  
Philadelphia, PA 19102-1579  
(Fax No.: 215-683-1705).

A copy of the certificates of insurance shall be submitted to the Director at the address of the Department set forth in the Notice Section of the Provider Agreement. Both submissions must be made at least ten (10) days before work is begun and at least ten (10) days before each Additional Term. The City, in its sole discretion, may waive the ten (10) day requirement for advance documentation of coverage in situations where such waiver will benefit the City, but under no circumstances shall Provider actually begin work (or continue work, in the case of an Additional Term) without providing the required evidence of insurance. The actual endorsement adding the City as an additional insured must specifically reference the City contract number and be submitted to the City's Risk Management Division at the above address. The City reserves the right to require Provider to furnish certified copies of the original policies of all insurance required under this Contract at any time upon ten (10) days written notice to Provider.

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

Evidence of the existence of the fidelity bond or crime insurance shall be submitted to the City prior to the commencement of Services in conformity with the requirements of Section 9.3 (Evidence of Insurance Coverage) above.

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

### **10.1 Ownership of Materials.**

(a) Subject to Applicable Law, all Materials shall be the sole and absolute property of the City and the City shall have title thereto and unrestricted use thereof. To the extent that any Materials relating to this Contract developed by or for Provider embody a copyrightable work, including, but not limited to, a "compilation" as that term is used in 17 U.S.C. §101, as amended from time to time, the City and Provider agree that such copyrightable work(s) shall be considered as one or more "works made for hire" by Provider for the City, as that term is used in 17 U.S.C. §§101 and 201(b), as amended from time to time. To the extent that any Materials relating to this Contract developed by or for Provider embody one or more copyrightable works but are neither a "compilation" nor any other form of "work made for hire," Provider hereby assigns, and agrees to execute instruments evidencing such assignment, all copyrights in all of such works to the City. Provider shall cause all Materials developed or produced by Provider and any Subcontractor in connection with this Contract which embody a copyrightable work to bear the following designation: "© \_\_\_\_\_ The City of Philadelphia" [complete then current year in blank line].

(b) Without limitation of the foregoing, and in order to ensure continuity of care, medical records may be retained in the custody and control of Provider, subject to Applicable Law. Provider shall allow the City unlimited access to all medical records, and if copies are required they shall be made at Provider's expense.

(c) Provider shall make available to the City, upon the City's request, a copy of any Materials prepared by or for Provider in performance of this Contract, at no cost to the City.

(d) If this Contract is funded in whole or in part by the Commonwealth Office of Drug and Alcohol Programs, Provider shall, and shall require its Subcontractors to, place in a conspicuous place on any data, material, media, curricula, instruments, reports or other material, developed or delivered under this Contract, a statement that such work was "performed under the auspices of the Commonwealth Office of Drug and Alcohol Programs" and the City. Otherwise, all notices, informational pamphlets, press releases, research reports and similar public notices prepared and released by Provider shall include the statement, "This project is funded in part under a contract with The City of Philadelphia, Office of Behavioral Health/Intellectual disAbility Services."

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

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

10.2 **Non-Disclosure.** During the Initial Term and any Additional Term(s) of this Contract and thereafter, except with the prior written consent of the Director, Provider will not:

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

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

## **ARTICLE XI: EVENTS OF DEFAULT**

11.1 **Events of Default.** Each of the following shall be an Event of Default by Provider under this Contract:

(a) Failure by Provider to comply with any provision of this Contract,

(b) Occurrence of an Event of Insolvency with respect to Provider,

(c) Falseness or inaccuracy of any warranty or representation of Provider contained in this Contract or in any other document submitted to the City by Provider,

(d) Any act, omission, or misrepresentation which renders the Provider ineligible for a City contract or renders the contract voidable under Chapter 17-1400 of the Code,

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

(f) A violation of law which results in a guilty plea, a plea of nolo contendere, or conviction of a criminal offense by Provider, its directors, employees, or agents (1) directly or indirectly relating to this Contract or the Services or Materials provided under this Contract, whether or not such offense is ultimately adjudged to have occurred; or (2) which adversely affects the performance of this Contract,

(g) Indictment of or other issuance of formal criminal charges against Provider, its directors, employees or agents for any criminal offense or any other violation of Applicable Law directly relating to this Contract or Services or Materials, or which adversely affects Provider's

performance of this Contract in accordance with its terms, whether or not such offense or violation is ultimately adjudged to have occurred, and/or

(h) Debarment or suspension of Provider or any agent, employee or Subcontractor of Provider under any federal, state or local law, rule or regulation.

11.2 **Notice and Cure.** The City agrees that the City will not exercise any right or remedy provided for in Section 12.1 (The City's Remedies) below because of any Event of Default unless the City shall have first given written notice of the Event of Default to Provider, and Provider, within a period of ten (10) days thereafter, or such additional cure period as the City may authorize, shall have failed to correct the Event of Default; provided, however, that no such notice from the City shall be required nor shall the City permit any period for cure if:

(a) Provider has temporarily or permanently ceased providing Services and Materials;

(b) The Event of Default creates an emergency which requires, as determined by the City in the City's sole discretion, immediate exercise of the City's rights or remedies;

(c) The City has previously notified Provider in the preceding twelve (12) month period of any Event of Default under this Contract;

(d) An Event of Default occurs as described in 11.1(e) above or 11.1(f) above; or

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

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

## **ARTICLE XII: REMEDIES**

### **12.1 The City's Remedies.**

(a) In the event Provider has committed or permitted an Event of Default and has been notified thereof in accordance with Section 11.2 (Notice and Cure) above, then the City may, but shall not be obligated to, without further notice to or demand on Provider and without waiving or releasing Provider from any of its obligations under this Contract:

(1) perform (or cause a third party to perform) this Contract, in whole or in part, including, without limitation, obtaining or paying for any required insurance or performing other acts capable of performance by the City. Provider shall be liable to the City for all sums paid by the City and all expenses incurred by the City (or a third party) pursuant to this Section 12.1(a)(1), together with interest at the highest legal rate permitted in the Commonwealth of Pennsylvania thereon from the date the City or its agent incurs such costs. The City shall not in any event be liable for inconvenience, expense or other damage incurred by Provider by reason



of the City's performance or paying such costs or expenses, and the obligations of Provider under this Contract shall not be altered or affected in any manner by the City's exercise of its rights under this Section 12.1 (The City's Remedies);

(2) withhold payment of, or offset against, any funds payable to or for the benefit of Provider;

(3) collect, foreclose or realize upon any bond, collateral, security or insurance provided by or on behalf of Provider; or

(4) exercise any other right the City has or may have at law, in equity, or under this Contract.

(b) In the event Provider has committed or permitted an Event of Default and has been notified thereof in accordance with Section 11.2 (Notice and Cure) above, then the City may, but shall not be obligated to, without waiving or releasing Provider from any of its obligations under this Contract, terminate or suspend this Contract in whole or in part, as set forth more fully in Article XIII (Termination and Suspension) below. In the event of partial termination or suspension, Provider shall continue the performance of this Contract to the extent not terminated or suspended. If this Contract is terminated, the City shall issue a written Termination Notice which shall set forth the effective date of the termination.

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

**12.2 Concurrent Pursuit of Remedies; No Waiver.** The City may exercise any or all of the remedies set forth in this Article XII (Remedies), each of which may be pursued separately or in conjunction with such other remedies as the City in its sole discretion shall determine. No extension or indulgence granted by the City to Provider shall operate as a waiver of any of the City's rights in connection with this Contract. The rights and remedies of the City as described in this Article XII (Remedies) and as described elsewhere in this Contract shall not be exclusive and are in addition to any other rights or remedies available to the City under this Contract at law or in equity.

## **ARTICLE XIII: TERMINATION AND SUSPENSION**

**13.1 Termination or Suspension for Convenience.** In addition to its rights under Articles V (Compensation) and XII (Remedies) above, the City shall have the right to terminate this Contract or suspend Provider's performance under this Contract at any time during the Initial Term or any Additional Term(s) of this Contract, for any reason, including, without limitation, the convenience of the City. If this Contract is terminated solely for the City's convenience, the City shall issue a written Termination Notice, which shall set forth the effective date of the

termination. If this Contract is suspended solely for the City's convenience, the City shall issue a written Suspension Notice, which shall set forth the effective date of the suspension.

### **13.2 Provider Responsibilities Upon Termination or Suspension.**

(a) Upon the City's transmission of a Termination Notice or a Suspension Notice under any provision of this Contract, Provider and its agents, employees and Subcontractors, shall

(1) take immediate action in an orderly manner to discontinue Services and Materials, and demobilize work forces to minimize the incurrence of costs; and

(2) upon request by the City by notice to Provider, collect, assemble and transmit to the City all Materials in such state of completion as may exist as of the effective date of the termination or suspension. All such Materials shall be clearly labeled and indexed to the satisfaction of the Director and delivered to the Director by Provider on or before the date set forth in the Termination Notice for delivery of the Materials or, if no such date is set forth in the Termination Notice, then before the effective date of termination set forth in the Termination Notice. Provider waives and releases any and all right to any retaining or charging liens or similar right or remedy in favor of Provider.

(b) The City's termination or suspension of this Contract shall not affect any obligations or liabilities of either Party accruing prior to the effective date of such termination or suspension.

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

### **13.3 Payment of Provider upon Termination or Suspension.**

(a) Upon termination or suspension of this Contract by the City for an Event of Default, Provider shall be entitled to payment of such an amount, to be determined by the City and subject to audit, as shall compensate it for the work satisfactorily performed prior to the termination date; provided, however, that:

(1) no allowance shall be included for termination expenses or for anticipated profits, unabsorbed or under absorbed overhead, or unperformed Services; and

(2) the City shall deduct from any amount due and payable to Provider prior to the termination date, but withheld or not paid, the total amount of fees, costs or additional expenses incurred by the City in order to satisfactorily complete the Services and Materials required to be performed by Provider under this Contract, including the expense of engaging another provider for this purpose, and such other damages, costs, losses and expenses of the City as may be incurred or result from such termination for an Event of Default.

(b) In the event of termination or suspension of this Contract by the City for the City's convenience, Provider shall be paid such an amount as shall compensate Provider for the portion of the Services satisfactorily performed and Materials satisfactorily delivered prior to the date of termination. The City shall not pay Provider any amount for Provider's termination or suspension expenses or anticipated profits, unabsorbed or underabsorbed overhead or unperformed Services and Materials not satisfactorily delivered.

**13.4 Suspension.** Suspension of Provider's performance under this Contract after an Event of Default shall not constitute a waiver or release of any liability of Provider for such Event of Default or any of the City's damages or other remedies arising out of such Event of Default; nor shall such suspension be deemed an election of remedies in derogation of any other remedy. Provider acknowledges that the City shall have the right, at its sole discretion, to suspend Provider's performance in the event City Council does not appropriate funds for the performance of this Contract. In the event that the City issues a Suspension Notice to Provider, such suspension shall continue from the effective date specified in the Suspension Notice until a date specified in the Suspension Notice which shall be not more than one hundred and eighty (180) days after the effective date (the "Suspension Period"). On or prior to the expiration of the Suspension Period, the City shall either terminate this Contract by giving a Termination Notice pursuant to Section 13.1 (Termination or Suspension for Convenience) above, or by notice to Provider, instruct Provider to resume the delivery of Services and Materials pursuant to this Contract upon the expiration of the Suspension Period. After issuing a Suspension Notice, the City shall pay any invoices submitted by Provider for Services rendered prior to the commencement of the Suspension Period or otherwise payable by the City to Provider under this Contract, subject to all of the City's rights and remedies against Provider, including but not limited to its rights of set off and its right to review and accept Services and Materials prior to payment therefore.

#### **ARTICLE XIV: ADDITIONAL REPRESENTATIONS AND COVENANTS OF PROVIDER RELATING TO CERTAIN APPLICABLE LAWS**

In addition to the representations, warranties, and covenants made by Provider in Article IV, Provider further represents, warrants, and covenants that, to the extent of their applicability to Provider, Provider is in compliance with the laws, ordinances, regulations and executive orders described below. By executing this Contract, Provider thereby certifies to such compliance. Provider further certifies that the representations, warranties, and covenants provided pursuant to this Article shall continue to remain true throughout the Term of this Contract or any other period of time required by such laws. In the event said representations, warranties, and covenants are or become untrue or inaccurate, Provider shall promptly give notice thereof to the City, specifying the manner in which said representation, warranty, or covenant is untrue or inaccurate. The provisions of this Article are not intended to limit the applicability of the other provisions of this Contract, including, without limitation, Provider's agreement to comply with all Applicable Law.

#### **14.1 Non-Discrimination; Fair Practices.**

(a) This Contract is entered into under the terms of the Charter, the Fair Practices Ordinance (Chapter 9-1100 of the Code) and the Mayor's Executive Order No. 04-86 (the "Executive Order"), as they may be amended from time to time, and in performing this Contract, Provider shall not discriminate or permit discrimination against any individual because of race, color, religion, ancestry or national origin, sex, gender identity, sexual orientation, age or disability. Nor shall Provider discriminate or permit discrimination against individuals in employment, housing and real property practices, and/or public accommodation practices whether by direct or indirect practice of exclusion, distinction, restriction, segregation, limitation, refusal, denial, differentiation or preference in the treatment of a person on the basis of actual or perceived race, ethnicity, color, sex, sexual orientation, gender identity, religion, national origin, ancestry, age, disability, marital status, source of income, familial status, genetic information or domestic or sexual violence victim status, or Human Immunodeficiency Virus (HIV) infection, or engage in any other act or practice made unlawful under the Charter, Chapter 9-1100, the Executive Order, or under the nondiscrimination laws of the United States or the Commonwealth of Pennsylvania. In the event of any breach of this Section 14.1 (Non-Discrimination; Fair Practices), the City may, in addition to any other rights or remedies available under this Contract, at law or in equity, suspend or terminate this Contract forthwith.

(b) Irrespective of the applicability to Provider of Chapter 9-1100 of the Code, in connection with providing Services under the Contract, Provider shall not engage in any of the following employment practices because of race, color, sex, sexual orientation, gender identity, religion, national origin, ancestry, age, handicap (including, but not limited to, HIV infection), disability, or marital status (together, for purposes of this paragraph (b), the "Protected Categories" except that sexual orientation and marital status shall not be Protected Categories for purposes of bona fide employee benefits plans):

(1) Refuse to hire, discharge, or discriminate against any person with respect to tenure, promotions, terms, conditions or privileges of employment or with respect to any matter directly or indirectly related to employment; or

(2) Establish, announce or follow a policy of denying or limiting, through a quota system or otherwise, the employment or membership opportunities, of any individual or group; or

(3) Prior to employment or admission to membership:

(.a) make any inquiry concerning, or make any record of any of the Protected Categories of any applicant for employment or membership, except and to the extent a particular Protected Category is a bona fide occupational qualification, or

(.b) use any form of application for employment of personnel or membership blanks containing questions or entries regarding Protected Categories except and to the extent of such a bona fide occupational qualification, or



(.c) cause to be printed, published, or circulated any notice or advertisement relating to employment or membership indicating any preference, limitation, specification or discrimination based upon Protected Categories except and to the extent of such a bona fide occupational qualification; or

(4) Fail or refuse to classify properly or refer any person for employment, or otherwise discriminate against any person, except and to the extent of a bona fide occupational qualification; or

(5) Violate any provision of Chapter 9-3200 of the Code, entitled "Entitlement To Leave Due To Domestic Or Sexual Violence;" or

(6) Penalize or discriminate in any manner against any individual because the individual has opposed any practice forbidden by this Section or has made a charge, testified or assisted in any manner in any investigation, proceeding or hearing hereunder; or

(7) Aid, abet, incite, compel or coerce the doing of any employment practice prohibited under this Section, or obstruct or prevent any person from complying with the provisions of this Section, or attempt directly or indirectly to commit any act prohibited under this Section.

(c) Irrespective of the applicability to Provider of Chapter 9-1100 of the Code, in connection with providing Services under the Contract, Provider shall not engage in any of the following housing practices because of race, color, sex, sexual orientation, gender identity, religion, national origin, ancestry, age, handicap (including, but not limited to, HIV infection), disability, marital status, the presence of children or sources of income (together, for purposes of this paragraph (c), the "Protected Categories"):

(1) Refuse to sell, rent, lease or in any way discriminate because of any Protected Category in the terms, conditions, or privileges of the sale, rental or lease of any commercial housing accommodation or other real property or in the furnishing of facilities or services in connection therewith; or

(2) Discriminate against any person in lending, guaranteeing loans, accepting mortgages or otherwise making available funds for the purchase, acquisition, construction, rehabilitation, repair or maintenance of any housing accommodation; or

(3) Make, print or circulate or cause to be made, printed or circulated any written or oral statement, advertisement, or publication, or to use any form of application for the purchase, rental or lease of housing accommodations or to make real estate appraisals, financial or credit reports or any record or inquiry in connection with the prospective purchase, rental or lease of housing accommodations which express, directly or indirectly, any limitation, specification or discrimination as to any Protected Category or any intent to make any such limitation, specification or discrimination; or

(4) Sell, lease or transfer any housing accommodation that is known to be the subject of a written complaint filed with the City; or

(5) Fail to include a notice of such a complaint in any subsequent lease or agreement of sale involving that housing accommodation, unless the complaint has been resolved in favor of Provider; or

(6) Establish, announce, follow a policy of denying or limiting, through a quota system or otherwise, the housing opportunities of any individual or group because of any Protected Category; or

(7) Harass, threaten, harm, damage or otherwise penalize any individual, group or business because of compliance with the provisions of this Section, or because of a charge, testimony or assistance in any manner in any related investigation, proceeding or hearing; or

(8) Give false or misleading information, written or oral, with regard to the sale or rental of any commercial housing for the purpose of discriminating on the basis of any Protected Category; or

(9) Make any distinctions in the location of a house, lot, apartment or other commercial housing or to make any distinctions relating to the time of delivery of a house or the date of availability of an apartment or other commercial housing; or

(10) Aid, abet, incur, induce, compel or coerce the doing of any unlawful housing practice prohibited by this Section or to obstruct or prevent any person from complying with the provisions of this Section; or

(11) Refuse or limit service to any person or to accept or retain a listing of any housing accommodation for sale, rent or lease with an understanding that discrimination may be practiced in connection with the sale, rental or lease thereof.

(d) Provider's failure to comply with any term or condition set forth in this Section 14.1 shall be an Event of Default pursuant to Article XI (Events of Default) of the General Provisions, for which the City may exercise any one or more of the remedies provided in Article XII (Remedies) of the General Provisions including, without limitation, termination of the Contract.

#### **14.2 Chapter 17-400 of The Philadelphia Code: Exclusionary Private Organizations.**

(a) In accordance with Chapter 17-400 of the Code, Provider agrees that its payment or reimbursement of membership fees or other expenses associated with participation by its employees in an exclusionary private organization, insofar as such participation confers an employment advantage or constitutes or results in discrimination with regard to hiring, tenure of employment, promotions, terms, privileges or conditions of employment on the basis of race, color, sex, sexual orientation, religion, national origin or ancestry, constitutes, without limiting

the applicability of Articles XI (Events of Default) and XII (Remedies) above, a substantial breach of this Contract entitling the City to all rights and remedies provided in this Contract or otherwise available at law or in equity.

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

**14.3 Executive Order 03-12: Minority, Woman and Disabled Business Enterprise Participation.** In accordance with Executive Order 03-12 (the "Antidiscrimination Policy"), the City, acting through its Office of Economic Opportunity ("OEO"), has established an antidiscrimination policy that relates to the solicitation and participation of Minority Business Enterprises ("MBE"), Woman Business Enterprises ("WBE"), and Disabled Business Enterprises ("DSBE") (collectively, "M/W/DSBE") in City contracts. The purpose of this Antidiscrimination Policy is to ensure that all businesses desiring to do business with the City have an equal opportunity to compete by creating access to the City's procurement process and meaningfully increasing opportunities for the participation by M/W/DSBEs in City contracts at all tiers of contracting, as prime contractors, subcontractors and joint venture partners. In furtherance of this policy, the City will, from time to time, establish participation ranges for City Contracts and City Related Special Projects. Provider agrees to comply with the requirements of the Antidiscrimination Policy by exercising its Best and Good Faith Efforts to include M/W/DSBEs in its contract, and where participation ranges are established by OEO, Provider agrees, without limitation, to submit documentation responsive to each of the participation ranges established for the Contract.

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

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

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

(3) Unless otherwise specified in a M/W/DSBE Subcontract between the Provider and its M/W/DSBE participant, as described in (a) (1) above, Provider shall, within five (5) business days after receipt of a payment from the City for services performed under the

Contract, deliver to its M/W/DSBE participant its proportionate share of such payment for services performed by the M/W/DSBE participant. In connection with payment of its M/W/DSBE participants, Provider agrees to fully comply with the City's payment reporting process which may include the use of electronic payment verification systems.

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

(5) Provider shall submit, within the time frames prescribed by the City, any and all documentation the City may request, including, but not limited to, copies of M/W/DSBE Subcontracts, participation summary reports, M/W/DSBE participant invoices, telephone logs and correspondence with M/W/DSBE participants, cancelled checks and certification of payments. Provider shall maintain all documentation related to this Section for a period of five (5) years from the date of Provider's receipt of final payment under the Contract.

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

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

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

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

(8) No privity of contract exists between the City and any M/W/DSBE participant identified herein and the City does not intend to give or confer upon any such M/W/DSBE participant(s) any legal rights or remedies in connection with the subcontracted services pursuant to the Antidiscrimination Policy or by reason of this Contract except such rights or remedies that the M/W/DSBE participant may seek as a private cause of action under any legally binding contract to which it may be a party. The remedies enumerated above are for the sole benefit of the City and City's failure to enforce any provision or the City's indulgence of any non-compliance with any provision hereunder, shall not operate as a waiver of any of the



City's rights in connection with this Contract nor shall it give rise to actions by any third parties including identified M/W/DSBE participants.

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

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

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

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

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

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

14.5 **Americans With Disabilities Act.** Provider understands and agrees that no individual with a disability shall, on the basis of the disability, be excluded from participation in this Contract or from providing Services or Materials under this Contract. By executing and delivering this Contract, Provider covenants to comply with all provisions of the Americans With Disabilities Act (the "ADA"), 42 U.S.C. §§12101 - 12213, and all regulations promulgated thereunder, as the ADA and regulations may be amended from time to time, which are applicable (a) to Provider; (b) to the benefits, Services, Materials, activities, facilities and programs provided in connection with this Contract; (c) to the City, or the Commonwealth of Pennsylvania; (d) to the benefits, services, activities, facilities and programs of the City or of the Commonwealth; and (e) if any funds under this Contract are provided by the federal government,

which are applicable to the federal government and its funds, benefits, services, activities, facilities and programs applicable to this Contract. Without limiting the applicability of the preceding sentence, Provider shall comply with the "General Prohibitions Against Discrimination," 28 C.F.R. Part 35.130, and all other regulations promulgated under Title II of the ADA, as they may be amended from time to time, which are applicable to the benefits, services, facilities, programs and activities provided by the City through contracts with outside contractors.

#### **14.6 Northern Ireland.**

(a) In accordance with Section 17-104 of the Code, Provider by execution of this Contract certifies and represents that (1) Provider (including any parent company, subsidiary, exclusive distributor or company affiliated with Provider) does not have, and will not have at any time during the Term of this Contract (including any extensions of the Term), any investments, licenses, franchises, management agreements or operations in Northern Ireland and (2) no product to be provided to the City under this Contract will originate in Northern Ireland, unless Provider has implemented the fair employment principles embodied in the MacBride Principles.

(b) In the performance of this Contract, Provider agrees that it will not use any suppliers, Subcontractors or subconsultants at any tier (1) who have (or whose parent, subsidiary, exclusive distributor or company affiliate have) any investments, licenses, franchises, management agreements or operations in Northern Ireland or (2) who will provide products originating in Northern Ireland unless said supplier, subconsultant or Subcontractor has implemented the fair employment principles embodied in the MacBride Principles.

(c) Provider agrees to cooperate with the City's Director of Finance in any manner which the said Director deems reasonable and necessary to carry out the Director's responsibilities under Section 17-104 of the Code. Provider expressly understands and agrees that any false certification or representation in connection with this Section 14.6 (Section 17-104 of the Code) and any failure to comply with the provisions of this Section 14.6 (Section 17-104 of the Code) shall constitute a substantial breach of this Contract entitling the City to all rights and remedies provided in this Contract or otherwise available at law (including, but not limited to, Section 17-104 of the Code) or in equity. In addition, Provider understands that false certification or representation is subject to prosecution under Title 18 Pa.C.S.A. § 4904.

**14.7 Limited English Proficiency.** Provider understands and agrees that no individual who is limited in his or her English language proficiency shall be denied access to Services provided under this Contract on the basis of that limitation. As a condition of accepting and executing this Contract, Provider shall comply with all provisions of Title VI of the Civil Rights Act of 1964, the President of the United States of America Executive Order No. 12250, the Mayor of the City of Philadelphia's Executive Order entitled, "Access to Federally Funded City Programs and Activities for Individuals with Limited English Proficiency" dated September 29, 2001, and all regulations promulgated thereunder, as the Act and regulations may be amended from time to time, which are applicable (a) to Provider, (b) to the benefits, services, activities and programs provided in connection with this Contract, (c) to the City, or the Commonwealth of Pennsylvania, and (d) to the benefits, services, activities and programs of the City or of the

Commonwealth, and if any funds under this Contract are provided by the federal government, which are applicable to the federal government and its benefits, services, activities and programs. Without limiting the applicability of the preceding sentence, Provider shall comply with 45 C.F.R. 80 et. seq. and all other regulations promulgated under Title VI of the Civil Rights Act of 1964, as they may be amended from time to time, which are applicable to the benefits, services, programs and activities provided by the City through contracts with outside contractors.

**14.8 Human Experimentation.** In accordance with 45 C.F.R. §46, as it may be amended from time to time, each Provider agrees to refrain from experimentation involving any physical or mental risk to human subjects without complying with all Applicable Law and obtaining the following:

(a) Prior written approval of the City and the Commonwealth Department of Public Welfare; and

(b) Prior informed and voluntary written consent of the subject; or

(c) Prior informed and voluntary written consent of the subject's parents or legal guardians, if the subject is a minor or incompetent.

(d) Notification to each potential subject prior to his or her consent that refusal of consent will not result in the loss of any benefits to which the subject is otherwise entitled from the City or Provider.

**14.9 Drug and Alcohol Abuse.** If this Contract is funded in whole or in part by the Commonwealth Office of Drug and Alcohol Programs, Provider shall render all Services hereunder in compliance with Pennsylvania Drug and Alcohol Abuse Control Act of April 14, 1972, P.L. 221, No. 63, 71 P.S. §1690, as it may be amended from time to time, all regulations promulgated thereunder, and the City's Drug and Alcohol Abuse Treatment and Rehabilitation Plan.

**14.10 Terms and Conditions Relating to Protected Health Information ("City PHI Terms").** The City of Philadelphia is a "Covered Entity" as defined in the Privacy Rule issued pursuant to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). The City's business activities include both (1) functions which make the City a Covered Entity, and therefore, subject to HIPAA, and (2) functions that are not subject to HIPAA. In accordance with 45 CFR §164.105(a)(2)(iii)(D), the City has designated certain departments and units of the City, including the Department, as health care components that must comply with the HIPAA Rules (defined below). These City PHI Terms (defined below) shall apply to any Provider that, with respect to the Contract, falls within the definition of a "Business Associate" in 45 CFR §160.103, including, but not limited to, any Provider who, pursuant to the Contract: (1) creates, receives, maintains, or transmits Protected Health Information (as defined below) on behalf of the Department for a function or activity described in paragraph (1)(i) of the definition of a Business Associate in 45 CFR §160.103; (2) provides to or for the Department a service described in paragraph (1)(ii) of the definition of a Business Associate in 45 CFR §160.103, which may involve the disclosure of Protected Health Information from the City (or from another

Business Associate of the City) to the Provider or someone acting for or on behalf of the Provider; (3) provides data transmission services that require access on a routine basis to Protected Health Information; or (4) offers a personal health record to one or more individuals on behalf of the Department.

Capitalized terms used in these City PHI Terms but not defined in the Contract shall have the same meaning as those terms are given in the HIPAA Rules (as defined below). Any reference to a statute or regulation in these City PHI Terms shall refer to the statute or regulation referenced, as may be amended or superseded from time to time.

(a) **Definitions.**

For purposes of these City PHI Terms and notwithstanding anything in the Contract to the contrary, the terms enumerated in this Section (a) shall be defined as follows:

(1) Agent. “Agent” shall mean an agent of Provider as determined in accordance with the federal common law of agency.

(2) Breach. “Breach” shall have the same meaning as the term “breach” in 45 CFR §164.402.

(3) Breach Notification Rule. “Breach Notification Rule” shall mean the Final Rule requiring notification of Breaches of Unsecured Protected Health Information set forth at 45 CFR §§164.400 through 164.414.

(4) Business Associate. “Business Associate” shall have the same meaning as the term “business associate” in 45 CFR §160.103.

(5) City PHI Terms. “City PHI Terms” shall mean the Terms and Conditions Relating to Protected Health Information set forth in these General Provisions.

(6) Covered Entity. “Covered Entity” shall have the same meaning as the term “covered entity” in 45 CFR §160.103.

(7) Discovery of an Incident. Consistent with 45 CFR §164.410 (a)(2), “Discovery of an Incident” shall mean that Provider, or an employee, officer, or other Agent of Provider, knows of an Incident or by the exercise of reasonable diligence should have known of an Incident.

(8) Electronic Protected Health Information. “Electronic Protected Health Information” (sometimes referred to as “EPHI”) shall have the same meaning as the term “electronic protected health information” in 45 CFR §160.103, limited to information received from the City (or from another Business Associate of the City) or information accessed, created, received, maintained, retained, modified, transmitted, destroyed, or otherwise held, used, or disclosed by Provider (or a Subcontractor or Agent) for or on behalf of the City pursuant to the Contract.



(9) HIPAA. "HIPAA" shall mean the Health Insurance Portability and Accountability Act of 1996, Public Law No. 104-191, 104<sup>th</sup> Congress.

(10) HIPAA Rules. "HIPAA Rules" shall mean the Privacy, Security, Breach Notification, and Enforcement Rules set forth in 45 CFR Part 160 and Part 164.

(11) HITECH Act. "HITECH Act" shall mean the Health Information Technology for Economic and Clinical Health Act, Public Law No. 111-05, 111th Congress (2009).

(12) Incident. "Incident" shall mean (a) any Security Incident that results in the unauthorized access, use, disclosure, modification, or destruction of EPHI or interference with system operations in an information system of Provider or of an Agent or Subcontractor, (b) any use or disclosure of Protected Health Information not authorized by the Contract, or (c) any Breach of Unsecured Protected Health Information.

(13) Individual. As defined in 45 CFR §160.103, "Individual" shall mean the person who is the subject of Protected Health Information and for purposes of Section (c)(7) through Section (c)(10) of these City PHI Terms shall include a person who qualifies as a personal representative in accordance with 45 CFR §164.502(g).

(14) Other Privacy Laws. The Pennsylvania Mental Health Procedures Act (50 P.S. §7111 et seq.), Pennsylvania Mental Health Treatment Regulations (55 Pa. Code §5100.31 et seq.), Pennsylvania Confidentiality of HIV-Related Information Act (35 P.S. §7601 et seq.), federal substance abuse treatment confidentiality law and regulations codified as 42 USC 290dd-2 and 42 CFR Part 2, Pennsylvania Drug and Alcohol Abuse Control Act (71 P. S. §1690.101 et seq.), Pennsylvania Breach of Personal Information Notification Act (73 P. S. §2301 et seq.), Identity Theft Prevention Rules under 16 CFR §681.1, and any other Pennsylvania and federal laws that protect the privacy, confidentiality, integrity, and security of individually identifiable health information shall collectively be referred to in these City PHI Terms as "Other Privacy Laws."

(15) Privacy Rule. "Privacy Rule" shall mean Subparts A and E of Part 164 of Title 45 of the Code of Federal Regulations.

(16) Protected Health Information. "Protected Health Information" (sometimes referred to as "PHI") shall have the same meaning as the term "protected health information" in 45 CFR §160.103, limited to information received from the City (or from another Business Associate of the City) or information accessed, created, received, maintained, retained, modified, transmitted, destroyed, or otherwise held, used or disclosed by Provider (or a Subcontractor or Agent) for or on behalf of the City pursuant to the Contract.

(17) Required By Law. "Required By Law" shall have the same meaning as the term "required by law" in 45 CFR §164.103.

(18) Responsible Official. "Responsible Official" shall mean the person identified as the Responsible Official in the General Provisions attached to the Provider Agreement.

(19) Secretary. "Secretary" shall mean the Secretary of the U. S. Department of Health and Human Services or the Secretary's designee.

(20) Security Incident. As defined in 45 CFR §164.304, "Security Incident" shall mean the attempted or successful unauthorized access, use, disclosure, or destruction of information or interference with system operations in an information system.

(21) Security Rule. "Security Rule" shall mean Subparts A and C of Part 164 of Title 45 of the Code of Federal Regulations.

(22) Subcontractor. Notwithstanding anything to the contrary in the Contract, the term "Subcontractor" when used in these City PHI Terms shall mean a Person who under a contract or other arrangement with Provider performs or assists in the performance of some part of the Services or Materials or any other function or activity involving the use or disclosure of or access to Protected Health Information.

(23) Unsecured Protected Health Information. "Unsecured Protected Health Information" shall have the same meaning as the term "unsecured protected health information" in 45 CFR §164.402, limited to information received from the City (or from another Business Associate of the City) or accessed, created, received, maintained, retained, modified, transmitted, destroyed, or otherwise held, used or disclosed by Provider (or a Subcontractor or Agent) for or on behalf of the City pursuant to the Contract.

**(b) Obligations and Activities of Provider**

(1) Provider shall not use, disclose, or maintain Protected Health Information other than as expressly authorized or required by the Contract or as Required By Law.

(2) Provider shall use appropriate safeguards to prevent the use or disclosure of Protected Health Information other than as provided for by the Contract and, with respect to Electronic Protected Health Information, shall comply with all the requirements of Subpart C of Part 164 of Title 45 of the Code of Federal Regulations that apply to Business Associates. Provider understands and agrees that failure to comply with these requirements may result in civil or criminal penalties pursuant to §§13401(b) and 13404 of the HITECH Act.

(3) To the extent Provider is to carry out one or more of the City's obligations under the Privacy Rule, Provider shall comply with the requirements of the Privacy Rule that apply to the City in the performance of such obligation(s).

(4) Without unreasonable delay after Provider becomes aware of an Incident, or within the time prescribed by Applicable Law, whichever is shorter, (i) Provider shall mitigate, to the extent practicable, any harmful effect of any Incident or any use or

disclosure of Protected Health Information by Provider (or a Subcontractor or Agent) in violation of the Privacy Rule or these City PHI Terms and (ii) shall use all reasonable steps to cure any Event of Default arising out of these City PHI Terms. Provider's obligation under this paragraph shall not relieve Provider of its obligation to cure an Event of Default to the extent otherwise required by the Contract or Applicable Law.

(5) In accordance with 45 CFR §164.502(e)(1)(ii) and 45 CFR §164.308(b)(2), if applicable, Provider shall ensure that any Subcontractors that create, receive, maintain, or transmit Protected Health Information, in any format, on behalf of Provider agree to the same restrictions, conditions, and requirements that apply to Provider with respect to such information and shall ensure that any such Subcontractors enter into a business associate agreement or other arrangement that complies with the applicable requirements of 45 CFR §164.504(e) and 45 CFR §164.314(a).

(6) Provider shall make its internal practices, books, and records relating to the use and disclosure of Protected Health Information available to the City and to the Secretary, in a time and manner designated by the head of the Covered Component for which Services are being rendered pursuant to the Contract, the City's HIPAA Privacy Officer, or the Secretary, for purposes of determining the City's compliance with the Privacy Rule and Security Rule. Provider shall notify the head of the Covered Component for which Services are being rendered pursuant to the Contract and the City's HIPAA Privacy Officer in writing, as set forth in Section (d)(2) of these City PHI Terms, of any request from the Secretary for Provider's internal practices, books, and records within five (5) business days after receipt of such request and, at the same time or before it provides any information to the Secretary, shall provide the City's Privacy Officer with a copy of such information.

(7) Individual's Request for Access to PHI. Provider shall, following an Individual's or the City's written request from time to time, make available to the City or, at the City's direction, to an Individual, Protected Health Information in a Designated Record Set (as that term is defined in 45 CFR §164.510) in a time and manner that enables the City to meet its obligations under 45 CFR §164.524. Upon the City's written request, Provider shall provide to the HIPAA Privacy Officer of the Department documentation of the Designated Record Sets that are subject to access by Individuals and the titles of and contact information for the persons or offices of Provider responsible for receiving and processing requests for access to PHI by Individuals.

(8) Individual's Request for Amendment of PHI. As requested by the City or an Individual in writing from time to time and in the time and manner specified by the City, Provider shall (i) make any amendments to Protected Health Information in a Designated Record Set (as that term is defined in 45 CFR §164.510) as the City is required to make in accordance with 45 CFR §164.526 and (ii) make reasonable efforts to inform and provide the amendments to others who Provider knows have the Protected Health Information that is the subject of the amendment, and that may have relied, or could foreseeably rely, on the information to the detriment of the Individual. Upon the City's written request, Provider shall provide to the HIPAA Privacy Officer of the Department the titles and contact information of the persons or

offices of Provider responsible for receiving and processing requests for amendments of PHI and retaining the documentation required by 45 CFR §164.530(j).

(9) Documentation of Disclosures. Provider shall identify and document, and require any Subcontractors and Agents to identify and document, such disclosures of Protected Health Information and information related to disclosures as necessary to enable the City to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR §164.528.

(10) Individual's Request for Accounting of Disclosures. If an Individual requests Provider to provide the Individual with an accounting of disclosures, Provider shall provide to the Individual within fifty (50) days of such request an accounting of disclosures of Protected Health Information in such form and manner that enables the City to fulfill its obligations to respond to a request by an Individual for an accounting of disclosures in accordance with 45 CFR §164.528. If the City requests Provider to provide an accounting of disclosures for an Individual, Provider shall provide to the City or, at the City's direction, to the Individual, in a time that will enable the City to meet its obligations under the Privacy Rule, but no later than thirty (30) days after requested by the City to do so, information collected in accordance with Section (b)(9) of these City PHI Terms, in such form and manner that enables the City to fulfill its obligations to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR §164.528.

(11) Minimum Necessary Standard. Except as otherwise expressly authorized in the Contract, Provider shall use, disclose or request only the minimum Protected Health Information necessary to accomplish the intended purpose of the use, disclosure, or request in accordance with 45 CFR §164.502(b) and shall provide access to such information only to those employees who have a need to know the information to carry out the intended purpose.

**(c) Permitted Uses and Disclosures by Provider**

(1) Uses and Disclosures Authorized by the Contract. The City authorizes Provider to create, use, receive, and disclose the minimum Protected Health Information necessary to perform the Services and provide the Materials required by the Contract.

(2) Creation of De-Identified Information, Limited Data Set and Provision of Data Aggregation Services. As requested by and subject to such limitations as may be imposed by the City in writing from time to time, Provider may use PHI to create information that is not individually identifiable health information in accordance with the specifications in 45 CFR §164.514(b), to create a limited data set that meets the specifications in 45 CFR §164.514(e)(2), or to provide data aggregation services as permitted in 45 CFR §164.504(e)(2)(i)(B).

(3) Duty to Comply with the Privacy Rule and Other Privacy Laws. Provider may not use, disclose, or request Protected Health Information in a manner that would violate the Privacy Rule or Other Privacy Laws if done by the City except that Provider may



provide data aggregation services to the extent permitted under Section (c)(2) of these City PHI Terms.

**(d) Reporting Obligations.**

**(1) Notice of Unauthorized Use or Disclosure of PHI, Security Incident, or Breach of Unsecured Protected Health Information.**

(.a) Without unreasonable delay, and in no event later than five (5) business days after Provider becomes aware of an Incident, Provider shall give notice of such Incident to the head of the Department and the HIPAA Privacy Officer of the Department. Such notice shall be in writing, shall be given as set forth in Section (d)(2) of these City PHI Terms, and shall include a) a description of what happened, including the date of the Incident, the date of Discovery of the Incident, and how Provider learned of the Incident; b) the nature and extent of the Protected Health Information involved, including but not limited to the types of Protected Health Information (demographic, financial, or clinical), the types of identifiers (such as name, account number, or social security number) and any other information that could be used to identify an Individual or reveal a sensitive health condition; c) if applicable, steps Individuals should take to protect themselves from potential harm resulting from the Incident; d) a description of what Provider is doing to investigate the Incident, to mitigate harmful effects of the Incident, to lessen and assess the risk that the PHI has been compromised, and to protect against any further Incidents; e) the name, title, and address of the unauthorized person who used the Protected Health Information or to whom the disclosure was made; f) whether the Protected Health Information was actually acquired or viewed; g) contact procedures and information to enable the City to ask questions or learn additional information relating to the Incident; h) whether the Incident involved Unsecured Protected Health Information and, if not, Provider's basis for this conclusion; i) the approximate number of Individuals affected by the Incident (if number is not known, state whether number may involve more than 500 Individuals); j) the extent to which the risk to the Protected Health Information has been mitigated, and k) such other information relating to the Incident as Provider deems relevant to the City's review of the Incident. Provider shall not include any Protected Health Information in such notice.

(.b) Without unreasonable delay after providing notice of an Incident pursuant to Section (d)(1)(.a) of these City PHI Terms, and in no event later than fifteen (15) calendar days after becoming aware of such Incident, Provider shall provide in writing to the head and the HIPAA Privacy Officer of the Department: a) Provider's conclusion as to whether the Incident falls within an exception to the duty of a Covered Entity to report the Incident under the Breach Notification Rule, if applicable, and, if so, Provider's basis for this conclusion; b) Provider's conclusion as to whether there is low probability that the privacy or security of the applicable Protected Health Information has been compromised and Provider's basis for this conclusion; and c) such other information as the City may request or Provider deems relevant to the City's review of the Incident. Provider shall provide to the head and the HIPAA Privacy Officer of the Department updates to the written notices or reports required under Section (d)(1) of these City PHI Terms, which updates shall be provided without unreasonable delay from time to time as Provider becomes aware of any information that Provider is required to report to the

City under Section (d)(1) of these City PHI Terms or that the City is required to include in any notification to Individuals or the Secretary under Applicable Law.

(.c) Upon the City's written request from time to time, Provider shall provide to the City's HIPAA Privacy Officer, without unreasonable delay and in no event later than fourteen (14) calendar days after the City makes each such request, the name and contact information of each Individual whose Unsecured Protected Health Information has been, or is reasonably believed by Provider to have been, accessed, acquired, used, or disclosed during the Incident, and if relevant to the Incident or the duty of the City to notify someone other than the Individual, the Individual's date of birth.

(.d) Upon the City's written request from time to time, Provider shall provide to the City's HIPAA Privacy Officer, without unreasonable delay and in no event later than seven (7) business days after receiving such request, a written report that a) identifies patterns of activity that constitute Unsuccessful Security Incidents within the timeframe specified in the request, and b) states whether Provider believes its current defensive security measures are adequate to address such Unsuccessful Security Incidents and, if the security measures are not adequate, the specific measures Provider will implement to address the inadequacies and the date when each such measure will be implemented. To the extent such patterns of activity are tracked by Provider, Provider shall include in the report all patterns of activity that the City determines, in its sole discretion, are necessary to enable the City to assess the risk posed by the Unsuccessful Security Incidents within the specified timeframe and shall notify the City's HIPAA Privacy Officer when a measure that Provider agrees to implement to address an inadequacy is fully implemented and operational. For purposes of this paragraph, an "Unsuccessful Security Incident" shall mean the attempted unauthorized access, use, disclosure, modification, or destruction of information or interference with Provider's system operations used in connection with the Services, including (to the extent that Provider is aware) the attempted unauthorized access, use, disclosure, modification, or destruction of information or interference with any Agent's or Subcontractor's system operations used in connection with the Services.

(2) Notices. Notwithstanding anything to the contrary in the Contract, any notification given pursuant to these City PHI Terms shall be in a writing delivered by fax and by overnight delivery service. In each case, such notices shall be sent to the address and fax number of the head of the Department, the HIPAA Privacy Officer of the Department, and the City's HIPAA Privacy Officer, as applicable, as set forth in this Section (d)(2) or to such other address and fax number for such individuals as the Responsible Official or the City's HIPAA Privacy Officer may specify in a notice sent to Provider in accordance with the Contract. If a notice sent pursuant to these City PHI Terms is returned to Provider as undeliverable, a notice required to be given to the head or HIPAA Privacy Officer of the Department pursuant to these City PHI Terms shall also be given to the City's HIPAA Privacy Officer.

The address and fax number of the head and HIPAA Privacy Officer of OBH/IDS are:

**Office of Behavioral Health and  
Intellectual disAbility Services**

Attn: Director  
City of Philadelphia  
1101 Market Street  
7<sup>th</sup> floor  
Philadelphia, PA 19107-2907  
Fax Number: (215) 685-4751

**Office of Behavioral Health and  
Intellectual disAbility Services**

Attn: HIPAA Privacy Officer  
City of Philadelphia  
1101 Market Street  
7<sup>th</sup> floor  
Philadelphia, PA 19107-2907  
Fax Number: (215) 685-5563

The address and fax number of the City's HIPAA Privacy Officer are as follows:

City of Philadelphia Law Department  
Attn: HIPAA Privacy Officer  
1515 Arch Street, 17<sup>th</sup> Floor  
Philadelphia, PA 19102  
Fax Number: (215) 683-5069

(3) Cooperation with the City. Provider shall cooperate with the City in investigating any Incident and in meeting the City's obligations under HIPAA, the HITECH Act, the HIPAA Rules, and the Other Privacy Laws. If the City determines that a Breach of Unsecured Protected Health Information must be reported to the U. S. Department of Health and Human Services ("HHS"), the City (and not Provider) shall report the Breach to HHS. As may be requested by the City from time to time after a Breach, Provider shall provide to the City full and timely assistance in compiling and producing the information and documentation needed for the submission to HHS and notification to Individuals affected by the Breach, including but not limited to preparing and submitting to the City's HIPAA Privacy Officer for approval the notification letters to Individuals affected by the Breach, delivering to the City an addressed envelope for each Individual to receive the notification, translating letters to foreign languages, Braille, or large text as necessary to comply with the City's obligations under Applicable Law, and providing the postage to cover the cost of mailing the notifications.

(4) Responsibility for Costs - Breach of Unsecured Protected Health Information. To the extent an Incident occurs involving Unsecured Protected Health Information under the custody or control of Provider or a Subcontractor or Agent, then, in addition to any other obligation of Provider under the Contract and notwithstanding any other provision in the Contract to the contrary, Provider will indemnify the City for (i) all costs and expenses the City incurs to investigate an Incident and, if the City determines that a Breach has or may have occurred, to comply with the notification and mitigation requirements of 45 CFR §§164.404, 164.406, 164.408, and 164.414, and (ii) any fees, fines, penalties, costs, expenses, and other liabilities assessed or imposed on the City as a result of the Incident. Nothing contained in this Section (d)(4) shall be deemed to limit, waive, or in any way modify Provider's obligations to the City under any provision of the Contract outside of this Section (d)(4). Nothing contained or waived in any provision of the Contract outside of this Section(d)(4) shall be deemed to limit, waive, or in any way modify Provider's obligations to the City under this Section (d)(4).



(5) Responsibility for Costs - Pennsylvania Breach of Personal Information Notification Act. In addition to any other obligation of Provider under the Contract and notwithstanding any other provision in the Contract to the contrary, in the event the City or any agency or administrative or judicial body determines that a "Breach of Personal Information" (as that term is defined in the Pennsylvania Breach of Personal Information Notification Act, 73 P. S. §2301 (2005)) has occurred, Provider will indemnify the City for any fees, fines, penalties, costs, expenses, and other liabilities incurred by the City or assessed or imposed on the City as a result of such Breach of Personal Information to the extent the Breach of Personal Information involves Personal Information (as that term is defined in the Pennsylvania Breach of Personal Information Notification Act) under the custody or control of Provider or a Subcontractor or Agent. Nothing contained in this Section (d)(5) shall be deemed to limit, waive, or in any way modify Provider's obligations to the City under any provision of the Contract outside of this Section (d)(5). Nothing contained or waived in any provision of the Contract outside of this Section(d)(5) shall be deemed to limit, waive, or in any way modify Provider's obligations to the City under this Section (d)(5).

**(e) Obligations of City to Inform Provider of Privacy Practices and Restrictions.**

(1) The City shall notify Provider of any limitation(s) in a City's notice of privacy practices in accordance with 45 CFR §164.520, to the extent that such limitation may affect Provider's use or disclosure of Protected Health Information.

(2) The City shall notify Provider of any changes in, or revocation of, permission by an Individual to use or disclose Protected Health Information, to the extent that such changes may affect Provider's use or disclosure of Protected Health Information.

(3) The City shall notify Provider of any restriction on the use or disclosure of Protected Health Information that has been requested by an Individual and agreed to by the City in accordance with 45 CFR §164.522, to the extent that such restriction may affect Provider's use or disclosure of Protected Health Information.

**(f) Termination.**

(1) Termination for Cause. In addition to and without limiting any other termination rights or remedies of the City provided for in the Contract, the City shall have the right to terminate the Contract immediately if (i) upon becoming aware of an Event of Default arising out of these City PHI Terms, the City determines in its sole discretion that such Event of Default constitutes a material breach of these City PHI Terms and (ii) Provider fails to cure the Event of Default within ten (10) days after the City notifies Provider of the Event of Default.

(2) Effect of Termination. At termination of the Contract for any reason, unless Provider is mandated by Applicable Law to retain the Protected Health Information or unless the City directs Provider, or agrees in writing to allow Provider, to retain the Protected Health Information after the Contract terminates, Provider shall return all Protected Health Information to the Responsible Official or, if directed by the Responsible Official in writing to



do so, shall destroy all Protected Health Information that Provider still maintains or otherwise holds in any form, and Provider shall retain no copies of such information in any electronic, paper, or other form, format, or medium. To the extent Provider is mandated by Applicable Law or directed or authorized by the City to retain any Protected Health Information after the termination of the Contract, Provider agrees to extend the protections of these City PHI Terms to the information and limit further uses and disclosures strictly to those purposes that are mandated by Applicable Law or that are expressly authorized by the City in writing. At such time as Provider is no longer mandated by Applicable Law or directed or authorized by the City to retain the Protected Health Information, Provider shall return to the Responsible Official or, if directed by the Responsible Official in writing to do so, shall destroy all Protected Health Information retained by Provider, and Provider shall retain no copies of such information in any electronic, paper, or other form, format, or medium. If Provider destroys any Protected Health Information, Provider agrees to use a technology or methodology that renders the Protected Health Information unusable, unreadable, or indecipherable to unauthorized individuals in accordance with the most recent guidance issued by the Secretary pursuant to the HITECH Act. The above notwithstanding, to the extent Provider, during the term of the Contract, maintains or otherwise holds any Protected Health Information for or on behalf of the City that the City has a legal obligation to retain under any local, state or federal records retention laws, Provider shall retain such Protected Health Information that is not returned to the City for the time period and in accordance with such retention laws.

The foregoing paragraph shall apply to Protected Health Information in the possession of Subcontractors or Agents, shall be enforced by Provider with respect to such Subcontractors and Agents, and shall be incorporated in any Subcontract or other agreement between Provider and such Subcontractors or Agents for the performance of the Services or provision of the Materials.

(g) **Miscellaneous.**

(1) **Privacy Law Modifications Notice.** Notwithstanding anything to the contrary in the Contract, the Provider and the City agree that these City PHI Terms shall be deemed automatically modified as the City in its sole judgment deems necessary from time to time to insure continued compliance with the requirements of HIPAA, the HITECH Act, the HIPAA Rules, and Other Privacy Laws, and all regulations implemented pursuant thereto, such modification to be effective upon the City posting the modified Terms and Conditions Relating to Protected Health Information (referred to as "City PHI Terms") on the City's website (at <https://secure.phila.gov/eContract/> under the "About" link).

(2) **Survival.** In addition to and without limiting the survival of any other rights, obligations, or liabilities provided for in the Contract, the respective rights and obligations of Provider under Sections (d) and (f)(2) of these City PHI Terms shall survive the termination of the Contract.

(3) **Interpretation.** Any ambiguity in these City PHI Terms shall be resolved to permit the City and require Provider to comply with HIPAA, the HITECH Act, the HIPAA Rules, and Other Privacy Laws.

14.11 **Non-Lobbying Certification.** No federally appropriated funds have been paid, by or on behalf of Provider, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan or cooperative agreement.

If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this Contract, Provider shall complete and submit Standard Form LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.

If this Contract or any Subcontract is funded with federal funds, Provider shall require that this language be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients and Subcontractors shall certify and disclose accordingly.

Provider understands that this is a material representation of fact upon which reliance was placed when this Contract was entered into. Submission of this certification is a prerequisite for making or entering into this Contract imposed under Section 1352, Title 31, U.S. Code, and Provider agrees that the execution of this Contract shall constitute the requisite submission.

14.12 **Business, Corporate and Slavery Era Insurance Disclosure.**

(a) In accordance with Section 17-104 of the Code, the Provider, after execution of this Agreement, will complete an affidavit certifying and representing that the Provider (including any parent company, subsidiary, exclusive distributor or company affiliated with Provider) has searched any and all records of the Provider or any predecessor company regarding records of investments or profits from slavery or slaveholder insurance policies during the slavery era. The names of any slaves or slaveholders described in those records must be disclosed in the affidavit.

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

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

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

**(1) Minimum Wage.**

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

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

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

**(2) Minimum Benefits.**

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

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

(3) Generally. Notwithstanding the above requirements, to the extent a change in law would require an increase in wages or benefits under Chapter 17-1300 (for example, an increase in the federal minimum wage to \$9.00/hour, which would increase the required City minimum wage to \$13.50 due to the Chapter's requirement of 150% of the federal minimum wage), such new requirement will take effect only at the start of an Additional Term, if any, commencing on or after the date of the new legal requirement.

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

(c) Absent a waiver, a Provider subject to Chapter 17-1300 shall comply with all of its requirements as they exist on the date when the Provider entered into this Contract with the City or into an amendment thereto. Provider shall take such steps as are necessary to notify its Subcontractors of these requirements, and to cause such Subcontractors to notify lower-tier subcontractors that are Service Contractors of these requirements, including, without limitation, by incorporating this Section 14.13, with appropriate adjustments for the identity of the parties, in its Subcontracts with such Subcontractors. A Provider or subcontractor at any tier subject to Chapter 17-1300 that fails to comply with these provisions may, after notice and hearing before the Director of Finance or such other officer or agency designated by the Mayor, be suspended from receiving financial assistance from the City or from bidding on and/or participating in future City contracts, whether as a prime contractor or a subcontractor, for up to three (3) years. City Council may also initiate a similar suspension or debarment process. Such suspension or debarment shall be in addition to any of the other sanctions or remedies set forth in Chapter 17-1300 or this Contract.

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

(e) Provider's covered Employees shall be deemed third-party beneficiaries of Provider's representation, warranty, and covenant to the City under this Section 14.13 only, and the covered Employees of a subcontractor at any tier that is also a covered Employer performing Services directly or indirectly under a subcontract at any tier shall be deemed third-party beneficiaries of their Employer's representation, warranty and covenant to Provider or such subcontractors at any tier, as the case may be, under this Section.



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

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

(a) Provider confirms on behalf of itself and its Subcontractor(s) that no contribution(s) have been made and agrees that none shall be made during the Term of this Contract, and any Additional Term, by Provider, any Subcontractor, or any party from which a contribution can be attributed to the Provider or Subcontractor, that would render the Provider or Subcontractor, as applicable, ineligible to apply for or enter into a Non-Competitively Bid Contract under the provisions of Sections 17-1404(1) and 17-1405 of the Code; and that disclosures made as part of its application to receive a Non-Competitively Bid Contract contain no material misstatements or omissions. Breach of this covenant shall constitute an event of default and render the Contract voidable at the City's option, and, as to contributions made by or attributable to Provider, shall make the Provider liable for liquidated damages to the City in the amount of ten percent (10%) of the maximum payments to the Provider allowed under the Contract, regardless whether actually paid. The City may exercise any or all of the remedies set forth in this Section 14.14 (Contributions and Other Mandatory Disclosures), each of which may be pursued separately or in conjunction with such other remedies as the City in its sole discretion shall determine. No extension or indulgence granted by the City to Provider shall operate as a waiver of any of the City's rights in connection with this Contract. The rights and remedies of the City as described in this Section 14.14, and as described elsewhere in this Contract, shall not be exclusive and are in addition to any other rights or remedies available to the City under this Contract at law or in equity.

(b) Provider shall, during the term of the Contract, any Additional Term, and for one year thereafter, disclose any contribution of money or in-kind assistance the Provider, Subcontractor or any Consultant utilized by Provider in connection with this Contract, has made, or any individual or entity has made if such contributions can be attributed to Provider, or such Subcontractor or Consultant pursuant to the attribution rules of Section 17-1405, during such time period to a candidate for nomination or election to any public office in the Commonwealth of Pennsylvania or to an individual who holds such office, or to any political committee or state party in the Commonwealth of Pennsylvania, or to any group, committee or association organized in support of any such candidate, office holder, political committee or state party, and the date and amount of such contribution.

(c) It shall not be a violation of Section 14.14(b) if Provider fails to disclose a contribution made by a Consultant because the Provider was unable to obtain such information from the Consultant, provided the Provider demonstrates that it used reasonable efforts to attempt to obtain such information, including, at a minimum:

(1) Entering into a written agreement with the Consultant for such Consultant's services, before the filing of the application for the Contract, and before the Consultant communicated with a City department or office, official or employee on behalf of the Provider;

(2) Including in such agreement a provision requiring the Consultant to provide the Provider in a timely manner with all information required to be disclosed under the provisions of Chapter 17-1400 of the Code, and providing, in effect, that the agreement will be terminated by the Provider if the Consultant fails to provide all required information on a timely basis and that no further payments, including payments owed for services performed prior to the date of termination, will be made to the Consultant by or on behalf of the Provider as of the date of such termination;

(3) Communicating regularly with the Consultant concerning the Consultant's obligations to provide timely information to permit the Provider to comply with the provisions of Chapter 17-1400; and

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

(d) The Provider shall, during the Term of the Contract, any Additional Term, and for one year thereafter, disclose the name and title of each City officer or employee who, during such time period, asked the Provider, any officer, director or management employee of the Provider, or any Person representing the Provider, to give money, services, or any other thing of value (other than a Contribution as defined in Section 17-1401) to any Person, and any payment of money, provision of services, or any other thing of value (other than a Contribution as defined in Section 17-1401) given to any Person in response to any such request. The Provider shall also disclose the date of any such request, the amount requested, and the date and amount of any payment made in response to such request.

(e) The Provider shall, during the Term, and any Additional Term, of the Contract disclose the name and title of each City officer or employee who directly or indirectly advised the Provider, any officer, director or management employee of the Provider, or any Person representing the Provider that a particular Person could be used by the Provider to satisfy any goals established in the Contract for the participation of minority, women, disabled or disadvantaged business enterprises. The Provider shall also disclose the date the advice was provided, and the name of such particular Person.

(f) The disclosures required by Sections 14.14(b), (d) and (e) shall be made utilizing the online disclosure update process through Provider's eContract Philly account which can be accessed on the City's website at [www.phila.gov/contracts](http://www.phila.gov/contracts) by clicking on eContract Philly. Such disclosures shall be made within five (5) business days of the action or event requiring Provider to update its disclosures. In the case of updates to political contributions made by Provider required by Section 14.14(b), the attribution rules of Section 17-1405 shall apply to determine what contributions must be disclosed under this provision as contributions of the Provider or of a Consultant. Provider is advised that any individual who submits an update

on eContract Philly must be an authorized signatory of the Provider, authorized to make the required updated disclosures.

(g) Reports generated automatically by the online process for the updated disclosures required by Sections 14.14(b), (d) and (e) will be automatically forwarded to the President and Chief Clerk of City Council, and to the Mayor, Director of Finance, Procurement Department, and the Department of Records..

#### **14.15 Executive Order 03-11: Gifts.**

(a) Pursuant to Executive Order 03-11, no official or employee in the Executive and Administrative Branch of the City shall solicit or accept, directly or indirectly, anything of value, including any gift, gratuity, favor, entertainment, invitation, food, drink or loan, unless consideration of equal or greater value is conveyed in return, from any of the following sources:

(1) a person seeking to obtain business from, or who has financial relations with, the City;

(2) a person whose operations or activities are regulated or inspected by any City agency;

(3) a person engaged, either as principal or attorney, in proceedings before any City agency or in court proceedings in which the City is an adverse party;

(4) a person seeking legislative or administrative action by the City; or

(5) a person whose interests may be substantially affected by the performance or nonperformance of the official's or employee's official duties.

(b) Provider understands and agrees that if it offers anything of value to a City official or employee under circumstances where the receipt of such item would violate the provisions of this Executive Order, Provider shall be subject to sanctions with respect to future City contracts. Such sanctions may range from disqualification from participation in a particular contract to debarment, depending on the nature of the violation.

#### **14.16 Chapter 17-1900 of the Philadelphia Code: Equal Benefits Ordinance.**

(a) Unless Provider is a government agency, this is a "Service Contract" as that term is defined in Section 17-1901(4) of the Code. If the Service Contract is in an amount in excess of \$250,000, then pursuant to Chapter 17-1900 of the Code, Provider shall, for any of its employees who reside in the City, or any of its employees who are non-residents subject to City wage tax under Section 19-1502(1)(b) of the Code, extend the same employment benefits the Provider extends to spouses of its employees to life partners of such employees. Provider certifies that (i) it is in compliance with the requirements of Chapter 17-1900, (ii) its employees have been notified of the employment benefits available to life partners pursuant to Chapter 17-1900, and (iii) such employment benefits are currently, or will be made available within the time

required by Section 17-1902(2), or that the Provider does not provide employment benefits to the spouses of married employees.

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

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

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

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

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

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

## **ARTICLE XV: FIXED ASSETS**

### **15.1 Title to Fixed Assets.**

(a) Title to fixed assets purchased in whole or in part through this Contract shall vest in the City, subject to Provider's use thereof during the Term of this Contract. The City may, at its sole discretion, in whole or in part, according to the percentage of contribution, and within one hundred and eighty (180) days after the expiration of the Term of this Contract:

(1) Take possession of the fixed assets and reimburse any other funding sources according to their percentage of contribution based upon fair market value as determined by an Independent appraisal by an appraiser selected by the City;

(2) Direct that the fixed assets be sold pursuant to an independent appraisal by an appraiser selected by the City reflecting an acceptable fair market value, with the proceeds of the sale retained by the City;

(3) Allow retention by Provider upon proportionate payment to the City of the share contributed by the City as determined by the fair market value in accordance with an independent appraisal by an appraiser selected by the City.



(b) Provider shall maintain and administer, in accordance with sound business practice, a program for the maintenance, repair, protection, preservation, and insurance of property so as to assure its full availability and usefulness for the performance of this Contract. A control system, including insurance coverage, must be in effect to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft must be investigated and fully documented by Provider.

(c) During the Term of this Contract and within one hundred and eighty (180) days after the expiration or earlier termination of the Term hereof, Provider shall not sell, lease, donate, or otherwise dispose of any fixed asset purchased with funds obtained pursuant to this Contract without prior written permission from the City.

(d) The following provisions shall apply to all property which has been furnished by the City or for which reimbursement has been made.

(1) Provider shall maintain a fixed assets ledger or equivalent document which shall be current and shall be submitted to the City in accordance with the terms and conditions of this Contract. The fixed assets ledger or equivalent document shall separately identify those assets owned by the City and those assets owned by Provider.

(2) In the event that Provider is indemnified, reimbursed or otherwise compensated for any loss, destruction or damage to assets covered by this Contract, it shall notify the City in writing and shall use the proceeds to repair, renovate or replace the property involved; and shall credit such proceeds against the cost of work covered by this Contract, or shall otherwise reimburse the City as directed by the City.

(3) Provider shall maintain an inventory listing of all fixed assets. Provider shall perform an annual physical inventory at the end of the Initial Term and the end of any Additional Term of this Contract, by sighting and verifying the inventory listings. Discrepancies shall be documented and kept on file with the invoices, inventory reports, and other papers which are subject to audit. Provider shall submit such inventory listings to the City at the end of the Initial Term and the end of any Additional Term of this Contract. Without limiting the applicability of other portions of this Contract, the City retains the right to enter the property or facilities used in connection with this Contract or Services, to make inspections of fixed assets covered by this Contract, and of the above-mentioned invoices, inventory reports and other papers.

## **ARTICLE XVI: MISCELLANEOUS**

**16.1 Governing Law.** This Contract shall be deemed to have been made in Philadelphia, Pennsylvania. This Contract and all disputes arising under this Contract shall be governed, interpreted, construed and determined in accordance with the laws of the Commonwealth of Pennsylvania, without giving effect to principles of Pennsylvania law concerning conflicts of laws.

16.2 **Amendments; Waiver.** Except as provided in Sections 3.3, 5.7, and 14.10(g)(1) above, this Contract may not be amended, supplemented, altered, modified or waived, in whole or in part, except by a written Amendment signed by the Parties. Except to the extent that the Parties may have otherwise agreed in writing in an Amendment, no waiver, whether express or implied, by either Party of any provision of this Contract shall be deemed: (a) to be a waiver by that Party of any other provision in this Contract; or (b) to be a waiver by that Party of any breach by the other Party of its obligations under this Contract. Any forbearance by a Party in seeking a remedy for any noncompliance or breach by the other Party shall not be deemed to be a waiver of rights and remedies with respect to such noncompliance or breach.

16.3 **Integration.** The Contract Documents forming this Contract, including the Provider Agreement and the General Provisions and the exhibits incorporated by reference therein, contain all the terms and conditions agreed upon by the Parties, constitute the entire agreement among the Parties pertaining to the subject matter hereof, and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, of the Parties (except to the extent specifically set forth herein). No other prior or contemporaneous agreements, covenants, representations or warranties, oral or otherwise, regarding the subject matter of this Contract shall be deemed to exist or to bind any Party or to vary any of the terms contained in this Contract.

16.4 **No Joint Venture.** The Parties do not intend to create, and nothing contained in this Contract shall be construed as creating, a joint venture arrangement or partnership between the City and Provider with respect to the Services or the Materials.

16.5 **No Third Party Beneficiaries.** With the exception of the remedy provided to third party beneficiaries by Section 14.13(e), nothing in this Contract, express or implied, is intended or shall be construed to confer upon or give to any Person, other than the Parties, any rights, remedies, or other benefits, including but not limited to third-party beneficiary rights, under or by reason of this Contract. This Contract shall not provide any third party with any remedy, claim, liability, reimbursement, cause of action or other right other than any such remedy, claim, etc. existing without reference to the term of or the existence of this Contract.

16.6 **Counterparts.** This Contract may be executed in one or more counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same instrument.

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

16.8 **Survival.** Any and all provisions set forth in this Contract which, by its or their nature, would reasonably be expected to be performed after the termination of this Contract shall survive and be enforceable after such termination. Any and all liabilities, actual or contingent,

which shall have arisen in connection with this Contract shall survive the expiration or earlier termination of this Contract, along with the following: Provider's representations, warranties and covenants set forth in Article IV (Provider's Representations, Warranties and Covenants) above; Provider's obligation to indemnify, defend and hold harmless the City, its officers, employees and agents as set forth in Section 8.2 (Indemnification) above; and the Parties' rights and obligations set forth in Article X (Ownership of Materials; Proprietary Information; Confidentiality) above.

**16.9 Determination of Disputes.** Any dispute arising between the City and Provider under or with respect to either Party's covenants, obligations, powers, rights or duties under this Contract shall be submitted to and decided by the Responsible Official or his or her designee. The Responsible Official or his or her designee shall render and reduce to writing his or her decision, and furnish a copy to Provider by notice under this Contract. In connection with any dispute under this Contract, the Responsible Official shall offer Provider an opportunity to offer evidence in support of its position concerning the subject matter of the dispute. This Section shall not be construed to limit the benefit to the City of Articles XI (Events of Default) or XII (Remedies) above.

**16.10 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.

**16.11 Headings.** The titles, captions or headings of Articles, Sections and Exhibits or schedules in this Contract are inserted for convenience of reference only; do not in any way define, limit, describe or amplify the provisions of this Contract or the scope or intent of the provisions, and are not a part of this Contract.

**16.12 Statutory and other 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.

**16.13 Days.** Any references to a number of days in this Contract shall mean calendar days unless this Contract specifies business days.

**16.14 Forum Selection Clause; Consent to Jurisdiction.** The Parties irrevocably consent and agree that any lawsuit, action, claim, or legal proceeding involving, directly or indirectly, any matter arising out of or related to this Contract, or the relationship created or evidenced thereby, shall be brought exclusively in the United States District Court for the Eastern District of Pennsylvania or the Court of Common Pleas of Philadelphia County. It is the express intent of the Parties that jurisdiction over any lawsuit, action, claim, or legal proceeding shall lie exclusively in either of these two (2) forums. The Parties further irrevocably consent and agree not to raise any objection to any lawsuit, action, claim, or legal proceeding which is brought in either of these two (2) forums on grounds of venue or *forum non conveniens*, and the Parties expressly consent to the jurisdiction and venue of these two (2) forums. The Parties further agree that service of original process in any such lawsuit, action, claim, or legal

proceeding may be duly effected by mailing a copy thereof, by certified mail, postage prepaid to the addresses specified in Section 5.1 (Notice) of the Provider Agreement.

**16.15 Waiver of Jury Trial.** Provider hereby waives trial by jury in any legal proceeding in which the City is a party and which involves, directly or indirectly, any matter (whether sounding in tort, contract or otherwise) in any way arising out of or related to this Contract or the relationship created or evidenced hereby. This provision is a material consideration upon which the City relied in entering into this Contract.

**16.16 Notices.** All notices, demands, requests, waivers, consents, approvals or other communications which are required or may be given under this Contract shall be in writing and shall be deemed to have been duly made (a) when received or refused if delivered by hand with receipt given or refused; (b) on the next business day if delivered by a nationally recognized overnight courier service (*e.g.*, Federal Express or United Parcel Service); (c) on the date confirmed for receipt by facsimile if delivered by facsimile; and (d) upon receipt or refusal of delivery if sent by certified or registered United States mail, return receipt requested. In each case notices shall be sent to the addresses set forth in Section 5.1 of the Provider Agreement, or to such other address as either Party may specify to the other by a notice complying with the terms of this Section 16.16 (Notices).

## **Recovery House Transformation Initiative Questions and Answers**

**Q1)** Is one disqualified if they did not attend the pre-proposal conference?

**Response:** No.

**Q2)** Can one application be submitted for two houses?

**Response:** Yes, as long as the amount is \$25,000 or less.

**Q3)** If my house needs repairs that costs more than \$25,000, can I submit more than one application?

**Response:** Yes, each applicant can submit up to two applications if major work is needed in one house.

**Q4)** If I do not have formal staffing at the recovery house or do not pay a living wage to staff, will my application be disqualified?

**Response:** No. If a recovery house does not have formal staffing but provides a stipend to a house manager who also lives in the house, please describe how your recovery house operates and the equivalent of the stipend and the financial value of any other benefits of being the house manager. Please also provide the salary of each staff person employed by the residence and the barriers to paying a living wage.

**Q5)** Will my application be considered if I already have PARR Certification?

**Response:** Yes, if your house needs repairs to maintain PARR certification over the next 5 years.

**Q6)** I have two properties that I would like to make Recovery Residence; can I apply for two grants?

**Response:** If the houses are not currently operating as Recovery Residences, you can not apply. If both houses are currently operating as recovery residences, then you may apply for two grants. Please indicate the date that your recovery house became operational.

**Q7)** Do I need a person to reside at the property 24 hours a day to monitor residence?

**Response:** Yes. Please ensure that there is a staff person or lead person present during each shift.



**Q8)** Will I need someone on staff that will administer medication?

**Response:** No, but if medications are kept on site, submit your medication policy as an addendum and describe the measures in place to keep residents safe.

**Q9)** Is there an age bracket that I must target?

**Response:** Yes, ages 18 and over.

**Q10)** Should there be a curfew in place regarding incoming and outgoing?

**Response:** Yes.

**Q11)** How long should residence be available to the clients?

**Response:** Residents should be able to stay in the recovery house for a minimum of 180 days.

**Q12)** What license would I need to be the administrator of the house?

**Response:** At present there is no house administrator license; it is encouraged that every house administrator completes the recovery house training series "Tools for Success."

**Q13)** How many staff members should each house have?

**Response:** The number of staff members at each house should be at a level to ensure that all residents are safe. Please indicate the number of staff members present during each shift and the rationale for the number of staff.

**Q14)** Can the residence have visitors?

**Response:** Houses should have written protocols about visitors coming onto the property to include contraband.

**Q15)** Should I have a laundry facility on the premise?

**Response:** This is not a requirement. If there aren't laundry facilities on the premises, please indicate how residents complete laundry and what is done for individuals who do not have an income.

**Q16)** How much insurance is required for each home or is it per residence?

**Response:** The organization should have \$500,000 or more of liability insurance .

**Q17)** What is there a page limit on the narrative section? Should it be double spaced?

**Response:** The proposal should be no longer than 5 pages, it does not have to be double spaced.

**Q18)** Is there a required format for the budget?

**Response:** Please submit the budget in an excel or excel-type worksheet with the information listed in section II, F that includes the costs of the repairs being requested.

**Q19)** How much information is required for proposed sub-contractors, that is, the people who will do the needed upgrades to the houses? Must applicants have identified all contractors before submitting their applications? The assumption is that many applicants will use very local small contractors to do the work.

**Response:** Estimates are required upon submission of the application along with supporting information to show that the contractor is licensed and insured.

**Q20)** Section III, A, 13 is the Statement of Financial Capacity. Does this only apply to applicants who are already running Recovery Houses? Some applicants may be applying to start a Recovery House and don't have 5 years of financial statements. What should they do?

**Response:** All applicants are required to submit a statement of financial capacity. This grant opportunity is only for currently operating recovery houses. If there are not five years of financial statements available, please indicate the date that the recovery house began operating and financial statements from that point forward.

**Q21)** Please look at Section E (Compliance with Phila. 21st Century Minimum Wage and Benefits Ordinance).? I believe there needs to be a statement about wages paid to the few workers in a house, but these requirements seem excessive for owners of one or two Recovery Houses.

**Response:** Please provide the salary of each staff person employed by the residence and the barriers to paying a living wage.



**Q22)** Appendix B-1 states that it applies only to non-profit agencies. As such it is not likely that sole proprietors do not have to complete the form. Please verify.

**Response:** Follow the instructions per the form. If you do not identify as a non-profit agency, then you are not required to complete the form.

**Q23)** What is the maximum grant amount per facility?

**Response:** The maximum grant amount per facility is two awards, or \$50,000.

**Q24)** Is there a minimum or maximum on the number of beds for the facility?

**Response:** No.

**Q25)** What stage of construction does the property need to be in, in order to receive grants or contract? Does it need to be completely built, or can we have plans, and zoning done?

**Response:** This grant opportunity is only available to currently operating recovery houses.

**Q26)** Do we need to have the license through DDAP prior to receiving grants or contract?

**Response:** No, the DDAP Recovery House license is not available as of the date of this response.