



CITY OF PHILADELPHIA

REQUEST FOR PROPOSALS

**MISCELLANEOUS PURCHASE ORDER
FOR**

Information Services Training for Contract Management Software

CITY OF PHILADELPHIA
Office of the Director of Finance

All Proposals must be submitted electronically through the eContract Philly online application process at www.phila.gov/contracts, choose eContract Philly. Applicants who have failed to file complete applications through the eContract Philly online application process will not be considered for the Miscellaneous Purchase Order.

Proposals must be received no later than 5:00 p.m. Philadelphia, PA, local time, on December 16, 2011.

Michael Nutter, Mayor
Rob Dubow, Finance Director, Office of the Director of Finance

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Appendix A – Miscellaneous Purchase Order Terms and Conditions

(2) Project Overview

This RFP seeks proposals for performance of the following services under a Miscellaneous Purchase Order (MPO) issued by the Office of the Director of Finance: Information Services Training for Automated Contracting Information System (ACIS), the City of Philadelphia's contract management software for non-competitively bid contracts.

The Office of the Director of Finance's Contract Legislation Unit (CLU) provides oversight of the City of Philadelphia's (City) implementation and compliance with Chapter 17-1400 of the Philadelphia Code, the law governing non-competitively bid contracts for the City. ACIS, the City's internal contracting database, is the system of record for contracts that fall under the purview of the aforementioned section of the Philadelphia Code.

Overview of ACIS

Created in 1996 under a contract process management re-engineering project, ACIS allows department users to initiate, process, and manage their non-competitively bid contracts (also known as professional services contracts). ACIS provides a mechanism for users to plan their contracts by fiscal year and by specific department. Initiating planned contracts will automatically route contracts through a process management system that includes steps required to complete a contract. These include, but are not limited to, approval by certain City officials, contract document drafting, legal review, internal and external negotiations, financial and budget review, contract signing, and contract conformance (e.g., verification that all documents are signed by the necessary parties and received by the City).

In 2006, ACIS was significantly upgraded to provide department users with the ability to advertise new contract opportunities. Through an interface with a public website (eContract Philly – <https://secure.phila.gov/eContract/>), ACIS allows users to solicit proposals from interested vendors using a standardized format. These upgrades came as a response to legislation (codified in Chapter 17-1400) from City Council that requires the City to advertise all new non-competitively bid contract opportunities, requires applicants and contractors to submit required disclosure forms, and restricts eligibility for receiving contracts based on local campaign contributions. A process management workflow requires internal users to enter standard information for each advertised contract opportunity and to obtain approval from certain City staff prior to the opportunity being made public.

In 2008, ACIS was further modified to include a set of contract documents historically completed solely on hard copy. Miscellaneous Purchase Orders (MPs) are contracts under \$30,000 and are not required to follow the same process workflow as contracts over \$30,000. There are, however, certain approvals and process steps that all MPs must undergo. Processing MPs electronically will be a new function for all ACIS users.

Key Roles Related to ACIS

Since ACIS is a process management system, each user has a defined role associated with their access. These roles include:

- Conformance Manager for Contracts and Miscellaneous Purchase Orders

Conformance managers are the users responsible for planning, initiating, and routing contract opportunities and contracts. Conformance managers also initiate the financial encumbrance process through ACIS. This type of conformance manager will manage contracts above and below \$30,000 (there is a separate workflow depending the contract amount).

- **Conformance Manager for Miscellaneous Purchase Orders**
Conformance managers are the users responsible for planning, initiating, and routing contract opportunities and contracts. Conformance managers also initiate the financial encumbrance process through ACIS. This type of conformance manager will only manage contracts below \$30,000.
- **Encumbrance Approver**
Encumbrance approvers are responsible for approving initiated financial encumbrances.
- **Department Approver**
Department approvers approve contract opportunities and contracts at certain steps throughout the management process.

Miscellaneous Purchase Order Term

The term of the MPO is expected to commence on or about January 1, 2012 and, unless sooner terminated by the City pursuant to its terms, shall expire on June 30, 2012 following the commencement date. The compensation provided in the MPO will be as stated below or as agreed by the Department and the successful Applicant, but shall not exceed a total of Thirty Thousand Dollars (\$30,000). The MPO will incorporate and be governed by the Miscellaneous Purchase Order Terms and Conditions attached as Appendix A to this RFP.

Disclaimer

This RFP does not commit the City of Philadelphia to award a Miscellaneous Purchase Order. 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 submitted pursuant 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.

(3) Project Requirements

1. Services.

Training Requirements

Training is expected to be hands-on training in front of the computer. The City will be responsible for providing the training space, preparing the computers, preparing the training environment, and working with the training provider on developing appropriate training curriculum.

The selected trainer will be responsible for developing a training curriculum, developing training manuals, providing didactic training courses, and working with City staff to prepare for each training course.

At least three types of training courses are needed:

1. Conformance Manager Training. Anticipated two day training that introduces new users to ACIS and covers all aspects of planning, initiating, and routing contract opportunities and contracts. Also covers initiating financial encumbrances.
 2. MP Conformance Manager Training. Anticipated half-day to full-day training that introduces new users to ACIS and covers all aspects of planning, initiating, and routing contract opportunities and contracts under \$30,000. Also covers initiating financial encumbrances.
 3. Department and Encumbrance Approver Training. Anticipated full-day training that introduces new users to ACIS and covers all aspects of approving contracts and financial encumbrances in ACIS.
2. Timetable. The trainings will be given between January 1, 2012 and June 30, 2012. Trainings will only be established once a full group of users has signed up for each class, defined as ten to twelve (10 to 12) users per class. It is anticipated that one to two classes will be held within the stated timeframe.
3. Reporting requirements. Reports will be submitted on a monthly basis for the entirety of the MPO. Reports will be submitted on the 15th of the month, reporting on the month that just concluded. The details shall include: trainings given, overall number and name of each attendee. If no training was provided in that month, the monthly report is not required.
4. Compensation.
- Overall compensation will not exceed \$30,000.
 - Compensation will be on a per training, per day, per trainee basis.
5. Invoicing Requirements. The selected contractor will be required to submit invoices on official company letterhead to the City within 30 days following a scheduled training. A separate invoice must be submitted for each department sending staff to the particular training, which includes the following information:
- MP (contract) number
 - Title of training
 - Date of training
 - Department name
 - Total number of attendees from the department
 - Name(s) of attendee(s) from the department
 - Name and title of department approver
 - Cost per attendee
 - Total cost of training

Please note that the attendee's department will be responsible for paying the total cost of the training for those department staff present and will remit payment to the selected contractor directly. Staff within the CLU will provide the selected contractor the information necessary for each attendee to create the invoices and facilitate the distribution of invoices to departments upon receipt from the selected contractor.

(4) Submission Requirements; Mandatory Online Application Requirements; Selection Process

1. Proposal Format and Content

Please submit the following in response to this request for information:

- Project understanding
- Description of organizational structure (whether a business organization or individual trainer)
- Description of training experience
- Resumes of all trainers
- Examples of recent computer trainings (including examples of a training manual prepared for a computer training course)
- Three professional references
- Cost proposal (per training, per day, per trainee as well as any costs associated with the development of the training curriculum and training materials)
- Statement of Financial Capacity (e.g. statement of financial condition, audited or unaudited financial statements, bank statements, bank references)

2. Participation of Minority, Woman and Disabled Owned Business Enterprises

Executive Orders 02-05 and 14-08 establish an antidiscrimination policy relating to the participation of Minority (MBE), Woman (WBE) and Disabled (DSBE) Owned Business Enterprises (collectively referred to hereafter as M/W/DSBEs) in City Contracts (the “Antidiscrimination Policy”). Executive Order 14-08 disestablished the Minority Business Enterprise Council and transferred its administrative functions under Executive Order 02-05 to the Office of Economic Opportunity (“OEO”). The purpose of the Antidiscrimination 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. While there are no participation ranges for M/W/DSBEs established for this Miscellaneous Purchase Order, the Applicant is encouraged to provide meaningful and representative contracting opportunities for M/W/DSBEs in this project. M/W/DSBEs are also encouraged to respond directly to this RFP.

3. Tax Compliance; Licenses and Permits

It is the policy of the City of Philadelphia that each contractor have all required licenses and permits and be current in its 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. If an Applicant 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 Privilege Tax Account Number and 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. Applications may be made online at <http://business.phila.gov/Pages/Home.aspx> (click “Register Your Business.”) Non-profit corporations need not have a Business Privilege License but typically must have a Business Privilege Tax Account Number. If you have specific questions, call the Department of Revenue, 215-686-6600 (Business Privilege Tax Account Number) or the Department of Licenses and Inspections, 215-686-2490 (Business Privilege License).

4. Mandatory Online Application Requirements

You must apply online in order to be eligible for award of the MPO described in this RFP. Proposals and related documents prepared in response to this RFP will not be considered unless they are filed through eContract Philly within the prescribed time period. eContract Philly can be accessed on the City’s website at www.phila.gov/contracts by clicking on *eContract Philly*. The posting of this RFP on eContract Philly is also referred to as a Notice of Contracting Opportunity.

Applicants and contractors are required to disclose the following: their campaign contributions to local and state political candidates and incumbents; any consultants used in responding to the RFP and contributions those consultants have made; prospective subcontractors; and whether Applicant or any representative of 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. These disclosures, as well as the Applicant’s proposal and any other response document required, are part of the online application and can be submitted only through the eContract Philly online application process. For more information, please consult the reference materials found on the website, e-mail econtractphilly@phila.gov or call 215-686-4914.

Applicants who fail to file complete applications – including using the online disclosure forms provided – through the eContract Philly online application process prior to the closing date and time will not be considered for the MPO.

Applicants are encouraged to start and complete their online applications on eContract Philly as early as possible. Please be aware that internet connection speed depends on a variety of factors including: configuration of your computer, configuration of your business or home network, the condition of the wiring at your location, network or internet congestion (available bandwidth). Please prepare and plan accordingly to ensure a timely submission. Your proposal and other application documents will not be considered submitted until you sign the application electronically and click on the “submit” button at the conclusion of the eContract Philly process.

You can begin uploading (or attaching) your proposal and other application materials at any time. It is especially prudent for you to start uploading your attachments earlier if you have a large number of attachments (e.g. over five documents) or larger-sized attachments (e.g. above 5 MB). Until you sign and submit your application, your materials are not accessible to any staff with the City of Philadelphia. Once you have signed and submitted your

application, your application is accessible only to appropriate contract staff within the City of Philadelphia.

5. Selection Process

The successful proposal will be selected based on criteria that include but are not limited to:

- 1) Superior ability or capacity to meet particular requirements of the MPO and needs of City Department and those it serves
- 2) Eligibility under Philadelphia Code provisions relating to campaign contributions
- 3) Superior prior experience of Applicant and staff
- 4) Superior quality, efficiency and fitness of proposed solution for City Department
- 5) Superior skill and reputation, including timeliness and demonstrable results
- 6) Special benefit to continuing services of incumbent, such as operational difficulties with transition or needs of population being served
- 7) Benefit of promoting long-term competitive development and allocation of experience to new or small businesses, including those owned by minority or disabled persons or by women
- 8) Lower cost
- 9) Administrative and operational efficiency, requiring less City oversight and administration
- 10) Anticipated long-term effectiveness
- 11) Meets prequalification requirements

(5) Questions Relating to the RFP

All questions concerning this RFP must be submitted in writing via email to Stephanie Tipton at Stephanie.Tipton@phila.gov no later than December 5, 2011 by 5 pm. The City will provide written responses to the submitted questions no later than December 12, 2011 by 5 pm. These responses will be posted on the eContract Philly website with the original RFP details notice. Oral responses by any City employee or agent of the City are not binding and shall not in any way be considered as a commitment by the City.

(6) Reservation of Rights; Confidentiality and Public Disclosure

A. Reservation of Rights

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

- 1) to reject any and all proposals and to reissue this notice of contract opportunity at any time prior to execution of a final MPO;
- 2) 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;
- 3) 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;
- 4) 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;
- 5) to supplement, amend, substitute or otherwise modify this notice of contract opportunity at any time prior to issuing a notice of intent to enter into an MPO with one or more Applicants;
- 6) to cancel this notice of contract opportunity at any time prior to the execution of a final miscellaneous purchase order, whether or not a notice of intent to enter into an MPO 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;
- 7) to do any of the foregoing without notice to Applicants or others, except such notice as the City, in its sole discretion, elects to post on eContractPhilly.

2. Proposal Selection and Negotiation of the MPO

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:

- 1) 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;
- 2) 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 City 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;
- 3) to waive any defect or deficiency in any proposal, including, without limitation, those identified in subsections 1) and 2) preceding, if, in the City's sole judgment, the defect or deficiency is not material to the proposal;

- 4) 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 MPO;
- 5) to issue a notice of intent to enter into an MPO and/or execute an MPO 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;
- 6) 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 MPO, whether or not a notice of intent to enter into an MPO has been issued to any Applicant and without reissuing this notice of contract opportunity;
- 7) 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;
- 8) to discontinue negotiations with any Applicant at any time prior to the execution of a final MPO, whether or not a notice of intent to enter into an MPO 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;
- 9) to rescind, at any time prior to the execution of a final MPO, any notice of intent to enter into an MPO issued to an Applicant, and to issue or not issue a notice of intent to enter into an MPO 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;
- 10) to elect not to enter into any MPO with any Applicant, whether or not a notice of intent to enter into an MPO 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;
- 11) 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;
- 12) to conduct on-site investigations of the facilities of any one or more Applicants (or the facilities where the Applicant performs its services);
- 13) 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;
- 14) 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,
- 15) to do any of the foregoing without notice to Applicants or others, except such notice as the City, in its sole discretion, elects to post on eContractPhilly.

3. Miscellaneous

- 1) 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.
- 2) 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.

B. 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
Miscellaneous Purchase Order Terms and Conditions

CITY OF PHILADELPHIA
MISCELLANEOUS PURCHASE ORDER TERMS AND CONDITIONS

1. SCOPE OF AGREEMENT

This Miscellaneous Purchase Order (“MPO” or “Contract”) is made by and between the City of Philadelphia, acting through the City agency identified as “Department” on the form titled “Miscellaneous Order” to which these terms and conditions are attached (“MPO Form”), and the person or entity identified as the vendor on the MPO Form (“Contractor” or “Provider”) The MPO consists of the MPO Form, the terms and conditions set forth below (“MPO Terms”), any exhibits and attachments (including, but not limited to, any proposal of Contractor or scope of services), and all documents incorporated herein by reference. In the event of a conflict or variance in any of the foregoing documents, the MPO Terms and the “City PHI Terms” (as defined in Section 12 below) shall govern; the MPO Terms and City PHI Terms shall be of even precedence.

2. GOVERNING LAW AND COMPLIANCE WITH APPLICABLE LAW

This Agreement shall be deemed to have been made in Philadelphia, Pennsylvania. This Agreement and all disputes arising under this Agreement 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. All services rendered and documents and other materials prepared by Contractor shall strictly conform to all applicable federal, state and local laws, statutes and ordinances and the applicable rules, regulations, methods and procedures of all governmental boards, bureaus, offices, commissions and other agencies, including without limitation, federal laws regarding individuals with disabilities and limited English proficiency and Section 17-104 of The Philadelphia Code relating to Northern Ireland and Slavery Era Disclosure.

3. PERFORMANCE/PAYMENT

All services shall be performed to the satisfaction and approval of the City, in accordance with the schedule contained in the Agreement. Payment(s) are contingent upon satisfactory performance and shall be made in accordance with the schedule set forth in the Agreement (assuming satisfactory progress is being made) or, in the absence of a payment schedule, upon satisfactory completion of all services. To process payment, Contractor shall furnish the City with invoices, in the number, form and content, and accompanied by such supporting data as the City may require.

4. RECORDS

- a. Contractor covenants and agrees to have available in the City of Philadelphia, upon request, its books and records for inspection by appropriate City, state or federal auditors concerning charges, fees and costs under this Agreement for a minimum of five (5) years following acceptance of final payment under this agreement; however, if any litigation, claim or audit is commenced prior to expiration of said five (5) year period, then the books and 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.
- b. Any Contractor that is an “Agency”, as defined in Section 6-400 of the Philadelphia Home Rule Charter, shall permit the City Controller to audit its affairs as authorized in Section 6-400. Under Section 6-400, an Agency is any entity that receives funds from the City, and either 1) that is created by, or whose board of directors is in whole or part appointed by, one or more City officials or bodies; or 2) that is organized pursuant to legal authority granted to it by City ordinance.

5. NONDISCRIMINATION

- a. This Agreement is entered into under the terms of the Philadelphia Home Rule Charter, as it may be amended from time to time, and in performing this Agreement, Contractor shall not discriminate or permit discrimination against any individual because of race, color, religion or national origin. In addition, Contractor shall, in performing this Contract, comply with the provisions of the Fair Practices Ordinance of The Philadelphia Code (Chapter 9-1100) and the Mayor’s Executive Order No. 04-86, as each may be amended from time to time and which, as applicable, prohibit, among other things, discrimination against individuals in employment, housing, and/or services in places of public accommodation because of race, color, sex, sexual orientation, gender identity, religion, national origin, ancestry, age, handicap (including, but not limited to, Human Immunodeficiency Virus infection), marital status, presence of children or source of income. Without limiting the generality of Paragraph 9 below, such discrimination shall constitute a substantial breach of this Agreement entitling the City to terminate this Agreement forthwith. This right of termination is in addition to any other rights or remedies provided in this Agreement or otherwise available to the City in law or equity.

- b. In accordance with Chapter 17-400 of The Philadelphia Code, Contractor 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 a substantial breach of this Agreement entitling the City to all rights and remedies provided in this Agreement or otherwise available in law or equity. Contractor agrees to include the immediately preceding sentence, with appropriate adjustments for the identity of the parties, in all subcontracts which are entered into for work to be performed pursuant to this Agreement. Contractor further agrees to cooperate with the Commission on Human Relations of the City of Philadelphia in any manner which the said Commission deems reasonable and necessary for the Commission to carry out its responsibilities under Chapter 17-400 of The Philadelphia Code. Without limiting the generality of Paragraph 9 below, failure to so cooperate shall constitute a substantial breach of this Agreement entitling the City to all rights and remedies provided herein or otherwise available in law or equity.

6. OWNERSHIP

All reports, documents, and other materials prepared by Contractor in performance of this Agreement shall be the sole and absolute property of the City and the City shall have title thereto and unrestricted use thereof. Contractor 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 Agreement but which relate to the performance of the services, materials or this Agreement; provided, however, that Contractor shall not be required to grant such right to the City with respect to any materials for which Contractor would be liable to pay compensation to third parties because of such grant.

7. CONTRACTOR'S REPRESENTATIONS AND COVENANTS

The representations, warranties and covenants below, shall continue throughout the term of this Agreement. In the event said representations, warranties and covenants are or become untrue or inaccurate, Contractor shall promptly give notice thereof to the City, specifying the manner in which said representation, warranty or covenant is untrue or inaccurate.

- a. Certification of Nonindebtedness. Contractor and any and all entities controlling Contractor, under common control with Contractor or controlled by Contractor represent that they are not currently indebted to the City, and will not at any time during the term of this Agreement, 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. Contractor shall remain current during the term of this Agreement under all such agreements and payment plans, and shall inform the City in writing of Contractor'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, Contractor 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 Contractor under this Agreement 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 Agreement for default (in which case Contractor shall be liable for all excess costs and other damages resulting from the termination), or both. In addition, Contractor understands that false certification, representation or warranty by it is subject to prosecution under Title 18 Pa.C.S.A. § 4904.
- b. Business Privilege License. If Contractor is a "business" as defined in The Philadelphia Code, Section 19-2601, Contractor has and shall maintain during the Term of this Agreement, a valid, current Business Privilege License, issued by the City's Department of Licenses and Inspections, to do business in the City.
- c. Authority to Act and Good Standing. Contractor has full legal power and authority to execute and deliver this Agreement, and provide the services and materials as set forth herein. Contractor 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 Agreement, including, but not limited to, the jurisdiction in which Contractor is organized. Neither Contractor's personnel nor any subcontractor personnel shall be employees of the City.
- d. Contributions. In accordance with Section 17-1402 of The Philadelphia Code, Contractor represents on behalf of itself and its subcontractor(s) that no "contribution(s)," as such term is defined in the Pennsylvania Election Code, 25 P.S. Section 3241, have been made and none shall be made during the term of the Agreement by Contractor, any subcontractor, or any party from which a contribution can be attributed to the Contractor or subcontractor, that would render the Contractor or subcontractor, as applicable, ineligible to apply for or enter into a "Non-Competitively Bid

Contract,” a contract for the purchase of goods or services to which the City is a party that is not subject to the lowest responsible bidder requirements of Section 8-200 of The Philadelphia Home Rule Charter; 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 Agreement voidable at the City’s option, and shall make the Contractor liable for liquidated damages to the City in the amount of ten percent (10%) of the maximum payments to the Contractor allowed under the Agreement, regardless whether actually paid. The City may exercise any or all of the remedies set forth herein, 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 Contractor shall operate as a waiver of any of the City’s rights in connection with this Agreement. The rights and remedies of the City as described herein shall not be exclusive and are in addition to any other rights or remedies available to the City under this Agreement at law or in equity. In addition, pursuant to the attribution rules of Section 17-1405, Contractor shall, during the term of the Agreement and for one year thereafter, make the following disclosures with respect to any contribution of money or in-kind assistance the Contractor, subcontractor or any “Consultant” (“Consultant” means any individual or entity used by Contractor to assist in obtaining a Non-Competitively Bid Contract) has made during such time period:

1. Disclose contribution(s) 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.
 - a. Such disclosure shall be made on a form provided by the City Department awarding the Agreement, and the form shall be signed and filed with such City Department within five (5) business days of the contribution. The City Department receiving the disclosure form shall forward copies to the President and Chief Clerk of City Council, and to the Mayor, Finance Director, Procurement Department, and the Department of Records. The attribution rules of Section 17-1405 shall apply to determine what contributions must be disclosed under this provision as contributions of the Contractor or of a Consultant.
 - b. It shall not be a violation if Contractor fails to disclose a contribution made by a Consultant because the Contractor was unable to obtain such information from the Consultant, provided the Contractor demonstrates that it used reasonable efforts to attempt to obtain such information.
2. Disclose, during the term of the Agreement and for one year thereafter, the name and title of each City officer or employee who, during such time period, asked the Contractor, any officer, director or management employee of the Contractor, or any individual or entity representing the Contractor, to give money, services, or any other thing of value (other than a Contribution as defined in Section 17-1401) to any individual or entity, and any payment of money, provision of services, or any other thing of value (other than a Contribution as defined in Section 17-1401) given to any individual or entity in response to any such request. Contractor 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.
 - a. Such disclosure shall be made on a form provided by the City Department awarding the contract, and the form shall be signed and filed with the City Department within five (5) business days after a request was made or a payment in response to a request was made, as the case may be.
 - b. The City Department receiving the disclosure form shall forward copies to the President and Chief Clerk of City Council, and to the Mayor, Finance Director, Procurement Department, and the Department of Records.
3. Disclose the name and title of each City officer or employee who directly or indirectly advised the Contractor, any officer, director or management employee of the Contractor, or any individual or entity representing the Contractor that a particular entity could be used by the Contractor to satisfy any goals established in the Agreement for the participation of minority, women, disabled or disadvantaged business enterprises
- e. Executive Order 02-04: Gifts. Pursuant to Executive Order 02-04, no official or employee in the Executive and Administrative Branch of the City shall solicit or accept, directly or indirectly, anything of value, including any gift, gratuity, favor, entertainment or loan from any of the following sources:
 1. A person seeking to obtain business from, or who has financial relations with the City;
 2. A person whose operations or activities are regulated or inspected by any City agency;
 3. A person engaged, either as principal or attorney, in proceedings before any City agency or in court proceedings in which the City is an adverse party;
 4. A person seeking legislative or administrative action by the City; or
 5. A person whose interests may be substantially affected by the performance or nonperformance of the official’s or employee’s official duties.

6. Contractor 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, Contractor 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.

8. INDEMNIFICATION

Contractor shall indemnify, defend and hold harmless the City, its officers, employees and agents from and against any and all losses, costs (including without limitation, litigation and settlement costs, and counsel fees and expenses), claims, suits, actions, damages, liabilities and expenses, occasioned wholly or in part by Contractor's act or omission or negligence or fault or the act or omission or negligence or fault of Contractor's agents, subcontractors, independent contractors, suppliers, or employees in connection with this Agreement, including, but not limited to, those in connection with loss of life, bodily injury, personal injury, damage to property, failure to pay subcontractors (including subconsultants and suppliers), intentional acts, contamination or adverse effects on the environment, any breach of this Agreement, and any infringement or violation of proprietary rights (including, but not limited to, patent, copyright, trademark, service mark and trade secret). This obligation to indemnify, defend and hold harmless the City, its officers, employees and agents shall survive the termination of this Agreement.

9. TERMINATION

The City has the right to terminate this Agreement for default if Contractor fails to perform any of its obligations under this Agreement. This right of termination is in addition to any other rights or remedies available to the City under this Agreement, in law or equity.

The City shall have the right to terminate this Agreement at any time for the convenience of the City. In the event of such termination, the City shall pay Contractor for work satisfactorily performed, delivered, and accepted and approved by the City prior to the date of termination, but shall not otherwise be liable for any costs or damages incurred by Contractor in relation to the termination.

10. TAXES

The City is exempt from the payment of any Federal Excise or Transportation Taxes and any Pennsylvania Sales or Use Tax. The City shall not be responsible or liable for the payment of the aforesaid taxes or any other tax paid or payable by Contractor to its subcontractors or suppliers in connection with this Agreement. Contractor agrees and will require all its subcontractors performing work in connection with the Agreement to promptly pay all applicable taxes, including but not limited to, City and School District Taxes. Contractor agrees (1) to assign and transfer to City all of its right to sales and use tax which may be refunded as a result of a claim for refund for any materials purchased in connection with the Agreement, (2) that, other than as directed by City, it will not file a claim for refund for any sales or use tax which is the subject of this assignment, and (3) that City, in its own name or in the name of Subcontractor, may file a claim for a refund of any sales or use tax covered by the assignment.

11. INSURANCE

Unless otherwise approved by the City's Risk Manager in writing, Contractor shall, at its sole cost and expense, procure and maintain in full force and effect covering the performance of the services required under this Agreement, the types and minimum limits of insurance specified below. All insurance shall be procured from reputable insurers authorized to do business in the Commonwealth of Pennsylvania and acceptable to the City. Except as noted below, all insurance required hereunder shall be written on an "occurrence" basis and not a "claims-made" basis. All insurance shall be in form and content acceptable to the City and shall provide for at least thirty (30) days prior written notice to be given to the City in the event coverage is materially changed, canceled or non-renewed. The City of Philadelphia, its officers, employees and agents are to be named as additional insureds on the General Liability Insurance policy. Also, an endorsement is required stating that the coverage afforded the City and its officers, employees and agents as additional insureds will be primary to any coverage available to them. The City reserves the right to require Contractor to furnish certificates of insurance and/or certified copies of the original policies of all insurance required hereunder at any time upon ten (10) days prior written notice to Contractor. The insurance requirements set forth herein are not intended and shall not be construed to modify, limit, or reduce the indemnifications made in this Agreement by Contractor to the City or to limit Contractor's liability under this Agreement to the limits of the policies of insurance required to be maintained by Contractor hereunder:

- a. Workers Compensation and Employers Liability: Statutory limits.

- b. General Liability Insurance (comprehensive coverage): \$1,000,000 per occurrence and aggregate, combined single limit.
- c. Automobile Liability: \$300,000 per occurrence combined single limit covering owned, non-owned and hired vehicles.
- d. Professional Liability Insurance: Professional Liability Insurance may be written on a "claims-made" basis; however, coverage for occurrences during the performance of the services required under this Agreement shall be maintained in full force and effect under the policy or "tail" coverage for a period of at least two years after completion of the services.
 - 1. All Business Entities providing professional services other than Health Care or Human Services Providers: \$500,000 minimum limit; deductible not to exceed \$10,000.
 - 2. Health Care Providers subject to PA Act 111: Statutory Limits.
 - 3. All other Health Care Providers and Human Services Providers not subject to PA Act 111: \$1,000,000 per occurrence and annual aggregate.

Requests to self insure any of the coverage(s) listed above must be submitted in writing to the City for approval by the City's Risk Manager. If approved, the City, its officers, employees and agents, shall be entitled to the same coverage benefits under the Contractor's self insurance program that they would have received had the requirements been satisfied by an approved insurance carrier.

12. PROTECTED HEALTH INFORMATION

- a. The City of Philadelphia is a "Covered Entity" under the federal Health Insurance Portability and Accountability Act (HIPAA), and certain City agencies have been designated by the City as covered healthcare components of the City ("Covered Components") under HIPAA. The following have been designated by the City as Covered Components of the City as of January 1, 2011: Ambulatory Health Services, a unit of the Department of Public Health (DPH); the Office of Behavioral Health and Intellectual Disability Services; the Riverview Home, a unit of the Office of Supportive Housing; the Philadelphia Nursing Home, a unit of DPH, the Benefits Administration Unit of the Office of Human Resources; and the Emergency Medical Services Unit of the Philadelphia Fire Department. This list is subject to change, and any component of the City that the City in future designates as a Covered Component under HIPAA shall be deemed to be a Covered Component for purposes of this Section 12.
- b. To the extent this MPO (i) is entered into with the City through a City agency acting on behalf of a Covered Component, and/or (ii) requires the performance of services that will be delivered to or used by a Covered Component of the City (whether or not the City agency issuing the MPO is a Covered Component), and (iii) Contractor is a "business associate" of the City as defined in 45 CFR §160.103, Contractor shall comply with the City's "Terms and Conditions Relating to Protected Health Information" as posted on the City's website (at <https://secure.phila.gov/eContract/> under the "About" link) on the date identified as the "Date Prepared" of the MPO Form ("City PHI Terms"). The City PHI Terms are hereby incorporated in this Section 12 as if fully set forth herein. (A printed version of the City PHI Terms, in the City's sole discretion, may also be attached to this MPO.)

13. LIMITED ENGLISH PROFICIENCY.

Provider understands and agrees that no individual who is limited in 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 applicable provisions of Title VI of the Civil Rights Act of 1964, the President of the United States of America Executive Order No. 12250, the Mayor of the City of Philadelphia's Executive Order "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, Executive Orders and regulations may be amended from time to time.

14. PHILADELPHIA 21ST CENTURY MINIMUM WAGE AND BENEFITS STANDARD.

- a. If Provider is an Employer, as defined at Philadelphia Code Section 17-1303, with the exclusion of subcontractors and their employees, Provider shall comply with the minimum compensation standards by providing its employees with an hourly wage, excluding benefits, at least 150 percent of the federal minimum wage, and to extent Provider provides health benefits to any of its employees, Provider shall provide each full-time, non-temporary, non-seasonal covered employee health benefits at least as valuable as the least valuable health benefits that are provided to any other full-time employees of Provider, as more fully set forth at Philadelphia Code Chapter 17-1300. Provider shall promptly provide to the City all documents and information verifying its compliance with the requirements of Chapter 17-1300. Furthermore, Provider shall notify each affected employee what wages are required to be paid pursuant thereto.

Prior to commencement of the contract's term or execution by the City, each Provider subject to Chapter 17-1300 will certify to the satisfaction of the City that its employees are paid the minimum wage standard as provided therein.

- b. A Provider subject to Chapter 17-1300 shall comply with all its requirements as they exist on the date when Provider entered into its agreement with the City or when such agreement is amended. A Provider subject to Chapter 17-1300 who fails to comply with its provisions may, after notice and hearing before the Finance Director 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 for up to three (3) years. Furthermore, the Council may, by resolution adopted after a public hearing, determine that there are reasonable grounds to believe that an employer subject to Chapter 17-1300 has failed to comply with its provisions, and that if such failure is established, then debarment would be an appropriate remedy for such failure. A copy of any such adopted resolution shall be forwarded to the Finance Director, or such other officer or agency designated by the Mayor, who shall without undue delay provide appropriate notice and opportunity for hearing, and after such hearing, make a final determination as to whether there has been a violation of Chapter 17-1300 and whether debarment, as provided by Chapter 17-1300, should be imposed. Such debarment shall be in addition to any of the other sanctions or remedies set forth in Chapter 17-1300. The debarment procedure by Council resolution shall be in addition to any other procedure for debarment established under Chapter 17-1300.
- c. The Office of Labor Standards may grant a partial or total waiver of Section 17-1300 based on specific stipulated reasons elaborated in Section 17-1304 of the Philadelphia Code.

15. CITY-RELATED AGENCIES

City-Related Agencies. If Provider is a City-Related Agency, as defined at Philadelphia Code subsection 17-1401(9), Provider shall abide by the provisions of Philadelphia Code Section 17-1400 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 Subsection 17-1406(8) shall apply to Provider as if Provider were listed in that subsection. Unless approved by the City to the contrary, any approvals required by the Philadelphia Code Chapter 17-1400 to be performed by the City Solicitor shall be performed by Provider by its General Counsel; any approvals required to be performed by the Director of Finance shall be performed by Provider by its Chief Financial Officer; and any approvals required to be performed by the Mayor shall be performed by Provider by its Executive Director.

16. ENTIRE AGREEMENT

This Miscellaneous Purchase Order contains the entire agreement between the parties with respect to the subject matter hereof; supersedes all prior negotiations, agreements, and undertakings between the parties with respect to such subject matter; and cannot be changed, modified or amended except by agreement in writing signed by both parties.

17. NOTICES

Except as expressly provided otherwise in the City PHI Terms, all notices required under or relating to this MPO shall be in writing delivered by overnight delivery service to the City department issuing the MPO, as identified on the page titled "Miscellaneous Order," addressed to the attention of the person there identified as "Requisitioner."