



## **PROJECT MANUAL**

# **Renovations of the East Schuylkill River Wall at Reviewing Stands (Kelly Drive – Just North of Columbia Bridge)**

**Posting Date: February 3, 2023**

# ***RENNOVATIONS OF THE SCHUYLKILL RIVER WALL***

## ***TABLE OF CONTENTS***

### ***DIVISION 00 -- BIDDING AND CONTRACTING REQUIREMENTS***

- 00100 Instructions to Bidders
- 00411 Bid Proposal Form
- 00430 Bid Bond
- 00720 Standard Contract Requirements (City)
- 00813 Economic Opportunity Plan (EOP)
- 00814 Prevailing Wage Rates Schedule

### ***DIVISION 01 -- GENERAL PROJECT REQUIREMENTS***

- 01210 Allowances
- 01250 Contract Modification Procedures
  - Change Order Form
- 01290 Payment Procedures
- 01291 Schedule of Values
- 01311 Project Coordination
- 01312 Project Meetings
- 01321 Construction Photographs
- 01322 Progress Reports
- 01323 Construction Scheduling
- 01330 Submittals
- 01410 Codes, Regulations and Standards
- 01450 Contractor's Quality Control
- 01500 Temporary Facilities and Controls
- 01510 Environmental Controls
- 01610 Products and Materials
- 01630 Substitution Procedures
- 01770 Closeout Procedures
  - Certificate of Substantial Completion Form
- 01781 Operation and Maintenance Manuals
- 01782 Warranties
- 01783 Project Record Documents

**ATTACHMENTS:**

- A. *Final ENS Plan*
- B. *Final Structure Plan*
- C. *Final Submission Special Provisions*
- D. *City of Philadelphia Questionnaire & Financial Statements*
- E. *Campaign Contribution Disclosure Forms*
- F. *Tax Status - Conflict of Interest Form*
- G. *PRA Insurance Requirements*
- H. *DCNR Nondiscrimination & Sexual Harassment Clause*
- I. *DCNR Permanent Sign Policy*
- J. *Public Works Employment Verification Form*

*END OF SECTION*

SECTION 00100  
INSTRUCTIONS TO BIDDERS

PART 1—GENERAL

1.1 BASIC INFORMATION

- A. The following is a list of basic bidding information for the convenience of Bidders. If discrepancies between information contained in this section and other Bidding Documents are uncovered, the requirements of the other Bidding Documents shall govern.

**The entire project must be bid by a Single Prime General Contractor. Work does not need to be performed under separate prime contracts.**

1. Project Title:

**Renovations of the East Schuylkill River Wall at Reviewing Stands**

2. Project Location:

**East Schuylkill River Wall at Reviewing Stands, Kelly Drive (Just North of Columbia Bridge)**

3. Mandatory Pre-Bid Meeting to be held on **February 13, 2023, at 11:00 AM at the East Schuylkill River Wall at Reviewing Stands, Kelly Drive (Just North of Columbia Bridge)**
4. Bids shall be brought in person to **East Schuylkill River Wall at Reviewing Stands, Kelly Drive (Just North of Columbia Bridge) on February 23, 2023, at 11:00 AM** and opened immediately thereafter.
5. Submit one (1) original, complete, signed, Bid for Project.
6. Allowances are included.
7. Bids shall be valid for 60 calendar days after bid opening unless otherwise mutually extended by PRA and apparent low bidder.
8. Access to the site for inspection by the Bidders will be part of the mandatory pre-bid conference scheduled on the cover.
9. It should be understood and agreed by this bidder that funding for this project will be partially certified. It should be further understood that additional funding is subject to councilmatic appropriation of funds. Should the PRA fail to appropriate the necessary additional funds for this project, the Contract for that portion of the work not funded shall terminate automatically, without penalty, cost or liability to the PRA.

1.2 INVOLVED PARTIES:

- A. Contracting Agency:

Philadelphia Redevelopment Authority (PRA), 1234 Market Street, 16<sup>th</sup> Floor, Philadelphia, PA, 19107

Robert LaBrum, Director, Design and Construction, Phone: 215-448-3046  
Dennis Torres, Architect, Phone: 215-448-3075

- B. City of Philadelphia:  
Department of Parks and Recreation  
Francesco Cerrai, Project Director: 215-683-4449

### 1.3 DEFINITIONS

- A. Refer to Section 00700, “Standard Contract Requirements”.

### 1.4 BIDDER'S REPRESENTATIONS

- A. Each Bidder by submitting a Bid represents that:
  1. The Bidder has read and understands the Bidding Documents and the Bid is made in accordance therewith.
  2. The Bidder has visited the site and is familiar with the local conditions under which the Work is to be performed and has correlated site observations with the requirements of the proposed Contract Documents.
  3. Bid is based upon the materials, systems and equipment required by the Bidding Documents without exception.
- B. The PRA assumes no responsibility for any representation made by any of its officers, agents, or employees concerning the nature of the Work or the general and local conditions unless such representation is included in the Contract Documents or Addenda.

### 1.5 BIDDING DOCUMENTS

- A. Copies of the Bidding Documents are available on the PHDC’s website (<http://www.phdcphila.org>).
- B. PRA, in making copies of the Bidding Documents available on the above terms, does so only for the purpose of obtaining Bids on the Work and does not confer a license or agreement for any other use.
- C. Title to all Bidding Documents shall remain with the PRA.

### 1.6 INTERPRETATION OR CORRECTION OF BIDDING DOCUMENTS

- A. Bidders shall promptly notify the PRA of any ambiguity, inconsistency or error which they may discover upon examination of the Bidding Documents or of the site and local conditions.
- B. PRA will accept questions and requests for additional information directed in writing to **RFP@phdc.phila.gov up to 3:00 PM on February 17, 2023**. Responses and any additional information will be posted on the PHDC Website, (<http://www.phdcphila.org>), within 3 business days of this date.
- C. Clarifications or interpretations received prior to deadline for submission of Bids shall either be addressed in an Addendum which may also include an extension of the deadline for submission of Bids, or at the sole discretion of the PRA, no additional information will be issued, and the Bidders shall comply with the Bidding Documents as they exist. All bidders **MUST** acknowledge/sign **ALL** Addenda and include with their Proposal/Bid. All Addenda will be posted to the PHDC Website, (<http://www.phdcphila.org>).
- D. Any interpretation, correction or change of the Bidding Documents will be made by Addendum. Interpretations, corrections or changes of the Bidding Documents made in any

other manner will not be binding, and Bidders shall not rely upon such interpretations, corrections and changes.

1.7. SUBSTITUTIONS

A. Requests for substitutions shall comply with Section 01630, "Substitution Procedures."

1.8. ADDENDA

A. All Addenda and Additional information will be posted on the PHDC's website (<http://www.phdcphila.org>).

B. All Addenda must be acknowledged/signed by the Bidder and included with their Proposal/Bids.

1.9. BIDDING PROCEDURES

A. Form and Style of Bids:

1. Submit Bids on forms provided in the Loose Proposal package.
2. Fill in blanks on the Bid by typewriter or otherwise in ink.
3. Where so indicated by the makeup of the Bid, express sums in both words and figures.
4. The signer of the Bid must initial any interlineation, alteration or erasure.
5. All requested Alternates shall be bid. If no change in the Base Bid is required, enter "No Change."
6. Bids shall not contain any conditions or qualifications whatsoever.
7. Bids shall include an allowance for permits and licenses in connection with all or any portion of the work.
8. All coordination needed to procure and obtain the required permits and licenses necessary to perform the work in its entirety shall be the responsibility of the bidder/contractor. Payment under this allowance shall be for the actual permit or license fee(s). Additional costs to procure such permits or licenses will not be reimbursed to the bidder/contractor. Refer to section 00700 Standard Contract Requirements, Clause 35.

B. Bid Security, See Section 00700 Standard Contract Requirements, Section 10.1.

1. Each Bid shall be accompanied by bid bond as per the requirements of the Standard Contract Requirements for Public Works Contracts.
2. Bid Bond shall be issued on form included in the Loose Proposal Package.

C. Submission of Bids

1. The Bid, bid security, and other required documents shall be enclosed in a sealed opaque envelope identifying the Project name, the Bidder's name and address and the designated portion of the Work for which the Bid is submitted. If the Bid is sent by mail, enclose the sealed envelope in a separate mailing envelope with the notation "Sealed Bid Enclosed" on the face thereof.
2. Deposit Bids at the designated location prior to the time and date for submission of Bids indicated in the Invitation to Bid, or any extension thereof made by Addendum. Bids received after the time and date for submission of Bid will be rejected.
3. The Bidder shall assume full responsibility for timely delivery at the location designated for submission of Bid.
4. Oral, telephonic or telegraphic Bids are invalid and will not receive consideration.

D. Modification or Withdrawal of Bid

1. A Bid may not be modified, withdrawn or canceled by the Bidder after the time and date designated for the receipt of Bids except as provided in the Standard Contract Requirements for Public Works Contracts.
2. Prior to the time and date designated for receipt of Bids, any Bid submitted may be modified or withdrawn by notice to the party receiving Bids at the place designated for submission of Bids. Such notice shall be in writing on company letterhead under the signature of the Bidder.
3. Withdrawn Bids may be resubmitted up to the time designated for the submission of Bids provided that they are then fully in conformance with these Instructions to Bidders.

1.10 CONSIDERATION OF BIDS

- A. Opening of Bids: Properly identified Bids received on time will be opened publicly.
- B. Rejection of Bids: The PRA has the right to reject any or all Bids and to reject a Bid not accompanied by data required by the Bidding Documents, or to reject a Bid which is in any way incomplete or irregular.
- C. Acceptance of Bid (Award)
  1. It is the intent of the City to award a Contract to the lowest responsive and responsible Bidder.
  2. If Alternates are to be included in the award, they will be accepted in the order listed.

1.11 CONTRACT PROCESSING

- A. Successful bidder shall be mailed Contract forms from Philadelphia Redevelopment Authority (PRA), 1234 Market Street, 16<sup>th</sup> Floor, Philadelphia, PA, Attn: Robert LaBrum, Director, Design and Construction and shall return properly executed contract forms and bond forms within ten (10) working days Philadelphia Redevelopment Authority (PRA), 1234 Market Street, 16<sup>th</sup> Floor, Philadelphia, PA, Attn: Robert LaBrum, Director, Design and Construction
- B. The PRA may vacate awards for failure to comply with provisions above.

1.12 PERFORMANCE BONDS

- A. Bond Requirements: Bidder shall furnish bonds covering the faithful performance of the Contract and the payment of all obligations arising thereunder per the requirements of the Standard Contract Requirements and other requirements of the Bidding Documents.
- B. Bidder shall provide and furnish bonds to the contract limit which includes the contingency.

1.13 INSURANCE CERTIFICATES

- A. The successful Bidder will not be permitted to start any Work under the Contract until certificates covering all insurance requirements are submitted per the Standard Contract Requirements and other requirements of the Bidding Documents.

1.14 PRE-BID INFORMATION

- A. Pre-bid information regarding the Project is correct and current at the time it is issued and is offered to obtain Bids.
- B. The pre-bid information cannot be guaranteed to remain correct in every detail throughout the time preceding the signing of the Contract due to such variables as changes in budget, labor and material markets and anticipated date of issuing the notice to proceed.

1.15 INFORMATION AVAILABLE TO BIDDERS

A. Geotechnical Information

1. Not applicable

B. Site Visit

1. Bidders shall make themselves familiar with all readily observable features of the Project Site. Readily observable features include spaces above lay-in ceilings, behind access panels and other similar areas not normally exposed to view but easily accessible.
2. Bidder shall not rely solely on Contract Drawings or Record Drawings.
3. Uncovered conditions differing substantially from those indicated on Record Drawings and not observable during the pre-bid visit will be considered for modification to the Contract.

C. Record Drawings

1. Record drawings of existing construction can be made available to Bidder at cost of reproduction for use in preparing bids.
2. Record Drawings were used for design purposes only and shall not be used for construction.
3. The Record Drawings are attached and identified in Section 00015 "List of Drawings".

PART 2—PRODUCTS            Not Used

PART 3—EXECUTION        Not Used

END OF SECTION



SECTION 00411  
BID PROPOSAL FORM

**PHILADELPHIA REDEVELOPMENT AUTHORITY**  
**RENOVATIONS OF THE EAST SCHUYLKILL RIVER WALL**

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**FIRM NAME**

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**FIRM ADDRESS**

---

**FEDERAL EIN**

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**PHILADELPHIA BUSINESS TAX ID**

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**TOTAL BASE BID (Base Bid Amount, plus Allowances 1)**

To the Philadelphia Redevelopment Authority:

I, the undersigned Bidder, hereby propose to furnish all the labor, materials and equipment, perform the whole of the work, and submit to all conditions, as represented, intended and implied, both particularly and generally, by the Plans, Special Specifications, Standard Specifications, Standard Details, Standard Contract Requirements, Form of Agreement, the Ordinance authorizing the work and this bid at the prices herein stated, and agrees that each item bid shall be complete in itself, and the Philadelphia Redevelopment Authority may increase or diminish the amount of work thereunder, or omit the item without invalidating the unit price bid for it or any other item, on the following terms to wit:

A. BID AMOUNT

(1) BASE BID AMOUNT \_\_\_\_\_

DOLLARS, \$ \_\_\_\_\_

(2) ALLOWANCE No. 1: Bidders are to include the amount equal to Two Percent (2%) of their base bid amount for payment of Permit and License fees to all regulatory agencies. Refer to Allowances, Section 01210 for more details.

ALLOWANCE AMOUNT: \_\_\_\_\_

DOLLARS, \$ \_\_\_\_\_

**TOTAL BASE BID:**

Base Bid Amount plus Allowances 1: \_\_\_\_\_

DOLLARS, \$ \_\_\_\_\_

B. PERFORMANCE OF THE WORK BY CONTRACTOR:

I, the undersigned Contracting Bidder, am required to perform work on the site with its own workforce equal to at least twenty percent (20%) of the original total contract price exclusive of profit, overhead and the costs of procuring insurance and bonds. I, the undersigned Contracting Bidder, shall submit with its bid a complete description of the work that will be performed (e.g., earthwork, paving, brickwork, roofing, etc.), the percentage of the total contract this work represents, and the estimated dollar value thereof.

I shall perform the following work \_\_\_\_\_.

Percentage of the total contract to be performed by Contracting Bidder: \_\_\_\_\_%.

Estimated cost of work to be performed by Contracting Bidder:

\$ \_\_\_\_\_

C. COMPLETION

I will substantially complete the Work, ready for final payment, in accordance with the Contract Documents within 150 consecutive calendar days counting from the date stated in the Notice to Proceed.

E. ADDENDA

Bidder must attach Addendum Acknowledgement sheets for all Addenda, if applicable.

Addendum #1, dated: N/A

**EXECUTION OF CONTRACT**

This contract consists of the Standard Contract Requirements; the Department's Standard Details and Specifications, as they apply; the Department's General Bidding and Contract Requirements; the Technical Specifications; the Bid; the Plans with all of the notes thereon (excluding any records or reports of test borings, underground structures, and test piles); any additional exhibits or attachments to any of the foregoing; and any addenda thereto issued by the City (collectively, the "Contract").

NOTE: ANY CONTRACT THAT IS NOT EXECUTED IN ACCORDANCE WITH THE INSTRUCTIONS PROVIDED BELOW, MAY, IN THE SOLE DISCRETION OF THE PHILADELPHIA REDEVELOPMENT AUTHORITY, BE REJECTED.

**SIGNING OF CONTRACT**

If Contractor is an INDIVIDUAL or a PARTNERSHIP, date and sign the Contract here, with original signatures, in ink.

This \_\_\_\_\_ day of \_\_\_\_\_ 2022

\_\_\_\_\_  
(Signature of Owner, Partner)

\_\_\_\_\_  
(Type or Print Name and Title)

\_\_\_\_\_  
(Business Name of Bidder)

If Contractor is a CORPORATION, date and sign the Contract here with original signatures, in ink, by (a) President or Vice-President of the corporation AND (b) Secretary, Assistant Secretary, Treasurer or Assistant Treasurer of the corporation; and (c) affix the seal of the corporation. If the Contract is not signed by the President or Vice-President; and Secretary, Assistant Secretary; Treasurer or Assistant Treasurer, attach a duly certified corporate resolution authorizing the person signing in place of such officers to execute this Contract for the corporation.

This \_\_\_\_\_ day of \_\_\_\_\_ 2022

\_\_\_\_\_  
(Corporate or Business Name of Bidder) **CORPORATE SEAL**

\_\_\_\_\_  
(Address, Including Zip Code)

(Telephone Number)

---

(Signature of President or Vice President)

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(Signature of Secretary, Asst. Secretary, Treasurer or Assistant Treasurer)

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SECTION 00430  
BID BOND

PROJECT NAME:     **Renovations of the East Schuylkill River Wall**

FOR THE PHILADELPHIA REDEVELOPMENT AUTHORITY, KNOW ALL MEN BY THESE PRESENT, that we

\_\_\_\_\_

as Principal (hereinafter called the “Principal Obligor”), and \_\_\_\_\_

\_\_\_\_\_

Surety, are jointly and severally held firmly bound unto the Philadelphia Redevelopment Authority, in the sum of:

\_\_\_\_\_

TEN PERCENT (10%) OF THE GROSS AMOUNT OF THE BID

lawful money in the United States of America, to be paid to the said Philadelphia Redevelopment Authority, its successors and assigns, to which payment well and truly to be made, we do bind ourselves and each of us, our and each of our successors and assigns, jointly and severally, firmly by these present.

Sealed with our seals and dated the \_\_\_\_\_ day of \_\_\_\_\_, A.D. 2023

WHEREAS, the above bonded Principal Obligor, submitted a bid pursuant to the above referenced Bid Number to perform certain work for the Philadelphia Redevelopment Authority.

NOW, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Philadelphia Redevelopment Authority shall accept the bid of the Principal Obligor and the Principal Obligor shall enter into a contract with the Philadelphia Redevelopment Authority in accordance with the terms of such bid, and furnish such bond or bonds as are specified in the bid documents with good and sufficient surety, for the faithful performance of the contract and for the prompt payment of labor and material furnished in the prosecution thereof; or in the event of the failure or refusal of the Principal Obligor to enter such contract and give such bond or bonds, if the Principal Obligor shall pay to the Philadelphia Redevelopment Authority the difference between the amount specified in said bid and such larger amount for which the Philadelphia Redevelopment Authority may legally contract with another party to perform the work covered by said bid, then this obligation shall be null and void, otherwise to remain in full force and effect.

And we do for ourselves and each of us, our and each of our heirs, executors, administrators, successors and assigns, hereby authorize and empower the Solicitor of Philadelphia Redevelopment Authority or any other attorney of any court of record in Pennsylvania or elsewhere by him or her deputized for the purpose, upon the filing of this instrument or a copy thereof, duly attested as correct by the Solicitor of the Philadelphia Redevelopment Authority, to appear for us or either of us, our or either of our heirs, executors, administrators, successors or assigns, and confess a judgment against us or either of us, our or either of our heirs, executors, administrators, successors or assigns, in favor of the Philadelphia Redevelopment Authority for the sum named in this bond, without defalcation, with

costs of suit, release of errors, and with five percent added for collection fees; hereby waiving the benefit of all exemption laws and the holding of inquisition of any real estate that may be levied upon by virtue of such judgment, voluntarily condemning such real estate and authorizing the entry of such condemnation upon any writ of fieri facias and agreeing that said real estate may be sold under the same; and further waiving all errors, defects and imperfections whatsoever in the entering of the said judgment or any process thereon, and hereby agreeing that no writ of error or objection of motion or rule to open or strike off judgment or to stay execution or appeal, shall be made or taken thereto.

And for the doing of these acts, this instrument or a copy thereof attested as aforesaid shall be full warrant and authority.

CORPORATE SEAL:

PRINCIPAL OBLIGOR:

\_\_\_\_\_(SEAL)  
President or Vice President

\_\_\_\_\_(SEAL)  
Secretary or Treasurer  
(or either of their assistants)

\_\_\_\_\_(SEAL)  
Secretary or Treasurer

SURETY:

\_\_\_\_\_(SEAL)  
Attorney-In-Fact

- 
- Note: (1) All bidders must utilize this Bid Bond Form when submitting a bid to the Philadelphia Redevelopment Authority.
- (2) If Principal Obligor is an individual or partnership, Bid Bond should be signed by owner or authorized general partner. Please identify on the Bid Bond the type of business (e.g. individual proprietorship or partnership) and title of party executing the Bid Bond.
- (3) Bid Bond must be executed by a surety company duly authorized and licensed to act as surety by the Pennsylvania Insurance Commissioner pursuant to the laws of the Commonwealth of Pennsylvania.

END OF SECTION

**CITY OF PHILADELPHIA**



**STANDARD CONTRACT REQUIREMENTS  
FOR PUBLIC WORKS CONTRACTS**

**PROCUREMENT DEPARTMENT**

August 25, 2021

**CITY OF PHILADELPHIA**  
**STANDARD CONTRACT REQUIREMENTS**

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**TABLE OF CONTENTS**

<b>CONTRACT PROVISIONS:</b>		<b><u>Page</u></b>
<b>A.</b>	<b>Definitions.....</b>	<b>3</b>
<b>B.</b>	<b>Quote Submission Requirements .....</b>	<b>7</b>
<b>C.</b>	<b>General Requirements of the Contract.....</b>	<b>12</b>
<b>D.</b>	<b>Administration, Measurement, and Payment .....</b>	<b>23</b>
<b>E.</b>	<b>Materials, Workmanship, and Inspection .....</b>	<b>32</b>
<b>F.</b>	<b>Construction Requirements.....</b>	<b>33</b>
<b>G.</b>	<b>Surface, Subsurface, and Overhead Structures .....</b>	<b>36</b>
<b>H.</b>	<b>Miscellaneous Provisions.....</b>	<b>38</b>
<b>I.</b>	<b>Specific Laws .....</b>	<b>40</b>
<b>INDEX</b>	<b>.....</b>	<b>45</b>



## STANDARD CONTRACT REQUIREMENTS

### A. DEFINITIONS

1. **Definitions.** The terms used in the Contract Documents shall have the following meanings:
  - a. "ADA" has the meaning set forth in Paragraph 113 below.
  - b. "Amendment" means a written modification or change to any Contract Document signed by both Parties.
  - c. "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 of Philadelphia ("City"), the Commonwealth of Pennsylvania ("Commonwealth") and the United States of America ("USA"). Applicable Law includes, without limitation, laws, etc. relating to the environment, the Philadelphia Home Rule Charter ("HRC"), as amended from time to time, The Philadelphia Code ("Code"), as amended from time to time, and the specific laws set forth in Paragraphs 107–116 below, each as amended from time to time. Sellers submit quotes, and the parties execute, deliver and perform their respective obligations under the Contract, under and pursuant to the applicable provisions of all Acts of the General Assembly of the Commonwealth and applicable ordinances of the City, as such enactments may hereafter be supplemented or amended.
  - d. "Application for Final Estimate" has the meaning set forth in Paragraph 56 below.
  - e. "Application for Payment" has the meaning set forth in Paragraph 52 below.
  - f. "Application for Semi-Final Estimate" has the meaning set forth in Paragraph 55 below.
  - g. "Bid Solicitation" means a public invitation to submit competitive Quotes for a specific City contract or City contracts that is or are issued by the Procurement Department in accordance with Sections 8-200(1), 2(a) and 2(b) of the Philadelphia Home Rule Charter. A Bid Solicitation includes all addenda thereto issued by the Procurement Department.
  - h. "Change Order" means an instrument altering the scope of the work under the Contract issued under Paragraph 48 below.
  - i. The "City" means The City of Philadelphia, a corporation and body politic existing under the laws of the Commonwealth, and includes its various executive and administrative departments, agencies, boards and commissions, including the Department, and its legislature, City Council. The City is a City of the First Class under the laws of the Commonwealth.
  - j. "City Work" has the meaning specified in Paragraph 107(d) below.
  - k. "Contingent Price" means a price for a unit or component of work specified on the "Contingent Price List" published from time to time by the City.
  - l. "Commonwealth" means the Commonwealth of Pennsylvania.
  - m. "Contract" means the agreement of the Parties evidenced by the Contract Documents.
  - n. "Contract Documents" means the Standard Contract Requirements; the Department's Standard Details and Specifications, as they apply; the Department's General Bidding and Contract Requirements; the Technical Specifications; the Quote; the Plans with all of the notes thereon (excluding any records or reports of test borings, underground structures, and test piles); the Notice to Proceed ("NTP"), the Notice of Contract Award

("NCA"), the performance bond and the payment bond, as prepared by the Department and issued with the Bid Solicitation, and includes all exhibits, schedules and addenda, if any, to any of the foregoing documents, and any and all Amendments and Change Orders.

o. "Contractor" means the Person that has entered into the Contract with the City, has had its authorized individual(s) sign the Contract Documents on behalf of the Person but does not include, without the City's written consent, any subsidiary, affiliate, agent, etc., or parent company, if any, of the Contractor.

p. "Current Estimate" has the meaning set forth in Paragraph 53 below.

q. "Demographic Data" means statistical information on a group of individuals, aggregated by specific characteristics, including but not limited to race, ethnicity, gender identity, job title, salary range, length of employment, Philadelphia residence, and such other categories as may be established by regulation.

r. "Department" means the department, board, commission, or agency of the City for which the Contractor carries out the work under the Contract, except when the Department of Public Property ("DPP") supervises the Contract, in which case "Department" means the Department of Public Property.

s. "Disputed Change Order" means a Change Order issued by the City under Paragraph 49 below.

t. "Event of Insolvency" means (a) the filing of a voluntary petition by the Contractor under the Federal Bankruptcy Code or any similar state or federal law; or (b) the filing of an involuntary petition against The Contractor 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) the Contractor's making of an assignment for the benefit of creditors; or (d) the appointment of a receiver for the Contractor or for the property or assets of the Contractor, 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) the Contractor proves unable to pay its obligations as they mature; or (g) the Contractor is insolvent as otherwise defined under any Applicable Law.

u. "General Bidding and Contract Requirements" means the additional bidding and contract conditions and requirements specifically prepared by the Department for a specific Bid Solicitation (which may accompany the Technical Specifications) and may from time to time include, but not be limited to, Quote proposal forms, special or additional or supplementary instructions to Sellers, minimum wage rate schedules, prevailing wage rate schedules, contingent price lists, requirements of the City's Office of Economic Opportunity ("OEO"), and general tax requirements.

v. "Inspector" means the representative of the City's Project Manager assigned to inspect work and the delivery of services under the Contract.

w. "Labor Source" means a defined pool of trained and qualified individuals from which workers can be secured by agreement or through other means from an entity other than the contractor itself, including but not limited to a business, union hiring hall, job training organization, or registered apprenticeship program.

x. "Lump Sum Bid Breakdown" has the meaning set forth in Paragraph 52 below.

y. "Notice of Contract Award" (NCA) means a notice from the City to the Seller informing the Seller of the City's determination to award the Contract to the Seller.

z. "Notice to Proceed" (NTP) means a notice from the City to the Contractor authorizing the Contractor to commence work under the Contract.

aa. "Operating Commissioner" means the director, commissioner, or other head of the Department issuing the work to the Contractor pursuant to the Contract.

- bb. "Parties" means the City and the Contractor, and a "Party" means either the City or the Contractor.
- cc. "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.
- dd. "PGW" means the Philadelphia Gas Works.
- ee. "Plans" means the general plans and design drawings which accompany the Technical Specifications, the Standard Details and Specifications, and such detail and supplementary drawings as may be furnished from time to time.
- ff. "Procurement Commissioner" means the head of the City's Procurement Department, or his or her designee.
- gg. "Procurement Department" means the Procurement Department of the City.
- hh. "Project" means all of the work which the City seeks to complete at the Project site, including, but not limited to, the work which the Contractor has agreed to perform under the Contract. The Project includes other work at the Project site by the City and by other contractors pursuant to other City contracts.
- ii. "Project Manager" means the designated representative of the City officer in charge of the construction branch, division or unit of the Department, or the individual specifically designated as "Project Manager" in the Technical Specifications, and any other individual who may be designated in writing by the Project Manager as his or her representative. The City may delegate or provide for the performance of certain of the duties and functions of the Project Manager by architectural or engineering firms under contract with the City.
- jj. "Proposal" means a Seller's price and other specific terms and conditions included in a Quote.
- kk. "Public Works Contract(s)" means any contract awarded by the Procurement Department for the construction, reconstruction, alteration, or repair of any public building or other public work or public improvement within the City and County of Philadelphia.
- ll. "Quote" means a Seller's signed response, including a Proposal, submitted to the Procurement Department pursuant to a Bid Solicitation.
- mm. "Report Date" means December 31<sup>st</sup> of the calendar year, immediately preceding the date the bid is filed.
- nn. "Responsibility" or "Responsible" means the capacity to perform a City contract in accordance with its terms and conditions. Elements of Responsibility include the following, among others: judgment, skill, promptness, faithfulness, skillful workers, honesty of the Contractor, financial standing, reputation, experience, resources, facilities, past history of adherence to plans and specifications, capacity and ability to do the work according to the plans and specifications, availability and efficiency, and such other factors as may be determined by law and the City.
- oo. "Seller" means a Person submitting a Quote, signed by the Person, to the Procurement Department pursuant to a Bid Solicitation. Seller includes only the Person who signs the Contract. Seller does not include, without the written consent of the City, any subsidiary, affiliate, agent, etc., or parent company, if any, of the Person.
- pp. "Semi-Final Estimate" has the meaning set forth in Paragraph 55.
- qq. "Shop Drawings" means all drawings, diagrams, illustrations, brochures, schedules, performance charts, instructions, and other data which are prepared by the Contractor, its Subcontractors, suppliers, or distributors, or equipment fabricators or manufacturers, and which illustrate the manufacture or fabrication of the product or equipment or any part thereof, and which are submitted to the Department to establish that the materials, articles and components of equipment Contractor proposes to supply will, when installed, meet all requirements of the Contract Documents.

oo. "Standard Contract Requirements" or "SCR" means these Standard Contract Requirements of the City in connection with the Bid Solicitations for, and the award, execution, and performance of Public Works Contracts, except as modified by the Department's General Bidding and Contract Requirements, the Technical Specifications and Plans and any other special requirements for the Contract. These Standard Contract Requirements are attached to and form an integral part of the Contract Documents.

rr. "Standard Details and Specifications" means the standard details and specifications for specific, recurring types of work or components thereof, as may be issued by the Department from time to time, *e.g.*, the Standard Details and Standard Specifications for Sewers, as issued by the Philadelphia Water Department, or the Standard Construction Items, as issued by the Department of Streets.

ss. "Structures" has the meaning set forth in Paragraph 83 below.

tt. "Subcontract" means a contract made between the Contractor and a Subcontractor, or between a Subcontractor and a sub-subcontractor at any tier, providing for the completion of one or more portions of the work which the Contractor has agreed to perform under the Contract, including agreements for the manufacture or supply of equipment, systems or components forming part of such work.

uu. "Subcontractor" means a Person performing at any tier under a contract with the Contractor or another Subcontractor one or more portions of the work which the Contractor has agreed to perform under the Contract. Subcontractors shall include, without limitation, vendors, manufacturers, suppliers, or other Persons contracting with a Subcontractor or the Contractor for the manufacture or supply of equipment, systems or components forming part of the work under the Contract. There is no contractual relationship (privity of contract) between the Contractor's Subcontractor, or a Subcontractor's subcontractor, and the City.

vv. "Substantial Completion" or "Substantially Complete" or "Substantially Completed" means that construction is sufficiently complete in accordance with Contract Documents and certified by the Project Manager, as modified by Change Orders or amendments, so that (a) the work under this Contract can be used, occupied or operated for its intended use, and (b) all applicable permits and licenses, including, if applicable, a statement or certificate of occupancy, shall have been duly issued by all government offices, including those of the City. In no event shall the Contract be certified as substantially complete until the Contractor has completed at least ninety percent (90%) of the work under the Contract.

ww. "Technical Specifications" means the written and detailed requirements, prepared by the Department, or its consultants or representatives, for materials, equipment, systems, standards and workmanship for the work under this Contract and related services to be performed under the Contract.

xx. "Unbalanced Quote" means an offer by the Contractor which (1) contains extremely low prices on items or types of work which are, as determined by the City in its sole discretion, unimportant or infrequently ordered or performed, and extremely high prices on items or types of work which are frequently ordered or performed, resulting in an effort to qualify as the low Seller while charging disproportionately high prices for certain items or types of work; or (2) contains prices for phases of the work to be performed early in the course of the work under this Contract that are, as determined by the City in its sole discretion, disproportionately high relative to prices for later phases of the work, resulting in payment of a disproportionately high percentage of the total Contract price early in the Contract period.

yy. "Working Days" means calendar days, less allowances for days or parts of days, in increments of one-quarter (1/4) day, for conditions entirely beyond the control of the Contractor as defined in Paragraph 25(c)(2); and also excludes New Year's Day, Memorial Day, July 4<sup>th</sup>, Labor Day, Thanksgiving Day and Christmas Day, or the Monday thereafter when these days occur on Sunday, and Saturdays and Sundays shall not be considered as Working Days.

xx. "Working Drawings" means those drawings prepared by the Contractor to supplement the Plans and Shop Drawings to accurately and clearly depict all working and installation dimensions, arrangement and sectional views, units of equipment in the proposed positions for installation, details of required attachments and connections, and dimensioned locations between units and in relation to the existing and proposed structures. Working Drawings shall show all necessary details and information for making connections between the various

trades including, but not limited to, power supplies and interconnecting wiring between units, accessories, and appurtenances.

2. **Interpretation; number, gender.** The words "herein" "hereof" and "hereunder" and other words of similar import refer to the Contract as a whole, including all of the Contract Documents, and not to any particular article, paragraph, subparagraph 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.

## **B. QUOTE SUBMISSION REQUIREMENTS**

### **3. Qualifications of Seller.**

a. Each Seller must demonstrate to the satisfaction of the City that it is Responsible, capable of performing the work under the Contract, and has successfully completed contracts equivalent in scope and nature, and comparable in magnitude. Seller must further demonstrate that: 1) it has the necessary financial resources, equipment, and workforce to perform the work under the Contract in a proper and satisfactory manner, in accordance with the Contract Documents, and within the time specified, and 2) that the possible award of this Contract to the Seller will not, in the City's sole discretion, overextend the Seller because it is already performing another City contract or other contract(s) or project(s).

b. As required by Section 17-101, as amended, of The Philadelphia Code, entitled "Prequalification of Prospective Bidders for Contracts for Construction of Public Works", all Sellers shall submit to the Procurement Department through PHLContracts, by the date specified in the Quote advertisement(s), a "City of Philadelphia Prequalification Questionnaire," for the purpose of determining the Seller's Responsibility. Should the Seller omit any required information, or refuse to give any required information, or should the information submitted by Seller, in the judgment of the Procurement Commissioner, taking into consideration the recommendations of the Operating Commissioner, reveal that the Seller is not sufficiently equipped or qualified to enter into or perform the Contract, the City shall not accept any Quote from such Seller(s), and the Procurement Commissioner shall notify the Seller to that effect. In such case, Section 17-101 of The Philadelphia Code shall govern any appeal to which the Seller may be entitled.

### **4. Examination of Contract Documents and Site.**

a. Sellers shall thoroughly acquaint themselves with the Contract Documents, including, without limitation, a careful study and review of the Plans and Technical Specifications. Sellers shall examine in detail the Project site and shall acquaint themselves with conditions affecting the work under the Contract and the overall Project, and, when applicable, the condition of walls and foundations of overlying and adjacent structures, the character of the paving, and the soil and subsurface soil. The Quote shall be prepared with due regard to the provisions of the Contract Documents and to the conditions existing or to be anticipated at the Project site.

b. Where test borings, test piles, and existing underground and above-ground structure locations are reported on, or included with, the Contract Plans or Technical Specifications, or where they are provided as separate Plans or Technical Specifications, they are for the information of the City only and are not provided to Sellers to show the conditions to be encountered by the Seller; the correctness, accuracy, or interpretation of the information is not guaranteed or warranted in any fashion by the City; and in no event is any boring or underground or above-ground structure information to be considered as a part of the Contract, notwithstanding any provision to the contrary that may appear in the Technical Specifications. If a Seller uses any of this information in preparing its Quote, Seller shall assume any and all risks resulting from conditions that differ from the conditions or approximation shown on the Plans or Shop Drawings.

1. If Seller desires to obtain similar data or information, or to conduct an independent subsurface investigation of the Project site, the Seller must notify the Department in writing at least ten (10) days prior to the date for opening of Quotes, or not later than five (5) days after the date on which Quotes are first advertised by the City, whichever date is earlier. Upon written notice from Seller, the City shall afford Seller the opportunity, at Seller's sole expense, to make test borings or soundings, to drive test piles, or to dig test pits on that portion of the Project site in which the work under this Contract will take place. Seller shall be responsible for complying with all Applicable Law relating to such activity. The foregoing to the contrary notwithstanding, the

City reserves the right to reject such investigations by any Seller when the City deems such rejection to be in the City's best interest. If the City permits such investigations by any Seller, then (a) each such Seller, prior to its entry onto the Project site, shall deliver to the City a certificate of insurance conforming to the

requirements of Paragraph 30 below, and a License Agreement in the form provided by the City; (b) each such Seller shall indemnify, defend and hold the City harmless from and against any and all claims, causes of action, suits, damages, losses, costs and expenses, whether for personal injury or property damage or for any other reason, arising out of such Seller's entry on the Project site; (c) such Seller covenants and agrees that it shall restore the Project site to the same condition as existed prior to such Seller's entry onto the Project site; (d) the City reserves the right to require the delivery of payment and performance bonds prior to any entry onto the Project site by such Seller; (e) in the event more than one Seller seeks to conduct such investigations, the City reserves the right to coordinate and schedule such investigations so as to minimize interference with the use of the Project site and other adjacent sites and any interference with other work at the Project site or adjacent to the Project site.

2. Failure of a Seller to notify the Department in writing of a Seller's desire to obtain such information shall operate as an absolute bar to any claim by a Seller that it had no reasonable means of making an independent subsurface investigation of the site.

c. If a Seller discovers or encounters any ambiguity or discrepancy in the Contract Documents in the course of preparing its Quote, the Seller shall promptly notify the Department of the ambiguity or discrepancy prior to the date and time for receipt and opening of Quotes. The City, so advised, may, at its sole discretion determine whether such ambiguity or discrepancy exists and whether any corrective action is necessary.

5. **Antibid-Rigging Act.** All Sellers, by submitting a Quote, certify that they have not committed or engaged in, or attempted to commit or engage in, a prohibited activity under the Antibid-Rigging Act, 62 Pa. C.S.A. § 4501, et seq., as amended, in connection with their Quote. In addition, all Sellers by submitting a Quote certify that the Seller has not been convicted or found liable for any act prohibited by any federal or state law in any jurisdiction involving conspiracy or collusion with respect to bidding on any public contract within the five (5) years prior to the date of the Quote; that the Seller acknowledges that a conviction or finding of liability for any act prohibited by federal or state law in any jurisdiction involving conspiracy or collusion with respect to submitting a Quote on any public contract within the three (3) years prior to the date of the Quote shall not prohibit the City from accepting a Quote from the Seller or awarding a Contract to the Seller, but may nonetheless serve as grounds for Seller's suspension or debarment at the sole discretion of the Procurement Commissioner, or may serve as grounds for a non-award of a Contract to the Seller on the basis of the Seller's lack of Responsibility.

6. **Multiple Quote Restriction.** No Seller shall be a party to more than one (1) Quote for the same Bid Solicitation. A violation of this condition may in the sole discretion of the Procurement Commissioner, result in rejection of any or all such Quotes in which the Seller is interested.

7. **Quote Submission.**

a. By submitting a Quote, the Seller certifies that it is familiar with the Project site and the conditions affecting the Project site, that it has thoroughly reviewed the Contract Documents, and that all work can be completed for the amount stated in the Quote and within the Contract time specified. No Quote may be considered if received after the date and time for opening of Quotes established by the Bid Solicitation, nor may any Quote be modified after that date and time, except as provided herein or by Applicable Law. The time of Quote opening shall be the time displayed in PHLContracts. In the event of any discrepancy between actual time and the time displayed in PHLContracts, the latter shall determine the time of Quote opening.

b. It is the sole responsibility of the Seller to ensure that it has received any and all addenda and the Procurement Commissioner may, in his or her discretion, reject any Quote for which all addenda have not been executed and returned in accordance with the instructions provided therein.

c. For purposes of determining the basis of a contract award, in the event of a discrepancy between a unit price and an extended price for a work or line item, the unit price shall govern, and the extended price shall be re-computed by the City. If the amount set forth as a unit price is ambiguous, unintelligible, or uncertain for any cause, or is omitted entirely, or is the same amount as the extended price for a work or line item, then the amount set forth as the extended price shall govern for purposes of determining the basis of a contract award. In such event, the extended price shall be divided by the estimated quantity for the work or line item to

arrive at a re-computed unit price which shall thereafter govern for purposes of payment under Paragraph 45.

d. Where a unit or other price (including a unit price extension or the aggregate or total price) contained in the Quote contains a mistake or error in computation, or is otherwise ambiguous as to computation, or there is a discrepancy between a unit price and an extended price for a work or line item, and where the mistake, ambiguity, or discrepancy is not discovered prior to contract award and results in the award of a contract to the Seller, which award is later determined to be mistaken or erroneous, or the Contract Amount is determined to be erroneous, based upon a re-computation of the unit prices and the total price, the Contractor shall bear the sole financial risk of such mistake or ambiguity, and such mistake or ambiguity shall be construed solely against the Contractor and in favor of the City. In all such cases of price mistake, ambiguity, or discrepancy, if work under the Contract has not yet commenced, the City shall have the discretion, at its sole option, to formally rescind the Contract, if the Contractor is deemed not to be the low Seller in accordance with the rule set forth in Paragraph 7(c) above, or to unilaterally reform the Contract and the prices therein in accordance with the rule set forth in Paragraph 7(c), if the Contractor would still be deemed to be the low Seller notwithstanding any mistake, ambiguity, or discrepancy. If work under the Contract has already commenced, the City shall have the discretion, at its sole option, to make payment at the unit price as recomputed in accordance with Paragraph 7(c) above or at the mistaken or ambiguous unit price, or to dispute payment at the mistaken or ambiguous price. In the event of a rescission or reformation of the contract under this Paragraph, the Contractor agrees and acknowledges that it shall have no claim against the City, including any claim for breach of contract or breach of any other legal duty, or for lost profits, costs, damages, or expenses of any kind, arising out of the rescission or reformation. In the event that the City disputes payment to the Contractor at a mistaken or ambiguous unit price, and the parties cannot mutually agree upon a price to be paid to the Contractor for the item of work in question, the payment to the Contractor for the item of work shall not exceed the payment which would be made pursuant to Paragraph 51, and the City's liability to the Contractor for such item of work shall not in any event exceed the Contract Amount as specified in Paragraph 44.

**8. Quote Withdrawal.** P.L. 9, No. 4, Act of January 23, 1974, 73 P.S. § 1601, et seq., as amended, shall govern the withdrawal of Quotes for clerical mistakes. A Seller must provide the Procurement Department written notice of a right to withdraw a Quote under 73 P.S. § 1601, et seq., within two (2) business days after the opening of Quotes.

**9. Quote Responsiveness.** Subject to the right of the Procurement Commissioner to waive irregularities and non-responsiveness as set forth below in this Paragraph 9, the Contract Documents are mandatory and must be strictly followed by all Sellers in the preparation and submission of their Quotes. After Quotes are opened, the Procurement Department, and other City departments or agencies where appropriate or specified, shall review all Quotes for responsiveness. Any Quote which is incomplete, obscure, conditional, unbalanced, which contains additions not called for, or irregularities of any kind, including alterations or erasures, or which fails to conform in any respect to the Contract Documents shall be deemed to be non-responsive and shall be rejected, except where the Procurement Commissioner, in his or her sole discretion, determines that the irregularity or non-responsiveness is not material or that a waiver of the irregularity or non-responsiveness is otherwise permitted by the Contract Documents or by Applicable Law. The Procurement Commissioner reserves the right to waive such irregularities or non-responsive matters in a Quote. The Procurement Department's determination of non-responsiveness shall be final and any Quote rejected as non-responsive shall not be eligible for Contract award. The Procurement Commissioner's determination of non-responsiveness is not appealable to the Court of Common Pleas.

**10. Security for Execution of Contract.** The Seller shall include with its Quote a bid bond in the amount of ten percent (10%) of the gross amount of the Quote. The gross amount of the Quote shall mean the sum of all items enumerated in the Quote, without reduction for "deduct" alternates. All Sellers must use the City's standard bid bond form, which is included in the Bid Solicitation or otherwise available at the City's Procurement Information Center (Rm. 170 Municipal Services Bldg.), in fulfilling the requirement of this Paragraph 10. The City shall not accept any other bid bond form. The Seller may not submit cash. Upon return of the duly executed Contract Documents by the lowest responsible Seller to the City's Law Department, the bid bonds of all Sellers shall be deemed released.



11. **Bid Processing Fee.**

a. In addition to bid security and any other fee or monies required, the Quote shall be accompanied by a non-refundable processing fee in the form of a separate check payable to the City or electronic payment as specified in the bid solicitation. The processing fee is based on the advertised cost estimate for the bid in accordance with the formula below. Cash is not acceptable.

\$0	when the advertised cost estimate does not exceed \$10,000
\$10	when the advertised cost estimate is or exceeds \$10,000 but does not exceed \$100,000
\$30	when the advertised cost estimate is or exceeds \$100,000 but does not exceed \$300,000
\$50	when the advertised cost estimate is or exceeds \$300,000 but does not exceed \$500,000
\$100	when the advertised cost estimate is or exceeds \$500,000 but does not exceed \$1,000,000
\$200	when the advertised cost estimate is or exceeds \$1,000,000 but does not exceed \$2,000,000
\$300	when the advertised cost estimate is or exceeds \$2,000,000 but does not exceed \$3,000,000
\$400	when the advertised cost estimate is or exceeds \$3,000,000 but does not exceed \$4,000,000
\$500	when the advertised cost estimate is or exceeds \$4,000,000 but does not exceed \$5,000,000
\$600	when the advertised cost estimate is or exceeds \$5,000,000.

b. For the purpose of estimating the amount of the bid processing fee the amount of work and labor or the quantities of materials or supplies to be furnished will be in accordance with the estimated quantities, but the City will not be bound by such estimates in regard to the actual quantities of work and labor or materials or supplies required to be furnished under the Contract.

c. Failure to submit the bid processing fee may result in the Seller's disqualification from submitting a Quote. In addition, if an award is made pursuant to the Bid Solicitation and Quote, any unpaid processing fees owed by the Seller to the City must be paid prior to the City's release of any payments to the Contractor under the Contract.

12. **Business Tax Requirements.** Any Contractor, or vendor of goods, wares and merchandise, or purveyor of services, who submits a Quote and is awarded a contract by the City or the School District of Philadelphia ("School District" or "SDP"), is subject to Philadelphia's business tax and applicable ordinances and regulations. Anyone who is awarded a contract by the City or the School District of Philadelphia pursuant to a formal bid solicitation, including a Bid Solicitation, shall be deemed to have entered into a contract within the City, and the subsequent delivery of goods into the City, or performance of services within the City constitutes "doing business" in the City and subjects the successful Seller to one or more of the following taxes: (a) Business Privilege Tax; (b) Net Profits Tax; and (c) City Wage Tax. The successful Seller, if not already paying the aforesaid taxes, is required to apply to the Department of Revenue for a tax identification number and to file appropriate business tax returns as provided by law.

13. **Tax Indebtedness.** The successful Seller shall represent, warrant and covenant that the Contractor and any entities controlling the Contractor, under common control with the Contractor, or controlled by the Contractor are not currently indebted to the City, and will not at any time during the term of the Contract be indebted to the City, and will not at any time during the term of this Contract (including any extensions or renewals thereof) 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), liens, judgments, fees or other debts for which no written agreement or payment plan satisfactory to the City has been established. In addition to any other rights or remedies available to the City at law or in equity, the 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 the Contractor and, if such breach or failure is not resolved to the City's satisfaction within a reasonable time period 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 the Contractor shall be liable for all excess costs and other damages resulting from the termination), or both.

14. **Commercial Activity License.** A Commercial Activity License ("CAL") is required for every Person desiring to engage in any business within the City, whether or not such Person maintains a place of business in the City. The successful Seller will be required to furnish a CAL number at the time of Contract

award, but no later than before the "Notice to Proceed" is issued. In the event the successful Seller has applied for, but not been issued, a CAL, a photocopy of the application will be acceptable. The CAL is a one-time license with no expiration date. Only one (1) license is needed for multiple locations or for multiple businesses for the same Person. If the Seller has never had a CAL assigned, the Seller may request one by filing a "Miscellaneous License Application". In order to be assigned a CAL, it is necessary to have a "Philadelphia Business Tax Account Number". This is a number assigned by the City's Department of Revenue to identify City tax accounts. If the Seller has never had a number assigned, the Seller may request one by filing an "Application for Philadelphia Business Tax Account Number". Any tax account previously opened for the Seller which is unsettled or delinquent will cause delay and may preclude the issuance of a new license. Applications may be obtained from the Department of Licenses and Inspection, License Issuance Unit.

15. **Comparison of Quotes.** Quotes will be compared on the basis of the aggregate of all the items of the Quote, unless otherwise specified in the General Bidding and Contract Requirements.

16. **Award of Contract.** The City shall make the Contract award to the lowest responsive, Responsible Seller. In the event of an absolute tie, the Procurement Commissioner shall make the Contract award in accordance with the best interests of the City. The Procurement Commissioner, in his or her sole discretion, may reject all Quotes, if deemed in the best interests of the City. The award of the Contract shall be governed in all respects by 62 Pa.C.S. §3911, as amended. However, the failure of the City to comply with the statutory requirement set forth in 62 Pa.C.S. §3911 shall not operate as a release of the Seller, unless the Seller shall first notify the City in writing, prior to the end of the deadline set forth in 62 Pa.C.S. §3911, of the Seller's intent to demand compliance of the City with such requirement.

17. **Binding Contract and Execution of the Contract.**

a. The award shall not become a contract binding upon the City until after written Notice of Contract Award is made by the Procurement Department to the lowest responsive, Responsible Seller and until after all of the following conditions have been satisfied:

1. Successful Seller posts a proper performance bond and a proper payment bond, as provided for in Paragraph 18 below, on the City's current bond forms, within the time set forth in the Notice of Contract Award;
2. Successful Seller provides proof of the requisite insurance;
3. The Contract is approved as to form by the City's Law Department;
4. The Director of Finance and the City Controller's Office certify the availability of funds for the Contract; and
5. The Procurement Commissioner executes the Contract.

The Procurement Commissioner may, in his or her sole discretion, cancel any contract award if any of the above conditions are not satisfied, or if the Procurement Commissioner, in his or her sole discretion, determines cancellation of the contract award to be in the best interests of the City. In the event of such cancellation, the successful Seller agrees and acknowledges that it shall have no claim against the City, including any claim for breach of contract or breach of any other legal duty, or for lost profits, costs, damages, or expenses of any kind.

b. The execution of the Contract shall be made within sixty (60) days of the date of the award of the Contract and shall in any event be governed in all respects by 62 Pa.C.S. §3912, as amended. Any Seller who is not lawfully released from its Quote and who fails, refuses, or is unable to furnish the required performance and payment bonds or insurance, shall be liable to the City for the actual loss or damage sustained by the City as a result of the failure of the Seller to enter into the Contract. This remedy against the Seller shall be in addition to, and not in lieu of, any remedy or claim which the City may have under the bid bond posted by the Seller.

c. In no event shall the Contract awarded to the Contractor be construed or deemed to include, as a term, covenant or condition, any exception, addition or other term which the Seller may have included or as part of its Quote, except as may be expressly approved by the Procurement Commissioner pursuant to Paragraph 9 above.

18. **Contract Surety.** As provided by the Act of 1967, December 20, P.L. 869 (8 P.S. § 193.1, *et seq.*, as amended), the successful Seller will be required at the time of execution of the Contract to give security for the faithful performance of the work and for compliance with the Contract in the form of a performance bond, with a surety company approved by the City, in a sum equal to 100% of the amount of the Contract (equal to the Quote amount plus any contingency amount). In addition, as provided by the Act of 1967, December 20, P.L. 869 (8 P.S. § 193.1, as amended), the Contractor will be required at the time of execution of the Contract to give a payment bond, with a surety company approved by the City, in a sum one hundred percent (100%) of the amount of the Contract (equal to the Quote amount plus any contingency amount), conditioned for the full payment of Subcontractors and others furnishing labor and materials in the performance of the Contract. Both the performance and payment bonds must be submitted by the Seller to the City on bond forms provided by the City.

### C. **GENERAL REQUIREMENTS OF THE CONTRACT**

19. **Unauthorized Acts.** Any act of any City representative, official, agent, or employee, which is not within the scope of his or her authority as set forth in the Contract Documents or pursuant to the Philadelphia Home Rule Charter, shall not be binding on the City and shall not be deemed as a defense to the Contractor for the breach of any of the terms and conditions of the Contract.

20. **Cancellation of the Contract.** The Contractor will not be required to proceed with the work of the Contract, if:

- a. for any reason for which the Contractor it is not responsible, the Contractor cannot commence work within three (3) months from the date of execution of the Contract, except in the case of Contracts for street improvements, when six (6) months shall be the limiting period; or
- b. at any time prior to the issuance of the Notice to Proceed, the City, in its sole discretion, determines that it must reduce the scope of the work in an amount equal to or greater than twenty-five percent (25%) of the amount of the Quote. In such event, the City shall give notice thereof the Contractor.

In the event the Contractor cannot commence work, the Contractor shall give notice of cancellation within five (5) days after the date which is three (3) months from the date of execution of the Contract by the Contractor, except in the case of Contracts for street improvements, when the Contractor shall give such notice six (6) months from the date of execution of the Contract by the Contractor. In the event the City gives notice to the Contractor that the City has determined to reduce the scope of the work as provided in Paragraph 20(b) above, then the Contractor shall give notice of cancellation within five (5) days after the date the Contractor receives such notice from the City, otherwise the Contract shall remain valid.

This Paragraph 20 shall not apply to Contracts entered into for work the commencement of which is dependent upon progress of other contracts where this condition is plainly indicated by the character and location of such work at the time the City issues the Bid Solicitation and where Departmental constraints limit construction activities as described in the Technical Specifications. The City shall have no liability, by way of any penalty or otherwise, arising out of the cancellation of the Contract pursuant to this Paragraph 20.

21. **Termination for the Convenience of the City.** The City may terminate this Contract at any time during the term of the Contract, for any reason, including, without limitation, the City's own convenience. Written notice of termination shall be sent to the Contractor by the Procurement Commissioner and said notice shall set forth the effective date of the termination. Upon receipt of such notice of termination, the Contractor shall stop all work under the Contract. Upon termination under this Paragraph, the City shall be liable to the Contractor only for the cost and profit on the physical work then completed on the job site by the Contractor

and in place. The City shall have no additional liability or cost for termination of the Contract, including, but not limited to, any penalty, the Contractor's anticipated profits, the Contractor's estimating costs, or any loss on the work terminated. If termination of the Contract occurs prior to the issuance of the Notice to Proceed, the City shall not be liable to the Contractor for any cost or lost profits of the Contractor, regardless of whether the Contractor may have performed some physical work, except where the Project Manager has otherwise authorized in writing the commencement of work by the Contractor, in which case the City's liability to the Contractor shall be governed by the prior terms of this Paragraph. Termination of the Contract shall not affect any obligation or liabilities of either Party accruing prior to termination.

22. **Contractor's Obligations.** The work to be done under the Contract is set forth in detail in the Contract Documents. The Contractor shall furnish all labor, materials, plant, tools and appliances, and shall complete the work to the satisfaction of the Project Manager in the manner and within the time required in the Contract Documents at the prices set forth in the Contract. If at any time the Contractor's methods, workforce, or equipment appear to the Project Manager to be unsafe, insufficient, or inadequate for the proper performance of the provisions of the Contract, the Project Manager may order the Contractor to make such changes as the Project Manager may deem necessary, and the Contractor shall comply with such orders, but the failure of the Project Manager to make such demands shall not relieve the Contractor of its obligations under the Contract. The Contractor shall maintain an office on the Project site where orders and instructions may be delivered, and shall give personal attention to the faithful performance of the work of the Contract. The Contractor shall employ a competent representative or superintendent on the Project site who shall have full authority to receive and execute orders, and to supply such labor, tools, and materials as may be required for the proper performance of the work.

23. **Performance of Work by the Contractor.** The Contractor is required to perform, on the site and with its own work force, work with a value of at least twenty percent (20%) of the original total contract price, exclusive of profit, overhead and the costs of procuring insurance and bonds. The Contractor shall submit with its Quote a complete description of the work it will perform (e.g., earthwork, paving, brickwork, roofing, etc.), the percentage of the total work this represents, and the estimated dollar value thereof.

24. **Materials and Equipment Loaned or Rented by the City.** Any materials, or equipment loaned or rented by the City to the Contractor for use on the particular job must be returned by the Contractor in kind or in cash, or as a credit to the Contract as determined by the Department or the Contractor will be considered in default of the Contract. The use or operation of such material or equipment shall be at the Contractor's own risk. The material or equipment shall be taken in its "AS IS" condition and the Contractor shall maintain the material or equipment in the same condition as when received, less normal wear and tear. Should damage occur, repair or replacement shall be made by the Contractor at its own expense, at the election and to the satisfaction of the City, in accordance with specifications approved in writing by the City.

25. **Contract Time.**

a. Times set forth in the Contract Documents for the performance of the work or any portions thereof are essential elements of the Contract. The Contractor shall begin work within ten (10) days from the date of issuance of the Notice to Proceed from the Department directing the Contractor to proceed with the work, and shall complete all work covered by the Contract Documents within the time specified in the General Bidding and Contract Requirements. The Contract completion date shall be determined by reference to the date of the issuance to the Contractor of the Notice to Proceed. In submitting a Quote, the Contractor acknowledges and agrees that the Contract time, as specified in the General Bidding and Contract Requirements, is a reasonable period for performing the work.

b. Except as may otherwise be required by the General Bidding and Contract Requirements or the Technical Specifications, the Contractor shall prepare and submit to the Project Manager, before starting work, a written and detailed construction schedule which shall, at a minimum, indicate the milestone dates on which the Contractor intends to start and end each of the principal items of work under the Contract and which shall indicate generally how the Contractor intends to complete the work under the Contract within the Contract time specified. The Contractor's construction schedule shall include a schedule or timeline for submission of Shop Drawings or other submittals to the Department, which shall be coordinated with the overall construction schedule and which allows for a reasonable time for the Department or the Project Manager to review the

submittals or such time as the Department or the Project Manager may otherwise require pursuant to any of the Contract Documents. The Contractor's construction schedule shall in no event exceed the time allotted for completion of the Contract. From time to time, the Contractor shall revise and update its construction schedule to show changes to the schedule and any agreed revisions to the Contract time. The Contractor acknowledges that its failure to submit a written schedule to the Project Manager, as herein provided, shall preclude the assertion of any claims for delay or interference to Contractor's schedule or prosecution of the work and shall further preclude the assertion of any claim or request for an extension of the Contract time.

c. The Contractor shall be entitled to a reasonable extension of time for unavoidable delays or interference in completion of the Contract caused by:

1. Any acts or omissions of the City (but not PGW, or its contractors, or any other non-City utilities or authorities) which occur subsequent to the issuance of the Notice to Proceed and which cause delay in the completion of the Contract, by failure to give possession of the Project site, by changes in the Plans and Technical Specifications, or by requiring for any cause the suspension of the work under the Contract, except where such suspension is the result of a default or other act or omission by the Contractor. Any delay or postponement in the issuance of the Notice to Proceed shall not entitle the Contractor to an extension of the Contract time and shall not give rise to any claim for delay, disruption, or interference by the Contractor. The Contractor's remedies in the event of a delay or postponement in the issuance of the Notice to Proceed shall be governed solely by 62 Pa.C.S. §3913, as amended.

2. Causes not reasonably foreseeable by the Parties at the time of the complete execution of the Contract and which are entirely beyond the control and without the fault or negligence of the Contractor, including, but not limited to, acts of God, acts of the public enemy, acts of governmental authorities, quarantine restrictions, general strikes throughout the trade or freight embargoes not caused or participated in by the Contractor, fire, floods, pandemics and weather of unusual severity, such as hurricanes or tornados.

d. Delays caused by the Contractor's Subcontractors or materialmen shall not, in themselves, be cause for an extension of time by the City. To warrant an extension of time, such delays must be occasioned by the same causes specified in Paragraphs 25(c)(1) and (2) above.

e. Time extensions shall be handled as follows:

1. The Contractor, within five (5) days after the beginning of any delay or interference to its construction schedule, shall notify the Project Manager in writing of the occurrence of the delay or interference, stating with reasonable particularity the cause or causes of the delay or interference and the Contractor's intention to seek an extension of time.

2. Any claim by the Contractor for a time extension must be made in writing to the Project Manager within ten (10) days after the conclusion of the delay or interference for which a time extension is requested or the City will not consider such claim. The City shall not in any event grant a time extension for any delay or interference which was incurred more than five (5) days before the Contractor gave written notice as required in subparagraph (1) above.

3. Before the Project Manager reviews a claim for a time extension, the Contractor shall demonstrate in writing the effect of the delay or interference on the Contractor's construction schedule, including plotting such effect on the Contractor's critical path documents, showing graphically therein the effect on the Contract completion date, both in calendar days and Working Days. This depiction of the delay or interference must accompany the written claim for a time extension submitted in accordance with subparagraph (2) above. If the Contractor believes that it has been impacted beyond a mere time delay, the Contractor shall also provide the Project Manager with an estimate of the costs incurred by the Contractor as a result of the delay or interference. The failure of the Contractor to provide the Project Manager with this contemporaneous cost estimate shall bar any later claim by the Contractor for any costs incurred as a result of the delay or interference.

4. If the Project Manager determines that an extension of time is in order, the time allowed for any delay will be added to and will correspondingly extend the Contract time for completion and

adjust any Contract completion milestones set forth in the General Bidding and Contract Requirements or the Technical Specifications. The Contractor agrees that a time extension granted by the Project Manager shall be its sole remedy for a delay or interference and shall operate as a full and complete release of any claim by Contractor for any and all costs and expenses related to or arising out of the event giving rise to the delay or interference.

f. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, THE CONTRACTOR AGREES AND ACKNOWLEDGES THAT THERE SHALL BE NO PAYMENT OR COMPENSATION OF ANY KIND TO THE CONTRACTOR FOR DAMAGES OR COSTS ARISING FROM ANY DELAY OR INTERFERENCE WHETHER SUCH DELAY IS AVOIDABLE OR UNAVOIDABLE. CONTRACTOR FURTHER AGREES AND ACKNOWLEDGES THAT ITS SOLE REMEDY IN THE CASE OF DELAYS OR INTERFERENCES TO ITS CONSTRUCTION SCHEDULE WHICH ARE ATTRIBUTABLE TO THE CITY, SHALL BE A REASONABLE EXTENSION OF THE CONTRACT TIME.

g. On contracts on a calendar day basis (a specified number of days), no allowance will be made for Saturdays, Sundays or holidays. On contracts on a Working Day basis, allowances will be made for days or parts of days, in increments of one-quarter (1/4) day, for conditions entirely beyond the control of the Contractor; New Year's Day, Memorial Day, July 4<sup>th</sup>, Labor Day, Thanksgiving Day and Christmas Day, or the Monday thereafter when these days occur on Sunday, and Saturdays and Sundays shall not be considered as Working Days. The Department shall keep a record of the Working Days and the Department shall make this record available to the Contractor on request. The Contract time shall start with the first Working Day after the date of the Notice to Proceed and the scheduled date of completion shall be that established by the specified number of Working Days plus the allowance.

h. If, for reasons other than those stated above, any portion of the work remains uncompleted after the Contract date specified for its completion, notwithstanding Substantial Completion of the work, the Project Manager shall deduct from payments due the Contractor, as liquidated damages an amount per diem, according to the following schedule:

<u>Contract Value</u>	<u>Agreed Delay Damages Per Diem</u>
\$0-\$100,000	\$ 250
\$100,001-\$500,000	\$ 500
\$500,001-\$1,000,000	\$ 750
Over \$1,000,000	\$1,000

These per diem delay damages are assessed as agreed liquidated damages because the Parties have considered the difficulty of determining the City's actual damages and agreed that computation of the City's actual damages is impossible. If a delay is due to causes which the Contractor considers extraordinary or beyond its control, the Contractor must give timely notice thereof in writing as specified in Paragraph 25(e) above. In the event that the General Bidding and Contract Requirements or the Technical Specifications contain a provision allowing for the imposition of liquidated damages for delays to the completion of the work, such provision shall take precedence over this subparagraph (h).

This subparagraph (h) shall not be construed to apply to claims, offsets, credit change orders, and/or chargebacks which the City may assert or assess against any Contractor for the reimbursement or recovery of any costs incurred by a different Contractor on the Project due to the fault or delay of the Contractor. In all such cases, the City shall not be limited to the per diem amounts listed above and shall be permitted to seek recovery or reimbursement of the full amounts incurred by any non-delaying Contractor.

26. **Independent Contractor.** The Contractor 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 the Contractor nor its employees or Subcontractors shall in any way represent that they are acting as employees, officials or agents of the City.

27. **Risk of Loss.** The Contractor shall assume all risk and responsibility for casualties of every description in connection with its work. The Contractor shall have charge of the entire work until completion and acceptance, and shall alone be liable and responsible for any injuries to persons and any loss or damage to property, buildings, or adjacent work that may occur as a consequence of or during the progress of the work under this Contract, whether such damage or accident be due to the Contractor's own negligence or that of its servants, agents, employees, or whether such damage or accident be due to the inherent nature of the work, or whether such damage or accident be due to other causes.

28. **Indemnification.** The Contractor shall indemnify, defend and hold harmless the City, its officers, employees, and agents, from and against any and all losses, costs and expenses, including but not limited to litigation costs, settlement fees and expenses, and counsel fees and expenses, claims, suits, actions, damages, liability and expenses, arising out of or resulting in whole or in part from the performance of the work under the 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 maintain a drug-free work site and workforce and any other breach of the Contract, regardless of the inherent nature of the work and regardless of whether or not such loss, cost, claim, suit, action, damage, liability, or expense is caused in whole or in part by the negligent act or omission of a party indemnified hereunder. Such obligation shall not be construed to negate, abridge or reduce other rights or obligations of indemnity which would otherwise exist as to a Party or Person described in this Paragraph. The Contractor shall further indemnify, defend and hold harmless the City from and against any and all claims, demands, liens, causes of action, liabilities and judgments of any kind asserted against the City by any Subcontractor or suppliers on account of or relating to the furnishing of services, work, labor, materials or equipment under the Contract for the Contractor.

In claims against any Person indemnified under this Paragraph 28 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Paragraph 28 shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers compensation acts, disability benefit acts or other employee benefit acts.

29. **Assignment.** Except through a Subcontract, the Contractor shall not assign the Contract, or any part of the Contract, or delegate performance of the Contract (other than to its own work forces), without obtaining the prior written consent of the Procurement Commissioner and Operating Commissioner. 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 the Contract shall not relieve the Contractor from the faithful performance of any of its obligations under the Contract or change any of the terms and conditions of the 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 the 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 the 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 Paragraph 29, an assignment includes the transfer or acquisition of the Seller or the Contractor, or a controlling interest therein, through a corporate or other merger, and the appointment of a receiver or bankruptcy trustee, and the transfer of the Contract or the Contractor in any bankruptcy or other insolvency proceeding.

30. **Insurance.** Unless otherwise approved by the City's Risk Manager in writing, the Contractor shall, at its sole cost and expense, procure and maintain, or cause to be procured and maintained, in full force and effect until the Contractor completes the work under the Contract, the types and minimum limits of insurance specified below, covering the Contractor's performance of the work required under the Contract. The Contractor shall procure, or cause to be procured, all insurance from reputable insurers admitted to do business on a direct basis in the Commonwealth 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 the Contractor perform any work under the Contract until the Contractor has delivered or caused to be delivered to the City's Office of Risk Management the required evidence of insurance coverages. If the Contractor fails to obtain or maintain the required insurance, the City shall have the right to treat such failure as a default under

the Contract and to exercise all appropriate rights and remedies. 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 and, where applicable, the Builders Risk Insurance Policy. The Contractor 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. Commercial General Liability Insurance.

1. Limit of liability: \$1,000,000 per occurrence combined single limit for bodily injury (including death) and property damage liability; \$1,000,000 advertising injury; \$2,000,000 general aggregate, and \$1,000,000 aggregate for products and completed operations. The City may require higher limits of liability if, in the City's sole discretion, the potential risk warrants.
2. Coverage: Premises operations; Blanket Contractual liability; Personal injury liability; Products and completed operations; Independent Contractors; Employees and volunteers as additional insureds; Cross liability; Broad form property damage (including completed operations); Explosion, collapse and underground hazards; and asbestos abatement liability Coverage (Note: Required for asbestos abatement projects only).

c. Automobile Liability.

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. Builders' Risk/Installation Floater Insurance.

1. When required: This insurance is required only when the total Contract price is \$500,000 or greater (Note: not for road and street work, unless required in the Supplementary Conditions, Technical Specifications, Standard Details and Specifications, and/or General Bidding and Contract Requirements).
2. Coverage: "All risks" in an amount equal to not less than the full replacement cost of the work under the Contract (meaning work in replacement which is of like kind and quality).
3. Period of Coverage: Anything herein to the contrary notwithstanding, the Builders' Risk Insurance shall be procured and maintained during the entire period of performance of the Contract until final acceptance of the work by the City.



Certificates of insurance evidencing the required coverages and additional insured endorsements must specifically reference the City contract Number for which they are being submitted. The original certificates of insurance shall be submitted to the Department and the Office of Risk Management at least ten (10) days before work is to commence and at least ten (10) days before each renewal date. The ten (10) day requirement for advance documentation of insurance coverage may be waived in situations where such waiver will benefit the City, but under no circumstances shall the Contractor actually begin work (or continue work, in the case of renewal) without providing the required proof of insurance and required endorsements. The City reserves the right to require the Contractor to furnish certified copies of the original policies of all insurance required under this Contract, including certified copies of all required endorsements, at any time upon ten (10) days prior written notice to the Contractor.

**31. Proprietary Rights Indemnity.** The Contractor shall indemnify, defend and hold harmless the City, and its officers, employees, and agents, from and against any and all losses, costs and expenses, including, but not limited to, litigation costs, settlement fees and expenses, and counsel fees and expenses, claims, suits, actions, damages, liability and expenses for or on account of the use of patented appliances, products, processes, constructions, designs, or methods, or the infringement of any patent, trademark, service mark, copyright, or trade secret rights of any third party, and the Contractor shall pay all royalties, charges and penalties which may become due or payable by reason of such use or infringement. Before the issuance of the Final Estimate, upon request by the Project Manager, the Operating Commissioner, or the Procurement Commissioner, the Contractor shall submit evidence of the full payment of such royalties, charges and penalties, or in lieu thereof, Contractor shall give such security, approved by the City Solicitor, as may in the opinion of the Project Manager, the Operating Commissioner, or the Procurement Commissioner, be necessary to indemnify, defend and hold harmless the City, its officers, employees, and agents, as aforesaid.

**32. Default and Remedies.**

a. It shall be a violation of the Contract for the Contractor to abandon the work under the Contract; to fail or refuse to prosecute the work with promptness and diligence; to unreasonably delay the work so that it may not be completed within the contract time; to fail or refuse to proceed with work under a Disputed Change Order; to fail or refuse to furnish suitable materials in place of any which may be rejected by the Project Manager as unsuitable as not being in accordance with the Contract Documents, or to refuse or neglect to furnish and supply a sufficient number of properly skilled workers and necessary equipment or either of them; to execute any of the work improperly, carelessly, or in bad faith; to fail or refuse to remove any of the work which, in the opinion of the Project Manager, is defective and unsuitable and not in accordance with the Contract Documents, and to replace it with work that is in accordance with the Contract Documents; to cause or permit to occur an Event of Insolvency with respect to the Contractor; or to otherwise violate any of the terms, conditions, and provisions of the Contract. In the event of a violation of Contract, the Operating Commissioner may notify the Contractor and its surety in writing to require that each remedy the Contractor's violation of the Contract and require the Contractor to comply with the terms, conditions, and provisions of the Contract which it has violated or is violating. The failure of the City to promptly notify the Contractor of a violation of Contract shall not constitute an acceptance by the City of work which is performed or installed in violation of the Contract.

b. If the Contractor shall fail to cure or remedy, or diligently commence to cure or remedy, the violation of the Contract, as described in the notice specified above, within five (5) days after the receipt of said notice, or within twenty four (24) hours after receipt of said notice when, in the opinion of the Operating Commissioner, immediate action is necessary to safeguard life or property, or within some other period of time specified in the notice, the Operating Commissioner shall thereupon notify the Procurement Commissioner, who shall have the right to declare the Contractor in default of the Contract, and to notify the Contractor to discontinue the work or any part thereof under the Contract, and to call upon the surety to carry out its obligations under the performance bond posted for the Contract.

c. If the surety fails to abide by the terms of the performance bond or if the surety shall deny liability to the City under the performance bond, the Procurement Commissioner shall have the right to declare the surety in default under the performance bond and, at his or her sole option, shall also have the right:

1. To terminate the work under the Contract, to maintain conditions, to obtain Quotes (if circumstances will allow) for all or any portion of the work, and to enter into a new contract to complete the work of the original Contract; or

2. In case of an emergency, including, but not limited to, danger to life or property, or serious interference with traffic, to terminate any and all of the work under the Contract, and to then and there secure in the open market, from any Person, at the then current market prices the materials of the quality and quantity required, the necessary workers and mechanics, and the required equipment to complete the Contract.

d. Upon default by the Contractor as herein set forth, all moneys due and owing to the Contractor upon estimates, retainage, or otherwise, materials delivered, materials built into the work, and the Contractor's plant (including tools, appliances, and equipment on the premises intended for use in the performance of the Contract), shall become the property of the City for use in the completion of the work under the Contract, and the City shall have resort thereto to the extent necessary to maintain and complete the work and reimburse the City for its outlays and expenditures.

e. In case of such default by the Contractor the remedies herein provided shall be in addition to and not in substitution of the rights and remedies which would otherwise be vested in the City by statute, at law or in equity, all of which rights and remedies are specifically reserved to the City. In addition, upon default by the Contractor, the Procurement Commissioner shall have the right to secure from any Person the materials, equipment, and labor necessary and required for the proper completion of the Contract. In such event, the Contractor shall pay the City, upon demand, the difference between the cost paid by the City for such materials, equipment and labor and the price or prices set forth in the Contract, together with all costs and expenses incident to the same and incurred by the City. Upon default by the Contractor, the Procurement Commissioner, in his or her sole discretion, shall also have the right, to terminate the Contract and to secure from any Person the materials, equipment, and labor necessary and required for the proper completion of the work. In such event, the Contractor shall pay the City, upon demand, the difference between the price or prices set forth in the Contract and the price or prices which may be paid upon such termination and completion of the work, together with all costs and expenses incident to such re-advertisement. In the exercise of either of these remedies, the City shall further have the right to a set-off against any monies which may be due or may thereafter become due the Contractor under the Contract or any other contract between the City and the Contractor. If the Procurement Commissioner shall secure materials, equipment, and labor to complete the work under the Contract, or if the Procurement Commissioner shall terminate this Contract, the Procurement Commissioner shall have the right to take possession, for the purpose of completing the work under the Contract, of all materials, tools, appliances, and equipment on the Project site, intended for use in the performance of the Contract. The Contractor hereby assigns to the City (and each Subcontract shall require each Subcontractor to assign) all right, title, and interest of the Contractor in and to such materials, tools, appliances, and equipment. The failure of the City to exercise any of the remedies herein provided shall not preclude the resort by the City to any other remedy available to the City arising out of the Contractor's default.

f. The use of any specific remedy herein provided shall not bar subsequent or concurrent resort to any other remedy available to the City at law or in equity, for the recovery of damages or otherwise, on account of such default, or in the event of any other default by the Contractor.

g. The Contractor and its surety shall pay to the City on demand, all loss, expense, cost or damage suffered or incurred by the City by reason of any default.

**33. Subcontracts.** Within fifteen (15) days after execution of the Contract, the Contractor shall submit in writing to the Project Manager the names of all Subcontractors who will perform any work on the Contract or who will supply any materials or equipment for the Contract. All proposed Subcontractors who have not been pre-approved by the Department may be approved by the Project Manager if in his or her opinion such proposed Subcontractor is reliable, Responsible and competent to perform the work in compliance with the Contract Documents. The City, acting in its sole discretion, reserves the right to reject any Subcontractor. The City shall have no liability to the Contractor for additional compensation under the Contract, or otherwise, in connection with the substitution of a Subcontractor for any proposed subcontractor rejected by the City pursuant to this Paragraph 33. The Contractor shall be as fully responsible to the City for the acts and omissions of its

Subcontractors and Persons either directly or indirectly employed by them, as it is for the acts and omissions of the Contractor and Persons directly or indirectly employed by the Contractor. The City and the Contractor specifically understand and intend, and acknowledge and agree that no Subcontractor utilized by the Contractor shall have any right or claim against the City or the Department to any monies due and owing to the Contractor for the performance of work under the Contract. Each Subcontract for any portion of the work is hereby assigned to the City provided that (a) such assignment is effective only after termination of the Contract by the City and only for a Subcontract which the City, acting in its sole discretion, accepts by issuing notice to such Subcontractor and to the Contractor; and (b) such assignment, if exercised, is subject to the prior rights of the surety, if any, obligated under a bond relating to this Contract. The exercise of the foregoing option for an assignment shall be in the City's sole discretion, the City having no duty or obligation to the Contractor, such Subcontractor or any surety, to exercise or decline to exercise the foregoing option for an assignment. The Contractor shall incorporate the foregoing option for an assignment into each Subcontract for any portion of the work.

**34. Permits and Licenses.** Unless otherwise noted elsewhere, the Contractor shall obtain all permits and licenses required by the City or pursuant to Applicable Law in connection with the performance of all or any part of the work under the Contract, unless otherwise specifically directed. The Contractor will be required to pay the current fee for such permits and licenses required in connection with all or any portion of the work under the Contract, including any permits and licenses required in connection with any equipment, system or component forming part of the work.

**35. Co-operation and Coordination with other Contractors.**

a. The Contractor shall have the duty to co-operate and coordinate with any other contractors on other work which is being performed concurrently on or adjacent to the Project site, including specifically PGW, or its contractors or any other non-City utilities or authorities, and shall afford reasonable facilities and access to them. The Project Manager will decide any matters in dispute as to the performance of the work, including access to the Project site and priority of performance on either side of any division line between contiguous sections of the Project site where the Contractor and another contractor each work.

b. Where the work or any portion thereof is performed by the Contractor as part of a "multiple-prime" project, or in conjunction or combination with other "prime" contractors, the Contractor shall have the duty to cooperate and coordinate its work with the work of each of the other prime contractors. The Contractor shall further have a duty not to delay, disrupt, interfere with, or otherwise retard the progress of the work of any of the other prime contractors.

c. It is expressly understood by the Contractor that, on "multiple-prime" projects, the City relies primarily, but not exclusively, upon the organization, management, skill, cooperation and efficiency of the "Contractor for general construction" (unless a different Contractor is otherwise designated in the General Bidding and Contract Requirements or the Technical Specifications) to oversee, coordinate, and plan the work of all the other prime contractors, including, but not limited to, the prime contractors for electrical, mechanical, HVAC, and plumbing work, so as to complete the work under all of the prime contracts in a timely and efficient manner. The Contractor therefore expressly recognizes that the "Contractor for general construction" shall be the coordinating Contractor for all aspects of the multiple-prime contract work, including the scheduling of all such work. The Contractor shall have an explicit duty on "multiple-prime" projects to rely primarily upon the organization, management, skill, cooperation and efficiency of the "Contractor for general construction" to oversee, coordinate, and plan its work with the work of all of the other prime contractors, so as to ensure completion of the work under all of the contracts, including the Contract, in a timely and efficient manner and without disruption and interference. It is expressly understood by the Contractor, however, that the City is also relying upon the organization, management, skill, cooperation and efficiency of the Contractor so as to ensure completion of the work under the Contract in a timely and efficient manner and without disruption and interference.

d. It is expressly understood by the Contractor that time is of the essence of this Contract. The Contractor agrees to diligently prosecute its work in coordination and cooperation with the work of the other prime contractors and under the coordination of the "Contractor for general construction," without delay,

interference, or disruption, so as to ensure the completion of the Contract work in a timely and efficient manner and in conformity with the schedule approved by the City under the Contract. In the event that the Contractor shall unnecessarily delay, disrupt, or interfere with the work of any of the other prime contractors, the Contractor shall be liable for the payment of all costs and expenses incurred by such prime contractor or prime contractors on account of such delay, disruption, or interference. The Contractor accordingly authorizes the City to deduct the amount of such costs and expenses from any monies due and owing to the Contractor under the Contract. The Contractor shall further assume all liability, financial or otherwise, in connection with its Contract and shall protect, defend, and hold harmless the City from and against any and all damages or claims that may arise because of inconvenience, delay, interference, disruption, or loss experienced by the Contractor because of the presence and operations of other prime contractors working within the limits of the same multiple-prime project.

e. The provisions of this Paragraph 35 shall be read in conjunction with any provisions in the Technical Specifications, the Proposal, and the Plans, and, notwithstanding Paragraph 95 of these Standard Contract Requirements, the provisions of this Paragraph 35 shall take precedence over any other provisions in the Technical Specifications respecting the "coordination and cooperation" among prime contractors on a "multiple-prime" project, except where such other provisions shall impose greater duties upon the Contractor for coordination and cooperation.

**36. Clean-up of Project Site.** The Contractor and its Subcontractors shall remove all rubbish or refuse and all unused materials and tools from the Project site daily, if required by the Project Manager, and as the work progresses the Contractor shall carefully clean and keep the Project site clean from such rubbish and refuse. The Contractor shall furnish to the Project Manager upon request all documentation regarding the proper disposal of all rubbish, soil, refuse, and other debris. Before the City will approve the completion of the work under the Contract, the Project site and any other place or places affected by the work shall be thoroughly cleared of all construction and other debris and dust, and left clean, free from debris, construction plant, buildings, and materials; fit for travel or other proper use; and in as good condition as existed before the work was begun. The Contractor shall resod or plant anew any grass plot or plots disturbed, and replace any shrubbery destroyed. Structures shall be broom clean, free from stains, spots or other blemishes, and ready for use, and all glass shall be washed. The clean-up work shall be governed by the record of existing conditions made and filed with the Department prior to the commencement of work.

**37. Maintenance after Completion and Contractor's Guarantee.**

a. The Contractor shall guarantee the work of the Contract against defects in materials and workmanship for a period of one (1) year from the date of completion and acceptance of the work by the City, unless a longer period is specified, and shall guarantee and warrant that all equipment shall perform in accordance with the specifications of the manufacturer and in accordance with the Technical Specifications. When individual items of the Contract, including equipment, are formally accepted in writing by the Project Manager and used or operated by the City prior to the completion of the total work under the Contract, the period of guarantee for such items shall be calculated from the date of final written acceptance of such items, provided, however, that the item of work and equipment is used or operated by the City for a period of ninety (90) consecutive days following the date of acceptance without the occurrence of any defects, breakdowns, or faulty operation. Paving, including curbs and footway, shall be similarly guaranteed for a period of five (5) years from the date of completion and acceptance of the work by the City.

b. If, within such one (1) year or five (5) year period of guarantee, any of the work shall prove to be defective either in materials or workmanship, or if damage occurs by settlement of the backfill placed under this Contract, or if any part or parts of any equipment furnished shall prove to be inadequate, insufficient, or defective, either in design, materials, or workmanship, the Contractor shall immediately, upon demand of the Project Manager (whose decision as to such inadequacy, insufficiency, or defectiveness shall be binding and conclusive upon the Parties hereto), repair and replace the same in accordance with the Plans and Technical Specifications, and shall repair and replace any damage to other parts or structures at the Contractor's sole cost and expense, without cost or expense to the City, to the approval and satisfaction of the Project Manager.

c. Should the Contractor or its sureties fail to comply with the orders of the Project Manager to replace or repair defective materials, workmanship, or equipment as aforesaid within the time specified in

subparagraph (a) above, the Operating Commissioner shall notify the Procurement Commissioner, who shall have the right to declare the Contractor or its surety, or both, in default and to proceed with the correction of the defect in accordance with the methods provided herein.

**38. Access to Accounting Records.** The Contractor shall certify that all materials, equipment, and labor charged to the City are accounted for and shall keep such full and detailed accounts as may be necessary for proper financial management under this Contract. The Contractor shall retain, and shall provide the City and its representatives access to, all records, books of account, correspondence, instructions, Shop Drawings, receipts, vouchers, memoranda, and similar data and documentation pertaining to the Contract for a period of five (5) years following final payment, or earlier termination of the Contract, or for such longer period as may be required by law; however, if any litigation, claim or audit is commenced prior to expiration of said five (5) year period, then the records shall be retained until all litigation, claims or audit findings have been completely terminated or resolved, without right of further appeal, or if Applicable Law requires a longer period, then the records shall be retained for such longer period. From time to time during the performance of the work under the Contract, and for a period of five (5) years after the completion of the work under the Contract, the City may audit any and all aspects of the Contractor's performance under the Contract, including but not limited to its billings and invoices. Representatives, agents or contractors of the City, including the Department, or other authorized City representatives including, without limitation, the City Controller may conduct audits. If requested by the City, the Contractor shall submit to the City all vouchers or invoices presented for payment pursuant to the 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 the Contract. All books, invoices, vouchers, records, reports, cancelled checks and other materials shall be subject to periodic review or audit by the City. All work, equipment, materials, systems, subassemblies, tools appliances and plant shall be subject to inspection and review by City, federal and state representatives, as may be applicable, or their designees, at the offices of the Contractor in the City, or in another location with the City's consent. The Contractor shall cooperate with all City, state and federal inspections and reviews conducted in accordance with the provisions of the Contract. Such inspection and review of the Contractor's work hereunder shall be in the sole discretion of the inspecting or reviewing entity. Such inspection or review may include, without limitation, review of staffing ratios and job descriptions, and meetings with any of the Contractor's staff who are either directly or indirectly involved in providing all or any portion of the work hereunder. The Contractor shall make available, within the City at reasonable times during the performance of the work hereunder and for the period set forth above in this Paragraph 38, all records pertaining to the 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 Auditor General, and any other federal or state auditors, as may be applicable, at no additional cost to the City.

**39. Sales and Use Tax; Federal Excise Tax.**

a. The City is not subject to federal, state or local sales or use tax or federal excise tax. Contractor hereby assigns to City all of its right, title and interest in any sales or use tax which may be refunded as a result or the purchase of any materials in connection with the Contract, and the Contractor, unless directed by the City, shall not file a claim for any sales or use tax refund subject to this assignment. The Contractor authorizes the City, or its agent, in its own name or in the name of the Contractor, to file a claim for a refund of any sales or use tax subject to this assignment. To the extent it may be applicable to the work under this Contract, the Contractor covenants and agrees that it shall not bill the City for or otherwise pass-through to the City for payment any Federal Excise Tax paid in connection with the work under this Contract; in consideration of the Contractor's foregoing covenant, the City hereby consents to any filing by the Contractor for a refund of any Federal Excise Tax paid in connection with the work under this Contract.

b. The Contractor agrees to include the above referenced Paragraph in any Subcontracts with Subcontractors.

**D. ADMINISTRATION, MEASUREMENT, AND PAYMENT**

**40. Status and Authority of the Project Manager.** The Project Manager shall be responsible for the general direction of the work to be performed under the Contract, the interpretation of the Plans and General Bidding and Contract Requirements, and the Technical Specifications, the ordering of additions to or deductions from the work, and the determination of procedure. The Project Manager shall give all orders and directions contemplated under the Contract. The Project Manager shall in all cases determine the amount, quality, acceptability, and fitness of the several kinds of work and materials which are to be paid for under the Contract, and shall have authority and sole discretion to reject all work and materials which in his or her opinion do not conform to the requirements of the Contract. The Project Manager shall determine all other questions that may arise in relation to the execution of the work and shall have the authority to halt the work whenever such action may be necessary to secure the safe and proper execution of the Contract. The Project Manager shall adjust and decide any differences or conflicts that may arise between the Contractor and other prime contractors for the performance of concurrent work. The provisions of this Paragraph are not intended to supersede or limit the provisions of Paragraph 35.

**41. Plans and Technical Specifications.** The Plans, with all notes thereon, and the Technical Specifications are intended to be consistent with one another and of equal force and effect, and in the event the Contractor should believe that an apparent discrepancy may exist between the Plans and the Technical Specifications, the Contractor shall bring such apparent discrepancy to the attention of the Project Manager, who will interpret their meaning. The Plans give general dimensions and sizes, and such details as are required to cover special features. Figures shall have preference over scale in reading dimensions. The Contractor shall maintain at the site of the work for use of the Project Manager or Inspector one record copy of the Plans and Technical Specifications, and Change Orders and other Contract modifications, and one record copy of all approved Shop Drawings and other submittals, including the construction schedule.

**42. Shop Drawings and Working Drawings.** The Contractor shall prepare and submit to the Department or the Project Manager, as specified in the Technical Specifications or as required by the Project Manager, all Shop Drawings and Working Drawings, which shall include all details required to carry out the City's Plans and Technical Specifications. By approving and preparing Shop Drawings and other similar submittals, the Contractor represents that it has determined and verified materials, field measurements, and field construction criteria related thereto and has checked and coordinated the information contained within such Shop Drawings and submittals with the requirements of the Contract Documents. The Contractor shall not proceed with any portion of the work until the Shop Drawings or other submittal which governs the work has been approved. The Shop or Working Drawings shall conform to standards specified by the Department. Upon correction, if found necessary, and after approval, the Contractor shall furnish three (3) or more prints of the Shop Drawings or Working Drawings for construction purposes. After the completion of the work, the documents shall be delivered to and become the sole property of the City for its unrestricted use. The approval of Shop Drawings shall not relieve the Contractor of responsibility for the proper fit of the work, nor for its completion pursuant the Contract.

**43. Lines and Grades – City Datum.** Vertical dimensions are given in United States standard feet and fractions thereof. Unless otherwise stated, elevations preceded by a plus (+) or a minus (-) sign refer respectively to distances above or below the established City Datum, which is two and one quarter (2.25) feet above mean high water in the Delaware River at Chestnut Street, Philadelphia. Dimensions locating buildings and structures shall be verified and checked in the field by the Contractor before proceeding with construction details affected thereby. Curb line and paving stakes giving the requisite basic data will be set by the City. The price for the setting of these lines shall be at the predetermined rate as set by the Board of Surveyors and made part of the public record or as stated in the Contract Documents. The Contractor will be held responsible for the proper and correct extensions of measurements from such data, and the correctness of work based thereon. The Contractor will be held responsible for the preservation of stakes, benchmarks, and survey monuments, until authorized to remove them. Should any stakes be disturbed, the cost of replacing them will be charged against the Contractor at the then current fee as determined by the City's district surveyor and regulator, to be deducted from the Final Estimate. All survey monuments or benchmarks moved, covered or uprooted in the course of performance of the work of this Contract will be reset by the City at the expense of the Contractor, at the then current fee per monument or benchmark, as determined by the City's district surveyor and regulator. Said cost shall be deducted

from the Final Estimate. The Contractor shall provide reasonable and necessary opportunities and facilities for setting points and taking measurements. The Contractor shall not proceed until it has made timely demand upon the District surveyor and regulator for, and has received from him or her, such points and from the resident engineer such instructions as may be necessary for the progress of the work. Any work improperly done without lines or levels or instructions shall be removed and replaced by the Contractor at its own expense. Failure to do so may be considered a default under the Contract.

**44. Contract Amount.** The total amount which is to be paid by the City to the Contractor for the work performed and materials supplied under the Contract shall in no event exceed the sum of the Contractor's Quote price, plus a contingency fund of approximately ten percent (10%) of the Contractor's Quote price (to be specified by the Procurement Department upon the award of the Contract), which fund is intended to cover additional compensation which may be due to the Contractor as a result of Change Orders issued pursuant to Paragraphs 48 and 49 below, as such sum may be increased or reduced pursuant to a Change Order or Change Orders, or pursuant to an Amendment. The City shall specify the contract amount in the Notice of Contract Award. The Contractor acknowledges that the City's liability under the Contract shall be limited by the amounts which shall have been or may be from time to time appropriated by City Council. The City reserves the right to authorize the Contractor to commence work prior to appropriation of the total amount of the Contract, in which case the City shall give the Contractor notice thereof, and the City shall not be liable hereunder in any amount greater than that appropriated therefor by City Council. Payments will only be made payable to the Contractor as shown on the purchase order; the invoice must reflect this same Contractor name as the entity to "pay to". For any bids awarded for work to begin on or after July 1, 2019, the City has instituted a policy of making all of its payments through electronic deposits into the awarded Contractor's designated bank account. Before any City payments are made, the Contractor 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. The foregoing notwithstanding, nothing herein shall be construed to limit the City's ability to make payments by assessment bills as provided in paragraph 57, below.

**45. Scope of Payments.** Payment for the cost of all work, labor, materials, and services required to complete the work of the Contract as shown in the Plans, Technical Specifications, Standard Details and Specifications, or as otherwise specified (except where payment is otherwise specifically provided), will be made at the unit prices or lump sum prices contained in the Quote. The prices contained in the Quote shall each cover the supply and installation, in a good, sound, substantial and workmanlike manner, of everything required for and incidental to the full completion of the work of that item as called for by the Plans, Technical Specifications, Standard Details and Specifications, or as otherwise specified, including its proportionate share of the expense of all plants, tools, and equipment required; the cost of all bonds, fees, and permits; of all administration, superintendence, and insurance; and of any loss or damages arising out of the nature of the work, from the action of the elements, from any unforeseen difficulties encountered in the prosecution of the work, and from risks of all kinds connected with the work, except as otherwise specifically provided in the Contract Documents.

**46. Quantities are Approximate.** When quantities of the various classes or components of work and materials required under the Contract are stated in the Bid Solicitation or elsewhere, such quantities are estimated and approximate, except where otherwise stated to the contrary. When stated in the Bid Solicitation or a Seller's Proposal, they are given only for the purpose of comparing the Quotes on a uniform basis. The City does not guarantee that such estimated quantities will correspond to the actual quantities ultimately required to complete the work, and the City will not allow any claim for damages, for anticipated profit, or for loss of profit of the Contractor in the event that actual quantities used to complete the work under the Contract vary from the estimates in the Bid Solicitation. The Department reserves the right to increase or decrease the quantities or to entirely omit any of the items as contained in the Bid Solicitation to the extent found necessary by the Project Manager, provided that the aggregate cost of the work performed is within the limit of funds fixed in the Contract.

**47. Changes.**

a. If changes to any portion of the work or the requirements of the Plans, Technical Specifications or Standard Details and Specifications are deemed necessary by the Project Manager, in order to carry out and complete the work covered by the Contract Documents, the Project Manager may by notice to the Contractor order alterations to or changes in the work covered by the Contract Documents, and the Contractor shall promptly comply with such orders. No changes or alterations to the work shall be made or performed by the Contractor except upon prior written orders from the Project Manager authorizing the change and a Change Order fixing the additional compensation or deduction therefor, except where the order authorizing the change states that the method of compensation or deduction shall be determined at a later date.

b. Where the Project Manager pursuant to Paragraph 47(a) orders additions to or deductions from the amount of work called for by the Plans or Technical Specifications, or where changes are ordered in writing in the design of the work or the requirements of the Plans or Technical Specifications which increase or reduce the cost of the work to the Contractor, adjustment in compensation therefor shall be made to cover the additional work required or the work reduced, in accordance with a written order of the Project Manager, as follows:

1. For work for which applicable unit prices are bid in the Bid Solicitation, payment or deduction shall be made in accordance with the prices bid. When the final quantity of work performed on a unit price bid item differs substantially (twenty-five percent (25%) or more) from the Bid Solicitation quantity, the Project Manager will review the price contained in the Quote and the actual work performed by the Contractor and may, in his or her sole discretion, determine if an adjustment is appropriate. Where the Project Manager deems an adjustment appropriate, the Contractor shall:

i. substantiate that the Quote unit price remains fair and reasonable despite the substantial change in quantity; or

ii. in the case of substantial underrun compared to the previously estimated quantity, negotiate a revised unit price for all the work actually completed; or

iii. in the case of substantial overage compared to the previously estimated quantity, negotiate a revised unit price for that portion of the actual work completed in excess of one hundred twenty-five (125%) of the Quote quantity.

This provision shall not be deemed, however, to vest in the Contractor any rights to any adjustment.

2. For work not covered by the unit prices contained in the Quote, payment or deduction shall be made at the applicable contingent prices named for work.

3. For work for which neither the unit prices bid nor the prices for contingent work are applicable, payment or deduction shall be made in accordance with Paragraphs 48 and 49 below.

#### **48. Change Orders by Agreement.**

a. If alterations or changes increase the cost of the work to the Contractor, additional compensation will be allowed by the City, based upon unit prices, contingent prices, or by a detailed cost proposal submitted by the Contractor to the Project Manager, negotiated by the Department and agreed to by the Contractor, or by Force Account, in accordance with Paragraph 51 below. The cost proposal shall detail the costs of materials, labor, overhead and profit, as well as any proposed changes to the Contract time. If such alterations or changes reduce the cost of the work to the Contractor, the amount of such reduction may be deducted by the City, and any such reduction may be based upon unit prices contained in the Quote for the performance of the deleted items of work, upon any Subcontract already entered into by the Contractor for the performance of the deleted item of work, or upon a detailed cost proposal submitted by the Contractor to the Project Manager and negotiated by the Department. Credit Change Orders will include the same mark-ups as chargeable Change Orders. The Contractor shall submit its cost proposal for the change or alteration within twenty (20) days after the Project Manager gives notification to the Contractor of the intended change or



alteration. Thereafter, a formal Change Order will be executed and signed by the Department reflecting the change or alteration and the additional cost or reduction negotiated by both Parties.

b. A Change Order negotiated and agreed to by the Contractor and the City and then executed as a Change Order by the City and the Contractor shall be deemed to cover all of the Contractor's costs associated with the change or alteration to the work, as reflected in the Change Order, including all costs and expenses incurred by the Contractor for time, material, labor, and extended or field office or home office overhead. Any Contract time extension granted by the City for the Change Order shall be the sole time extension granted for the change or alteration and for which Contractor is entitled, and no other time extension shall be granted by the City in connection with the work reflected in such Change Order. No loss of profit on account of any changes or alterations to the work or on account of work not executed or performed by the Contractor will be allowed, except that the Contractor may be entitled to an extension of time on account of changes or alterations to the work, provided that the Contractor satisfies the requirements of Paragraph 25 above.

c. The Contractor agrees and acknowledges that after a Change Order is negotiated and agreed to by the Parties and then executed by the City, the Change Order shall operate as a full and complete waiver and release of any and all claims of the Contractor related to or arising out of such change or alteration, whether such change or alteration is considered individually or cumulatively, including, but not limited to, any claim by the Contractor for extended home office overhead, extended field office overhead, time-impact costs, schedule delay costs, acceleration costs, compression costs, loss of productivity costs, extra work, additional work, and interference costs, or any combination of such costs.

**49. Disputed Change Orders.** If, after submission of a cost proposal, the Department and the Contractor cannot agree upon a price within a reasonable amount of time, or if the Contractor disputes the applicability of unit prices or contingent prices, the Project Manager may direct the Contractor to perform or complete the extra or additional work notwithstanding that there is no agreement between the Parties as to price, and the Contractor shall proceed to perform the work so as to avoid any delay or interference to the progress of its work. In all such cases, the Contractor shall promptly comply and maintain proper force account time sheets and records, in accordance with Paragraph 51 below. The Project Manager shall also process a Change Order in an amount that he or she determines to be reasonable, necessary and appropriate. If the Contractor does not agree with the amount processed by this Disputed Change Order, the Contractor must notify the Project Manager within ten (10) days of issuance of the Disputed Change Order that it is proceeding under protest and that it reserves the right to a claim for the cost of the disputed work. In all cases of Disputed Change Orders which are protested by the Contractor, the Contractor shall submit to the Project Manager, within five (5) days after completion of the work, a detailed cost proposal which shall detail the costs of materials, labor, overhead and profit, actually expended by the Contractor for the work, as well as any changes to the Contract time.

**50. Disputed Work.** If the Contractor is of the opinion that any work required or ordered by the Project Manager violates the terms and provisions of the Contract or is not called for under the Contract Documents, the Contractor shall promptly notify the Project Manager, in writing, of its contentions with respect thereto and shall request a final determination thereof. If the Project Manager determines that the work in question is work required under the Contract Documents and is not "extra" work, or that the order complained of is proper, the Project Manager will direct the Contractor to proceed with the work in question. In all such cases, the Contractor shall promptly comply and maintain proper force account time sheets and records, in accordance with Paragraph 51 below. In order to preserve its right to claim compensation for such disputed work or damages resulting from compliance with such an order, the Contractor must notify the Project Manager in writing, within five (5) days of receiving notice from the Project Manager of this final determination, that the work is being performed or that the determination and direction is being complied with under protest. Furthermore, in order to claim an adjustment in the Contract price for work performed under protest, the Contractor must submit in writing to the Project Manager, within five (5) days after completion of the work in question, the nature and precise amount of compensation sought for the work, as well as copies of all force account time sheets and records compiled by the Contractor for the work. Failure of the Contractor to so notify the Project Manager of both its protest and its claim for compensation shall be deemed as a full and final release and waiver of any claim for extra compensation or damages therefor.

**51. Force Account.**

a. Payment under Force Account will be for the reasonable, actual and necessary direct cost of the work in accordance with the orders of the Project Manager, and in addition thereto the percentage of such cost hereafter stated. "Reasonable, actual and necessary direct cost" shall be deemed to include the following:

1. Wages of forepersons, equipment operators and skilled and semi-skilled and common laborers directly assigned to the specific operation at actual payroll rate of wages per hour and actual fringe benefits paid, labor taxes as established by law, and workers compensation and employers liability insurance, for each hour that such employees are actually engaged in the performance of the authorized work and, if directed, overtime, as provided by existing laws and regulations, as well as other insurance premium expenses, including but not limited to premiums for general liability insurance, where the such insurance premium expenses are a direct function of the foregoing wages, but only to the extent such insurance premium expenses derive solely from the foregoing wages.

2. The reasonable actual expenditure for materials (including sales tax paid, if applicable, and except as provided to the contrary in Paragraph 39 above), used up or incorporated in the work.

3. For any equipment, including machinery and trucks, mutually deemed as necessary for the performance of the work, the Project Manager shall allow the Contractor reasonable rental rates, computed as follows: (i) for all equipment rented, the Contractor will be reimbursed the reasonable actual costs based upon the receipts provided, plus an allowance for operating cost as provided in subparagraph (ii) of this subparagraph 51(a)(3).; (ii) for all equipment owned, including pumps and compressors, a reasonable hourly rate will be determined by using the reasonable monthly rental rates taken from the current edition (with updated supplements) of the Rental Rate Blue Book for Construction Equipment and dividing it by one hundred seventy-six (176); an allowance may be made for operating costs for each and every hour the machinery or equipment is actually operated in accordance with the rates listed in the aforesaid rental book; if the machinery or equipment is required to be at the work site, but is not operated, the Contractor may be compensated at the reasonable hourly rental rate, exclusive of operating costs. The Contractor will be allowed to add to the above rates the reasonable predominate areas adjustment percentage for the state as shown on the area adjustment map contained in the Rental Rate Blue Book for Construction equipment. In the case of any machinery or equipment not referred to in the Rental Rate Blue Book for Construction Equipment, a monthly rental rate shall be computed on the basis of an amount that is the equivalent of six percent (6%) of the manufacturer's list price for the sale (new) of such equipment; the hourly rate in such cases will be determined by dividing the monthly rate by one hundred sixty (160) when actually operating, and by one hundred seventy-six (176) when at the Project site, but not operating, to which no percentage shall be added. The above rates shall be for the time such equipment is required on the Project site for the performance of force account work exclusively.

b. To the reasonable, actual and necessary direct cost of the work done under Force Account as noted above, twenty percent (20%) will be added to the expenditure for labor and fifteen percent (15%) will be added to the expenditure for materials, excluding sales tax. No additions will be allowed for equipment costs, whether such equipment is rental or Contractor-owned. These percentages shall be deemed to cover the cost of heat, light, bond or bonds, use and up keep of small hand tools, administration, engineering, field and office superintendence, home office and site overhead, extended general conditions, non-payroll taxes, insurance (including general liability and non-payroll insurance), all loss, damage, risk and expenses incidental to the work and profit. The Contractor shall have no claim in excess of the above, such payments being in full compensation for the performance of such work and the furnishing of such materials and for all expense in connection therewith and incidental thereto.

c. Should the Contractor subcontract any portion of the work, with the prior written approval of the Project Manager, payment for that portion will be computed as the reasonable, actual and necessary costs defined above (exclusive of any profit to the Subcontractors), plus the percentages allowed, plus eight percent (8%) mark-up of the total paid to the Subcontractor. No additional percentage mark-up by or for any additional tiers of Subcontractors will be allowed.

d. The Contractor shall submit daily a statement in duplicate of work done on a Force Account

basis within twenty-four (24) hours of the time the work is done, and representatives of the Project Manager and the Contractor shall make daily comparison of the time and rates of labor, material used, etc., as shown therein. After correction, if necessary, this comparison shall be signed by each and filed with the Project Manager and the Contractor. The Contractor shall submit to the Project Manager monthly, prior to each Current Estimate, four (4) copies of an itemized statement of the amount and value of labor and materials furnished, accompanied by the original invoices for work performed under a Subcontract, and by an affidavit certifying the correctness of such statement. The Project Manager shall have access to any books, vouchers, time sheets, records, and memoranda showing the labor employed and the materials actually used on the specific operation and the actual net cost thereof, for the Contractor and any Subcontractor(s). Daily force account time sheets must include the name and job titles of employees, actual starting and quitting times, and the total number of hours worked each day by each employee.

e. Work done under Force Account shall be subject to all of the requirements of the Contract. It shall be prosecuted in an orderly, reasonable and economical way, and the prices paid for labor and material and the method of prosecuting the work shall be subject to the approval of the Project Manager. Neither work nor material will be paid for under Force Account unless it is ordered as such in writing.

**52. Lump Sum Bid Breakdown; Applications for Payment.** In order to assist the Project Manager in estimating approximate quantities and the value of the work performed, the Contractor shall furnish in writing to the Project Manager within thirty (30) days after the issuance of the Notice to Proceed, an apportionment of any lump sum Quote (the "Lump Sum Bid Breakdown") showing in detail its component parts. The Lump Sum Bid Breakdown shall be subject to the approval of the Project Manager. In addition, the Contractor shall furnish within sixty (60) days of the commencement of the work, and thereafter every thirty (30) days until Substantial Completion of the work, an application for payment (the "Application for Payment") which shall set forth in detail the approximate quantities and value of the work performed as of the date of the Application for Payment in conformity with the approved Lump Sum Bid Breakdown. The Contractor shall certify that the information set forth in the Application for Payment is true, correct and complete, and accurately and fairly represents the work performed to date by the Contractor in accordance with the Contract Documents.

**53. Current Estimates.**

a. The Project Manager, after receipt of an Application for Payment, shall prepare a current estimate (the "Current Estimate") of the approximate quantities and value of the work performed at intervals of about one (1) month during the progress of the work, except that the first Current Estimate may be prepared within sixty (60) days of the commencement of work under the Contract, provided at all times, however, that the Contractor is in compliance with all of the requirements of the Contract and the value of the work done during the time covered by the Current Estimate exceeds the amount of fifteen hundred dollars (\$1,500). The City shall make payments to the Contractor on the basis of the Current Estimates, when approved by the Project Manager. The City shall have no obligation to pay interest on the amount due under any Current Estimate, any provision of Applicable Law to the contrary notwithstanding. Payments on uncompleted items will be for the value of work done and materials furnished, as apportioned by the Project Manager. The Current Estimates are approximate only, and subject to correction in the Final Estimate. The payment of a Current Estimate shall not bind the City to the acceptance of any materials furnished or work performed by the Contractor. The City shall not be precluded from later contesting a Current Estimate and shall enjoy every legal defense, or other claim or counter-claim, in recoupment or otherwise, by reason of the character, quality, and quantity of the work and materials covered by a Current Estimate, notwithstanding payment of a Current Estimate.

b. The City may withhold payment for deficient items according to the terms of the Contract. The City shall pay the Contractor according to the provisions of 62 Pa. C.S.A. §§ 3931 et seq., as amended, Subchapter D, Prompt Payment Schedules, for all other items which appear on the Application for Payment and have been satisfactorily completed. If the City withholds payment from the Contractor for a deficient item, it shall notify the Contractor of the deficient item within sixty (60) calendar days of the date that the City received the Application for Payment.

c. Subject to the provisions of subparagraph (e) below, Current Estimates on Contracts which include the furnishing or installing of electrical, mechanical, plumbing, heating, and other equipment, systems or

components especially fabricated as part of the work under the Contract, which are subject to mechanical or electrical test, will include payment of invoice or invoices previously paid by the Contractor, not to exceed ninety percent (90%) of the amount shown on the Lump Sum Bid Breakdown approved by the Project Manager for such equipment, systems or components, when such equipment is delivered to the site, City property, or a bonded warehouse approved by the Project Manager. The City shall pay the balance of ten percent (10%) upon completion of successful testing of such equipment, systems or components, and acceptance thereof by the City. If no invoice is available, the City will pay the Contractor fifty percent (50%) of the cost of such specially fabricated equipment, systems or components, in conformity with the Lump Sum Bid Breakdown when delivered to the site, City property, or a bonded warehouse approved by the Project Manager, and an additional forty percent (40%) when such equipment, systems or components are installed and ready for test. The City shall pay the balance of ten percent (10%) upon completion of successful testing of such equipment, systems or components, and acceptance thereof by the City. The Current Estimates described in this subparagraph shall be reduced by the retainage required under Paragraph 54 below.

d. Subject to the provisions of subparagraph (e) below, Current Estimates may also include, when authorized by the Project Manager, an amount equal to the actual cost of specially fabricated materials and equipment not subject to electrical or mechanical test, furnished but not incorporated into the work, provided that the quantity allowed does not exceed the corresponding quantity estimated in the Contract Documents. The Current Estimates described in this subparagraph shall be reduced by the retainage called for in Paragraph 54 below.

e. Before including payments for equipment and materials described in subparagraphs (c) and (d) above in a Current Estimate, the Project Manager must be satisfied that:

1. the equipment and materials are properly stored, insured and protected through appropriate security measures;

2. paid invoices of suppliers support the Contractor's actual net cost for the equipment and materials;

3. the equipment and materials will be incorporated in the work under this Contract within a reasonable period; and

4. the Contractor assumes full responsibility for the safe storage and protection of the equipment and materials. If the equipment and materials paid for hereunder are damaged, stolen or prove to be unacceptable, the payment made therefor shall be deducted from subsequent estimates and payments unless the equipment and materials are promptly replaced to the satisfaction of the Project Manager and in conformity with the requirements of the Contract Documents. Equipment and materials shall be available for inspection and inventory at the storage site by the Project Manager or his or her authorized representative at all times. Upon payment, title to all such equipment and materials shall be vested in the City, free and clear of any and all debts, claims, liens, mortgages, taxes and encumbrances. The Contractor, at its own expense, shall execute such documents and take such other steps as reasonably required by the City to vest the aforesaid title in the City.

f. The Contractor for itself and any and all Subcontractors acknowledges and agrees that neither the Contractor nor any Subcontractor has any right to file a mechanics', materialman's or other lien against the Project site under the Pennsylvania Mechanics' Lien Law of 1963, Act of August 24, 1963, P.L. 1175, 49 P.S. § 1101 *et seq.*, as amended, or under any other law.

**54. Retainage.** Act 57 of 1998, 62 Pa.C.S. §3921, as amended, shall govern the withholding of retainage on the Contract. Provided that the Contractor is making satisfactory progress and is in compliance with all of the requirements of the Contract and there is no specific legal or other basis for the withholding of greater amounts, retainage under the Contract shall be ten percent (10%) of the amounts due the Contractor until fifty percent (50%) of the work under the Contract is completed, at which time one-half (½) of the amount then retained shall be returned to the Contractor, and thereafter five percent (5%) of the amounts due the Contractor until substantial completion of the Contract.

**55. Semi-Final Estimate and Punchlist.**

a. Upon substantial completion of the Contract, the Contractor shall submit an Application for Semi-Final Estimate (the "Application for Semi-Final Estimate"), which shall include a request for a semi-final inspection of the work under the Contract. The Project Manager shall make a semi-final inspection within thirty (30) days of the City's receipt of the Application for Semi-Final Estimate and request for inspection. If, based on said inspection, the City determines that the Contractor has Substantially Completed the work under the Contract, the Project Manager shall issue a certificate of Substantial Completion, which shall include the punchlist items required under subparagraph 55(b) below, and the Project Manager shall process the Semi-Final Estimate. The City shall, upon receipt of said Application for Semi-Final Estimate and upon receipt by the City of any guarantee bonds and other written warranties which may be required in accordance with the contract to ensure proper workmanship for a designated period of time, make payment on the Semi-Final Estimate within forty-five (45) days after issuance of the Certificate of Substantial Completion, except as provided in Paragraph 54 above, and less such additional sums as the City may withhold pursuant to this Paragraph 55. The City shall have the same right to withhold payment from the Semi-Final Estimate as is set forth in subparagraph 53(b) above with respect to Current Estimates. The City shall pay interest on the amount due under the Semi-Final Estimate to the extent provided by Applicable Law. Except as provided in Paragraph 54 above, the Semi-Final Estimate shall reduce the retainage withheld by the City to one and one-half (1½) times the amount required to complete any remaining uncompleted items of work, provided that the Contractor has made satisfactory progress towards completion of the Contract and is in compliance with all of the requirements of the Contract and provided there is no legal or other basis for the withholding of a greater amount. The City reserves the right to withhold additional retainage to the extent the same as is permitted under 62 Pa.C.S. § 3921, as amended.

b. Upon preparation of the Semi-Final Estimate, the Project Manager, with the assistance of the Contractor, shall list in detail and in comprehensive fashion the remaining uncompleted items of work, and a reasonable cost of completion for each item on said list, or such other basis for payment thereof as may be provided in the Contract (which ever method may apply pursuant to the Contract), in an official punchlist which shall thereafter be issued in writing to the Contractor. If the Contractor disputes any of the items on the official punchlist, the Contractor must notify the Project Manager in writing, detailing the items in dispute and the nature of its dispute, with all supporting documentation, within five (5) days after receipt of the official punchlist. The Contractor must commence work on the official punchlist within ten (10) Working Days after receipt of the official written punchlist. The Contractor shall thereafter proceed promptly and expeditiously to complete the official punchlist items, and shall give notice to the Project Manager in writing of the date on which the Contractor completes the official punchlist items. The Contractor shall perform and complete all work on the official punchlist at its sole cost and expense and at no additional cost or expense to the City, subject to payment of the Final Estimate under Paragraph 56 below. The Contractor's work in completion of the official punchlist items shall in all respects be governed by the requirements of the Contract Documents.

**56. Final Estimate and Inspection.** The Project Manager shall conduct final inspection of the work, including the completion of all punchlist items, after completion of all punchlist items to the Project Manager's satisfaction and within thirty days (30) of receipt of the Contractor's formal written request for such final inspection and application for Final Estimate (the "Application for Final Estimate") (which request the Contractor shall not make until completion of the punchlist items). After the punchlist inspection, and provided that all the requirements of the Contract Documents have been complied with to the satisfaction of the Project Manager, including completion of all official punchlist items, the Project Manager will prepare a final payment (the "Final Estimate") and, based upon the Final Estimate, the City will pay the balance due to the Contractor, after all allowable additions and deductions have been made, by checks drawn by the City Treasurer or assessment bills as provided in Paragraph 57 below, or a combination of these two methods of payment. The foregoing to the contrary notwithstanding, the City shall have the same right to withhold payment from the Final Estimate as is set forth in subparagraph 53(b) above with respect to Current Estimates.

**57. Assessment Bills.** Where required by ordinance of the City Council of the City, the Contractor shall receive, and accept as payment, assessment bills against abutting property, as compensation for furnishing materials, labor, tools, and equipment, and for doing the work set forth in the Contract Documents. The Contractor shall collect such assessment bills at its own cost, and employ all legal remedies or proceedings, whether by lien, civil action, or otherwise, including recourse to the appellate courts, to which the City may be entitled. The

Contractor acknowledges and understands that the City does not in any way guarantee either the value, or the collection, of any assessment bill or bills, and that in the event of neglect to properly file and collect the assessment bill or bills, no recourse shall be had to the City by reason thereof. The Contractor hereby accepts and assumes all risk of failure to collect any such assessment bill or bills.

**58. Contractor Claims.**

a. Except as otherwise provided in these Standard Contract Requirements, the Contractor must notify the Project Manager in writing of any and all claims whatsoever relating to or arising out of Contractor's performance of the work under the Contract within ten (10) days of the event or occurrence giving rise to the claim, except where a shorter time is specified by the Contract Documents. The written notice of claim to the Project Manager shall provide a detailed statement of and basis for the claim, with supporting documentation attached. For purposes of this Paragraph 58, a "claim" shall mean a demand or assertion by the Contractor seeking, as a matter of right, an adjustment or interpretation of the Contract, payment of money, extension of time or other specific relief with respect to the terms and conditions of the Contract. The Project Manager will review all claims submitted by the Contractor and shall approve or reject each claim in whole or part, or shall request additional documentation in support of the claim from the Contractor.

b. The City and the Contractor hereby release and waive any and all claims against each other for consequential damages arising out of or related to the Contract and the work performed thereunder. This mutual release and waiver includes damages incurred by the Contractor for principal home office expenses, including home office overhead and the compensation of personnel stationed there, for losses of financing, business, and reputation, and for loss of profit associated with any other work, except anticipated profit arising directly from the Contract and the work thereunder. Nothing hereunder shall preclude, however, the assessment by the City of liquidated direct damages, when applicable in accordance with the Technical Specifications, General Bidding and Contract Requirements, and other applicable locations in the Contract Documents, or damages pursuant to Paragraph 25(h) above.

c. After Substantial Completion of the work under the Contract, but prior to the Contractor's acceptance of the Final Estimate, the Contractor shall notify the Project Manager in writing of any and all unresolved and previously asserted claims relating to or arising out of the work. The Contractor's written notice of claims to the Project Manager shall list the claims by number, assign a dollar value to each claim, and provide a detailed statement of each claim, with supporting documentation attached, including a copy of the notice by which the Contractor first brought the claim to the attention of the Project Manager.

d. Failure of the Contractor to notify the Project Manager of any claims in accordance with subparagraphs (a) and (c) above, and the Contractor's acceptance of and negotiation of payment under the Final Estimate under Paragraph 55 above, shall constitute and operate as a full and final release and a waiver of all such claims by the Contractor.

**59. Review by Project Manager of Contractor Claims and Compulsory Non-Binding Mediation of Contractor Claims.**

a. Within thirty (30) days after receipt of the Contractor's notice to the Project Manager under Paragraph 58(c) above, the Project Manager shall review all identified claims of the Contractor and shall notify the Contractor whether the claims are approved or rejected, in whole or in part.

b. Any claim of the Contractor which shall have been rejected by the Project Manager, in whole or in part, shall be subject to non-binding mediation. Mediation of the claim shall be an irrevocable condition precedent to institution of legal proceedings by the Contractor against the City with respect to such claim.

c. The Contractor must submit its demand for mediation to the Project Manager and the City of Philadelphia Law Department, c/o Chief Deputy City Solicitor, Affirmative and General Litigation Unit not later than 30 days after the Project Manager's notice of rejection. Failure of the Contractor to submit such claim to mediation within this time period shall be an absolute bar to institution of legal proceedings by the Contractor.

d. The Contractor shall submit a written timely request for mediation to the Project Manager and the City of Philadelphia Law Department, c/o Chief Deputy City Solicitor, Affirmative and General Litigation Unit. Upon submission of the claim to mediation, the City and the Contractor shall endeavor to resolve the claim by mediation in accordance with such rules as may be mutually agreed upon by the City and the Contractor.

e. The fee of the mediator, who shall be selected jointly by the parties, and the common expenses and costs incurred in connection with conduct of the mediation, shall be borne equally by the City and the Contractor. The mediation shall be conducted in the City of Philadelphia. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

**60. Contractor's Liability for Services and Materials.**

a. Notwithstanding the acceptance and approval by the City of any work the Contractor shall continue to be responsible for the professional quality, technical accuracy and the coordination of all work under the Contract. The Contractor shall, without additional compensation, correct any defects, deficiencies or omissions in the work.

b. The City's review, approval, or acceptance of, or payment for, any of the work performed under the Contract shall not constitute any representation, warranty, or guaranty by the City as to the substance or quality of the work 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 the Contract, nor of any cause of action arising out of the performance of the Contract. No Person shall rely in any way on such review, approval or acceptance by the City. The Contractor shall be and remain liable in accordance with the Contract and Applicable Law for all damages to the City caused by the Contractor or the work under the Contract. Review, approval or acceptance by the City or the Project Manager under the 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 of police powers under applicable law.

**61. False Claims.** The Contractor covenants and agrees that it shall promptly reimburse the City for (a) all sums paid to the Contractor by the City as a result of any false, fictitious or fraudulent billings, invoices, contract overcharges, and the like, and (b) all other costs which are incurred by the City as a result of the false fictitious or fraudulent billings, invoices, contract overcharges and the like. The Contractor further covenants and agrees that it shall promptly reimburse the City for all expenses and costs, including but not limited to attorneys' fees and expenses, incurred by the City in recovering any such sums from the Contractor. This Paragraph shall survive termination of the Contract and completion of the work under the Contract.

**E. MATERIALS, WORKMANSHIP, AND INSPECTION**

**62. Materials and Workmanship.** The materials used in the work under the Contract shall conform to the requirements of the Plans, Technical Specifications and Standard Details and Specifications, as the same may be applicable. The workmanship shall be equal to the best standard practices. Work of reconstruction and restoration of privately-owned structures adjacent to the Project site shall be as set forth in the Plans and Technical Specifications or otherwise by written agreement with the owner or owners of such structures. Where no requirements are specified for materials or for the methods of testing materials or equipment, such materials or methods shall at least equal the latest standard or tentative specifications of nationally recognized standardizing agencies, such as the American Society of Mechanical Engineers, the latest codes of the National Board of Fire Underwriters or, as they apply, any regulations of the City.

**63. Inspection.** All of the work of the Contract shall be subject to general direction and inspection of the Project Manager or the Project Manager's designated representatives, and the Contractor shall afford every opportunity for the inspection of materials and workmanship. Authorized representatives of the City shall be permitted access at all reasonable times to all portions of the work, and to such portions of the place of manufacture of fabricated materials as may be necessary for complete inspection. Before beginning work the Contractor shall notify the Project Manager of the type and source of supply of the principal materials which the Contractor proposes to furnish, and, as soon as possible thereafter, shall furnish samples of materials, fixtures, and appliances for approval by the Project Manager. Before removal of any excess excavated material, waste, refuse,

or rubble, etc., from the site, the Contractor shall furnish to the Project Manager a list of certified dump site or landfill locations that are to be utilized for disposal of such waste materials and written verification that permission for the disposal of the waste materials has been obtained. Before beginning the fabrication of materials, equipment or systems, and before shipping materials, equipment or systems of a specified type, the Contractor shall notify the Project Manager in ample time to permit inspection at the place of manufacture or shipping, should the Project Manager so desire. Such materials, equipment or systems shall be delivered to the Project site properly marked for identification, and shall be subject to re-inspection and final acceptance or rejection at the Project site by the City. The Contractor shall deliver materials, equipment and systems to be inspected at the Project site in ample time for such inspection and testing. No materials, equipment or systems shall be incorporated into or used in connection with the work until accepted by the Project Manager, and all materials, equipment or systems rejected by the Project Manager as unsuitable or not in conformity with the Plans or Technical Specifications shall be immediately removed from the work. Unless otherwise specifically provided for, the City shall bear the cost of inspection and testing. All work shall be prosecuted in the presence of the City's Inspector ("Inspector"), and conformity with the requirements of the Contract Documents. The Contractor shall provide for inspection and testing to be carried out during regular working hours unless specifically authorized or directed otherwise by the Project Manager. The presence of the Inspector shall not affect in any way the duty of the Contractor to complete the work in accordance with the Contract Documents, nor be deemed a defense on the part of the Contractor for default or violation of the Contract. The Inspector is not authorized to waive, amend, revoke, alter, enlarge, relax, or release any of the requirements of the Contract Documents.

**64. Investigation of Work.** If the Project Manager at any time has reason to suspect that the Contractor may have delivered any unsuitable, unfit or otherwise defective work, the Project Manager may order an investigation thereof, and the Contractor shall furnish the necessary labor and equipment for such investigation. If the City finds that any part of the work is defective, the Contractor shall repair, replace or reconstruct such work to the satisfaction of the Project Manager, and the cost thereof and of such investigation shall be the sole responsibility of the Contractor. If the work is found to be in accordance with the Contract Documents, the City will reimburse the Contractor, in accordance with Paragraph 51 above, for the expense of the examination.

**65. Defective Work or Material.** The Contractor shall remove, at its own expense, any work or material rejected by the Project Manager as unsuitable, unfit, or otherwise defective and not in accordance with the Contract Documents, and shall repair, replace or reconstruct the same without additional compensation. Failure to do so shall be deemed a violation of Contract and shall be subject to the provisions of the Contract concerning violations and defaults. Any omission or failure on the part of the Project Manager to disapprove or reject any work or material shall not be construed to be an approval or acceptance of any such defective work or material. For any work or material that is determined to be defective and not in accordance with the Contract Documents, but which in the sole determination of the Project Manager cannot be remedied or does not require total replacement, the Project Manager shall determine an appropriate credit due the City from the Contractor.

## F. CONSTRUCTION REQUIREMENTS

**66. Prosecution and Performance of Work.** The Contractor's methods for the performance of the work must be those best adapted for the safe, efficient, and expeditious prosecution of the work, with a minimum of interference to adjoining work sites, to adjoining properties, and to public traffic and convenience. The Contractor shall prosecute the work vigorously, without delay, and with such workforces and equipment as shall be satisfactory to the Project Manager. The Contractor shall furnish and supply all labor and materials, in the quantity and of the quality required for the proper and timely performance of the work under the Contract; all such materials shall be of the best kind and quality and subject to the inspection and approval of the Project Manager. The Contractor shall strictly conform to the orders, instructions and directions given by the Project Manager, it being expressly understood and agreed that the decision of the Project Manager on any questions arising in connection with the performance of the work under Contract shall be binding and conclusive upon the Contractor. The Contractor shall supervise and direct the work, and Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of its work under the Contract. Before commencing the work, the Contractor, when required by the Project Manager, shall submit for approval its proposed methods of prosecution of the work, including the maintenance



of both vehicular and pedestrian traffic; underpinning, bulk heading, shoring; sinking foundations; handling spoil; lighting; fencing; street surfaces; drainage; and all other branches of its work operation. Such approval is intended to safeguard the City's interest, but such approval will not be deemed to relieve the Contractor of its obligation or responsibility for the safe and proper conduct of the work. The Contractor shall at all times ensure that its work site, and its Subcontractors' personnel, while performing any part of the work under this Contract, are and remain free of the influence of alcohol or illegal drugs. The Contractor shall at all times enforce good discipline and order among its employees, and shall not employ any unfit Person or anyone not skilled in the task assigned. Any contact by the Contractor or its employees with adjacent property owners, passing motorists or pedestrians, and the general public shall at all times be professional, courteous, and respectful.

**67. Right of Way.** Where work is constructed on private property in the lines of an unopened street, the City guarantees the Contractor, for access and construction purposes, the area only within the lines of said street. Where work is constructed over private property, not within the lines of any street upon the City plan, the City guarantees the Contractor right-of-way between lines not more than twenty-five (25) feet, each side, beyond the outside lines of the structure to be built, unless otherwise provided for, with right of access only within the lines of this strip and subject to the limitations of existing structures. Where work is constructed within the lines of an open street, the City guarantees the Contractor use of the area only within the lines of the street, and subject to the requirements of the Standard Contract Requirements and Technical Specifications for maintenance of travel, existing structures, and access to abutting properties.

**68. Maintenance of Traffic and Access to Property.** Traffic of all kinds shall be maintained continuously and access to buildings shall be provided for at all times, except where otherwise specifically permitted by the Contract Documents, or where temporary interference is authorized by the Project Manager, in which case it shall be interrupted only for such time as is necessary to provide temporary substitutes for surfaces disturbed by the construction and to restore street and sidewalk surfaces after the completion of the work. Suitable bridges or other means of access shall be built and maintained to permit owners and occupants to reach their premises. Where necessary, the Contractor shall maintain proper and easy means for passengers to enter or exit public transportation. Where partial occupation of the street is allowed, materials and equipment shall be so placed as to ensure a minimum of interference with traffic; no materials shall be placed on the sidewalk within one foot of the curb line, and a clear sidewalk passage not less than four (4) feet in width shall be maintained at all times. The work shall be so conducted that annoyance to residents and interference with the normal use of the properties will be reduced to a minimum. The flow in gutters and inlets shall be maintained. When access to any adjacent property is temporarily cut off, owing to occupancy of the street by the Contractor, the Contractor shall render every assistance to the owner or occupant in handling materials of every description that must be delivered to or removed from such property, including recyclables, rubbish, and garbage, and such materials shall be taken to or from the nearest accessible point that, in the opinion of the Project Manager, is convenient for handling. No additional compensation will be allowed for the various items of expense noted above in this Paragraph 68.

**69. Maintenance of Waterways.** In navigable streams all work shall be carried on in full compliance with the requirements of the United States Department of the Army, the Commonwealth, the City and any other governmental or quasi-governmental agency, authority or commission having jurisdiction under Applicable Law. Movement of boats and vessels of all kinds shall be maintained unless the United States Department of the Army or any other governmental or quasi-governmental agency, authority or commission having jurisdiction under Applicable Law shall permit interference, and then only within the limits and times specified. Should the Contractor, during the progress of the work, sink, lose, or throw overboard any material, plant, equipment, machinery, etc., which may be dangerous to or obstruct navigation, the Contractor shall forthwith recover and remove the same. The Contractor shall give immediate notice to the proper authorities of such obstruction, and, if required, the Contractor shall, under the direction of such authorities mark or buoy such obstructions until the same are removed. Upon the completion of any work affecting waterways of any character, all equipment and materials deposited in such waterways shall be removed unless otherwise ordered or permitted, so as to leave an unobstructed channel of the same width and depth and with the banks, retaining structures, or wharves in a condition equal to that existing before the beginning of work.

**70. Access to Fire Hydrants and Fire Alarm Boxes.** Fire hydrants shall be left at all times clear of obstructions and readily accessible to fire apparatus. No material or other obstructions shall be placed within ten

(10) feet of a fire hydrant. Fire alarm boxes shall be supported and protected and maintained so as to be readily accessible and open to view. Excavation shall be decked or bridged, where necessary, to permit the safe passage of fire apparatus and to give access to fire hydrants and to adjacent buildings for the extinguishing of fires. Where necessary, branch pipes shall be extended from the nozzles of the fire hydrants to the mains. Fire hydrants and any branch pipes shall be protected from freezing, and the fire hydrants (particularly the high pressure type) shall, where necessary, be braced or tied to the connecting pipes to prevent movement under water pressure.

71. **Temporary Buildings.** Buildings, fences, trailers, and equipment erected or provided by the Contractor shall be neat in appearance. Except as provided in Paragraph 74 below, no advertising matter, other than Project information and the name and address of the Contractor, shall be displayed on the work or any such buildings, fences, trailer or equipment.

72. **Danger Signals.** The Contractor, at Contractor's own expense, shall erect and maintain all necessary barricades, and danger signs and signals. The Contractor shall keep adequate lights burning from sunset until sunrise, and shall provide security personnel as necessary for the safety of the public. The Contractor shall observe such rules relative to signals and safeguards as the police regulations, harbor regulations, and other Applicable Laws require.

73. **Street Closings and Detour Signs.** In the event that the work requires the closing of a street or roadway, the Contractor shall first obtain a permit from the City's Department of Streets. When the Department of Streets gives permission to close a street or roadway during Contract operations and to divert the traffic therefrom, the Contractor, at the Contractor's sole expense, shall erect and maintain appropriate traffic and highway barricades, detour signs, and any other necessary traffic signs in order to safely protect vehicular and pedestrian traffic. The Contractor shall notify the Department seven (7) days prior to the date of starting work and one (1) day prior to the date of completion. Copies of these notices shall be sent to the Traffic Engineer of the Department of Streets.

74. **Contract Identification Signs.** The Contractor shall, unless specified otherwise in the Technical Specifications, at Contractor's own expense, erect and maintain in a prominent position upon the Project site at a location approved by the Project Manager, a suitable sign, plainly lettered with the name and address of the Contractor, the character of the work and the name of the Department under which the Contract is being carried out. No advertising matter other than the signs above noted shall be displayed on the work.

75. **Safety and Sanitary Provisions.** The Contractor shall provide means and appliances and shall enforce suitable rules for the safe prosecution of the work and for the safety and health of the work force employed on it. The completed portions of the work shall be kept clean and in a sanitary condition. The Contractor shall provide and maintain properly secluded sanitary conveniences, in accordance with existing regulations of the Department of Public Health, for the use of Contractor's work force, and the Contractor shall strictly enforce the exclusive use of them by its work force.

76. **Storage Space.** Buildings, yards, or sidings that may be required for the delivery or storage of materials shall be provided by and at the cost of the Contractor. The Contractor may not use streets for storing materials unless otherwise specifically authorized in writing by a permit issued by the City's Department of Streets. Upon request of the Project Manager, the Contractor shall furnish a copy of any agreement for the use of a property or building for construction purposes, except where owned by the Contractor.

77. **Night Work.** Work during the night shall be carried on with due regard to the comfort of, and so as to minimize any disturbance to, nearby residents, and the methods to carry out such work shall be subject to the approval of the Project Manager, who may, if conditions so require, order that no night work be done in specific localities. The Contractor's work force shall refrain from loud noises, calls, whistles, and the operation of air compressors, rock drills, riveting machinery, and blasting between the hours of 7:00 p.m. and 7:00 a.m. unless specifically permitted by the Project Manager.

78. **Power and Light.** In developed portions of the City, and elsewhere when ordered by the Project Manager, the Contractor shall use either electric, compressed air or internal combustion engine power. When compressed internal combustion engines are used the exhaust shall be muffled. None but electric lights

shall be used in or under buildings or anywhere on the work below the surface of the street.

**79. Use of Water.** Permission for the use of City water shall be obtained directly from the Philadelphia Water Department. Water may be obtained through a hydrant attachment or as otherwise specified in the Technical Specifications. In all cases, the Contractor shall obtain and use such water in accordance with regulations of the Water Department. If the Contractor shall, at any time, waste water (as determined by the Project Manager) obtained from the Water Department, the Project Manager shall revoke permission for such use. No charge will be made for the use of water actually used for the construction work, unless specifically set forth elsewhere in the Technical Specifications.

**80. Prevention of Dust and Smoke.**

a. The Contractor shall keep the surface of the sidewalks and streets affected by its work, including decking and temporary paving, in a clean, neat condition. The Contractor shall sprinkle with water or otherwise treat the surface sufficiently to keep down any dust generated during the progress of work. Piles of dirt or other material shall not be left on the surface. The aforementioned requirements are not intended to take the place of the usual duties of the Department of Streets but to supplement them. No fires of any kind or burning of debris on the site or adjacent to it will be permitted; the debris shall be disposed of off the Project site.

b. The Contractor shall comply strictly with the provisions of the Air Pollution Code (Title 3 of The Philadelphia Code, as amended).

**81. Explosives.** If any blasting is involved in the performance of the Contract, the Contractor must obtain a blasting permit from the Department of Licenses and Inspections. Such permits will be issued only upon approval of the Fire Marshal and posting of bond or Certificate of Insurance covering personal injuries and property damage. Blasting may be done only by blasters duly licensed by the City. Storage of explosives and transportation of explosives to the site also require permits, which are issued by the Department of Licenses and Inspections, subject to prior approval of the Fire Marshal.

**82. Work in Freezing Weather.** Masonry of all kinds, pointing, grouting, plastering, and other work subject to the action of frost shall not be done when exposed to freezing weather, except under conditions where the Project Manager may specifically direct or permit such work, subject to the heating of materials, the protection of finished work and such other measures as may be deemed necessary. If operations are suspended on account of freezing weather, the entire work shall be properly protected until the resumption of work is permitted. If a suspension of the work on account of freezing weather or from any other cause is necessary, the site shall be cleaned up, left in good order, and continuously maintained by the Contractor during the period of such suspension.

**G. SURFACE, SUBSURFACE, AND OVERHEAD STRUCTURES**

**83. Completeness of Data.** The term "structures" used in these Standard Contract Requirements shall apply to all surface, underground, and above-ground structures of whatever character within the Project site or immediately adjacent thereto, including buildings situated in or adjacent to the excavation. Where these structures are shown or indicated on the Plans, the information provided is in accordance with the information in the possession of the Department, but is approximate only. Such data are not warranted or guaranteed by the Department to be either complete or correct, and the Contractor shall and must assume, and adjust its Quote to account for, all risks resulting from conditions in the field that differ from the approximation shown.

**84. Support and Protection.** All structures, unless specifically designated by the Project Manager to be abandoned or relocated, shall be supported and protected at all times from destruction or injury, including damage from freezing, and maintained continuously in service. Should any injury occur while the work is in progress and the structures are under the protection of the Contractor, the Contractor shall fully restore such structures to as good condition as existed before the injury was done. All such support and protection work, and also such alterations of any structures as the Contractor may carry out for the Contractor's own convenience in executing the work, shall be done without additional compensation, unless otherwise specifically provided for in the Contract Documents. The City makes no covenant, representation or warranty as to the right of the

City or the Contractor to carry out any such support or protection work, or any alterations of any structures for the Contractor's own convenience; all such work being in any and all events subject to the consent and approval of the owner or owners of such structures.

**85. Structures Interfering with Construction.** If, in the course of the work, the Contractor determines that any of the existing structures occupy space required by the structure or its appurtenances to be constructed under the Contract, or that such structures are so situated as to render it impracticable, in the opinion of the Project Manager, to do the work called for under the Contract in the manner specified, the Contractor shall excavate and uncover the portions of such structures in service and shall notify the Project Manager, who will, if reasonably practicable, arrange for the alteration, relocation or removal of the interfering structures or appurtenances within a reasonable time. The Contractor shall not move nor disturb such structures in any way without prior approval by the owners thereof, and the approval of the Project Manager. Any such action by the Contractor shall be at the Contractor's sole cost, risk and expense. Structures belonging to the public utility companies, which are ordered by the Project Manager to be removed or relocated, will be so removed or relocated and permanent supports placed, in general by their owners without cost to the Contractor. The Contractor, however, shall support and protect them up to the time of their removal, shall co-operate with such owners during the process of relocation, and shall maintain and protect such structures if and when such structures are relocated within the Project site or immediately adjacent thereto. Such work shall be done without additional compensation. Sewers, water pipes, electrical conduits, and other City-owned structures shall be altered, relocated, or reconstructed as shown on the Plans or as may be ordered in the course of the work. Payment for this work will be made at the applicable prices in the Contract unless otherwise specifically provided for. If the Project Manager approves a request by the Contractor to effect a temporary or permanent relocation of structures for Contractor's own convenience, and satisfactory arrangements can be made with the owners thereof, the Contractor may carry out such work at its own expense.

**86. Abandonment of Structures.** In the case of structures the service of which is permanently abandoned, the Project Manager will designate which such structures or portions of such structures the Contractor may salvage and which the Contractor may abandon in place on the Project site, including in the trench. The Contractor shall remove and deliver to a designated point of storage materials salvaged, and payment therefor will be made at the appropriate prices of the Contract, unless otherwise specifically provided. The Contractor shall allow owners of privately owned structures reasonable facilities for salvaging their property. Structures designated as abandoned shall become the property of the Contractor, and shall be removed from the work, unless the Project Manager has approved abandonment of such structures in place on the Project site.

**87. Co-operating with Public Utility Companies and City Departments.**

a. The Contractor shall at all times during the performance of the work fully comply with the Underground Utility Line Protection Law (Act 287 of 1974, as amended by Act 121 of 2008), 73 P.S. § 176 et seq., otherwise known as the PA One Call System.

b. The Contractor shall co-operate with other contractors and with the employees, officers, and agents of the City Departments or the various public utility companies which own, operate, or have supervision over the underground or above-ground structures encountered by the Contractor, and shall conform to the requirements of the owners of such structures in regard to their safe maintenance. The Contractor shall give to authorized representatives of the City Departments and public utility companies unrestricted access at all times to the excavation and site to inspect the condition and support of their structures at no additional cost to the City. Suitable arrangements shall be provided to facilitate access to valves and manholes if necessary. Ventilation openings shall be provided where gas is likely to accumulate. Where structures are to be constructed by the Contractor under the facilities of any public utility, the Contractor shall make suitable arrangements with the public utility company for the removal or support and maintenance of such facilities at no additional cost to the City.

**88. Gas Pipes.** Philadelphia Gas Works ("PGW") will make any necessary alterations to the gas mains or gas service pipes, without expense to the Contractor, unless specifically indicated elsewhere in the Contract Documents. PGW will by-pass the gas service in temporary pipes laid outside such excavation, in advance of the construction work. The mains and services that have been removed may be replaced in their permanent position

after the backfilling has been sufficiently compacted.

**89. Traffic Control Apparatus.** The Contractor acknowledges that the underground location of conduit and cables for traffic signals at intersecting streets is not ordinarily shown on the Plans for the work. Where traffic signals are indicated on the Plans, but the location of connecting conduit or cables for the signals is not shown, the Contractor shall nonetheless assume that there are underground conduits and cables that may affect or interfere with the performance of its work and the Contractor shall adjust its Quote accordingly. The Contractor shall support and maintain in their present locations, or in approved temporary locations, any existing traffic control masts, signals, apparatus, and their connecting underground or above-ground conduits and cables, in such condition as to permit the uninterrupted functioning of the signals during the progress of the work, on temporary poles if necessary, and in a manner satisfactory to the Department of Streets. If the existing signal apparatus is supported on poles and these poles are moved to a temporary location during the progress of the work, the Contractor shall either erect temporary signal poles in the approximate locations of the original poles and erect the signals thereon, or shall extend the electrical connection to the poles as relocated as may be ordered by the Project Manager. Upon the restoration of surface conditions, the Contractor shall restore the equipment, including underground or above-ground conduits and cables and electrical connections, to its original position and condition. This work, except new masonry, shall be done without additional compensation to the Contractor. Masonry piers will be paid for at the applicable unit prices.

**90. Vaults.** The City will secure the vacating of vaults interfering with the work without expense to the Contractor; but reasonable time shall be allowed the owners for the removal of materials and of any mechanical or other equipment that may be installed therein. These vaults will be vacated to the extent necessary, in the opinion of the Project Manager, to do the work called for under this Contract, including underpinning. The Contractor shall make arrangements with the owners of such vaults in regard to its occupation thereof and shall give the owners at least two (2) weeks' notice of Contractor's intention to remove or break into the walls.

**91. Street Lighting Units.** Whenever it is necessary to remove, relocate, or adjust street lighting units, or poles, the work shall be reviewed and approved by the City's Department of Streets – Street Lighting Division. All such street lighting work shall be performed at the sole expense of the Contractor and at no additional cost to the City, unless otherwise pre-approved in writing by the Project Manager and the Street Lighting Division.

#### **H. MISCELLANEOUS PROVISIONS**

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

**93. Binding Upon Contractor's Successors, etc.** The Contract shall be binding upon the Contractor's heirs, executors, administrators, and successors and assigns and such successors and assigns shall be responsible for the faithful performance and completion of the Contract work.

**94. Amendments; Waiver.** The Contract may not be amended, supplemented, altered, modified or waived, in whole or in part, except by a written Amendment, or other writing, signed by the Parties, or as provided in Paragraphs 20 and 21 above concerning cancellation of the Contract by the Contractor and termination for convenience by the City, or as provided in Paragraphs 48 and 49 concerning Change Orders and Disputed Change Orders, respectively. Except to the extent that the Parties may have otherwise agreed in writing in an Amendment, or other writing, no waiver, whether express or implied, by either Party of any provision of the Contract shall be deemed: (a) to be a waiver by that Party of any other provision in the Contract; or (b) to be a waiver by that Party of any breach by the other Party of its obligations under the 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.

**95. Interpretation and Order of Precedence.** If the Technical Specifications, the Proposal, or the

Plans expressly modify any of the terms, conditions, or requirements of these Standard Contract Requirements, or of the Department's Standard Details and Specifications, such Technical Specifications, Proposal or Plans shall supersede the portions of these Standard Contract Requirements or the Department's Standard Details and Specifications with which they conflict. The foregoing to the contrary notwithstanding, the City and the Contractor expressly understand that in no event shall the provisions of Paragraph 4 of these Standard Contract Requirements (with respect to test borings, test piles, and existing underground and above- ground structure locations) be superseded by the Technical Specifications, the Proposal, or the Plans.

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

**97. No Joint Venture.** The Parties do not intend to create, and nothing contained in the Contract shall be construed as creating, a joint venture arrangement or partnership between the City and the Contractor with respect to the work performed by the Contractor under the Contract.

**98. No Third Party Beneficiaries.** Nothing in the 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 the Contract. The 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 the Contract.

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

**100. Survival.** Any and all provisions set forth in the Contract which, by its or their nature, would reasonably be expected to be performed after the termination of the Contract or after full performance of the work under the Contract shall survive and be enforceable after such termination. Any and all liabilities, actual or contingent, which shall have arisen in connection with the Contract shall survive the expiration or earlier termination of the Contract, along with the following: the Contractor's warranty of its work, the Contractor's obligation to indemnify, defend and hold harmless the City, its officers, employees and agents; and the Parties' rights and obligations set forth in Paragraph 31 (Proprietary Rights Indemnity).

**101. Controlling and Pertinent Statutes.** All statutory citations in the Contract shall refer to the pertinent statute as it may be amended hereafter from time to time.

**102. 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 the Contract 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, in the case of the Contractor, to the address specified in the Quote, and in the case of the City, to The City of Philadelphia Law Department, Attention:

City Solicitor at the then-current address of the Law Department.

**103. Waiver of Jury Trial.** The Contractor 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 the Contract or the relationship created or evidenced thereby. This provision is a material consideration upon which the City relied in entering into the Contract.

**104. Headings.** The titles, captions or headings of Paragraphs, sections, exhibits or schedules in or to the Contract are inserted for convenience of reference only, and do not in any way define, limit, describe or amplify the provisions of the Contract or the scope or intent of the provisions, and are not a part of the Contract.

**105. Days.** Any references to a number of days in the Contract shall mean calendar days, unless the Contract specifies Working Days or business days.

**106. Notice.** All notices, demands, requests, waivers, consents, approvals or other communications which are required or may be given under the 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, in the case of notices to the Contractor, to the address or addresses set forth in the Contractor's Quote, and in the case of the City, to the address set forth in the City's Notice to Proceed, to the attention of the Project Manager, or to such other address as either Party may specify to the other by a notice complying with the terms of this Paragraph 106.

#### I. SPECIFIC LAWS

The following provisions are not intended to limit the applicability of any of the other provisions of the Contract:

**107. Labor-Management Relationships; Prevailing Wages.** The Contract is subject to Section 17-107, as amended, of The Philadelphia Code, "Contractors: Labor-Management Relationships", and all regulations and procedures adopted thereunder.

a. As required by Section 17-107 of The Philadelphia Code all employees performing work under the Contract shall be paid at least the applicable prevailing wages for the respective occupational classifications designated, as set forth in the minimum wage schedule attached as part of the General Bidding and Contract Requirements, and shall be given at least the applicable presently prevailing working conditions during the entire period of work under the Contract. Such working conditions are those which are given to employees pursuant to a bona fide collective bargaining agreement for the applicable craft, trade or industry in the Philadelphia area on the date the General Bidding and Contract Requirements are issued. The occupational classifications for all employees under the Contract shall be only the specific categories of jobs within a given craft, trade or industry for which a separate hourly wage rate for the Philadelphia area is determined by the Secretary of Labor of the United States, in accordance with the provisions of the Davis-Bacon Act, and which are set forth in the applicable schedule attached to the General Bidding and Contract Requirements. In the event that any Contractor believes that work under the Contract should be performed by employees in occupational classifications omitted from the schedule attached to the General Bidding and Contract Requirements, it shall so advise the Managing Director's Office (the "MDO"), Labor Standards Division, which shall remedy the omission if it agrees.

b. The City may withhold from any sums due to the Contractor under the Contract so much as may be necessary to pay the employees the difference between the wages required to be paid under this Paragraph 107 and the wages actually paid to such employees, and the City may make such payments directly to the appropriate employees.

c. Each Contractor shall require all Subcontractors to comply with and be bound by all of the

provisions of this Paragraph of the Contract and of Section 17-107 of The Philadelphia Code, and the Contractor shall insert the requirements of Section 17-107 in all Subcontracts.

d. Every Contractor and Subcontractor shall keep an accurate record preserved on employee time sheets or time cards showing the name, address, social security number, occupational classification, wages and other benefits paid or provided and number of hours worked for each employee assigned to city-work (as "city work" is defined in Section 17-107(1)(b) of The Philadelphia Code), and such record shall be preserved at the current place of business of the employing Contractor or Subcontractor for two (2) years from the date of the Final Estimate on the Contract. The Contractor shall maintain and make his or her accounting and employment records and records relating thereto available for inspection by authorized representatives of the City, at all reasonable hours, and shall permit such representatives to interview employees during the hours on the job, all without prior notice. Neither the Contractor nor any Subcontractor shall allow any employee or other person to interfere with any such inspection or interview.

e. All Contractors and Subcontractors performing city-work shall, upon request of the City, file with the MDO, Labor Standards Division a certified statement setting forth the name, address, occupational classification, wages and other benefits paid or provided and number of hours worked with respect to each employee performing city work. Such statement shall be made weekly for each preceding weekly period. The certification shall affirm that the statement is correct and complete, that the wages set forth therein are not less than those required by the Contract for city-work and that the occupational classification set forth for each employee conforms with the work performed.

f. Nothing herein shall preclude the payment by the Contractor of wages at rates higher than those specified as the minimum in the applicable schedule attached to the General Bidding and Contract Requirements. However, no increase in any Contract price shall be allowed or authorized on account of the payment of wages in excess of those so specified, or on account of wage increases granted hereafter. No increases above the amounts specified in the applicable schedule attached to the General Bidding and Contract Requirements will be required by any Contract during the term thereof except in the case of an error or omission in such schedule. Such an error or omission shall be called to the attention of the MDO, Labor Standards Division as promptly as possible; but the remedying thereof by the Department shall not constitute grounds for withdrawal of a Quote or cancellation of a Contract, nor for an increase in the Contract price or other claim or recovery against the City, nor a ground for failure or refusal to pay the applicable proper minimum to all employees.

g. The minimum wages required hereby shall be paid unconditionally without any subsequent deduction or rebate of any kind except in accordance with Applicable Law governing payroll deductions for taxes, benefits and collective bargaining charges. Any assignment of wages by an employee for the direct or indirect benefit of the Contractor shall constitute a violation of this Paragraph; and any purported release of rights under Section 17-107 of The Philadelphia Code by an employee shall be void and of no effect.

h. The Parties shall refer to Section 17-107 of The Philadelphia Code, and to the regulations to be issued from time to time by the MDO, Labor Standards Division, for further information concerning the administration of the foregoing requirements of this Paragraph 107. In addition, it shall be the responsibility of all Sellers and Contractors to inform themselves as to all prevailing working conditions, including, without limitation, length of work day and work week, overtime compensation, and holiday and vacation rights.

**108. Non-Discrimination; Fair Practices.**

a. The Parties acknowledge that they have entered into and perform the Contract under the terms of the Philadelphia Home Rule Charter, as it may be amended from time to time, and in performing the Contract, the Contractor shall not discriminate or permit discrimination against any individual because of race, color, religion or national origin. In addition, the Contractor shall, in performing the Contract, comply with the provisions of the Fair Practices Ordinance of The Philadelphia Code (Chapter 9-1100, as amended) and the Mayor's Executive Order No. 4-86, as each may be amended from time to time, both of which prohibit, among other things, discrimination against individuals because of race, color, sex, sexual orientation, religion, national origin, ancestry, age, handicap (including but not limited to Human Immunodeficiency Virus infection), marital



status, presence of children or source of income, in employment, housing and services in places of public accommodation. In the event of any breach of this Paragraph 108, the City may, in addition to any other rights or remedies available under the Contract, at law or in equity, suspend or terminate the Contract forthwith.

b. In accordance with Act 57 of 1998, 62 Pa.C.S. §3701, as amended, in the hiring of employees for the performance of work under the Contract or any Subcontract, neither the Contractor, nor any of its Subcontractors, nor any Person acting in their behalf shall discriminate, by reason of gender, race, creed, or color, against any citizen of the Commonwealth who is qualified and available to perform the work to which the employment relates. In addition, neither the Contractor, nor any of its Subcontractors, nor any Person acting in their behalf shall in any manner discriminate against or intimidate any employee hired for the performance of work under the Contract on account of gender, race, creed, or color. In addition to any other remedies available to the City, the Contract may be cancelled or terminated by the City and all money due on or to become due under the Contract may be forfeited for a violation of the terms or conditions of this Paragraph 108(b).

**109. Employment of Low - and Moderate - Income Persons.** The Contract is subject to Section 17-1000, as amended, of The Philadelphia Code, "Employment of Low- and Moderate-Income Persons by City Contractors", and all regulations and procedures adopted thereunder.

a. As required by Section 17-1000 of The Philadelphia Code, for all construction and demolition contracts entered into by the City with a total value in excess of \$150,000 (a "Covered Construction Contract"), the Contractor must certify to the Procurement Department that at least forty percent (40%) of the workers who work on a Covered Construction Contract are low- or moderate-income persons. Apprentices and those working in on-the-job training positions shall be considered workers for the purpose of meeting the requirements of Section 17-1000.

b. A low- or moderate-income person is defined under Section 17-1000 as a person whose income does not exceed more than eighty percent (80%) of the median income for the Philadelphia metropolitan area, as determined or adjusted by the Secretary of Housing and Urban Development pursuant to 42 U.S.C. §5302(a)(20), as amended. A person who no longer meets the income eligibility criteria set forth in Section 17-1000 because of employment by a party to a Covered Construction Contract, but who met the criteria on his or her date of hire, shall be deemed a low- or moderate-income person for three years from the date of hire.

c. Each Contractor shall require all Subcontractors to comply with and be bound by all of the provisions of this Paragraph of the Contract and of Section 17-1000 of The Philadelphia Code, and the Contractor shall insert the requirements of Section 17-1000 in all Subcontracts.

**110. Ethics Requirements.** To preserve the integrity of City employees and maintain public confidence in the competitive bidding system, the City intends to vigorously enforce the various ethics laws as they relate to City employees in the bidding and execution of contracts to which the City is a party. Such laws are in three categories:

a. Executive Order No. 02-04, which prohibits City employees from soliciting or accepting anything of value from any Person seeking to initiate or maintain a business relationship with the City, including but not limited to any of its departments, boards, commissions or agencies. All City employees presented with gifts or gratuities as indicated in Executive Order 02-04 have been instructed to report these actions to the appropriate authorities. All Sellers, agents or intermediaries who are solicited for gifts or gratuities by City employees are urged to report these actions to the appropriate authorities, including but not limited to the Inspector General.

b. Section 10-102, as amended, of the Philadelphia Home Rule Charter, which prohibits any Quote from being accepted from, or contract awarded to any City employee or official, or any firm in which a City employee or official has a direct or indirect financial interest. All Sellers are required to disclose any current City employees or officials who are employees or officials of the Seller's firm, or who otherwise would have a financial interest in the Contract.

c. The State Ethics Act and the City Ethics Code, which prohibit a public employee from using

his or her public office or any confidential information gained thereby to obtain financial gain for himself or herself, a member of his or her immediate family, or a business with which he or she or a member of his or her immediate family is associated. "Use of public office" is avoided by the employee or official publicly disclosing the conflict and disqualifying himself or herself from official action in the matter, as provided in The Philadelphia Code §20-608, as amended.

**111. The Philadelphia Code, Chapter 17-400.**

a. In accordance with Chapter 17-400 of The Philadelphia Code, as it may be amended from time to time, 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, without limiting the generality of Paragraph 32 (Default and Remedies), a substantial breach of the Contract entitling the City to all rights and remedies provided herein or otherwise available at law or in equity.

b. The Contractor agrees to include the immediately preceding subparagraph, with appropriate adjustments for the identity of the parties, in all Subcontracts which are entered into for work to be performed pursuant to the Contract.

c. The Contractor agrees to cooperate with the City's Commission on Human Relations in any manner which the Commission deems reasonable and necessary for the Commission to carry out its responsibilities under Chapter 17-400 of The Philadelphia Code. The Contractor's failure to so cooperate shall constitute, without limiting the applicability of Paragraph 32 (default and remedies), a substantial breach of the Contract entitling the City to all rights and remedies provided herein or otherwise available at law or in equity.

**112. Federal Laws.** The Contractor shall comply with the provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d – 2000d7), 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.

**113. Americans With Disabilities Act.** Contractor understands and agrees that no individual with a disability shall, on the basis of the disability, be excluded from participation in the Contract or from activities or services provided under the Contract. As a condition of accepting and executing the Contract, Contractor shall comply with all provisions of the Americans With Disabilities Act (the "ADA"), 42 U.S.C. §§ 12101 – 12213, as amended, and all regulations promulgated thereunder, as the ADA and regulations may be amended from time to time, which are applicable (a) to Contractor, (b) to the benefits, services, activities, facilities and programs provided in connection with the Contract, (c) to the City, or the Commonwealth, and (d) to the benefits, services, activities, facilities and programs of the City or of the Commonwealth, and, if any funds for payments by the City or otherwise under the Contract are provided by the federal government, which are applicable to the federal government and its benefits, services, activities, facilities and programs. Without limiting the applicability of the preceding sentence, Contractor 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, programs and activities provided by the City through Contracts with outside contractors.

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

a. In the performance of the Contract, the Contractor agrees that it will not utilize 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.

b. The Contractor 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 Philadelphia Code. The Contractor expressly understands and agrees that any false certification or representation in connection with this Paragraph and any failure to comply with the provisions of this Paragraph shall constitute a substantial breach of the Contract entitling the City to all rights and remedies provided in the Contract or otherwise available at law (including, but not limited to, Section 17-104 of The Philadelphia Code) or in equity. In addition, the Contractor acknowledges and understands that false certification or representation is subject to prosecution under Title 18 Pa.C.S. §4904, as amended, concerning unsworn falsification to authorities.

**115. Steel Products Procurement Act.** The Steel Products Procurement Act, 73 P.S. § 1881, et seq., as amended, shall govern payments to the Contractor under the Contract. In seeking payment under the Contract, the Contractor represents, warrants and covenants that only steel products made in the United States as defined by the Steel Products Procurement Act have been used or supplied in the performance of the Contract and all Subcontracts thereunder. Where unidentified steel products are supplied or used under the Contract, the City will not authorize, provide for, or make any payments to the Contractor for such steel products, unless and until the Contractor shall first provide to the Project Manager documentation, including, but not limited to, invoices, bills of lading, and mill certification, attesting that the steel was melted and manufactured in the United States. Where a steel product is identifiable from its face, the City will authorize, provide for, and make payments to the Contractor for such steel products, only after the Contractor shall have submitted a certification, in a form satisfactory to the Project Manager, that the Contractor has fully complied with the requirements of the Steel Products Procurement Act. Where the Project Manager has determined, in writing that a particular steel product is not produced in the United States in sufficient quantities to satisfy the requirements of the Contract, then this Paragraph shall not apply to payments for that steel product. Failure of the Contractor to comply with the Steel Products Procurement Act shall constitute a violation of the Contract which shall entitle the City to exercise all rights and remedies provided to it by the Steel Products Procurement Act and provided to it under the Contract, either at law or in equity.

**116. Business, Corporate and Slavery Era Insurance Disclosure.** In accordance with Section 17-104, as amended, of The Philadelphia Code, the Seller, after execution of the Contract, will complete an affidavit certifying and representing that the Seller (including any parent company, subsidiary, exclusive distributor or company affiliated with Seller) has searched any and all records of the Seller or any predecessor business entity 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.

The Seller expressly understands and agrees that any false certification or representation in connection with this Paragraph and/or any failure to comply with the provisions of this Paragraph shall constitute a substantial breach of this 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 Philadelphia Code) or equity and the contract will be deemed voidable. In addition, it is understood that false certification or representation is subject to prosecution under Title 18 Pa.C.S.A. Section 4904, as amended, concerning unsworn falsification to authorities.

**117. Transparency in Business Act.** If this Contract is valued over \$100,000, the following requirements shall apply:

a. After Contractor has been notified of its selection for the contract award and prior to formal written agreement to the Contract, Contractor shall disclose the following information:

1. The Contractor's and each anticipated Subcontractor's prior years of experience performing on City contracts in any capacity during the five calendar years prior to the date the application must be filed.

2. Demographic Data on all individuals employed by the Contractor and each anticipated Subcontractor on the Report Date.

3. Demographic Data on all individuals serving as board members of the Contractor on the Report Date.

4. Demographic Data on all individuals employed for each Labor Source from which workers are likely to be drawn in performance of the Contract. Submission to the Department of Labor of Demographic Data on a Labor Source by any contractor during the previous 6 months shall satisfy the disclosure requirements with respect to such Labor Sources. The Department of Labor shall provides notice no later than one week prior to the time of the opening of bids for each contract of all Labor Sources for which Demographic data has been provided during the previous 6 months.

5. Demographic Data of all employees who will perform work under the Contract.

b. At each renewal term or additional performance period, the Contractor shall submit updated Demographic Data of the individuals performing work on the Contract in the form of a supplemental disclosure. Submission of certified payroll records shall satisfy this disclosure requirement.

# INDEX To Contract Provisions

	Clause		
<b>A</b>		· Guarantee	37
Access:		· Independent	26
· Fire Hydrants and Alarms	70	· Liability for Service	60
· Property	68	· Obligations	22
· Records	38	· Performance of Work	23
Amendments; Waiver	94	· Successors	93
Anti-bid Rigging Act	5		
Assessment Bills	57	<b>D</b>	
Assignment	29	Damages, Liquidated	25
		Danger Signals	72
<b>B</b>		Default and Remedies	32
Bonds:		Defective Work or Material	65
· Bid Security	10	Definitions	1
· Payment	18	Detour Signs	73
· Performance	18	Disabilities Act	113
Borings	4	Discrimination	108, 111
		Disputed Work	50
<b>C</b>		Drawings, Shop and Working	42
Change Orders:		Dust and Smoke	80
· By Agreement	48		
· Disputed	49	<b>E</b>	
Changes to the Work	47	Employment of Low Income Persons	109
Claims	58, 61	Equipment or Material, Loaned or Rented	24
Clean-up of Project Site	36	Estimates:	
Commercial Activity License	14	· Current	53
Completeness of Data	83	· Final	56
Contract:		· Semi-Final	55
· Amount	44	Ethics Requirements	110
· Award	16	Examination, Documents and Site	4
· Cancellation	20	Exclusionary Organizations	111
· Days	105	Explosives	81
· Default	32		
· Execution	17	<b>F</b>	
· Surety	18	Federal Laws	112
· Termination	21	Fees	11
· Time for Completion	25	Final Inspection	56
Contractor:		Fire Hydrants and Boxes	70
· Co-Operation with Others	35	Force Account	51
· Co-Operation with Utilities	87		

<b>G</b>	
Gas Pipes	88
Governing Law	92
Guarantee	37

<b>H</b>	
Headings, Titles, Captions	104
Hold Harmless Clause	28

<b>I</b>	
Indemnification	28
Indemnity, Proprietary Rights	31
Inspection	56, 63
Insurance Requirements	30
Integration	96
Interpretation; Precedence	2, 95
Investigation of Work	64

<b>J</b>	
Joint Venture	97
Jurisdiction	102
Jury Trial Waiver	103

<b>L</b>	
Labor-Management Relationships	107
Lighting Units, Street Lines and Grades - City Datum	91
Liquidated Damages	43
	25

<b>M</b>	
Maintenance:	
· After Completion of Work	37
· Of Traffic	68
· Of Waterways	69
Mediation, Non-Binding	59

<b>N</b>	
Night Work	77
Northern Ireland Provision	114
Notice	106

<b>P</b>	
Payments:	
· Application for	52, 53
· Final	56
· Scope of	45
· Semi-Final	55
Permits and Licenses	34
Plans and Technical Specifications	41
Power and Light	78
Prevailing Wages	107
Project Manager; Authority and Status	40
Proprietary Rights Indemnity	31
Punchlist	55, 56

<b>Q</b>	
Qualifications of Seller	3
Quantities are Approximate	46
Quote:	
· Breakdown	52
· Comparison	15
· Processing Fee	11
· Responsiveness	9
· Restriction	6
· Security	10
· Submission	7
· Withdrawal	8

<b>R</b>	
Records, Accounting	38
Retainage	54
Risk of Loss	27

<b>S</b>	
Safety Provisions	75
Sanitary Provisions	75
Severability and Partial Invalidity	99
Signs, Identification	74
Slavery	116
Specifications, Technical	41
Statutes	101
Steel Products Procurement Act	115

Storage Space	76
Street Closings	73
Structures:	
· Abandonment of	86
· Interfering with Construction	85
· Support and Protection	84
Subcontracts	33
Survival	100

## T

Tax:	
· Indebtedness	13
· Requirements	12
· Sales, Use, Federal Excise	39
Temporary Buildings	71
Termination of Contract	21
Third Party Beneficiaries	98
Time Extensions	25
Traffic Control Apparatus	89
Traffic, Maintenance of	68
Transparency in Business Act	117

## U

Unauthorized Acts	19
-------------------	----

## V

Vaults	90
--------	----

## W

Water, Use of	79
Withdrawal of Quote	8
Work:	
· Disputed	50
· In Freezing Weather	82
· Investigation	64
· Performance	23, 66
Workmanship	62

**City of Philadelphia  
Economic Opportunity Plan**

**Renovations of the Schuylkill River Wall**

I. Introduction, Definitions, Goals and Diversity Practices

The City of Philadelphia, acting through its offices of the Division of Housing and Community Development (“DHCD”) and Office of Economic Opportunity (“OEO”) (collectively, “City”) and the Philadelphia Redevelopment Authority (“PRA”) strongly encourage the use of certified Minority (“MBE”), Women (“WBE”), Disabled (“DSBE”) and Disadvantaged<sup>1</sup> (“DBEs”) Business Enterprises (collectively, “M/W/DSBEs”) and minority and female workers in all aspects of the development and use of a parcel(s) of land located at **East Schuylkill River Wall at Reviewing stands, Kelly Drive, North of Columbia Bridge** which may include financial investment, design, construction and operations (Project). In support of this objective, City and PRA will require that the \_\_\_\_\_ (“Contractor”) of this parcel commit to this Economic Opportunity Plan (“EOP” or “Plan”) as required by Section 17-1602 of The Philadelphia Code, as amended.

This Plan contains ranges of projected M/W/DSBE utilization and goals for the employment of minority and female workers in connection with the Project. Contractor shall cause this Plan to be made part of and incorporated into all bids, proposals and solicitations and any resulting agreement(s) entered into between Contractor and any participant in connection with the development and use of the parcel. By submission of this Plan, Contractor makes a legally binding commitment to the City and PRA to abide by the provisions of this Plan which include its commitment to exercise its Best and Good Faith Efforts throughout the project and its commitment to cause its participants to use their Best and Good Faith Efforts to provide subcontracting opportunities for M/W/DSBEs in all phases of the project and to employ a diverse workforce. This Plan expressly applies to all contracts awarded in connection with the Project.

Neither Contractor nor any participant shall discriminate on the basis of race, color, religion, sex, national origin, sexual orientation, gender identity, ancestry, age, or handicap in the award and performance of contracts pertaining to this Plan. Contractor has summarized its current and past practices relating to Contractor’s diversity practices (“Diversity Practices Statement”). This statement, included as Attachment “A” to this Plan, identifies and describes Contractor’s processes used to develop diversity at all levels of Contractor’s organization including, but not limited to, board and managerial positions. This Diversity Practices Statement summarizes Contractor’s strategic business plans specific to its current or past practices of M/W/DSBE utilization on its government and non-government projects and procurement activities. Contractor further agrees to identify any “Equity Ownership” held in connection with this Project which shall mean the percentage of beneficial ownership in the Contractor’s organization or development team that is held by minority persons, women and disabled persons. In the event Equity Ownership is identified, Contractor agrees to abide by the reporting requirements enumerated in Section 17-1603 (1)(g)(.3).

Contractor hereby verifies that all information submitted to the City in response to this Plan, is true and correct and is notified that the submission of false information is subject to the penalties of 18 Pa.C.S. Section 4904 (relating to unsworn falsification to authorities) and 18

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<sup>1</sup>Disadvantaged Business Enterprises (“DBEs”) are those socially or economically disadvantaged minority and woman owned businesses certified under 49 C.F.R. Part 26.



Pa.C.S. Section 4107.2 (a)(4) (relating to fraud in connection with minority business enterprises or women's business enterprises).

For the purposes of this Plan, MBE, WBE, DBE and DSBE shall refer to certified businesses so recognized by OEO. Only the work or supply effort of firms that are certified as M/W/DSBEs by an OEO approved certifying agency<sup>2</sup> will be eligible to receive credit as a Best and Good Faith Effort. In order to be counted, certified firms must successfully complete and submit to the OEO an application to be included in the OEO Registry which is a list of registered M/W/DSBEs maintained by the OEO and available online at [www.phila.gov/oEO/directory](http://www.phila.gov/oEO/directory).

For this Plan, the term “Best and Good Faith Efforts,” the sufficiency of which shall be in the sole determination of the City, means: efforts, the scope, intensity and appropriateness of which are designed and performed to foster meaningful and representative opportunities for participation by M/W/DSBEs and an appropriately diverse workforce and to achieve the objectives herein stated. Best and Good Faith Efforts are rebuttably presumed met, when commitments are made within the M/W/DSBE Participation Ranges established for this development and a commitment is made to employ a diverse workforce as enumerated herein.

## II. Goals

### A. M/W/DSBE Participation Ranges

The City of Philadelphia has established a citywide goal of 35% M/W/DSBE utilization as informed by its Annual Disparity Study.<sup>3</sup> This citywide goal should be used as a benchmark for the Contractor’s expression of Best and Good Faith Efforts which are efforts taken by Contractor to provide meaningful and representative opportunities for M/W/DSBEs in the Project. For this project, in the absence of discrimination in the solicitation and selection of M/W/DSBEs, the percentage of MBE, WBE and DSBE participation that is reasonably attainable through the exercise of Best and Good Faith Efforts is stated below as participation ranges. These percentages relate to the good faith estimated cost of the entire Project. 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. These ranges are based upon an analysis of factors such as the size and scope of the development and the availability of MBEs, WBEs, DSBEs and DBEs to participate in this Project:

MBE	WBE
18%	7%

<sup>2</sup>A list of “OEO approved certifying agencies” can be found at [www.phila.gov/oEO](http://www.phila.gov/oEO)

<sup>3</sup> The City of Philadelphia FY’16 Annual Disparity Study recommends an overall goal of 35% based upon an analysis of FY’16 utilization and availability.

## B. Workforce Goals for a Diverse Workforce

As a benchmark for the expression of “Best and Good Faith Efforts” to provide meaningful and representative opportunities for diverse workers in the Project, the following goals have been established for the employment of minority persons and females in the Project workforce of apprentices and journeymen at the following levels<sup>4</sup>:

African American Journeypersons – 22% of all journey hours worked across all trades

Asian Journeypersons – 3% of all journey hours worked across all trades

Hispanic Journeypersons – 15% of all journey hours worked across all trades

Female Journeypersons – 5% of all journey hours worked across all trades

Minority Apprentices – 50% of all hours worked by all apprentices

Female Apprentices – 5% of all hours worked by all apprentices

## III. Responsiveness

A. Contractor shall, and shall cause its participants to identify all M/W/DSBE commitments and agree to employ a diverse workforce on the form entitled, “M/W/DSBE Participation and Workforce Commitments.” The commitments on this form constitute a representation that the identified M/W/DSBE is capable of providing commercially useful goods or services relevant to the commitments and that the Contractor and its participants have entered into legally binding agreements with the listed M/W/DSBEs for the work or supply effort described and the dollar/percentage amount(s) set forth on the form. In calculating the percentage of M/W/DSBE participation, the standard mathematical rules apply in rounding off numbers. In the event of inconsistency between the dollar and percentage amounts listed on the form, the percentage will govern.

B. M/W/DSBE commitments are to be memorialized in a written subcontract agreement. Letters of intent, quotations, contracts, subcontracts and any other documents evidencing commitments with M/W/DSBEs, including the M/W/DSBE Participation and Workforce Commitments Form, become part of and an exhibit to this Plan.

C. DHCD will review the M/W/DSBE Participation and Workforce Commitments Form for the purpose of determining whether Best and Good Faith Efforts have been made. DHCD reserves the right to request further documentation and/or clarifying information at any time during the construction and development of the Project.

D. If Contractor, its participants or any subsequent developer makes any changes in contracts that have been reviewed by DHCD under the Plan, or if Contractor at the time of Closing has not yet identified contracts entered into for the development of the Project, then Contractor, its participants or any subsequent developer shall have the obligation to inform DHCD of any changes to the approved Plan and shall use Best and Good Faith efforts to use M/W/DSBEs for any new contracts.

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<sup>4</sup> These goals are informed by the City of Philadelphia’s annual disparity assessment of workforce diversity, the “Economic Opportunity Plan Employment Composition Analysis Fiscal Year 2016.”

#### IV. Compliance and Monitoring of Best and Good Faith Efforts

A. A hard copy of this Plan, as certified below by OEO, shall be filed with the Chief Clerk of City Council within fifteen (15) days of Closing. The Plan shall be filed with:

Michael Decker, Chief Clerk of City Council  
Room 402 City Hall  
Philadelphia, Pennsylvania 19107

B. Contractor and its participants agree to cooperate with DHCD in its compliance monitoring efforts, and to submit, upon the request of DHCD, documentation relative to their implementation of the Plan, including the items described below:

- Copies of signed contracts and purchase orders with M/W/DSBE subcontractors;
- Evidence of payments (cancelled checks, invoices, etc.) to subcontractors and suppliers to verify participation; and
- Telephone logs and correspondence relating to M/W/DSBE commitments.
- To the extent required by law, the Contractor and its participants shall ensure that all its on-site contractors maintain certified payrolls which include a breakout of hours worked by minority and female apprentices and journeymen; these documents are subject to inspection by the City.

#### C. Prompt Payment of M/W/DSBEs

1. The Contractor and its participants agree and shall cause all its contractors to ensure that all M/W/DSBEs participating in the Project receive payment for their work or supply effort within five (5) business days after receipt of a proper invoice following satisfactory performance.

#### D. Oversight Process

1. Where the dollar value of development is in excess of Five Million Dollars (\$5,000,000), the Plan shall establish a Project Oversight Committee, consisting of, as appropriate, the contractor, developer or recipient of financial assistance and representatives of the Contractor, PRA, OEO, DCHD, City Council, and appropriate community organizations. Such Committee shall meet regularly, beginning no later than the initiation of the design phase of the project, and shall be responsible for facilitating compliance with the Plan. OEO will implement the Oversight Process, as required by Section 17-1603(b) of The Philadelphia Code. The Oversight Committee, through the Oversight Process, shall have within its purview the reconciliation of all compliance related issues or grievances. The Oversight Committee Process, as needed, will involve convening individual consultation or periodic small group meetings to include any or all of the constituent parties.

#### V. Remedies and Penalties for Non-Compliance

A. The Contractor acknowledges and agrees that its compliance with the requirements of this Plan is a material inducement for the Ordinance of City Council and Contractor's failure to substantially comply with the Plan may result in enforcement actions and the imposition of penalties as authorized by Sections 17-1605 and 17-1606 of The Philadelphia Code. Notwithstanding the foregoing, no privity of contract exists between PRA, the City and any M/W/DSBE identified in any contract resulting from implementation of the Plan. Neither PRA nor the City intends to give or confer upon any such M/W/DSBE any legal rights or remedies in connection with subcontracted services under any law or policy or by any reason of any contract resulting from implementation of the Plan except such rights or remedies that the M/W/DSBE may seek as a private cause of action under any legally binding contract to which it may be a party.

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PRINT NAME OF CONTRACTOR DATE

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SIGNATURE OF CONTRACTOR DATE

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OFFICE OF ECONOMIC OPPURTUNITY DATE

# CITY OF PHILADELPHIA PREVAILING WAGE RATES

Contractors and their subcontractors are required to submit weekly certified payrolls “WH347” to the Philadelphia Redevelopment Authority Wage Compliance Department, Attn: Alberta Burton-Benn. Failure to pay Prevailing Wage, as applicable, or to submit certified payroll records is a substantial breach of Contract and may be subject to fines and penalties as prescribed by Section 17-107 of The Philadelphia Code which may include withholding from any sums due to the Contractor under the Contract so much as may be necessary to pay the employees the difference between the wages required to be paid hereunder and the wages actually paid to such employees, and the Philadelphia Redevelopment Authority may make such payments directly to the appropriate employees. For any questions please contact Alberta Burton-Benn, Director, Wage Compliance, 215-448-3025, [alberta.burton-benn@phcd.phila.gov](mailto:alberta.burton-benn@phcd.phila.gov)

\*Updated Wages Rates will be issued at the Pre-Construction Meeting.