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**REQUEST FOR PROPOSALS
for
Disaster Recovery Management Services
for The
CITY OF PHILADELPHIA**

Issued by:
THE CITY OF PHILADELPHIA ("City")
Office of the Director of Finance

All proposals must be emailed to Sarah.Dewolf@phila.gov AND
Christopher.Rupe@phila.gov.

Applicants who have failed to submit complete applications will not be considered for the contract.

Proposals must be received no later than 5:00 p.m. Philadelphia, PA, local time,
on *May 1, 2020*

Pre-Proposal Conference (Highly Encouraged):

Date: April 29, 2020

Time: 12:00 PM

Format: Conference Call (Number: 800-615-4580, Access Code: 226-9656)

James F. Kenney, Mayor
Rob Dubow, Director of Finance, Office of the Director of Finance

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Addendum

Please note that the RFP has been amended to show that the Local Business Entity/Local Impact criterion set forth in Sections III.A, III.H and III.J of the RFP and in Appendix D are not applicable to this opportunity. Appendix D shall not be completed. Further, to the extent the City's procurement process is inconsistent with federal reimbursement guidelines, the federal guidelines will govern.

I. Project Overview

A. Introduction; Statement of Purpose

The County and City of Philadelphia (“City”) Office of the Director of Finance seeks professional consulting and grants management services to support the City’s response to and recovery from the Coronavirus Disease 2019 (“COVID-19”) pandemic disaster. The purpose of this contract is to provide the City with some or all of the following services:

- Specialized consulting and grant management services to maximize the City’s drawdown of state and federal funding streams to support the City’s COVID-19 pandemic disaster response and economic recovery. These services include supporting the City with the following objectives:
 - Establishing a comprehensive recovery funding portfolio with multiple funding streams, including reimbursement programs, stimulus funding, grants or loans from various federal or state programs, especially those identified in COVID-19 related legislation; and
 - Expanding the City’s capacity for cost-tracking, recordkeeping and record retention, public accounting, and fiscal management to support recovery and sustainment of routine operations while fully engaged in the COVID-19 response.
- Specialized consulting and grant management services to maximize the City’s cost reimbursement from the Federal Emergency Management Agency (“FEMA”) Public Assistance Grant Program and the U.S. Department of Health and Human Services grant programs.

B. Department Overview

The Office of the Director of Finance was created by the Philadelphia 1951 Home Rule Charter to give the Mayor and the City government a principal officer responsible for the financial, accounting, and budgeting functions of the executive branch.

The Office of the Director of Finance is comprised of the Executive Office, Accounting Bureau, Administrative Services Center, Payroll Unit, Office of Budget and Program Evaluation, Mayor’s Office of Grants, Office of Property Data, and Risk Management. Other agencies reporting to the Director of Finance include the City Treasurer, Department of Revenue, Sinking Fund Commission, the staff of the Board of Pensions and Retirement, and the Office of Property Assessment (OPA) and the Philadelphia.

Operating on a fiscal year between July 1st and June 30th, the Office of the Director of Finance administers the City’s payroll activities and risk management functions, issues financial reports, and oversees expenditures and reports on all grants through the Mayor’s Office of Grants.

C. Project Background

Like many jurisdictions across the nation, the City is engaged in a large-scale response to the COVID-19 pandemic disaster. To date, thousands of Philadelphia residents have tested positive for the COVID-19, with more than a thousand hospitalized and hundreds deceased. Public Health mitigation measures, such as social distancing, stay-at-home orders, and business closures

have disrupted our social and economic systems. Recent actions by the Federal government have opened funding opportunities related to the COVID-19 pandemic disaster, including a Major Disaster Declaration for Pennsylvania (Pennsylvania COVID-19 Pandemic [DR-4506]), and the passage of three major pieces of federal legislation to-date, including the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”). As we reach the apex of this unprecedented incident, the City’s Office of the Director of Finance seeks specialist services to maximize funding opportunities available to support our response to and recovery from the COVID-19 pandemic disaster.

D. Request for Proposals

The Office of the Director of Finance will accept proposals from specialist firms. Firms may apply to all or some of the objectives in this Request for Proposals (“RFP”), or propose to engage subcontractors to build their firm’s capacity to meet the objectives.

Applicants should highlight their subject matter experience relevant to 1) managing the administrative and financial function of a large-scale catastrophic disaster recovery program following the National Disaster Recovery Framework and industry best practices; 2) managing large funding grant portfolios with multiple funding streams totaling more than \$100 million; 3) demonstrating familiarity and experience with federal government agencies and their grants administration processes, including complying with the requirements of the Office of Management and Budget's (OMB) *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (commonly referred to as "Uniform Guidance"); 4) providing public accounting and fiscal management services with the highest degrees of competency, fidelity, and integrity; 5) implementing and managing a Public Assistance Grant Program, or similar grant reimbursement program, on behalf of a jurisdiction; this includes, but is not limited to, experience with the following:

- Eligible cost tracking and reconciliation of labor, equipment use, contracts, supplies, mutual aid, and other applicable costs;
- Project Worksheets (PW) development and successful appeals during project formulation;
- Documentation review and project closeout;
- Coordination and management of deliverables with government agencies, such as PEMA and FEMA.
- Federal grants quarterly reporting;
- Conducting internal controls reviews including U.S. Department of Homeland Security programs Improper Payment Act and Internal Controls reviews.

The intent is to contract one firm or multiple firms to supply these services. Interested parties are encouraged to supply examples of similar projects and a list of references. The respondent may propose an initial milestone payment plan in accordance with the scope of work proposed and refined upon negotiation.

The City has received offers to perform some of the services contemplated herein on a pro bono basis. Applicants are encouraged to utilize creative pricing solutions such as reduced rates or to bundle free services along with their proposed scope of work.

E. 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:

- Maximize the City's drawdown of state and federal funding streams to assist in the City's COVID-19 response and the economic recovery of the City:
 - Establish a comprehensive recovery funding portfolio with multiple funding streams, including reimbursement programs, stimulus funding, grants or loans from various federal or state programs, especially those identified in COVID-19 related legislation; and
 - Expand the City's capacity for cost-tracking, recordkeeping and record retention, public accounting, and fiscal management to support the City's recovery and sustainment of routine operations while fully engaged in the COVID-19 response.
- Maximize the City's cost reimbursement from the Federal Emergency Management Agency ("FEMA") Public Assistance Grant Program and the U.S. Department of Health and Human Services for costs eligible under the Major Disaster Declaration for Pennsylvania, Pennsylvania COVID-19 Pandemic (DR-4506) or other declarations.

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 Office of the Director of Finance to achieve the objective. Applicants may apply to all or some of the objectives of the RFP, or propose to engage subcontractors to build their firm's capacity to meet the objectives.

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 Office of the Director of Finance has identified as necessary to meet those requirements. The Office of the Director of Finance 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. Applicants may apply to all or some of the objectives of the RFP, or propose to engage subcontractors to build their firm's capacity to meet the objectives.

B. Services and Tangible Work Products

1. Services

The Office of the Director of Finance requires at least the services listed below, including the specific tasks and work activities described. Applicant's proposed scope of work should state in detail how it will carry out each task, including the personnel/job titles (as identified in Section I, *Organizational and Personnel Requirements*) responsible for completing the task. For each service specified, the Applicant should propose criteria to determine when the tasks comprising the service are completed satisfactorily. Applicants may propose additional or revised tasks and activities, but should explain why each is necessary to achieve the project objectives.

In regard to the objective, maximize the City's drawdown of state and federal funding streams to assist in the City's COVID-19 response and the economic recovery of the City, and its sub-objectives contained within:

Project Assessment, Development, and Formulation

- Assist the City with establishing a comprehensive recovery funding portfolio with multiple funding streams, including reimbursement programs, stimulus funding, grants or loans from various federal or state programs, especially those identified in COVID-19 related legislation;
- Advise the City of all federal and state assistance available;
- Advise and develop methods to maximize federal and state assistance across multiple funding sources and agencies;
- Assist the City with reviewing, scoping, applying for and managing grant or loan programs related to the COVID-19 pandemic disaster and Major Disaster Declaration, Pennsylvania COVID-19 Pandemic (DR-4506), including, but not limited to, the following:
 - Funding authorized by recent COVID-19 stimulus legislation; such as the Coronavirus Emergency Supplemental Funding program;
 - U.S. Department of the Treasury;
 - U.S. Department of Health and Human Services ("U.S. HHS");
 - Centers for Disease Control and Prevention ("CDC");
 - U.S. Department of Justice ("U.S. DOJ");
 - U.S. Department of Housing and Urban Development ("HUD") Community; Development Block Grant ("CDBG") Disaster Recovery Program (if applicable);
 - FEMA Community Disaster Loan Program (if applicable);
 - FEMA Individual Assistance (if applicable);
 - FEMA Hazard Mitigation Grant Program (if applicable); and
 - Other sources as identified through research or future legislation.

Cost Tracking and Accounting, Including Vendor Engagement & Procurement;

- Assist the Office of the Director of Finance with expanding the City's capacity for cost-tracking, public accounting, and fiscal management to support recovery and sustainment of routine operations while fully engaged in the COVID-19 response;

- Assist with insurance claim submission and tracking in relation to costs or projects submitted to granting agencies to avoid duplication of benefits and document final amount of insurance proceeds applied to each project;.
- Coordinate with local government staff to obtain all costs and necessary backup documentation to develop, revise, and submit funding applications;
- Work with the City to ensure the City is following processes that meet the procurement requirements of federal and state grants; advise the City on what procurement documentation to collect, review, document or submit for federal and state grant applications; and advise on other related requirements the City should consider;
- In accordance with enterprise architecture and security guidelines set forth by the City Office of Innovation and Technology, develop a City-owned database/electronic system for tracking and management of claims, grant applications and status, and associated information to facilitate effective documentation, management of grant management and funding programs, and information sharing;
- Work with the City and the Office of the Director of Finance staff to understand the systems and processes used by the City for grant management and fiscal management.
- Conduct work in compliance with the Office of Management and Budget's (OMB) *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (commonly referred to as "Uniform Guidance").

Communications and Liaison Services

- Attend relevant meetings with local, state, federal and other agencies in conjunction with or on behalf of the City and in coordination with the City's legislative affairs teams;
- Track status of funding applications and payouts and serve as a co-liaison between granting agencies;
- Assist in responding to Requests for Information from relevant agencies; and
- Assist with the submission of appeals to granting agencies; and
- Assist with the preparation of oral or written testimony for public or administrative hearings.

Reporting and Compliance Monitoring

- Provide detailed and periodic management reports on the status of applications, including developments, revisions, submissions/approvals, open issues, financial overview, etc.;
- Coordinate and manage deliverables with funding agencies and federal grants quarterly reporting;
- Generate time extension requests to funding agencies when necessary so that eligibility is not forfeited;
- Assess and check for duplication of benefits across multiple recovery grant programs and insurance policies;
- Review data, records, and processes for compliance with federal requirements;
- Advise on document retention strategies for audit purposes;
- Assist in getting the necessary legal documents for proper filing;
- Provide cash management reports showing the projected schedule for reimbursement requests and the actual status of reimbursements received; and

- Review data and records for compliance with federal requirements.

Guidance and Training

- Provide expert guidance and advisory services regarding all applicable legislation, regulations, policies, and rules;
- Provide ongoing guidance to maximize funding;
- Provide training and, if necessary, support for IT systems developed to support all COVID-19 Recovery Management efforts; and
- Advise on the management of the program and grants closeout process.

In regard to the objective, maximize the City’s cost reimbursement from the Federal Emergency Management Agency (“FEMA”) Public Assistance Grant Program and U.S. HHS for costs eligible under the Major Disaster Declaration for Pennsylvania, Pennsylvania COVID-19 Pandemic (DR-4506) or other declarations:

Project Design and Initial Assessment

From the pre-award phase to project close-out, provide consulting and grants management services for the FEMA Public Assistance Grant Program and any reimbursement funding program available through the U.S. HHS in regard to the COVID-19 pandemic disaster:

- Develop program guidelines, policies, procedures, implementation plans, or other pertinent documents;
- Assist with project formulation, including, but not limited to, the following activities as applicable to the COVID-19 pandemic disaster:
 - Damage assessments, if applicable (i.e., assessment of damages including a comprehensive list of assessed damages or costs);
 - Information gathering (e.g., document damages or costs, gather records, review insurance policies);
 - Project development (define both small and large projects’ scope, size, and damages, including cost estimating that will be the basis of each Project Worksheet for FEMA);
 - Development of Project Worksheets for submission to the FEMA Public Assistance Grant Program;
 - Project submittals (draft and submit small and large Project Worksheets to Pennsylvania Emergency Management Agency (“PEMA”) and FEMA).
- Research, develop, and prepare all applicable Public Assistance documents; and
- Research, monitor, report, document, manage, analyze, assess, design, and other work related to disaster recovery, disaster mitigation, and public assistance.

Cost Tracking and Accounting, Including Vendor Engagement & Procurement

- Assist with insurance claim submission and tracking in relation to projects submitted to FEMA to avoid duplication of benefits, and document final amount of insurance proceeds applied to each project, if applicable.
- Coordinate with local government staff to obtain all costs and necessary backup documentation to develop, revise, and submit Project Worksheets (“PW”);

- Work with the City to ensure the City is following processes that meet the procurement requirements of federal and state grants; advise the City on what procurement documentation to collect, review, document or submit for federal and state grant applications; and advise on other related requirements the City should consider;
- In accordance with enterprise architecture and security guidelines set forth by the City Office of Innovation and Technology develop a City-owned database/electronic system for tracking and management of project worksheets, claims, grant applications and status, and associated information to facilitate effective documentation, management of grant management and funding programs, and information sharing;
- Work with the City and the Office of the Director of Finance staff to understand the systems and processes used by the City for grant management and fiscal management; and
- Conduct work in compliance with the Office of Management and Budget's (OMB) *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (commonly referred to as "Uniform Guidance").

Communications and Liaison Services

- Attend relevant meetings with local, state, federal and other agencies in conjunction with or on behalf of the City and in coordination with the City's legislative affairs teams;
- Track status of FEMA and other agency reimbursement and serve as a co-liaison between FEMA/other agencies and local government;
- Assist in responding to Requests for Information from PEMA, FEMA, and other relevant agencies; and
- Assist with the submission of appeals to FEMA;
- Assist with the preparation of oral or written testimony for public or administrative hearings.

Reporting and Compliance Monitoring

- Provide detailed and periodic management reports on the status of PWs, including developments, revisions, submissions/approvals, open issues, financial overview, etc.;
- Coordinate and manage deliverables with PEMA and FEMA and/or other federal grants quarterly reporting;
- Generate time extension requests to FEMA and/or other federal grants and PEMA when necessary so that eligibility is not forfeited;
- Assess and check for duplication of benefits across multiple recovery grant programs and insurance policies;
- Review data, records, and processes for compliance with federal requirements;
- Advise on document retention strategies for audit purposes;
- Assist in getting the necessary legal documents for proper filing;
- Provide Cash Management reports showing the projected schedule for reimbursement requests and the actual status of reimbursements received; and
- Review data and records for compliance with federal requirements.

Guidance and Training;

- Provide expert guidance and advisory services regarding all applicable legislation, regulations, policies, and rules, including, but not limited to, the Robert T. Stafford Disaster Relief and Emergency Assistance Act (“Stafford Act”), the Federal legislation related to the COVID-19 pandemic disaster, e.g., CARES Act, U.S. Department of Homeland Security Program Improper Payment Act and Internal Controls Review, Federal Procurement rules, etc.;
- Provide training and, if necessary, support for IT systems developed to support all COVID-19 Recovery Management efforts.
- Provide ongoing guidance to maximize FEMA Public Assistance funding, including proactively identifying opportunities to maximize Public Assistance and Post-Disaster Mitigation Section 406 funding (if applicable) within the current regulatory framework;
- Provide ongoing guidance to maximize recovery funding from the U.S. HHS; and
- Advise on the management of the program and grants closeout process.

2. Tangible Work Products

Due to the dynamic nature of the COVID-19 pandemic disaster and the federal approach to the response, tangible work products to be delivered under the awarded contract will be defined and refined over the term of the contract. The Services section provides a comprehensive overview of the scope of activities to be covered.

C. Milestones

The Office of the Director of Finance expects the work for this project will be organized into milestones (at a minimum), and any tasks, services and/or work products necessary for meeting the objectives of the RFP. The Applicant should propose milestones and criteria to determine when each milestone has been completed. The Office of the Director of Finance would expect that such a milestone schedule would include, at a minimum, a period of initial review and primary analysis with the City, a data collection and initial plan process, and a monitoring and compliance timetable and schedule. Applicants may propose additional or revised milestones, or a project structure that does not rely on milestones but should explain their reasons for the structure proposed and how it will facilitate completion of the work.

The Office of the Director of Finance reserves the right to condition payments on the satisfactory completion of the specified milestones, tasks, services and/or work products listed above. In addition to describing how each proposed milestone will be accomplished, the scope of work proposed by Applicant should identify the milestones the Applicant proposes as payment milestones and the amount it proposes for each milestone payment. Applicants may propose alternative means of payment but should explain their reasons for the alternative and how it will facilitate completion of the work.

D. Timetable

The Office of the Director of Finance anticipates the initial term of this RFP will be approximately 12 months after the project starts. Applicants should take note of the dynamic nature of the COVID-19 pandemic disaster and acknowledge that the timetable may necessarily

adjust.

E. Hours and Location of Work

The Office of the Director of Finance holds regular business hours. Work may be performed remotely provided the Applicant is able to supply appropriate remote work capabilities. The progress reports may be facilitated via conference call. Additional meetings, including in-person meetings, may be requested by the Office of the Director of Finance or the Applicant as the project progresses. The selected firm may choose to visit potential sites in Philadelphia to conduct assessments or other work. The Office of the Director of Finance can help facilitate access to these locations or accompany the consultant if desired.

F. Monitoring; Security

By submission of a proposal in response to this RFP, the Applicant agrees that it will comply and cooperate with all contract and compliance monitoring and evaluation activities undertaken by the City and with all security policies and requirements of the City.

The Office of the Director of Finance may ask the selected Applicant to sign a non-disclosure agreement. A federal security clearance is not required. Any additional authorizations to view and use sensitive or protected information will be assessed as the project advances.

G. Reporting Requirements

The successful Applicant shall report to the Office of the Director of Finance on at least a weekly 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(s) who performed the service.

H. Cost Proposal

As noted in the foregoing sections, Applicants may apply to all or some of the objectives of this RFP, or propose to engage subcontractors to build their firm's capacity to meet the objectives. For the cost proposal, the respondent may propose an initial milestone payment plan in accordance with the scope of work proposed and refined upon negotiation. The Office of the Director of Finance expects that such a milestone schedule would, at minimum, include a period of initial review and primary analysis with the City, a data collection and initial plan process, and a monitoring and compliance timetable and schedule.

I. Organization and Personnel Requirements

The proposal must identify all personnel who will perform work on the project, by education level, skill set (described in detail), experience level, and job title. Resumes of all personnel so identified should be included in Applicant's proposal.

J. Technology Capabilities

The successful Applicant will be responsible for having and using the technology capabilities and resources necessary to perform the work. If the applicant is providing an IT solution, then

the successful Applicant should have an understanding of and experience with hybrid IT infrastructure that includes a mix of cloud and on-premises legacy applications.

K. 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, then 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; and
- Detailed cost information for each option/alternative in accordance with the cost proposal requirements of the RFP.

Applicants may apply to all or some of the objectives of the RFP, or propose to engage subcontractors to build their firm's capacity to meet the objectives.

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

A. Proposal Format

Applicants may apply to all or some of the objectives of the RFP, or propose to engage subcontractors to build their firm's capacity to meet the objectives. 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; and
- 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.

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 projects that are similar in nature, size and scope to that which is the subject of this RFP. If any minimum qualifications for performance are stated in this RFP, Applicant must include a statement confirming that Applicant meets such minimum requirements.

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. 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.F for more information.)

9. 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.)

10. 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.D for more information.)

11. 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.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. Provide a general, independent statement of the Applicant’s financial condition in addition to one or more of the following:

- 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: **Inapplicable.**

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, Appendix E, is voluntary. (See Section III. I)

16. Disclosure Requirements

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

17. Defaults

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

18. Statement of Anticipated Job Creation (*optional*)

Applicant shall provide a narrative description on whether and how a contract award based on its proposal will result in new job creation within the following: 1) City of Philadelphia; 2) Philadelphia Metropolitan Statistical Area; 3) Commonwealth of Pennsylvania; 4) United States of America. For each job anticipated, the Applicant shall describe the following: job title, job description, educational qualifications, and anticipated annual salary or anticipate annual hourly rate.

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. Health Insurance Portability and Accountability Act (HIPAA)

The work to be provided under any contract entered into pursuant to this RFP may be subject to the federal Health Insurance Portability and Accountability Act (HIPAA), as amended, and/or other state or federal laws or regulations governing the privacy and security of health information. The selected Applicant must comply with the “Terms and Conditions Relating to Protected Health Information” which are posted on the City’s website at <https://secure.phila.gov/eContract/> under the “About” link and which will be incorporated into the contract by reference.

D. 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, and is required to exercise its “Best and Good Faith Efforts” in response to the ranges specified in the Appendix B-1 portion of Appendix B, included with this RFP 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. Forms, instructions and special contract provisions for the Antidiscrimination Policy explain these requirements in more detail and are included in Appendix B-1 to this RFP. Applicants are required to complete and return with their proposals the “Solicitation for Participation and Commitment” form which is included in Appendix B-1. The City encourages proposals from M/W/DSBE Applicants. M/W/DSBE Applicants, like all other Applicants, are required to submit a proposal that is responsive to the Antidiscrimination Policy. The M/W/DSBE Applicant will receive credit towards the participation range for its certification category (i.e., MBE range, WBE range or DSBE range).

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 in addition to the Solicitation for Participation and Commitment form.

E. The Philadelphia Tax and Regulatory Status and Clearance Statement

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

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

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

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

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

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

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

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

Applicants are advised that any contract awarded pursuant to this RFP is a “Service Contract,” and the successful Applicant under such contract is a “Service Contractor,” as those terms are defined in Chapter 17-1300 of the Philadelphia Code (“Philadelphia 21st Century Minimum Wage and Benefits Standard Ordinance”) Any Subcontractor (as defined in the General Provisions attached as an Appendix to this RFP), and any sub-subcontractor at any tier proposed to perform services sought by this RFP, is also a “Service Contractor” for purposes of Chapter 17-1300. If any such Service Contractor (i.e. Applicant and subcontractors at any tier) is also an “Employer,” as that term is defined in Section 17-1302 (more than five employees), and is among the Employers listed in Section 17-1303 of the Code, then during the term of any resulting contract, it is subject to the minimum wage and benefits provisions set forth in Chapter 17-1300 unless it is granted a waiver or partial waiver under Section 17-1304. Absent a waiver, these minimum wage and benefits provisions, which include a minimum hourly wage that is adjusted annually based on the CPI, health care and sick leave benefits, are mandatory and must be provided to Applicant’s employees or the employees of any subcontractor at any tier who perform services related to the City contract resulting from this RFP. Applicants and any subcontractors at any tier proposed by Applicants are strongly encouraged to consult Chapter 17-1300 of the Philadelphia Code,³ the General Provisions, and the About/Minimum Wage and Equal Benefits Ordinances Impacting Some City Contractors links on the eContract Philly home page for further details concerning the applicability of this Chapter to, and obligations it imposes on certain City contractors and subcontractors at any tier. In addition to the enforcement provisions contained in Chapter 17-1300, the successful Applicant’s failure or the failure of any subcontractor at any tier to comply (absent an approved waiver) with the provisions of Chapter 17-1300, or any discrimination or retaliation by the successful Applicant or Applicant’s subcontractors at any tier against any of their employees on account of having claimed a violation of Chapter 17-1300, shall be a material breach of any Service Contract resulting from this RFP. By submitting a proposal in response to this RFP, Applicants acknowledge that they understand, and will comply with the requirements of Chapter 17-1300, and will require the compliance of their subcontractors at any tier if awarded a contract pursuant to this RFP. Applicants further acknowledge that they will notify any subcontractors at any tier proposed to perform services related to this RFP of the requirements of Chapter 17-1300.

G. 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

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

response to this RFP, all Applicants so acknowledge and certify that, if awarded a Service Contract pursuant to this RFP, they will comply with the provisions of Chapter 17-1900 of the Philadelphia Code and will notify their employees of the employment benefits available to life partners pursuant to Chapter 17-1900. Following the award of a Service Contract subject to Chapter 17-1900 and prior to execution of the Service Contract by the City, the successful Applicant shall certify that its employees have received the required notification of the employment benefits available to life partners and that such employment benefits will actually be available, or that the successful Applicant does not provide employment benefits to the spouses of married employees. The successful Applicant's failure to comply with the provisions of Chapter 17-1900 or any discrimination or retaliation by the successful Applicant against any employee on account of having claimed a violation of Chapter 17-1900 shall be a material breach of the any Service Contract resulting from this RFP. Further information concerning the applicability of the Equal Benefits Ordinance, and the obligations it imposes on certain City contractors is contained in the General Provisions attached to this RFP and the About/Minimum Wage and Equal Benefits Ordinances Impacting Some City Contractors links on the eContract Philly home page.

H. Local Business Entity or Local Impact Certification

Inapplicable.

I. 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, Appendix E, is voluntary.

J. 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 City Department and those it serves
2. Eligibility under Code provisions relating to campaign contributions
3. Superior prior experience of Applicant and staff
 - Specialized experience in FEMA Public Assistance Grant Program and disaster recovery

- Documented prior experience in performing project(s) of similar size and scope to the work sought by the RFP
- Demonstrated ability to meet project deadlines.
- 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: **Inapplicable.**

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 this website 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	Friday, April 24, 2020
Pre-Proposal Meeting	Wednesday, April 29, 2020, 12:00 PM, Conference Call
Site Visit	N/A
Applicant Questions Due	Wednesday, April 29, 2020, 5:00 PM Philadelphia, PA local time
Answers Posted on RFPs Online	Thursday, April 30, 2020
Proposals Due	Friday, May 1, 2020, 5:00 PM Philadelphia, PA local time
Applicant Interviews, Presentations	As needed or determined by contracting department
Applicant Selection	Approximately Friday, May 15, 2020
Contract Execution	Approximately Friday, May 15, 2020

The above dates are estimates only and the City reserves the right, in its sole discretion, to change this schedule. Notice of changes in the pre-proposal meeting date/time or location, the due date for Applicant questions, and the date for proposal submission will be posted on the City's website at

www.phila.gov/contracts (click on “*Additional Opportunities*”). 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 Sarah DeWolf at **Sarah.deWolf@phila.gov** **AND** Christopher Rupe at **Christopher.Rupe@phila.gov** no later than **Wednesday, April 29, 2020, 5:00 PM** Philadelphia, PA local time and may not be considered if not received by then. The City will respond to questions it considers appropriate to the RFP and of interest to all Applicants, but reserves the right, in its discretion, not to respond to any question. Responses will be posted on the City’s website at www.phila.gov/contracts (click on “*Additional Opportunities*” and go to the Opportunity Details page for this notice of contracting opportunity). Responses posted on the City’s website become part of the RFP upon posting. The City reserves the right, in its discretion, to revise responses to questions after posting, by posting the modified response. No oral response to any Applicant question by any City employee or agent shall be binding on the City or in any way considered to be a commitment by the City.

C. Pre-Proposal Conference Call Meeting

A pre-proposal conference call meeting to review the requirements of this RFP will be held in via conference call on **April 29, 2020, starting at 12PM, Philadelphia, PA local time**. Attendance at the pre-proposal conference call meeting is optional, but highly encouraged.

D. Interviews; Presentations

The Department reserves the right to request post-application interviews or presentations. If the Department so chooses, the Department also reserves the right to invite all or a selection of applicants to participate in the post-application process.

E. Term of Contract

It is anticipated that the initial term of the Contract shall commence on **May 15, 2020** (the “Initial Term”) and, unless sooner terminated by the City pursuant to the terms of the Contract, shall expire up to twelve months thereafter, on **May 14, 2021**. The City may, at its sole option, amend the Contract to add up to three (3) additional successive one-year terms (“Additional Terms”). Except as may be stated otherwise in such amendment, the terms and conditions of this Contract shall apply throughout each Additional Term.

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 at www.phila.gov/contracts (click on “*Additional Opportunities*”) with the original Opportunity Details. It is the Applicant’s responsibility to check the website frequently to determine whether additional information has been released or requested.

B. City Employee Conflict Provision

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

C. Proposal Binding

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

D. Contract Preparation Fee

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

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

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

E. Reservation of Rights

By submitting its response to this notice of contract opportunity as posted on the Additional Opportunities website at www.phila.gov/contracts (click on "*Additional Opportunities*"), the Applicant accepts and agrees to this Reservation of Rights and to the terms of this Notice of Contract Opportunity. The term "notice of contract opportunity," as used herein, means this RFP and includes all information posted on *Additional Opportunities* in relation to this "New Contract Opportunity" as published on *Additional Opportunities*, including, without limitation, the information posted for this opportunity on the *Additional Opportunities* and including in addition to this RFP, any other document linked to the *Additional Opportunities* 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 *Additional Opportunities*.

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 *Additional Opportunities*.

3. Other Contracts for Related Services

The services contemplated under this RFP are time sensitive and essential to City operations. The City reserves the right to enter into other agreements for similar services under separate contracting procedures. The City further reserves the right to award this opportunity to any or to none of the applicants who may be providing similar services to the City. By submitting its application, applicant expressly waives any claims of unfairness or bias on the part

of the City in the event of an award or non-award to any applicant already providing similar services to the City.

4. 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 GENERAL CONSULTANT SERVICES

Included as attachment with posted RFP/opportunity.

Applicants are advised that in addition to the City's base general provisions, the awarded applicant will also have to agree to additional contract assurance required by the federal government.

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
FORMS, INSTRUCTIONS AND SPECIAL CONTRACT PROVISIONS
(NON-COMPETITIVELY BID CONTRACTS)

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

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

The Office of Economic Opportunity has approved the following projected ranges of participation for this NOCO which serve as a guide in determining each applicant’s responsibility:

MBE 10% - 15%

and/or

WBE 10% - 15%

These ranges represent the percentage of MBE, WBE and/or DSBE (collectively, “M/W/DSBE”) participation that should be attained by M/W/DSBEs from business opportunities existing in the available market absent discrimination in the solicitation and selection of these businesses and through applicant’s exercise of Best and Good Faith Efforts. Best and Good Faith Efforts are those efforts, the scope, intensity and appropriateness of which are taken to achieve meaningful and representative opportunities for participation by M/W/DSBEs. These ranges are derived from an analysis of factors such as the size and scope of the contract and the availability of certified M/W/DSBEs to perform various elements of the contract. The submission of a Solicitation For Participation and Commitment Form and any supporting documentation (more fully discussed

¹ The term “Notice of Contracting Opportunity,” shortened to the acronym “NOCO,” refers to the City’s contract solicitation documents and information posted on *Additional Opportunities*. 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.

below) is an element of responsiveness to the NOCO and failure to submit the required information will result in rejection of your proposal.

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

A. M/W/DSBE PARTICIPATION

1. Only firms that are certified by an approved certifying agency² and identified in the OEO Certification Registry by the time of contract award will be credited toward the participation ranges on City contracts. An OEO Certification Registry is maintained by the OEO and is available online at 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. No applicant that seeks to meet the participation range(s) for participation by entering into a subcontract with any M/W/DSBE participant shall be considered to meet the range(s) if the M/W/DSBE participant does not perform 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 Subcontract 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 Subcontract 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. Participation that is not commercially useful will not be counted.

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 credited toward one participation range as either an MBE or WBE or DSBE. The firm will not be credited toward more than one category. Applicants will note with their submission which category, MBE or WBE or DSBE, is submitted for credit.

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

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. The M/W/DSBE Applicant will receive credit towards the participation range for its certification category (e.g., MBE range or WBE range or DSBE range). In addition, the participation of an M/W/DSBE partner, as part of a joint venture created for this contract, may be credited towards the participation ranges 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 M/W/DSBEs that have been solicited and that will be used by the applicant on the contract, if awarded; where the proposal satisfies the M/W/DSBE participation ranges for that contract, the applicant is rebuttably presumed not to have discriminated in its selection of contract participants.

2. Applicants must submit documentary evidence of MBE, WBE and DSBEs who have been solicited and with whom commitments have been made in response to each of the participation ranges included in this NOCO. Failure to submit the Solicitation For Participation and Commitment Form will result in the rejection of the proposal as nonresponsive, although 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. 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.

3. If Applicant does not fully meet each of the range(s) for participation established for this NOCO, applicant must demonstrate that it exercised Best and Good Faith Efforts to achieve the M/W/DSBE participation ranges along with a written request, on its letterhead, for the reduction of part or all of the M/W/DSBE participation ranges ("Request For Reduction/Waiver"). Applicant, through the submission of documentary evidence must show that applicant took all necessary steps and made reasonable efforts to achieve the M/W/DSBE participation ranges, even if these efforts were not fully successful. OEO will evaluate the scope, intensity and appropriateness of these efforts to ascertain whether they could reasonably be expected to achieve M/W/DSBE participation commensurate with the ranges. Failure to submit the documentary evidence will result in rejection of the proposal as nonresponsive; 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:

- Reasons for not committing with any MBE/WBE/DSBEs that submitted a quote/subproposal, regardless of whether the quote/subproposal was solicited by applicant.

- 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 participation within the ranges, 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 in response to the participation ranges. 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 and cannot be used as a basis for requesting a reduction or waiver of the participation ranges. OEO's review will include consideration of the following:

- 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.

4. 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 of OEO 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

Antidiscrimination Policy Solicitation for Participation and Commitment Form attached as separate document in MS Excel for the ease of use.

APPENDIX B-2

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

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

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

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

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

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

1 DEMOGRAPHIC BREAKDOWN OF WORKFORCE							
Please provide the following demographic breakdown of your workforce by race/ethnicity/gender/ disability:			#	%	Males Females	#	%
African American							
Asian/Pacific Islander							
Caucasian							
Disabled							
Hispanic							
Native American							
Other							
Total Number of Employees							
2 DEMOGRAPHIC BREAKDOWN OF BOARD COMPOSITION							
Please provide the following demographic breakdown of your Board of Directors or Trustees by race/ethnicity/gender/disability:			#	%	Males Females	#	%
African American							
Asian/Pacific Islander							
Caucasian							
Disabled							
Hispanic							
Native American							
Other							
Total Number of Directors or Trustees							
3 SUPPLIER DIVERSITY							
Please check the appropriate box to indicate if you have a supplier diversity policy. If “no,” please explain on your letterhead.						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 C

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

THIS IS A CONFIDENTIAL TAX DOCUMENT NOT FOR PUBLIC DISCLOSURE

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

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

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

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

Authorized Signature

Date

Print Name and Title

*Applicant name and number **must** correspond with those on file. Review the name and TIN requirements in the RFP's "Mandatory Online Application Requirements" section. Also, you may apply for a City of Philadelphia Business Income and Receipts Tax Account Number or a Commercial Activity License on line after you have registered your business on the City's Business Services website located at <http://business.phila.gov/Pages/Home.aspx>. Click on "Register" or "Register Now" to register your business.

APPENDIX E
LGBTQ Applicant Opportunity Data

LGBTQ Applicant Opportunity Data form attached as separate document in a fillable PDF for the ease of use.

ADDENDUM

Please note that the RFP has been amended to show that the Local Business Entity/Local Impact criterion set forth in Sections III.A, III.H and III.J of the RFP and in Appendix D are not applicable to this opportunity. Appendix D shall not be completed. Further, to the extent the City's procurement process is inconsistent with federal reimbursement guidelines, the federal guidelines will govern.

**Addendum to Request for Proposals for
Disaster Recovery Management Services
Office of the Director of Finance**

Please note that the deadline for proposal submissions for the Disaster Recovery Management Services contracting opportunity has been extended from:

Friday, May 1, 2020, 5:00 PM Philadelphia, PA local time

to

Monday, May 4, 2020, 5:00 PM Philadelphia, PA local time

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

DEPARTMENT OF COMMERCE OFFICE OF ECONOMIC OPPORTUNITY (OEO)										
Bid Number or Proposal Title:				Name of Bidder/Proposer:				Bid/RFP Opening Date:		
Disaster Recovery Management Services										
List below ALL MBE/WBE/DBE/DSBEs that were solicited regardless of whether a commitment resulted therefrom. - Photocopy this form as necessary.										
<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> DSBE <input type="checkbox"/> M-DBE <input type="checkbox"/> W-DBE			Work or Supply Effort to be Performed		Date Solicited		Commitment Made		Give Reason(s) If No Commitment	
Company Name					By Phone	By Mail	Yes (If Yes, give date) NO			
Address										
Contact Person					Quote Received		Amount Committed To			
Telephone Number		Fax Number			YES²	NO	Dollar Amount			
Email Address							\$			
OEO REGISTRY #		CERTIFYING AGENCY					Percent of Total Bid/RFP			
<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> DSBE <input type="checkbox"/> M-DBE <input type="checkbox"/> W-DBE			Work or Supply Effort to be Performed		Date Solicited		Commitment Made		Give Reason(s) If No Commitment	
Company Name					By Phone	By Mail	Yes (If Yes, give date) NO			
Address										
Contact Person					Quote Received		Amount Committed To			
Telephone Number		Fax Number			YES²	NO	Dollar Amount			
Email Address							\$			
OEO REGISTRY #		CERTIFYING AGENCY					Percent of Total Bid/RFP			
<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> DSBE <input type="checkbox"/> M-DBE <input type="checkbox"/> W-DBE			Work or Supply Effort to be Performed		Date Solicited		Commitment Made		Give Reason(s) If No Commitment	
Company Name					By Phone	By Mail	Yes (If Yes, give date) NO			
Address										
Contact Person					Quote Received		Amount Committed To			
Telephone Number		Fax Number			YES²	NO	Dollar Amount			
Email Address							\$			
OEO REGISTRY #		CERTIFYING AGENCY					Percent of Total Bid/RFP			

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

2. Attach all quotations to this form.

09/2010

Notice of Intent to Contract

Contact Opportunity: City of Philadelphia Office of the Director of Finance, COVID-19 Response and Recovery Financial Consulting and Grants Management RFP

Names of All Applicant Vendors:

Accenture LLP
Deloitte & Touche LLP
Ernst & Young LLP
Guidehouse Inc.
Hagerty Consulting, Inc.
Kairos Development Group, LLC
S&S Consultants, LLC
Storm Petrel, LLC
Tetra Tech, Inc.

Chosen Applicant: Tetra Tech, Inc.

Intent of Contract and Reasons for Rejection of Lower-Cost Proposals: After consideration of all appropriate factors, including the responsiveness and responsibility of all Applicants, this Intent to Contract is made in the best interest of the City to the Chosen Applicant. The following factors were the most important in selecting the Chosen Applicant:

- Superior ability or capacity to meet particular requirements of contract and needs of City Department and those it serves
- Superior prior experience of Applicant and staff
- Superior quality, efficiency and fitness of proposed solution for City Department
- Superior skill and reputation, including timeliness and demonstrable results
- 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
- Administrative and operational efficiency, requiring less City oversight and administration
- Anticipated long-term cost effectiveness
- Meets prequalification requirements

LGBTQ Applicant Opportunity Data

As part of the City of Philadelphia'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. By submitting this form you are agreeing that the City may, in its discretion, use the data submitted for other projects and may cause it to become publicly available. Response to this form is entirely 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?
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)?
 - 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)?
If yes please identify the name of the certifying agency and category of certification (e.g., MBE, WBE, DSBE, DBE):
Certifying Agency
Certification Category
3. For this contracting opportunity, are any of Applicant's subcontractors certified by NGLCC/IBA? If yes, how many subcontractors are certified as LGBTBE?
Please list all by business name below.

Attendees

Jayesh Desai
President
National Disaster Recovery Technical Assistance Consultants, Inc.
jayesh@ndrtac.com

Frank Robinson
Managing Partner
Kairos Development Group
frank@kairosdg.com

Fidelis LLC

Monique Curry-Mims
Principal
Civic Capital Consulting
monique@civiccapitalconsulting.com

Anna Shaw/Anin Shaw
Glorium Consulting

Anne Cabrera
Deputy Director, Post Disaster Programs
Tetra Tech
anne.cabrera@tetrattech.com

April Waits
Marketing Assistant
april.waits@tetrattech.com

Ayo Jemiri
President & CEO
CG Global Management Solutions, LLC
ayo.jemiri@cggmanagement.com

Amanda Ward
Partner
Plante Moran, PLLC
amanda.ward@plantemoran.com

Ryan Foughty
Managing Director
Deloitte
rfoughty@deloitte.com

Chrystina Cappello
Manager

Deloitte
ccappello@deloitte.com

Saxon Knight
Deloitte

John Roberts
Managing Director
Ernst & Young
john.roberts1@ey.com

Kelly Garcia
Client Executive
Ernst & Young
kelly.garcia@ey.com

Matthew Dugan
Senior Manager
Ernst & Young
matthew.dugan@ey.com

Alex Billak
Manager
Ernst & Young
alex.billak@ey.com

David Davis
Managing Director, Health & Public Sector
Accenture
david.m.davis@accenture.com

Rowan Miranda
Managing Director
Accenture
rowan.a.miranda@accenture.com

Chuck Woods
Senior Advisor
Accenture
c.woods@accenture.com

Christina (Chris) Chepel
Director
MFR Consultants, Inc.
cchepel@mfrconsultants.com

Maria Roberts
President & CEO

MFR Consultants, Inc.
mfrizelle@mfrconsultants.com

Steven Miller
Vice President, Engineering
Mondre Energy, Inc.
smiller@mondreenergy.com

Sandra (Sandy) Swiacki
Project Director
Milligan & Company LLC
sswiacki@milligancpa.com

Kajal Patel
Director
Guidehouse
kpatel@guidehouse.com

Rebecca McGregor
Director
Guidehouse
rmcgregor@guidehouse.com

MORIAH Consulting

RuthAnne Hall
Purchasing Manager
Lake County, IL
rhall@lakecountyil.gov

Katie Freeman
Director of Operations
Hagerty Consulting
katie.freeman@hagertyconsulting.com

Brian Murray
Owner
Blueprint Financial Group
brian@blueprintforfinance.com

Barry Johnson
Communication & Membership Engagement Specialist
African-American Chamber of Commerce of PA, NJ & DE
bjohnson@aachamber.org

Andre Leake
President & Founder
A. Leake Accounting, LLC

Pre-bid meeting held by phone on Wednesday, April 29, 2020 12PM
COVID-19 Response and Recovery Financial Consulting and Grants Management

Attendees

Non-City Participants:

Jayesh Desai

President

National Disaster Recovery Technical Assistance Consultants, Inc.

jayesh@ndrtac.com

Frank Robinson

Managing Partner

Kairos Development Group

frank@kairosdg.com

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Monique Curry-Mims

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Civic Capital Consulting

monique@civiccapitalconsulting.com

Anna Shaw/Anin Shaw

Glorium Consulting

Anne Cabrera

Deputy Director, Post Disaster Programs

Tetra Tech

anne.cabrera@tetrattech.com

April Waits

Marketing Assistant

april.waits@tetrattech.com

Ayo Jemiri

President & CEO

CG Global Management Solutions, LLC

ayo.jemiri@cggmanagement.com

Amanda Ward

Partner

Plante Moran, PLLC

amanda.ward@plantemoran.com

Ryan Foughty

Managing Director

Deloitte
rfoughty@deloitte.com

Chrystina Cappello
Manager
Deloitte
ccappello@deloitte.com

Saxon Knight
Deloitte

John Roberts
Managing Director
Ernst & Young
john.roberts1@ey.com

Kelly Garcia
Client Executive
Ernst & Young
kelly.garcia@ey.com

Matthew Dugan
Senior Manager
Ernst & Young
matthew.dugan@ey.com

Alex Billak
Manager
Ernst & Young
alex.billak@ey.com

David Davis
Managing Director, Health & Public Sector
Accenture
david.m.davis@accenture.com

Rowan Miranda
Managing Director
Accenture
rowan.a.miranda@accenture.com

Chuck Woods
Senior Advisor
Accenture
c.woods@accenture.com

Christina (Chris) Chepel
Director

MFR Consultants, Inc.
cchepel@mfrconsultants.com

Maria Roberts
President & CEO
MFR Consultants, Inc.
mfrizelle@mfrconsultants.com

Steven Miller
Vice President, Engineering
Mondre Energy, Inc.
smiller@mondreenergy.com

Sandra (Sandy) Swiacki
Project Director
Milligan & Company LLC
sswiacki@milligancpa.com

Kajal Patel
Director
Guidehouse
kpatel@guidehouse.com

Rebecca McGregor
Director
Guidehouse
rmcgregor@guidehouse.com

MORIAH Consulting

RuthAnne Hall
Purchasing Manager
Lake County, IL
rhall@lakecountyil.gov

Katie Freeman
Director of Operations
Hagerty Consulting
katie.freeman@hagertyconsulting.com

Brian Murray
Owner
Blueprint Financial Group
brian@blueprintforfinance.com

Barry Johnson
Communication & Membership Engagement Specialist
African-American Chamber of Commerce of PA, NJ & DE

bjohnson@aachamber.org

Andre Leake
President & Founder
A. Leake Accounting, LLC

City of Philadelphia Participants:

Sarah de Wolf
Chief of Staff and Deputy Director for Policy and Practice, Office of the Director of Finance

Chris Rupe
Deputy Managing Director for Policy and Legislation, Managing Director's Office

Ashley Del Bianco
Chief Grants Officer, Mayor's Grant Office

Samantha Porter
Deputy Director of Policy and Strategic Initiatives, Mayor's Policy Office

Carolyn Caton
Infrastructure Program Manager, Office of Emergency Management

Questions from Call Attendees

Question 1: Could the City clarify the statement about the City having already received pro bono offers?

A: The RFP notes that the City has received and may accept offers to perform some of the services contemplated herein on a pro bono basis from entities that may respond to this RFP and be considered for award of a contract. Applicants are encouraged to utilize creative pricing solutions when responding to the RFP.

Question 2 : Could the City provide the website link for the RFP?

A: www.phila.gov/rfp/

Question 3: Once the contract is awarded, what is the turnaround time for first payment to the consultant? Is there a 90 day window?

A: Payment terms will be established in the contract and will be made to the provider pursuant to the City's standard payment process, after submission of itemized invoices by provider. Payment shall be made for services satisfactorily performed after review of invoices for completeness and accuracy. The process can result in payment within 90 days but circumstances may result in a more extended time frame.

Question 4: Is there any guidance on the number of hours expected per section?

A: No, there is not guidance provided to applicants on the hours required for performance in the RFP or at this time. The City asks the respondent to provide estimates for the cost of each service or deliverable provided, with supporting detail on how those estimates were determined. This detail may include hourly rates, estimated time assigned to the service/deliverable, and/or assigned team member(s).

Question 5: Could the City provide guidance on the policy regarding political contributions? What is the universe of partners that respondents need to query with beforehand to determine the conflict of interest?

In accordance with RFP Section 3.A.16, Applicants would typically disclose all information required under Chapter 17-1400 of the Philadelphia code on the forms provided through eContract Philly. Given this RFP requires email submission, how should Applicants submit the required Disclosure forms? 16. Disclosure Requirements: Disclose all information required under Chapter 17-1400 of the Philadelphia Code, including any local and state political campaign contributions, on the forms provided through eContract Philly. (See Section III.J for more information.)

A: Due to the urgent nature of this RFP and the accelerated response time, the City will only require Applicants who are awarded a contract resulting from this RFP to submit the disclosures required under Chapter 17-1400 of the Philadelphia Code (the "Code"). An awarded Applicant will submit those responses electronically through their eContractPhilly account

Under Chapter 17-1400 of the Code, an awarded Applicant must disclose its actual and attributed political contributions to or for the benefit of candidates who are running for, individuals who are currently serving in, and/or individuals who have been elected to serve in local Philadelphia elected office. This obligation includes contributions made to political committees/parties that are operating in Philadelphia. An awarded Applicant must also disclose any such actual or attributed contributions made by any Consultant the Applicant has used to assist in obtaining a contract resulting from this opportunity. This disclosure obligation is for contributions made within the two years prior to the Application due date.

Under the attribution rules found in section 17-1405 of the Code, an awarded Applicant's disclosure obligation includes such political contributions which are made by a) the Applicant's for-profit affiliates, b) political committees associated with the Applicant or the Applicant's affiliates, c) any officer, director, controlling shareholder, or partner of the Applicant and/or of any of the Applicant's for-profit affiliates, and d) any political committees controlled by any of these Persons. An awarded Applicant's disclosures must include all required contributions and must be certified. Failure to submit complete disclosures may cause an award to be rescinded. Comprehensive guidance regarding an Applicant's complete disclosure obligations may be found on eContractPhilly, secure.phila.gov/eContract/, especially at the Disclosure/Eligibility link.

Further, the following language was inadvertently omitted from the RFP:

Pursuant to Chapter 17-1400 of the Philadelphia Code, awarded Applicants are required to disclose: a) their direct and indirect campaign contributions to candidates who are running for, and/or incumbents who are currently serving in local Philadelphia elected office and to political committees/parties that are operating in Philadelphia (federal campaign contributions are not included unless the subject of the campaign is also running for, or currently serving in a local Philadelphia elected office); b) any Consultants used in responding to the RFP and contributions those Consultants have made; c) prospective subcontractors; and d) whether the awarded Applicant or any representative of the awarded Applicant has received any requests for money or other items of value or advice on particular firms to satisfy minority-, woman- or disabled-owned business participation goals from City employees. This information, as well as the proposal and other response documentation required, will be deemed part of the electronic application. For more information, please consult the text of Chapter 17-1400 (especially section 17-1402(1)(b)(i).(2) and section 17-1405), consult the reference materials found on the eContractPhilly website, e-mail econtractphilly@phila.gov, or call 215-686-4914. Awarded Applicants are advised that under Chapter 17-1400 individuals and businesses that make campaign contributions in excess of the amounts set forth in Section 17-1404(1), as periodically adjusted, are ineligible to enter into a City contract or subcontract at any tier. Awarded Applicants should take this into consideration in electing to apply for this opportunity or in selecting subcontractors if awarded a contract to perform the work sought by this RFP. At their option, Applicants may require that their subcontractors disclose to the Applicants, the subcontractors' direct and indirect campaign contributions to candidates who are running for, and/or incumbents who are currently serving in local Philadelphia elected office and to political committees/parties that are operating in Philadelphia (federal campaign contributions are not included unless the subject of the campaign is also running for, or currently serving in a local Philadelphia elected office). Disclosure forms may be found on the Disclosure/Eligibility – Subcontractor Disclosure tab on eContract Philly. Applicants are not required to submit these forms to the City.

Questions 6 and 7: **For the section about meeting the WMBE participation goal, is it necessary to have identified the individual or entity identified by Friday?**

Is minority and women participation in the RFP set at a certain level? Additionally, if the firm selected is not a minority or woman owned firm, how can one apply to do work with the firm selected? I know that one firm may or may not get the entire project and this will depend on that.

A: The opportunity states an MBE goal of 10-15% and/or a WBE goal of 10-15%. Applicants are required to demonstrate their Best and Good Faith Efforts in meeting these participation goals, including completing, signing and submitting at the time of Application Appendix B-1, the Solicitation for

Participation and Commitment Form (“S&C Form”). The S&C Form provides the evidence of an Applicant’s solicitation of, and commitment to MBEs and/or WBEs which the Applicant intends to and will use if awarded a contract resulting from this opportunity. The S&C Form is an Excel spreadsheet that must be submitted electronically by the due date, within the e-mail containing all of the Proposal documentation. Further, as stated in the RFP, the City reserves the right to contract with one or multiple firms to supply these services.

Question 8: Could the City clarify which sections for the Local Business Entity/Local Impact criterion is not applicable for this RFP?

A: Sections III.A, III.H and III.J of the RFP and Appendix D are not applicable to this opportunity.

Question 9: Could the City clarify the statement that firms may apply to all or some of the objectives in this RFP? Is the City referring to the objectives under Section A or the breakdown of work products under Section B?

A: The City is referring to any part of the Services and Tangible Work Products set forth Section II.B of the RFP.

Question 10: Could the City clarify if Appendix B or D is not applicable?

A: Appendix D is not applicable.

Additional Questions by Email

Question 11 and 12: Can the City provide the list of the attendees, as a pre-release, later today prior to the release of the actual QA? Will you be sharing the list of pre-proposal conference call attendees with their contact info details? This should allow attendee to conduct outreach for subcontracting & teaming opportunities.

A: The list of known conference call attendees, their titles, and the company they work for is included in this document and has been posted online with the RFP.

Questions 13, 14, 15, and 16: Can the City of Philadelphia please provide some information on the grant funding either received or expected at this point? For example, what is the City’s spend on the COVID-19 response so far; what has been received through CARES Act funding; etc.?

What federal or outside funding has the City received to date to support COVID response and recovery efforts?

Has the city received any funds from state or federal agencies related to COVID-19 to date?

A: We are learning more each day about what federal and state relief will be made available to Philadelphia, as new legislation is introduced and as additional guidance is made available about existing legislation. As the funding situation is evolving, the following information is provided as an illustrative list, and should not be considered to be exhaustive. The City expects that the prospective consultant would be engaged in supporting these and possibly additional grants.

To date, the City has been notified of several grant allocations or awards, including: a grant from the Centers for Disease Control for COVID-19 Crisis Response, grants from Federal Aviation Administration for the Philadelphia International Airport and the Philadelphia Northeast Airport, Community Development Block Grants and other U.S. Department of Housing and Urban Development COVID-19 Recovery Formula Grants, and funding from the US Treasury’s Coronavirus Relief Fund for State and Local Governments. In

addition, as the Commonwealth of Pennsylvania is now operating under a federal disaster emergency declaration, the City is eligible for Federal Emergency Management Administration (FEMA) disaster relief funding.

Question 17: Will there be a City-led project structure or project manager in place in the event that multiple vendors are awarded contracts?

A: Vendors will report directly to Sarah de Wolf, Chief of Staff and Deputy Director of Finance for Policy and Practice, and Christopher Rupe, Deputy Managing Director for Policy and Legislation, who are co-leading the City's COVID-19 recovery efforts.

Question 18: Pg. 5 and 7 of the RFP state that vendor will work with the City Office of IT to develop a City-owned database/electronic system for tracking and management of documentation. Does the City have a preference for the technology used to develop this database/system?

A: No. Applicants are invited to recommend appropriate technology solutions for the database/system.

Question 19: In Section I. Scope of Work:

A. Project Details

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

"Expand the City's capacity for cost-tracking, recordkeeping and record retention, public accounting, and fiscal management to support the City's recovery and sustainment of routine operations while fully engaged in the COVID-19 response."

B. Services and Tangible Work Products

a. (Cost Tracking and Accounting, Including Vendor Engagement & Procurement)

"Develop a City-owned database/electronic system for tracking and management of claims, grant applications and status, and associated information to facilitate effective documentation, management of grant management and funding programs, and information sharing"

- i. Is the development of the "database/electronic system" listed above the work product associated with the referenced "expanding the City's capacity" in the Project Details section?**
- ii. Are there other in-scope IT-development areas?**

A: To answer question "i" first, "expanding the City's capacity" refers to a broader set of deliverables than just the development of the database/electronic system. To answer question "ii", we ask that applicants recommend appropriate solutions for the work described, which may include IT solutions in some areas.

Question 20: Has Philadelphia already undertaken any effort to track COVID-19 related costs and compile supporting documentation?

A: Yes, the City has begun tracking COVID-19 related costs and has also begun instructing departments to compile supporting documentation.

Question 21: Our intention is to fully comply with the MBE/WBE provisions of the RFP. Can you help us understand whether we need to have that entity identified/included at the time we submit our proposal response?

A: The opportunity states an MBE goal of 10-15% and/or a WBE goal of 10-15%. Applicants are required to demonstrate their Best and Good Faith Efforts in meeting these participation goals, including completing, signing and submitting at the time of Application Appendix B-1, the **Solicitation for Participation and Commitment Form**. Applicants should try to list the MBE and WBE subcontractors that they will use on the B-1 Form. You will have up until the time of award to finalize the list. Further, as stated in the RFP, the City reserves the right to contract with one or multiple firms to supply these services.

Question 22: Re pricing - is it acceptable for us to provide an estimate for the first milestone (a period of initial review and primary analysis with the City) in the RFP; with the understanding that we would collaborate and agree on pricing for future milestones?

A: Since pricing is one of the criteria that will be used in making an award, estimates for all services an applicant is proposing to provide must be stated.

Question 23: In relation to the "Local Business Entity Certification" in Appendix C, shall applicants who have a national presence with locations in various cities throughout the country, evaluate the certification criteria on a whole entity basis or can this certification be evaluated as pertaining to only its local Philadelphia office location?

A: Appendix C is the Tax and Regulatory Status and Clearance form. This question is directed at the Local Business Entity/Local Impact Certification at Appendix D, which has been removed and is inapplicable.

Question 24: Should the technical and cost proposals be submitted as two separate files?

A: Applicants can submit these proposals together or separately, but they must be included in the same e-mail with all of the required Proposal documentation.

Question 25: In section II.B the RFP the client states: "In accordance with enterprise architecture and security guidelines set forth by the City Office of Innovation and Technology, develop a City-owned database/electronic system for tracking and management of claims, grant applications and status, and associated information to facilitate effective documentation, management of grant management and funding programs, and information sharing." Without being able to review the enterprise architecture, assess the volume of reimbursements, and the existing grants management systems in place, it is difficult to include a budget for this line item. Does the City require a price estimate for potential technology as part of the proposal submission or can this be priced later once additional information is obtained and requirements further defined?

A: Since pricing is one of the criteria that will be used in making an award, estimates for all services an applicant is proposing to provide must be stated. In an instance where discovery is required for accurate pricing, the respondent should provide detail on the cost basis for the estimate.

Question 26: What cost tracking and reporting software is the City currently using?

A: Microsoft Word and Excel.

Question 27: In section III.A.10 of the RFP under the Office of Economic Opportunity - Solicitation for Participation and Commitment Form/Diversity Report of Nonprofit Organizations section, it says "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." Does separate document mean a separate file for submission?

A: The opportunity states an MBE goal of 10-15% and/or a WBE goal of 10-15%. Applicants are required to demonstrate their Best and Good Faith Efforts in meeting these participation goals, including completing, signing and submitting at the time of Application Appendix B-1, the Solicitation for Participation and Commitment Form.

Question 28: Can the City please provide weights for the twelve scoring criteria found in section III.J of the RFP?

A: The City does not disclose weighting information for professional services contracts..

Question 39: Will the City please clarify the following: Disclose all information required under Chapter 17-1400 of the Philadelphia Code, including any local and state political campaign contributions, on the forms provided through eContract Philly. (See Section III.J for more information.) The solicitation document does not have a Section III.J.

A: See answer to Question 5.

Question 30: Will the City accept a MBE/WBE commitment with follow-up identification of team partners upon award in order for vendors to meet short run around response schedule?

A: Applicants will have up until the date of award to finalize their MWDSBE subcontractors.

Question 31: Will the City please clarify the selection criteria? There are items included in that criteria that were stated on the call to not be relevant (e.g. Local Business Entity / Local Impact Status).

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

- Superior ability or capacity to meet particular requirements of contract and needs of City Department and those it serves
- Eligibility under Code provisions relating to campaign contributions
- Superior prior experience of Applicant and staff
 - Specialized experience in FEMA Public Assistance Grant Program and disaster recovery
 - Documented prior experience in performing project(s) of similar size and scope to the work sought by the RFP
 - Demonstrated ability to meet project deadlines.
- Superior quality, efficiency and fitness of proposed solution for City Department
- Superior skill and reputation, including timeliness and demonstrable results
- Special benefit to continuing services of incumbent, such as operational difficulties with transition or needs of population being served
- 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
- Lower cost
- Administrative and operational efficiency, requiring less City oversight and administration
- Anticipated long-term cost effectiveness
- Meets prequalification requirements

Question 32: Will the City please clarify how "pro bono" services will be accounted for in the overall selection criteria?

A: Pro bono services are not part of the selection criteria. However, price (expressed as both Lower Cost and Anticipated long-term cost effectiveness) will be one of the criteria in selecting an Applicant for an award of a contract resulting from this opportunity.

**City of Philadelphia – Office of Economic Opportunity
Diversity Report of Nonprofit Organizations**

1 DEMOGRAPHIC BREAKDOWN OF WORKFORCE								
Please provide the following demographic breakdown of your workforce by race/ethnicity/gender/ disability:				#	%	Males Females	#	%
African American								
Asian/Pacific Islander								
Caucasian								
Disabled								
Hispanic								
Native American								
Other								
Total Number of Employees								
2 DEMOGRAPHIC BREAKDOWN OF BOARD COMPOSITION								
Please provide the following demographic breakdown of your Board of Directors or Trustees by race/ethnicity/gender/disability:				#	%	Males Females	#	%
African American								
Asian/Pacific Islander								
Caucasian								
Disabled								
Hispanic								
Native American								
Other								
Total Number of Directors or Trustees								
3 SUPPLIER DIVERSITY								
Please check the appropriate box to indicate if you have a supplier diversity policy. If “no,” please explain on your letterhead. 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:							Yes	No
Company Name		Company Address	Company Telephone	Minority	Woman	Disabled	Annual Expenditures	
1								
2								
3								
4								
5								
Signature:		Date:		Non-Profit Name:				



THE CITY OF PHILADELPHIA
PROFESSIONAL SERVICES CONTRACT
GENERAL PROVISIONS
FOR
GENERAL CONSULTANT SERVICES

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GENERAL PROVISIONS

ARTICLE I: DEFINITIONS

- 1.1 **ADA** has the meaning set forth in Section 14.5 (Americans with Disabilities Act) below.
- 1.2 **Additional Services and Materials** has the meaning set forth in Section 3.3 (Additional Services and Materials; Change in Scope of Services) below.
- 1.3 **Additional Term** has the meaning set forth in Section 2.2 (Additional Terms) below.
- 1.4 **Appropriated Fiscal Year** has the meaning set forth in Section 5.3 (Crossing Fiscal Years) below.
- 1.5 **Amendment** means a written modification or change to any Contract Document signed by both Parties and, as to the City, approved by the Law Department.
- 1.6 **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), the Code (as defined below), and the specific laws set forth in Article XIV (Additional Representations and Covenants of Provider Relating to Certain Applicable Laws) below hereof, each as amended from time to time.
- 1.7 **Applicant** means a Person who has filed an application to be awarded a Non-Competitively Bid Contract.
- 1.8 **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** means the Philadelphia Home Rule Charter, as it may be amended from time to time.
- 1.10 **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 City Council. The City is a City of the First Class under the laws of the Commonwealth of Pennsylvania.
- 1.11 **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 **City Data** means any and all records, documents, and data furnished by the City to Provider in relation to the work required under the Contract; and all deliverables, work product(s), items of work, and other Materials created by Provider as part of, or to perform work required under, the Contract. "City Data" does not, however, include any information that was known to Provider, prior to the commencement of its performance of the Contract, free of any

obligation to keep it confidential; is proprietary to Provider; was generally known to the public at the time of receipt by Provider, or becomes generally known to the public through no act or omission of Provider; or was independently developed by Provider, unrelated to work performed for the City, and without knowledge or use of any information obtained from the City.

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

1.14 **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 Provider or any other Person; provided, however, that “Consultant” shall not include a full-time employee of Provider.

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

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

1.17 **Contract Documents** 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.

1.18 **Contributions** has the meaning set forth in the Pennsylvania Election Code, 25 P.S. § 3241.

1.19 **Department** means the department, board, commission or agency of the City of Philadelphia defined as the Department in the heading of the Provider Agreement.

1.20 **Event of Default** means an event defined and identified in or pursuant to Section 11.1 below.

1.21 **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** means the fiscal year of the City, which commences on July 1 of each calendar year and expires on June 30 of the next succeeding calendar year.

1.23 **General Provisions** means this document, entitled “The City of Philadelphia Professional Services Contract General Provisions for General Consultant Services,” which contains the standard provisions required by the City in its general consultant professional services contracts, and all exhibits or documents identified or incorporated in these General Provisions, as it or they may be amended from time to time.

1.24 **Initial Term** has the meaning set forth in Section 2.1 below.

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

1.26 **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.

1.27 **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).

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

1.29 **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.

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

1.31 **Provider Agreement** means the instrument by that name, part of the Contract Documents, which sets forth the terms, covenants and conditions specific to Provider’s engagement.

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

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

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

1.35 **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.

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

1.37 **Suspension Notice** means notice of full or partial suspension of the Contract served by the City on Provider pursuant to Section 13.1 (Termination or Suspension for Any Reason) below.

1.38 **Suspension Period** has the meaning set forth in Section 13.4 (Suspension) below.

1.39 **Term** means the Initial Term and any Additional Term.

1.40 **Termination Notice** means notice of full or partial termination of the Contract served by the City on Provider pursuant to Section 13.1 (Termination or Suspension for Any Reason) below.

ARTICLE II: TERM

2.1 **Initial Term.** The initial term ("Initial Term") of this Contract is set forth in Section 2.1 of the Provider Agreement.

2.2 **Additional Terms.** The City may, at its sole option, amend this Contract to add on an annual basis up to three (3) successive one (1) year terms (each an "Additional Term"), 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 each Additional Term. 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. Absent authorization of the Contract by ordinance of City Council, each Additional Term shall be subject to the availability of funds appropriated 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 an Additional Term. Each Additional Term of this Contract shall be deemed to constitute a separate contract.

ARTICLE III: PROVIDER'S DUTIES AND COVENANTS

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

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

3.3 **Additional Services and Materials; Change in Scope of Services.** At any time during the term of this Contract, the City may, by written change order or request delivered by notice to Provider, make changes to the Scope of Services under this Contract, and the Parties will, if appropriate, negotiate an adjustment in compensation, subject to the availability of funds

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

3.4 **Responsibility.**

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

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

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

3.5 **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.

3.6 **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 before the scheduled expiration of the Term.

3.7 **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 will pay Subcontractors within the time period required under Section 14.3 (Executive Order 03-12: Minority, Woman and Disabled Business Enterprise Participation) of these General Provisions to the extent it applies. Provider shall provide, upon request of the City, reasonable evidence that these Persons have been fully and timely paid.

3.8 **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 that may be refunded as a result of any materials, including any Materials, purchased or services, including any Services, rendered in connection with this Contract; and unless directed otherwise by the City, Provider shall not file a claim for any sales or use tax refund subject to this assignment. Provider authorizes the City, in its own name or the name of Provider, to file a claim for a refund of any sales or use tax subject to this assignment.

3.9 **Subcontracts.**

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

(b) Provider shall submit to the Responsible Official copies of all proposed Subcontract(s) to be entered into by Provider, along with Provider's written request for the City's consent. All such Subcontracts must specify, effective on the date of the Subcontract, 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 is 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 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 presently, fully and unconditionally assigns, transfers and sets 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 otherwise has all obligations to the City that Provider has pursuant to Section 3.8 (Sales and Use Tax) above.

(9) Subcontractor shall not be indebted to the City, and shall have all obligations to the City that Provider has pursuant to Subsection 4.1(g) ("No Indebtedness to the City") below.

(10) Subcontractor shall comply with Chapter 17-400 (Payment or Reimbursement of Employee Expenses Associated with the Use of Exclusionary Private Organizations) of the Code, and shall have all obligations to the City and to Provider that Provider has pursuant to Section 14.2 (Chapter 17-400 of the Philadelphia Code: Exclusionary Private Organizations) below.

(11) Subcontractor shall comply with Section 17-104 (Prerequisites to the Execution of City Contracts) of the Code, and shall have all obligations to the City that Provider has pursuant to Sections 14.6 (Northern Ireland) and 14.8 (Business, Corporate and Slavery Era Insurance Disclosure) below.

(12) Subcontractor shall comply with Chapter 17-1300 (Philadelphia 21st Century Minimum Wage and Benefits Standard) 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. Provider shall notify its Subcontractors of these provisions; shall expressly incorporate this paragraph and Section 14.10 (Chapter 17-1300 of The Philadelphia Code: Philadelphia 21st Century Minimum Wage and Benefits Standard) 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.

(13) Subcontractor is and shall remain eligible for contracts with the City subject to Chapter 17-1400 (Non-Competitively Bid Contracts; Financial Assistance) of the Code, and shall have all obligations to Provider that Provider has to the City pursuant to Section 14.11 (Chapter 17-1400 of the Philadelphia Code: Contributions and Other Mandatory Disclosures) below.

(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 voidable, in the City's option.

(e) City-Related Agencies. If Provider is a City-Related Agency, as defined in Subsection 17-1401(9) of the Code, then:

(1) Provider shall abide by the provisions of Chapter 17-1400 (Non-Competitively Bid Contracts; Financial Assistance) 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 at Section 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's General Counsel; any approvals required to be performed by the Director of Finance shall be performed by Provider's Chief Financial Officer; and any approvals required to be performed by the Mayor shall be performed by Provider's Executive Director.

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. ***False statements to the City in or in connection with this Contract, in or pursuant to any representation or covenant made in this Article IV or otherwise, are subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities, which may include fines and imprisonment.***

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

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

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

(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 and shall maintain during the term of the Subcontract, 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 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.

(k) Additional Representations and Covenants. See Article XIV (Additional Representations and Covenants of Provider Relating to Certain Applicable Laws).

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 Office of the Director of Finance 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 subject to the other provisions of this Article V, 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 under this Contract are subject to the limitations on the allowability of cost items imposed by the Contract Cost Principles.

ARTICLE VI: AUDITS; INSPECTION RIGHTS; RECORDS

6.1 **City Audit.** From time to time during the Term, 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 the period set forth in Section 6.1 above. If any litigation, claim or audit is commenced prior to expiration of said five (5) year period, then the records shall be retained until all litigation, claims or audit findings have been completely terminated or resolved, without right of further appeal, or if Applicable Law requires a longer period, then the records shall be retained for such longer period.

6.5 **Audits Pursuant to Section 6-400 of the Home Rule Charter.** Any Provider that is an Agency, as defined in Section 6-400 (Auditing Department) 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 Responsible Official. The decision whether to consent to an assignment, the timing of consent (if any), and conditions to such consent, if any, shall each be at the City's sole discretion. Any consent to the assignment of any monies to be paid under this Contract shall not relieve Provider from the faithful performance of any of its obligations under this Contract or change any of the terms and conditions of this Contract. Any purported assignment in violation of this provision shall be void and of no effect. The City's consent to an assignment shall not release the assignor from any liability accrued or thereafter accruing under this Contract. Any assignment or purported assignment shall be in writing and shall contain an express assumption by the assignee of all liability accrued or thereafter accruing under this Contract. Consent by the City to any assignment shall not be deemed a course of conduct, dealing or performance with respect to any other assignment or proposed assignment. For purposes of this Section 7.1 (Assignment by Provider), an assignment includes the acquisition of Provider, or a controlling interest therein, through a corporate or other merger, and the appointment of a receiver or bankruptcy trustee, and the transfer of this Contract or Provider in any bankruptcy or other insolvency proceeding.

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

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

ARTICLE VIII: INDEPENDENT CONTRACTOR; INDEMNIFICATION; LITIGATION COOPERATION

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

8.2 **Indemnification.** Provider shall indemnify, defend and hold harmless the City and 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, loss of data, data security breach, and any infringement or violation of any proprietary right (including, but not limited to, patent, copyright, trademark, service mark and trade secret).

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

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

ARTICLE IX: INSURANCE

9.1 **Insurance.** Unless otherwise approved by the City's Risk Management Division in writing, Provider shall, at its sole cost and expense, procure and maintain, or cause to be procured and maintained, in full force and effect, the types and minimum limits of insurance specified below, covering Provider's performance of the Services and the delivery of the Materials. Provider shall procure, or cause to be procured, all insurance from reputable insurers admitted to do business on a direct basis in the Commonwealth of Pennsylvania or otherwise acceptable to the City. All insurance herein, except Professional Liability insurance, shall be written on an "occurrence" basis and not a "claims-made" basis. In no event shall Provider perform any Services or other work until Provider has delivered or caused to be delivered to the City's Risk Management Division the required evidence of insurance coverages. All insurance coverages shall provide for at least thirty (30) days prior written notice to be given to the City in

the event coverage is materially changed, cancelled, or non-renewed. The City, its officers, employees, and agents, shall be named as additional insureds on the General Liability Insurance policy. Provider shall also deliver or cause to be delivered to the City an endorsement stating that the coverage afforded the City and its officers, employees and agents, as additional insureds, will be primary to any other coverage available to them and that no act or omission of the City, its officers, employees or agents shall invalidate the coverage.

(a) Workers' Compensation and Employers' Liability:

(1) Workers' Compensation: Statutory Limits.

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

(3) Other states insurance including Pennsylvania.

(b) General Liability Insurance:

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

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

(c) Automobile Liability Insurance:

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

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

(d) Professional Liability Insurance:

(1) Limit of Liability: \$1,000,000 with a deductible not to exceed \$50,000.

(2) Coverage: Errors and omissions including liability assumed under Contract.

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

9.2 **Self-Insurance.** Provider may self-insure any of the coverages required under this Contract only with the prior written approval of the Responsible Official and the City's Risk Manager. If Provider wants to self-insure any of the coverages listed above, it shall submit to the Responsible Official and the City's Risk Management Division, prior to Provider's commencement of Services or delivery of any Materials hereunder, a certified copy of Provider's most recent audited financial statement and such other evidence of its qualifications to act as self-insurer (e.g. state approval) as the Responsible Official or the City's Risk Manager may request. If 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 any Term of this Contract, Provider self-insures its professional liability or workers' compensation and employers' liability coverage, Provider may, in lieu of the foregoing, furnish to the City a current copy of the state certification form for self-insurance or a current copy of the State Insurance Commissioner's letter of approval, whichever is appropriate. The insurance (including self-insurance) requirements set forth herein are not intended and shall not be construed to modify, limit or reduce the indemnifications made in this Contract by Provider to the City, or to limit Provider's liability under this Contract to the limits of the policies of insurance (or self-insurance) required to be maintained by Provider hereunder.

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

The City of Philadelphia
Office of the Director of Finance
Division of Risk Management
1515 Arch Street, 14th Floor
Philadelphia, PA 19102-1579
(Fax No.: 215-683-1705)

A copy of the certificates of insurance shall be submitted to the Responsible Official at the address of the Department set forth in the Notice Section of the Provider Agreement. Both submissions must be made at least ten (10) days before work is begun 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. 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) Provider shall make available to the City, upon the City’s request, a copy of any Materials prepared by or for Provider in performance of this Contract, at no cost to the City.

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

(d) Provider hereby grants, and shall require its Subcontractors to grant, to the City 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 and Destruction of Data. Provider and its employees, agents, Subcontractors, suppliers, and any person or entity acting on its behalf (i) will maintain in strict confidence all City Data; (ii) will not, without the City’s written permission, issue, divulge, disclose, publish, communicate, or distribute any City Data to any person or entity except as may be strictly necessary to perform under the Contract; (iii) will not, without the City’s written permission, in any way use any City Data for their businesses, research, or other advantage or gain (except as may be strictly necessary to perform under the Contract), including, without limitation, any use of City Data in any presentation, demonstration, or proposal to perform work, to the City or to others, that may be conducted or created as part of their business activities or otherwise; and (iv) except as required by Applicable Law, will immediately upon termination of the Contract return all City Data to the City, destroy any and all copies of any City Data that are in their possession, whether on paper or in electronic or other form and, if requested by the City in writing, will certify in writing that there has been full compliance with this section. See also Section 14.9 (Protected Health Information).

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 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.
- (h) Debarment or suspension of Provider or any agent, employee or Subcontractor of Provider under a 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 Section 11.1(e), 11.1(f), or 11.1(h) above.
- (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, take any or all of the following actions 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.

(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.

(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 remedies set forth in this Article XII, 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 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 Any Reason. 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 Term of this Contract, in whole or in part, for any stated reason, including, without limitation, the convenience of the City. The City shall give written notice to Provider of any full or partial termination or suspension, stating the reason(s) for its action, setting forth the effective date of the termination or suspension and describing any partial termination or suspension.

13.2 Provider's Responsibilities Upon Termination or Suspension.

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

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

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

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

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

13.3 Payment of Provider upon Termination or Suspension.

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

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

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

(b) In the event of termination or suspension of this Contract by the City for the City's convenience, Provider shall be paid such an amount as shall compensate Provider for the portion

of the Services satisfactorily performed and Materials satisfactorily delivered prior to the date of termination. The City shall not pay Provider any amount for Provider's termination or suspension expenses or anticipated profits, unabsorbed or underabsorbed overhead or unperformed Services and Materials not satisfactorily delivered.

(c) In no event shall Provider be entitled to payment beyond the maximum amounts set forth elsewhere in the Contract.

13.4 **Suspension.**

(a) Suspension after an Event of Default, or pending investigatory or criminal proceedings concerning an event that would constitute an Event of Default if resolved contrary to the interests of Provider or a Person for which Provider may be responsible, 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.

(b) 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.

(c) If 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 Any Reason) above; or issue a new Suspension Notice; 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. The City may exercise its right to amend the Contract to add an Additional Term without waiving the suspension; but in the absence of the City's notice of intent to enter into such amendment, Provider shall terminate Services and Materials at the end of the Term even if the Suspension Period has not yet expired.

(d) 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 the City's rights and remedies against Provider, including but not limited to its rights of set off and its right to review and accept Services and Materials prior to payment therefor.

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

In addition to the representations, warranties and covenants made by Provider in Article IV, Provider further represents, warrants and covenants that, to the extent of their applicability to Provider, Provider is in compliance with the laws, ordinances, regulations and executive orders described below. By executing this Contract, Provider thereby certifies to such compliance. Provider further certifies that the representations, warranties and covenants provided pursuant to this Article shall continue to remain true throughout the Term of this Contract or any other period of time required by such laws. ***False statements to the City in or in connection with this Contract, in or pursuant to any representation or covenant made in this Article XIV or otherwise, are subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to***

authorities, which may include fines and imprisonment. In the event said representations, warranties and covenants are or become untrue or inaccurate, Provider shall promptly give notice thereof to the City, specifying the manner in which said representation, warranty or covenant is untrue or inaccurate. The provisions of this Article are not intended to limit the applicability of the other provisions of this Contract, including, without limitation, Provider's agreement to comply with all Applicable Law.

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

14.2 Chapter 17-400 of the Philadelphia Code: Exclusionary Private Organizations.

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

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

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

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

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

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

(2) Provider shall secure the prior written approval of 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 participants proportionately, which increase shall be reflected in the M/W/DSBE Subcontract(s) described in (a) (1) above. OEO may from time to time request documentation from Provider evidencing compliance with this provision.

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

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

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

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

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

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

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

(b) **Special Requirements Applicable to Non-Profit Providers.** In the event the Provider is a non-profit, the Contract may not be subject to M/W/DSBE participation ranges, but

Provider shall demonstrate its compliance with the Antidiscrimination Policy by providing annually to OEO the following information:

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

(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 the Commonwealth; and (e) if any funds under this Contract are provided by the federal government, to federal 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 (including any parent company, subsidiary, exclusive distributor or company affiliated with Provider) (1) confirms that it does not have, and agrees that it will not have at any time during the Term of this Contract, any investments, licenses, franchises, management agreements or operations in Northern Ireland and (2) agrees that 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 (Northern Ireland) and any failure to comply with the provisions of this Section 14.6 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.

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, Executive Order No. 12250 of the President of the United States, publication of the Mayor of the City of Philadelphia's Executive Order entitled, "Access to Federally Funded City Programs and Activities for Individuals with Limited English Proficiency" dated September 29, 2001, and all regulations promulgated thereunder, as the Act and regulations may be amended from time to time, which are applicable (a) to Provider, (b) to the benefits, services, activities and programs provided in connection with this Contract, (c) to the City, or the Commonwealth of Pennsylvania, and (d) to the benefits, services, activities and programs of the City or of the Commonwealth, and if any funds under this Contract are provided by the federal government, which are applicable to the federal government and its benefits, services, activities and programs. Without limiting the applicability of the preceding sentence, Provider shall comply with 45 C.F.R. 80 et. seq. and all other regulations promulgated under Title VI of the Civil Rights Act of 1964, as they may be amended from time to time, which are applicable to the benefits, services, programs and activities provided by the City through contracts with outside contractors.

14.8 Business, Corporate and Slavery Era Insurance Disclosure.

(a) In accordance with Section 17-104 of the Code, Provider, after execution of this Contract, will complete an affidavit certifying and representing that Provider (including any parent company, subsidiary, exclusive distributor or company affiliated with Provider) has searched any and all records of 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) Provider expressly understands and agrees that any false certification or representation in connection with this Section and/or any failure to comply with the provisions of this Section shall constitute a substantial breach of this Contract entitling the City to all rights and remedies provided in this Contract 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.

14.9 Protected Health Information.

(a) The City of Philadelphia is a “Covered Entity” as defined in the regulations issued pursuant to the federal Health Insurance Portability and Accountability Act of 1996 (“HIPAA”). The City’s business activities include both (1) functions which make the City a Covered Entity, and, therefore, subject to HIPAA, and (2) functions that are not subject to HIPAA. In accordance with 45 CFR §164.105(a)(2)(iii)(D), the City has designated certain departments and units of the City as health care components that must comply with HIPAA (“Covered Components”). The Covered Components of the City as of April 1, 2017 include: Ambulatory Health Services (a unit of the Philadelphia Department of Public Health (“PDPH”)); the Philadelphia Nursing Home (a unit of PDPH); the Sexually Transmitted Disease Control Program (a unit of PDPH); the Philadelphia Public Health Laboratory (a unit of PDPH); the Benefits Administration Unit of the Office of Human Resources; Emergency Medical Services (a unit of the Philadelphia Fire Department); and the Office of Behavioral Health and Intellectual disAbility Services. This list is subject to change, and any department or unit of the City that the City in the future determines to be a Covered Component under HIPAA shall be deemed to be a Covered Component for purposes of this Section 14.9.

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

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

(a) Provider is a “Service Contractor” in that by virtue of entering into this Contract, Provider has entered into a “Service Contract,” as those terms are defined in Chapter 17-1300 of the Code. Any Subcontract between Provider and a Subcontractor to perform Services under this Contract is a “Service Contract” and such Subcontractors are also “Service Contractors” for purposes of Chapter 17-1300, as are any subcontract and subcontractor at any tier providing Services under this Contract. (Chapter 17-1300 is accessible at <http://www.amlegal.com/library/pa/philadelphia.shtml>.) If such Service Contractor (Provider or any subcontractor at any tier) is also an “Employer,” as that term is defined in § 17-1302 (more than 5 employees), and further described in §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.

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, Provider, and any Subcontractor at any tier, shall provide their covered Employees with an hourly wage, excluding benefits, that is no less than the result of multiplying \$12 by the then current Consumer Price Index Multiplier (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 All Items Index for Philadelphia, Pennsylvania, by the most recently published Consumer Price Index for all Urban Consumers (CPI-U) of each calendar year. The then current minimum hourly wage applicable to City contractors and subcontractors will be posted on the City's website. As of January 1, 2018 that wage is \$12.20 per hour.

(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. Chapter 17-1300 of the Philadelphia Code requires that employers pay the higher of either: 150% of the federal minimum wage, or \$12 multiplied by the CPI Multiplier. 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, if Provider is subject to Chapter 17-1300, Provider shall comply with all of its requirements as they exist on the date when Provider entered into this Contract with the City or into an amendment thereto. Provider shall take such steps as are necessary to notify its Subcontractors of these requirements, and to cause such Subcontractors to notify lower-tier subcontractors that are Service Contractors of these requirements, including, without limitation, by incorporating this Section 14.10, with appropriate adjustments for the identity of

the parties, in its Subcontracts with such Subcontractors. A Provider or subcontractor at any tier subject to Chapter 17-1300 that fails to comply with these provisions may, after notice and hearing before the Director of Finance or such other officer or agency designated by the Mayor, be suspended from receiving financial assistance from the City or from bidding on and/or participating in future City contracts, whether as a prime contractor or a subcontractor, for up to three (3) years. City Council may also initiate a similar suspension or debarment process. Such suspension or debarment shall be in addition to any of the other sanctions or remedies set forth in Chapter 17-1300 or this Contract.

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

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

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

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

(a) Provider confirms on behalf of itself and its Subcontractor(s) that no contribution(s) have been made, and agrees that none shall be made during the Term of this Contract by Provider, any Subcontractor, or any party from which a contribution can be attributed to Provider or Subcontractor, that would render 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 Provider liable for liquidated damages to the City in the amount of ten percent (10%) of the maximum payments to Provider allowed under the Contract, regardless whether actually paid. The City may exercise any or all the remedies set forth in this Section 14.11 (Contributions and Other Mandatory Disclosures), each of which may be pursued separately or in conjunction with such other remedies as the City in its sole discretion shall determine. No extension or indulgence granted by the City to Provider shall operate as a waiver of any of the City's rights in connection with this Contract. The rights and remedies of the City as described in this Section

14.11, and as described elsewhere in this Contract, shall not be exclusive and are in addition to any other rights or remedies available to the City under this Contract at law or in equity.

(b) Provider shall, during the Initial Term of the Contract, any Additional Term, and for one year thereafter, disclose any contribution of money or in-kind assistance that Provider, or any Subcontractor or 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 of the Code, 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.

(1) It shall not be a violation of this Section 14.11(b) if Provider fails to disclose a contribution made by a Consultant because Provider was unable to obtain such information from the Consultant, provided Provider demonstrates that it used reasonable efforts to attempt to obtain such information, including, at a minimum:

(A) 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 Provider;

(B) Including in such agreement a provision requiring the Consultant to provide 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 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 Provider as of the date of such termination;

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

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

(c) Provider shall, during the Initial 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 Provider, any officer, director or management employee of Provider, or any Person representing 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 such a Contribution) given to any Person in response to any such request. 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.

(d) Provider shall, during the Initial Term, and any Additional Term, of the Contract disclose the name and title of each City officer or employee who directly or indirectly advised Provider, any officer, director or management employee of Provider, or any Person representing

Provider that a particular Person could be used by Provider to satisfy any goals established in the Contract for the participation of minority, women, disabled or disadvantaged business enterprises. Provider shall also disclose the date the advice was provided, and the name of such particular Person.

(e) The disclosures required by Sections 14.11(b), (c) and (d) shall be made utilizing the online disclosure update process through Provider's eContract Philly account which can be accessed on the City's website at www.phila.gov/contracts by clicking on eContract Philly. Such disclosures shall be made within five (5) business days of the action or event requiring Provider to update its disclosures. In the case of updates to political contributions made by Provider required by Section 14.11(b), the attribution rules of Section 17-1405 shall apply to determine what contributions must be disclosed under this provision as contributions of Provider or of a Consultant. Provider is advised that any individual who submits an update on eContract Philly must be an authorized signatory of Provider, authorized to make the required updated disclosures.

(f) Reports generated automatically by the online process for the updated disclosures required by Sections 14.11(b), (c) and (d) will be automatically forwarded to the President and Chief Clerk of Council, and to the Mayor, Director of Finance, Procurement Department, and the Department of Records.

14.12 Executive Order 10-16: Gifts.

(a) Pursuant to Executive Order 10-16, no City officer or employee may accept or receive a payment, subscription, advance, forbearance, rendering or deposit of money, services, entertainment, invitation, food, drink, travel, lodging or anything of value, unless consideration of equal or greater value is conveyed in return, from any person who, at time or within 12 months preceding the time a gift is received:

(1) is seeking, or has sought, official action from the officer or employee;

(2) has operations or activities regulated by the officer's or employee's agency, department, office, board or commission, or, in the case of gifts to members of the Mayor's Cabinet, has operations or activities that are regulated by any agency, department, office, board or commission within the Executive and Administrative branch;
or

(3) has a financial or other substantial interest in acts or omissions taken by the officer or employee, which the officer or employee could substantially affect by his or her official action.

(b) Additionally, no City officer or employee shall accept or receive a gift of any value from any person that engages in lobbying on behalf of a principal for economic consideration, and is registered as such, pursuant to the requirements of Section 20-1202 of The

Philadelphia Code or any other Applicable Law, including any attorney-at-law while engaged in lobbying.

(c) 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.

(d) All City employees presented with gifts or gratuities as indicated in Executive Order 10-16 are required to report these actions to the appropriate authorities. All Providers that are solicited for gifts or gratuities by City employees must report these incidents to the appropriate authorities, including but not limited to the Office of the Inspector General.

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

(a) Unless Provider is a government agency, this is a “Service Contract” as that term is defined in Section 17-1901(4) of the Code. If the Service Contract is in an amount in excess of \$250,000, then pursuant to Chapter 17-1900 of the Code, Provider shall, for any of its employees who reside in the City, or any of its employees who are non-residents subject to City wage tax under Section 19-1502(1)(b) of the Code, extend the same employment benefits that 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 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 Provider with the requirements of Chapter 17-1900 of the Code shall be a material breach of this Contract.

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

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

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

ARTICLE XV: MISCELLANEOUS

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

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

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

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

15.5 **No Third Party Beneficiaries.** With the exception of the remedy provided to third party beneficiaries by Section 14.10(e), nothing in this Contract, express or implied, is intended or shall be construed to confer upon or give to any Person, other than the Parties, any rights, remedies, or other benefits, including but not limited to third-party beneficiary rights, under or by reason of this Contract. This Contract shall not provide any third party with any remedy, claim, liability, reimbursement, cause of action or other right other than any such remedy, claim, etc. existing without reference to the term of or the existence of this Contract.

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

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

15.8 **Survival.** Any and all provisions set forth in this Contract which, by its or their nature, would reasonably be expected to be performed after the termination of this Contract shall survive and be enforceable after such termination. Any and all liabilities, actual or contingent, which shall have arisen in connection with this Contract shall survive the expiration or earlier termination of this Contract, including without limitation: Provider's representations, warranties and covenants set forth in Article IV (Provider's Representations, Warranties and Covenants) above; audit, inspection and record retention requirements set forth in Article VI (Audits; Inspection Rights; Records) 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; the Parties' rights and obligations set forth in Article X (Ownership of Materials; Proprietary Information; Confidentiality) above; and Providers continuing obligations related to section 14.11 (Chapter 17-1400 of the Philadelphia Code: Contributions and Other Mandatory Disclosures).

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

15.10 **Interpretation; Order of Precedence.** In the event of a conflict or inconsistency between the terms of the Contract Documents, the terms of the General Provisions shall govern, followed by the terms of the Provider Agreement, and lastly by any exhibit, attachment, or other document incorporated by reference into the Contract. The foregoing notwithstanding, the Provider Agreement or an amendment agreement may expressly supersede, create exception to, or otherwise modify the General Provisions by specific reference thereto in the Provider Agreement, an amendment agreement, or an exhibit to either specifically labeled for such purpose.

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

15.12 **Statutes and Other Citations.** All statutory or other citations of law referenced in the Contract shall refer to the statute or citation referenced, as it may be amended or superseded from time to time.

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

15.14 **Forum Selection Clause; Consent to Jurisdiction.** The Parties irrevocably consent and agree that any lawsuit, action, claim, or legal proceeding involving, directly or indirectly, any matter arising out of or related to this Contract, or the relationship created or evidenced thereby, shall be brought exclusively in the United States District Court for the Eastern District of Pennsylvania or the Court of Common Pleas of Philadelphia County. It is the express intent

of the Parties that jurisdiction over any lawsuit, action, claim, or legal proceeding shall lie exclusively in either of these two (2) forums. The Parties further irrevocably consent and agree not to raise any objection to any lawsuit, action, claim, or legal proceeding which is brought in either of these two (2) forums on grounds of venue or *forum non conveniens*, and the Parties expressly consent to the jurisdiction and venue of these two (2) forums. The Parties further agree that service of original process in any such lawsuit, action, claim, or legal proceeding may be duly effected by mailing a copy thereof, by certified mail, postage prepaid to the addresses specified in Section 5.1 (Notice) of the Provider Agreement.

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

15.16 **Notices**. All notices, demands, requests, waivers, consents, approvals or other communications which are required or may be given under this Contract shall be in writing and shall be deemed to have been duly made (a) when received or refused if delivered by hand with receipt given or refused; (b) on the next business day if delivered by a nationally recognized overnight courier service (*e.g.*, Federal Express or United Parcel Service); (c) on the date confirmed for receipt by facsimile if delivered by facsimile; and (d) upon receipt or refusal of delivery if sent by certified or registered United States mail, return receipt requested. In each case notices shall be sent to the addresses set forth in Section 5.1 (Notice) of the Provider Agreement, or to such other address as either Party may specify to the other by a notice complying with the terms of this Section 15.16 (Notices).



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

THIS IS A CONFIDENTIAL TAX DOCUMENT NOT FOR PUBLIC DISCLOSURE

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

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

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

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

Authorized Signature

Date

Print Name and Title

*Applicant name and number **must** correspond with those on file. Review the name and TIN requirements in the RFP's "Mandatory Online Application Requirements" section. Also, you may 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.