BID OPENING DATE AND TIME

On: June 21, 2013 **AT: 10:30 A.M.**

BID NO.	PAGE	INVITATION AND BID ADVERTISED	BIDDER MUST COMPLETE BELOW
T3WJ7920	1 OF 16		BIDDER AGREES TO COMPLY WITH ALL CONDITIONS OF THIS BID. UNSIGNED BIDS WILL NOT BE ACCEPTED.

This Invitation to Bid with your quotations must be received prior to the above cited bid opening date and time.

DEPARTMENT	DIVISION
FREE LIBRARY	IT

AWARDED

DATE

FOR THE PROCUREMENT COMMISSIONER

CITY OF PHILADELPHIA
PROCUREMENT DEPARTMENT
MUNICIPAL SERVICES BLDG.
1401 JFK BLVD, ROOM 170A
PHILADELPHIA, PA 19102-1685

NAME AND ADDRESS OF FIRM

Federal EIN/Social Security Number

BUYER: T. VINSON
J. WASHINGTON

TITLE OF BID: PC Leasing (Computer Equipment) Lease Public

GENERAL INFORMATION

This Invitation to Bid and Contract is issued under the Antidiscrimination Policy described in the Mayor's Executive Order 03-12.

While there are no ranges for the participation of Minority (MBE), Woman (WBE) or Disabled (DSBE) Owned Business Enterprises (collectively, M/W/DSBEs) projected for this Bid, bidders are prohibited from discriminating in their selection of subcontractors and are encouraged to use their Best and Good Faith Efforts to solicit quotes from M/W/DSBEs on an equitable basis with other firms. See the Office of Economic Opportunity (OEO) Instructions and Form which is part of this Invitation to Bid and Contract.

BID QUESTIONS

All questions concerning this Invitation to Bid, including specifications and conditions, must be presented prior to the bid opening date and time. Contact the Procurement Department, Public Information Center by calling **(215) 686-4721, 686-4720, or 686-4719** with questions.

BID SECURITY

When applicable, BIDDERS MUST SUBMIT BID SECURITY.

BID SIGNATURE

BIDDERS MUST SIGN PAGE 9 OF THE "TERMS AND CONDITIONS".

FOR CITY USE ONLY

BID SECURITY See Conditions of Bidding	MASTER BID SECURITY		CERTIFIED CHECK SUBMITTED WITH BID	
	☐ YES	☐ NO	AMOUNT	CHECK NUMBER

CITY OF PHILADELPHIA
OFFICE OF ECONOMIC OPPORTUNITY
ANTIDISCRIMINATION POLICY- MINORITY, WOMAN AND DISABLED OWNED BUSINESS ENTERPRISES
INSTRUCTIONS AND FORM
(SEALED BID CONTRACTS)

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

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

For this Bid, the City has not established ranges for the participation of MBEs, WBEs and/or DSBEs (collectively, "M/W/DSBEs"), but bidder is encouraged to exercise Best and Good Faith Efforts to include M/W/DSBEs in this bid and in bidder's supply chain. "Best and Good Faith Efforts" are those efforts, the scope, intensity and appropriateness of which are designed and performed to achieve meaningful and commercially useful participation by M/W/DSBEs. An OEO Certification Registry of M/W/DSBEs is maintained by the OEO and is available online at www.phila.gov/OEO/directory. Firms owned and controlled by minority persons, women or disabled persons, which are certified as MBE, WBE, DSBE or DBE by an approved certifying agency, including the Pennsylvania Unified Certification Program, may apply to the OEO for listing in its OEO Certification Registry.

Bidder is also encouraged to identify below, any M/W/DSBEs that will be used by bidder if successful:

Company Name	Address	Certification Status (MBE, WBE or DSBE)	Type of Work/Supply Effort
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ANTIDISCRIMINATION POLICY SOLICITATION FOR PARTICIPATION AND COMMITMENT FORM

Minority (MBE), Woman (WBE), Disabled (DSBE) and Disadvantaged (DBE) Business Enterprises [1]

DEPARTMENT OF COMMERCE

OFFICE OF ECONOMIC OPPORTUNITY (OEO)

Bid Number or Proposal Title:	*Name of Bidder/Proposer:*	*Bid/RFP Opening Date:*

List below ALL MBE/WBE/DBE/DSBEs that were solicited regardless of whether a commitment resulted therefrom. - Photocopy this form as necessary.

☐ MBE ☐ WBE ☐ DSBE ☐ M-DBE ☐ W-DBE	Work or Supply Effort to be Performed	Date Solicited		Commitment Made		Give Reason(s) If No Commitment
Company Name		By Phone	By Mail	Yes (*If Yes, give date*)	NO	
Address						
Contact Person		Quote Received		Amount Committed To		
Telephone Number / Fax Number		YES[2]	NO	Dollar Amount $		
Email Address				Percent of Total Bid/RFP %		
OEO REGISTRY # / CERTIFYING AGENCY						

☐ MBE ☐ WBE ☐ DSBE ☐ M-DBE ☐ W-DBE	Work or Supply Effort to be Performed	Date Solicited		Commitment Made		Give Reason(s) If No Commitment
Company Name		By Phone	By Mail	Yes (*If Yes, give date*)	NO	
Address						
Contact Person		Quote Received		Amount Committed To		
Telephone Number / Fax Number		YES[2]	NO	Dollar Amount $		
Email Address				Percent of Total Bid/RFP %		
OEO REGISTRY # / CERTIFYING AGENCY						

☐ MBE ☐ WBE ☐ DSBE ☐ M-DBE ☐ W-DBE	Work or Supply Effort to be Performed	Date Solicited		Commitment Made		Give Reason(s) If No Commitment
Company Name		By Phone	By Mail	Yes (*If Yes, give date*)	NO	
Address						
Contact Person		Quote Received		Amount Committed To		
Telephone Number / Fax Number		YES[2]	NO	Dollar Amount $		
Email Address				Percent of Total Bid/RFP %		
OEO REGISTRY # / CERTIFYING AGENCY						

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

SECTION 1: GENERAL SUBMISSION

1.1 **TITLE: PC LEASING(COMPUTER EQUIPMENT)LEASE PUBLIC**

1.2 **STATEMENT OF DIRECTION:**

The Philadelphia Municipal Authority (PMA), at the direction of the City of Philadelphia (City), will make an award pursuant to this Invitation and Bid on behalf of the Free Library of Philadelphia (FLP), for PC Leasing and associated services as specified herein, for the term specified in Section 1.3. The City will enter into a sublease with PMA pursuant to which the City will sublease the PCs from PMA for the use of FLP and the associated services will be delivered to FLP, on substantially the terms set forth herein. The City's Procurement Department is conducting this Invitation and Bid process on behalf of PMA. Any lease agreement resulting from this Invitation and Bid will be entered into by PMA.

1.3 **TERM OF LEASE AGREEMENT:DOA** through **10/31/17.** The City may, at its sole discretion, direct PMA to extend the Lease Agreement for up to six (6) months, in order for the FLP to continue to receive the support and maintenance services described in Section 2. Pricing for any such extension shall not exceed the on-site maintenance costs identified by the bidder in Schedule 3e of Exhibit 3.

1.3.1 An individual Performance Bond and Payment Bond is required under this Invitation and Bid, in accordance with the terms of Paragraph 13 of the Data Processing Agreement attached hereto (DPA)and in the amount of fifty percent(50%)of the total amount bid for lease and services for the term of the Lease Agreement; such bond(s) shall be and remain in full force and effect throughout the Lease Term, any Additional Performance Period, and the period of any unexpired warranty provided or required under the Lease. It is the sole responsibility of the Contractor to ensure that such bond(s) remain in full force and effect as provided in this Section 1.3.1, and failure to do so shall be an event of default pursuant to Paragraph 8 of the Data Processing Agreement. The bond(s) shall be on the City's form.

1.4 **CONTRACT TYPE: LEASE AGREEMENT**

1.4.1 The following items are required in the operation of various City agencies, as required and ordered by the City. Exact quantities cannot now be determined but estimates thereof are listed herein. Quantities listed may be increased or decreased to meet the requirements of the City during the period of this lease. A minimum is not guaranteed. Purchase orders issued as a result of this bid will be for materials or services to be delivered generally on an as-ordered basis.

Successful vendors are cautioned not to deliver any materials or services without first being advised to do so by the ordering agency.

1.4.2 PMA, at the direction of the Procurement Department, will make an award for an equipment lease as set forth in this Invitation and Bid, for the period as stated above, subject to the appropriation of funds in succeeding fiscal year/years by City Council. The City's fiscal year is from July 1st to June 30th inclusive.

Commodities or services on the bid to be ordered after the end of the fiscal year are subject to the issuance of purchase orders by PMA for the following fiscal years. Neither the City nor PMA is liable for the award involving following fiscal years' funds until such orders are issued.

The Contractor's obligation to deliver on such purchase orders shall not take effect until the orders are issued.

1.4.3 By signing and submitting its bid in response to this Invitation and Bid, Contractor agrees (i) to lease to PMA the PCs and associated equipment and software provided in Section 2.3, such leased PCs and associated equipment and software being collectively referred to herein as the "Equipment"; and (ii) to provide to FLP the services provided in Section 2.4. Title to the Equipment shall not pass to the City nor to the PMA. At the end of the term of the Lease Agreement, the Contractor shall remove the Equipment as provided in Section 2.4.8.

1.4.4 The Equipment shall be leased to PMA in accordance with the lease terms set forth in Exhibit 6 (in addition to the terms and conditions of this Invitation and Bid). Notwithstanding the foregoing, PMA will consider bids with different lease terms and reserves the right to award a bid proposing lease terms differing (in whole or in part) from the terms set forth in Exhibit 6, or to require the use of the lease terms set forth in Exhibit 6, in PMA's sole discretion.

1.4.5 PMA will consider bids that require assignment of lease rights and obligations to a third party in accordance with Section 1.d) of Exhibit 6 (and notwithstanding Paragraph 10 of the attached Data Processing Agreement.) The bid must clearly identify any such proposed assignee in the space provided in Section 5 (Pricing). The Contractor may not assign any other rights and obligations set forth in this Invitation and Bid (including, but not limited to, any of the obligations set forth in Section 2.4, Services Specification, and/or Exhibit 1,Statement of Work) without obtaining in advance the express written consent of PMA as provided in Paragraph 10 of the Data Processing Agreement.

1.4.6 This Invitation and Bid, executed by the successful bidder as provided herein, shall become the Lease Agreement between the successful bidder and PMA, binding PMA to the terms and conditions herein, upon execution by the Executive Director of PMA and issuance of a purchase order by PMA as set forth in Section 1.4.1.

1.5 **BID INFORMATION:**

1.5.1 All information concerning this Bid will be contained in this Invitation and Bid document as issued or amended.

1.5.2 Information provided verbally by any official or employee of the City or PMA shall not be binding or a part of this Invitation and Bid.

1.5.3 Any questions about this Invitation and Bid should be directed to the Procurement Department employee listed on the cover letter. Please address all questions to him/her prior to returning the document, so all questions may be addressed and answered.

1.5.4 Defined terms used in this Invitation and Bid have the meaning set forth in the attached Data Processing Agreement.

1.6 **BID SUBMISSION:**

1.6.1 Bids must be complete and include ALL information required, as described in the various paragraphs of the specifications (Section 2 and any Attachments) and elsewhere herein.

1.6.2 All pricing must be completed on the forms provided (Section 5); be complete; and be in ink or typed.

1.6.3 Bids must be complete as to required signatures and corporate seal, and must fully accept the terms and conditions contained herein, except as set forth in Section 1.4.4. If the Contractor submits counter terms and conditions it will delay the contracting process. Subject to Section 1.4.4, counter terms and conditions MAY, in PMA's sole discretion, preclude ordering or paying for products and services from the Contractor, or may, in PMA's sole discretion, result in disqualification of the bid as non-responsive.

1.6.4 **CONTACT PERSON:**

Indicate below to whom in your firm questions concerning the Contract resulting from award of this Bid should be directed:

Name:_____

Address:_____

City/State/ZC:_____

Telephone No.(_____)_____Ext.:_____

Fax No.(_____)_____

E-Mail Address: _____

1.6.5 Vendor agrees that any price list or other literature to be submitted with its Bid is for verification of price, product or specifications only. Any additional terms or conditions contained therein, including, but not limited to, disclaimers or limitations of liability, shall not be part of the Lease Agreement or bind PMA to any terms other than those set forth in this Invitation and Bid.

1.6.6 Return the completed Invitation and Bid to the individual noted on the cover letter on, or before, the date designated on the same cover letter.

1.7 **BID SECURITY:**

All bids submitted with a total greater than $30,000.00 must be accompanied by the proper Bid Security. For the purposes of this bid, the Master Bid Security Program is not applicable. Bidders instead MUST submit with their bid a refundable Certified, Treasurer’s or Cashier’s Check, Bank Money Order or United States Postal Money Order in the amount of $2,000.00.

1.8 **BID PROCESSING FEE:**

All bids submitted with a total greater than $30,000.00 must be accompanied by the proper Bid Processing Fee. For purposes of this bid ONLY, bidder MUST submit with their bid a non-refundable check or money order payable to the City of Philadelphia in the amount of $30.00 to cover the bid processing fee. Failure to submit the bid processing fee may result in disqualification from bidding.

SECTION 2: SPECIFICATIONS

2.1 **Overview of Services/Equipment Requested**

2.1.1 Successful vendor shall be required to supply PMA with a PC Leasing Package as listed in Sections 2 and 5 of this Invitation and Bid.

2.1.2 On behalf of The Free Library of Philadelphia (FLP), PMA seeks to lease (for a 4 year term) 1,095 computers, in accordance with the specifications set forth in Sections 2 and 5, and Microsoft Windows 7 64-bit Ultimate Operating Systems, for three configurations (one for use by FLP patrons, one for use by the Public for Special purposes such as printing and reserving PCs, and one for use by FLP staff) at fifty-three (53) FLP facilities: including all forty nine (49) Branch Libraries and special PC configuration installations at the four (4) main and regional libraries including Central Library, Northeast Regional Library, Joseph E. Coleman-Northwest Regional Library, and West Philadelphia Regional Library.

2.1.3 Vendor is required to provide **PCs** and **Monitors** as specified in Sections 2 and 5 of this Invitation and Bid, or equivalent.

2.1.4 Vendor is required to provide 4 years of maintenance coverage as provided in Section 2.1.15, below; in Section 1.2.5 of Exhibit 1; and in the DPA.

2.1.5 Vendor is required to provide Project Management for equipment installation.

2.1.6 Vendor is required to validate equipment configurations and confirm compliance with manufacturer’s specifications. In the event the quoted model is not available at the time the order is placed an equivalent or higher grade model will be provided at no additional cost to the PMA subject to approval of FLP’s Chief Technology Officer.

2.1.7 Vendor is required to stage PC equipment in vendor’s warehouse

2.1.8 Vendor is required to provide configuration (assembly, testing/burn-in) of units in vendor’s warehouse.

2.1.9 Vendor is required to install an FLP-provided (ghost) image on leased PCs and to provide necessary project management coordination.

2.1.10 Vendor is required to deliver PCs to fifty-three(53) designated sites.

2.1.11 Vendor is required to de-install existing equipment (and stage for removal) from 6 sites. De-installed PCs are leased by the City and will be removed from site by the current vendor under contract with the City.

2.1.12 Vendor is required to break down and stage all new PC boxes and packing material and unnecessary cables and cable ties from new and old PCs. FLP will coordinate the disposal of the boxes and packing material with internal resources.

2.1.13 Vendor is required to install 1,075 of the leased PCs in the fifty-three (53)facilities listed in Section 2.1.2, above.

2.1.14 Vendor is required to complete all PC installations by September 30, 2013. Due to replacement of existing leased PCs the date is firm; provided, however, that requests for extension of this deadline may be considered in the event of delay caused by PMA or FLP.

2.1.15 MAINTENANCE AND SUPPORT. Vendor is required to provide on-site maintenance of PC hardware, including all required parts and labor, through the term of the Lease Agreement, and must restore the equipment to full operability in conformance with all manufacturers' specifications within one (1) business day after notification by FLP, in accordance with Paragraph 6 of the DPA. Vendor should provide two prices that include pricing for a technician stationed at FLP premises performing repair services at FLP branches as directed by FLP staff (and coordinating all related paperwork).

2.1.16 Upon expiration of the term of the Lease Agreement, the awarded vendor shall be responsible for the removal of the leased PCs (not to include de-installation service, for which the City will be responsible, itself or through its contractor) from the 6 sites.

2.2 **Data Processing Agreement, Invitation and Bid, Exhibits**

2.2.1 The attached Data Processing Agreement (DPA) is made part of this Invitation and Bid. Reference in the DPA to the City of Philadelphia and its departments are deemed to refer to PMA acting as the City's agent.

2.2.2 In the event of any discrepancies between the attached Data Processing Agreement and this Invitation and Bid, the Invitation and Bid document shall govern.

2.2.3 In addition to the DPA, the following Exhibits are attached and made part of this Invitation and Bid: Exhibit 1, Scope of Work; Exhibit 2, Business Functional Requirements; Exhibit 3, Products and Services; Exhibit 4, Testing Requirements; Exhibit 5, Performance Requirements; and Exhibit 6, Lease Terms and Conditions.

The Vendor must complete all schedules in Exhibit 3.

2.2.4 The Vendor is required to provide the detail of the PCs and the Monitors they are proposing with their response submissions.

2.3 Equipment Specifications

There are three (3) equipment specifications to accommodate separate functions. The first equipment specification is the Public PC Specification, set forth in Schedule 3b of Exhibit 3, Products and Services. The second is the Administrative/Staff PC Specification for PCs for all other uses and is a higher end business grade PC, as set forth in Schedule 3c of Exhibit 3, Products and Services. The third is the Special Use Public PC Specification for PCs for public uses such as printing and reserving PCs and is a lower end business grade PC, as set forth in Schedule 3d of Exhibit 3, Products and Services.

2.4 Services Specification

Vendor is required to perform all items of work identified in Exhibit 1, Statement of Work, including but not limited to:

2.4.1 PROJECT MANAGEMENT. Vendor is required to provide Project Management for installation of PCs and all associated logistics.

2.4.2 HARDWARE STAGING AND CONFIGURATION.

2.4.2.1 Vendor is required to validate equipment configurations and confirm all equipment conforms to manufacturer’s specifications and to the specifications of this Invitation and Bid.

2.4.2.2 Vendor is required to stage PC equipment in vendor warehouse

2.4.2.3 Vendor is required to provide configuration (assembly, testing/burn-in) of units in vendor warehouse

2.4.2.4 Vendor is required to provide and affix asset tags to all units before delivery

2.4.3 SOFTWARE INSTALLATION AND CONFIGURATION. Vendor is required to install an FLP provided (ghost) image on leased PCs and provide necessary project management coordination.

2.4.3.1 The vendor will receive a ghosted image from the Free Library Information Technology staff to use to configure the workstations.

2.4.3.2 Multiple images will be used in the process for the following: (1) All Public PCs; (2) All Staff and Administrative PCs; and (3) Special Use PC Images. A fourth image will be created for Access Technology Workstations but not be a part of the required installation or services.

2.4.3.3 The image consists of standard Microsoft software and several Library selected educational packages.

2.4.3.4 FLP Technology staff project manager, in coordination with the vendor designated project manager will provide all special instructions for post installation and testing.

2.4.4 DELIVERY

Vendor is required to deliver 1,095 PCs to fifty-three designated sites.

2.4.4.1 The vendor will provide five (5) workstations (two (2) public, two (2) staff/admin, and one (1) special use) to be used in the full installation at least six (6) weeks before the rest of the installation begins. No image load will be required on these PCs. These will be used by the Free Library Information Technology staff to test desktop configurations and create required Ghost Images.

2.4.4.2 The vendor will deliver 1,095 PCs to fifty-three (53) Library sites, all (49) branch libraries, three (3) Regional Libraries, and the Central Library - delivery and installation schedules are specified in Exhibit 1.

2.4.5 DEINSTALLATION. Vendor is required to de-install existing equipment (and stage for removal) from the forty-nine (49) installation sites and only partial removal in four (4) additional sites (note: de-installed currently used PCs are leased and will be removed from site by the current vendor under contract with the City).

2.4.6 INSTALLATION

2.4.6.1 The vendor will install 1,075 units at fifty-three (53). (The remaining 20 PCs, including 15 Access Technology workstations and 5 test development PCs, will be delivered by the vendor as directed by FLP but installed by FLP staff.)

2.4.6.2 Vendor is required to complete all PC installations by September 30, 2013. Due to replacement of existing leased PCs the date is firm, subject to Section 2.1.14 above.

2.4.6.3 The vendor will be responsible for installing the pre-configured workstations on existing furniture at the specified locations, adding the workstations to the Free Library network, and post-installation testing of the workstation. It is not desired to place any PCs inside of locked cabinetry.

2.4.6.4 The vendor will stage replaced equipment (CPU’s, monitors, and cables) for removal by the current lesson unless otherwise instructed by Free Library Information Technology staff at the time of installation.

2.4.6.5 The vendor will break down and stage all new PC boxes and packing material and unnecessary cables and cable ties from new and old PCs. The Free Library will coordinate the disposal of the boxes and packing material with internal resources.

2.4.6.6 Vendor will provide an inventory of all new workstations including asset tag number or id, hostname, role of machine (public, staff, administrative), physical location, IP address, MAC address, special software, special configuration, Network Operating System, and serial numbers in a standard format to be mutually agreed upon. This inventory should be derived from the leasing company asset records.

2.4.6.7 Data drops and electrical power will be available at each location. Should the vendor experience difficulties that prevent installation, Free Library Information Technology staff should be notified immediately.

2.4.6.8 The Free Library Project Manager and the vendor project manager will establish a specification that is mutually agreeable as to the physical arrangement of the workstation before the installation begins. Length of keyboard and mouse cables, wire management practices, monitor placement and any aspect of installation that may impact the comfort of the end user will be agreed upon as part of the installation specifications. These specifications may vary from place to place but will be clearly determined prior to installation.

2.4.6.9 At the conclusion of the installation the vendor and the Free Library's Project Manager will conduct an inspection. Any outstanding problems, malfunctions or errors will be documented and submitted to the vendor.The vendor will submit a proposed solution for approval by the Free Library's Project Manager. Upon approval and completion of the proposed solution the Free Library Information Technology staff will conduct another inspection to verify that the installation is completely successful. This process will be reiterated until no problems remain.

2.4.6.10 The vendor is not responsible for any data migrations – this will be performed by FLP staff.

2.4.7 MAINTENANCE AND SUPPORT

Vendor is required to provide on-site maintenance of PC hardware, including all required parts and labor, through the term of the Lease Agreement, and must restore the equipment to full operability in conformance with all manufacturers' specifications within one (1) business day, in accordance with Paragraph 6 of the DPA.

Vendor should provide pricing that includes: pricing for a technician stationed at FLP premises performing repair services at FLP branches as directed by FLP staff at (and coordinating all related paperwork).

2.4.8 EQUIPMENT REMOVAL

Upon expiration of the lease, the vendor shall be responsible for the removal of the leased PCs (not including de-installation service) from the 6 sites identified in Exhibit 1.

2.5 **Pricing**

2.5.1 In Section 5, "Pricing", vendor shall submit firm pricing for the following equipment, including pricing for support provided by staff stationed at FLP premises as set forth in Section 2.4.8 of this Invitation and Bid (I&B):

2.5.1.1 **28210 007 007** - Lease Price per Month for Public PC Equipment

2.5.1.2 **28210 007 004** - Lease Price per Month for Administrative & Staff PC Equipment

2.5.1.3 **28210 007 008** - Lease Price per Month for Special Use Public PC Equipment (printing, reservations, etc)

2.5.2 Lease price per month shall include all charges for all products and services required under this Invitation and Bid. Neither the City nor PMA shall be obligated to make any payment additional to the lease price per month for any such products or services.

2.5.3 Vendor must complete all schedules in Exhibit 3.

2.6 **Delivery:**

Delivery Addresses and inventory are provided in Exhibit 1. Prior to the time of delivery and installation all addresses MUST be validated by the vendor and FLP project managers. Vendor must complete Section 5, “Type of Transportation”

SECTION 3: EVALUATION AND AWARD

3.1 **EVALUATION**

3.1.1 Bids will be evaluated by the Procurement Department, on behalf of PMA, and by PMA.

3.1.2 Bids will be evaluated for responsiveness to the specifications and for responsibility of the Contractor.

3.1.3 A bid which is determined to be non-responsive because it includes counter-terms or conditions may be disqualified by PMA. The decision of PMA is final. A respondent which is determined to be non-responsible may be disqualified by the PMA. Factors affecting determination of a vendor’s responsibility may include, but are not limited to, the financial and technical capacity of a third party, if any, to which the respondent intends to assign lease rights and obligations in accordance with Section 1.4.5 above and Section 1.d of Exhibit 6. The decision of PMA is final.

3.2 **AWARD**

3.2.1 This Invitation and Bid shall be awarded as a whole to the lowest responsible, responsive vendor.

3.2.2 Performance Security - For purposes of this Bid ONLY, Contractor is to submit with its bid a non-refundable check or money order payable to the City of Philadelphia to cover Performance Security. The Master Performance Security Fee shall be based on Paragraph 13 of the DPA.

3.2.3 Insurance Requirements - Insurance is a requirement for this Lease. See Paragraph 12 of the DPA. Certificates of Insurance shall be returned with this Proposal. No Lease will be executed nor purchase order issued unless and until all required insurance certificates, in the required amount, are received. **All insurance MUST meet the following requirements:**

- Insured must be in the same name and address as the Vendor
- The insurance carrier must be rated "A" or better by AM Best
- The certificate holder must be PMA and City of Philadelphia, and the City and PMA must each be specifically named as an additional insured on the certificate in the "Description of Operations section."
- Certificate must be signed by an authorized representative of the insurance company/carrier.

All certificates are to be sent to the Office of Risk Management, One Parkway, 1515 Arch Street, 14th Floor, Philadelphia, PA 19102, Attn. Debbie Lawton or FAX to (215) 683-1705.

SECTION 4: LEASE MANAGEMENT

4.1 **CITY OF PHILADELPHIA RESPONSIBILITY**

4.1.1 **Order Against Lease Agreement**

Subsequent to conformance of Lease Agreement resulting from this Invitation and Bid, purchase orders will be issued at such time that the service is needed. Such purchase orders will show if delivery

4.1.2 **ADD-ONS**

PMA, if and as directed by the City, reserves the right to add, delete and/or acquire other product/services that the vendor can supply that are similar to, but not specifically called for in this Invitation and Bid. The procedure for such acquisitions shall be as follows:

Procurement or the using department will obtain from the Contractor a letter (on his/her letterhead) verifying the items to be added. The letter shall include the complete description of the item, the location (if applicable), the bid number, the price to the City and the applicable Lease Agreement period; and upon receipt and approval by the Procurement Department shall automatically become part of the Lease.

4.2 **VENDOR RESPONSIBILITY**

4.2.1 Contractor may deliver only service as authorized in the Lease Agreement and only after receipt of a purchase order or other authorized document from PMA. All orders must be in writing. Contractor shall not accept verbal delivery requests until after receipt of purchase order or other authorizing document from PMA. PMA shall have no payment or other responsibility unless or until a purchase order is issued.

4.2.2 Contractor may deliver only service at the prices quoted in the lease and that are reflected on the purchase order.

4.2.3 In the event that the contractor receives an order for services not specifically priced and incorporated into the lease, he must:

(i) bring this to the immediate attention of the FLP and PMA, and
(ii) notify the ordering agency in writing and refuse to deliver.

4.2.4 Should services be delivered that are not specifically incorporated and priced into the contract, and/or be delivered without purchase order, neither the City nor PMA shall have any obligation for payment.

4.2.5 For performance of services, contractor shall honor and be paid for orders placed until the close of business of the date of purchase order expiration. Performance of services may occur following purchase order expiration, so long as the order was placed prior to the purchase order expiration date.

4.3 **VENDOR ACCEPTANCES - BY SUBMITTING AN EXECUTED BID, THE CONTRACTOR AGREES TO THE LEASE MANAGEMENT PROCEDURES IN THIS SECTION.**

SECTION 5: PRICING

(PRICES QUOTED MAY NOT EXCEED THREE (3) DECIMAL PLACES)

Unit pricing quoted below will prevail in case of any discrepancy(ies) between unit price and the extended amount and will be the determining factor in establishing applicable lease amount(s)/award.

5.1 On-Site Maintenance Performed by Vendor's Technician Stationed at FLP Premises, as described in Section 2.4.8

ITEM	Unit price per month Each PC	Number of Months		Annual Price per Each PC		Total number of PCs		Total Amount
5.1.1 **28210-007-007** Lease Price per Month for Public PC Equipment (Estimated Quantity of 535)		48	=		x	535	=	
5.1.2 **28210-007-004** Lease Price per Month For Administrative and Staff PC Equipment (Estimated Quantity of 414)		48	=		x	414	=	
5.1.2 **28210007-008** Lease Price per Month For Administrative and Staff PC Equipment (Estimated Quantity of 146)		48	=		x	146	=	
TOTAL						1,095		

5.3 If vendor's bid proposes assignment of lease rights and obligations to a third party, as described in Section 1.4.5 above, vendor must identify such proposed assignee in the space below, including full corporate name and address and the name, address, telephone and email address of its authorized contact person:

Assignee Name:_____

Address:_____

City/State/ZC:_____

Authorized Contact:_____

Address:_____

City/State/ZC:_____

Telephone No.(_____)_____Ext.:_____

E-Mail Address: _____

(VENDOR MUST COMPLETE ALL SCHEDULES IN EXHIBIT 3)
VENDOR TO STATE HOW PRODUCT(S), SUPPLIES AND/OR PARTS ARE TO BE DELIVERED TO THE CITY OF PHILADELPHIA: (E.G. ON-SITE DELIVERY VIA AWARDED VENDOR'S TRUCK, UNITED PARCEL, U.S. POSTAL SERVICE ETC.).

TYPE OF TRANSPORT: _____

EXHIBIT 1 - STATEMENT OF WORK

This Statement of Work (SOW) defines the scope of work to be performed by [INSERT CONTRACTOR NAME] Corporation ([INSERT CONTRACTOR NAME] or Contractor) to provide PC equipment and installation services to the Free Library of Philadelphia's (FLP or City) [INSERT CONTRACTOR NAME] to replace existing leased PCs in all Branch Libraries, and all special use PCs only in 4 additional Libraries, including all Equipment, Hardware and Software, Documentation, Deliverables and Services required therefore, as set forth in this Statement of Work, the Data Processing Agreement (DPA), and Invitation and Bid (collectively, the Free Library Branch PC Lease or Free Library Leased PCs). This SOW further specifies the tasks to be performed by FLP to execute the installation of all PCs. In this SOW and Exhibits 2-5 to the DPA, capitalized terms shall have the meanings provided in *Paragraph 2, Definitions, of the DPA* unless expressly provided otherwise.

The Free Library Leased PCs encompass computer equipment for Library staff use and use by Patrons of the Library to run the daily operations of Library city-wide system. The staff PCs are the primary means of accessing and operating the Library's Integrated Library System (ILS) that effectively manages the entire inventory of the Library's $445 million library materials assets. These PCs also are the primary access to the Library's main catalog for staff and patrons. The Library's catalog is accessed well over a half million times per month and has an anticipated access in excess of 6.3 million annually. The Library has a circulation of approximately 7 million annually – a circulation that is fully managed by the Integrated Library System using the PC equipment that will be replaced. The patron PCs are used an average of 250,000 times per quarter or roughly 1 million times per year.

The Free Library's Branch PCs are all leased presently and will come to term on June 30, 2013, however, the Library will extend the present lease by a minimum of 3 months to provide ample time for the installation of the new PCs.

This Statement of Work has the following sections: Project Scope, Key Assumptions, Approach, Detailed work plan delineating [INSERT CONTRACTOR NAME] responsibilities and FLP Responsibilities, Project Plan, Completion Criteria, and Requirements for commencement of Lease Payments.

1.1. Project Scope in General

1.1.1. Project Management of the acquisition and delivery of 1,095 PCs and the installation of 1,075 PCs

1.1.2. Validate equipment configurations and order all PCs

1.1.3. Staging of PC equipment in vendor warehouse

1.1.4. Configuration (assembly, testing/burn-in) of units in vendor warehouse

1.1.5. Provide and affix asset tags to all units before delivery

1.1.6. Installation of an FLP provided image on leased PCs and necessary project management coordination

1.1.7. Delivery of PCs to 53 designated sites in phases

1.1.8. De-installation of existing equipment (and staging for removal) from 53 sites (note: de-installed PCs are leased and will be removed from the site by appropriate vendor)

1.1.9. Break down and staging of all new PC boxes and packing material and unnecessary cables and cable ties from new and old PCs. The Free Library will coordinate the disposal of the boxes and packing material with internal resources.

1.1.10. Installation of new leased PCs in phases

1.1.11. Completion of all PC installations by September 30, 2013 (note: due to replacement of existing leased PCs the September 30, 2013 date is firm – some minimal PC installs can go beyond September 30, 2013 – to approximately the end of December because they are not replacing leased PCs).

1.1.12. Maintenance of PC hardware and software through the term of the lease (4 years) – FLP requires an on-site maintenance presence.

1.2. Key Assumptions

This Statement of Work and CONTRACTOR's prices to perform the Work are based on the following key assumptions.

1.2.1. Changes to the work.

Contractor's performance of certain key tasks is dependent on the City's completion of tasks for which the FLPis responsible, as well as tasks for which the Contractor is responsible. All such tasks for which the FLP is responsible are identified as FLP tasks in this Statement of Work. FLP or Contractor failure to complete tasks for which it is responsible in a timely manner may require a change to the project scope and/or the project time of performance.

Either party may request a change in project scope or a change in project time of performance, including, but not limited to, changes the requesting party contends are necessary on account of a failure of either party to perform in a timely manner. It is the responsibility of the FLP Project Manager and the CONTRACTOR Project Manager to (1) determine the impact of a proposed change on project scope and/or project time of performance (as reflected in the revised Project Plan and Detailed Work Plan provided in Section 1.2.2 below); (2) prepare a mutually satisfactory written change order setting forth the change; (3) present the change order to the FLP Project Manager and FLP Chief Technology Officer for approval; and (4) implement the required change if the change order is approved in writing by both parties.

In no event shall Contractor proceed with any change to the project scope, or any change to project time of performance, nor shall the FLP be obligated to pay for any change to the project scope or project time of performance, unless both Contractor and the FLP have agreed to and executed a written change order setting forth, in reasonable detail, the agreed change to the work, Contractor's price (if any) to perform the change, and the impact on the revised Project Plan and revised Detailed Work Plan provided in Section 1.2.2. Change orders shall be on a form agreed to by Contractor and the FLP. Change orders may be executed only by the following authorized personnel:

For Contractor: Project Manager

For the FLP: Chief Technology Officer or Director of Information Technology

1.2.2. Project Plans; Status Reports and Meetings. The expected installation dates and response/turnaround times for review of deliverables are as provided in the Project Plan (Section 1.6 of this SOW) and Detailed Work Plan (Section 1.4 of this SOW). Within fifteen (15) business days after all parties execute the Contract, Contractor will submit to the FLP a revised Project Plan and revised Detailed Work Plan that fully reflects the agreement of the parties as to

the tasks and activities comprising the project and the start and finish dates for each. The revised Project Plan and revised Detailed Work Plan shall be consistent with the Plans provided in Sections 1.4 and 1.6; shall include at least all tasks and activities there provided, together with (i) such additional tasks and activities, and (ii) such additional detail in the descriptions of tasks and activities, as the FLP requires; shall reflect the times of performance for specific tasks and activities there provided (except as agreed otherwise by the FLP); and shall provide for the same overall time to complete the work there provided. The revised Project Plan and revised Detailed Work Plan shall be deliverables under the Contract, subject to *Article 7,.Standard of Performance and Acceptance, of the DPA*. Upon acceptance by the FLP pursuant to *Article 7*, the revised Project Plan and Revised Detailed Work Plan shall supersede and replace the Project Plan and Detailed Work Plan provided in Sections 1.4 and 1.6, and shall be deemed to be incorporated into this SOW and the DPA. The revised Project Plan and revised Detailed Work Plan will be updated at least monthly.

Contractor and FLP will hold project status meetings at least every week and include the project managers for FLP and Contractor, technical personnel of both where required to address project issues, and if requested by FLP, representatives of subcontractors to Contractor. Prior to each project status meeting, Contractor will submit a written project status report and the most current versions of the revised Project Plan and Detailed Work Plan to the FLP project manager. The status report will identify project issues and problems, including all factors that potentially impact Contractor's time of performance; set forth in detail the tasks and activities completed since the last project status meeting and the tasks to be completed by the next project status meeting; and provide such other information as FLP reasonably requires.

1.2.3. The Free Library of Philadelphia will adhere to the [INSERT CONTRACTOR NAME] Pre-Installation Guides (if provided in writing) for FLP tasks and activities to which the Guides apply, except as agreed otherwise by Contractor in writing.

1.2.4. CONTRACTOR will provide equipment, software, inventory, and licensing documentation to the FLP Project Manager electronically in an appropriate format such as Microsoft Word, Microsoft Project, or Adobe PDF. Documentation (one copy of each) will include at least the following:

1.2.4.1. CPU User Guides
1.2.4.2. CPU Equipment Documentation
1.2.4.3. Monitor User Guides
1.2.4.4. Monitor Equipment Documentation
1.2.4.5. CD, DVD, Audio, Video documentation
1.2.4.6. Windows 7 Ultimate 64 Bit Operating System Licensing Documentation
1.2.4.7. Inventory of all PCs provided (derived from the Leasing Company database) – note that the vendor must affix an asset tag to each PC prior to shipping. The asset tag identifier or number should be included in the PC Lease database inventory that is provided to FLP.

1.2.5. <u>Maintenance and Support Services</u>. The Free Library of Philadelphia will purchase from Contractor and Contractor will furnish, as part of the contract: (1) maintenance services for all PC hardware as provided in Exhibit 3, *Products and Services*, Section 3.5, to commence on the date of the beginning of the lease term (estimated to be October 1, 2013) to continue for the entire length of the lease term which is 4 years; and (2) installation services, as provided in Exhibit 3, Section 3.5 and (3) configuration services and delivery services. Pricing structure for such maintenance and services shall be as set forth in Exhibit 3, Sections 3.1 thru 3.5.

1.3. Approach

1.3.1. General Approach

The general approach to this project will be collaborative in that FLP IT staff and Library staff will work with [INSERT CONTRACTOR NAME] project manager and technicians to jointly detail exact plans and strategies to perform the required installation of PCs. Notwithstanding the foregoing: [INSERT CONTRACTOR NAME] shall be responsible for timely installation of the equipment, and causing it to perform, in accordance with the DPA; FLP acceptance of and payment for the Software, Equipment, Deliverables, and Services to be furnished by [INSERT CONTRACTOR NAME] shall be subject to *Article 7, Standard of Performance and Acceptance, of the Contract.*

FLP will designate a project manager as will [INSERT CONTRACTOR NAME]. A technical committee structure will also be employed to develop, manage, evaluate, and determine and recommend acceptance. This group, their membership, and their duties shall be established at the discretion of FLP, with advice and recommendations from [INSERT CONTRACTOR NAME] as appropriate. The [INSERT CONTRACTOR NAME] project manager, working through the FLP project manager, will cooperate with and support group members in creating detailed work, test, and acceptance plans.

The installation of the PCs will not require any coding on the part of the [INSERT CONTRACTOR NAME]. FLP technical staff will create and test all necessary login and policy code. FLP technical staff will create, test, and certify all software that will become part of the images that will be provide to the contractor to load on the PCs prior to delivery. The contractor project manager will provide input as necessary with regard to the images developed by FLP technical staff.

In order to meet the September 30, 2013 deadline of replacing all leased PCs it is estimated that the contractor will need to provide three (3) teams of technicians (see Exhibit 1, section 1.4, Schedule 1a for details). FLP technical staff will join each team. All teams will work concurrently in order to accomplish the overall task within the given timeframe. FLP technical staff will develop and provide the necessary images in a timely fashion to the contractor. The contractor will load the provided images in their warehouse and deliver the PCs to the designated locations prior to the teams commencing work. All network infrastructure work including server configuration and installations to support the PC installations will be performed by FLP technical staff. FLP technical staff, with the contractor project manager, will develop test and post installation procedures. All installation teams will be provided instructions on how to execute the testing and post-installation procedures.

Test plans, test criteria, and tests of the PCs will conform to the Testing Requirements provided in Exhibit 4.

1.3.2. Specific Approach

1.3.2.1. The vendor will deliver HP/Compaq PCs as required and specified in Exhibit 3.

1.3.2.2. The vendor will provide five workstations (two public, one special PC, and two staff/admin) to be used in the full installation at least six weeks before the rest of the installation begins. No image load will be required on these PCs. These will be used by the Free Library Information Technology staff to test desktop configurations and create required Ghost Images.

1.3.2.3. Delivery and installation schedules are specified in Exhibit 1 with the primary completion date being September 30, 2012. This schedule will be finalized by the Free Library project manager and the vendor project manager and approved by the Free Library Chief Technology Officer.

1.3.2.4. The vendor will be responsible for installing the pre-configured workstations on existing furniture at the specified locations, adding the workstations to the Free Library network, and post-installation testing of the workstation. It is not desired to place any PCs inside of locked cabinetry.

1.3.2.5. The vendor is NOT responsible for any data migration. FLP staff will install new servers and migrate all server data in support of the PC installations that the vendor is doing. FLP staff is also responsible for migration of data from staff PCs.

1.3.2.6. The vendor will NOT be responsible for de-installing some leased PCs in the 4 Special PC only sites that FLP staff will identify as PCs on another lease that is not expiring.

1.3.2.7. Replaced equipment (CPU's, monitors, and cables) and new PC boxes and packing material will be staged for removal by the vendor of the leased PCs unless otherwise instructed by Free Library Information Technology staff at the time of installation.

1.3.2.8. Vendor will provide an inventory of all new workstations including asset tag number or id, hostname, role of machine (public, staff, administrative), physical location, IP address, MAC address, special software, special configuration, Network Operating System, and serial numbers in a standard format to be mutually agreed upon. This inventory should be derived from the leasing company asset records.

1.3.2.9. Data drops and electrical power will be available at each location. Should the vendor experience difficulties that prevent installation, Free Library Information Technology staff should be notified immediately.

1.3.2.10. The Free Library Project Manager and the vendor project manager will establish a specification that is mutually agreeable as to the physical arrangement of the workstation before the installation begins. Length of keyboard and mouse cables, wire management practices, monitor placement and any aspect of installation that may impact the comfort of the end user will be agreed upon as part of the installation specifications. These specifications may vary from place to place but will be clearly determined prior to installation.

1.3.2.11. At the conclusion of the installation the vendor and the Free Library Project Manager will conduct an inspection. Any outstanding problems, malfunctions or errors will be documented and submitted to the vendor. The vendor will submit a proposed solution for approved by the Free Library project manager. Upon approval and completion of the proposed solution the Free Library Information Technology staff will conduct another inspection to verify that the installation is completely successful. This process will be reiterated until no problems remain.

1.3.3. Installation Approach Summary

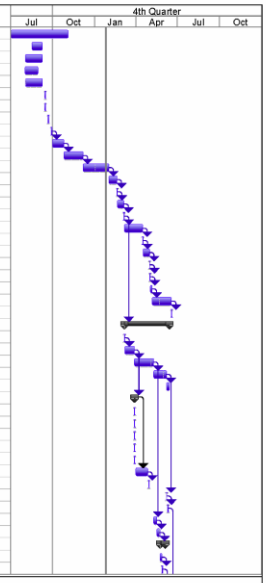
1.3.3.1. Although 1,095 PCs are requested as part of the lease the vendor will only be required to install 1,075. The details of the installation approach are in the above section, the following is a summary:

LEASED PCS	DESCRIPTION
1,095	Total leased PCs (vendor is responsible for order, config, burn-in, image load, shipping - required on all)
(15)	Number of Access Technology Workstations – performed by FLP staff and NO vendor install required
(5)	Number of staff and public PCs (3 staff and 2 public) that the vendor must deliver to FLP immediately for image development and testing – performed by FLP staff and NO vendor install required
1,075	TOTAL NUMBER OF PCs THAT VENDOR MUST INSTALL

1.4. [Schedule 1a] - Detailed Work Plan and [INSERT CONTRACTOR NAME] and FLP Responsibilities

[NOTE: Detailed Work Plan will be replaced with a revised Plan as provided in Section 1.2.2]

ID	Task Name	Duration	Start	Finish	Predecessors
1	Develop Project Specifications	90 days	Mon 7/2/12	Sat 11/3/12	
2	Develop Specifications	16 days?	Fri 8/17/12	Sat 9/8/12	
3	Develop Procurement Specification Section 2 of Bid doc	26 days?	Fri 8/3/12	Sat 9/8/12	
4	Validate final count	20 days?	Thu 8/2/12	Wed 8/29/12	
5	Develop Contract Exhibits	26 days?	Fri 8/3/12	Sat 9/8/12	
6	Approval Meetings	1 day?	Fri 9/14/12	Sat 9/15/12	
7	Meeting with MOIS	1 day?	Fri 9/14/12	Sat 9/15/12	
8	Meeting with Procurement	1 day?	Fri 9/21/12	Sat 9/22/12	
9	Meeting with Law Office	1 day?	Fri 9/28/12	Sat 9/29/12	
10	Procurement Bid Processing	19 days	Mon 10/1/12	Thu 10/25/12	9
11	MBEC input	6 wks	Fri 10/26/12	Thu 12/6/12	10
12	Finalize Bid Document	8 wks	Fri 12/7/12	Thu 1/31/13	11
13	Bid Document Released	12 days	Fri 2/1/13	Mon 2/18/13	12
14	Non-Mandatory Pre-Bid Meeting	1 day?	Tue 2/19/13	Tue 2/19/13	13
15	Bids Received	10 days	Wed 2/20/13	Tue 3/5/13	14
16	Bid Decision by FLP	1 day?	Wed 3/6/13	Wed 3/6/13	15
17	Contract Review	28 days	Thu 3/7/13	Mon 4/15/13	16
18	Contract Signed	1 day?	Tue 4/16/13	Tue 4/16/13	17
19	Bid Award	10 days	Wed 4/17/13	Tue 4/30/13	18
20	Engage Vendor/Order Equipment	1 day?	Wed 5/1/13	Wed 5/1/13	19
21	Initial Project Meeting With Vendor	1 day?	Thu 5/2/13	Thu 5/2/13	20
22	Validate Equipment Specifications	2 days	Fri 5/3/13	Mon 5/6/13	21
23	PC Equipment Purchased	6 wks	Tue 5/7/13	Mon 6/17/13	22
24	PC Equipment Received by Vendor	1 day?	Tue 6/18/13	Tue 6/18/13	23
25	**Image Development**	**71 days?**	**Thu 3/7/13**	**Thu 6/13/13**	**16**
26	Establish Image Development FLP Team	1 day?	Thu 3/7/13	Thu 3/7/13	
27	Develop new Branch and staff image documentation	15 days	Fri 3/8/13	Thu 3/28/13	26
28	Develop new Branch Image (Public & Staff - includes Unicorn)	30 days	Fri 3/29/13	Thu 5/9/13	27
29	Test image	20 days?	Fri 5/10/13	Thu 6/6/13	28
30	build PC Res image	5 days	Fri 6/7/13	Thu 6/13/13	29
31	**build print management image**	**1 day?**	**Fri 3/29/13**	**Fri 3/29/13**	**27**
32	End User Profiles and Policy Testing	1 day?	Fri 3/29/13	Fri 3/29/13	
33	Bring web in to test image	1 day?	Fri 3/29/13	Fri 3/29/13	
34	Bring extensions in to test	1 day?	Fri 3/29/13	Fri 3/29/13	
35	make end user modifications	1 day?	Fri 3/29/13	Fri 3/29/13	
36	end user retest	1 day?	Fri 3/29/13	Fri 3/29/13	
37	create backup job to backup home directories to CD/RWR	20 days	Mon 4/1/13	Fri 4/26/13	31
38	create script to copy home directories to another admin pc	1 day?	Mon 4/29/13	Mon 4/29/13	37
39	Meet and discuss final image content	1 day?	Fri 6/7/13	Fri 6/7/13	29
40	create sysprep of each image	1 day?	Mon 6/10/13	Mon 6/10/13	39
41	apply gpo settings to image	5 days	Fri 5/10/13	Thu 5/16/13	28
42	Develop End User Profiles and Policy Testing Review doc	5 days	Fri 5/17/13	Thu 5/23/13	41
43	**Develop Branch Install Procedures Document**	**8 days**	**Fri 5/24/13**	**Tue 6/4/13**	**42**
44	IT test images against Profiles and Policies	2 days	Fri 5/24/13	Mon 5/27/13	
45	Test Group sign off on Profiles and Policies	2 days	Tue 5/28/13	Wed 5/29/13	44



Project: 2009 Branch PC Lease Projec
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Task	External Milestone	Manual Summary Rollup	
Split	Inactive Task	Manual Summary	
Milestone	Inactive Milestone	Start-only	
Summary	Inactive Summary	Finish-only	
Project Summary	Manual Task	Progress	
External Tasks	Duration-only	Deadline	

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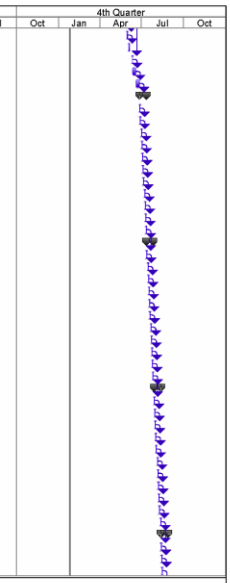
ID	Task Name	Duration	Start	Finish	Predecessors
46	IT Department Management Signoff	2 days	Thu 5/30/13	Fri 5/31/13	45
47	Branch Install Procedures Document Signoff	2 days	Mon 6/3/13	Tue 6/4/13	46
48	Ship Final Images to Vendor	1 day?	Tue 6/11/13	Tue 6/11/13	40
49	Vendor burns images (initial - process ongoing)	5 days	Wed 6/12/13	Tue 6/18/13	48
50	Initial PC Delivery to FLP	6 days	Wed 6/19/13	Wed 6/26/13	49
51	**Installation Phase 1**	**11 days**	**Thu 6/27/13**	**Thu 7/11/13**	**50**
52	site 1 - Walnut Street West (WAL) 21	1 day	Thu 6/27/13	Thu 6/27/13	
53	site 2 - Katharine Drexel (KDR) 20	1 day	Fri 6/28/13	Fri 6/28/13	52
54	site 3 - Lovett (LOV) 21	1 day	Mon 7/1/13	Mon 7/1/13	53
55	site 4 - Furno Family (FFB) 18	1 day	Tue 7/2/13	Tue 7/2/13	54
56	site 5 - McPherson (MPS) 17	1 day	Wed 7/3/13	Wed 7/3/13	55
57	site 6 - Wyoming (WYO) 21	1 day	Thu 7/4/13	Thu 7/4/13	56
58	site 7 - Paschalville (PAC) 20	1 day	Fri 7/5/13	Fri 7/5/13	57
59	site 7 - Paschalville Workplace lab	1 day	Mon 7/8/13	Mon 7/8/13	58
60	site 8 - Overbrook Park (OVP) 19	1 day	Tue 7/9/13	Tue 7/9/13	59
61	site 9 - Fox Chase (FOX) 18	1 day	Wed 7/10/13	Wed 7/10/13	60
62	site 10 - Wadsworth (WAD) 19	1 day	Thu 7/11/13	Thu 7/11/13	61
63	**Installation Phase2**	**11 days**	**Fri 7/12/13**	**Fri 7/26/13**	**62**
64	site 1 - South Phila (SPB) 20	1 day	Fri 7/12/13	Fri 7/12/13	62
65	site 2 - Welsh Road (WEL) 23	1 day	Mon 7/15/13	Mon 7/15/13	64
66	site 3 - Andorra (ROX) 23	1 day	Tue 7/16/13	Tue 7/16/13	65
67	site 4 - Whitman (WHT) 18	1 day	Wed 7/17/13	Wed 7/17/13	66
68	site 5 - Eastwick 17	1 day	Thu 7/18/13	Thu 7/18/13	67
69	site 6 - Greater Olney (GRO) 19	1 day	Fri 7/19/13	Fri 7/19/13	68
70	site 7 - Kensington) 26	1 day	Mon 7/22/13	Mon 7/22/13	69
71	site 7 - Kensington - Gates Lab 20	1 day	Tue 7/23/13	Tue 7/23/13	70
72	site 8 - Charles Durham (DUR) 16	1 day	Wed 7/24/13	Wed 7/24/13	71
73	site 9 - Torresdale (TOR) 20	1 day	Thu 7/25/13	Thu 7/25/13	72
74	site10 - Logan (LOG) 19	1 day	Fri 7/26/13	Fri 7/26/13	73
75	**Installation Phase 3**	**11 days**	**Mon 7/29/13**	**Mon 8/12/13**	**74**
76	site 1 - Phila City Institute (PCI) 22	1 day	Mon 7/29/13	Mon 7/29/13	74
77	site 2 - Widener (WID) 19	1 day	Tue 7/30/13	Tue 7/30/13	76
78	site 3 - Roxborough (ROX) 23	1 day	Wed 7/31/13	Wed 7/31/13	77
79	site 4 - Charles Santore (SAN) 19	1 day	Thu 8/1/13	Thu 8/1/13	78
80	site 5 - Fishtown Community (FSH) 17	1 day	Fri 8/2/13	Fri 8/2/13	79
81	site 6 - Ogontz (OGN) 16	1 day	Mon 8/5/13	Mon 8/5/13	80
82	site 7 - Lillian Marrero 29	1 day	Tue 8/6/13	Tue 8/6/13	81
83	site 7 - Lillian Merraro Gates Lab	1 day	Wed 8/7/13	Wed 8/7/13	82
84	site 8 - Haverford (HAV) 20	1 day	Thu 8/8/13	Thu 8/8/13	83
85	site 9 - Holmesburg (HOL) 18	1 day	Fri 8/9/13	Fri 8/9/13	84
86	site 10 - Bustleton (BUS) 19	1 day	Mon 8/12/13	Mon 8/12/13	85
87	**Installation Phase 4**	**11 days**	**Tue 8/13/13**	**Tue 8/27/13**	**86**
88	site 1 -Independence (IND) 21	1 day	Tue 8/13/13	Tue 8/13/13	86
89	site 2 - Bushrod (BHR) 24	1 day	Wed 8/14/13	Wed 8/14/13	88
90	site 3 - Chestnut Hill (CHH) 20	1 day	Thu 8/15/13	Thu 8/15/13	89



Project: 2009 Branch PC Lease Projec
Date: Sat 1/26/13

Task		External Milestone		Manual Summary Rollup	
Split		Inactive Task		Manual Summary	
Milestone		Inactive Milestone		Start-only	
Summary		Inactive Summary		Finish-only	
Project Summary		Manual Task		Progress	
External Tasks		Duration-only		Deadline	

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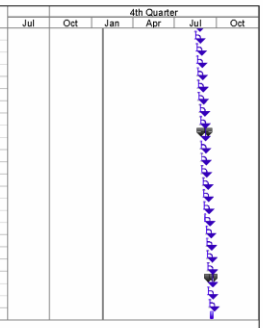
ID	Task Name	Duration	Start	Finish	Predecessors
91	site 4 - Queen Memorial (QMB) 16	1 day	Fri 8/16/13	Fri 8/16/13	90
92	site 5 - Richmond (RIC) 16	1 day	Mon 8/19/13	Mon 8/19/13	91
93	site 6 - Oak Lane (OAK) 18	1 day	Tue 8/20/13	Tue 8/20/13	92
94	site 7 - Blanche A. Nixon (COB) 11	1 day	Wed 8/21/13	Wed 8/21/13	93
95	catch up week	1 day	Thu 8/22/13	Thu 8/22/13	94
96	site 8 - Wynnefield (WYN) 22	1 day	Fri 8/23/13	Fri 8/23/13	95
97	site 9 - Tacony (TAC) 17	1 day	Mon 8/26/13	Mon 8/26/13	96
98	site 10 - Lawncrest (LWN) 19	1 day	Tue 8/27/13	Tue 8/27/13	97
99	**Installation Phase 5**	**12 days**	**Wed 8/28/13**	**Thu 9/12/13**	**98**
100	site 1 - Ramonita Rodriguez (RGR) 22	1 day	Wed 8/28/13	Wed 8/28/13	98
101	site 2 - Kingsessing 20	1 day	Thu 8/29/13	Thu 8/29/13	100
102	site 3 - Cecil B. Moore (DON) 18	1 day	Fri 8/30/13	Fri 8/30/13	101
103	site 4 - Thomas F. Donatucoli (DON) 19	1 day	Mon 9/2/13	Mon 9/2/13	102
104	site 5 - Nicetown (NIC) 20	1 day	Tue 9/3/13	Tue 9/3/13	103
105	site 6 -Haddington (HAD) 19	1 day	Wed 9/4/13	Wed 9/4/13	104
106	site 7 - West Oak Lane (WOL) 32	2 days	Thu 9/5/13	Fri 9/6/13	105
107	site 7 - West Oak Lane (WOL) Gates Lab	1 day	Mon 9/9/13	Mon 9/9/13	106
108	site 8 - Falls of Schuylkill (FAL) 20	1 day	Tue 9/10/13	Tue 9/10/13	107
109	site 9 - Frankford (FRK) 20	1 day	Wed 9/11/13	Wed 9/11/13	108
110	site 10 -Blackwell Regional 11	1 day	Thu 9/12/13	Thu 9/12/13	109
111	**Installation Phase 6**	**7 days**	**Fri 9/13/13**	**Mon 9/23/13**	**110**
112	site 11 - Northeast Regional 14	1 day	Fri 9/13/13	Fri 9/13/13	110
113	site 12 - Northwest Regional 13	1 day	Mon 9/16/13	Mon 9/16/13	112
114	site 13 - Central	5 days	Tue 9/17/13	Mon 9/23/13	113



Project: 2009 Branch PC Lease Projec
Date: Sat 1/26/13

Task
Split
Milestone
Summary
Project Summary
External Tasks
External Milestone
Inactive Task
Inactive Milestone
Inactive Summary
Manual Task
Duration-only
Manual Summary Rollup
Manual Summary
Start-only
Finish-only
Progress
Deadline

Page 3

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1.5. Completion Criteria

The completion criteria will be determined by the appropriate FLP technical committee, in accordance with the requirements for the System provided in this Statement of Work, Exhibits 2 -5, and the DPA. Items of work comprising a milestone will be considered to be completed only when they are accepted by the FLP in accordance with *Paragraph 7, Standard of Performance and Acceptance*, of the Contract. The project as a whole will be considered to be completed only when it is Finally Accepted by the FLP in accordance with Paragraph 7 of the Contract.

1.6. Project Plan

[NOTE: Project Plan will be replaced with a revised Project Plan as provided in Section 1.2.2 based upon the detailed work plan in Section 1.4]

1.7. [Schedule 1b] - PC Replacement Inventory and Shipping Information

1.7.1. Delivery and Site Information

1.7.1.1. Locations for Special Use PC Installations Only (4)

CODE	NAME	ADDRESS	ZIP	PHONE	HOURS
BRL	West Philadelphia Regional	125 S. 52nd St.	19139-3408	215-685-7426	Monday and Wednesday 12-8 p.m. Tuesday, Thursday, Friday, Saturday 10 a.m. - 5 p.m.; Sunday 1-5 p.m.
CEN	Central Library	1901 Vine Street	19103	215-686-7501	Monday - Wednesday 9 a.m. - 9 p.m. Thursday - Saturday 9 a.m. - 5 p.m. Sunday 1 p.m. - 5 p.m.
JEC	Northwest Regional	68 W. Chelten Ave	19144-2795	215-685-2156	Monday, Wednesday 12 - 8 p.m. Tuesday, Thursday, Friday, Saturday 10 a.m. - 5 p.m.; Sunday 1-5 p.m
NER	Northeast Regional	2228 Cottman Ave.	19149-1297	215-685-0500	Monday, Tuesday, Wednesday 1 p.m. - 9 p.m. ; Thursday, Friday, Saturday 10 a.m. - 5 p.m.; Sunday 1 - 5 p.m.

1.7.1.2. Locations for All PC Replacements (49)

Code	Name	Address	Zipcode	Phone
AND	Andorra Branch	705 E Cathedral Rd	19128-2106	685-2552
BHR	Bushrod Branch	6304 Castor Ave	19149-2731	685-1471
BUS	Bustleton Branch	10199 Bustleton Ave	19116-3718	685-0472
CBM	Cecil B. Moore Avenue Branch	2320 W. Cecil B Moore Ave	19121-2927	685-2766
CHH	Chestnut Hill Branch	8711 Germantown Ave	19118-2716	685-9290
COB	Blanche A. Nixon/Cobbs Creek Branch	5800 Cobbs Creek Pky	19143-3036	685-1973
DON	Passyunk Branch	1935 Shunk Street	19145-4234	685-1755
DUR	Charles Durham Branch	3320 Haverford Ave	19104-2021	685-7436

ESW	Eastwick Branch	2851 Island Ave	19153-2314	685-4170
FAL	Falls of Schuylkill Branch	3501 Midvale Ave	19129-1633	685-2093
FFB	Fumo Family Branch	2437 S. Broad St	19148-3508	685-1758
FOX	Fox Chase Branch	501 Rhawn Street	19111-2504	685-0547
FRK	Frankford Branch	4634 Frankford Ave	19124-5804	685-1473
FSH	Fishtown Community Branch	1217 E Montgomery Ave	19125-3445	685-9990
GRO	Greater Olney Branch	5501 N 5th St	19120-2805	685-2845
HAD	Haddington Branch	446 N 65th St	19151-4003	685-1970
HAV	Haverford Branch	5543 Haverford Ave	19139-1432	685-1964
HOL	Holmesburg Branch	7810 Frankford Ave	19136-3013	685-8756
IND	Independence Branch	13 South 7th Street	19106-2314	685-1633
KDR	Katherine Drexel Branch	11099 Knights Rd	19154-3516	685-9383
KEN	Kensington Branch	104 West Dauphin Street	19133-3701	685-9996
KNG	Kingsessing Branch	1201 S 51st St	19143-4353	685-2690
LMB	Lillian Merraro Lehigh Branch	601 W. Lehigh Ave.	19133-2228	685-9794
LOG	Logan Branch	1333 Wagner Ave	19141-2916	685-9156
LOV	Lovett Memorial Branch	6945 Germantown Ave	19119-2189	685-2095
LWN	Lawncrest Branch	6098 Rising Sun Ave	19111-6009	685-0549
MPS	McPherson Square Branch	601 E. Indiana Ave	19134-3042	685-9995
NIC	Nicetown-Tioga Branch	3720 N Broad St	19140-3608	685-9790
OAK	Oak Lane Branch	6614 N. 12th Street	19126-3299	685-2848
OGN	Ogontz Branch	6017 Ogontz Ave.	19141-1311	685-3566
OVP	Overbrook Park Branch	7422 Haverford Ave	19151-2995	685-0182
PAC	Paschalville Branch	6942 Woodland Ave	19142-1823	685-2662
PCI	Philadelphia City Institute	1905 Locust Street	19103-5730	685-6621
QMB	Queen Memorial Branch	1201 S 23rd Street	19146	685-1899
RGR	Ramonita G. DeRodriguez Branch	600 W Girard Ave	19123-1311	592-6211
RIC	Richmond Branch	2987 Almond St	19134-4955	685-9992
ROX	Roxborough Branch	6245 Ridge Ave	19128-2630	685-2550
SAN	Charles Santore Branch	932 S 7th St	19147-2932	685-1866
SPB	South Philadelphia Branch	1700 S Broad St	19145-2392	685-1766
TAC	Tacony Branch	6742 Torresdale Ave	19135-2416	685-8755
TOR	Torresdale Branch	3079 Holme Ave	19136-1101	685-0494
WAD	Wadsworth Branch	1500 Wadsworth Ave	19150-1699	685-9293
WAL	Walnut Street-West Branch	201 S. 40th St	19104	685-7671
WEL	Welsh Road Branch	9233 Roosevelt Blvd	19114-2205	685-0498
WHT	Whitman Branch	200 Synder Ave	19148-2620	685-1754
WID	Widener Branch	2808 W. Lehigh Ave	19132	685-9798
WOL	West Oak Lane Branch	2000 Washington La.	19138-1344	685-2843
WYN	Wynnefield Branch	5325 Overbrook Ave	19131-1498	685-0298
WYO	Wyoming Branch	231 E Wyoming Ave	19120-4439	685-9158

1.7.2. PC Installation Inventory Detail

Locations	TOTAL Staff PCs	TOTAL Special PCs	Existing CAT PCs	Existing Public Access PCs	New Public Access PCs	Existing Public LAB PCs	TOTAL Public PCs	TOTAL
Access Tech				15			15	15
AND	10	2	1	8			9	21
BHR	10	4	2	8			10	24
BRL	5	6					0	11
BUS	9	2	1	7			8	19
CBM	7	2	1	8			9	18
CEN-ART	1	1	1		1		2	4
CEN-BSI	1	2					0	3
CEN-CCD	0	2					0	2
CEN-EPR	1	2	1				1	4
CEN-GID	3	5	1				1	9
CEN-GPD	1	1			2		2	4
CEN-LIT	1	1			1		1	3
CEN-MUS	0	1			4		4	5
CEN-NEWS	2	2					0	4
CEN-PIX	1						0	1
CEN-PPL	10		1				1	11
CEN-RFC	0	1					0	1
CEN-SSH	1	2					0	3
CEN-STX	2						0	2
CHH	8	2	2	8			10	20
COB	7	2	1	6	2		9	18
DON	8	2	1	6	2		9	19
DUR	6	2	1	7			8	16
ESW	6	2	1	8			9	17
FAL	8	2	2	6	2		10	20
FFB	7	2	1	6	2		9	18
FOX	7	2	1	8			9	18
FRK	8	2	1	9			10	20
FSH	6	2	1	6	2		9	17
GRO	7	2	1	9			10	19
HAD	6	2	1	8	2		11	19
HAV	7	2	1	8	2		11	20

HMB	3						0	3
HOL	7	2	1	8			9	18
IND	11	2	2	6			8	21
JEC	7	5		1			1	13
KDR	9	2	1	8			9	20
KEN	6	2	1	8		9	18	26
KNG	7	2	1	10			11	20
LEH	8	2	1	7		11	19	29
LOG	7	2	1	7	2		10	19
LOV	8	4	2	7			9	21
LWN	6	2	1	10			11	19
MPS	6	2	1	6	2		9	17
NER	7	7					0	14
NIC	7	2	1	8	2		11	20
OAK	6	2	1	7	2		10	18
OGN	5	2	1	8			9	16
OVP	8	2	1	8			9	19
PAC	7	2	1	7		3	11	20
PCI	9	4	1	8			9	22
QMB	7	2	1	6			7	16
RGR	8	2	2	10			12	22
RIC	5	2	1	8			9	16
ROX	7	4	2	8	2		12	23
SAN	9	2	2	6			8	19
SPB	9	2	1	6	2		9	20
TAC	6	2	1	8			9	17
TEST	2	1			2		2	5
TOR	8	2	1	7	2		10	20
WAD	6	2	1	8	2		11	19
WAL	9	2	1	7	2		10	21
WEL	10	2	2	9			11	23
WHT	7	2	1	6	2		9	18
WID	7	2	1	7	2		10	19
WOL	7	2	2	9		12	23	32
WYN	7	3	2	8	2		12	22
WYO	8	2	1	8	2		11	21
Cen-OPR	2						0	2
	414	146	64	386	50	35	535	1095

1.8. Commencement of Lease Payments

Commencement date of the first lease payment is estimated to be October 1, 2013 for all PC equipment and continue for a term of 4 years.

EXHBIT 2 - BUSINESS FUNCTIONAL REQUIREMENTS

2.1. General

- All PCs must support the Microsoft Windows 7 64-bit Operating system
- Staff/Admin PC configurations must support existing scanners which are PSC Quickscan 6000
- PCs must be maintained on-site 8x5 including parts and labor with an on-site presence required.
- PC must support Library's core business system client (Unicorn) as certified by FLP staff
- PCs must physically fit on existing furniture
- Cable lengths must be adequate to support on desk or under desk installations (no extraordinary distances should be required. In the event that there is, FLP staff will obtain the extenders)
- PCs must operate to the full manufacturers' specification.
- PCs must operate on the existing network infrastructure as certified by FLP staff

EXHIBIT 3 - PRODUCTS AND SERVICES

3. Products and Services Requirements and Cost

3.1. [Schedule 3a] – Overall PC Lease Cost Summary

Description	Monthly Lease Cost
PUBLIC PC CONFIGURATION SUBTOTAL (535 units)	
ADMINISTRATIVE AND STAFF PC CONFIGURATION SUBTOTAL (414 units)	
SPECIAL PUBLIC PC CONFIGURATION SUBTOTAL (146)	
SERVICES AND MAINTENANCE SUBTOTAL	Included in lease cost
TOTAL MONTHLY LEASE COST	
TOTAL ANNUAL LEASE COST	

3.2. [Schedule 3b] – Public PC Minimum Configuration Required

Description	Bid Item #	Quantity
All-IN-ONE PC		535
• Windows 7 Ultimate 64-bit OS • Multi-touch compliant touch-screen, 23" full HD display • Touch-enabled software interface • AMD Phenom(TM) X4 910e quad-core processor [2.6GHz, 2MB L2, 6MB L3, up to 4000MT/s bus], or equivalent • 6GB to 8GB DDR3-1066MHz SODIMM [2 DIMMs], or equivalent • 500GB 7200 rpm SATA 3Gb/s hard drive, or equivalent • 2GB ATI Radeon HD 5570 graphics card, or equivalent • Slot-load DVD burner • Wireless-N LAN card • Webcam • Integrated speakers • Minimum of 4 USB ports, including a minimum of at least three ports accessible to a user seated in front of the PC, and at least 1 USB 3.0 ports		

• Integrated 10/100/1000Mbps (Ethernet). • USB keyboard • USB optical mouse		

3.3. [Schedule 3c] – Administrative and Staff PC Minimum Configuration Required

Description	Bid Item #	Quantity
SLIM TOWER FORM FACTOR CPU:		414
• Windows 7 Ultimate 64-bit OS • AMD Phenom(TM) II X6 1090T six-core processor [3.2GHz, 3MB L2 + 6MB L3 shared, up to 4000MHz] or equivalent • 8GB to 12GB DDR3-1333MHz SDRAM [4 DIMMs] • 750GB 7200 rpm SATA 3Gb/s hard drive (prefer SATA 6Gb/s drive if available) • 3GB DDR3 NVIDIA GeForce GT 440 graphics card, or equivalent, with DVI, HDMI, and VGA support and integrated power supply • 16X max. DVD+/-R/RW SuperMulti drive • DVD burning software • Integrated 10/100/1000Mbps (Ethernet) • Minimum of 6 USB ports with at least one 3.0 port • Firewire • Integrated audio • USB keyboard • USB optical mouse		
MONITOR:		414
• Minimum 22" widescreen LCD, 1680x1050 resolution w/webcam		

3.4. [Schedule 3c] – Special Public PC Minimum Configuration Required

Description	Bid Item #	Quantity
SLIM TOWER FORM FACTOR CPU:		146
• Windows 7 Ultimate 32-bit OS • AMD Dual Core processor or AMD equivalent • 2GB to 4GB DDR3-1333MHz SDRAM [4 DIMMs] • 250GB 7200 rpm SATA 3Gb/s hard drive • 1GB DDR3 NVIDIA GeForce GT 440 graphics card, or equivalent, with VGA support and integrated power supply • 16X max. DVD+/-R/RW SuperMulti drive • Integrated 10/100/1000Mbps (Ethernet) • Minimum of 4 USB ports • Integrated audio • USB keyboard • USB optical mouse		

MONITOR:		146
• Minimum 17" LCD, 1680x1050 resolution		

3.5. [Schedule 3e] – Services and Maintenance Requirements

Costs listed in this schedule are to be rolled into the lease costs of the PCs – this section is informational

Description	**Quantity**	**Unit Cost**	**Extended**
Configuration (image load, assembly, tagging, burn-in)	1095		
Hardware asset tags	1095		
Delivery/Shipping (note that 5 units must be shipped immediately for image development and testing – details are in Exhibit 1)	1095		
Installation (note that no installation will be required on the following which reduces the install number to 1075: 15 Access Technology Workstations and 5 image development/test PCs). See Section 1.3.2 and 1.3.3 of Exhibit 1 for further details.	1075		
Vendor is required to provide on-site maintenance of PC hardware, including all required parts and labor, through the term of the lease with a four-hour response time, as set forth in those Paragraphs of the Data Processing Agreement incorporated through Section 2.2.1.7 of the IAB: a full- or part-time technician stationed at FLP premises performing warranty repair services (and coordinating all related paperwork) at FLP branches, as directed by FLP staff	1095		
Project Management Services	1		
Provide complete PC lease inventory including asset tag number and specific data derived from the lease asset database.	1		
TOTAL COST (rolled into PC lease costs – info only)			

3.6. [Schedule 3f] – Additional Information Requirements

Description
Provide a detailed description of the PC and Monitor models proposed for each configuration to meet the bid requirements including HP PC Model and technical specifications and the monitor model and technical specifications. Attach detail.

3.7. [Schedule 3g] – Optional Products and Services

The pricing for the following optional Products and Services are in effect for duration of the Contract with expectations that normal industry rate increases apply annually. All options will be exercised at the sole discretion of the FLP.

Description	Quantity	Monthly Lease Cost per unit
Optional Professional Services		
Additional Installation services hourly rate		
Additional Project Management services hourly rate		
Image Development technical assistance hourly rate		
General Senior Technician hourly rate		
HP and other printer repair service hourly rate		

EXHIBIT 4 – TESTING REQUIREMENTS

4.1. General

4.1.1. All PCs will be fully tested and burned-in at the vendor warehouse location prior to shipping.

4.1.2. Any "DOA's" will be promptly processed and replaced by the vendor at no additional charge to the Free Library of Philadelphia (FLP) or the City of Philadelphia.

4.1.3. FLP staff will develop and fully test and validate all applications, network connectivity, and policy execution for each image on existing PC equipment.

4.1.4. FLP staff will develop and fully test and validate all applications, network connectivity, and policy execution for each image on new PC equipment (that is, new PC equipment meaning the PCs delivered as part of the new PC lease).

4.1.5. Vendor will participate with the Free Library of Philadelphia technical staff in final testing of the image developed by FLP – vendor will comment on validity of test as it pertains to image loading procedures and suggest corrective action if need be. The on-site vendor representative or project manager will approve the final image prior to accepting it for delivery to the vendor configuration center.

4.2. Test Procedures

4.2.1.1. The FLP project manager and the vendor project manager will establish precise installation, post installation, and test plans and procedures, develop documentation for installers, and train and orient installers. The following is a sample desktop deployment and testing procedure:

- After Windows boots up into the setup input the computer name. The computer name should follow this format. [3 Letter Department Code]W7[Assigned Number] *(For Example: AUSW701)*
- Click on the **Next** button.
- In the **Domain Field** type **FLPS** if this computer is going to be used exclusively by the staff or type …… if the computer will be available to the public.
- Click on the **Next** button.
- A Username and Password field will now appear to bind the computer to the domain. In the **Username** field type in …… and in the **Password** field type ……
- After the computer has rebooted log on as the user into the **FLPS** domain to setup the staff logons and follow the directions below.
  (Note: The initial logon may take a few minutes to complete)
- Double-Click on **Microsoft Outlook**.
- Click on the **Next** button.
- Choose **Yes** and click on the **Next** button.
- Choose **Microsoft Exchange Server** and click on the **Next** button.
- Type in **Excen** for the Exchange Server name.
- Type in the user's username in the Username field.
- Click on the **Next** button.
- Click on the **Finish** button.

EXHIBIT 5 - PERFORMANCE REQUIREMENTS

5. Performance Standards

5.1. Assumptions

5.1.1. PCs will operate to the full manufacturer specification in regards to performance

5.1.2. The local and wide area networks and servers are not part of the vendor provided equipment. Further, all DNS, primary and backup domain controller, DHCP, network switch, web server, and routing and virtual LAN functions are under the direct management of the Free Library of Philadelphia. As such, no performance requirements will be imposed upon the CONTRACTOR related to any of these equipment categories.

5.1.3. A failure to meet the applicable performance standards which is caused solely by the local or wide area network connection between the workstation and a remote server located in a different facility will not be considered failure by the CONTRACTOR to satisfy the requirements of this Exhibit. However, the System must operate in conformance with the requirements of this Exhibit across the local network, i.e. from the wide area network connection to and including the workstation. In all cases this assumes that the Free Library of Philadelphia meets or exceeds the CONTRACTOR recommended standards for workstation hardware and operating systems, and the local area networks and all related components, on which the System will operate.

5.1.4. PCs will be in use 12 hours per day, 7 days per week

5.1.5. PCs will be used by multiple users

5.2. Network Infrastructure:

The PCs will perform to the manufacturer specifications in the following Free Library networked environment:

5.2.1. Cabling Infrastructures
The cabling structure is Category 5, 100 Mbps using the TIA/EIA-568A Commercial Telecommunications Cabling Standard.

5.2.2. Central site computer Room LAN
The central-site LAN is where the server(s) will reside. Any remote-site WAN circuits will terminate at this location. The central-site LAN may also support workstations within the same building as well as connections to a governmental or local campus network. For remote connections, a TCP/IP-capable router is supplied with at least one Ethernet port and as many WAN ports as are required to support the remote connections. A 10/100 auto-sensing Ethernet switch is provided (Cisco 6509) for the central-site computer room to provide ports for current Ethernet hubs and servers, local networked PCs, and WAN connections. This switch will act as the backbone for all network connected devices, reducing Ethernet collisions, while increasing available bandwidth capabilities.

5.2.3. Remote Servers and Active Directory
All sites will access servers remotely to authenticate, obtain IP addresses, name resolution, execute policies, store files, etc. All PCs will operate within a Microsoft Active Directory domain environment.

5.2.4. WAN Bandwidth
All sites have a minimum of a 10MB circuit (25 sites have 100MB TLS, the rest 10MB).

5.2.5. Remote Library LANs

Each remote site has a device (DSU or other) to connect to the WAN circuit, a router, and an Ethernet hub or switch with the proper number of ports based on the number of PCs to be connected.

5.2.6. IP Addresses

IP addresses are provided by the primary ISP servicing the library network. Each networked device (PC, server, or other) has an IP address and subnet mask. Client workstations use some static addressing but the standard is dynamic IP allocation (DHCP). Servers use static IP addressing. NAT translations from private IP addressing are allowed.

5.2.7. DNS Tables

Standard DNS (Domain Name Service) tables are configured for proper name and address resolution.

5.2.8. Internet Connections

The FLP ISP is accessed across the WAN circuit.

Exhibit 6

LEASE TERMS AND CONDITIONS

1) General

a) The Philadelphia Municipal Authority ("Lessee"), at the direction of the City of Philadelphia ("City"), will make an award on behalf of the Free Library of Philadelphia ("FLP") for PC Leasing to Contractor (herein "Lessor") as provided herein. Lessee shall sublease the PCs to the City for use by FLP, on substantially the terms set forth herein (hereinafter "Master Agreement"). Unless otherwise specified herein, capitalized terms shall have the meanings provided in the Data Processing Agreement ("DPA") attached to the Invitation and Bid.

b) Lessor agrees to lease to the Lesssee the PCs, associated installation and associated software identified in the applicable Schedule(s) in the form of Exhibit A, as defined in the DPA (such leased PCs and associated equipment and system software ("System Software") are collectively referred to herein as the "Equipment"). The Master Agreement shall be in accordance with the following terms (in addition to the terms and conditions of the Contract). Lessee shall indicate its election to enter into each Schedule as described in Subsection (c)and lease the Equipment on the applicable purchase order issued to the Contractor by Lesssee. Subject to the other terms and conditions contained in this Master Agreement and the applicable Schedule, Lessee shall enter into individual Leases (hereinafter defined) with Lessor as follows:

(c) Execution of Schedule; Acceptance. Each Schedule, when executed by both Lessee and Lessor, together with this Master Agreement, shall constitute a separate and distinct lease ("Lease"), enforceable according to its terms. In the event of any conflict between the terms of this Master Agreement and such Schedule, the provisions of the Schedule shall govern. Lessor and Lessee mutually agree to enter into a Lease by executing a Schedule in the form of Exhibit A with such changes as Lessor and Lessee shall have agreed to as conclusively evidenced by their execution thereof. Each such Schedule shall specifically identify (by serial number or other identifying characteristics) the items of Equipment to be leased under such Schedule (other than items of System Software, which shall be deemed to be items of Software leased under the Schedule pursuant to which the related items of Hardware are leased). Upon the satisfactory inspection of the Equipment by Lessee, or if acceptance requirements for such Equipment are specified in the applicable purchase order, as soon as such requirements are met, Lessee shall unconditionally and irrevocably accept the Equipment by executing and delivering to Lessor a properly completed Acceptance Certificate in substantially the form of Exhibit B. The Initial Term of each Lease shall begin on the Acceptance Date of the Equipment subject to such Lease and shall continue for the period described in the applicable Schedule unless a Nonappropriation shall have occurred.

(d) As set forth in the Lease Agreement, the monthly lease payment ("Rent") includes (i) all charges for leasing the Equipment ("Rent") and (ii) all charges for theApplication Software and Third Party Software ("Software"), support, maintenance, removal, and other services required under the Invitation and Bid (herein "Financed Items"). The Rent and the payment period for each installment of Rent ("Payment Period") shall be set forth in the applicable Schedule.

e) The Lesssor may assign the rights and solely the obligation to pay for the Equipment and Financed Items set forth in this Master Agreement and Schedules hereunder (“Lease Assignment”) to a third party ("Initial Assignee”) that finances the purchase of the Equipment, takes title to the equipment, and assumes the right to receive Rent payments hereunder. The consent of Lessee to such assignment by the Lessor shall not be required, provided the Contractor has identified the third party as required in Section 5 of the Invitation and Bid. Notwithstanding the foregoing, Lessor may not assign any other rights and obligations of the Master Agreement or any Schedule without obtaining in advance the express written consent of Lessee.Contractor shall notify the City and PMA of its Lease Assignment to an Initial Assignee in its acknowledgment to PMA of the purchase order within 10 days of such assignment. Lessee may not assign, transfer, sell, sublease, pledge or otherwise dispose of this Master Agreement, any Lease, any Equipment or any interest therein. Notwithstanding the foregoing, Lessor hereby consents to the sublease of all Lease transactions hereunder by Lessee (the Philadelphia Municipal Authority) at the direction of the City of Philadelphia to the Free Library of Philadelphia, so long as (i) Lessee has provided satisfactory written evidence to Lessor that such sublease is expressly subordinate to and co-terminous and consistent with this Master Agreement and each Lease, including an appropriate written acknowledgement by sublessee of Lessor’s rights, and (ii) such additional documentation that Lessor may reasonably require. No such sublease shall relieve Lessee of its obligations hereunder and under the related Lease(s) and Lessee shall be responsible for all costs and expenses associated with such sublease, including, without limitation, additional Taxes or any Tax Loss (as defined in the applicable Lease) suffered by Lessor.

e) Notwithstanding any provisions to the contrary in the Lease Agreement, in the event of a Lease Assignment, the Initial Assignee shall only be bound to the obligation to fund individual Schedules as provided herein and shall not be responsible for any additional representations, warranties, covenants or obligations of the Contractor as provided in the remainder of the Master Agreement. The City and Lessee waive any claims they may have against the Initial Assignee, but not the Lessor or Contractor, for any loss, damage or expense caused by the Equipment or any defect therein or use or maintenance thereof. The City and Lessee acknowledge that the Initial Assignee is not the supplier of the Equipment and is not responsible for its selection or installation. Once an acceptance certificate in the form attached hereto as Exhibit B is executed by the City and Lessee and is received by Initial Assignee, if any portion of the Equipment is unsatisfactory for any reason, Lesssee shall, nevertheless, continue to make payments for the Rent under the applicable Lease and shall make any claim against the Contractor, Lessor or the manufacturer, but not against the Initial Assignee or any subsequent assignee of the Initial Assignee. However, Lessee may elect to cancel the lease and cease payments pursuant to Section 14(c) herein. AS TO INITIAL ASSIGNEE AND ANY SUBSEQUENT ASSIGNEES, LESSEE LEASES THE EQUIPMENT FROM LESSOR “AS IS, WHERE IS”. IT IS SPECIFICALLY UNDERSTOOD AND AGREED THAT (A) EXCEPT AS EXPRESSLY SET FORTH IN SECTION 15, LESSOR MAKES ABSOLUTELY NO REPRESENTATIONS OR WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY REPRESENTATION OR WARRANTY WITH RESPECT TO THE DESIGN, COMPLIANCE WITH SPECIFICATIONS, QUALITY, OPERATION, OR CONDITION OF ANY EQUIPMENT,SOFTWARE OR FINANACED ITEM (OR ANY PART THEREOF), THE MERCHANTABILITY OR FITNESS OF EQUIPMENT FOR A

PARTICULAR PURPOSE, OR ISSUES REGARDING PATENT INFRINGEMENT, TITLE AND THE LIKE; (B) LESSOR SHALL NOT BE DEEMED TO HAVE MADE, BE BOUND BY OR LIABLE FOR, ANY REPRESENTATION, WARRANTY OR PROMISE MADE BY THE SUPPLIER OF ANY EQUIPMENT, SOFTWARE OR FINANCED ITEM (EVEN IF LESSOR IS AFFILIATED WITH SUCH SUPPLIER); (C) LESSOR SHALL NOT BE LIABLE FOR ANY FAILURE OF ANY EQUIPMENT,SOFTWARE OR FINANCED ITEM OR ANY DELAY IN THE DELIVERY OR INSTALLATION THEREOF; (D) LESSEE HAS SELECTED ALL EQUIPMENT WITHOUT LESSOR'S ASSISTANCE...IT IS FURTHER AGREED THAT INITIAL ASSIGNEE AND ANY SUBSEQUENT ASSIGNEES SHALL HAVE NO LIABILITY TO LESSEE, LESSEE'S CUSTOMERS, OR ANY THIRD PARTIES FOR ANY INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF THIS MASTER AGREEMENT OR ANY SCHEDULE OR CONCERNING ANY EQUIPMENT, SOFTWARE OR FINANCED ITEM OR FOR ANY DAMAGES BASED ON STRICT OR ABSOLUTE TORT LIABILITY OR LESSOR'S NEGLIGENCE; PROVIDED, HOWEVER, THAT NOTHING IN THIS MASTER AGREEMENT SHALL DEPRIVE LESSEE OF ANY RIGHTS IT MAY HAVE AGAINST ANY PERSON OTHER THAN INITIAL ASSIGNEE AND ANY SUBSEQUENT ASSIGNEES. LESSOR AND LESSEE AGREE THAT THE LEASES SHALL BE GOVERNED BY THE EXPRESS PROVISIONS OF THIS MASTER AGREEMENT, EACH SCHEDULE AND THE RELATED ACCEPTANCE CERTIFICATE AND NOT BY THE CONFLICTING PROVISIONS OF ANY OTHERWISE APPLICABLE LAW. ACCORDINGLY, TO THE EXTENT PERMITTED BY APPLICABLE LAW, LESSEE WAIVES ANY RIGHTS AND REMEDIES CONFERRED UPON A LESSEE BY ARTICLE 2A OF THE UCC (INCLUDING, BUT NOT LIMITED TO, LESSEE'S RIGHTS, CLAIMS AND DEFENSES UNDER UCC SECTIONS 2A-303 AND 2A-508 THROUGH 2A-522) AND THOSE RIGHTS NOW OR HEREAFTER CONFERRED BY STATUTE OR OTHERWISE, IN EITHER CASE THAT ARE INCONSISTENT WITH OR THAT WOULD LIMIT OR MODIFY LESSOR'S RIGHTS SET FORTH IN THIS MASTER AGREEMENT.

f) Subject to the limitations set forth in Sections 4, below, the rights of the Initial Assignee and any subsequent assignee to receive Equipment Rent under a Lease Assignment are absolute and unconditional and shall not be affected by any right of set-off or defense of any kind whatsoever once an acceptance certificate in the form attached here to as Exhibit B is executed by the City and is also received by Initial Assignee. The term ofeach Schedule ("Lease Term") shall commence on the date the Equipment is accepted by Lessee (as evidenced by an acceptance certificate in the form attached hereto as Exhibit B) and shall continue for a period of four years, unless a "Nonappropriation" shall have occurred as set forth in Section 4.

3) RENT; PAYMENT OBLIGATION.

a) Lessee agrees to pay to Lessor or the Initial Assignee the Rent as specified in the Schedule All Rent and other amounts due and payable under the Schedule shall be paid to Lessor in lawful funds of the United State of America at the payment address for Lessor set forth in the Schedule or at such other address as Lessor may designate in writing from time to time. Lessee agrees to pay Lessor interest on any Rent payment or other amount due hereunder that is not paid within 45 days of its due date, at the rate of 1/2% per month (or such lesser rate as is the maximum rate allowable under applicable law). Lessee will make provision for such payments in budgets submitted to its governing body for the purpose of obtaining funding for the payments.

b) EXCEPT AS EXPRESSLY PROVIDED IN SECTION 4, LESSEE'S OBLIGATION TO PAY ALL RENT AND OTHER AMOUNTS WHEN DUE UNDER THESE LEASE TERMS

AND CONDITIONS AND TO OTHERWISE PERFORM AS REQUIRED UNDER THE MASTER AGREEMENT AND EACH SCHEDULE SHALL BE ABSOLUTE AND UNCONDITIONAL, AND SHALL NOT BE SUBJECT TO ANY ABATEMENT, REDUCTION, SET-OFF, DEFENSE, COUNTERCLAIM, INTERRUPTION, DEFERMENT OR RECOUPMENT FOR ANY REASON WHATSOEVER WHETHER ARISING OUT OF ANY CLAIMS BY LESSEE AGAINST CONTRACTOR OR LESSOR, LESSOR'S ASSIGNS, THE SELLER, OR THE SUPPLIER OR MANUFACTURER OF THE EQUIPMENT, SOFTWARE OR FINANCED ITEM, TOTAL OR PARTIAL LOSS OF THE EQUIPMENT, SOFTWARE OR FINANCED ITEM OR ITS USE OR POSSESSION, OR OTHERWISE. If any Equipment, Software or Financed Item is unsatisfactory for any reason, Lessee shall make its claim solely against the seller of such Equipment, Software or Financed Item (or the Licensor in the case of Software, as defined below), Lessor or Contractor and shall nevertheless pay Lessor or its assignee all amounts due and payable under the related Lease.

4) APPROPRIATION OF FUNDS. a) Notwithstanding anything contained in this Master Agreement to the contrary, the obligations of Lessee under this Agreement are special obligations of Lessee, payable solely from payments received from the City under the Sublease Agreement. Such payments will be made from funds budgeted and appropriated by the City for that purpose during the City's then current fiscal period, and shall be subject to the City's annual appropriations of funds for the Equipment, Software and Financed Items procured under this Master Agreement by the City's governing body. If sufficient funds have not been appropriated by the City ("Nonappropriation") to support continuation of the Sublease and this Master Agreement during any subsequent fiscal period, Lessee shall give Lessor notice of such termination at least twenty (20) days prior to the end of the then current fiscal period. If a Nonappropriation occurs, and funds otherwise available by any means whatsoever in any fiscal period of the Lessee for Rent are insufficient therefor, this Master Agreement shall terminate on the last day of the fiscal period for which appropriations were received without penalty or expense to Lessee of any kind whatsoever, except as to the portions of Rent for which funds shall have been appropriated and budgeted or are otherwise available. In the event of such termination, if the Authority does not or is unable to exercise its option to purchase the Equipment, Software or Financed Items pursuant to Section 7 hereof, Lessee agrees to return the Equipment, Software and Financed Items to Lessor or its assignee on the date of such termination as provided in Section 7. Lessor or its assignee will have all legal and equitable rights and remedies to take possession of the Equipment, Software or Financed Items.

b) Notwithstanding the foregoing, and to the extent permitted by law, Lessee agrees

(i) that it will not cancel this Master Agreement or any Lease under the provisions of the above paragraph if any funds are appropriated by the City for the acquisition, retention, leasing or operation of the Equipment, Software or Financed Items or other equipment performing functions similar to the Equipment, Software or Financed Items for the fiscal period in which such appropriation occurs, and (ii) that it will not during the term of this Master Agreement or any Lease give priority in the application of funds to any other similar equipment.

This subparagraph will be construed so as to prohibit Lessee from terminating this Master Agreement or any Lease in order to acquire or lease any other equipment, or from allocating funds directly or indirectly, to perform essentially the same application for which the Equipment, Software or Financed Item is intended, to the extent permitted by law. c) Lessee represents, warrants and covenants that (i) it intends, subject to the provisions of this Section 4, to continue the term of this Master Agreement and each Lease from the commencement date through the end of the Lease Term, and to pay all Rent required hereunder for such period, and (ii) it reasonably believes that legally available funds of an amount sufficient to make all Rent during such period will be obtained and that it will do all things lawfully within its power to obtain, maintain and properly request and pursue funds from the City.

5) LICENSED MATERIALS.. "Licensed Materials" are any manuals and documents, end user license agreements, evidence of licenses, including without limitation, any certificate of authenticity and other media provided in connection with System Software or Software, all as delivered with or affixed as a label to the Equipment. Lessee agrees that this Master Agreement and each Lease (including the sale of any product pursuant to any purchase option) does not grant any title or interest in Software, System Software or Licensed Materials. Any use of the terms "sell," "purchase," "license," "lease," and the like in this Master Agreement or any Lease with respect to Licensed Materials shall be interpreted in accordance with this Section 5.

6) USE; LOCATION; INSPECTION. Lessee shall (a) comply with all terms and conditions of any Licensed Materials and (b) possess and operate the Equipment only in accordance with the manufacturer's recommendations and applicable laws; and only for the business purposes of Lessee and not for personal, family or household purposes. Lessee agrees not to move Equipment from the City of Philadelphia, except as may required for the Contractor to service the Equipment under the Contract. Provided Lessor complies with Lessee's reasonable security requirements, Lessee shall allow Lessor to inspect the premises where the Equipment is located from time to time during reasonable hours after reasonable notice in order to confirm Lessee's compliance with its obligations under the Master Agreement and each Lease.

7) RETURN. At the expiration or earlier termination of the Master Agreement and/or any or all Leases, Lessee will cause Contractor to (a) wipe clean or permanently delete all data contained on the Equipment, including without limitation, any data contained on internal or external drives, discs, or accompanying media, and (b) pack the Equipment to be returned to Lessor in accordance with the manufacturer's guidelines and deliver such Equipment within fifteen (15) calendar days after the expiration or earlier termination of this Master Agreement and/or any or all Leases to Lessor at any destination within 100 miles of Philadelphia designated by Lessor. In the case of any item of Software or License Agreement subject to a Lease , at the time of the occurrence of a Non-Appropriation or an Event of Default by Lessee, Lessee shall also be automatically deemed to have reassigned any License Agreement, and shall immediately deinstall and deliver to Lessor all Software, together with the original certificate of authenticity issued by the licensor of such Software, if any.

All dismantling, packaging, transportation, in-transit insurance and shipping charges shall be borne by Lessee. All Equipment shall be returned to Lessor in the same condition and working order as when delivered to Lessee, reasonable wear and tear excepted.

8) RISK OF LOSS; INSURANCE; TAXES. A) Lessee assumes any and all risk of loss or damage to the Equipment from the time such Equipment is delivered to Lessee until such Equipment is returned to and is received by Lessor in accordance with the terms and conditions of the applicable Lease.B) Lessor shall report and pay all all license and registration fees and all taxes (local, state and federal), fees, levies, imposts, duties, assessments, charges and withholding of any nature whatsoever, however designated (including, without limitation, any value added, transfer, sales, use, gross receipts, business, occupation, excise, personal property, real property, stamp or other taxes) other than taxes measured by Lessor's income ("Taxes") now or hereafter imposed or assessed by any governmental body, agency or taxing authority upon the purchase, ownership, delivery, installation, leasing, rental, use or sale of the Equipment, the Rent or other charges payable hereunder, or otherwise upon or in connection with any Lease, whether assessed on Lessor or Lessee, other than any such Taxes required by law to be reported and paid by Lessee. Lessee shall promptly reimburse Lessor for all such Taxes paid by Lessor, together with any penalties or interest in connection therewith attributable to Lessee's acts or failure to act, excluding (a) Taxes on or measured by the overall gross or net income or items of tax preference of Lessor, (b) as to any Lease the related Equipment, Taxes attributable to the period after the return of such Equipment to Lessor, and (c) Taxes imposed as a result of a sale or other transfer by Lessor of any portions of its interest in any Lease or in any Equipment except for a sale of other transfer to Lessee or a sale or other transfer occurring after and during the continuance of any Event of Default by Lessee . Notwithstanding the foregoing, Lessee represents that Lessee holds permit number **[INSERT NUMBER]** ("Sales Tax Permit") which allows Lessee to self report and self remit **[INSERT STATE]** sales tax and Lessee warrants that, so long as this Master Agreement is in effect, Lessee shall maintain and deliver to Lessor certified copies of the current sales Tax Permit in full force and effect and, pursuant thereto, calculate and remit applicable **[INSERT STATE]** sales tax directly to the applicable taxing authority, and Lessee shall provide immediate written notice to Lessor of any termination, cancellation or other impediment to use of such permit. In the event Lessee notifies Lessor that the Sales Tax Permit is not in full force and effect or otherwise is impaired and, as to all other Taxes, Lessor shall be responsible for the filing of required Taxes. Lessee indemnifies Lessor from any claim, fines, penalties, interest or other loss arising from any breach of the foregoing representations and warranties.

9) CASUALTY LOSS**.** If the Equipment is lost, stolen, destroyed, damaged beyond repair or in the event of any condemnation, confiscation, seizure or expropriation of such Equipment ("Casualty Equipment"), Lessee shall promptly (i) notify Lessorr of the same and (ii) pay to Lessor the Stipulated Loss Value for the Casualty Equipment. The Stipulated Loss Value is an amount equal to the sum of (a) all Rent and other amounts then due and owing under the applicable Lease , plus (b) the present value of all future Rent to become due under the applicable Lease during the remainder of the Lease Term, plus (c) the present value of the estimated in place fair market value of the Equipment at the end of the Lease Term as determined by Lessor; plus (d) all other amounts to become due and owing during the remaining Lease Term. Unless priced in the purchase order on

a tax exempt basis, each of (b) and (c) shall be calculated using the federal funds rate target reported in the Wall Street Journal on the Acceptance Date of the applicable Lease . 10) ALTERATIONS. Lessee shall make no alterations or additions to the Equipment, except those that (a) will not void any warranty made by the supplier of the Equipment, result in the creation of any security interest, lien or encumbrance on the Equipment or impair the value or use of the Equipment either at the time made or at the end of the applicable Lease , and are readily removable without damage to the Equipment ("Optional Additions"), or (b) are required by any applicable law, regulation or order. All additions to the Equipment or repairs made to the Equipment, except Optional Additions, become a part of the Equipment and Lessor's property at the time made; Optional Additions which have not been removed in the event of the return of the Equipment shall become Lessor's property upon such return.

11) REPRESENTATIONS AND WARRANTIES OF LESSEE. Lessee represents, warrants and covenants to Lessor and will provide to Lessor at Lessor's request all documents deemed necessary or appropriate by Lessor, including, financial statements, Secretary or Clerk Certificates, essential use information or documents (such as affidavits, notices and similar instruments in a form satisfactory to Lessor) and Opinions of Counsel to the effect that, as of the time Lessee enters into this Master Agreement and each Schedule that:

a) Lessee is an entity duly organized and existing under and by virtue of the authorizing statute or constitutional provisions of its state, with full power and authority to enter into this Master Agreement and perform all of its obligations under this Master Agreement and each Lease;

b) The Lease Agreement and each Lease have been duly authorized, authenticated and delivered by Lessee by proper action of its governing board at a regularly convened meeting and attended by the requisite majority of board members, or by other appropriate official authentication, as applicable, and all requirements have been met and procedures have occurred in order to ensure the validity and enforceability of the Lease;

c) The Master Agreement and each Lease constitute the valid, legal and binding obligations of Lessee, enforceable in accordance with their terms;

d) No other approval, consent or withholding of objection is required from any federal, state or local governmental authority or instrumentality with respect to the entering into or performance by Lessee of the Master Agreement or any Lease and the transactions contemplated thereby;

e) Lessee has complied with such public bidding requirements and other state and federal laws as may be applicable to the Contract and the acquisition by Lessee of the Equipment;

f) The entering into and performance of the Master Agreement and each Lease will not (i) violate any judgment, order, law or regulation applicable to Lessee; (ii) result in any breach of, or constitute a default under any instrument to which the Lessee is a party or by which it or its assets may be bound; or (iii) result in the creation of any lien, charge, security interest or other encumbrance upon any assets of the Lessee or on the Equipment, other than those created pursuant to the Lease Agreement;

g) There are no actions, suits, proceedings, inquiries or investigation, at law or in equity, before or by any court, public board or body, pending or threatened against or affecting Lessee, nor to the best of Lessee's knowledge and belief is there any basis thereofor,

which if determined adversely to Lessee will have a material adverse effect of the ability of Lessee to fulfill its obligations under the Master Agreement or any Lease;
h) The Equipment is essential to the proper, efficient and economic operation of the City or to the services which Lessee provides to its citizens. Lessee expects to make immediate use of the Equipment, for which it has an immediate need that is neither temporary nor expected to diminish during the Master Agreement and each Lease. The Equipment will be used for the sole purpose of performing one or more of Lessee's governmental or proprietary functions consistent within the permissible scope of Lessee's authority;
i) The City reasonably believes that legally available funds of an amount sufficient to make all Rent payments during the term of the Master Agreement and each Lease will be obtained and it will do all things lawfully within its power to obtain, maintain and properly request and pursue funds from which the Rent payments may be made, including making provisions for such payments to the extent necessary in each budget submitted for the purpose of obtaining funding using its bona fide best efforts to have such portion of the budget approved and exhausting all available administrative reviews and appeals in the event such portion of the budget is not approved (provided, that the City's best efforts shall not be construed to require the City to file a lawsuit against City Council);
j) there has been no material change in the budget for Lessee's current Fiscal Period since its adoption;
(k) Lessee's obligations to pay Rent and any other amounts due under the Master Agreement and each Lease constitute a current expense and not a debt of Lessee under applicable state law; (n) no provision of the Master Agreement and each Lease constitutes a pledge of the tax or general revenues of Lessee;
(l) Lessee does not export, re-export, or transfer any Equipment, Software, system software or source code or any direct product thereof to a prohibited destination, or to nationals of proscribed countries wherever located, without prior authorization from the United States government and other applicable governments;
(m) Lessee does not use any Equipment, Software or system software or technology, technical data, or technical assistance related thereto or the products thereof in the design, development, or production of nuclear, missile, chemical, or biological weapons or transfer the same to a prohibited destination, or to nationals of proscribed countries wherever located, without prior authorization from the United States and other applicable governments; and
(n) Lessee is not an entity designated by the United States government or any other applicable government with which transacting business without the prior consent of such government is prohibited.
12. WARRANTY ASSIGNMENT.
(a) Provided no Event of Default has occurred and is continuing, Lessor assigns to Lessee for the Lease Term the benefit of any Equipment warranty and right or return provided by any seller.
13. EVENTS OF DEFAULT. As used herein, the term "Event of Default" means the occurrence of any one or more of the following events: (a) except in an event of Nonappropriation as set forth in Section 4, Lessee fails to make any Rent payment as it becomes due in accordance with the terms of the Master Agreement or any Lease and

such failure continues for ten (10) days after the due date thereof; (b) Lessee fails to perform or observe any other covenant, condition, or agreement to be performed or observed by it hereunder or under any Lease, and such failure is not cured within thirty (30) days of Lessee's receipt of notice from Lessor; (c) the discovery by Lessor that any statement, representation, or warranty made by Lessee hereunder or in any Lease is false, misleading or erroneous in any material respect; (d) proceedings under any bankruptcy, insolvency, reorganization or similar legislation shall be instituted against or by Lessee, or a receiver or similar officer shall be appointed for Lessee or any of its property, and such proceedings or appointments shall not be vacated, or fully stayed, within thirty (30) days after the institution or occurrence thereof; or (e) an attachment, levy or execution is threatened or levied upon or against the Equipment, and such attachment, levy or execution is not cured within thirty (30) days; (f) the Lessee shall default in the payment of principal of and/or interest on any of the City's outstanding general obligation bonds; or (g) any certificate, statement, representation, warranty, or financial statement heretofore or hereafter furnished pursuant to or in connection with this Master Agreement or any Lease by or on behalf of Lessee is false in any material respect at the time as of which the facts therein set forth were stated or certified, or omits any substantial contingent or unliquidated liability or claim against Lessee or, upon the date of execution of this Master Agreement or any Lease, there shall have been any materially adverse change in any of the facts disclosed by any such certificate, statement, representation, or warranty, which shall not have been disclosed in writing to Lessor at or prior to the time of execution of this Master Agreement or the related Lease.

14. REMEDIES; TERMINATION.

(a) Upon an Event of Default, all of Lessee's rights (including its rights to the Equipment), but not its obligations hereunder and under any and all Leases shall automatically be canceled without notice and Lessor may exercise one or more of the following remedies in its sole discretion:

(i) require Lessee to return any and all such Equipment covered by any and all Leases in accordance with Section 7, or if requested by Lessor, to assemble such Equipment in a single location designated by Lessor and to grant Lessor the right to enter the premises where such Equipment is located (regardless of where assembled) for the purpose of repossession;

(ii) sell, lease or otherwise dispose of any or all Equipment (as agent and attorney-in-fact for Lessee to extent necessary) upon such terms and in such manner (at public or private sale) as Lessor deems advisable in its sole discretion ("Disposition");

(iii) declare immediately due and payable as a pre-estimate of liquidated damages for loss of bargain and not as a penalty, the Stipulated Loss Value of the Equipment leased under any and all Schedules in lieu of any further Rent, in which event Lessee shall pay such amount to Lessor within 10 days after the date of Lessor's demand; or

(iv) proceed by appropriate court action either at law or in equity (including action for specific performance) to enforce the performance by Lessee or recover damages associated with such Event of Default or exercise any other remedy available to Lessor in law or in equity.

(b) Lessee shall pay all costs and expenses arising or incurred by Lessor, including reasonable attorney fees, in connection with or related to an Event of Default or the repossession, transportation, re-furbishing, storage and Disposition of any or all of the

Equipment ("Default Expenses"). In the event Lessor recovers proceeds (net of Default Expenses) from its Disposition of the Equipment, Lessor shall credit such proceeds against the owed Stipulated Loss Value. Lessee shall remain liable to Lessor for any deficiency. With respect to this Section, to the extent the proceeds of the Disposition (net of Default Expenses) exceed the Stipulated Loss Value owed under the related Lease, or Lessee has paid Lessor the Stipulated Loss Value, the Default Expenses and all other amounts owning under the related Lease , Lessee shall be entitled to such excess and shall have no further obligation with respect to such Lease except as provided in Section 18. All rights of Lessor are cumulative and not alternative and may be exercised by Lessor separately or together.

(c) In the event of default by the Lessor as set forth in the DPA, Lessee may pursue one or more of the following remedies: (i) If the payments hereunder have been assigned to an Initial Assignee, Lessee shall continue to make rent payments for those units of Equipment, Software and Financed Items which have been delivered for which Acceptance Certificates have been received, and cancel its order without liability for payment for those units which have not been delivered and for which Acceptance Certificates have not been received. The amount of the Rent payments shown in the payment schedule will be recalculated, however, to take into consideration and pay for the actual number of units which were delivered and for which Acceptance Certificates have been received. If no acceptable units of equipment have been delivered and accepted, Lessee may terminate the purchase order or Schedule without liability to make any payments. (ii). If the payments under this agreement have not been assigned to an Initial Assignee, Lessee may setoff or counterclaim against its obligation to make the payments any and all damages incurred by Lessee or the City as a result of the Contractor's default.

15. QUIETE ENJOYMENT. Lessor shall not interfere with Lessee's right to possession and quiet enjoyment of the Equipment during the Lease term of any Lease hereunder, provided no Event of Default has occurred or is continuing. Lessor represents and warrants that as of the Acceptance Date, Lessor has the right to lease the Equipment to Lessee.

16**.** LESSEE RESPONSIBILITY. Lessee, to the extent permitted by law, shall indemnify and hold harmless Lessor and assignees, from and against any and all claims, actions, suits, proceedings, costs, expenses (including, without limitation, court costs, witness fees and reasonable attorneys' fees), damages, obligations, judgments, orders, penalties, fines, injuries, liabilities and losses, including, without limitation, actions based on Lessor's strict liability in tort ("Claim") arising directly or indirectly out of or in connection with any matter involving this Master Agreement, the Equipment or any Lease, including but not limited to the selection, manufacture, purchase, acceptance, rejection, ownership, delivery, lease, possession, maintenance, use (including any patent, trademark or copyright infringement), condition, return or operation of any Equipment or the enforcement of Lessor's rights under any Lease. Notwithstanding the foregoing, Lessee shall have no obligation to indemnify or defend against any Claim arising solely as a result of Lessor's gross negligence or willful misconduct. Nothing herein shall be construed to constitute a waiver of the sovereign immunity of Lessee.

17. TRUE LEASE; SECURITY INTEREST; MAXIMUM RATE**.** Each Lease is intended to be a "Finance Lease" as defined in Article 2A of the UCC, and Lessee hereby

authorizes Lessor to file a financing statement to give public notice of Lessor's ownership of the Equipment. The parties' intent that each Lease be a "Finance Lease" within the meaning of Article 2A and the UCC shall have no effect on the characterization of any Lease for accounting purposes, which characterization shall be made by each party independently on the basis of generally accepted accounting principles in the United States in effect at the time. Lessee, by its execution of each Schedule, acknowledges that Lessor has informed it that (a) the identity of Seller is set forth in the applicable Schedule, (b) Lessee is entitled under Article 2A of the UCC to the promises and warranties, including those of any third party, provided to Lessor in connection with, or as a part of, the applicable Purchase Documents, and (c) Lessee may communicate with Seller and receive an accurate and complete statement of the promises and warranties, including any disclaimers and limitations of them or of remedies. If (1) notwithstanding the express intention of Lessor and Lessee to enter into a true lease, any Lease is ever deemed by a court of competent jurisdiction to be a lease intended for security, or (2) Lessor and Lessee enter into a Lease with the intention that it be treated as a lease intended as security by so providing in the applicable Schedule, then to secure payment and performance of Lessee's obligations under this Master Agreement and all Leases, Lessee hereby grants Lessor a purchase money security interest in the related Equipment and in all attachments, accessories, additions, substitutions, products, replacements, rentals and proceeds (including, without limitation, insurance proceeds) thereto as well as a security interest in any other equipment financed pursuant to this Master Agreement or any other agreement between Lessor and Lessee (collectively, the "Collateral"). In any such event, notwithstanding any provisions contained in this Master Agreement or in any Schedule, neither Lessor nor any Assignee shall be entitled to receive, collect or apply as interest any amount in excess of the maximum rate or amount permitted by applicable law. In the event Lessor or any Assignee ever receives, collects or applies as interest any amount in excess of the maximum amount permitted by applicable law, such excess amount shall be applied to the unpaid principal balance and any remaining excess shall be refunded to Lessee. In determining whether the interest paid or payable under any specific contingency exceeds the maximum rate or amount permitted by applicable law, Lessor and Lessee shall, to the maximum extent permitted under applicable law, characterize any non-principal payment as an expense or fee rather than as interest, exclude voluntary prepayments and the effect thereof, and spread the total amount of interest over the entire term of this Master Agreement and all Leases.

18. TERM OF MASTER AGREEMENT; SURVIVAL. This Master Agreement shall commence and be effective upon the execution hereof by both parties and shall continue in effect until terminated by either party by 30 days prior written notice to the other, provided that the effective date of the termination is after all obligations of Lessee arising hereunder and pursuant to any Schedule have been fully satisfied. Notwithstanding the foregoing, all representations, warranties and covenants made by Lessee hereunder shall survive the termination of this Master Agreement and shall remain in full force and effect. All of Lessor's rights, privileges and indemnities under this Master Agreement or any Lease, to the extent they are fairly attributable to events or conditions occurring or existing on or prior to the expiration or termination of such Lease, shall survive such expiration or termination and be enforceable by Lessor and Lessor's successors and assigns.

19. WAIVER OF JURY TRIAL. LESSEE AND LESSOR HEREBY EXPRESSLY WAIVE ANY RIGHT TO DEMAND A JURY TRIAL WITH RESPECT TO ANY ACTION OR PROCEEDING INSTITUTED BY LESSOR OR LESSEE IN CONNECTION WITH THIS MASTER AGREEMENT, ANY SCHEDULE OR ANY MATERIAL AGREEMENT RELATED TO EITHER OF THEM.

20. NOTICES. All notices, requests, demands, waivers and other communications required or permitted to be given under this Master Agreement or any other Fundamental Agreement shall be in writing and shall be deemed to have been received upon receipt if delivered personally or by a nationally recognized overnight courier service, or by confirmed facsimile transmission, or 3 days after deposit in the United States mail, certified, postage prepaid with return receipt requested, addressed as follows (or such other address or fax number as either party shall so notify the other):

If to Lessor:	If to Lessee:
	_____
	_____
	_____
	Attn: _____("Authorized Lessee Representative")
	Fax:

21. MISCELLANEOUS

(a) Governing Law. THIS MASTER AGREEMENT AND EACH LEASE SHALL BE GOVERNED BY THE INTERNAL LAWS (AS OPPOSED TO CONFLICTS OF LAW PROVISIONS) OF THE STATE OF EQUIPMENT LOCATION.

(b) Credit Review. Lessee consents to a reasonable credit review by Lessor for each Lease.

(c) Captions and References. The captions contained in this Master Agreement and any Schedule are for convenience only and shall not affect the interpretation of this Master Agreement or any Lease. All references in this Master Agreement to Sections and Exhibits refer to Sections hereof and Exhibits hereto unless otherwise indicated.

(d) Entire Agreement; Amendments. This Master Agreement, each Schedule and Acceptance Certificate and all material agreements related thereto executed by both Lessor and Lessee constitute the entire agreement between Lessor and Lessee relating to the leasing of the Equipment, and supersede all prior agreements relating thereto, whether written or oral, and may not be amended or modified except in a writing signed by the parties hereto.

(e) No Waiver. Any failure of Lessor to require strict performance by Lessee, or any written waiver by Lessor of any provision hereof, shall not constitute consent or waiver of any other breach of the same or any other provision hereof.

(f) Invalidity. If any provision of this Master Agreement or any Schedule shall be prohibited by or invalid under law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Master Agreement or such Schedule.

(g) Counterparts. This Master Agreement may be executed in counterparts, which collectively shall constitute one document.

(h) Lessor Reliance. Lessor may act in reliance upon any instruction, instrument or signature reasonably believed by Lessor in good faith to be genuine. Lessor may assume that any employee of Lessee who executes any document or gives any written notice, request or instruction has the authority to do so.

IN WITNESS WHEREOF, LESSEE AND LESSOR HAVE EXECUTED THIS MASTER AGREEMENT ON THE DATES SPECIFIED BELOW.

LESSEE:	LESSOR:
_____	
By:_____	By:_____
_____	_____
Name and Title	Name and Title
_____	_____
Date	Date

Exhibit A to Master Agreement

Master Agreement Number _____

Schedule Number _____

COUNTERPART NO. _____ OF _____. TO THE EXTENT THAT THIS SCHEDULE CONSTITUTES CHATTEL PAPER (AS DEFINED ON THE UCC), NO SECURITY INTEREST IN THIS SCHEDULE MAY BE CREATED THROUGH THE TRANSFER OR POSSESSION OF ANY COUNTERPART OTHER THAN COUNTERPART NO. 1.

MASTER AGREEMENT
SCHEDULE (Operating)

… ("Lessor") and_____, an agency, department or political subdivision of the State of _____ ("Lessee") are parties to the Master Agreement identified by the Master Agreement Number specified above (the "Master Agreement"). This Schedule (which shall be identified by the Schedule Number specified above) and the Master Agreement together comprise a separate Lease between the parties. The terms and conditions of the Master Agreement are hereby incorporated by reference into this Schedule. All capitalized terms used in this Schedule without definition have the meanings ascribed to them in the Master Agreement.

1. **LEASE.**

   A. **Description of Items of Leased Equipment** **Total Cost**

   B. **Initial Term**: ____ Months.

2. **RENT**: $_____

   RENT is payable: ___in advance ___in arrears (check one) ____monthly ____quarterly (check one)

   ____semi-annually ____annually

If the Rent is due in advance, then the first Rent payment shall be due on the Acceptance Date. If the Rent is due in arrears, then the first Rent payment shall be due at the end of the first payment frequency period as selected above.

3. **LATEST COMMENCEMENT DATE**: _____. Lessor's obligation to purchase and lease the Equipment is subject to the Acceptance Date being on or before the Latest Commencement Date.

4. **EQUIPMENT LOCATION:** _____

5. **SELLER:** _____

6. **APPROPRIATIONS:** Monies for all Rent and other payments due under the Lease for the Fiscal Period ending _____ are available from Lessee's appropriated funds for such Fiscal Period and that appropriations and/or other funds have been encumbered or designated for the payment of all Rent and other payments that shall become due under the Lease in such Fiscal Period.

7. LESSEE'S END-OF-LEASE-TERM OPTIONS; AUTOMATIC EXTENSION. Lessee shall have the following options in respect of each Lease at the end of each of the Initial Term, any Renewal Term (defined below) and any optional extension of the Initial Term or any Renewal Term ("Then Applicable Term") by delivering to Lessor a written notice delivered by Lessee to Lessor at least 90 days prior to the end of the Then Applicable Term setting forth Lessee's elections pursuant to this Section 7 with respect to the Equipment subject to such Lease ("End-of Term Notice"):

a. **Purchase Option.** Lessee may elect to purchase any or all Units of Equipment then subject to such Lease (other than items of Software that may not be sold by Lessor under the terms of any applicable License Agreement) for an amount equal to the Fair Market Value of such Units of Equipment as of the end of the Then Applicable Term, provided no Lessee Default shall have occurred and be continuing. In the event of such an election, Lessee shall pay such amount to Lessor, in immediately available funds, on or before the last day of the Then Applicable Term. If Lessee shall have so elected to purchase any of the Units of Equipment, shall have so paid the applicable purchase price and shall have fulfilled the terms and conditions of this Master Agreement, then on the last day of the Then Applicable Term (1) the Lease with respect to such Units of Equipment shall terminate and, except as provided in Section 26, Lessee shall be relieved of all of its obligations in favor of Lessor with respect to such Units of Equipment, and (2) Lessor shall transfer all of its interest in such Units of Equipment to Lessee "AS IS, WHERE IS," without any warranty, express or implied, from Lessor, other than the absence of any liens or claims by or through Lessor. In the event Lessor and Lessee are unable to agree on the Fair Market Value of any Units of Equipment, Lessor shall, at Lessee's expense, select an independent appraiser to conclusively determine such amount.

b. **Renewal Option.** Lessee may elect to renew the Lease with respect to any or all Units of Equipment then subject to such Lease (other than items of Software that may not be re-released by Lessor under the terms of any applicable License Agreement) for an amount equal to the amount of periodic rent that would be payable for any specified Equipment in an arm's length transaction between an informed and willing lessee and an informed and willing lessor, neither under compulsion to lease, such amount not to be reduced by the costs of removing such Equipment from its current location or moving it to a new location ("Fair Rental Value") of such Units of Equipment as of the end of the Then Applicable Term. In the event of such an election, Lessee shall enter into a mutually agreeable renewal agreement with Lessor ("Renewal Agreement") on or before the last day of the then applicable term confirming the Units of Equipment as to which the Lease is to be renewed, the period for which the Lease is to be renewed (the "Renewal Term"), and the amount of Rent and the times at which such Rent is to be payable during the Renewal Term. In the event Lessor and Lessee are unable to agree on the Fair Rental Value of any Units of Equipment, Lessor shall, at Lessee's expense, select an independent appraiser to conclusively determine such amount.

c. **Return**. Lessee may elect to return any or all of the Units of Equipment then subject to such Lease in accordance with Section 7 of the Master Agreement.

d. Optional Extension. Lessee may elect, by omitting to deliver to Lessor an End-of-Term Notice at least 90 days prior to the expiration of the Initial Term or any Renewal Term, to extend the Initial Term or such Renewal Term, as the case may be. In that event, the Initial Term or such Renewal Term shall, without any additional notice or documentation, be automatically extended for successive calendar months with respect to all items of Equipment then subject to such Lease through the end of the calendar month falling at least 90 days after the date Lessee shall have delivered to Lessor an End-of-Term Notice with respect to such Lease. For each calendar month that the then applicable term of such Lease is so extended, Lessee shall pay to Lessor Rent in an amount equal to the monthly Rent payment in effect immediately prior to such extension (or the appropriate pro rata portion of the Rent payment then in effect in the case of Rent payable other than on a monthly basis), and all other provisions of this Master Agreement and the applicable Schedule shall continue to apply.

If Lessee shall have delivered to Lessor an End-of-Term Notice with respect to a Lease, but shall have subsequently failed to comply with its obligations arising from its elections specified therein (*e.g.*, Lessee shall have failed, on or before the last day of the then applicable term (1) to pay Lessor the purchase price for Equipment to be purchased in accordance with Section 7(a) above, (2) to execute a Renewal Agreement with respect to Equipment as to which the Lease is to be renewed in accordance with Section7(b) above, or (3) to return to Lessor Equipment to be returned in accordance with Section 7(c) above), then the Then Applicable Term of such Lease shall, without any additional notice or documentation, be automatically extended for successive calendar months with respect to all items of Equipment as to which Lessee shall have so failed to comply with its obligations through the end of the calendar month in which Lessee shall have complied with such obligations. For each calendar month that the then applicable term of any Lease is so extended, Lessee shall pay to Lessor Rent in an amount equal to the monthly Rent payment in effect immediately prior to such extension (or the appropriate pro rata portion of the Rent payment then in effect in the case of Rent payable other than on a monthly basis), and all other provisions of this Master Agreement and the applicable Schedule shall continue to apply.

Notwithstanding any of the provisions of this Section 7 to the contrary, if any Event of Default shall have occurred and be continuing at any time during the last 90 days of the then applicable term of any Lease, Lessor may cancel any Renewal Term or optional or other automatic extension of the Then Applicable Term immediately upon written notice to Lessee.

8. ADDITIONAL PROVISIONS:

9. FISCAL PERIOD: ___[Annual]_____

LESSOR AGREES TO LEASE TO LESSEE AND LESSEE AGREES TO LEASE FROM LESSOR THE EQUIPMENT DESCRIBED IN SECTION 1.A ABOVE. SUCH LEASE WILL BE GOVERNED BY THE MASTER AGREEMENT AND THIS SCHEDULE, INCLUDING THE IMPORTANT ADDITIONAL TERMS AND CONDITIONS SET FORTH ABOVE. IN THE EVENT OF ANY CONFLICT BETWEEN THE TERMS OF THIS SCHEDULE AND THE MASTER AGREEMENT, THE TERMS OF THIS SCHEDULE SHALL GOVERN. LESSEE HEREBY REPRESENTS AND WARRANTS THAT ON AND AS OF THE DATE HEREOF EACH OF THE REPRESENTATIONS AND WARRANTIES MADE BY LESSEE IN THE MASTER AGREEMENT ARE TRUE, CORRECT AND COMPLETE.

LESSEE:	**LESSOR:**
_____	**…**
By: _____	**By:** _____
_____	_____
Name and Title	**Name and Title**
_____	_____
Date	**Date**

Exhibit B to Master Agreement

Master Agreement Number _____

Schedule Number _____

MASTER AGREEMENT

ACCEPTANCE CERTIFICATE

("Lessor") and_____, an agency, department or political subdivision of the State of _____ ("Lessee") are parties to the Master Agreement and Schedule under such Master Agreement (the "Schedule") identified by the Master Agreement Number and Schedule Number, respectively, specified above. The Master Agreement and Schedule together comprise a separate Lease, that is being accepted and commenced pursuant to this Acceptance Certificate. All capitalized terms used in this Acceptance Certificate without definition have the meanings ascribed to them in the Master Agreement.

1. LEASE ACCEPTANCE. Lessee hereby acknowledges that the Equipment described in Section 1 of the Schedule, or if different, the Equipment described in the attached invoice or other attachment hereto, has been delivered to the Equipment Location specified below, inspected by Lessee and found to be in good operating order and condition, and has been unconditionally and irrevocably accepted by Lessee under the Lease evidenced by the Master Agreement and the Schedule as of the Acceptance Date set forth below. Lessee authorizes Lessor to adjust the Rent payments on the Schedule to reflect the Final Invoice Amount set forth on the attached invoice(s) if such amount is different than the Total Cost on the Schedule.

2. LESSEE ACKNOWLEDGEMENTS. Lessee hereby agrees to faithfully perform all of its obligations under the Master Agreement and the Schedule and reaffirms, as of the date hereof, its representations and warranties as set forth in the Master Agreement. Lessee hereby acknowledges its agreement to pay Lessor Rent payments, as set forth in the Schedule, plus any applicable taxes, together with all other costs, expenses and charges whatsoever which Lessee is required to pay pursuant to the Master Agreement and the Schedule, in each instance at the times, in the manner and under the terms and conditions set forth in the Master Agreement and the Schedule, respectively.

3. EQUIPMENT LOCATION. The Equipment has been installed and is located at the following Equipment Location:

_____

_____

4. REPRESENTATIONS AND WARRANTIES. Lessee hereby represents and warrants that on and as of the date hereof each of the representations and warranties made by Lessee in the Master Agreement are true, correct and complete.

[LESSEE]

_____

_____

Name and Title

Acceptance Date:_____

CITY OF PHILADELPHIA

PROCUREMENT DEPARTMENT

DATA PROCESSING AGREEMENT

Invitation and Bid No. T3WJ7920

CITY OF PHILADELPHIA
PROCUREMENT DEPARTMENT

DATA PROCESSING AGREEMENT

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CITY OF PHILADELPHIA
PROCUREMENT DEPARTMENT
DATA PROCESSING AGREEMENT
DATA PROCESSING AGREEMENT

1. SCOPE, EFFECTIVE DATE, AND TERM OF CONTRACT

The undersigned, hereinafter called "Contractor" or "Bidder," by signing the Invitation and Bid as provided in pages 1-51 of this Data Processing Agreement ("DPA"), agrees to furnish to the City of Philadelphia (the "City") the data processing and other equipment and products, the computer software, and/or the services that are described in the product and/or service specifications and requirements set forth in the Invitation and Bid, in accordance with such specifications and requirements, the Price Schedule, and the terms and conditions set forth in this DPA and elsewhere in the Invitation and Bid. Unless otherwise stated in an addendum issued by the Procurement Department, the Contract shall be effective as of the date set forth in Section I, *General Bid Submission*, of the Invitation and Bid (provided that all other conditions of a contract binding on the City, as set forth in Paragraph 25.i. below, are fully satisfied), and the initial term and renewal terms, if any, of the Contract shall be as set forth in such Section I.

2. DEFINITIONS - The following terms shall have the meanings specified for them, wherever they occur in this Data Processing Agreement (and, as applicable, elsewhere in the Invitation and Bid), whether or not they are capitalized. Such meanings shall be applicable to both the singular and plural of the term defined; whenever the context requires, words used in the singular shall be construed to mean or include the plural and vice versa; and pronouns of any gender shall be deemed to include and designate the masculine, feminine and neuter gender. The definitions and explanations set forth in this Paragraph 2 are an integral part of the terms and conditions of the Contract.

a. BID, BIDDER; CONTRACTOR - This Invitation And Bid, properly executed by the bidder and submitted to the Procurement Department in accordance with its requirements, constitutes the Bid. The Bidder is the entity submitting and signing, by its authorized signatory, the Invitation And Bid. The successful bidder, whose bid is signed by the Procurement Commissioner and becomes the Contract, is also referred to as the "Contractor."

b. CONTRACT - The Invitation And Bid, properly executed by the successful bidder as required below, shall become the Contract upon, but only upon, execution by the Procurement Commissioner and the satisfaction of all set forth in Paragraph 25.i. The Contract shall consist of all of the documents constituting the Invitation And Bid (as set forth in Paragraph 2.l), as executed by the bidder and the Procurement Commissioner, together with all Purchase Orders issued by the Procurement Department pursuant to the Contract; the term "Contract" shall refer collectively to such documents.

c. DATA PROCESSING AGREEMENT or DPA - The term "Data Processing Agreement" or "DPA" shall refer to that part of the Contract consisting of this document (Paragraphs 1-27 and pages 1-51 hereof), together with all exhibits and attachments hereto.

d. DAY- Calendar day, unless business day is specified

e. EQUIPMENT - An all-inclusive term which, depending upon the procurement, refers either to individual machines (including related components/devices) or to a complete data processing system or subsystem.

f. OPERATING SYSTEM SOFTWARE - All programs ordered with and innately necessary for the operation of the equipment ordered hereunder, as well as other programming generally made available by the equipment manufacturer without separate charge.

g. APPLICATION SOFTWARE - Any program that may be ordered under this contract that performs a specific functional application as required by the City.

h. UNMODIFIED APPLICATION SOFTWARE - Any application software ordered under this contract that can be installed or delivered without program code changes.

i. MODIFIED APPLICATION SOFTWARE - Any application software ordered under this contract that requires program code changes to meet City requirements prior to delivery or installation.

j. EQUIPMENT FAILURE - A malfunction in the equipment or software furnished hereunder.

k. INSTALLATION DATE - The date(s) set forth in the bid specifications by which Contractor must have delivered and installed and have ready for use by the City, the equipment, operating system software and/or application software identified in the bid specifications for "Delivery and Installation."

l. INVITATION AND BID - "Invitation and Bid" refers, collectively, to the documents by which bids are solicited for this procurement, including all of the following: (i) the form titled "Invitation And Bid" and bearing the "Bid No." for this procurement; (ii) this Data Processing Agreement ("DPA"); (iii) all attachments, exhibits, and appendices to such form and to this DPA; and (iv) all addenda to the Invitation and Bid issued by the Procurement Department. The terms "bid specifications," "bidding specifications," "bid requirements", and "bidding requirements" shall mean the Invitation And Bid wherever they are used in this DPA and elsewhere in the documents comprising the Invitation And Bid.

m. DELIVERY DATE - The date set forth in the Purchase Order and/or bid specifications by which Contractor must have delivered to the City's site the equipment, operating system software, and/or application software identified in the bid specifications for "Delivery."

n. MACHINE - An individual unit identified by type and model including model upgrades and features such as a processor, an additional memory unit, a tape unit, a card reader, a terminal, a controller, etc., unless the context requires individual reference to model upgrades and features.

o. MECHANICAL REPLACEMENT - The replacement of one machine for another occasioned by the mechanical condition of the machine being replaced.

p. PREVENTIVE MAINTENANCE - That maintenance performed by Contractor which is designed to keep the equipment and software in proper operating condition, and which is performed on a scheduled or unscheduled basis.

q. PRICE SCHEDULE - "Price Schedule" refers to Section 5 of the Invitation and Bid, titled "Pricing," where the Bidder is required to provide pricing is under the Invitation and Bid.

r. PRINCIPAL PERIOD OF MAINTENANCE (PPM) - Unless otherwise called for in the bid specifications, the PPM shall consist of ten (10) consecutive hours between the hours of 8 a.m. and 6 p.m. (local time), Monday through Friday (exclusive of national holidays observed by Contractor).

s. PRODUCT(S) - Equipment, operating system software, application software, and other products required under the Contract.

t. PURCHASE ORDER - The purchasing document, bearing the title "Purchase Order" and the number of the Contract, as signed by an authorized representative of the Procurement Department, that authorizes the Contractor to furnish and the City to pay for equipment, software, and/or services required under the Contract.

u. REMEDIAL MAINTENANCE - The maintenance performed by Contractor which results from equipment or software failure and which is performed as required, and therefore on an unscheduled basis.

v. SUBCONTRACTOR - any subcontractor or suppler to Contractor, at any tier.

3. CONTRACTOR COMMITMENTS, WARRANTIES AND REPRESENTATIONS

a. Any written commitment by Contractor within the scope of the Contract shall be binding upon Contractor whether or not incorporated into a Purchase Order. Failure of Contractor to fulfill any such commitment shall render Contractor liable for liquidated or other damages due under the terms of this DPA; except that if the Invitation and Bid provides different terms relating to liquidated damages, then such different terms shall govern with respect to liquidated damages only .

b. For the purposes of this DPA a commitment by Contractor includes:

(1) prices and options committed to remain in force over specified period(s) of time;

(2) any warranty or representation made by Contractor in a bid as to equipment performance or operating system software performance, application software performance, total systems performance, any other physical, design or functional characteristics of a machine, operating system software, application software, installation date or delivery date;

(3) any warranty or representation made by Contractor concerning the characteristics or items described in 3 b. (2) above made in any literature, descriptions, drawings or specifications accompanying or referred to in a bid;

(4) any modification of or affirmation or representation as to the characteristics of items described in 3b (2) above which is made by Contractor in writing during the course of discussions whether or not incorporated into a formal amendment to the bid in question; and

(5) any representation by Contractor in a bid supporting documents or other writing issued during the course of the bid or proposal review as to training to be provided,

services to be performed, prices and options committed to remain in force over a fixed period of time, or any other similar matter regardless of the fact that the duration of such commitment may exceed the term of this DPA.

4. INVOICES; LEASE AND LEASE/PURCHASE TERMS

a. Invoices - Invoice requirements shall be as set forth in Section 4, *Contract Management*, of the Invitation and Bid.

b. Lease; Lease/Purchase

(1) Contractor shall render invoices (3 copies) to the City for monthly lease or lease/purchase payments in the month for which the charges accrue. No lease or lease/purchase charges shall accrue until after acceptance of the equipment and/or software pursuant to acceptance of the equipment and/or software pursuant to Paragraph 7 of this DPA. City will evidence its acceptance of equipment and/or software by written notice to Contractor. Invoices shall as a minimum provide:

(a) type and description of equipment or product;

(b) serial or other identification number;

(c) prompt payment discount, if applicable;

(d) City Purchase Order and contract numbers.

(2) Essential Use - It is the City's intent to make all lease or lease/purchase payments in connection with the equipment and/or software if funds are legally appropriated therefore, and in that regard City represents that the use of the equipment and/or software is essential to its proper, efficient and economic operation. City also represents that:

(a) it has every intent to do or cause to be done all things necessary to preserve this DPA and all related documents (if any) in full force and effect; and

(b) it has sufficient appropriations or other funds available to pay all amounts due during the current fiscal period.

(3) Authority and Authorization - City represents, covenants and warrants that:

(a) City is fully constituted political subdivision of the Commonwealth of Pennsylvania;

(b) the execution, delivery and performance by City of this DPA has been duly authorized by all necessary action on the part of the City;

(c) this DPA constitutes a legal, valid and binding DPA of City enforceable in accordance with its terms

(d) no further approval, consent or withholding of objections is required from any governmental authority with respect to this DPA;

(e) the entering into and performance of this DPA is not contrary to and does not violate any judgement, order, law, or regulation or constitute a default by City under any other DPA or instrument;

(f) with respect to this DPA, City has complied with all procurement and other legal requirements.

(4) Termination Due to Non-Appropriation

(a) In the event sufficient funds are not appropriated any future fiscal period of City for lease or lease/purchase payments due under the Contract, the City shall promptly notify contractor of such occurrence and this shall, in accordance with the provisions of Subparagraph 4.f. below, terminate as of the last day of the period for which a Purchase Order was issued by the Procurement Department, without penalty or expense to the City of any kind whatsoever.

(b) In the event of such termination, City shall peaceably surrender possession of the equipment and/or software to Contractor (or its designee) on the date of such termination, in the same condition as when delivered, subject to reasonable wear and tear. Notwithstanding the foregoing, it is City's intent that:

(1) it will not cancel this DPA under the provisions of this Subparagraph or Subparagraph 4.f. below if any funds are appropriated to the City department or agency for whom the equipment was acquired (hereinafter referred to as the "Ordering Department") for the acquisition, retention or operation of the equipment or other equipment or services performing functions similar to such equipment for the fiscal period in which such termination occurs; and

(2) that the Ordering Department will not give priority in the application of funds to any other functionally similar equipment or services.

Neither this Subparagraph nor Subparagraph 4.f. below will be construed so as to permit City to terminate the terms and conditions of this Subparagraph 4 for convenience or in order to acquire any other equipment or services for the Ordering Department to perform in essentially the same application for which the equipment is intended.

(5) Security Interest - City grants to Contractor, a purchase money security interest until City's payment of the last monthly lease or lease/purchase payment. City agrees to execute and deliver, so that Contractor may file or record, any documents reasonably requested by Contractor for the purpose of protecting and/or perfecting said security interest. In the event this DPA terminates as a result of non- appropriation of funds as specified in Subparagraph 4.f. below, the equipment and software (including title to the equipment) will pass from City to Contractor.

(6) Purchase Option - Upon written notice from the City to Contractor (which notice may, in City's sole discretion, be in the form of a Purchase Order issued to Contractor), and provided there is no Event of Default (as defined below in Subparagraph 4.b.(8) or any event which, with notice, could become an Event of Default, then existing, City will have the right to fully satisfy its obligations under the lease or lease/purchase payment schedule with respect to any or all items of equipment and/or software by paying Contractor a concluding payment equal to the unpaid time balance calculated to delete any interest then unearned. Upon satisfaction by City of such payment obligations, Contractor will transfer any and all of its rights, title and interest in such equipment to City free and clear of any liens created by Contractor.

(7) Contractor's Right of Assignment

(a) Upon approval by the City, pursuant to Paragraph 17 of this DPA, Contractor shall have the right to assign the following rights and interests to its assignee (herein after referred to as "Approved Assignee").

(1) all of City's lease or lease/purchase payments due and to become due under the Contract;

(2) all of Contractor's right, title and interest in and to the equipment and other property described in the Contract; and

(3) all of Contractor's rights and remedies under the Contract, including the right to take all legal, equitable and other action necessary to enforce City's obligation.

(b) It is expressly understood and agreed that the Approved Assignee shall not assume, nor will it be liable for the performance of any of the obligations or liabilities of Contractor under the Contract; they all remain the responsibility of Contractor. However, it is also understood and agreed that the Approved Assignee shall not by virtue of any such agreement acquire any greater or better rights than Contractor has or would have had to payment under the Contract and that the Approved Assignee shall only be entitled to payments which are actually due or become due under the Terms and Conditions of the Contract.

(c) After approval by the City of proposed assignment, Contractor shall specify in writing the location to which the lease or lease purchase payments due and to become due under the Contract shall be forwarded; all lease or lease purchase payments shall continue to be made payable in the name of Contractor notwithstanding such approved assignment. City shall keep a complete and accurate record of all such assignments in a manner that complies with the Internal Revenue Code, Paragraph 103 (i), and the regulations promulgated hereunder.

(8) Default by City

(a) The term "Event of Default", as used herein, means the occurrence of any one or more of the following events:

(1) City fails to make any lease or lease/purchase payment as it becomes due in accordance with the terms of the Contract and/or Purchase Order, and such failure continues, after written notice thereof by Contractor, for a period longer than the City's standard payment cycle (i.e. normally within 45-60 calendar days following receipt of proper invoices);

(2) City fails to perform or observe any other covenant, condition, or agreement to be performed or observed by it in connection with any lease or lease/purchase arrangements entered into hereunder and such failure continues for thirty (30) days after written notice thereof by Contractor.

(b) Upon the occurrence of any Event of Default, and as long as such Event of Default is continuing, Contractor may, at its option, exercise any one or more of the following remedies:

(1) By written notice to City, request City to promptly return the equipment to Contractor, whereupon City shall immediately return the equipment at City's expense and in the manner set forth in Subparagraph 4.b.(4) hereof, or Contractor, at its option, may enter upon the premises where the equipment is located and take immediate possession and remove the same;

(2) Sell or lease the equipment or sublease it for the account of City, holding City liable for all lease or lease/purchase payments due to the effective date of such selling, leasing or subleasing and for the difference between:

(a) The purchase price, rental and other amounts paid by the purchaser, lessee or sub- lessee pursuant to such sale, lease or sub lease; and

(b) the amounts payable by City hereunder.

(9) <u>Representations Regarding Government Use:</u>

(a) If vendor is utilizing tax exempt funds to finance the lease or lease purchase City represents, covenants, and warrants as follows:

(1) It will comply with the applicable information reporting requirements of the federal Internal Revenue Code, including but not limited to, the execution and delivery to contractor of information statements required thereby;

(2) It will not do, cause to be done, or fail to do any act that will cause the Contract, or any transaction hereunder, to be an arbitrage bond within the meaning of the applicable provisions of the federal Internal Revenue Code;

(3) It will not do, cause to be done, or fail to do any act that will cause the Contract, or any transaction hereunder, to be a private activity bond

within the meaning of the applicable provisions of the federal Internal Revenue Code;

(4) It will not do, cause to be done, or fail to do any act that will cause the interest portion of the lease or lease/purchase payments to be or become subject to federal income taxation under the code;

(5) It will be the only entity to own, use and operate the equipment during the lease or lease/purchase term.

(b) Vendor agrees to prepare for the City's review and certification any reports regarding the lease or lease purchase payments required under the applicable Paragraph(s) of the code.

c. Monthly Rental/License Charges

(1) Payment for monthly rental or license charges if less than one month's duration shall be prorated at 1/30th of the monthly rental or license charge for each calendar day except that the 31st day of any month shall not be included in the computation.

(2) Contractor shall render invoices (3 copies) for monthly rental for license charges in the month following the month for which the charges accrue. Monthly charges shall not accrue until after acceptance of the equipment and/or software by the City. Invoices shall as a minimum provide:

(a) type and description of equipment or product;

(b) serial or other identification number;

(c) monthly charge for each time;

(d) total charges;

(e) City Purchase Order and contract numbers.

d. Maintenance Charges

(1) Payment for maintenance services less than one month's duration shall be prorated at 1/30th of the monthly maintenance charges for each calendar day except that the 31st day of any month shall not be included in the computation.

(2) Contractor shall render invoices (3 copies) for basic monthly maintenance charges in the month for which such charges accrue. Invoices shall provide as a minimum:

(a) type and description of each piece of equipment or product;

(b) serial number or other identification number

(c) basic monthly charge for each machine and feature;

(d) total charges;

(e) prompt payment discount, if applicable;

(f) City Purchase Order and contract numbers.

(3) In case of extra service charges (i.e., per-call maintenance), contractor shall render invoices in the month following the month for which such charges accrue. Invoices shall provide as a minimum:

(a) number of hours of extra service;

(b) extra service rate applied; and

(c) total extra service charges for the month.

(4) Extra service charges shall be computed in a minimum of fifteen (15) minute ~~or less~~ increments. A copy of the applicable malfunction incident report(s) shall accompany this invoice.

f. Fiscal Funding Limitation - Payment for items and/or services to be furnished hereunder after the end of the City's current fiscal year (i.e., after June 30th) is subject to Councilmanic appropriation of funds in each succeeding fiscal year of the City. In the event that City Council fails to appropriate the necessary funds for such items and/or services in any future fiscal year of the City, the Contract shall terminate automatically without penalty, cost or liability to the City as of the last day of the fiscal period for which an appropriation was received. Payment for items and/or services after the end of the City's current fiscal year will be made pursuant to Purchase Orders issued by the City in the following fiscal year.

5. DELIVERY/INSTALLATION DATES

a. Equipment

(1) Contractor shall deliver or install newly manufactured equipment (or equipment warranted as new), ready for set up or use, within 45 days of receiving the Purchase Order; or, if different delivery or installation dates are specified in the Purchase Order and/or Invitation and Bid, on or before the delivery or installation date(s) set forth in the Purchase Order and/or Invitation and Bid. The date(s) set forth in the bid specification may be changed upon mutual agreement of the parties in writing. All equipment must be furnished as originally manufactured without change, alteration or modification to the equipment or any of the internal components thereof.

(2) If the equipment is delivered or installed prior to the specified date, the City may elect to use the equipment and change the specified date accordingly.

(3) Any changes by the City to an order or any part thereof, may require the establishment of a new mutually agreed to delivery or installation date. The City may delay the delivery or installation date by notifying Contractor at least twenty (20) calendar days before the delivery or installation date previously established.

(4) The City shall provide Contractor reasonable access to the site for the purpose of delivering or installing the equipment on or before the specified date. Contractor shall specify in writing the estimated time required to deliver or install the equipment.

(5) Equipment to be installed shall not be considered ready for acceptance testing until:

(a) Contractor notifies the City in writing that the equipment is installed and ready for use;

(b) Contractor provides the City with the documentation of successful testing performed at the City's installation site which demonstrates that the equipment operates in accordance with the manufacturer's technical specifications;

(c) after review of the documentation the City agrees that the equipment is ready to begin the acceptance test.

(6) Equipment to be delivered will be set up by the City in accordance with the instructions furnished by the manufacturer.

(a) set up of the equipment by the City and beginning of the acceptance testing shall be done within the set up allowance period provided for by the manufacturer for the type equipment involved;

(b) where equipment to be delivered is to be used in conjunction with equipment to be installed by the Contractor, the beginning of the set up allowance period for the delivered equipment or the installation date of the installed equipment, whichever is later.

b. Software

(1) Contractor shall, as required in the Invitation and Bid and/or Purchase Order, deliver or install the required operating system software and/or ordered application software ready for set up or use, on or before the delivery or installation date(s) set forth in the Invitation and Bid and/or Purchase Order. The delivery or installation date(s) set forth in the bid specifications may be changed upon mutual agreement of the parties in writing. All operating system software and application software shall perform in accordance with the software manufacturer's technical specifications and Contractor's representations.

(2) Operating system software and/or application software to be installed shall not be considered ready for acceptance testing until:

(a) Contractor notifies the City in writing that the software is installed and ready for use;

(b) Contractor provides the City with the documentation of successful testing performed at the City's installation site which demonstrates that the software operates in accordance with the software manufacturer's technical specification;

(c) After review of the documentation, the City agrees that the software is ready to begin the acceptance test.

(3) Operating system software and/or application software to be delivered shall be set up and loaded by the City in accordance with the instructions furnished by the software manufacturer. Set up and loading of the software shall be done within five working days following delivery or within the set up allowance provided by the manufacturer, whichever is later, provided that the equipment on which it operates has been classified by the City as being ready for acceptance testing.

c. Technical Reference Manuals - Contractor shall provide on or before the required delivery or installation date for the equipment, operating system software and/or application software, one (1) complete set of all applicable reference manuals. Unless otherwise expressly prohibited by the Contractor, said manuals may be reproduced by the City for its own internal use. For purpose of Paragraph 6. of this DPA, equipment and software shall not be considered delivered or installed if the aforesaid manuals have not been furnished to the City.

6. LIQUIDATED DAMAGES FOR DELAY

a. General - The delivery and/or installation date(s) for the equipment, operating system software and/or application software provide for the utilization of the equipment and software consistent with the timing schedule of the City's programs. If the equipment and software are not delivered or installed by the specified date(s), the delay will interfere with the proper implementation of programs utilizing the equipment and software to be acquired under the Contract, to the loss and damage of the City. Due to the nature of this matter, it would be impracticable and extremely difficult to fix the actual damages sustained in the event of any such delay. The parties acknowledge that in the event of any such delay the City will sustain damages, and they agree that in the event of any such delay Contractor shall pay the amounts set forth in this Paragraph as liquidated damages and not as a penalty.

b. Equipment

(1) If, on any scheduled delivery or installation date, Contractor has not delivered and/or installed (whichever is specified in the Purchase Order or elsewhere in the Contract) all ~~the~~ equipment that is scheduled for delivery or installation by such date (designated by type and model numbers, and including all features and accessories specified in the Purchase Order or elsewhere in the Contract), then Contractor shall pay to the City, as fixed and agreed liquidated damages, not as a penalty, for each calendar day's delay beginning with the scheduled delivery or installation date, one half of one per cent of the total amount of the Purchase Order(s) that apply to the equipment scheduled for delivery or installation by such date, whether or not the equipment was delivered and/or installed after such date, and whether or not other equipment required under such Purchase Orders was delivered and/or installed by the dates scheduled therefor. The City shall have the right, at its sole discretion, to deduct the amount of such liquidated damages from any invoice of Contractor under the Contract.

(2) If some, but not all, of the machines scheduled for delivery or installation are delivered or installed and the City uses any such delivered or installed machines, liquidated damages shall not accrue against the machines so used.

(3) If the delay is more than thirty (30) calendar days, then the City may, in its sole discretion, by written notice to Contractor (i) cancel the Purchase Order(s), in whole or in part, that apply to the equipment not timely installed and/or delivered, or (ii) declare Contractor in default and proceed in accordance with the provisions set forth in Paragraph 15 of this DPA. If the City terminates the right of Contractor to deliver

or install and seeks to obtain substitute equipment, Contractor shall be liable for liquidated damages in the amount specified in Paragraph 6.b(1) until substitute equipment is delivered or installed, and, in addition, for all costs incurred by the City to obtain the substitute equipment and for all other amounts due or payable to the City pursuant to Paragraph 15 of this DPA. If the City elects not to declare Contractor in default, then Contractor shall timely perform all Purchase Orders not cancelled by the City, and for Purchase Orders that are cancelled in part only, all obligations not cancelled. The remedies set forth in (i) and (ii) of this Subparagraph b.(3) shall not be exclusive, and the City's exercise of the remedy set forth in (i) shall in no way preclude the City from exercising any of its rights and remedies under Paragraph 15, *Default*, of this DPA.

(4) If the City is unable to use the equipment because Contractor failed to deliver or install (as applicable) the operating system software and/or application software ordered with the equipment on or before the delivery or installation date, and Contractor does not furnish other programming which the City accepts and agrees in writing would render the equipment usable, then, beginning with the applicable delivery or installation date, liquidated damages as specified in Paragraph 6.b.(1) shall apply in addition to the liquidated damages as specified in Paragraph 6.c. (1), until the City uses the equipment or until the Contractor provides the other programming which would render the equipment usable, whichever occurs first.

c. <u>Software</u>

(1) If Contractor does not deliver or install (as applicable) all operating system and/or application software ordered with the equipment as prescribed in Paragraph 5.b., on or before its scheduled delivery or installation date, Contractor shall pay to the City, as fixed and agreed liquidated damages, not as a penalty, three per cent of the monthly charge, or one half of one per cent of the one-time charge if there is no monthly charge, for each calendar day's delay in delivery or installation for each software item which is not delivered or installed as prescribed in Paragraph 5.b. In addition, the City may, at its option, delay the delivery or installation date of the equipment for which the software was ordered. The liquidated damages provided for in this Subparagraph 6.c.(1) shall not extend to chip-based firmware embedded in equipment, which shall be considered part of the equipment subject to Subparagraph 6.b for purposes of assessing liquidated damages.

(2) If the delay is more than thirty (30) calendar days, then the City may, in its sole discretion, by written notice to Contractor (i) cancel the Purchase Order(s), in whole or in part, that apply to the software item(s) not timely installed and/or delivered, or (ii) declare Contractor in default and proceed in accordance with the provisions set forth in Paragraph 15 of this DPA. If the City terminates the right of Contractor to deliver and/or install (as applicable) the operating system and/or application software and seeks to obtain substitute software, Contractor shall be liable for liquidated damages until substitute software is delivered or installed, and, in addition, for all costs incurred by the City to obtain the substitute software and for all other amounts due or payable to the City pursuant to Paragraph 15 of this DPA. If the City elects not to declare Contractor in default, then Contractor shall timely perform all Purchase Orders not cancelled by the City, and for Purchase Orders that are cancelled in part only, all obligations not cancelled. The remedies set forth in (i) and (ii) of this Subparagraph c.(2) shall not be exclusive, and the City's exercise of the remedy set

forth in (i) shall in no way preclude the City from exercising any of its rights and remedies under Paragraph 15, *Default*, of this DPA.

(3) In the event the provisions of Paragraph 6.b.(2) are applicable and substitute equipment is delivered or installed, Contractor shall be liable for liquidated damages in the amount specified in Paragraph 6.c.(1) for the period of time between the original software delivery or installation date and the date the software for the substitute equipment is delivered or installed (as applicable).

d. Limitation - Unless otherwise provided elsewhere in the Contract, in no event shall the total of the combined liquidated damages for equipment and software for which Contractor may be liable under this Paragraph 6 exceed fifty-five (55) per cent of the total dollar amount of all Purchase Orders that apply to the software and/or equipment not timely delivered and/or installed.

e. Exception - Contractor shall not be liable for liquidated damages for delays due to causes which would relieve Contractor from liability for costs incurred by the City to procure substitute services, equipment, software, or other products, as provided in Paragraph 15.d, *Force Majeur Exceptions to Contractor Default*, of this DPA.

f. The City's right to, and receipt of, liquidated damages for delays as provided in this Paragraph is in addition to and not in limitation of any rights and remedies the City may have under the Contract, including but not limited to Paragraph 15 of this DPA.

7. STANDARD OF PERFORMANCE AND ACCEPTANCE

a. This Paragraph establishes a standard of performance which must be met before any equipment or software (operating system and/or application) is accepted by the City. This also includes field modification of a machine from one model to another and machines which are added or field modified after a system has completed a successful performance period. It shall not include field modifications not involving a model change, machines which are relocated by the City, or machines not maintained by Contractor.

b For equipment delivered by Contractor and for equipment and/or <u>required operating system software to be installed by Contractor:</u>

(1) The performance period shall begin on the date the equipment and/or software is installed, ready for use and shall end when the equipment and/or software furnished hereunder has met the standard of performance for a period of thirty (30) consecutive calendar days by operating in conformance with the manufacturer's technical specifications and Contractor's representations. It is understood that equipment shall not be deemed to have satisfied the standard of performance unless during the said thirty (30) consecutive calendar day period the equipment operates as described in this Subparagraph at an average effectiveness level of 90% or more.

(2) In the event the equipment and/or software (operating system) does not meet the standard of performance during the initial thirty (30) consecutive calendar days, the standard of performance test shall continue on a day-by-day basis until the standard of performance is met for a total of thirty (30) consecutive calendar days.

(3) If the equipment and/or operating system software fails to meet the standard of performance after one hundred twenty (120) days from the commencement of the

performance period, the City may, in its sole discretion, terminate the applicable Purchase Order and/or proceed in accordance with the provisions of Paragraph 15, *Default*. In the event of such termination, Contractor shall, upon written notice by the City, remove, by the date specified in the City's notice and at Contractor's sole expense, all equipment and/or software furnished under the terminated Purchase Order(s).

(4) The average effectiveness level for a system is the percentage figure determined by dividing the number of operational use time hours of the processor during the performance period by the number of such hours plus equipment failure downtime.

(5) After the equipment and/or software has completed a successful performance period, a machine which is field modified from one model to another, or is ordered for that system, shall be subject to a performance period which shall be determined in accordance with the provisions of Paragraph 7, but independently of processor or other machine downtime in the system. Should the actual hours be less than 100 and the average effectiveness level for such hours be 90 percent or more, the City shall accept the machine without additional simulated machine operational use time necessary to achieve a minimum of 100 hours of use time on that machine.

(6) Operational use time for performance testing for a system is defined as the accumulated time during which the processor is in actual operation, including any interval of time between the start and stop of the processor.

(7) Operational use time for performance testing of a field modified machine involving a model change or a machine added to a system, which has been accepted by the City, is defined as the accumulated time during which the machine is in actual use.

(8) During the performance period, equipment failures will be corrected by Contractor at no cost to the City.

(9) During a period when one or more machines are inoperable and the system is undergoing a performance test, the City may run jobs when such action does not interfere with maintenance of the inoperable equipment. The operational use time which accrues on the processor during this period shall be excluded from the system's effectiveness level computation. The downtime which accrues during this period shall be excluded from the downtime portion of the system effectiveness level computation.

(10) Machine failure downtime including downtime for added, field modified, substitute or replacement machines after a system has completed a successful performance period, is that period of time when such machines are inoperable due to their failure.

(11) Downtime for each incident shall start from the time the City makes a bona fide attempt to contact the Contractor's designated representative at the pre-arranged contact point and ends when the system or machine(s) is returned to the City in proper operating condition, exclusive of actual travel time required by contractors maintenance personnel but not in excess of one hour on the day such service were requested.

(12) During the performance period for a equipment and/or software, a minimum of 100 hours of operational use time with reproductive or simulated work will be required as a basis for computation of the average effectiveness level, exclusive of the periods

covered by Paragraph 7.b.(9). However, in computing the average effectiveness level, the actual number of operational use hours shall be used when in excess of the minimum of 100 hours. In scheduling use during the performance period, the City shall schedule enough hours to achieve the minimum 100 hours required and shall make provisions for preventive maintenance required for the system.

(13) The City shall maintain appropriate daily records to satisfy the requirements of this Paragraph 7.

(14) Equipment and/or software shall not be accepted by the City and no charges shall be paid by the City until the standard of performance is met except that, should the City delay the start of the performance period in accordance with the maximum 30-day delay provision in Paragraph 7.b.(16), amounts equal to Contractor's standard maintenance charges for the period between the installation date and the beginning of the performance period shall accrue and shall be paid promptly upon completion of a successful performance period. The date of acceptance shall be the first day of the successful performance period.

(15) Operational use time and downtime shall be measured in hours and whole minutes.

(16) Should it be necessary, the City may upon prior notice to Contractor to be confirmed in writing, delay the start of the performance period, but such delay shall not exceed thirty (30) consecutive calendar days, subject to the provisions in Paragraph 7.b.(14). The performance period must begin no later than the 31st day, unless otherwise agreed in writing between the City and the Contractor.

(17) When a system involves on-line machines which are remote to the basic installation, the required effectiveness level shall apply separately to the system and to each remote machine, unless the City and Contractor agree otherwise. When system configurations ordered by the City are so designed as to have characteristics which would prevent a successful attainment of the standard of performance, the Contractor will advise the City in writing within 15 days from Contractor's receipt of the order (unless a different period is specified in the Purchase Order or elsewhere in the Invitation and Bid) of any equipment or software which Contractor believes will not meet the standard of performance and therefore will not be considered for purposes of the standard of performance, warranty, or maintenance.

c. <u>For required operating system software to be delivered but not installed by Contractor:</u>

(1) Operating system software shall be accepted by the City provided that the installed software (i) successfully runs the manufacturer's diagnostic routines; (ii) operates in accordance with all applicable manufacturers specifications and all specifications and requirements set forth in the Invitation and Bid; (iii) fully conforms to all such requirements and specifications when operated together with the other software, and on the equipment, if any, furnished by the Contractor under the Contract; and (iv) if so required under the Purchase Order and/or Invitation and Bid, fully conforms to all such requirements and specifications when operated together with other software, and on equipment, that was not furnished by Contractor under this Contract.

(2) If any of the City's acceptance tests shall disclose deficiencies, the City shall notify Contractor in writing of the deficiencies, the City shall notify Contractor in writing of the deficiencies and Contractor (or such longer period as the City may authorize in

writing) repair or replace the defective equipment and/or software and the City shall promptly thereafter reconduct the acceptance tests.

(3) Failure to meet the acceptance criteria specified above upon the second test shall, at the City's option, be deemed a default by Contractor and the City shall have all the rights afforded to it as are applicable on default hereunder.

d. For unmodified applications software to be installed or delivered by Contractor:

(1) Unmodified applications software shall be accepted by the City promptly after installation or delivery to the City site provided that the application software successfully runs the manufacturers diagnostic routines furnished hereunder by the Contractor.

(2) If any of the foregoing tests shall disclose deficiencies, the City shall notify Contractor in writing of the deficiencies and Contractor shall, within ten (10) calendar days after receipt of such notification (or such longer period as the City may authorize in writing), replace the defective application software, and the City shall promptly thereafter reconduct the acceptance tests.

(3) Failure to meet the acceptance criteria specified above upon the second test shall, at the City's option, be deemed a default by Contractor and the City shall have all the rights afforded to it as are applicable on default hereunder.

e. For modified applications software to be installed or delivered by Contractor.

(1) The successful Contractor and the City will develop a plan for acceptance testing of modified applications software.

(2) For each installation of modified applications software, or phase thereof, the Contractor and the City will, unless agreed otherwise in writing, proceed as follows:

(a) They will establish and document in writing the definition of elements of the application or phase thereof, as described in the Purchase Order or elsewhere in the Contract.

(b) They will establish a mechanism for review of the on-going development of the modified applications software, or phase thereof, to include review and feedback sessions between City and Contractor's personnel.

(c) They will conduct an initial testing of the modified applications software supervised by City personnel:

(1) Testing should take place at a Philadelphia area location with the hardware/software available locally or through dial up/leased lines.

(2) Representative test data shall be developed by the City approximating 2% of the total annual work volume for that phase of work.

(3) Entry of the test data shall be done by City personnel (or by Contractor personnel as an option selected by City) and results

reviewed jointly by City and Contractor to determine further requirements.

(d) Upon completion of the programming changes as required by the initial testing, they will conduct a secondary test of the modified application software supervised by City personnel:

(1) Testing should take place at a Philadelphia area location with the hardware/software available locally or through dial up/leased lines.

(2) Representative test data shall be developed by the City approximating 7% of the total annual work volume for that phase of work.

(3) Entry of the test data shall be done by City personnel (or by Contractor personnel as an Option selected by City) and results reviewed jointly by City and Contractor to determine further requirements.

(3) Acceptable completion of secondary testing for the modified applications software or each phase thereof, shall be required prior to final acceptance testing.

f. Final acceptance testing:

(1) Upon completion of the programming changes as required by the secondary testing, the Contractor shall undertake all measures necessary to initiate acceptance testing as outlined in Subparagraph 5.b.(2).

(2) The performance period shall begin on the date the modified applications software, or phase thereof, is installed or delivered ready for use and shall end when the applications software furnished has met the standard of performance for a period of thirty (30) consecutive calendar days by operating in conformance with the City requirements and Contractors representations.

(3) In the event the modified applications software does not meet the standard of performance during the initial thirty (30) consecutive calendar days, the standard of performance test shall continue on a day-by-day basis until the standard of performance is met for a total of thirty (30) consecutive calendar days.

(4) If the modified applications software fails to meet the standard of performance after ninety (90) days from the commencement of the performance period, the applications software or phase thereof shall be remanded to the Secondary testing level, and Contractor may be subject to the provisions of Subparagraph 6.c.

(5) Upon being remanded to the secondary testing level, the City shall notify Contractor in writing of the deficiencies and Contractor shall make the additional modifications necessary to meet City requirements prior to initiating a second final acceptance test.

(6) The City shall maintain appropriate daily records to satisfy the requirements of this Subparagraph and shall provide the Contractor opportunity during the performance period to conduct further modifications as may be necessary to meet City

requirements. The City shall notify the Contractor in writing of the date of the first day of the successful performance period.

(7) Modified applications software shall not be accepted by the City and no charges shall be paid by the City until the standard of performance is met. The date of acceptance shall be the first day of the successful performance period.

(8) Should it be necessary, the City may delay the start of the performance period, but such delay shall not exceed thirty (30) consecutive calendar days.

(9) The majority of testing should take place at a site within a 25-mile radius of Philadelphia. If the Contractor proposes any testing outside this radius, the Contractor will be required to bear the costs of all travel and lodging (including meals) expenses for the City employees in such off-site testing.

(10) Failure to meet the acceptance criteria specified upon the second test shall, at the City's option, be deemed a default by the Contractor and the City shall have all the rights afforded to it as applicable on default hereunder.

g. When an integrated system is ordered incorporating equipment, operating system software, and applications software, the system shall not be deemed accepted until all items meet acceptance criteria.

8. WARRANTY

a. The warranty period for all equipment, operating system software and application software furnished hereunder shall be ninety (90) days commencing upon acceptance of the equipment and software by the City; provided, however (i) if the manufacturer's standard warranty is longer than ninety (90) days for any item of equipment or software furnished under the Contract, then such longer warranty period shall apply; and (ii) if a warranty period is specified in the Purchase Order or in the Invitation and Bid, then such warranty period shall apply whether or not it is longer than ninety (90) days and whether or not it is longer than the manufacturer's standard warranty; and (iii) if the warranty period expires on a Friday or Saturday, it will be extended by either two days or one day respectively, so that the last day of such warranty period will be on a Sunday. Subject to the limitations of Paragraph 8.c. below, during the warranty Contractor shall, without cost or expense to the City, repair or replace equipment, operating system software, and/or application software as may be required to maintain the same in good working order and in conformance with the manufacturer's technical specifications, Contractor's representations, all specifications and requirements set forth in the Invitation and Bid, and any performance criteria that are agreed by the parties in writing as part of tests performed pursuant to Paragraph 7, Standard of Performance and Acceptance. During the warranty period, Contractor will be required to perform all of the maintenance obligations set forth below in Paragraph 12. of this DPA (i.e. according to the type of maintenance service called for in the bid specifications), without cost or expense to the City. If, after seven (7) days (or such longer period as may be agreed to by the City in writing), Contractor is unable to get the equipment and/or software (operating system and/or application), or replacement equipment and/or software, to perform as warranted, the City may, at its sole option (i) require Contractor to pay the City as liquidated damages, not as a penalty, the amount of One Hundred Dollars ($100) per day for each day that the equipment and/or software fails to perform as warranted (Contractor expressly acknowledges and agrees that Subparagraph 6.a, relating to *Liquidated Damages for Delay*, applies fully to any failure of Contractor to timely cause the equipment and/or software to perform as warranted); or (ii)

declare Contractor in default under Paragraph 15 of this DPA and exercise any or all rights and remedies afforded to it for Contractor default under the Contract; provided, that the remedies set forth in (i) and (ii) shall not be exclusive, and the City's exercise of the remedy set forth in (i) shall in no way preclude the City from exercising any of its rights and remedies under Paragraph 15 of this DPA.

b. Prior to the expiration of the warranty period, whenever equipment is shipped for mechanical replacement purposes, Contractor shall bear all costs, including, but not limited to, costs of packing, transportation, rigging, drayage and insurance. This warranty shall apply to the replacement machine beginning on the first day of its acceptance. Warranty service may be provided by repairing the machine or by exchanging it under the type of maintenance service selected by the City.

c. The warranties provided herein do not cover maintenance required to repair damages malfunctions or service failures caused by:

(1) City's failure to follow Contractor's furnished operation or maintenance instructions or the Contractor supplied manual;

(2) Non-Contractor's repair, modification or movement of the equipment or software;

(3) Accessories, alterations, or attachment of products neither manufactured nor supplied by Contractor; or

(4) Events beyond the control and without the fault or negligence of Contractor;

(5) Equipment or software which the vendor has informed the City will not meet the standard of performance;

(6) Those items excluded from maintenance coverage as described in Paragraph 12.a.(15) below.

d. Except as provided in this Paragraph and Paragraph 3 of this DPA, and except for the implied warranty of merchantability, there are no other warranties expressed or implied.

9. SITE PREPARATION

a. Site preparation specifications shall be furnished in writing by Contractor within 72 hours of City's request. The specifications shall be in such detail so that the equipment to be delivered or installed shall operate efficiently from the point of view of environment.

b. The City agrees to have the installation site prepared at its own expense in accordance with Contractor's written site specifications prior to the delivery or installation date.

c. Any alterations or modifications in site preparations which are directly attributable to incomplete or erroneous environmental specifications provided by Contractor and which would involve additional expenses to the City, shall be made at the expense of Contractor.

d. Any such site alterations or modifications which cause a delay in the delivery or installation date will also result in liquidated damages for equipment as are specified in Paragraph 6. of this DPA, if the delay was directly attributable to incomplete or erroneous environmental specifications provided by Contractor.

e. For equipment to be installed, physical planning assistance requested by the City for initial installation of the equipment shall be provided at no additional charge.

10. TRANSPORTATION AND INSTALLATION - For equipment and/or software to be delivered or installed all charges for transportation to the City's installation site, including any rigging or drayage costs at the City's site, shall be as set forth in the Invitation and Bid and/or Purchase Order. Contractor shall make all arrangements for transportation and shall notify the City upon shipment. For equipment and software (operating system and/or application) specified in the bid specifications and price schedule for installation, Contractor shall, for the installation charges bid, provide all necessary labor and materials (including cabling) for unpacking, placement and installation of equipment and software at the City site. Packing materials shall be removed by Contractor at the Contractor's sole cost and expense, unless agreed otherwise by the City in writing.

11. RISK OF LOSS OR DAMAGE

a. Equipment - risk of loss or damage to the equipment, other than loss or damage caused by Contractor's fault or negligence, shall be deemed to pass to the City upon acceptance of the equipment by the City pursuant to Paragraph 7 of this DPA. City shall self-insure against the aforesaid risk of loss or damage and will furnish Contractor a letter to such effect upon request.

b. Software - If software (operating system and/or application) materials are lost or damaged during shipment from Contractor, Contractor shall replace such software and program storage media at no additional charge to the City. If software materials are lost or damaged while in the possession of the City, Contractor shall replace such software materials at its then current commercial charges, if any, for processing, distribution, and/or program storage media.

12. MAINTENANCE RESPONSIBILITIES

Except as expressly provided otherwise in the Invitation and Bid, the following terms and conditions shall apply to maintenance services furnished by Contractor under the Contract:

a. General Provisions

(1) Subject to the limitations set forth in 12.a.(15) below, Contractor shall provide maintenance service (labor and parts) at the prices set forth in the Invitation and Bid, Price Schedule, and/or Purchase Order for the period specified in Subparagraph 12.a.(2). Contractor shall keep the equipment and software (operating system and application) furnished hereunder in good operating condition and, subject to security regulations, the City shall provide Contractor access to the equipment and software (operating system and/or application) to perform maintenance service. "Good operating condition" for equipment shall mean, the continued ability to satisfy the manufacturer's technical specifications and Contractor's representations in Subparagraph 12.a. (10)(a); for software it shall mean the continued ability to operate in accordance with the manufacturer's technical specifications and Contractor's representations. The maintenance prices of Contractor include and substitute equipment as well as the detection and correction of software errors and all changes, updates and enhancements furnished by Contractor and/or equipment/software manufacturer without additional charge to its (their) other maintenance customers. In those instances involving on-site type maintenance (see description below) where it is necessary for Contractor to replace the equipment and/or software (operating system and/or application software) Contractor shall be responsible for the equipment and

software and shall bear all costs related thereto, including, but not limited to, costs of packing, transportation, rigging, drayage and insurance. Maintenance service for any or all equipment and software may be discontinued by the City upon thirty (30) day's prior written notice to Contractor.

(2) Maintenance Continuity - Contractor shall provide the required maintenance service at the prices agreed to by the City in writing (which agreement may, in the City's sole discretion, be in the form of a Purchase Order issued by the Procurement Department) for a period of twelve (12) month following expiration of the applicable warranty period. Thereafter, maintenance service may be renewed under the terms and conditions of the Contract at the sole option of the City on an annual basis (hereinafter referred to as "future maintenance renewal periods") for up to five (5) additional one (1) year periods and for each year thereafter that the equipment is marketed and/or maintained by the manufacturer. Contractor may increase maintenance prices for future maintenance renewal periods provided that:

(a) increase shall not be effective in any City fiscal year unless the City received written notice of increase at least sixty (60) days prior to the start of each twelve (12) month maintenance renewal period; and

(b) in no event shall the increased maintenance prices exceed Contractor's published charges maintenance service for non-educational state and local governments on the effective date of the adjustment, under similar terms and conditions.

(3) Maintenance Facilities - The City shall provide adequate working space including heat, light, ventilation, electric current and outlets for the use of Contractor's maintenance personnel. These facilities shall be within a reasonable distance of the equipment to be serviced and shall be provided at no charge to Contractor.

(4) Maintenance Periods

(a) The basic monthly maintenance charge of Contractor shall entitle the City to maintenance service during a principal period of maintenance (as defined in Paragraph 2 of this DPA).

(b) The City, by giving seven (7) calendar days written notice to Contractor, may change the principal period of maintenance in accordance with Contractor's standard time increments and surcharge rates.

(c) Except as otherwise provided in the Contract, on-site type maintenance service (see description below) which is authorized by the City outside the designated principal period of maintenance or extension thereof shall be performed on a per-call basis at Contractor's per-call hourly rates as agreed to in writing by the City (which agreement may take the form of a Purchase Order issued by the Procurement Department). No charges for parts, travel time, travel expenses or any other item, other than Contractor's per-call hourly rate, shall apply to per-call maintenance. Contractor shall be paid only for the actual time spent on-site performing required maintenance services unless mutually agreed upon, only one technician of Contractor shall be furnished during periods outside the principal period of maintenance or extension thereof. For remedial maintenance which either began, or for which a request

was placed and a response made during the principal period of maintenance or extension thereof, a grace period of up to one additional hour beyond the selected principal period of maintenance or extension thereof will be provided at no additional charge.

(5) Preventive Maintenance - Preventive maintenance shall be performed by Contractor in accordance with the manufacturer's then current commercial practices at a time which is mutually acceptable to the City and Contractor, and which is consistent with the City's operating requirements. Contractor shall specify in writing the frequency and duration of the preventive maintenance required for the equipment and software furnished under the Contract.

(6) Remedial Maintenance

(a) Remedial maintenance shall be performed as required when equipment or software is inoperative. Contractor shall provide the City with a designated point of contact and shall make representative to receive requests for service.

(b) Where on-site type maintenance of hardware or software has been contracted for, Contractor's maintenance personnel shall arrive at the City's installation site, fully prepared and ready to commence required repairs, within four (4) hours after service is requested. The four (4) hour response time shall apply regardless of the hour or day of the week the call was placed or the principal period of maintenance (including any extension thereof) selected.

If Contractor fails to satisfy the requirements of this Subparagraph 12.a.(6)(b), the City may, at its sole option, require Contractor to pay the City as liquidated damages, not as a penalty, the amount of Fifty Dollars ($50) per hour for each hour, beginning with the fifth hour after service is requested, during which repairs are not performed. (Contractor expressly acknowledges and agrees that Subparagraph 6.a, relating to *Liquidated Damages for Delay*, applies fully to any failure of Contractor to arrive at the City's installation site and commence repairs within the required four (4) hour response time). Such liquidated damages remedy shall be in addition to, and not in lieu of, any other rights and remedies that the City may have against Contractor under the Contract, including, without limitation, those set forth in Paragraph 15, *Default*.

(c) Response time shall be measured from the time the City makes a bona fide attempt to contact Contractor's representative at the pre-arranged contact point and ends when Contractor's maintenance representative arrives on site ready to perform required service.

(d) All equipment and software shall be restored to good operating condition and caused to operate in conformance with the manufacturer's technical specifications, Contractor's representations, all specifications and requirements set forth in the Invitation and Bid, and any performance criteria that are agreed by the parties in writing as part of tests performed pursuant to Paragraph 7, *Standard of Performance and Acceptance*, within two (2) business days following the calendar day on which the City requests service.

If Contractor fails to satisfy the requirements of this Subparagraph 12.a.(6)(d), the City may, at its sole option, require Contractor to pay the City as liquidated damages, not as a penalty, the amount of Fifty Dollars ($50) per day for each day, beginning with the third business day after service is requested, during which the equipment is not restored and caused to operate as set forth above in this Subparagraph (d). (Contractor expressly acknowledges and agrees that Subparagraph 6.a, relating to *Liquidated Damages for Delay*, applies fully to any failure of Contractor to so restore the equipment and so cause it to operate within the required two (2) business days restoration time.) Such liquidated damages remedy shall be in addition to, and not in lieu of, any other rights and remedies that the City may have against Contractor under the Contract, including, without limitation, those set forth in Paragraph 15, *Default*.

(e) Repeated failure to satisfy the four (4) hour response time requirement provided in Subparagraph 6(b) and/or the two (2) business day restore time requirement provided in Subparagraph 6(d) shall constitute sufficient grounds for placing Contractor in default in accordance with the provisions of Paragraph 15 of this DPA. For equipment and/or software (operating and/or applications) that require on-site maintenance Contractor's maintenance personnel shall supply continuous effort, unless otherwise directed by the City, to restore the equipment and software to good operating condition.

(7) Malfunction Report - Contractor shall furnish a malfunction incident report to the City upon completion of each maintenance call. The report shall include, as a minimum, the following: date and time notified; date and time of arrival; type and model number(s) of product; time spent for repair; time City held machine(s); and/or software preventive maintenance by Contractor's maintenance representative; description of malfunction; list of parts replaced; additional charges, if applicable.

(8) Service Records - In addition to malfunction incident reports, contractor shall maintain a complete record of all service performed on each machine, including all field and engineering changes performed on site. This service record shall be kept at the City installation site or such other sites as may be approved by the City in writing and shall be furnished for review if requested by the City. The service record shall be an individual record identifying each machine explicitly, with a complete history of dated service and all field and engineering changes recorded therein.

(9) Replacement Parts - Subject to the limitations in Paragraph 12.a.(15) below, while equipment is under warranty or maintenance with Contractor, there shall be no additional charges for replacement parts. Unless otherwise agreed to by the City, only new standard parts (or puts warranted as functionally equal to new) sourced from the original equipment manufacturer shall be used in effecting repairs. Maintenance parts shall be furnished on an exchange basis and the replaced parts become the property of Contractor. Contractor shall maintain an adequate supply of spare parts necessary for the repair or replacement of equipment within a twenty-five (25) mile radius of the City of Philadelphia.

(10) Maintenance Credits

(a) Contractor shall grant a credit for any machine which fails to perform at an effectiveness level of 90% during any month. The effectiveness level for a

machine is computed by dividing the operational use time by the sum of this time plus equipment failure downtime. Operational use time is the time the machine is in actual operation and is not synonymous with power-on time. Downtime shall be measured from the time that Contractor is notified of equipment failure to the time the machine is restored to good working order exclusive of actual travel time required by Contractor's service representative up to one (1)hour per incident. Unless Contractor is authorized by the City to perform maintenance service outside the designated principal period of maintenance or extension thereof in accordance with Subparagraph 12.a.(4)(c), downtime shall accrue only during the principal period of maintenance (including any extension thereof) and shall in no event accrue during any time that Contractor is denied full, free and safe access to the machine(s) to provide maintenance service. The credit shall be a reduction of the total monthly maintenance charges for each affected machine by the percentage figure determined by subtracting the actual effectiveness level percentage from 100%. For example, if the effectiveness level of a machine is 82%, the credit for that machine would be 18%. It shall be the responsibility of the City to administer the provisions of this Subparagraph.

(b) The City's right to, and receipt of, maintenance credits as provided in this Paragraph is in addition to and not in limitation of any other rights and remedies the City may have under the Contract, including but not limited to Paragraph 15 of this DPA.

(11) Notwithstanding Contractor's remedial or maintenance efforts, Contractor may be declared in default if equipment or software continues to exhibit defects causing disruption of use and/or repeated periods downtime.

(12) Additional Maintenance Charges - There shall be no additional maintenance charges for:

(a) Preventive maintenance which is performed during the principal period of maintenance or extension thereof. (Preventive maintenance performed outside of the selected principal period of maintenance or extension thereof at the City's request shall be furnished at the applicable per-call rates).

(b) Remedial maintenance required within a 48-hour period do to a recurrence of the same malfunction.

(c) Time spent by maintenance personnel after arrival at the site awaiting the arrival of additional maintenance personnel and/or delivery of parts, etc., after a service call has commenced.

(d) Remedial maintenance required when the scheduled preventive maintenance preceding the malfunction had not been performed.

(13) Engineering and Field Changes - Contractor shall inform the City, in writing, of any engineering or field changes deemed advisable by Contractor and/or the manufacturer of the equipment. Contractor shall indicate when any change is considered mandatory, in which case it shall be installed. If the change is not mandatory, Contractor shall indicate the purpose or desirability of the change for the City. Unless the City responds in writing within fifteen (15) days, it shall be assumed that the City agrees to

installation of the non-mandatory change. When informing the City of any engineering or field change, Contractor shall also indicate the number of hours of machine time and the number of hours of system time required to install the change, including any testing deemed necessary to ensure the return of the machine and system to good operating condition. All engineering and field changes shall be performed at no additional cost or expense to the City at mutually agreed to times.

(14) Through the issuance of a change to the City Purchase Order, the City may upon 30 days notification alter the type of maintenance program for any machine or software program consistent with the Contractor's standard maintenance program.

(15) Services Not Covered - In addition to the limitations in Paragraph 8.c hereof, Contractor's maintenance responsibilities shall not include electrical work external to the equipment, changes or alterations to the physical environment of the installation site, furnishing accessories or supplies, painting or refinishing the equipment or furnishing materials, inspection of machine's, moving or reinstallation of equipment except when required by an equipment upgrade or repair, maintenance of accessories, machines or other devices not furnished by Contractor, or repairs made necessary by misuse or negligence of the City, its employees, agents, contractors or invitees.

(16) All features and model upgrades that are eligible for maintenance service under the Contract, installed on a machine under the Contract, and not covered under Contractor warranty or another manufacturer's warranty be under the maintenance terms of the Contract with the same Type of Service and, if applicable, the same Optional Periods of Maintenance Service as the machine on which they are installed.

b. Types of Equipment Maintenance

(1) General

(a) Maintenance service for equipment under the Contract may be obtained utilizing one or more of the types of service specified in 12.b.(2) below as requested by the City in the bid specifications.

(b) Except as expressly noted herein and/or in Paragraph 12.a above, all the provisions of Paragraph 12.a. shall apply to the different types of equipment maintenance service. The requirements of the Subparagraph under 12.a pertaining to maintenance facilities, malfunction reports, service records, additional maintenance charges, and maintenance credits shall not apply to hardware maintained off site or on an exchange basis.

(2) Types of Service

(a) Contractor On-Site Repairs - The Contractor will provide maintenance service for the failing machine at the City's location.

(b) Contractor On-Site Exchange - The Contractor will deliver the exchange machine to the City's: location, disconnect the failing machine, connect the exchange machine, and remove the failing machine from the City's location.

(c) City On-Site Exchange - The Contractor will have an exchange machine delivered to the City's location. The City will disconnect the failing machine

and prepare it for shipment to the Contractor, connect the exchange machine, and verify its operation. The City will follow the Contractor's instructions regarding the shipment of the failing machine to the Contractor. Such shipment will be at the Contractor's expense.

(d) City Carry-In Exchange - The City will deliver the failing machine to a Contractor Service/Exchange Center or other Contractor designated location, pickup the exchange machine and take it to the City's location, connect it, and verify its operation. In lieu of such delivery and pickup, the City may ship the failing machine, prepaid, in the original shipping container or equivalent, to a Contractor Service\Exchange Center designated to receive such a shipment. Following receipt of the failing machine, the Contractor will ship the exchange machine to the City's location, prepaid, within the United States.

(e) City Carry-In Repair - The City will deliver the failing machine to a Contractor Service/Exchange Center or other Contractor designated location, following any necessary repairs, pick up the machine or machine element and take it to the City's location, connect it, and verify its operation. In lieu of such delivery and pickup, the City may ship the failing machine, prepaid, in the original container or equivalent, to a Contractor Service/Exchange Center designated to receive such a shipment. Following any necessary repairs, the Contractor will ship the machine or machine element to the City's location, prepaid, within the United States.

(3) For City "Carry-In" maintenance services, the City agrees that the City is responsible for risk of loss of, or damage to, machines during the period such machines are in transit to the Contractor, except for loss or damage caused by the Contractor's fault or negligence. However, the Contractor is responsible for risk of loss of, or damage to, machines owned by the Contractor and/or machines owned by other than the Contractor while in possession of the Contractor or in transit from the Contractor by a Contractor- selected carrier whose charges were prepaid by the Contractor.

c. Types of Software Maintenance

(1) General

(a) Contractor shall provide maintenance of software being acquired pursuant to the bid to include preventive maintenance, remedial maintenance as may be required, and program changes, updates, and enhancements which may be furnished by Contractor and/or (software) manufacturer without additional charges to its (their) other maintenance customers.

(b) Maintenance services for software under the Contract may be obtained utilizing one or more of the types of services specified in 12.c.(2) below as requested by the City in the bid specifications.

(c) Except as noted herein and/or in Paragraph 12.a., all provisions of Paragraph 12.a. except replacement parts, maintenance credits and engineering and field changes shall apply to the different types of software maintenance. In addition the requirements of the Subparagraphs under Paragraph 12.a pertaining to maintenance facilities, malfunction reports, service records, and

additional maintenance charges shall not apply to software maintained on a central service basis.

(2) Types of Service

(a) Central service - (off-site) Contractor shall designate a service location(s) which will accept documentation in the format prescribed by the Contractor indicating that a problem is caused by a defect in the licensed software program. Contractor shall correct the defect by issuing correction information or documentation to the City. City will be responsible for the preparation and submission of documentation to Central Service.

(b) Local Service - (on-site) Contractor shall, within the required response time, provide an on-site representative to analyze the software defect. Upon verification of the defect, Contractor's representative may issue correction information to City, submit documentation to Central Services, or make a reasonable attempt to resolve the problem by applying a local fix or a bypass.

(c) Local Assistance - (on-site) Contractor shall, within the required response time, provide an on-site representative to analyze the software defect. Upon verification of the defect, Contractor's representative may issue correction information to the City, assist the City in preparing documentation for submission to Central Services, or make a reasonable attempt to resolve the problem by applying a local fix or a bypass.

13. LIABILITY AND INDEMNIFICATION - Contractor shall indemnify defend, and hold harmless the City, its officers, employees and designated representative, from any and all claims, suits, actions, damages, liabilities, expenses and costs of any kind, including litigation costs and reasonable attorney's fees, arising out of bodily injury (including death), personal injury and/or damage to real or tangible personal property, provided that the injury or damage was caused by the fault or negligence of Contractor, its officers, employees, agents or subcontractors (including suppliers).

14. PATENT, COPYRIGHT AND OTHER PROPRIETARY RIGHTS INDEMNITY

a. In the event of any claim, suit or action against the City which alleges that the equipment, software or services furnished hereunder infringe upon or violate any United States patent, copyright, trade secret or any other proprietary right of any third party the City shall promptly notify Contractor in writing and Contractor shall defend such claim, suit or action in the City's name, but at Contractor's expense, and Contractor shall indemnify the City against all resulting costs, damages and attorney's fees finally awarded. City shall provide full information and all reasonable cooperation necessary to Contractor's defense of any such claim, suit or action.

b. If, in Contractor's opinion, the equipment or software furnished hereunder is likely to or does become the subject or claim of infringement, then without diminishing Contractor's obligation to indemnify and defend the City as stated above, Contractor may, at its option, substitute for the alleged infringing equipment or software, modifications sufficient to render them non-infringing which are satisfactory to the City or at Contractors' option and expense obtain the right for the City to continue the use of such equipment or software. If neither of the foregoing alternatives is available despite reasonable efforts of Contractor, then Contractor agrees to take back the infringing equipment and/or software and refund for equipment a credit for the purchase price less a reasonable allowance for depreciation with a pro-ration

period of 6 years, for software whose total charges are fully paid, a reasonable credit reflecting City's use of the software.

c. It is understood and agreed that the provisions of this Paragraph shall not apply if the claimed infringement results from non-Contractor modification of the equipment or software, or the combination, operation, or use of equipment or software furnished hereunder with other equipment, software, apparatus or devices not furnished or approved by Contractor, or in other than the Contractor's specified operating environment. This Paragraph states the entire liability of Contractor with respect to infringement or violation of patents, copyrights, trade secrets or other third party proprietary rights.

15. DEFAULT - All work performed and goods and services rendered by Contractor under the Contract shall conform to the terms and conditions of the Contract, including, but not limited to, the specifications and requirements contained in the Invitation and Bid and the provisions of this DPA.

a. Events of Default - The following shall constitute events of default under the Contract:

(1) failure by Contractor to comply with any provision or Paragraph of the Contract, including, but not limited to, the specifications and requirements for the products and/or services required, and this DPA;

(2) failure by Contractor to comply with any federal state and local law, statute, ordinance or applicable regulation of any federal, state, or local governmental department, board, agency and commission;

(3) falseness of any representation or warranty made in the Contract or other document(s) submitted to the City by Contractor in connection with the Invitation and Bid and Contract;

(4) failure by contractor to pay its suppliers or subcontractors, misappropriation of any funds provided under the contract, or failure to notify the City upon discovery of any misappropriation;

(5) a violation of law by Contractor which results in its making a guilty plea, a plea of nolo contendre, or conviction of a criminal offense by contractor, its directors, employees, or agents or indictment or issuance of charges against Contractor, its directors, employees or agents for any criminal offense or other violation of law (whether or not the offense or violation of law is ultimately adjudged to have occurred), where such criminal offense, violation, indictment or charges, in the sole judgment of the Procurement Commissioner, adversely affect the performance of the Contract;

(6) failure by Contractor to comply with the Mayoral Executive Order establishing the City's anti-discrimination policy relating to the participation of minority, woman and disabled owned disadvantaged business enterprises.

(7) the Procurement Department's determination that the Contractor is not a responsible bidder on the Invitation and Bid, where such determination is made, and is based upon, information received after award of the Contract and/or after execution of the Contract by the Procurement Commissioner and/or after satisfaction of any or all other conditions of a binding Contract set forth in Paragraph 25.i. below;

(8) City debarment of the Contractor from bidding or proposing on City contracts, whether or not such debarment arises from the performance of the Contract;

(9) Contractor so fails to make progress in the performance of the Contract as to endanger performance of the Contract in accordance with its terms;

(10) any other act or omission identified in this DPA or elsewhere in the Contract as an event or condition constituting default.

b. Termination for Default; Notice and Cure

(1) Upon the occurrence of one or more events of default as set forth in Paragraph 15.a.,

(a) the Procurement Commissioner, in his/her sole discretion, may require Contractor to remedy the default within a period of time to be determined by the Procurement Commissioner; or

(b) if the default is not remedied within such period of time (the "Cure Period"), the Procurement Commissioner, in his/her sole discretion, may

(i) terminate the Contract as provided in any one or more of the following Paragraphs of this DPA, if applicable to the event(s) of default: Paragraphs 6.b.(3) or 6.c.(2) (relating to Liquidated Damages for Delay), Paragraphs 7.b.(3), 7.c (3), 7.d.(3), or 7.e.(4) (relating to Standard of Performance and Acceptance), Paragraph 8.a. (relating to Warranty), and/or Paragraphs 12.a.(6)(d) or 12.a.(1) (relating to Maintenance Responsibilities); and/or

(ii) otherwise terminate the Contract, in whole or in part, and exercise any one or more of the remedies provided in Paragraph 15.c.

(2) The City shall notify Contractor of any termination pursuant to this Paragraph 15 by written notice (the "Termination Notice"), setting forth in reasonable detail the reasons for the termination; and termination shall be effective as of the date specified in the Termination Notice (the "Termination Date").

(3) The Cure Period shall not be less than fifteen (15) calendar days (unless the Procurement Commissioner determines that Contractor's default constitutes an emergency endangering the public health, welfare, or safety and requiring a shorter Cure Period). The Procurement Commissioner may, in his/her sole discretion, extend the Cure Period without terminating the Contract if the failure stated in the notice of default cannot be corrected within the period specified in the City's notice and if corrective action is instituted by Contractor within the applicable period and diligently pursued until the failure is corrected.

(4) The Procurement Commissioner may, in his/her sole discretion, require contractor to continue to furnish all equipment, software, products and services required under the contract until the Termination Date, in which case, subject to the remedies enumerated above, the successful bidder shall be paid in accordance with the contract therefor. If the City requires Contractor to cure the event(s) of default, or to continue to furnish products or services until the Termination Date, and Contractor refuses or fails to do

so, then such failure shall itself be deemed an event of default under this Paragraph 15, for which the City may exercise any of its rights hereunder.

(5) Contractor shall continue the performance of the Contract, in accordance with its terms, to the extent not terminated under this Paragraph 15, and shall be liable to the City for liquidated damages, as provided in Paragraph 6 (Liquidated Damages for Delay) for each calendar day of delay until the items not terminated are delivered or installed (as applicable) or the services performed; provided, however, that Contractor shall not be liable for such liquidated damages for delays due to causes which would relieve it from liability under Paragraph 15.d.

c. Remedies of the City - Upon termination of the Contract pursuant to this Paragraph 15, the Procurement Commissioner may, in his/her sole discretion, exercise either of the following remedies or both remedies concurrently:

(1) The City may purchase from others, upon such terms and in such manner as the Procurement Commissioner deems appropriate, equipment, software, other products, and/or services similar to and in substitution of those terminated. In such event, Contractor shall, subject to the limitations set forth in Paragraph 16 of this DPA, be solely responsible and liable to the City for the full amount of any costs incurred by the City for such similar equipment, software, other products, and/or services, and Contractor agrees to pay such costs upon receipt of the City's invoice therefor.

(2) The City may appropriate to the payment of the price of such substitute equipment, software, products or services, and the amount of any other loss, cost or damage incurred by the City as a result of Contractor's default, any monies which may then be due and payable to Contractor under the Contract or any other contract that Contractor then has with the City.

d. Force Majeur Exceptions to Contractor Default - The following terms and conditions shall apply solely to this Paragraph 15:

Except with respect to defaults of subcontractors, Contractor shall not be in default under this Paragraph 15 and shall not be liable for costs under Paragraph 15.c if the failure to perform this DPA arises out of causes beyond the control and without the fault or negligence of Contractor, including, and expressly limited to, natural disaster, any act of God, war, civil disturbance, court order, labor dispute, or nonperformance of third parties other than subcontractors and suppliers of Contractor (hereinafter referred to as a "Force Majeur Event"). If the failure to perform is caused by the default of a subcontractor, and if such default is caused by a Force Majeur Event that is beyond the control of both Contractor and subcontractor and is without the fault or negligence of either of them, and unless the items or services to be furnished by the Contractor are delivered in sufficient time to permit Contractor to meet the required performance schedule, then Contractor shall not be in default under this Paragraph 15 and shall not be liable for costs under Paragraph 15.c. In the event Contractor's performance of the Contract is affected by a Force Majeur Event, it shall immediately give written notice to the City, and shall exercise every commercially reasonable effort to resume performance. The Procurement Commissioner, in his/her sole discretion, may deem the failure to provide such written notice or to exercise such commercially reasonable efforts to be an event of default under this Paragraph 15.

e. Remedies Not Exclusive - The rights and remedies of the City provided in this Paragraph 15 shall not be exclusive and are in addition to and not in lieu of any other rights and remedies

the City may have at law, in equity, under any bond(s) filed in connection with the Contract or under any other provisions and Paragraphs of the Contract, all of which are reserved to the City; provided, however, that the exercise of such rights or remedies by the City shall be subject to the limitations set forth in Paragraph 16 (Limitation of Liability) of this DPA, except as expressly provided otherwise in Paragraph 16 or elsewhere in this DPA or the Contract.

16. LIMITATION OF LIABILITY

a. In no event will either party to the Contract be liable for consequential, indirect, incidental, punitive, or special damages. This limitation shall not limit or restrict Contractor's obligation to indemnify and defend the City under Paragraphs 13 and 14 of this DPA.

b. In the event of a default by Contractor under the Contract, the City shall be entitled to recover actual, direct damages and costs incurred as a result of the default; provided, however, that Contractor's liability therefor shall be limited to the greater of:

(1) $250,000; or

(2) the total dollar amount of all Purchase Orders issued to Contractor pursuant to the Contract as of the time of the default.

This limitation shall not limit or restrict Contractor's obligation to indemnify and defend the City under Paragraphs 13 and 14 of this DPA.

c. In no event shall the City's liability to Contractor for damages arising under or in relation to the Contract other than consequential, indirect, incidental, punitive, or special damages, of any kind or nature whatsoever (including, without limitation, direct damages) exceed the greater of: $250,000 or the total dollar amount of all Purchase Orders issued to Contractor pursuant to the Contract as of the time such damages arise.

17. NON-ASSIGNMENT - Neither party to the Contract shall assign or otherwise transfer its rights, duties and/or obligations under the Contract, except with the prior written consent of the other party hereto; any assignment or transfer (including, but not limited to, sub-contract) without such consent shall be null and void. In no event shall the City's consent to any assignment or transfer by Contractor relieve Contractor from its obligations hereunder or change the terms of the Contract. Contractor accepts full responsibility for and guarantees the performance of any and all assignees and transferees (including sub-contractors) of Contractor.

18. CONTRACTOR CERTIFICATION - Contractor certifies that all of the prices, warranties and benefits granted under the Contract are equivalent to or better then Contractor's prevailing prices, warranties, and benefits currently being offered to its non-educational state and local government customers contracting for similar volumes, under similar terms and conditions. If Contractor shall, prior to the City's acceptance of equipment or software under the Contract (or in the case of maintenance services, prior to the start of such services or at any time during the period such services are furnished hereunder), announce a general price reduction or make available to any other non-educational state or local government customer contracting for similar volumes under similar terms and conditions, more favorable prices, warranties or benefits with respect to the equipment or software identified in the Contract, such prices, warranties or benefits will be made available to the City upon the date the general price reduction or change in prices, warranties or benefits becomes effective and the Contract shall be deemed automatically amended to incorporate such reduction or change. It shall be Contractor's obligation to promptly notify the City in writing of such general price reductions

or change in prices, warranties or benefits. The City certifies that it is purchasing products hereunder solely for use by the City and not for resale.

19. SOFTWARE AND OTHER INFORMATION/TRAINING

a. General Provisions

(1) Documentation for operating system and/or application software and other information owned by Contractor and its subcontractors (including suppliers) and provided to City for Control of or use with products provided under the Contract or under subsequent orders placed under the Contract shall remain the property of Contractor. Contractor hereby grants the City a personal, non-transferable and nonexclusive basic license to use in the United States, all documentation, technical information, confidential business information and all software and related documentation, in whatever form recorded (all hereinafter designated "Information") which is furnished under the Contract for so long as the following conditions are adhered to.

(2) Such Information:

(a) shall be used by City only to order or to evaluate for that purpose Contractor's products or to install, operate or maintain the particular product for which the information was initially furnished;

(b) shall be used solely for City's internal purposes;

(c) shall not be reproduced or copied in whole or in part except as necessary for use as authorized herein; and

(d) shall, together with any copies thereof, be returned or destroyed, or may if in the form of software recorded on an erasable storage medium, be erased when no longer needed or permitted for use with the product for which it was initially furnished.

(3) Unless Contractor consents in writing such information except for any part thereof which is rightfully obtained by City free of any obligation to keep in confidence or which becomes generally known to the public through acts not attributable to City or is independently developed by the City, shall be treated in confidence by the City.

(4) Such information may be disclosed to other persons, solely for the purpose of installing, operating or maintaining the particular product for which it was furnished, provided such other persons agree in writing in advance of disclosure to the same conditions respecting ownership, use and confidentiality of information contained in this Paragraph and Contractor is furnished with a copy of such writing.

(5) If any product sold or provided hereunder is resold, leased or otherwise provided by City directly or through an intermediary to a subsequent end user, upon written request to contractor by City, Contractor will grant to such end user a personal nontransferable and nonexclusive right to use, in the United States, any related information which Contractor furnished hereunder for use in or with such product, solely for such end user's internal business purposes and solely for us in or with such

product. Such right will be granted to the end user provided the end user agrees in writing to the same conditions respecting ownership, use and confidentiality of information as is contained in the Contract and the payment of any applicable fees.

(6) Contractor, for the charges set forth in the attached bid specifications and price schedule shall provide at the City's training site (or such other site as may be mutually agreed to by the parties) all training as described in the attached bid specifications and price schedule.

b. Licensure

(1) Unless otherwise defined in the bid specifications or as provided for in Subparagraphs 20.b.(2) and 20.b.(4), a separate license is required for each machine on which any licensed software will be utilized.

(2) The City is authorized to transfer the license to and use the licensed software on:

(a) a backup machine when the designated machine or an associated unit required for use of the licensed software is temporarily inoperable until operable status is restored and processing on the backup machine is completed; or

(b) another machine for assembly or compilation of the licensed software if the designated machine and its associated units do not provide the configuration required for assembly or completion

(3) The City may order additional licenses for software:

(a) Each additional license for software (operating or applications) already licensed by the City under the Contract shall be ordered separately.

(b) For additional licenses, in lieu of distribution from Contractor, the City may elect to copy the licensed software previously distributed to the City by Contractor in machine readable form. Permission to copy granted in this Subparagraph shall not apply to licensed software provided by Contractor in printed form.

(4) In addition to the basic license for software for each machine, the City may as part of the bid specifications require the Contractor to provide alternate types of licenses,

(a) If the bid specification specifies an "Installation License" the City is also authorized to use the licensed software on any other machine in the same installation as the designated machine. For purposes of the Contract, "same installation" shall mean a single room or contiguous rooms unless otherwise agreed to in writing by Contractor.

(b) If the bid specification specifies "Location License" the City is also authorized to use the licensed software on any other machine in the same location as the designated machine. For purposes of the Contract, "same location" shall mean a single mailing address and contained within a single building unless otherwise agreed to in writing by Contractor.

(c) If the bid specification specifies a "Distributed License" the City is authorized to use the licensed software on other machines not covered under the Installation or Location License. For each such license, the City will:

(1) copy those licensed materials previously distributed in machine readable form to the City by Contractor under the basic license;

(2) provide problem documentation to Contractor through the location of the basic license;

(3) at Contractor's request, recreate any problems at the location of the basic license;

(4) distribute to, install and test on the distributed license designated machine any new release, correction or bypass provided by Contractor to the basic license designated machine;

(5) accept warranty and maintenance services for the distributed licensed software through the basic license location;

(6) not require acceptance testing for such licensed software; and

(7) accept termination of the distributed licensed software if the basic license is discontinued by the City.

(5) For any licensed software that is a data base, the license granted in this Paragraph is further limited to permit access to such database exclusively by the City. Except as provided in Paragraph 20.a.(4), the City shall not make or permit any manner of access to any form of such data base, or part thereof, for the purpose of making available to any other person any data contained in such data base.

(6) The City shall not use, print, copy, translate or display the licensed software, in whole or in part, unless expressly authorized in the Contract.

(7) The City shall not reverse assemble or reverse compile the licensed software in whole or in part.

(8) The City may notify Contractor of the City's intention to change the designation of the machine on which licensed software is to be used.

(9) The City may modify any licensed software in machine readable form and/or merge such materials into other program materials to form an updated work for the City's own use; provided that, upon discontinuance of the licensed software, the licensed software will be completely removed from the updated work and dealt with under the Contract as if permission to modify or merge had never been granted. Any portion of the licensed software included in such an updated work will continue to be subject to all terms of the Contract.

(10) When the City has issued a Purchase Order for licensed software that is available in printed form, it may request Contractor to ship such printed material up to six months prior to the shipment of the machine readable portion. The printed materials thus

provided may not be copied in any form for any purpose without the prior written permission of Contractor.

20. **TITLE TO EQUIPMENT -** Title to equipment furnished hereunder shall pass to the City upon acceptance of the equipment (i.e. on the first day of the successful performance period). Contractor shall have a purchase money security interest in the accepted equipment until all charges set forth in the Purchase Order are paid in full.

21. **INSURANCE -** Unless otherwise specified, the successful bidder (referred to in this Paragraph as "contractor") shall, at its sole cost and expense, procure and maintain in full force and effect, during the entire period of the contract (including any applicable warranty and/or renewal periods) the minimum types of insurance specified below. All insurance shall be procured from reputable insurers authorized to do business in the Commonwealth of Pennsylvania and shall be acceptable to the City. All insurance required herein shall be written on an "occurrence" basis and not a "claims-made" basis. The City of Philadelphia, its officers, employees and agents are to be named as additional insureds on all policies required hereunder, except the Workers' Compensation and Employers' Liability. Also, an endorsement is required stating that the coverage afforded these parties as additional insureds will be primary to any other coverage available to them. The City's coverage as an additional insured shall be primary coverage. The insurance shall provide for at least thirty (30) days prior written notice to be given to the City in the event coverage is materially changed, canceled or non-renewed. Certificates of insurance evidencing the required coverages shall be submitted to the City within fifteen (15) days of notice of contract award.

The City reserves the right to require the contractor to furnish certified copies of the original policies of all insurance required hereunder at any time upon fifteen (15) days prior written notice. The insurance requirements set forth herein are not intended and shall not be construed to modify, limit, or reduce the indemnifications made in this contract by the contractor to the City or to limit the contractor's liability under this contract to the limits of the policies of insurance required to be maintained by the contractor hereunder.

a. WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE

(1) Workers' Compensation -Statutory limits.
(2) Employers Liability - $500,000 Each Accident - Bodily Injury by Accident; $500,000 Each Employee - Bodily Injury by Disease; $500,000 Policy Limit -Bodily Injury by disease
(3) All states endorsement

b. GENERAL LIABILITY INSURANCE

(1)Limit of Liability: $1,000,000 per occurrence combined single limit for bodily injury (including death) and property damage liability.
(2) Coverage: Premises operation; Blanket contractual liability; Personal injury liability (employee exclusion deleted); Products and completed operations; Independent Contractors; Employees as additional insured; Cross liability; Broad form property damage (including loss of use) liability; Asbestos abatement liability coverage (Note: Required for asbestos abatement projects only).

c. AUTOMOBILE LIABILITY INSURANCE

(1) Limit of Liability: $1,000,000 per occurrence combined single limit for bodily injury (including death) and property damage liability.
(2) Coverage: owned, non-owned and hired vehicles.

d. PROFESSIONAL LIABILITY INSURANCE

Contractor shall be required to furnish professional liability insurance if, but only if, professional liability insurance is required elsewhere in the Invitation and Bid. If such insurance is required, it shall be furnished in the amounts, and in accordance with the terms and conditions, that are specified in the applicable provision of the Invitation and Bid.

22. PERFORMANCE SECURITY - The City of Philadelphia requires performance security for contracts greater than $30,000. If the amount of the contract to be awarded is greater than $30,000 but less than or equal to $500,000, the successful bidder is required to participate in the City's Master Performance Security Program by paying to the City a non-refundable fee of $5.00 per thousand dollars of the contract amount for firm limit contracts and $4.00 per thousand dollars of the contract amount for requirements contracts, or as otherwise specified in the Invitation and Bid. If the amount of the contract to be awarded is in excess of $500,000, or an individual performance bond and/or labor and materialmen's bond is required in the Invitation and Bid, the successful bidder is required to furnish such individual performance bond and/or labor and materialmen's bond, issued by a surety approved by the City, on a form prepared by the City's Law Department and in the amount specified for the bond(s) in the Invitation and Bid; or if no such amount is provided in the Invitation and Bid, in the amount specified for the bond(s) in the notice of contract award. The successful bidder is also required to pay a bond preparation fee to the City's Law Department in an amount prescribed by Chapter 17-700 of The Philadelphia Code; a schedule of such fees may be obtained from the Procurement Department's Public Information Office.

23. CENTURY DATE STANDARD

a. Covered Work - Contractor represents and warrants that the following items furnished under the contract shall conform to the City of Philadelphia Century Date Standard set forth in Paragraphs 23.b.(1)-(4) below. Such warranties and representations are in addition to, and not in lieu of, Contractor's warranties and representations set forth in Paragraph 8, Warranty, of this DPA and elsewhere in the Contract, and shall not limit or excuse any of Contractor's obligations under such warranties.

(1) all operating system software, application software, and other software, and all firmware, including, but not limited to, any authorization code or other code incorporated in such software or firmware for the purpose of disabling or limiting the functionality of the software under conditions specified by the manufacturer or publisher of the software;

(2) all equipment, including but not limited to computer hardware, and all components thereof, including, but not limited to, the following components:

(a) Programmable Read Only Memory (PROM), Erasable Programmable Read Only Memory (EPROM), Read Only Memory (ROM), Random Access Memory (RAM) and all other memory chips, devices, and components;

(b) Basic Input/Output System (BIOS) chips, devices, and components;

(c) any and all other semi-conductor chips and other chips, devices, and components of computer hardware and other equipment that in any way incorporate and/or depend for their operation on machine readable code that is embodied in the chip, device, or component.

b. Century Date Standard - The City of Philadelphia Century Date Standard consists of the following standards for General Integrity, Date Integrity, and Interface Integrity:

(1) General Integrity. No value for current date will cause interruptions in the operation of the software, firmware, or equipment before, during, or after January 1, 2000, and the software, firmware and equipment will operate through March 1, 2000 and thereafter, without any date-related faults or failures and without producing inaccurate data.

(2) Date Integrity. All manipulations of time-related data (including, without limitation, dates, durations, days of week, month, and year) will produce results that conform to the manufacturer's specifications for the software or equipment for all valid date values within the application domain, before, during, and after January 1, 2000.

(3) Interface Integrity.

Explicit Century: Date elements in interfaces and data storage shall permit specification of the century by means that will eliminate all ambiguity as to the applicable century for date and date-related data, before, during and after January 1, 2000.

Implicit Century: For any date element represented without century, the correct century shall be unambiguous for all manipulations involving that element before, during, and after January 1, 2000.

(4) Source code. Source code for software shall comply with the standard set forth in Federal Information Processing Standard Publication 4-2 (FIPS PUB 4-2), Representation of Calendar Date for Information Interchange.

c. Defects and Errors - Contractor shall, at no cost to the City, repair any equipment, firmware and/or software that does not conform to the standards set forth in Paragraph 23.b and cause it to conform such standards, or shall replace the software or equipment with software that does conform to such standards.

d. Reservation of Rights - The City may, in its sole discretion:

(1) elect to order and/or accept equipment or software that does not comply fully or exactly with Subparagraphs 23.b.(1)-(4) if, in the City's sole judgment, the equipment or software complies substantially with these Subparagraphs, and/or complies sufficiently to satisfy the City's requirements in purchasing the equipment or software; and/or

(2) accept representations and/or warranties with respect to the equipment or software that are different from those set forth in Paragraphs 23.a-b, and/or a century date standard that is different from the century date standard set forth in Paragraph 23.b., if, in the City's sole

discretion, such different representations, warranties, and/or century date standard are sufficient to satisfy the City's requirements in purchasing the equipment or software.

24. YEAR 2000 COMPLIANCE OF CONTRACTOR

a. "Year 2000 Compliant" - For purposes of this Article 18.2 only, a system, process, or piece of equipment is "Year 2000 Compliant" if it can operate normally before, during, and after midnight on December 31, 1999 without abnormal or unusual user intervention. This includes but is not necessarily limited to the following operations: accepting date input, providing date output, performing calculations and comparisons on dates or portions of dates, correctly accessing and processing date-dependent information, and correct date interpretation and manipulation for all valid dates; sequencing by date must produce normal results for all dates. A corporation, partnership, sole proprietor, or other entity is Year 2000 Compliant if all systems, processes, and pieces of equipment that are required for the normal conduct of its business and for the delivery of goods and services to its customers are Year 2000 Compliant.

b. Contractor's Representations and Warranties - Contractor represents and warrants as follows:

(1) that it has undertaken a detailed review and assessment of all areas within its business and operations that are material to its ability to furnish the Services required under the Contract in accordance with the terms of the Contract (including but not limited to terms relating to delivery dates and performance schedules) and that it reasonably believes could be adversely affected by Contractor's failure to be Year 2000 Compliant;

(2) that it has developed a plan and timeline for becoming Year 2000 Compliant prior to January 1, 2000;

(3) that it has implemented, or will implement, such plan in accordance with its timeline in all material respects;

(4) that prior to January 1, 2000, it will be Year 2000 Compliant in all respects that are material to its ability to furnish the Services required under the Contract in accordance with the terms of the Contract (including but not limited to terms relating to delivery dates and performance schedules); and

(5) that it shall become Year 2000 Compliant at no additional cost to the City. In the event that Contractor exchanges electronic data with the City, Contractor further represents and warrants that such exchange of data, the exchanged data, and any hardware or software interface with City computers that is required for such data exchange, will not cause any information system of the City to fail to be Year 2000 Compliant and will not adversely affect, directly or indirectly, any electronic information system of the City or cause errors or defects in date or date-dependent information processed by the system.

The forgoing warranties and representations are in addition to, and not in lieu of, Contractor's warranties and representations set forth in Paragraph 8, Warranty, of this DPA and elsewhere in the Contract, and shall not limit or excuse any of Contractor's obligations under such warranties.

c. Information Requests - Upon the written request of the City, Contractor shall furnish evidence sufficient to demonstrate that the foregoing representations and warranties are correct.

d. Reservation of Rights - The City may, in its sole discretion, accept representations and/or warranties and/or definition(s) of "Year 2000 Compliance" that are different from those set forth in Paragraphs 24.a.-b. if, in the City's sole discretion, such different representations, warranties, and/or definition(s) are sufficient to satisfy the City's requirements in purchasing the equipment or software required under the Contract.

25. GENERAL TERMS AND CONDITIONS OF BIDDING - Except as expressly stated otherwise in the bid specifications or elsewhere in the Invitation and Bid, the following general terms and conditions of bidding shall apply:

a. Preparation and Submission of Bids - All bids must be written in ink or typewritten and made on the forms issued and signed in ink, by a person with legal authority to bind the bidder. This Invitation and Bid and any contract awarded hereunder shall include all of the following, as set forth in Paragraph 2.b, *Contract*, and Paragraph 2.l, *Invitation and Bid*, of this DPA: (i) the form titled "Invitation And Bid" and bearing the "Bid No." for this procurement; (ii) this DPA; (iii) all attachments, exhibits, and appendices to such form and to this DPA; (iv) all addenda to the Invitation and Bid issued by the Procurement Department. The Contract shall include, in addition to the foregoing documents, all Purchase Orders issued by the Procurement Department pursuant to the Contract, which are hereby incorporated into the Contract. It is the sole responsibility of the bidder to ensure that it has received any and all addenda to the Invitation and Bid issued by the Procurement Department and the Procurement Commissioner may in his/her sole discretion reject any bid for which all addenda have not been executed and returned in accordance with the instructions provided therein. No bid may be considered if received after the date and time for the opening of bids established by this Invitation and Bid, nor may any bid be modified after that date and time. The time of bid opening shall be the time displayed on the City's official bid clock. In the event of any discrepancy between actual time and the City's official bid clock, the latter shall determine the time of bid opening.

b. Specifications - When a formal, numbered specification is referred to in this Invitation and Bid, no deviation therefrom will be permitted and the bidder will be required to furnish articles and/or services in conformity with that specification. When catalogues, model numbers, trade names, or cuts are listed in this Invitation and Bid, they are, unless otherwise specified, included for the purposes of furnishing bidders with information concerning the style, type or kind of article and /or service desired. A bidder may offer an article and/or service which he/she certifies to be equal or better in quality, performance and other essential characteristics. If submitting an alternate the bidder must specify the alternate (e.g., make and model #) in the bid and submit with the bid a complete description of the article (including any technical literature) and/or service proposed to be furnished. Failure to do so, will require the bidder to furnish the article and/or service specified in the Invitation and Bid. The Procurement Commissioner reserves the sole right to determine whether alternates offered are equal or better. Unless otherwise provided in the bid specifications, all items offered by the bidder must be new. A “new” item is one which will be used first by the City. This clause shall not be construed to prohibit bidders from offering goods, supplies, equipment or materials containing recycled materials or printing with recycled content; bidders intending to provide goods made with recycled materials are expected to so notify the Procurement Department.

c. Types of Bidder Restricted - Bidders must not be a party to more than one bid for the same article or service. A violation of this condition may, in the sole discretion of the Procurement Commissioner, result in rejection of any or all such bids in which the bidder is interested.

d. Quantities Awarded - For requirements contracts only (which shall be so identified elsewhere in the Invitation and Bid), the articles and quantities of such articles as set forth in the Invitation and Bid are estimates and the Procurement Commissioner, in his/her sole discretion, may make an award for all or some of the articles bid and in such quantities as the Procurement Commissioner shall deem appropriate. For firm limit contracts, it is the City's intent to award based upon the quantities set forth in the Invitation and Bid, but the City reserves the right to award more or less.

e. Bid Security - Unless the bidder is properly covered under the City's Annual Master Bid Security Program, or an individual bid bond is required elsewhere in the Invitation and Bid, all bids must be accompanied by a Certified Check, Treasurer's Check, Cashier's Check, Bank Money Order or United States Postal Money Order made payable to the order of "The City of Philadelphia" in the proper amount as shown below:

AMOUNT OF BID OR EST. AMT. CONTRACT	AMOUNT OF CERTIFIED CHECK
$ 30,000.00 or less	No Check Required
$ 30,000.01- $ 99,999.99	$ 500.00
$ 100,000.00 - $ 249,999.99	$ 2,000.00
$ 250,000.00- $ 499,999.99	$ 4,000.00
$ 500,000.00 or more	$ 6,000.00

When computing amount of Bid for Certified Check purposes, do NOT deduct for trade-ins.

Bids in excess of $500,000 cannot be covered by the Annual Master Bid Security Program and bidder must submit a Certified Check, Treasurer's Check, Cashier's Check, Bank Money Order or United States Postal Money Order made payable to the order of "The City of Philadelphia" in the required amount. After the lowest responsive and responsible bidder has been determined, the Procurement Department shall refund, with the exception of the non-refundable fee paid for participation in the City's Annual Master Bid Security program, the bid security of every bidder except the lowest responsive and responsible bidder. Upon return of the duly executed contract documents and all required fees, and the furnishing of any required bonds or other performance security by the lowest responsive and responsible bidder, its bid security will be refunded.

f. Cancellation and Award - The Procurement Commissioner, in his/her sole discretion, may cancel any Invitation and Bid prior to bid opening. After bid opening, the Procurement Commissioner, in his/her sole discretion, may reject all bids, if deemed in the best interest of the City. In all cases where a contract award is made by the Procurement Department, the bidder is bound by the terms and conditions of the Invitation and Bid upon the submission of its bid. All bids are valid for a period of not less than 60 days, or as otherwise specified in the Invitation and Bid. If the bid has not been awarded within the specified period of time, the bid shall be valid for subsequent award only upon the express consent of the bidder, with no change to the submitted bid. All contract awards shall be made by the Procurement Department upon written notice to the bidder that is determined by the Procurement Department to be the lowest responsive and responsible bidder.

g. Responsiveness of Bids - Subject to the right of the Procurement Commissioner to waive non-responsiveness of bids as set forth below in this Paragraph 25, the specifications, requirements, and terms and conditions set forth in this DPA and elsewhere in the Invitation and Bid are mandatory and must be strictly followed by all bidders in the preparation and submission of its bids. After bids are opened, the Procurement Department, and other City departments or agencies where appropriate or specified, shall review all bids for responsiveness to these Terms and Conditions of Bidding and the specifications and requirements included in this Invitation and Bid. Any bid which is incomplete, obscure, conditional, or unbalanced, which contains additions not called for in the Invitation and Bid or irregularities of any kind, including alterations or erasures, or which fails to conform in any respect to such specifications, requirements, and terms and conditions, is non-responsive and shall be rejected, except where the Procurement Commissioner, in his/her sole discretion, determines that the non-responsiveness is not material to the Invitation and Bid, or that a waiver of the non-responsiveness is otherwise permitted by the Invitation and Bid or by this DPA or by law. The Procurement Department's determination of non-responsiveness shall be final and any bid rejected as non-responsive shall not be eligible for contract award.

h. Responsibility - Unless otherwise specified elsewhere in the Invitation and Bid, after the bids are opened, the Procurement Department, and other City departments or agencies where appropriate or specified in the Invitation and Bid or required by law or regulation, shall review and may investigate the responsibility of the bidder, including, but not limited to, the bidder's qualifications, references, ability (including, but not limited to financial and technical capacity) to perform the contract resulting from this Invitation and Bid in accordance with its terms, and integrity. All determinations of bidder responsibility shall be vested in the sound discretion of the Procurement Commissioner and other City officials. Any bidder who is found not responsible shall be ineligible for award of the contract. Bidders found not responsible will be notified of such determination and the reasons therefore in writing by the Procurement Department, and shall have the right to contest the determination by submitting to the Procurement Department, within forty-eight (48) hours after receipt of its written determination, a written request for reconsideration that includes information relating to the bidder’s qualifications and responsibility and demonstrating the insufficiency of the reasons stated in the written determination for finding the bidder not responsible. Any further determination of a contesting bidder’s responsibility shall be vested in the sound discretion of the Procurement Commissioner and other City officials.

i. Conditions of Binding Contract - For bids in an amount less than or equal to $25,000, the signed bid of the lowest responsive and responsible bidder shall become a contract binding the City as of the date on which the Procurement Department issues its written notice of the Procurement Commissioner's award of the Contract to the bidder, without the satisfaction of further conditions by the bidder. For bids in an amount greater than $25,000, however, such signed bid shall not become a contract between the City and the successful bidder, and shall not bind or obligate the City in any way, unless and until all of the following conditions (1)-(5) are fully satisfied:

(1) The Procurement Department has issued its written notice of the Procurement Commissioner's award of the Contract to the successful bidder;
(2) The successful bidder posts sufficient Performance Security, as required in the Invitation and Bid, within the time specified in the written notice of award, and a Labor and Materialmen's Bond, if and as required by the Invitation and Bid, within the time specified in the written notice of award;
(3) The Contract Documents, as executed by the successful bidder, are approved as to form by the City's Law Department;

(4) The availability of funds is certified by the City's Director of Finance and the City Controller; and
(5) The Contract Documents are executed by the Procurement Commissioner.

The Procurement Commissioner may, in his/her sole discretion, cancel any contract award if any of the above conditions (1)-(5) are not satisfied, or if the Procurement Commissioner, in his/her sole discretion, determines that cancellation is in the best interests of the City. The bidder agrees that in the event of such cancellation, it shall not have any claim against the City, including any claim for breach of contract or of any other legal duty, or for lost profits, costs, damages, or expenses of any kind.

j. Failure to Execute Contract - Any bidder not lawfully released from its bid, who refuses to execute and/or be bound by a contract in accordance with its bid or who fails, refuses or is unable to furnish any required bonds, performance security or insurance, as may be required by this DPA and elsewhere in the Invitation and Bid, shall be liable for the entire amount of its bid security, as liquidated damages (not a penalty) to the City; or if bid security is furnished under the Annual Master Bid Security Program, shall be liable for ten (10) per cent of the amount of its bid, as liquidated damages (not a penalty) to the City; or where the damages are readily ascertainable by the City, for the actual loss, cost or damage incurred by the City as a result of the bidder's failure to execute the contract or to furnish such bonds, performance security or insurance.

k. Bid Processing Fee - In addition to bid security and any other fee or monies required to be submitted with the bid, the bid shall be accompanied by a non-refundable processing fee in the form of a separate Standard Check, Bank Money Order or United States Postal Money Order made payable to the order of "City of Philadelphia" in an amount based on the gross amount of the bid in accordance with the formula below. Cash is not acceptable.

AMOUNT OF BID OR ESTIMATED CONTRACT	AMOUNT OF PROCESSING FEE
$ 30,000.00 or less	No Check Required
$ 30,000.01 to $ 100,000.00	$ 10.00
$ 100,000.01 to $ 300,000.00	$ 30.00
$ 300,000.01 to $ 500,000.00	$ 50.00
$ 500,000.01 to $ 1,000,000.00	$ 100.00
$ 1,000,000.01 to $ 2,000,000.00	$ 200.00
$ 2,000,000.01 to $ 3,000,000.00	$ 300.00
$ 3,000,000.01 to $ 4,000,000.00	$ 400.00
$ 4,000,000.01 to $ 5,000,000.00	$ 500.00
$ 5,000,000.01 or more	$ 600.00

Failure to submit the Bid Processing Fee may result in rejection of the bidder's bid. In addition, if a contract award is made pursuant to this Invitation and Bid, any unpaid bid processing fees owed by the successful bidder to the City must be paid prior to the City's release of any payments under the resulting contract.

l. Price Increases and Discounts - All articles must be delivered at the price(s) bid, FOB Destination Point. Bids containing reservations of the right to increase the price(s) bid , including, but not limited to, late payment charges, will not be considered, except where the Procurement Commissioner, in his/her sole discretion, finds it in the City's best interest to do so. Discounts offered for payment may be a factor in the awarding of bids only in the event of tie bids. (In the

event of an absolute tie the award decision will be made in the best interest of the City as determined by the Procurement Commissioner in his/her sole discretion.) Discounts must be for a period of at least 15 days to be so considered. Discounts offered shall be assumed to be from gross price unless otherwise indicated.

m. Processing of Payments - All payments will be processed and paid in accordance with the City's standard payment procedures and payment cycle (i.e. normally within 45-60 calendar days following receipt of proper invoices). Any credit due to the City hereunder may be applied against Contractor invoices with appropriate information attached.

26. MISCELLANEOUS PROVISONS

a. Tax Exemption - The City of Philadelphia is exempt from the payment of any federal excise or transportation taxes and any Pennsylvania Sales Tax. The price bid must be net, exclusive of taxes. However, when under established trade practice any federal excise tax is included in list prices, bidder may quote the list price and shall show separately the amount of the federal tax, either as a flat sum or as a percentage of the list price, which shall be deducted by the City. In the event bidder pays any sales or use tax, bidder hereby assigns to City, or City's agent, all of its rights, title and interest in any sales or use tax which may be refunded as a result of the purchase of any articles furnished in connection with the contract and bidder, unless directed by the City, shall not file a claim for any sales or use tax refund subject to this assignment. Bidder authorizes the City, in City's name or the name of bidder, to file a claim for refund of any sales or use tax subject to this assignment.

b. Tax Requirements - Any contractor, or vendor of goods, wares and merchandise, or purveyor of services, who bids on and is awarded a contract by the City and/or School District of Philadelphia, is subject to Philadelphia's business tax and Ordinances and regulations. The City Solicitor has ruled that anyone who is awarded a contract by the City and/or School District pursuant to a bid has 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 bidder, including but not limited to, one or more of the following taxes:

(1) Business Privilege Tax
(2) Net Profits Tax
(3) City Wage Tax

The successful bidder, if not already paying the aforesaid taxes, is required to apply to the Department of Revenue, 1401 John F. Kennedy Blvd., Public Service Concourse, Municipal Services Building, Philadelphia, PA 19102, for a tax identification number and to file appropriate business tax returns as provided by law. Questions should be directed to the Business and Earnings Tax Unit at (215) 686-6600.

c. Tax Indebtedness - The City of Philadelphia does not wish to do business with tax delinquents or other businesses indebted to the City. In furtherance of this policy, the following certifications have been developed and shall form a part of any contract resulting from this Invitation and Bid. The successful bidder, or other entity contracting with the City is referred to below as the "contractor".

(1) Contractor's Certification of Non-Indebtedness - Contractor hereby certifies and represents that contractor and contractor's parent company(ies) and subsidiary(ies) are not currently indebted to the City of Philadelphia (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), 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, contractor acknowledges that any breach or failure to conform to this certification may, at the option of the City, result in the withholding of payments otherwise due to contractor and, if such breach or failure is not resolved to the City's satisfaction within a reasonable time frame specified by the City in writing, may result in the offset of any such indebtedness against said payments and/or the termination of this contract for default (in which case Contractor shall be liable for all costs, losses and other damages resulting from the termination).

(2) Subcontractor's Certification of Non-Indebtedness - Contractor shall require all subcontractors performing work in connection with this contract ("subcontractor" shall also include suppliers providing goods or materials) to be bound by the following provision and contractor shall cooperate fully with the City in exercising the rights and remedies described below or otherwise available at law or in equity:

"Subcontractor hereby certifies and represents that subcontractor and subcontractor's parent company(ies) and subsidiary(ies) are not currently indebted to the City of Philadelphia ("City"), and will not at any time during the term of contractor's contract with the City (the "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 at law or in equity, subcontractor acknowledges that any breach of or failure to conform to this certification may, at the option of the City, result in the withholding of payments otherwise due to subcontractor for services rendered in connection with the contract and, if such breach or failure is not resolved to the City's satisfaction within a reasonable time frame specified by the City in writing, may result in the offset of any such indebtedness against said payments otherwise due to subcontractor and/or the termination of subcontractor for default (in which case subcontractor shall be liable for all costs, losses and other damages resulting from the termination)."

d. 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 City contracts. Such laws are in three categories:

(1) Gifts. Executive Order No. 16-92 prohibits City employees from soliciting or accepting anything of value from any person or entity seeking to initiate or maintain a business relationship with the City of Philadelphia, its departments, boards, commissions and agencies. All City employees presented with gifts or gratuities as indicated in Executive Order 16-92 have been instructed to report these actions to the appropriate authorities. All bidders, agents or intermediaries who are solicited for gifts or gratuities by City employees are urged to report these incidents to the Inspector General, Aramark Tower, Third Floor, 1101 Market Street, Philadelphia, PA 19107.

(2) City employee interest in City contracts. In accordance with Paragraph 10-102 of The Philadelphia Home Rule Charter, no bid shall be 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 bidders are required to disclose any current City employees or officials who are employees or officials of the bidder's firm, or who otherwise would have a financial interest in the contract.

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

e. Non-Discrimination

(1) In the performance of the Contract, Contractor shall not discriminate nor permit discrimination against any person because of race, color, sex, religion, national origin- or ancestry. Contractor agrees that such discrimination constitutes a substantial breach of the Contract entitling the City to all rights and remedies provided in the Contract or otherwise available in law or equity.

(2) In accordance with Chapter 17-400 of The Philadelphia Code, Contractor agrees that its payment or reimbursement of membership fees or other expenses associated with participation by its employees in an exclusionary private organization, insofar as such participation confers an employment advantage or constitutes or results in discrimination with regard to hiring, tenure of employment, promotions, terms, privileges or conditions of employment on the basis of race, color, sex, sexual orientation, religion, national origin or ancestry, constitutes a substantial breach of the Contract entitling the City to all rights and remedies provided in the Contract or otherwise available in law or equity. Contractor agrees to include the immediately preceding sentence, with appropriate adjustments for the identity of the parties, in all subcontracts which are entered into for work to be performed pursuant to the Contract. Contractor further agrees to cooperate with the Commission on Human Relations of the City of Philadelphia in any manner which the said Commission deems reasonable and necessary for the Commission to carry out its responsibilities under Chapter 17-400 of The Philadelphia Code. Failure to so cooperate shall constitute a substantial breach of the Contract entitling the City to all rights and remedies provided in the Contract or otherwise available in law or equity.

f. MacBride Principles - Paragraph 17-104(2)(b) of The Philadelphia Code prohibits the City from accepting bids from companies that do business in Northern Ireland, unless that business has implemented the fair employment principles embodied in the MacBride Principles. In furtherance of this Ordinance, bidder makes the following certification and representations:

(1) In accordance with Paragraph 17-104 of the Philadelphia Code, bidder by execution of its bid certifies and represents that (i) bidder (including any parent company, subsidiary, exclusive distributor, or company affiliated with Bidder) does not have, and will not have at any time during the term of any contract resulting from this bid (including any extensions thereof), any investments, licenses, franchises, management agreements or operations in Northern Ireland and (ii) no product to be provided to the City under any resulting contract will originate in Northern Ireland, unless Bidder has implemented the fair employment principles embodied in the MacBride Principles.

(2) In the performance of any contract resulting from this bid, Bidder agrees that it will not utilize any suppliers or subcontractors at any tier (i) who have (or whose parent subsidiary, exclusive distributor of company affiliate have) any investments, licenses, franchises, management agreements or operations in Northern Ireland or (ii) who will provide products originating in Northern Ireland unless said supplier or subcontractor has implemented the fair employment principles embodied in the MacBride Principles. Bidder further agrees to include provisions with this Subparagraph (b), with appropriate adjustments for the identity of the parties, in all subcontracts and supply agreements which are entered into in connection with the performance of any resulting contract.

(3) Bidder 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 Paragraph 17-104 of The Philadelphia Code. Bidder expressly understands and agrees that any false certification or representation in connection with this Subparagraph (c) and/or any failure to comply with the provisions of this Subparagraph (c) shall constitute a substantial breach of any contract resulting from this Invitation and Bid entitling the City to all rights and remedies provided in this bid or otherwise available in law (including, but not limited to Paragraph 17-104 of the Philadelphia Code) or at equity. In addition, it is understood that false certification or representation is subject to prosecution under 18 Pa.C.S. Paragraph 4904.

g. Compliance With Law - In performing the work required under the Contract, Contractor shall comply with all federal, state and local laws, statutes and ordinances, and with all applicable regulations of federal, state and local governmental departments, boards, agencies and commissions.

h. Force Majeur - Contractor shall not be in default under Paragraph 15 of this DPA if any event of default as provided therein is the result of a Force Majeur Event as defined in Paragraph 15.d of this DPA. The City shall not be liable to Contractor for any failure to perform any of its obligations under the Contract if such failure is because of natural disaster, any act of God, war, civil disturbance, court order, labor dispute, or nonperformance of third parties.

i. Headings Not Controlling - Headings used in this DPA and elsewhere in the Contract are for reference purposes only and are inserted only as a matter of convenience and in no way define, limit, extend or describe the scope of the Contract or the intent of any provision of this DPA or elsewhere in the Contract.

j. Governing Law; Forum - The Contract shall be governed by the laws of Pennsylvania (including, but not limited to, the Pennsylvania statute of limitations) and shall be executed and performed in strict and exact accordance with the Philadelphia Home Rule Charter, as well as any applicable rules, statutes, ordinances, methods, regulations or procedures. The parties agree that any lawsuit, action, claim or legal proceeding involving, directly or indirectly, any matter arising out of or related to the Contract or the relationship created or evidenced thereby, shall be brought exclusively in the United States District Court for the Eastern District of Pennsylvania or the Court of Common Pleas of Philadelphia County. It is the express intent of the parties that jurisdiction over any lawsuit, action, claim, or legal proceeding arising under the Contract shall lie exclusively in either of these two forums. The parties further agree not to raise any objection to any such lawsuit, action, claim or legal proceeding which is brought in either of these two forums and the parties expressly consent to the jurisdiction and venue of these two forums.

k. Remedies Not Exclusive - In no event shall the rights and remedies of the City provided in any paragraph, subparagraph, or provision of this DPA or elsewhere in the Contract be exclusive, and all such rights and remedies are in addition to and not in lieu of any other rights and remedies the City may have at law, in equity, under any bond(s) filed in connection with the Contract or under any other provision, paragraph, of subparagraph of this DPA or the Contract, all of which are reserved to the City; provided, however, that the exercise of such rights or remedies by the City shall be subject to the limitations set forth in Paragraph 16 (Limitation of Liability) of this DPA, except as expressly provided otherwise in Paragraph 16 or elsewhere in the Contract.

l. City's Right to Audit Records - From time to time during the term of the Contract and for a period of five (5) years after termination of the Contract, the City (including, without limitation, the Office of the City Controller) may audit Contractor's performance under the Contract. If so requested, Contractor shall submit to the City all vouchers and invoices presented for payment pursuant to the Contract, all cancelled checks, work papers, books, records and accounts (whether in electronic, paper, or other form or medium) 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 Agreement, all of which shall be subject to periodic review and audit by the City. Contractor shall make available, within the City, at reasonable times during the term of the Contract and for the period set forth above in this Subparagraph, all records (whether in electronic, paper, or other form or medium) pertaining to the Contract for the purpose of inspection, audit or reproduction by authorized representatives of the City. Contractor shall retain all such records, books of account and documentation pertaining to the Contract for the period set forth above in this Subparagraph; however, if any litigation, claim or audit is commenced prior to expiration of such 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; if applicable law requires or permits a longer period, then the records shall be retained for such longer period.

27. **ENTIRE AGREEMENT** - The Contract, as defined in Paragraph 2.b of this DPA, constitutes the entire understanding of the parties with respect to the subject matter hereof**,** and neither it nor the rights and obligations hereunder may be changed, modified or waived except by an instrument in writing signed by all of the parties hereto. The parties hereto bind themselves, their heirs, executors, administrators, successors and assigns for the faithful performance of the Contract.

SIGNING OF BIDS

NOTE: THE BIDDER MUST EXECUTE ITS BID BY SIGNING THIS DATA PROCESSING AGREEMENT AS PROVIDED BELOW. ANY BID THAT IS NOT EXECUTED IN ACCORDANCE WITH THE INSTRUCTIONS PROVIDED BELOW OR THAT DOES NOT INCLUDE STREET ADDRESS, CITY, STATE AND PHONE NUMBER, MAY, IN THE SOLE DISCRETION OF THE PROCUREMENT COMMISSIONER, BE REJECTED.

If bid is by an INDIVIDUAL or a PARTNERSHIP, date and sign the bid on this page, with original signatures, in ink.

Contractor and the City of Philadelphia, intending to be legally bound by this Data Processing Agreement and all other documents comprising the Contract, have caused the Contract to be executed by their respective duly authorized officers:

Date of Bid: _____, _____

_____
Signature of Owner, Partner

_____
Type or Print Name and Title

_____
Business Name of Bidder/Contractor

_____
_____
Address, including Zip Code

_____
Telephone Number, including Area Code

If bid is by a CORPORATION, date and sign the bid 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 form is not signed by the President or a 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 bid for the corporation.

Contractor and the City of Philadelphia, intending to be legally bound by this Data Processing Agreement and all other documents comprising the Contract, have caused the Contract to be executed by their respective duly authorized officers:

CORPORATE SEAL

Date of Bid: _____, _____

_____
Corporate or Business Name of Bidder/Contractor

_____
_____
Address, including Zip Code

_____
Telephone Number, including Area Code

_____
Signature of President or a Vice-President

_____
Type or Print Name and Title

_____
Signature of Secy. Asst. Secy,
Treas. or Asst. Treas.

_____
Type or Print Name and Title

THE CITY OF PHILADELPHIA

_____
Procurement Commissioner

APPROVED AS TO FORM

_____
Assist./Dep. City Solicitor