

MONDAY, DECEMBER 03, 2007

OPERATING AGREEMENT  
BY AND AMONG  
CITY OF PHILADELPHIA,  
PENNSYLVANIA CONVENTION CENTER AUTHORITY  
AND  
COMMONWEALTH OF PENNSYLVANIA,  
THROUGH ITS OFFICE OF THE BUDGET  
DATED AS OF \_\_\_\_\_

1. BACKGROUND.

(a) The Pennsylvania Convention Center Authority (the "Authority") is an agency and public instrumentality of the Commonwealth of Pennsylvania (the "Commonwealth") and a body politic and corporate created and existing under the Pennsylvania Convention Center Authority Act, 64 Pa. Cons. Stat. Ann. § 6001, et seq, as amended (the "Act"). The Authority is authorized and empowered under the Act for the purposes of, *inter alia*, acquiring, holding, developing, designing, constructing, maintaining, managing, operating, financing, furnishing, fixturing, equipping, repairing, leasing or subleasing either in the capacity of lessor or lessee or sublessor or sublessee, and owning a convention center or parts thereof in cities of the first class.

(b) The City of Philadelphia (the "City"), a municipal corporation, is a city of the first class and a body corporate and politic, organized and existing under the laws of the Commonwealth.

(c) The City, the Authority and the Commonwealth desired to have developed, designed, constructed, furnished, equipped, financed, operated and maintained a convention center facility within the geographical limits of the City (the "Original Convention Center"). In order to undertake the foregoing, the Authority issued its Revenue Bonds, 1989 Series A, in the original aggregate principal amount of \$285,860,610.65 (the "1989 Bonds"), under and pursuant to the terms and conditions of a Trust Indenture dated as of December 15, 1989 (the "Original Trust Indenture") from the Authority to U.S. Bank National Association, successor in interest to Meridian Trust Company (the "Trustee"), for the purpose of financing a portion of the costs of a project of the Authority consisting of the development, design, construction, operation and management of the Original Convention Center (the "Original Convention Center Project").

(d) In conjunction with the Original Convention Center Project and the 1989 Bonds issued to finance the same, the Authority and the City entered into a Lease and Service Agreement dated as of December 14, 1989 (the "Original Lease and Service Agreement") pursuant to which, among other things, the City leased certain real property to the Authority (the "Land") in consideration of certain rentals payable by the Authority to the City, and the City agreed to pay to the Authority a certain service fee (the "Service Fee") in consideration of the undertakings of the Authority with respect to the Original Convention Center Project and the financing thereof. Further, the Original Lease and Service Agreement provided that upon its termination, title to all buildings, improvements and/or fixtures (as described therein) (the "Improvements") would automatically vest in the City without the need for any further action.

(e) In order to finance part of the costs of the Original Convention Center Project, the Commonwealth appropriated an amount not less than \$185,000,000, pursuant to the Act of May 18, 1984 and the Capital Budget Project Itemization Act for 1984-1985.

(f) The Original Trust Indenture was supplemented by a First Supplemental Indenture dated as of December 15, 1989 (the "First Supplemental Indenture"), a Second Supplemental Indenture dated as of June 1, 1994 (the "Second Supplemental Indenture") and a Third Supplemental Indenture dated as of November 1, 2005 (the "Third Supplemental Indenture, and together with the Original Trust Indenture, the First Supplemental Indenture, the Second Supplemental Indenture, and the Third Supplemental Indenture, the "Existing Indenture"), providing for the issuance of the 2005 Bonds (the "2005 Bonds"). The 2005 Bonds issued under and pursuant to the terms and conditions of the Existing Indenture (the "Bonds") are secured in part by an assignment to the Trustee of the Service Fee and are secured in part by an assignment to the Trustee of the Hotel Room Rental Tax, as set forth in The Philadelphia Code, Chapter 19-2400 and authorized by the Act (the "Hotel Tax").

(g) The Original Lease and Service Agreement was subsequently supplemented and amended by a First Supplemental Lease and Service Agreement dated as of December 5, 1990, the Second Supplemental Lease and Service Agreement dated as of December 5, 1990, the Third Supplemental Lease and Service Agreement dated as of February 14, 1991, the Fourth Supplemental Lease and Service Agreement dated June 1, 1995, the Amendment and Fifth Supplemental Lease dated as of March 26, 1997, the Amendment and Sixth Supplemental Lease dated as of December 3, 1999, and the Amendment and Seventh Supplemental Lease dated as of February 23, 2001, each between the City and the Authority (the Original Lease and Service Agreement, as amended and supplemented, is referred to herein as the "Existing Lease and Service Agreement"). The structure of the financing effectuating the Original Convention Center Project, as set forth in Existing Indenture and the Existing Lease and Service Agreement, together with all other documents relative there, is referred to herein as the "Existing Financing Structure."

(h) The City, the Authority and the Commonwealth desire to expand and renovate the Original Convention Center (the "Convention Center Project"), and will undertake, or have undertaken, the development, design, construction, and operation of the expansion and renovation of the Original Convention Center, as contained in drawings, specifications and the Design Development Summary Report constituting the design development documents, which the Authority caused to be prepared and submitted to the Commonwealth for review and acceptance. The Convention Center Project consists of the following:

(i) acquisition of land, demolition, site preparation and the design and construction of an approximately 960,000 square foot expansion of the Original Convention Center (the "Expanded Portion," and together with the Original Convention Center, the "Convention Center"). The Expanded Portion will begin at the westerly wall of the Original Convention Center at 13th Street and proceed west to Broad Street and north from Arch Street to Race Street, excluding the Liberty Title Building;

(ii) renovation of the Original Convention Center to accommodate new elevators and support space for the Expanded Portion. The renovation of the Original

Convention Center consists of demolishing and reconstructing approximately 30,000 square feet of the back of the Original Convention Center support spaces; and

(iii) purchase and installation of the furniture, furnishings and equipment (FF&E) for the Expanded Portion.

(i) In addition to its payment obligations hereunder, the City agrees to provide the following support to the Convention Center Project:

(i) the waiver of all permitting fees, licensing fees, assessments and other charges imposed by the City and associated with the review and approval of plans, granting of permits, utility shut-offs and relocations, inspections and certificates of occupancy relative to the Convention Center Project;

(ii) the reimbursement to the Authority for the relocation of certain water systems in and around the Expanded Portion, as defined in the Asset Acquisition Agreement by and between the Philadelphia Water Department and the Authority;

(iii) the transfer of fee title to the former fire station, located at 1328 Race Street; and

(iv) the closure of portions of Cherry Street and other rights-of-way and encroachments within portions of 13th Street and Broad Street, as authorized by City Council.

(j) To accomplish the foregoing, and in Section 3(8)(ii)(c) of the Capital Budget Itemization Act of 2003-2004, Act of June 22, 2004, No. 40 ("Act No. 40 of 2004"), the Pennsylvania General Assembly allocated up to \$400,000,000 in capital funds for the Convention Center Project. The provisions of Act No. 40 of 2004 relative to the Convention Center Project requires "non-State participation in an amount determined by the Office of the Budget." Act No. 40 of 2004 further provides that "[n]on-State participation shall not be less than 25% nor more than 50% of the total project cost." The Commonwealth has determined and acknowledged that a sufficient non-State match has been identified to allow the release of the full allocation authorized by the General Assembly.

(k) To further accomplish the foregoing Convention Center Project and in Section 3(10)(V)(D) of the Capital Budget Itemization Act of 2005-2006, Act of July 7, 2006, No. 83 ("Act No. 83 of 2006"), the Pennsylvania General Assembly allocated an additional \$300,000,000 in capital funds for the Convention Center Project, including furniture, fixtures and equipment, land acquisition, renovation and construction.

(l) Section 6014 of the Act anticipates funding by the Commonwealth to the Authority or for use by the Authority to finance any expansion or substantial renovation of the Original Convention Center. Under the Act, the terms "expansion or substantial renovation" are defined as "any construction with an estimated total cost of more than \$300,000,000 initiated after substantial completion." Any such grant of Commonwealth funds shall be subject to the requirements of Section 6014 of the Act.

(m) Further, Section 1407 of Act 71 of 2004 ("Act 71 of 2004"), titled the Pennsylvania Race Horse Development and Gaming Act, established the Pennsylvania Gaming

Economic Development and Tourism Fund (the "Fund") within the Pennsylvania Treasury Department of the Commonwealth. The Fund was established to receive five (5%) percent of daily gross terminal revenues from slot machines licensed under the provisions of Act 71 of 2004. Under Section 1407 of Act 71 of 2004, all moneys in the Fund are required to be distributed pursuant to a "subsequently enacted Economic Development Capital Budget that appropriates money from the [F]und." Act 53 of 2007, titled the Pennsylvania Gaming Economic Development and Tourism Fund Capital Budget Itemization Act of 2007 ("Act 53 of 2007") provides for annual payments not to exceed \$64,000,000 for up to thirty (30) years, under and subject to the terms of Act 53 of 2007 for the retirement of debt issued with regard to the Convention Center and for operating expenses of the Convention Center. However, Act 53 of 2007 provides that the amount paid may not exceed the actual amounts of debt service and \$6,000,000 for operating expenses in any year.

(n) The Commonwealth, acting by and through the Department of General Services, and The Redevelopment Authority of the City of Philadelphia (the "RDA"), a public body and a body corporate and politic, duly created and organized pursuant to and in accordance with the provisions of the Urban Redevelopment Law, entered into an Agreement of Agency Designation Pursuant to the Redevelopment Cooperation Law dated December 12, 2005 (the "Agreement of Agency Designation") whereby the Department of General Services designated the RDA as its agent to acquire certain properties and to undertake certain acts in furtherance of the Convention Center Project, all as more fully described in the Agreement of Agency Designation.

(o) Under and pursuant to the terms and conditions of a delegation agreement dated as of November 2, 2005 (the "Pre-Construction Activities Delegation Agreement"), by and among the Authority, the Department of General Services of the Commonwealth, and the Commonwealth, acting through its Office of the Budget, and subject to the requirements of Act No. 40 of 2004, the Department of General Services delegated the performance of certain pre-construction activities relative to the Convention Center Project to the Authority.

(p) The Office of the Budget has previously authorized the release of up to \$16 million for the performance of pre-construction activities under and pursuant to the Pre-Construction Activities Delegation Agreement.

(q) Further, under and pursuant to the terms and conditions of a certain delegation agreement (the "Construction Activities Delegation Agreement," and together with the Pre-Construction Activities Delegation Agreement, the "Delegation Agreements"), to be executed by the Authority, the Department of General Services, and the Commonwealth, acting through the Office of the Budget, and subject to the requirements of Act No. 40 of 2004, the Department of General Services, the parties thereto delegated the performance of certain construction activities relative to the Convention Center Project to the Authority.

(r) The Delegation Agreements set forth the duties, obligations and responsibilities of the Authority to the Commonwealth during both the pre-construction and construction periods of the Convention Center Project. Such duties and responsibilities include, but are not limited to, the preparation of pre-construction and construction schedules; the preparation of design and construction documents for the Commonwealth's approval; the development of an operating plan, capital plan and financing plan; the development of bidding procedures; and the submission

of regular status reports to the Commonwealth regarding the status of its pre-construction and construction activities.

(s) The Commonwealth, acting by and through its Office of the Budget, the City, and the Authority have entered into a certain Convention Center Agreement (the "Convention Center Agreement") dated and effective as of \_\_\_\_\_ (the "Convention Center Agreement Effective Date"), pursuant to which the parties entered into certain agreements concerning the release of the lien of the Existing Indenture and the legal defeasance of the 2005 Bonds. As set forth therein, the Commonwealth anticipates that the undertaking of the Convention Center Project will be accomplished in three phases:

(i) The first phase of the Convention Center Project ("Phase I") commenced prior to the Convention Center Agreement Effective Date and will terminate upon the Convention Center Agreement Effective Date.

(ii) The second phase of the Convention Center Project ("Phase II") commenced upon the Convention Center Agreement Effective Date and will terminate at the expiration of the term of the Convention Center Agreement.

(iii) The third and final phase of the Convention Center Project ("Phase III") will commence upon the expiration of the term of the Convention Center Agreement, as described above, and the effective date (the "Effective Date") of this operating agreement (the "Operating Agreement"), as such date is defined herein.

(t) The initial components of Phase II included, but are not limited to:

(i) the issuance by the Commonwealth of its General Obligation Bonds, in one or more series, on a taxable or tax-exempt basis (the "General Obligation Bonds"), to fund its contributions under Act No. 40 of 2004 and Act 71 of 2004; and

(ii) the construction of the Expanded Portion under and pursuant to the requirements of the Delegation Agreements to Substantial Completion (as such term is defined in the Convention Center Agreement).

(u) The additional components of Phase II, in anticipation of the transition to Phase III will include, but may not be limited to:

(i) recognizing the conveyances described in subparagraph (iii) hereof, the legal defeasance of the outstanding Bonds through the issuance of one or more series of taxable or tax-exempt bonds, on a variable rate and/or a fixed rate basis (the "Defeasance Bonds"), by the Pennsylvania Economic Development Financing Authority ("PEDFA") or such other issuing authority as selected by the Commonwealth (the "Defeasance Bonds Issuer"), under and pursuant to the terms and conditions of a trust indenture (the "Defeasance Bonds Indenture") from the Defeasance Bonds Issuer to a trustee named thereunder (the "Defeasance Bonds Trustee");

(ii) upon such legal defeasance of the Bonds, the legal defeasance of the Existing Indenture and the termination of the Existing Lease and Service Agreement, the Authority's surrender to the City of the Land and the Improvements;

(iii) in order to effectuate the issuance of the Defeasance Bonds, and upon obtaining all required Commonwealth approvals in order to accomplish the same, the conveyance by the City to the Philadelphia Authority for Industrial Development ("PAID") with the conveyance by PAID to the Commonwealth, or such other authority as the Commonwealth may designate, of the interest of PAID in the Improvements, and a leasehold interest in the Land, recognizing that the Commonwealth, or such other authority as the Commonwealth may designate, will be the original owner of the Expanded Portion. Such conveyance of the City's interest in the Improvements shall be documented in an agreement of sale, by and between the City and the Commonwealth (the "Agreement of Sale"), and such conveyance of the leasehold interest in the Land shall be documented in a ground lease, by and between the City and the Commonwealth (the "Ground Lease");

(iv) the Commonwealth's conveyance to the Authority of a leasehold interest in the Convention Center, in such form and substance as satisfactory to the Commonwealth (the "New Lease"), and including a reversionary interest to the City upon the expiration of the lease term; and

(v) the development of all remaining documents required to effectuate Phase II, including bond documents relative to the Defeasance Bonds and General Obligation Bonds, and further including such easements, rights-of-way, licenses and privileges as may be necessary or required to effectuate the transactions described herein, recognizing that certain of such documents have been executed and delivered as set forth in the Convention Center Agreement and this Operating Agreement and become effective pursuant to the provisions of each such document.

(v) In furtherance of the objectives of the Commonwealth, the City and the Authority and in consideration of the Commonwealth's contributions to the Convention Center Project, the Commonwealth, the Authority and the City desire to enter into this Operating Agreement to define the rights and responsibilities of each of the parties hereto upon the Effective Date of this Operating Agreement and during Phase III of the Convention Center Project.

## 2. USE OF CONVENTION CENTER.

(a) The Authority and the Commonwealth acknowledge that the New Lease provides that the Commonwealth shall accept the Convention Center upon Substantial Completion (as such term is defined in the Convention Center Agreement).

(b) The Authority shall use and operate the Convention Center for a range of public assemblies and exhibitions, conventions, musical and dramatic performances and other business, social, cultural, scientific and recreational events, as is an appropriate use of the Convention Center.

(c) The Authority will cooperate with the City and the Commonwealth and will make commercially reasonable, good faith efforts to bring a variety of attractions to the Convention Center that will be of interest to a substantial number of persons residing in and outside of the Philadelphia region, including without limitation those types of attractions contemplated in Paragraph 3 hereof, and will report these efforts annually in the sales/booking reports contemplated under Paragraph 4 hereof.

(d) The Authority shall comply with and conform to all applicable laws, codes, ordinances or regulations, or charter or constitution provisions, duly enacted or adopted by the United States, the Commonwealth, the County of Philadelphia (the "County") or the City (collectively, "Applicable Laws"). Notwithstanding the same, the City and the Commonwealth acknowledge that the Authority may reasonably contest all such Applicable Laws, so long as the Authority's actions in doing so does not materially interfere with the Authority's performance under this Operating Agreement.

(e) The use of the Convention Center by assignees, sublesees, and concessionaires are governed by the provisions of the New Lease. The Authority may license such space as it deems necessary to undertake its operations of the Convention Center in the manner as described herein, without the consent or prior approval of the Commonwealth.

### 3. OPERATIONS

(a) At all times during the Term (as defined herein below), the Authority shall (i) operate the Convention Center in a manner consistent with comparable convention center facilities; (ii) use commercially reasonable, good faith efforts to maximize the use of the Convention Center for a variety of events of interest and benefit to the Philadelphia community, and regions outside of the Philadelphia community, including but not limited to concerts, seminars, conferences, performances, religious events, programs of interest to children, and other attractions; (iii) cooperate with the City and agencies of the City, the County, and the Commonwealth to attract conventions and to permit usage of the Convention Center for conventions; and (iv) promote tourism, and encourage economic growth and development of the Philadelphia region.

(b) In connection with the rights and obligations of the Authority to manage, maintain and operate the Convention Center, Commonwealth approval is required for the hiring of any contract management firm or firms. Such firm or firms shall be of national or regional repute, with experience and standing in certain or all aspects of management and operation of similar facilities, subject to the terms of this Operating Agreement. If any such management contractor, or its principals, shall at any time have any business relationship with the Authority, or its principals, other than with respect to the Convention Center, the Authority shall disclose such relationship in writing to the Commonwealth and shall maintain such other business relationship and the Convention Center relationship entirely independent and separate from each other.

(c) Notwithstanding the above provisions of subparagraph (b), the Authority must contract with the Philadelphia Convention and Visitors Bureau, or such other tourist promotion agency as appointed by the City, for the provision of marketing services for long-term bookings. For purposes herein, "long-term bookings" mean bookings outside of an 18-month period.

(d) The Authority shall have the right, in its discretion, to do all of the following:

(i) solicit, negotiate and enter into leases, licenses, concessions and similar agreements regarding the use, occupancy and operation of conventions, shows, meetings and other events, and all other related purposes, subject to the requirements of the New Lease; and

(ii) enter into such other agreements as may be customary and consistent with comparable convention center facilities to effectuate its obligations under this Operating Agreement.

(e) The Authority shall do all things and take all actions, and expend such funds, as may be reasonably necessary or desirable for the operation of the Convention Center in accordance with this Operating Agreement and the approved Operating Budget and Capital Budget throughout its Term. Without limiting the generality of the foregoing, the Authority, at all times throughout the Term, shall:

(i) Commence, defend and settle in good faith such legal actions or proceedings concerning the operation of the Convention Center as are necessary or required in the reasonable opinion of the Authority; retain counsel in connection with such defense; and notify the Commonwealth in writing of the commencement of any legal action or proceeding and advise the Commonwealth of the progress of any such legal action or proceeding. Upon request, the Authority shall send to the Commonwealth copies of all legal documentation relating to such legal actions;

(ii) Employ, train, pay, supervise and discharge such employees of the Authority, and/or engage such independent contractors, as the Authority determines in its sole discretion to be necessary (subject to such Commonwealth approval rights as set forth in paragraph 3(b) and paragraph 7 hereof) for the maintenance, repair and operation of the Convention Center, including but not limited to cleaning personnel, ticket takers, maintenance workers and equipment operators. All personnel of the Authority used in carrying out its duties under this Operating Agreement shall be employees or independent contractors of the Authority, and not the Commonwealth;

(iii) Maintain or cause to be maintained all necessary licenses, permits, approvals and authorizations required by any governmental authority, for the operation of the Convention Center; and

(iv) Comply in all material respects with all Applicable Laws relating in any respect to the use, occupancy and operation of the Convention Center, including without limitation, the Americans With Disabilities Act of 1990 (42 U.S.C. § 12101, et seq.), all regulations promulgated thereunder, and comparable laws, ordinances, codes and regulations of the Commonwealth, the County and the City. Notwithstanding the same, the City and the Commonwealth acknowledge that the Authority may reasonably contest all such Applicable Laws, so long as the Authority's actions in doing so does not materially interfere with the Authority's performance under this Operating Agreement.

(f) At all times during the Term, the Authority will perform such maintenance and repair work as set forth in the New Lease and will otherwise comply with the terms and conditions of the New Lease with regard to its operation of the Convention Center.

#### 4. BUDGETS, RESERVES AND OTHER FINANCIAL MATTERS.

(a) Upon the Effective Date hereof, the Authority shall establish and maintain a Capital Reserve Fund. The Commonwealth shall deposit therein, from the proceeds of the sale and issuance of the Defeasance Bonds, such amount necessary so that the moneys in such Capital



Reserve Fund will equal \$5,000,000 (the "Capital Reserve Fund Requirement"), recognizing that proceeds from the capital reserve fund in the Existing Indenture will also be deposited in the Capital Reserve Fund. The Capital Reserve Fund Requirement shall be increased on an annual basis to fund financed capital improvements and "pay-as-you-go" costs in accordance with the Authority's re-investment plan, as attached to this Operating Agreement and marked as *Exhibit A* hereto (the "Re-investment Plan"). The Authority's Operating Budget and/or Capital Budget, as defined in paragraph 4 hereof, shall include the amounts of such annual contributions. The Commonwealth acknowledges that the annual contributions and draw downs from the Capital Reserve Fund as reflected in Re-investment Plan may change as the result of Authority development and Commonwealth approval of future Capital Improvement Plans, pursuant to the provisions of this Operating Agreement. The proceeds in the Capital Reserve Fund may be used by the Authority for FF&E and renewal and replacement improvements pursuant to the provisions of the Renewal and Replacement Plan and Capital Improvement Plan, each as defined and described herein.

(b) Upon the Effective Date hereof, the Authority shall establish and maintain an Operating Reserve Fund (and together with the Capital Reserve Fund, the "Reserve Funds"). The Commonwealth shall deposit therein, from the proceeds of the sale and issuance of the Defeasance Bonds, such amount necessary so that the moneys in such Operating Reserve Fund will equal \$10,000,000 (the "Maximum Operating Reserve Fund Balance"), recognizing that proceeds from the operating reserve fund in the Existing Indenture will also be deposited in the Capital Reserve Fund.. The Maximum Operating Reserve Fund Balance shall be increased every year by the cumulative value of the change in the index know as the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index, All Urban Consumers, United States City Average, All Items (1982-84=100) (the "CPI") or the successor index that most closely approximates the CPI, and as such Maximum Operating Reserve Fund Balance may be further increased with the approval of the Commonwealth. The Authority's Operating Budget, as defined in paragraph 4(c) hereof, shall include such amounts as necessary to maintain the Maximum Operating Reserve Fund Balance, as such Maximum Operating Reserve Fund Balance may be increased or modified pursuant to the provisions of this subparagraph (b). Proceeds deposited in the Operating Reserve Fund may be used by the Authority, as follows:

(i) for short-term cash flow borrowing, as long as the forecast of the then current Fiscal Year revenues and expenses provide sufficient cash to repay such borrowing by the end of such current Fiscal Year;

(ii) for special marketing purposes, subject to Commonwealth approval; and

(iii) for operating losses, subject to Commonwealth approval. Notwithstanding the above, if Operating Reserve Fund proceeds are used to offset an Operating Budget variance of less than two (2%) percent of operating expenses, such Commonwealth approval is not required. For purposes of this subsection (b)(iii), "operating expenses" is defined as total operating expenses less any amounts included as operating expenses for Reserve Fund contributions and Education and Training Program expenditures. Further, should the Authority desire to use proceeds from the Operating Reserve Fund to offset operating losses, such use must be included in the Authority's monthly year-end forecast of its Operating Budget.

(c) At least ninety (90) days before the commencement of each Fiscal Year and at least thirty (30) days before submission of its recommended capital and operating budgets (the "Capital Budget" and "Operating Budget," or as sometimes referred to herein, the "Capital and Operating Budgets") to the Authority's board of directors pursuant to the requirements of the Act, whichever is earlier, the Authority shall prepare and submit to the Commonwealth a proposed Capital Budget and a proposed Operating Budget for the subsequent Fiscal Year, reflecting the requirements of this paragraph 4 herein below and in such form as set forth in *Exhibit B* to this Operating Agreement. The Commonwealth acknowledges and agrees that the proposed form of Capital and Operating Budgets as attached to this Operating Agreement and marked as *Exhibit B* are in a form acceptable to the Commonwealth. Should the Commonwealth or the Authority desire to modify such forms, such forms may be modified with the consent of the other and *Exhibit B* shall be amended to reflect the modified form. Notwithstanding the same, the Commonwealth may modify such forms if the financial reporting requirements for public sector-owned convention centers change or in the event of force majeure or damage or destruction of all or a portion of the Convention Center, and *Exhibit B* shall be amended to reflect such modified forms. The Operating Budget shall be prepared on an accrual basis.

For purposes of this Operating Agreement, the term "Fiscal Year" means the period beginning on July 1 and ending June 30 of the following calendar year.

The Operating Budget shall set forth (i) the estimated operating revenues and expenditures of the Authority, including such amounts to be deposited in the Operating Reserve Fund as described in subparagraph (b) hereof, (ii) a projection of the monthly cash flow, and (iii) a projection of the operating fund balance for the succeeding Fiscal Year. The Operating Budget shall provide sufficient funds to ensure that the Authority will perform prudent and ordinary maintenance to the Convention Center during each Fiscal Year and shall further provide for funding in an amount sufficient to discharge any deficit in excess of the budgeted deficit incurred in the prior Fiscal Year. Notwithstanding the above, if in any Fiscal Year the Authority's operating deficit is less than the Commonwealth-approved operating deficit (the difference between the Commonwealth-approved operating deficit and the Authority's operating deficit is herein defined as "Operating Savings"), such Operating Savings may be deposited in the Operating Reserve Fund until the Maximum Operating Reserve Fund Balance is met for such Fiscal Year.

Further, during the Term of this Operating Agreement, and simultaneously with its annual submission of the Operating Budget, the Authority shall provide to the Commonwealth a four-year forecast of its operating results in form and substance as set forth in *Exhibit B* hereto.

The Capital Budget, in such form and substance as set forth in *Exhibit B* hereto, shall be comprised of and shall show in detail the capital expenditures to be made or incurred in the succeeding Fiscal Year, including such amounts to be deposited in the Capital Reserve Fund as described in subparagraph (a) hereof.

Further, during the Term of this Operating Agreement, and simultaneously with its annual submission of the Capital Budget, the Authority shall provide to the Commonwealth a four-year forecast of its capital improvement needs in form and substance as set forth in *Exhibit B* hereto. Combined, this one-year capital budget and this four-year forecast shall be known as the Authority's Capital Improvement Plan.

The Commonwealth acknowledges that Fiscal Years 2 -5 of each such Capital Improvement Plan constitute a forecast of anticipated work and not a commitment on the part of the Authority to undertake such work. Notwithstanding the same, the Authority acknowledges that the first year of such Capital Improvement Plan does not serve as a forecast, and any changes to the same must be approved by the Commonwealth.

(d) The Operating Budgets and Capital Budgets for Fiscal Years 2008-09, 2009-10, and 2010-11 are attached hereto and made a part hereof and marked as **Exhibit C**. Such Operating Budgets and Capital Budgets are hereby approved by the Commonwealth as to form and to content. For each Fiscal Year thereafter, and upon receipt of the Authority's proposed Operating Budget and proposed Capital Budget, the Commonwealth will have thirty days to review each such proposal and shall provide an approval or disapproval notice to the Authority within such thirty-day period (the "Commonwealth Notice"). The Commonwealth's approval shall not be unreasonably withheld. If such Commonwealth Notice is not received by the Authority within such thirty-day period, the proposed Operating Budget and proposed Capital Budget shall be deemed approved. If the Commonwealth provides a disapproval notice to the Authority within such thirty-day period, the Commonwealth shall specify the basis for its disapproval determination, and the Authority shall have a subsequent thirty-day period to revise the relevant budget(s) to address the issues raised in the Commonwealth disapproval notice. Upon the receipt of the Authority's revised proposed budget, the Commonwealth shall have a fifteen-day period to provide a second approval or disapproval notice to the Authority. If the Commonwealth does not provide such notice within the fifteen-day period, such proposed Capital Budget and proposed Operating Budget shall be deemed approved. The Authority shall not adopt the Capital Budget and Operating Budget until the Commonwealth shall have approved such Capital Budget and Operating Budget pursuant to the procedures described herein.

(e) In addition to the above-stated requirements, the Operating Budget will include funding for the Education and Training Program for a twenty-year period, as follows: (i) the Authority will use \$1,500,000 of PCCA Hotel Tax Receipts to support the Education and Training Program in Fiscal Year 2008-09, and (ii) commencing on Fiscal Year 2009-2010 and continuing through and including Fiscal Year 2027-2028, an annual amount equal to the lesser of (x) the amount paid in the immediately preceding Fiscal Year, as increased every year by the CPI or the successor index that most closely approximates the CPI, or (y) five (5%) percent of all City Hotel Tax receipts.

(f) Following adoption of the Capital Budget and Operating Budget pursuant to the requirements of this Operating Agreement, the Commonwealth must approve any deviation during the relevant Fiscal Year in a major category of the Capital Budget or the Operating Budget in excess of 5%. Notwithstanding the above, the Commonwealth must approve any deviation in the Capital Budget and Operating Budget related to a Reserve Fund or the Education and Training Program.

(g) The Renewal and Replacement Plan for the first Fiscal Year of the Term of this Operating Agreement is attached hereto and marked as **Exhibit D** (the "Renewal and Replacement Plan"). The Authority shall prepare and submit to the Commonwealth a revised Renewal and Replacement Plan every five years after the Effective Date of this Operating Agreement. Each five-year submission shall occur simultaneously with the Authority's

submission of its proposed Operating Budget and Capital Budget for that Fiscal Year. The Renewal and Replacement plan will reflect anticipated major repairs, renewals and replacements to the Convention Center as recommended by a consulting engineer selected by the Authority or, with the Commonwealth's approval, as recommended by the Authority's Director of Engineering.

(h) The Authority has submitted to the Commonwealth marketing, sales and pricing plans (collectively the "Marketing Plans") prepared by or on behalf of the Commonwealth, as attached hereto and marked as **Exhibit E**. The Authority is required to perform a competitive pricing analysis once every three (3) years and provide a copy of the same to the Commonwealth. The Commonwealth acknowledges that such competitive pricing analysis may be accomplished as part of the management audit discussed in paragraph 6 of this Operating Agreement. Further, the Authority shall provide to the Commonwealth any future marketing, sales and pricing plans and any modifications thereto.

(i) The Authority may not pledge Authority revenues as security during the Term of this Operating Agreement without the prior written approval of the Commonwealth.

(j) The Authority may not incur short-term or long-term debt during the Term of this Operating Agreement without the prior written approval of the Commonwealth. Notwithstanding the above, the Authority may issue debt, which the City agrees to pay, so long as such issuance does not have a negative financial impact on the Authority's Operating and Capital Budgets and so long as a financial impact analysis has been prepared and submitted to the Commonwealth which supports this conclusion.

(k) Within thirty (30) days of the end of each month during the Term of this Operating Agreement, the Authority shall provide to the Commonwealth financial reports reflecting monthly and year-to-date Operating and Capital Budget activity, a forecast of year-end operating and capital results, monthly cash flow statements and forecasts, and monthly event financial results in such form and substance as set forth in **Exhibit B** attached hereto and made a part hereof. Within thirty (30) days of the end of each Fiscal Year during the Term of this Operating Agreement, the Authority shall provide to the Commonwealth sales/booking reports in such form and substance as set forth in **Exhibit B** attached hereto and made a part hereof. The Commonwealth acknowledges and agrees that the proposed form of monthly and annual statements, as attached to this Operating Agreement as **Exhibit B** hereto, are in a form acceptable to the Commonwealth. Should the Authority or the Commonwealth desire to modify such forms, such forms may be modified with the consent of the other, and **Exhibit B** shall be amended to reflect the modified form. Notwithstanding the same, the Commonwealth may modify such forms if the financial reporting requirements for public sector-owned convention centers change or in the event of force majeure or damage or destruction of all or a portion of the Convention Center, and **Exhibit B** shall be amended to reflect such modified form. Further, and during the Term of this Operating Agreement, the Commonwealth shall have the right to request additional statements from time to time upon reasonable notice to the Authority.

(l) The City, the Commonwealth and the Authority acknowledge that Section 6013 of the Act provides to the City certain approvals relative to the Capital and Operating Budgets and the design of capital projects, all as more fully described in Section 6013. The City hereby delegates and assigns to the Commonwealth all of its rights under Section 6013, with the intention that the provisions of this paragraph 4 shall exclusively govern all approval rights

relative to the Authority's Operating and Capital Budgets during the Term of this Operating Agreement.

5. ACCOUNTING MATTERS.

(a) The Authority shall and hereby agrees to keep and maintain during the Term for a period of three (3) consecutive years following the end of the Fiscal Year, permanent, complete and accurate financial records for (i) the operations of the Convention Center, and (ii) the operations of the Authority, for each such Fiscal Year, which records shall be maintained in accordance with generally accepted accounting principles ("GAAP"), and which records shall be audited not less than annually by an independent and nationally recognized accounting firm selected by the Authority (the "Accountants").

(b) Within ninety (90) days after the end of each Fiscal Year during this Term of this Operating Agreement, the Authority will submit to the Commonwealth and to the City, complete and accurate audited financial statements prepared by an independent auditor, who is a certified public accountant. Such audited financial statements shall include, at a minimum, a balance sheet, income statement and statement of cash flows. With each such annual audit, the Authority shall also obtain a management letter or report from the auditor prepared for the Authority's Board of Directors. The Authority shall provide a copy of the management letter or report to the Commonwealth.

(c) All financial records of the Authority shall be open to the inspection and audit of the Commonwealth during the Term and for a period of three (3) years thereafter, which inspection shall occur at the Authority's office, at reasonable times following reasonable notice. The Commonwealth shall have the right to review and examine all documents and materials in the possession of the Authority relating to the financial statements submitted to the Commonwealth under this Paragraph, the Authority's management of the Convention Center and the Authority's expenditures relating to the leasing and operation of the Convention Center, including without limitation, any and all contracts entered into by the Authority with third-parties.

6. MANAGEMENT OF CONVENTION CENTER.

(a) At least once every three (3) years throughout the Term, beginning with the Fiscal Year of the Effective Date, the Authority shall cause an audit to be conducted of its management and operation of the Convention Center (the "Management Audit"). Further, the Commonwealth shall have the right to require the Authority to cause a Management Audit to be conducted at any time, and from time to time, provided, however, that the Authority shall not be required to cause such an audit to be conducted more than one time within any twelve (12) month period, and provided further that the Commonwealth acknowledges that the Authority's Operating Budget for such Fiscal Year in which the audit is conducted shall be increased by the cost of any such audit.

(b) The Management Audit shall be conducted by a business entity with material experience in the convention and tourism industry, as a convention center manager, operator, auditor and/or consultant. Such auditor may be selected by the Authority, at its sole discretion. Notwithstanding the same, the Commonwealth's consent shall be required if such auditor does

not have such experience as outlined herein above. The Management Audit shall (i) indicate whether the Authority is complying with the requirements of this Operating Agreement governing the management and operation of the Convention Center, (ii) provide improvement or change recommendations in instances where the Authority is managing or operating in a manner that is inconsistent with acceptable or traditional industry or business practices, (iii) indicate whether the management and/or operation should be improved or changed in any respect, and (iv) indicate whether the physical plant of the Convention Center is being properly and efficiently maintained in accordance with the terms of this Operating Agreement, and whether any modifications should be made to the physical plant of the Convention Center. If the Management Audit indicates noncompliance with this Operating Agreement, the Management Audit shall specify all areas of noncompliance. If the Management Audit indicates the need for improvement or changes, such Management Audit shall detail all such recommendations.

(c) Beginning in the first full Fiscal Year after Substantial Completion (as such term is defined in the Convention Center Agreement), the Commonwealth may require the Authority to dismiss the Executive Director for cause.

## 7. CONTRACTING PROVISIONS.

(a) The Commonwealth shall be required to approve the following contracts of the Authority or portions of such contracts: (i) for each Fiscal Year all contracts or portions of contracts which obligate the Authority during the applicable Fiscal Year to a payment in excess of 5% of the budgeted expenditures of the Authority for such year, (ii) any year of a multi-year contract which for any applicable Fiscal Year obligates the Authority to a payment in excess of 5% of the budgeted expenditures of the Authority, (iii) for each Fiscal Year all contracts or portions of contracts (but specifically excluding event licenses) which involve the receipt of revenues by the Authority of an amount during the applicable Fiscal Year in excess of 5% of the budgeted revenues of the Authority for such year, or (iv) all contracts with a term of more than three years (including the renewal of contracts which originally had a term of three years or less, whether due to a failure of a party or parties to terminate, or due to an affirmative act of a party or parties, but only as to the portion of such renewal which is the fourth or subsequent year of the total contract period) which obligates the Authority to a payment in excess of 5% of the budgeted revenues of the Authority for such year. The Authority shall provide to the Commonwealth each of the above-described contracts prior to its execution and delivery of the same, and the Commonwealth shall have thirty (30) days to review all such contracts. If the Commonwealth fails to provide notice of approval or disapproval as to such the contract(s) within the 30-day period, such contract or contract(s) shall be deemed approved. Further, and except as otherwise provided herein, the Commonwealth will receive ten days prior written notice of all contracts which do not require the approval of the Commonwealth. The notice will include the essential terms of the contract and following execution of the contract by the Authority and the third party, the Commonwealth will be provided with a copy.

## 8. CITY SERVICE FEE AND HOTEL TAX.

(a) The City shall pay to the Authority an amount (the "Service Fee") equal to \$17,486,522 on July 15, 2008 for fiscal Year 2008-09, and annually thereafter \$15,000,000, commencing on July 15, 2009 for Fiscal Year 2009-10 and on each July 15 of each Fiscal Year thereafter until the last to occur of the following: (i) the legal defeasance of the Defeasance

Bonds, and (ii) the legal defeasance of the General Obligation Bonds, and in either case, no later than December 31, 2032 (the "Service Fee Expiration Date"). For purposes of this Operating Agreement, the definitions of Defeasance Bonds or General Obligation Bonds specifically exclude any such bonds issued to refund the Defeasance Bonds and General Obligation Bonds. Such Service Fee payments shall be prorated accordingly should the Term of this Operating Agreement commence or should the Service Fee Expiration Date occur on a date other than the first or last day of a Fiscal Year. The Service Fee shall be paid on the applicable due date, without notice, demand, counterclaim, offset or deduction, except as otherwise specifically set forth herein. Notwithstanding the above, the City's obligation to pay the Service Fee hereunder shall be abated during such periods of time when the Authority fails to operate the Convention Center in accordance with paragraph 3(a) hereof.

(b) The City, the Authority and the Commonwealth acknowledge and agree that the Service Fee shall be used for (i) the payment of debt service on the General Obligation Bonds, the Defeasance Bonds or other bonds issued in connection with the financing of the Convention Center Project, (ii) the payment of costs incurred in connection with the Convention Center Project, and/or (iii) the costs of operating the Convention Center. The process to undertake the application of such payments shall be determined by the City, the Authority and the Commonwealth.

(c) Notwithstanding any provision of this Operating Agreement to the contrary, the Authority must maintain an annual Operating Budget of not less than the Commonwealth-approved amount for Fiscal Year 2008-09 in order for the Convention Center to remain competitive with other major convention centers in attracting national and regional conventions; therefore, during the Term of this Operating Agreement, the Commonwealth will not approve an Operating Budget that includes operating expenses less than that approved for the Fiscal Year 2008-09 Operating Budget. Notwithstanding the above, the Commonwealth may approve an Operating Budget with operating expenses that are less than those included in the Fiscal Year 2008-09 Operating Budget in the event of force majeure or damage or destruction of all or a portion of the Convention Center.

(d) Notwithstanding the termination of the Existing Lease and Service Agreement, the City remains obligated to pay to the Authority Hotel Tax revenues, as described therein. Should the Pennsylvania General Assembly authorize the City to implement an increase in the Hotel Tax to benefit the Authority, the City, subject to the approval of City Council, agrees to impose such increase and to provide such additional Hotel Tax revenue to the Authority on a monthly basis. Further, the City acknowledges the Agreement made as of December 14, 1989, by and between the Pennsylvania Convention and Visitors Bureau (the "PCVB") and the Authority, which obligates the PCVB to pay to the Authority, on an annual basis, a certain percentage of proceeds of the Hotel Tax during the term thereof.

(e) The City acknowledges that under the Defeasance Bonds Indenture, it is anticipated that the Defeasance Bonds Issuer will be selling, assigning, transferring, setting over and pledging unto the Defeasance Bonds Trustee all of the Defeasance Bonds Issuer's right, title and interest in and to the Hotel Tax revenues and/or the Service Fees in an amount sufficient to pay the debt service on the Defeasance Bonds in order to secure the payment of the Defeasance Bonds. In order to accomplish the foregoing, each of the parties hereto anticipate that the Defeasance Bonds Issuer, the Defeasance Bonds Trustee, the City and the Authority may be

required to execute an intercept agreement, in form and substance reasonably acceptable to each of them, pursuant to which the City may be obligated to make such payments of Hotel Tax revenues and/or Service Fees as pledged under the Defeasance Bonds Indenture directly to the Defeasance Bonds Trustee.

#### 9. COMMONWEALTH PAYMENTS TO AUTHORITY

(a) During the Term of this Operating Agreement, and subject to the provisions of Paragraph 13(b) hereunder, the Commonwealth shall pay to the Authority an annual amount equal to the sum of operating expenses, debt service payments and Reserve Fund contributions, if any, in each Fiscal Year *minus* an amount equal to the sum of operating revenues, the Service Fee and Hotel Tax revenues and non-operating income, such as interest earnings, in each such Fiscal Year, provided that such operating expenses, debt service payments and Reserve Fund contributions are not in excess of Commonwealth approved budget amounts. The Commonwealth's obligations hereunder shall commence in the Fiscal Year of the Effective Date of this Operating Agreement and shall continue in each Fiscal Year thereafter and shall be prorated accordingly should the Term of this Operating Agreement commence or expire on a date other than the first or last day of a Fiscal Year.

(b) Further, if in any Fiscal Year the Authority's operating deficit is greater than the Commonwealth-approved operating deficit (the difference between the Authority's operating deficit and the Commonwealth-approved operating deficit is herein defined as "Additional Loss"), the Commonwealth shall fund any such Additional Loss in the immediately subsequent Fiscal Year up to such maximum amount as permitted by Act 53 of 2007. Nothing contained in this paragraph 9(b) shall alter or amend any of the Authority's obligations under this Operating Agreement, including but not limited to, its obligations as set forth in paragraph 11 herein.

#### 10. DEFAULTS.

(a) (i) if the City fails to pay the full amount of its monetary obligations when due hereunder; or (ii) if the City fails to perform any of its covenants, conditions or agreements hereunder within thirty (30) days after the Authority or the Commonwealth has given the City written notice requiring the same to be performed; or (iii) if the City shall be adjudicated a bankrupt, or shall make an assignment for the benefit of creditors or shall file a bill in equity or otherwise initiate proceedings for the appointment of a receiver of the City's assets, or shall file any proceeding in bankruptcy or for reorganization or an arrangement under any federal or state law; or (iv) if any proceeding in bankruptcy or for the appointment of a receiver shall be instituted by any creditor of the City under any state or federal law, and such proceeding has not been terminated within sixty (60) days after its institution, then and in addition to any other rights or remedies the Authority or the Commonwealth may have under this Operating Agreement and at law and in equity, the Authority and the Commonwealth shall have the right to recover from the City all monies that are not paid when due plus any costs and expenses that will have accrued on such previously unpaid amounts.

(b) (i) if the Authority fails to pay the full amount of its monetary obligations when due hereunder; or (ii) if the Authority fails to perform any of its covenants, conditions or agreements hereunder within thirty (30) days after the Commonwealth or the City has given the Authority written notice requiring the same to be performed; or (iii) if the Authority shall be



adjudicated a bankrupt, or shall make an assignment for the benefit of creditors or shall file a bill in equity or otherwise initiate proceedings for the appointment of a receiver of the Authority's assets, or shall file any proceeding in bankruptcy or for reorganization or an arrangement under any federal or state law; or (iv) if any proceeding in bankruptcy or for the appointment of a receiver shall be instituted by any creditor of the Authority under any state or federal law, and such proceeding has not been terminated within sixty (60) days after its institution, then and in addition to any other rights or remedies the City or the Commonwealth may have under this Operating Agreement and at law and in equity, the Commonwealth and the City shall have the right to recover from the Authority all monies that are not paid when due plus any costs and expenses that will have accrued on such previously unpaid amounts.

(c) (i) if the Commonwealth fails to pay the full amount of its monetary obligations when due hereunder; or (ii) if the Commonwealth fails to perform any of its covenants, conditions or agreements hereunder within thirty (30) days after the Authority or the City has given the Commonwealth written notice requiring the same to be performed; or (iii) if the Commonwealth shall be adjudicated a bankrupt, or shall make an assignment for the benefit of creditors or shall file a bill in equity or otherwise initiate proceedings for the appointment of a receiver of the Commonwealth's assets, or shall file any proceeding in bankruptcy or for reorganization or an arrangement under any federal or state law; or (iv) if any proceeding in bankruptcy or for the appointment of a receiver shall be instituted by any creditor of the Commonwealth under any state or federal law, and such proceeding has not been terminated within sixty (60) days after its institution, then and in addition to any other rights or remedies the Authority or the City may have under this Operating Agreement and at law and in equity, the Authority and the City shall have the right to recover from the Commonwealth all monies that are not paid when due plus any costs and expenses that will have accrued on such previously unpaid amounts.

(d) No right or remedy herein conferred upon or reserved to the Authority, the City or the Commonwealth hereunder is intended to be exclusive of any other right or remedy herein or by law or in equity provided, but each shall be cumulative and in addition to every other right or remedy given herein or now or hereafter existing at law, in equity or by statute.

(e) No waiver by the Authority, the City or the Commonwealth of any breach by the other of any of the Authority's, the City's or the Commonwealth's obligations, agreements or covenants herein shall be a waiver of any subsequent breach or of any obligation, agreement or covenant, nor shall any forbearance by the Authority, the City or the Commonwealth to seek a remedy for any breach by the other be a waiver by the Authority, the City or the Commonwealth of any rights and remedies with respect to such or any subsequent breach.

(f) Notwithstanding any provision of this paragraph 10(a) hereof to the contrary, it shall be a defense to the failure of the Commonwealth to pay the Payments Subject to Appropriation when due hereunder if and to the extent that such failure occurs due to the General Assembly of the Commonwealth having not appropriated sufficient money in the general fund of the Commonwealth for this purpose to enable the Commonwealth to pay such Payments Subject to Appropriation, provided that, the annual budget request of the Commonwealth submitted to the General Assembly for this purpose included sufficient funds to make such Payments Subject to Appropriation.

## 11. CORRECTIVE ACTION PLANS

(a) The Authority shall undertake a corrective action plan (the "Corrective Action Plan") if one or more of the following events occur during the Term of this Operating Agreement:

(i) if a financial audit, conducted pursuant to the requirements of paragraph 5 of this Operating Agreement, results in one or more negative findings; or

(ii) if a management audit, conducted pursuant to the requirements of paragraph 6 of this Operating Agreement, results in one or more negative findings ("Negative Management Audit Finding"). For purposes hereof, a Negative Management Audit Finding is defined as a finding which (i) shows that the Authority is not operating in a manner consistent with acceptable or traditional industry or business practices, and (ii) such finding is material; or such finding indicates the Authority's noncompliance with the requirements of this Operating Agreement; or

(iii) if the Authority's monthly year-end forecast shows, or the Commonwealth makes a reasonable finding, that a "Material Budget Variance" exists. For purposes herein, a "Material Budget Variance" is an operating loss in excess of two (2%) of operating expenses. "Operating expenses" is defined as total operating expenses less amount for Operating Reserve Fund contributions and Education and Training Program expenditures; or

(iv) if the Authority forecasts, or the Commonwealth reasonably finds, that Authority capital expenditures in a Fiscal Year will fall short of anticipated capital sources of funds.

(b) If a Corrective Action Plan is required to eliminate or resolve a negative finding, Negative Management Audit Finding or a Material Budget Variance, such Corrective Action Plan will incorporate a revised budget, eliminating the forecasted negative finding or Material Budget Variance, to which the Authority will be bound.

(c) Implementation of any Corrective Action Plan must begin no more than 60 days after an Authority forecast, Commonwealth finding, negative finding, Negative Management Audit Finding or a Material Budget Variance (all as described in subparagraphs (i) - (iv)) occurs.

(d) Should any such Corrective Action Plan include the use of Operating Reserve Fund moneys in excess of two (2%) percent of operating expenses, the Authority must obtain the Commonwealth's approval of such component of the Corrective Action Plan. For purposes of this subsection (d), "operating expenses" is defined as set forth in this paragraph 11(a)(iii).

(e) Any Corrective Action Plan may include City action to reduce or eliminate any budget variance or negative finding.

(f) Should the Authority fail to prepare or implement a Corrective Action Plan or if the Authority acknowledges that the implementation of any such Corrective Action Plan will fail to remedy the relevant deficiencies, the Commonwealth may assume management responsibilities of the Convention Center on a temporary short-term basis until such time as the

relevant deficiency has been corrected or until the financial position of the Authority has stabilized. Such management responsibilities may be assumed on behalf of the Commonwealth by Commonwealth employees or by a third party.

(g) Notwithstanding the above, if either (x) the events described in subparagraphs (i) - (iv) above, or (y) the Authority's failure to remedy the relevant deficiency as described in subparagraph (f) above is as a result of force majeure, then the Commonwealth shall not proceed with its remedies hereunder but will work with the Authority to develop a reasonably acceptable solution to be implemented within a reasonable period of time.

## 12. REPRESENTATIONS AND WARRANTIES.

(a) The Commonwealth represents, covenants and agrees that, as of the date of this Operating Agreement:

(i) it has the full right, power and authority to execute this Operating Agreement and to perform its obligations and duties hereunder; and

(ii) the Commonwealth's execution and delivery hereof and performance of its obligations hereunder have been duly authorized, are the legal, valid and binding obligations of the Commonwealth (enforceable in accordance with their terms) and do not conflict with or constitute a breach under any law, regulation, ruling, order or instrument by which the Commonwealth is bound or to which the Commonwealth or its properties are subject.

(b) The Authority represents, covenants and agrees that, as of the date of this Operating Agreement:

(i) it is a body corporate and politic organized and in good standing under the laws of the Commonwealth, with full power and authority to enter into this Operating Agreement and to perform its obligations hereunder; and

(ii) the Authority's execution and delivery hereof and performance of its obligation's hereunder have been duly authorized by all necessary corporate action and do not and will not conflict with or constitute a breach under the Authority's enabling legislation or bylaws, or under any bond and indenture, agreement, instrument, law, regulation, ruling, or consent decree by which the Authority is bound or to which the Authority or its properties are subject.

(c) The City represents, covenants and agrees that, as of the date of this Operating Agreement:

(i) it is a municipal corporation, a city of the first class and body corporate and politic organized and in good standing under the laws of the Commonwealth, with full power and authority to enter into this Operating Agreement and to perform its obligations hereunder; and

(ii) the City's execution and delivery hereof and performance of its obligation's hereunder have been duly authorized by all necessary corporate action and do not and will not conflict with or constitute a breach under the City's enabling legislation or bylaws,

or under any bond, indenture, agreement, instrument, law, regulation, ruling, or consent decree by which the City is bound or to which the City or its properties are subject.

13. COVENANTS.

(a) During the Term of this Operating Agreement, each of the Authority and the City covenants and agrees to use its best efforts to comply with the provisions of its enabling legislation, including but not limited to, those provisions applicable to the use and operation of the Convention Center.

(b) Both the Authority and City acknowledge, covenant and agree that the payment obligations of the Commonwealth, as set forth in numbered paragraph 9, to the extent they exceed the limitations imposed by Act 53 of 2007 (such payments that exceed such limitations are defined herein as "Payments Subject to Appropriation"), are subject to annual appropriation by the Pennsylvania General Assembly. The Authority and the City further acknowledge that there can be no assurance that the Pennsylvania General Assembly will appropriate funds in any fiscal year of the Commonwealth in an amount required to satisfy the Commonwealth's obligations under paragraph 9, if such amounts exceed the limitations imposed by Act 53 of 2007.

(c) The Authority covenants and agrees to comply with the terms and conditions of the New Lease, including but not limited to, its obligations to maintain or cause to be maintained such insurance that it deems necessary and proper, in its reasonable business judgment, for the protection of the Convention Center, as more specifically set forth in the New Lease. The City, the Commonwealth and the Authority acknowledge that the New Lease provides that any insurance policies carried by the Authority and by the Authority's contractors with respect to the Convention Center and the Convention Center Project shall name the Commonwealth and the City as additional insureds and the Commonwealth and the City shall be provided with certificates of insurance evidencing the same.

(d) The Commonwealth covenants and agrees:

(i) to not limit or alter the Commonwealth's payment obligations under Act 53 of 2007 relative to the Convention Center Project;

(ii) to include in the annual budget request submitted by the Governor of the Commonwealth to the General Assembly of the Commonwealth an amount for payment of the Payments Subject To Appropriation when due pursuant to the provisions of this Operating Agreement. If the amount for payment is insufficient to pay the Payments Subject To Appropriation in any Fiscal Year as the same becomes due and payable, the Commonwealth shall include amounts not so paid in the Commonwealth's annual budget request for the ensuing Fiscal Year to pay in the ensuing Fiscal Year such balance due for the preceding Fiscal Year in addition to the amount of Payments Subject to Appropriation due for the ensuing Fiscal Year; and

(iii) The Commonwealth acknowledges that its covenants contained herein, but excluding the provisions of paragraph 10(d) hereof, are material terms of this Operating Agreement the breach of which constitutes a default.

(e) In the event the Commonwealth determines, based upon the advice of nationally recognized bond counsel, that continued compliance with the provisions of this Operating Agreement could adversely affect the tax-exempt status of the interest on any bonds issued by the Commonwealth, including the Defeasance Bonds, to finance costs related to the Convention Center, the parties agree to make such reasonable efforts, including amendment of the provisions of this Operating Agreement, to the extent necessary to preserve such tax-exempt status; provided, that such amendment will not have a material adverse impact or result in a substantial additional cost to the Authority.

(f) The Authority covenants and agrees to comply with the provisions of the Economic Opportunity Plan as set forth in *Exhibit F* attached hereto and made a part hereof, and when applicable shall include the relevant provisions in any contracts entered into under this Operating Agreement.

#### 14. INDEMNIFICATION PROVISIONS.

(a) In the exercise of the power of the Authority, the City and the Commonwealth and their respective officers, employees and agents under the Operating Agreement including (without limiting the foregoing) the Authority's, the City's and the Commonwealth's undertakings and performance under the Operating Agreement, neither the Authority, the City nor the Commonwealth nor their respective officers, employees or agents shall be accountable to the other for any action taken or omitted by it or them except actions constituting bad faith, willful misconduct, negligence, fraud or deceit of the Authority, the City or the Commonwealth or of any officer, employee or agent of either. The Authority, the City and the Commonwealth and such other persons shall be protected in its or their acting upon any paper or document believed by it or them to be genuine, and it or they may conclusively rely upon the advice of counsel and may (but need not) require further evidence of any fact or matter before taking any action. No recourse shall be had by the Authority, the Commonwealth or the City for any claims against any officer, employee or agent of the other alleging personal liability on the part of such person based on the Operating Agreement or based on the Authority's, the City's or Commonwealth's participation in the transfer of the Existing Convention Center or the Expanded Portion.

(b) Except as otherwise set forth in subparagraph (e) of this paragraph 14, liability under this Operating Agreement shall fall as determined by law.

(c) The Authority, the Commonwealth and the City shall have the right, but not the obligation, to control the defense of any legal proceedings involving any and all suits, claims or causes of action (collectively, "Claims") (other than Claims relating to the inherent powers of the Authority, the City or the Commonwealth), but shall keep each of the other parties hereto advised as to all material developments in such proceedings.

(d) Nothing herein shall be deemed to preclude the Authority, the Commonwealth or the City from asserting any claim against the other and each of its directors, officers, employees, agents and representatives (each a "Financially Responsible Party" and collectively, the "Financially Responsible Parties") for expenses arising from such Financially Responsible Party's willful misconduct, bad faith, negligence, fraud or deceit.

(e) Notwithstanding the provisions of this paragraph 14 to the contrary, the Authority further covenants and agrees to indemnify, defend and save harmless the City and the Commonwealth, and each of its officers, employees, agents, board and commissions (collectively, the “Indemnified Parties”), whether or not the Indemnified Parties, any of them or any other person shall have been negligent but not in the event of the gross negligence or willful misconduct of the Indemnified Parties or any Indemnified Party, from and against any and all claims, suits, causes of action, liabilities, losses, damages, costs, expenses (including, without limitation, attorneys’ fees, court costs and expenses of the Indemnified Parties), demands and/or judgments, of any nature relating to or arising in connection with:

(i) any act or omission of the Authority or the Commonwealth, its respective agents, directors, officers, employees, members, contractors, subcontractors, licensees, tenants, subtenants, or invitees, either in connection with any construction of the Convention Center, or in, on or about the Convention Center or any street, alley, sidewalk, curb or passageway adjacent to the Convention Center;

(ii) the performance of any construction or other work, or thing done, or omitted, in, on or about the Convention Center or the Convention Center Project;

(iii) any use, nonuse, possession, occupation, condition, operation, maintenance, marketing or management of the Convention Center or any part of either or any street, alley, sidewalk, curb, or passageway adjacent to the Convention Center;

(iv) any accident, injury, death or any accident, injury, death or damage to any person or property in, on or about the convention Center or any street, alley, sidewalk, curb or passageway adjacent to the Convention Center;

(v) any breach or default by anyone other than one or more of the Indemnified Parties of any agreement, covenant, term or condition of any agreements concerning the Convention Center, including but not limited to this Operating Agreement, or of any restrictions or of any laws, ordinances, orders, notices, rules or regulations affecting the Convention Center, or the ownership, occupancy or use thereof, or the presence, use, handling, removal and/or disposal of hazardous substances in, on to or from the Convention Center; and

(vi) any encroachment of any improvements in, on, or about the Convention Center upon property adjoining the Convention Center.

In case any action or proceeding is brought against an Indemnified Party by reason of any such matter, the Authority, upon written notice from the City or the Commonwealth, shall at the Authority’s sole cost and expense, resist or defend such action or proceeding by counsel approved by the City or the Commonwealth (as applicable) in writing; provided that no approval of counsel shall be required in each instance where the action or proceeding is resisted or defended by counsel of an insurance carrier obligated to resist or defend such action or proceeding, and further provided that the City or the Commonwealth may engage its own counsel to participate in the defense of any such action.

15. DESIGNATED REPRESENTATIVES AND NOTICE.

(a) The Commonwealth designates the following individual to be its designated representative for purposes of this Operating Agreement:

Secretary of the Office of the Budget  
Office of the Budget  
7th Floor, Verizon Tower  
303 Walnut Street  
Harrisburg, PA 17101-1 808

Copies of all notices, filings, consents or approvals required or permitted by this Operating Agreement shall be given to:

Chief Counsel  
Office of the Budget Legal Office  
7th Floor, Verizon Tower  
303 Walnut Street  
Harrisburg, PA 17101-1 808

(b) The Authority designates the following individuals to be its designated representatives for purposes of this Operating Agreement:

President  
Pennsylvania Convention Center Authority  
1201 Arch Street  
Philadelphia, PA

Chief Financial Officer  
Pennsylvania Convention Center Authority  
1201 Arch Street  
Philadelphia, PA

(c) The City designates the following individual to be its designated representative for purposes of this Operating Agreement:

Director of Finance  
City of Philadelphia  
13th Floor/Municipal Services Building  
1401 John F. Kennedy Blvd.  
Philadelphia, PA 19107

Copies of all notices, filings, consents or approvals required or permitted by this Operating Agreement shall be given to:

City Solicitor  
City of Philadelphia  
17th Floor/One Parkway Building

1515 Arch Street  
Philadelphia, PA 19102

(d) Except as otherwise specifically provided in this Operating Agreement, any notices, filings, approvals or consents required or permitted by this Operating Agreement shall be in writing and shall be deemed given if (i) delivered to the designated representatives (and a receipt obtained from each designated representative to whom personal delivery has been made); or sent to the designated representatives via certified or registered mail, return receipt requested or (ii) sent to the designated representatives by nationally recognized overnight courier. Delivery shall be deemed to have occurred on the date such notice, information or consent (i) was delivered personally or deposited with the overnight courier, or (ii) on the date of receipt of notice sent by certified or registered mail, return receipt requested.

(e) A designated representative, or the address of a designated representative, may be replaced by the party replacing the designated representative by sending notice to the other parties of such replacement.

#### 16. MISCELLANEOUS PROVISIONS

(a) The term of this Operating Agreement (the "Term") shall commence (the "Effective Date") immediately upon the expiration of the Convention Center Agreement. The Term of this Operating Agreement will expire (the "Expiration Date") on the Service Fee Expiration Date.

(b) The City and the Authority (collectively, as the "Contractor") hereby accepts and agrees to be bound by the nondiscrimination/sexual harassment clause set forth in *Exhibit G* attached hereto, the contractor integrity provisions set forth in *Exhibit H* hereto, the contractor responsibility provisions set forth in *Exhibit I* hereto, and the Americans with Disabilities Act provisions set forth in *Exhibit J* hereto.

(c) To the extent the Authority is required to provide the Commonwealth with plans, reports, financial statements, contracts and other materials as described in this Operating Agreement and the City is not already in receipt of the same, the Authority shall simultaneously provide all such materials to the City.

(d) The Authority shall be bound in its performance under this Operating Agreement with the such provisions as set forth in *Exhibit K* hereto, and when applicable, shall include the relevant provisions in any contracts entered into under this Operating Agreement.

(e) In the event that either party desires an amendment to this Operating Agreement, the party seeking the amendment must present the proposed amendment in writing to the other party. If the other party accepts the proposal, the amendment will be signed by the parties and attached to this Operating Agreement, as a rider.

(f) The provisions of this Operating Agreement are severable, and if any of its provisions become or are found to be unlawful, it shall not be construed to impair any other provision of this Operating Agreement, nor shall it be construed to void the entire Operating Agreement.



(g) This Operating Agreement shall be construed according to the laws of the Commonwealth of Pennsylvania with respect to contracts made and to be performed in Pennsylvania, without regard to its conflicts of laws principles and rules.

(h) This document contains the entire understanding between the parties with respect to the Financing.

IN WITNESS WHEREOF, the parties have caused this Operating Agreement to be executed by their duly authorized officers and their corporate seals to be hereunto affixed and duly attested, as of the day and year first above written.

ATTEST:

**PENNSYLVANIA CONVENTION CENTER  
AUTHORITY**

\_\_\_\_\_

By: \_\_\_\_\_

Approved as to form and legality:

\_\_\_\_\_  
Counsel, Pennsylvania Convention Center Authority

ATTEST:

**CITY OF PHILADELPHIA  
Director of Finance**

\_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Approved as to form  
Romulo L. Diaz, Jr., City Solicitor

By: \_\_\_\_\_

Henry Schwartz  
Divisional Deputy City Solicitor

ATTEST:

**COMMONWEALTH OF PENNSYLVANIA,  
acting through the Office of the Budget**

\_\_\_\_\_

By: \_\_\_\_\_

Approved as to form and legality:

\_\_\_\_\_  
Chief Counsel, Office of the Budget

\_\_\_\_\_  
Office of General Counsel

\_\_\_\_\_  
Office of Attorney General

**Exhibit A**  
**Re-investment Plan**

**Exhibit B**  
**Form of Capital and Operating Budgets**  
**Form of Operating Budget Five-Year Forecast**  
**Form of Capital Budget Five-Year Forecast**  
**Form of Monthly Statements**  
**Form of Sales/Booking Reports**

**Exhibit C**  
**Capital and Operating Budgets**

**Exhibit D**  
**Renewal and Replacement Plan**

**Exhibit E**  
**Marketing Plans**



**Exhibit F**  
**Economic Opportunity Plan**

**Exhibit G**  
**Non-Discrimination/Sexual Harassment Clause**

During the term of the contract, Contractor agrees as follows:

1. In the hiring of any employee(s) for the manufacture of supplies, performance of work, or any other activity required under the contract or any subcontract, the Contractor, subcontractor, or any person acting on behalf of the Contractor or subcontractor shall not, by reason of gender, race, creed, or color, discriminate against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.

2. Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate against or intimidate any employee involved in the manufacture of supplies, the performance of work, or any other activity required under the contract on account of gender, race, creed, or color.

3. Contractors and subcontractors shall establish and maintain a written sexual harassment policy and shall inform their employees of the policy. The policy must contain a notice that sexual harassment will not be tolerated and employees who practice it will be disciplined.

4. Contractors shall not discriminate by reason of gender, race, creed, or color against any subcontractor or supplier who is qualified to perform the work to which the contracts relates.

5. The Contractor and each subcontractor shall furnish all necessary employment documents and records to and permit access to their books, records, and accounts by the contracting agency and the Bureau of Contract Administration and Business Development, for purposes of investigation, to ascertain compliance with provisions of this Nondiscrimination/Sexual Harassment Clause. If the Contractor or any subcontractor does not possess documents or records reflecting the necessary information requested, the Contractor or subcontractor shall furnish such information on reporting forms supplied by the contracting agency or the Bureau of Contract Administration and Business Development.

6. The Contractor shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subcontract so that such provisions will be binding upon each subcontractor.

7. The Commonwealth may cancel or terminate the contract, and all money due or to become due under the contract may be forfeited for a violation of the terms and conditions of this Nondiscrimination/Sexual Harassment Clause. In addition, the agency may proceed with debarment or suspension and may place the Contractor in the Contractor Responsibility File.

**Exhibit H**  
**Contractor Integrity Provisions**

**Exhibit I**  
**Contractor Responsibility Provisions**

**Exhibit J**  
**Provisions Concerning *The Americans with Disabilities Act***

**Exhibit K**  
**Provisions Required by the City of Philadelphia**

(i) Records; Reports; Right to Audit.

a. Authority shall maintain full, complete and accurate books of account and other records relating to its performance under this Operating Agreement, and promptly make them available for inspection by the City upon the City's request.

b. During the Term of this Operating Agreement, the City Controller shall have the right to audit the affairs of the Authority to the extent required under Section 6-400 of the Home Rule Charter. In order to facilitate such an audit, upon prior reasonable notice, Authority must provide the Controller with reasonable access to Authority's books and financial records.

(ii) Labor-Management Relationships; Prevailing Wages.

a. As required by Section 17-107 (10) of The Philadelphia Code, all employees performing work under any applicable contract ("Contract") entered into by the Authority shall be paid at least the applicable prevailing wages for the respective occupational classifications designated, and shall be given at least the applicable presently prevailing working conditions during the entire period of work under the Contract. Such working conditions are those which are given to employees pursuant to a bona fide collective bargaining agreement for the applicable craft, trade or industry in the Philadelphia area on the date the General Bidding and Contract Requirements are issued for that Contract. The occupational classifications for all employees under the Contract shall be only the specific categories of jobs within a given craft, trade or industry for which a separate hourly wage rate for the Philadelphia area is determined by the Secretary of Labor of the United States, in accordance with the provisions of the Davis-Bacon Act. In the event that any Contractor believes that work under the Contract should be performed by employees in an occupational classifications omitted from the schedule attached to the General Bidding and Contract Requirements of that Contract, it shall so advise the Managing Director's Office (the "MDO"), Labor Standards Division, which shall remedy the omission if it agrees.

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

c. The Authority shall require any Contractor and all Subcontractors to comply with and be bound by all of the provisions of Section 17-107 of The Philadelphia Code, and the Contractor shall insert the requirements of Section 17-107 in all Subcontracts.

d. Every Contractor and Subcontractor shall keep an accurate record preserved on employee time sheets or time cards showing the name, address, social security number, occupational classification, wages and other benefits paid or provided and number of hours

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

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

f. Nothing herein shall preclude the payment by the Contractor of wages at rates higher than those specified as the minimum under Section 17-107. However, no increase in any Contract price shall be allowed or authorized on account of the payment of wages in excess of those so specified, or on account of wage increases granted hereafter. No increases above the amounts specified in the then applicable schedule attached to the General Bidding and Contract Requirements will be required by any Contract during the term thereof except in the case of an error or omission in such schedule. Such an error or omission shall be called to the attention of the MDO, Labor Standards Division as promptly as possible; but the remedying thereof by the Department shall not constitute grounds for withdrawal of a Bid or cancellation of a Contract, nor for an increase in the Contract price or other claim or recovery against the City, nor a ground for failure or refusal to pay the applicable proper minimum to all employees.

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

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

(iii) The Philadelphia Code, Chapter 17-400.

a. In accordance with Chapter 17-400 of The Philadelphia Code, as it may be amended from time to time, Authority 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 or race, color, sex, sexual orientation, religion, national origin or ancestry, constitutes, a substantial breach of this Operating Agreement entitling the City to all rights and remedies provided herein or otherwise available at law or in equity.

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

c. The Authority agrees to cooperate with the City's Commission on Human Relations in any manner which the Commission deems reasonable and necessary for the Commission to carry out its responsibilities under Chapter 17-400 of The Philadelphia Code. The Authority's failure to so cooperate shall constitute a substantial breach of the Operating Agreement entitling the City to all rights and remedies provided herein or otherwise available at law or in equity.

(iv) Employment of Low - and Moderate - Income Persons.

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

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

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



(v) Authority's Duties and Covenants Pursuant to 17-1400.

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

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

(vi) Executive Order 002-04.

a. Pursuant to Executive Order 002-04, no official or employee in the Executive and Administrative Branch of the City shall solicit or accept, directly or indirectly, anything of value, including any gift, gratuity, favor, entertainment or loan from any of the following sources:

- (1) A person seeking to obtain business from, or who has financial relations with, the City;
- (2) A person whose operations or activities are regulated or inspected by any City agency;
- (3) A person engaged, either as principal or attorney, in proceedings before any City agency or in court proceedings in which the City is an adverse party;
- (4) A person seeking legislative or administrative action by the City; or
- (5) A person whose interests may be substantially affected by the performance or nonperformance of the official's or employee's official duties.

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

(vii) Disadvantaged Business Enterprise Participation.

a. In accordance with Executive Order 2-05, as it may be amended from time to time, the City has established an antidiscrimination policy that relates to the solicitation and inclusion of Minority Business Enterprises ("MBE"), Woman Business Enterprises (WBE"), and Disabled Business Enterprises (DSBE") (collectively, "M/W/DSBE") in City contracts. The purpose of Executive Order 2-05 is to ensure that all businesses desiring to do business with the City have an equal opportunity to compete by creating access to the City's procurement process and meaningfully increasing opportunities for the participation by M/W/DSBEs in City contracts at all tiers of contracting, as prime contractors, subcontractors and joint venture partners. In furtherance of this policy, the City will, from time to time, establish participation ranges for City

Contracts and City Related Special Projects. Authority agrees to comply with the requirements of Executive Order 02-05, and where participation ranges are established by the City, Authority agrees, without limitation, to submit documentation responsive to each of the participation ranges established for the Contract.

b. In furtherance of the purposes of Executive Order 2-05, Authority agrees to the following:

1) Authority, if it has achieved participation commitments with M/W/DSBEs, represents that it has entered into legally binding agreement(s) with M/W/DSBEs as participants under this Operating Agreement for the services and in the dollar amount(s) and percentage(s) as specified in the M/W/DSBEs Participation Exhibits to this Operating Agreement.

2) Authority shall secure the prior written approval of the Minority Business Enterprise Council ("MBEC"), before making any changes or modifications to any contract commitments made by Authority herein, including, without limitation, substitutions for its MBEs, WBEs and/or DSBEs, changes or reductions in the services provided by its M/W/DSBE Subcontractors, or changes or reductions in the dollar and/or percentage amounts of commitments with its M/W/DSBE Subcontractors.

3) Unless otherwise specified in a legally binding agreement as described in (2) (a) above, Authority shall, within five (5) business days after receipt of a payment from the City for work performed under this Operating Agreement, deliver to its M/W/DSBE Subcontractors the proportionate share of such payment for services performed by its M/W/DSBE Subcontractors. In connection with payment of its M/W/DSBE Subcontractors, Authority agrees to fully comply with the City's payment reporting process which may include the use of electronic payment verification systems.

4) Authority shall, in the event of an increase in units of work and/or compensation under this Operating Agreement, increase its commitments with its M/W/DSBE Subcontractors proportionately. The MBEC may from time to time request documentation from Authority evidencing compliance with this provision.

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

6) Authority agrees that the City may, in its sole discretion, conduct periodic reviews to monitor Authority's compliance with the terms of Executive Order 2-05.

7) Authority agrees that in the event the Director of Finance determines that Authority has failed to comply with any of the requirements of Executive Order 2-05, the City may, in addition to any other rights and remedies it may have under this Operating Agreement which includes termination of this Operating Agreement, exercise one or more of the following remedies which shall be deemed cumulative and concurrent:

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

b) Recover as liquidated damages, one percent (1%) of the total dollar amount of the Agreement, which amount shall include any increase by way of amendments to this Operating Agreement, for each one percent (1%) (or fraction thereof) of the shortfall in commitment(s) to Authority's DBE Subcontractors.

No privity of contract exists between the City and any M/W/DSBE Subcontractor identified herein and the City does not intend to give or confer upon any such M/W/DSBE Subcontractor(s) any legal rights or remedies in connection with the subcontracted services under Executive Order 2-05 or by reason of this Operating Agreement except such rights or remedies that the M/W/DSBE Subcontractor may seek as a private cause of action under any legally binding contract to which it may be a party. The remedies enumerated above are for the sole benefit of the City and City's failure to enforce any provision or the City's indulgence of any non-compliance with any provision hereunder, shall not operate as a waiver of any of the City's rights in connection with this Operating Agreement nor shall it give rise to actions by any third parties including identified M/W/DSBE Subcontractors.

It is understood that false certification or representation is subject to prosecution under Title 18 Pa. C.S. Sections 4107.2 and 4904.

c. In accordance with Section 17-1402(f) of The Philadelphia Code, the Authority shall during the Term of this Operating Agreement, disclose the name and title of each City officer or employee who directly or indirectly advised the Authority, any officer, director or management employee of the Authority, or any Person representing the Authority that a particular Person could be used by the Authority to satisfy any goals established in this Operating Agreement for the participation of minority, women, disabled or disadvantaged business enterprises. The Authority shall also disclose the date the advice was provided, and the name of such particular Person. Such disclosure shall be made on a form provided by the Department awarding the contract, and the form shall be signed and filed with the Department within five business days after the Authority was so advised.

The Department receiving the disclosure form shall forward copies to the President and Chief Clerk of Council, and to the Mayor, Finance Director, Procurement Department, and the Department of Records.

(viii) Compliance with Applicable Law.

a. "Applicable Law" means all applicable present and future federal, state or local

laws, ordinances, executive orders, rules, regulations and all court orders, injunctions, decrees and other official interpretations thereof of any federal, state or local court, administrative agency or governmental body, including the City, the Commonwealth, and the United States of America. Applicable Law includes, without limitation, laws, etc. relating to the environment, the Philadelphia Home Rule Charter, as amended from time to time, the Philadelphia Code, as amended from time to time, including § 9-2404(2)(b) (Predatory Lending), § 10 602(5)(b) (Smoking Prohibited in Public Places), § 17-110(2) (Alcohol Advertisement), § 17-1306 (21<sup>st</sup> Century Minimum Wage Standard), and Executive Order 01-98 (Billboards and Other Advertising Signs).

b. Authority shall deliver and perform their respective obligations under this Operating Agreement, under and pursuant to the applicable provisions of all Acts of the General Assembly of the Commonwealth and applicable ordinances of the City, as such enactments may hereafter be supplemented or amended. Authority shall inform the Responsible Official, in writing, of any notices of violations of any Applicable Law within forty-eight (48) hours of receipt thereof, and shall correct any violations within the time prescribed by law, or immediately in the case of any emergency.

(ix) Non-Discrimination; Fair Practices.

a. The Authority and City acknowledge that they have entered into and intend to perform the Operating Agreement under the terms of the Philadelphia Home Rule Charter, as it may be amended from time to time, and in performing under the Operating Agreement, the Authority shall not discriminate or permit discrimination against any individual because of race, color, religion or national origin. In addition, the Authority shall, in performing under the Operating Agreement, comply with the provisions of the Fair Practices Ordinance of The Philadelphia Code (Chapter 9-1100) and the Mayor's Executive Order No. 4-86, as each may be amended from time to time, both of which prohibit, among other things, discrimination against individuals because of race, color, sex, sexual orientation, religion, national origin, ancestry, age, handicap (including but not limited to Human Immunodeficiency Virus infection), marital status, presence of children or source of income, in employment, housing and services in places of public accommodation. In the event of any breach of this provision, the City may, in addition to any other rights or remedies available under the Operating Agreement, at law or in equity, suspend or terminate the Operating Agreement forthwith.

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

c. Authority agrees to include subparagraphs (a) and (b) of this provision, with appropriate adjustments for the identity of the parties, in all sub-grants or subcontracts which are entered into pursuant to this Operating Agreement.

d. Authority further agrees to cooperate with the Commission on Human Relations 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.