

City of Philadelphia



(Bill No. 110832)

AN ORDINANCE

Authorizing the Procurement Commissioner and the Free Library of Philadelphia, on behalf of the City of Philadelphia, to enter into a sublease agreement for the leasing of personal computers and associated equipment, to include related maintenance and other services, from the Philadelphia Municipal Authority, for the use of the Free Library of Philadelphia; all under certain terms and conditions.

WHEREAS, the Procurement Commissioner and the Free Library of Philadelphia ("FLP") have determined there is a current need for personal computers and associated equipment (collectively, the "PCs"), together with certain associated services required for the installation and maintenance of the PCs (the "Services"), and that it is advantageous to the City to lease the PCs and acquire the Services through The Philadelphia Municipal Authority (the "Authority"); and

WHEREAS, the Authority will enter into a lease agreement with a vendor approved by the City, pursuant to which the Authority will lease the PCs from the vendor, or its assignee approved by the Authority and the City, and will require the vendor to furnish the Services to the FLP; now, therefore

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. The Procurement Commissioner, on behalf of the Free Library of Philadelphia ("FLP"), is hereby authorized to enter into a sublease agreement with the Philadelphia Municipal Authority (the "Authority"), for a term of four and a half years, which may be extended for up to a further seven months at the FLP's discretion, pursuant to which the FLP will agree to sublease personal computers and associated equipment and receive certain associated services required for the installation and maintenance of such computers and equipment from the Authority. The Sublease Agreement will substantially reflect the terms set forth in the document attached hereto as Exhibit "A".

SECTION 2. The Procurement Commissioner, the FLP, and the City Solicitor are hereby authorized, jointly and severally, to take all actions and to review and approve all documents and agreements necessary to effectuate this Ordinance, and to impose such terms and conditions as they may deem necessary and proper to protect the interests of the City of Philadelphia and to carry out the purpose of this Ordinance.

City of Philadelphia

BILL NO. 110832 continued

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EXHIBIT A Form of Sublease Agreement

SUBLEASE AGREEMENT

This Sublease Agreement (the "Agreement"), dated _____, 2011, is by and between The Philadelphia Municipal Authority, as lessor (the "Authority") and the City of Philadelphia, Pennsylvania, as lessee (the "City").

BACKGROUND

A. The City is a corporation and body politic existing under the laws of the Commonwealth of Pennsylvania with the power to, among other things, lease PCs from the Authority.

B. The Council of the City of Philadelphia, Pennsylvania enacted an Ordinance (Bill No. _____), signed into law on _____, 2011 (the "Ordinance"), authorizing, among other things: (i) the City's leasing through the Authority, for the use of the Free Library of Philadelphia ("FLP"), of personal computers and associated equipment, together with de-installation, configuration, installation, maintenance and other associated services; and (ii) the execution and delivery of this Agreement, dated _____, 2011, by and between the Authority and the City.

C. On or about the date of this Sublease Agreement, the Authority and _____, as lessor (the "Lessor"), have entered into that certain Lease Agreement (the "Lease Agreement"), pursuant to which the Authority has (i) leased from the Lessor the PCs and associated equipment set forth in Schedule A of Exhibit B, attached hereto and made a part hereof (the "PCs"), and provided for the Lessor's performance of the services set forth in Schedule B of Exhibit B, attached hereto and made a part hereof (the "Services"), such lease being pursuant to the terms and conditions set forth in Exhibit _____ to, and elsewhere, in the Lease Agreement (such terms and conditions are collectively referred to herein as the "PC Lease"), (ii) arranged for the Lessor's delivery of the Services, and (iii) agreed to make lease payments (the "Lease Payments") in the amount and at the times set forth in the Lease Agreement. The Lease Agreement is attached as Exhibit A hereto and made a part hereof.

D. The Services consist of (i) the de-installation, installation and other services set forth in Section 1 of Schedule B (the "Initial Services"), to be performed prior to commencement of the PC Lease; and (ii) the maintenance and support services set forth in Section 2 of Schedule B, to be performed during the term of the PC Lease (the "Maintenance Services").

E. The term of the PC Lease commences on on the later of July 1, 2012 or the date of the City's acceptance of the PCs as provided in the Lease Agreement, and ends four (4) years after its commencement date.

F. The term of the Lease Agreement commences on the date of this Sublease, approximately five months prior to the anticipated commencement of the PC Lease, in order to provide for the performance of the Initial Services. Under the Lease Agreement, all charges for PCs and Services are included in the Lease Payments. The first Lease Payment becomes due upon, but only upon, the commencement date of the PC Lease.

G. The Lease Agreement was awarded by means of a competitive solicitation conducted by the City's Procurement Department, on behalf of the Authority, in accordance with the Authority's statutory requirements, such that the Lessor's response constituted the Lease Agreement upon the full execution by all parties.

City of Philadelphia

BILL NO. 110832 continued

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H. Pursuant to the Lease Agreement, the Lessor and the Authority have agreed that the Authority will sublease the PCs from the Lessor and arrange for the Lessor's delivery of the Services to the City, for the use of the FLP, pursuant to the terms of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein set forth, the parties to this Agreement hereby covenant and agree as follows.

1. **Incorporation; Defined Terms.** The Background is hereby incorporated in this Agreement and made a part hereof. All initially capitalized terms used, but not otherwise defined, herein shall have the meanings set forth in the Lease Agreement.
2. **Effective Date; Term.** This Sublease Agreement shall become effective upon the date first written above (the "Effective Date"), shall have a term commencing on the Effective Date, and unless extended or earlier terminated according to its terms, shall end ninety (90) days after the PC Lease terminates in accordance with the Lease Agreement.
3. **Sublease.**
 - 3.1 The Authority hereby subleases the PCs to the City, for the use of the FLP, commencing on the date provided in the Lease Agreement for the commencement of the PC Lease (i.e. the later of July 1, 2012 or the date on which the City accepts the PCs, as set forth in the Lease Agreement), and ending four (4) years after such commencement date.
 - 3.2 The Authority shall arrange for the delivery of the Initial Services and the Maintenance Services to the FLP in accordance with the requirements and performance schedule provided in the Lease Agreement.
4. **Lease And Sublease Payments.**
 - 4.1 The Authority shall pay the Lease Payments as required under the Lease Agreement. The City shall pay to the Authority pursuant to this Sublease the amount of each Lease Payment as required under the Lease Agreement, at the times required under the Lease Agreement (the "Sublease Payments"), and any other amounts due from the Authority to the Lessor under the Lease Agreement.
 - 4.2 The Lease Payments shall include all amounts due from the Authority to the Lessor under the Lease Agreement for the Initial Services and/or Maintenance Services, as well as rent for the PCs. The Sublease Agreement shall include all amounts due from the City to the Authority under the Sublease Agreement for the Initial Services and/or Maintenance Services, as well as rent for the PCs. The City shall have no payment obligation to the Authority under this Agreement until the first Sublease Payment is due.
 - 4.3 The Authority shall invoice the City for the Sublease Payments, which the City shall pay to the Authority promptly upon receiving the invoice.
 - 4.4 The City may, in its discretion, with written notice to the Authority and subject to the terms of the Lease Agreement, pay any Lease Payment directly to the Lessor under the Lease Agreement.

4.5 The City's obligation to pay the Sublease Payments to the Authority shall be governed by the same terms and conditions that govern the Authority's obligation to make the Lease Payments to the Lessor under the Lease Agreement.

5. City Responsibilities.

5.1 The City agrees to pay promptly when due to the Authority or on the Authority's behalf, all fees, costs and expenses reasonably incurred by the Authority in connection with the Authority's negotiation, execution, delivery and performance of its obligations under this Agreement and the Lease Agreement; including, without limitation, the Authority's reasonable counsel fees in an amount not to exceed \$15,000.

5.2 The terms and conditions of the PC Lease are deemed to be incorporated by reference in this Agreement. The City, as sublessee to the Authority, shall be obligated to the Authority, but not to the counterparty(ies) on the Lease Agreement, throughout its term, to comply its terms and conditions and (except as set forth otherwise herein) to perform the Authority's obligations under the Lease Agreement, to the extent the City, as sublessee to the Authority, is permitted and can so comply and perform under the terms of the Lease Agreement; provided, however, that the City shall not be obligated to furnish any insurance required under the Lease Agreement other than the City's self-insurance.

5.3 The City, acting by and through the FLP, shall be responsible for managing the performance of all Services furnished under the Lease Agreement, as well as the disposition and use of the PCs, and the Authority hereby grants the City full authority to perform, in the Authority's name (with notice to the Authority where reasonably appropriate), all actions required (in the City's reasonable judgment) to carry out such responsibility.

5.4 Acceptance of PCs. The City shall evidence its acceptance of the PCs to the Authority by executing and delivering to the Authority a Delivery and Acceptance Certificate ("Acceptance Certificate") in substantially the form attached hereto as Exhibit C. Upon, but only upon, receipt of the Acceptance Certificate or other written City direction, the Authority shall accept the PCs as provided in the Lease Agreement.

6. Authority Responsibilities.

6.1 Pursuant to this Agreement, the Authority shall faithfully and timely perform and carry out all of the Authority's obligations pursuant to the Lease Agreement, as set forth therein.

6.2 If directed by the City, the Authority shall give such notices to the Lessor, and shall enter into such agreements and execute such documents, as the City may reasonably be require of the Authority (i) in order for the City to carry out the City's responsibilities provided in Section 5, and/or to enforce the rights of the Authority under the Lease Agreement as provided in Section 5, and the rights of the City as sublessee under this Agreement, and (ii) in order to carry out the transaction(s) contemplated by this Agreement.

6.3 If and as directed by the City, the Authority shall, with the agreement of the Lessor, enter into such agreements are may be necessary to extend the term or otherwise modify the provisions of the Lease Agreement, and to modify this Sublease Agreement accordingly.

6.4 Insurance.

6.4.1. The City is self insured against claims to persons or property, subject to the immunities, rights and defenses available to the City of Philadelphia in accordance with the provisions of the Pennsylvania Political Subdivision Tort Claims Act, 42 Pa. C.S.A. § 8541, et seq., as amended. The Authority acknowledges that the City has been permitted to self-insure, and the City will furnish Authority with a letter or certificate to such effect, in substantially the form attached as Exhibit D hereto. In the event of any loss, damage, injury or accident involving the PCs, the City will promptly provide Authority with written notice thereof and make available to Authority all information and documentation relating thereto.

6.4.2. Notwithstanding the foregoing, the Authority shall, if required by the Lease Agreement and with the City's approval, obtain insurance in accordance with the terms thereof. The City of Philadelphia, its officers, employees and agents shall be named as additional insureds on such general liability insurance and, if required, umbrella insurance policies. The coverage afforded the City and its officers, employees, and agents as additional insureds shall be primary to any other coverage available to the Authority and shall not permit or require such other coverage to contribute to the payment of any loss, and no act or omission of the City, its officers, employees and agents shall invalidate coverage. Prior to the effective date of the Lease Agreement, the Authority shall furnish a certificate(s) of insurance to the City's Risk Manager evidencing that the coverages required under the Tower Lease are bound and in effect, at the following address: City of Philadelphia, Risk Manager, One Parkway Building, 1515 Arch Street, 14th Floor, Philadelphia, PA 19102.

6.5 Quiet Enjoyment. Subject to the terms and conditions of the Lease Agreement and the rights of the Authority in this Agreement, and provided that the City is in compliance with this Agreement, the City shall have possession and quiet enjoyment of the PCs for the term of the Lease Agreement.

7. Availability of Funds. The City reasonably believes that funds will be made available sufficient to make all Lease Payments when due during the Lease Term and hereby covenants that it will do all things lawfully within its power to obtain, maintain and properly request and pursue funds from which the Lease Payments may be made, including making provisions for such payments in each budget submitted for the purpose of obtaining funding, using its bona fide best efforts to have such portion of the budget approved, and exhausting all available administrative reviews and appeals in the event such portion of the budget is not approved; provided, however, that such efforts shall not be deemed to require the Mayor or any agency of the City to initiate legal action against the Council of the City of Philadelphia. It is the City's intent to make Lease Payments for the full Lease Term if funds are legally available therefor and in that regard City represents that the PCs will be used for one or more authorized governmental or proprietary functions essential to its proper, efficient and economic operation.

8. Disclaimer Of Warranties; Limitation of Liability. THE CITY ACKNOWLEDGES THAT AUTHORITY MAKES NO EXPRESS OR IMPLIED WARRANTIES OF ANY NATURE OR KIND WHATSOEVER, AND AS BETWEEN CITY AND THE AUTHORITY, THE PCs AND SERVICES SHALL BE ACCEPTED BY CITY "AS IS" AND "WITH ALL FAULTS". THE CITY AGREES TO SETTLE ALL CLAIMS DIRECTLY WITH THE LESSOR OR OTHER SUPPLIER OF THE PCS AND WILL NOT ASSERT OR SEEK TO ENFORCE ANY SUCH CLAIMS AGAINST THE AUTHORITY. AUTHORITY SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY CHARACTER AS A RESULT OF THE CITY'S PURCHASE OF THE PCS, INCLUDING WITHOUT LIMITATION,

LOSS OF PROFITS, PROPERTY DAMAGE OR LOST PRODUCTION WHETHER SUFFERED BY THE CITY OR ANY THIRD PARTY. The City covenants and agrees not to assert against the Authority any claims or defenses by way of abatement, setoff, counterclaim, recoupment or the like which City may have against the Lessor or other supplier of the PCs. Authority is not responsible for, and shall not be liable to City for damages relating to loss of value of the PCs for any cause or situation (including, without limitation, governmental actions or regulations or actions of other third parties.

9. **Non-Appropriation of Funds.** Notwithstanding anything contained in this Agreement to the contrary, the City is obligated only to pay the Lease Payments from funds budgeted and appropriated for that purpose during the City's then current fiscal period, and shall be subject to the City's annual appropriations of funds for the PCs and Services procured under this Agreement by the City's governing body. The City's obligation to make Lease Payments shall not constitute a pledge of the City's full faith, credit and taxing power within the meaning of any constitutional debt limitation. If sufficient funds have not been appropriated by the City ("Event of Non-appropriation") to support continuation of this Agreement during any subsequent fiscal period, the City shall give the Authority notice of such termination at least twenty (20) days prior to the end of the then current fiscal period. If an Event of Non-appropriation occurs, and funds otherwise available by any means whatsoever in any fiscal period of the City for Sublease Payments are insufficient therefor, (i) this Agreement shall terminate on the last day of the fiscal period for which appropriations were received without penalty or expense to the City of any kind whatsoever, except as to the portions of Sublease Payments for which funds shall have been appropriated and budgeted or are otherwise available.

Notwithstanding the foregoing, and to the extent permitted by law, the City agrees (i) that it will not cancel this Agreement under the provisions of the above paragraph if any funds are appropriated to it, or by it, for the acquisition, retention, leasing or operation of the PCs or other PCs performing functions similar to the PCs for the fiscal period in which such appropriation occurs, and (ii) that it will not during the term of this Agreement give priority in the application of funds to any other similar PCs. This subparagraph will be construed so as to prohibit the City from terminating this Agreement in order to acquire or lease any other PCs, or from allocating funds directly or indirectly, to perform essentially the same application for which the PCs is intended, to the extent permitted by law.

The City represents, warrants and covenants that (i) it intends, subject to the provisions of this Section 9, to continue the term of this Agreement from the commencement date through the end of the term of the Lease Agreement, and to pay all Sublease Payments required hereunder for such period, (ii) it reasonably believes that legally available funds of an amount sufficient to make all rent payments during such period will be obtained and that it will do all things lawfully within its power to obtain, maintain and properly request and pursue funds from which the rent payments may be made, including making provisions for such payments to the extent necessary in each budget submitted for the purpose of obtaining funding using its bona fide best efforts to have such portion of the budget approved and exhausting all available administrative reviews and appeals in the event such portion of the budget is not approved (provided, that the City's best efforts shall not be construed to require the City to file a lawsuit against City Council), and (iii) the use of the PCs is essential to the City's governmental function and the proper, efficient and economic operation thereof.

10. **Authority's Representations and Warranties.** The Authority represents and warrants on the date hereof that:

10.1 The Authority is duly constituted municipal authority under the Pennsylvania Municipality Authorities Act.

- 10.2 The execution, delivery and performance by the Authority of this Agreement has been duly authorized by all necessary action on the part of the Authority and in compliance with all laws;
- 10.3 This agreement constitutes a legal, valid and binding obligation of the Authority enforceable in accordance with its terms.

11. City's Representations and Warranties. The City represents, warrants and covenants on the date hereof that:

- 11.1 The City is a duly constituted political subdivision of the Commonwealth of Pennsylvania.
- 11.2 The execution, delivery and performance by the City of this Agreement has been duly authorized by all necessary action on the part of the City and in compliance with all laws.
- 11.3 This Agreement constitutes a legal, valid and binding obligation of the City enforceable in accordance with its terms.
- 11.4 The City will comply with the applicable information reporting requirements of Section 149(e) of the Internal Revenue Code of 1986, as it may be amended from time to time (the "Code"), and such compliance shall include but not be limited to the execution of information statements appropriately requested by Authority.
- 11.5 Except as otherwise permitted by this Agreement, the City will be the only entity to possess, use and operate the PCs during the Lease Term.
- 11.6 The City will do or cause to be done all things necessary to preserve and keep the Agreement in full force and effect.
- 11.7 The City has complied with all applicable local, state and federal laws including without limitation laws regarding open meetings and public bidding, and by due notification presented this Agreement for approval and adoption as a valid obligation on its part.
- 11.8 The City is authorized by the Constitution and laws of the Commonwealth (1) to acquire PCs and other items of personal property and to finance such property by entering into lease-purchase agreements, and (2) to enter into this Agreement and the transactions contemplated by this Agreement and to carry out and perform its obligations hereunder and thereunder,
- 11.9 The execution, delivery, and performance by the City of this Agreement, and all related instruments and the consummation by the City of the transactions contemplated hereby: (1) do not and will not result in any violation of any term of any agreement, instrument, judgment, decree, franchise, permit, order, law, statute, rule, or governmental regulation presently applicable to City, (2) is not in conflict with and does not constitute a default under any of the terms or provisions of, or subject the PCs or any part thereof to any lien of, any indenture, mortgage, lease, contract, or other agreement or instrument (other than this Agreement) to which the City is a party or by which it or its property is bound or affected, and (3) do not conflict with or result in a breach of any of the terms, conditions or provisions of the home rule charter.
- 11.10 The execution, delivery, and performance by the City of this Agreement and all related instruments and documents does not require any consent, authorization, or approval of, any filing of or registration with, or other action in respect to any federal, state, governmental authority or agency or public body, or, if so required, the same have been obtained.
- 11.11 The execution of this Agreement does not result in the violation of any constitutional, statutory or other limitation relating to the manner, form or amount of indebtedness which may be incurred by the City.
- 11.12 There is no action, suit or proceeding pending or threatened against or affecting the City, before any court, administrative agency, arbitrator or governmental body, that challenges the existence or organization of the City, the title of any of the present officers of the City to their respective offices, the authority or proceedings for the execution and delivery of this Agreement and the other documents described above, the appropriation of moneys to make rent payments pursuant

City of Philadelphia

BILL NO. 110832 continued

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to this Agreement to the extent of such appropriations, or the authority of the City otherwise to perform its obligations under this Agreement.

11.13 There are no pending actions or proceedings to which the City is a party, and there are no other pending or threatened actions or proceedings of which the City has knowledge, before any court, arbitrator, or governmental or administrative department or agency, which either individually or in the aggregate, would materially adversely affect the financial condition of the City or its right to make or carry out this Lease, or the ability of the City to pay rent and perform its obligation hereunder. Further, the City is not in default under any material obligations for the payment of borrowed money, for the deferred purchase price of property or for the payment of any rent which, either individually or in the aggregate, would have the same such effect.

11.14 The PCs consists solely of personal property, and when subjected to use by City will not be or become fixtures under applicable law and the PCs will have a useful life in the hands of the City that is substantially in excess of the period ending at the end of the current fiscal year of the City.

11.15 The financial statements of the City accurately and completely present the City's financial condition and the results of its operations as of the date of and for the period covered by such statements, and since the date of such statements there has been no material adverse change in such conditions or operations.

11.16 The City will do or cause to be done all things necessary to preserve and keep this Agreement in full force and effect.

11.17 The City disclaims any interest in the PCs, except as set forth in this Sublease Agreement.

12. Alterations. Subject to Section 5, 3, the City will not make any alterations, additions or improvements to the PCs that reasonably could affect the Authority's obligations under the Lease Agreement without the Authority's prior written consent, which consent shall not be unreasonably conditioned, delayed or denied, unless such alterations, additions or improvements may be readily removed without damage to the PCs.

13. Inspection. Upon prior written request of the Authority, the City shall make the PCs available for inspection by the Authority during reasonable business hours to inspect the PCs or observe their use and operation.

14. Liens And Taxes. The City shall keep the PCs free and clear of all levies, liens and encumbrances except those created under this Agreement. The City shall pay, when due, all charges and taxes (local, state and federal) which may now or hereafter be imposed upon the ownership, leasing, rental, sale, purchase, possession or use of the PCs, excluding however, all taxes on or measured by Authority's income. If the City fails to pay said charges and taxes when due, Authority shall have the right, but shall not be obligated, to pay said charges and taxes. If Authority pays any charges or taxes, the City shall reimburse Authority therefor within ten (10) days of written demand as an addition to the Sublease Payments.

15. Use; Repairs. The City will use the PCs in a careful manner for the use contemplated by the manufacturer of the PCs and shall comply with all laws, ordinances, insurance policies and regulations relating thereto, and will pay all costs, claims, damages, fees and charges arising out of the possession, use or maintenance of the PCs, subject to the terms of the Lease Agreement and Sublease Agreement providing for the Services.

16. Risk Of Loss; Damage; Destruction. Upon delivery of the PCs to the City, the City assumes all risk of loss or damage to the PCs; provided, however, that no such loss of or damage to the PCs, nor defects therein, nor unfitness or obsolescence thereof, shall relieve the City of the obligation to make

Sublease Payments or to perform any other obligation under this Agreement. In the event of damage to any item of PCs under this Agreement, the City will immediately place the same in good repair with the proceeds of any insurance recovery applied to the cost of such repair. If Authority determines that any item of PCs is lost, stolen, destroyed or damaged beyond repair, the City will either (a) replace the same with like PCs in good repair; or (b) on the due date of the next Sublease Payment, pay the Authority the sum of (i) all amounts then owed by the City to the Authority under this Agreement, including the Sublease Payment due on such date; and (ii) an amount equal to all remaining Sublease Payments to be paid during the term of the Lease Agreement. In the event that the City determines to make such payment with respect to less than all of the PCs, Authority will provide City with the pro rata amount of the Sublease Payment and the balance to be paid by the City with respect to that portion of the PCs which has suffered such loss or damage.

17. **Assignment.** Neither party, without the other party's prior written consent, may (a) assign, transfer, pledge, hypothecate, grant any security interest in or otherwise dispose of this Agreement, the Lease Agreement, the PCs or any interest in the PCs or; (b) sublet or lend the PCs or permit them to be used by anyone other than (i) the City or any of its instrumentalities or agencies or authorities or their employees or (ii) any state or other local governmental unit, or instrumentality or agency or authority thereof or their employees (not including, however, the United States or an agency or instrumentality thereof).
18. **Event Of Default.** As used herein, the term "Event of Default" means the occurrence of any one or more of the following events.
 - 18.1 Except in an Event of Non-appropriation of funds as set forth in Section 9 of this Agreement, the City fails to make any Sublease Payment (or any other payment) as it becomes due in accordance with the terms of this Agreement and such failure continues for ten (10) days after the due date thereof.
 - 18.2 The City fails to perform or observe any other covenant, condition, or agreement to be performed or observed by it hereunder or under this Agreement, and such failure is not cured within thirty (30) days of the City's receipt of notice from Authority.
 - 18.3 The discovery by the Authority that any statement, representation, or warranty made by the City in this Agreement is false, misleading or erroneous in any material respect.
 - 18.4 Proceedings under any bankruptcy, insolvency, reorganization or similar legislation shall be instituted against or by the City, or a receiver or similar officer shall be appointed for the City or any of its property, and such proceedings or appointments shall not be vacated, or fully stayed, within thirty (30) days after the institution or occurrence thereof.
 - 18.5 An attachment, levy or execution is threatened or levied upon or against the PCs, and such attachment, levy or execution is not cured within thirty (30) days.
 - 18.6 Any certificate, statement, representation, warranty, or financial statement heretofore or hereafter furnished pursuant to or in connection with this Agreement by or on behalf of the City is false in any material respect at the time as of which the facts therein set forth were stated or certified, or omits any substantial contingent or unliquidated liability or claim against the City or, upon the date of execution of this document or any schedule, there shall have been any materially adverse change in any of the facts disclosed by any such certificate, statement, representation, or warranty, which shall not have been disclosed in writing to the Authority at or prior to the time of execution of this document or such schedule.

City of Philadelphia

BILL NO. 110832 continued

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19. **Remedies.** Upon the occurrence of an Event of Default, and as long as such Event of Default is continuing, the Authority may, at its option, exercise any one or more of the following remedies.
- 19.1 By written notice to the City, declare all remaining Sublease Payments due during the fiscal period in effect when the default occurs to be immediately due and payable, whereupon the same shall become immediately due and payable.
- 19.2 By written notice to the City, request the City to (and the City agrees that it will), at the City's expense, promptly return the PCs to the Authority.
- 19.3 Sell or lease the PCs or sublease it for the account of the City, holding the City liable for all Sublease Payments and other amounts due prior to the effective date of such selling, leasing or subleasing and for the difference between the purchase price, rental and other amounts paid by the purchaser, the lessee or sublessee pursuant to such sale, lease or sublease and the amounts payable by the City thereunder.
- 19.4 Exercise any other right, remedy or privilege which may be available to it under applicable laws of the Commonwealth of Pennsylvania or any other applicable law or proceed by appropriate court action to enforce the terms of this Agreement or to recover damages for the breach of this Agreement or to rescind this Agreement as to any or all of the PCs. In addition, the City will remain liable for all covenants and indemnities under this Agreement, and for all legal fees and other costs and expenses, including court costs, incurred by Authority with respect to the enforcement of any of the remedies listed above or any other remedy available to Authority.
- 19.5 THE CITY WAIVES ANY AND ALL RIGHTS TO NOTICE REQUIRED UNDER THE PENNSYLVANIA UNIFORM COMMERCIAL CODE AND TO JUDICIAL HEARING WITH RESPECT TO THE REPOSSESSION OF THE PCS BY AUTHORITY IN THE EVENT OF A DEFAULT HEREUNDER BY CITY; PROVIDED; HOWEVER, THAT THE AUTHORITY SHALL PROVIDE CITY NOT LESS THAN TEN (10) DAYS NOTICE PRIOR TO REPOSSESSION OF THE PCS.
20. **Indemnification.** The City assumes liability for, and hereby agrees, to the extent permitted by applicable law, to indemnify, protect, and hold harmless, Authority, its agents, servants, employees, officers, successors, and assigns from and against any and all liabilities, obligations, losses, damages, injuries, claims, demands, penalties, actions, environmental hazards, incidences or risks, costs and expenses, including reasonable attorney's fees, of whatsoever kind and nature, arising out of (i) the manufacture, installation, use, condition (including, but not limited to, latent and other defects and whether or not discoverable by the City or the Authority), operation, ownership, selection, delivery, leasing, removal or return of any PCs, regardless of where, how and by whom operated, or (ii) any failure on the part of the City to perform or comply with any covenant or condition of this Agreement. The amount payable pursuant to the paragraphs shall be payable upon demand of the Authority accompanied by a statement describing in reasonable detail such loss, liability, injury, claim, or expense and setting forth the computation of the amount so payable which computation shall be binding and conclusive upon City, absent manifest error. The indemnities and assumptions of liabilities and obligations provided for in this paragraph shall continue in full force and effect notwithstanding the expiration or other termination of this Agreement.
21. **Notices.** All notices to be given under this Agreement shall be made in writing and mailed by certified mail, return receipt requested, or overnight delivery service with confirmation of receipt, to

City of Philadelphia

BILL NO. 110832 continued

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the other party at its address set forth below or at such address as the party may provide in writing from time to time.

If to Authority:

With copy to:

If to City:

With Copy to:

22. **Section Headings.** All section headings contained herein are for the convenience of reference only and are not intended to define or limit the scope of any provision of this Agreement.
23. **Governing Law.** This Agreement shall be construed in accordance with, and governed by the laws of, the Commonwealth of Pennsylvania.
24. **Delivery Of Related Documents.** Each party will execute or provide, as reasonably requested by the other party, such other documents and information as are reasonably necessary with respect to the transaction contemplated by this Agreement.
25. **Entire Agreement; Waiver.** This Agreement, together with each schedule attached hereto, and other documents or instruments executed by the City and the Authority in connection herewith, are incorporated herein by reference and made a part hereof. This Agreement constitutes the entire agreement between the parties with respect to the lease of the PCs, and shall not be modified, amended, altered, or changed except with the written consent of the City and the Authority. Any provision of the Agreement found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remainder of the Agreement. The waiver by either party of any breach by the other party of any term, covenant or condition of this Agreement shall not operate as a waiver of any subsequent breach hereof.
26. **City Contract Provisions.** The Authority shall in its performance of this Agreement comply with all applicable laws, including, without limitation, the City contract provisions set forth in Exhibit E, attached hereto and made a part hereof.
27. **Execution In Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Any signature page of any such counterpart, or any electronic facsimile thereof, may be attached or appended to any other counterpart to complete a fully executed counterpart of this Agreement, and any telecopy, .pdf format copy or other facsimile transmission of any signature shall be deemed an original and shall bind such party. The Agreement shall bind the parties upon, but only upon, the valid execution of at least one counterpart by each party. The parties shall exchange originals of this Agreement bearing their original signatures within five (5) business days after execution.

[Signature page(s) follow]

City of Philadelphia

BILL NO. 110832 continued

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IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and year first above written.

THE PHILADELPHIA MUNICIPAL AUTHORITY

By: _____

Name:

Title:

Address: 1515 Arch Street, 9th Floor
Philadelphia, Pennsylvania 19102

CITY OF PHILADELPHIA, PENNSYLVANIA

By: _____

Name:

Title:

Address:

Approved as to Form:
Shelley R. Smith, City Solicitor

By: _____

Title:

EXHIBIT A
LEASE AGREEMENT

PMA Lease Agreement Summary of Terms

1. Transaction

- a. The Philadelphia Municipal Authority (PMA), on behalf of the City, will enter into an agreement (PMA Agreement) for the lease of personal computers and related equipment (collectively, PCs) and provision of maintenance, installation and other related services described below (Services), for use by the Free Library of Philadelphia (FLP) in its Main Library, three Regional Branch Libraries, Library for the Blind and Physically Handicapped, and the Rodin Place materials processing center.
- b. The PMA Agreement will be on a requirements basis, with an estimated total of 775 PCs required, and will provide for substantially the terms set forth in Sections 2 and following.
- c. The Procurement Department, acting on behalf of PMA, will procure the PMA Agreement by a competitive solicitation (the "Solicitation") in accordance with PMA statutory requirements.
- d. The City will enter into a sublease and operating agreement (Sublease) with PMA, providing for the City's sublease of the PCs from PMA and FLP's receipt of the Services from PMA's contractor.
- e. Under the Sublease, the City will retain all management responsibilities related to the PMA Agreement and the PCs and Services provided under it.
- f. The Solicitation will permit responses proposing the respondent's assignment of the lease to a third party approved by the City, or proposing that the lease be held by a third party approved by the City, such terms, if accepted, to be reflected in the Sublease.

2. Term

- a. Overall Term of PMA Agreement: Four (4) and a half years, commencing approximately five (5) months before the lease obligation commences and the first lease payment becomes due, in order to provide a period for de-installation of existing PCs, and configuration, delivery and installation of new PCs. The term may be extended by up to an additional seven (7) months at the direction of the City.
- b. Lease obligation under PMA Agreement: Four (4) years, to commence in or about July, 2012.
- c. Sublease Agreement: Term coequal with term of PMA Agreement, including any extensions.

3. Specifications; estimated quantities

- a. PCs will be acquired both for use by the public and for use by FLP staff.
- b. An estimated 220 public use PCs will be leased, and an estimated 555 administrative and staff PCs; estimated total, 775 PCs.
- c. Public use PCs will be specified as all-in-one units, incorporating computer and display in a single unit, using touch-screen technology. All PCs will be specified with high-speed multi-core

processors, high-resolution displays, and memory and hard disk capacities and speeds that are industry standard for the uses required. PCs will be delivered with City-specified software pre-installed.

4. Price; payment
 - a. Lease price will depend on the prices bid.
 - b. Lease payments are to be monthly and will include the price of all Services as well as rent for the PCs. Accordingly, payment for Services, including Services performed prior to commencement of the lease, will commence with the first lease payment.
5. Services
 - a. Maintenance and support services: The contractor must provide on-site repair service to restore equipment to full operability within one (1) business day of a problem notification.
 - b. Initial services: The contractor must de-install existing PCs, and stage, configure, deliver and install the leased PCs at the Main Library, three Regional Branch Libraries, Library for the Blind and Physically Handicapped, and the Rodin Place materials processing center.
6. Acceptance: City acceptance of installed PCs is a condition of payment obligations commencing under the PMA Agreement the Sublease.
7. Management: FLP will be responsible for managing the Services, including both the initial services and the maintenance services provided in Section 5, will be retained by FLP.
8. Participation ranges for Minority Business Enterprises, Woman Business Enterprises and Disabled Business Enterprises (M/W/DSBEs): As determined by the Office of Economic Opportunity.

EXHIBIT B

EQUIPMENT AND SERVICES SCHEDULES

City of Philadelphia

BILL NO. 110832 continued

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Schedule A Personal Computers and Associated Equipment

City of Philadelphia

BILL NO. 110832 continued

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Schedule B Services

City of Philadelphia

BILL NO. 110832 continued

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EXHIBIT C

DELIVERY AND ACCEPTANCE CERTIFICATE

The undersigned hereby acknowledges receipt of the PCs described below and confirms that the City has accepted the PCs described below. Authority shall not be liable for loss or damages occasioned by any cause, circumstance or event of whatsoever nature, including, but not limited to, failure of or delay in delivery to wrong location, delivery of improper PCs, or property other than the PCs, damage to the PCs, governmental regulations, strikes, embargoes or other causes, circumstances or events whether of a like or unlike nature.

PCs Description	Quantity	Unit Cost	Total Cost

CITY OF PHILADELPHIA

By: _____

Date: _____

City of Philadelphia

BILL NO. 110832 continued

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EXHIBIT D

Statement of Self-Insurance by City of Philadelphia



CITY OF PHILADELPHIA

OFFICE OF THE DIRECTOR OF FINANCE
RISK MANAGEMENT DIVISION

1515 Arch Street, 14th floor
Philadelphia, PA 19102-1595

Debora Lawton
Risk Management Services
Director
Phone: (215) 683-1719
Fax: (215) 683-1718
E-Mail:
Debbie.Lawton@phila.gov

Nella A. Goodwin
Risk Management Services
Manager
Phone: (215) 683-1708
Fax: (215) 683-1718
E-Mail:
Nella.Goodwin@phila.gov

[DATE]

RE: CITY OF PHILADELPHIA SELF-INSURANCE STATUS

To Whom It May Concern:

This letter will serve as confirmation that the City of Philadelphia self-insures with regard to its liability under Pennsylvania Law for negligent or willful acts or omissions of its officers and employees and for physical loss to property. To that end, the City has established an indemnity fund on a fiscal year basis, which is administered by the Law Department and the Risk Management Division.

The City of Philadelphia is also a qualified self-insurer in the Commonwealth of Pennsylvania for workers compensation and automobile liability.

Please let me know if you have any questions.

Sincerely,

Debora Lawton

EXHIBIT E

CITY CONTRACT PROVISIONS

1. Audit of Affairs. During the term of this 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, the Authority must provide the Controller with reasonable access to the Authority's books and financial records.

2. Nondiscrimination.

(a) Pursuant to this Agreement, the Authority shall not discriminate nor permit discrimination against any person because of race, color, sex, sexual orientation, religion, national origin or ancestry. In the event of such discrimination, the City may terminate this Agreement forthwith or exercise any other remedy provided to the City in this Agreement or at law or in equity. The foregoing shall not be construed to limit or restrict the City's right to terminate this Agreement as set forth in other sections of this Agreement.

(b) The 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, or privileges or conditions of employment on the basis of race, color, sex, sexual orientation, religion, national origin or ancestry, constitutes a substantial breach of this Agreement entitling the City to all rights and remedies provided in this Agreement or otherwise available at law or in equity.

(c) The Authority agrees to include subparagraph (a) of this Section, with appropriate adjustments for the identity of the parties, in all subcontracts which are entered into for work to be performed pursuant to this Agreement.

(c) The 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.

3. MacBride Principles.

(a) The Authority, by execution of this Agreement, certifies and represents that (i) the Authority (including any parent company, subsidiary, exclusive distributor or company affiliated with the Authority) does not have, and will not have at any time during the term of this Agreement (including any extensions or renewals thereof), any investments, licenses, franchises, management agreements or operations in Northern Ireland and (ii) no product or service to be provided to the City under this Agreement will originate in Northern Ireland, unless the Authority has implemented the fair employment principles embodied in the MacBride Principles.

(b) In the performance of this Agreement, the Authority agrees that it will not utilize any suppliers, subcontractors or sublicensees at any tier (i) who have (or whose parent, subsidiary, exclusive distributor or company affiliate have) any investments, licenses, franchises, management agreements or

operations in Northern Ireland, or (ii) who will provide products originating in Northern Ireland unless said supplier, sublicensee or subcontractor has implemented the fair employment principles embodied in the MacBride Principles. The Authority further agrees to include the provisions of this Section with appropriate adjustments for the identity of the parties, in all subcontracts and supply agreements which are entered into in connection with the performance of this Agreement.

(c) The Authority agrees to cooperate with the City's Director of Finance in any manner which the said Director of Finance deems reasonable and necessary to carry out the Director's responsibilities under Section 17-104 of The Philadelphia Code. the Authority expressly understands and agrees that any false certification or representation in connection with this Section or any failure to comply with the provisions of this Section shall constitute a substantial breach of this Agreement entitling the City to all rights and remedies provided in this Agreement or otherwise available at law (including, but not limited to, Section 17-104 of The Philadelphia Code) or in equity. In addition, it is understood that false certification or representation is subject to prosecution under Title 18 Pa. C.S.A. Section 4904.

4. Certification of Non-Indebtedness.

(a) The Authority hereby certifies and represents that the Authority and the Authority's parent company(ies) and subsidiary(ies), affiliate(s), if any, are not currently indebted to the City of Philadelphia, and will not during the term of this Agreement be indebted to the City of Philadelphia, for or on account of any delinquent taxes (including, but not limited, to taxes collected by the City of Philadelphia on behalf of the School District of Philadelphia), liens, judgments, fees or other debts for which no written agreement or payment plan satisfactory to the City of Philadelphia has been established.

(b) The Authority shall require any (contractors and subcontractors to the Authority (except the City) performing repairs and/or alterations on the Premises or in connection with this Agreement, the Tower Leases, or the Assigned Contracts, to be bound by the following provision and the Authority shall cooperate in exercising the rights and remedies described below or otherwise available at law or in equity:

"Contractor ('Contractor') or Subcontractor ('Subcontractor') hereby certifies and represents that Contractor or Subcontractor, and Contractor or Subcontractor's parent company(ies) and their subsidiary(ies), are not currently indebted to The City of Philadelphia (the "City"), and will not at any time during the term of this Agreement be indebted to the City of Philadelphia, for or on account of any delinquent taxes (including, but not limited to, taxes collected by the City of Philadelphia on behalf of the School District of Philadelphia), liens, judgments, fees or other debts for which no written agreement or payment plan satisfactory to the City of Philadelphia has been established."

(c) Any breach or failure to conform to the aforesaid certifications shall constitute a default by the Authority and entitle the City to exercise any rights or remedies available to it under this Agreement, and at law and in equity.

5. Fair Practices. The Authority agrees, in performing its obligations pursuant to this Agreement, to 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 they may be amended

City of Philadelphia

BILL NO. 110832 continued

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from time to time, both of which prohibit, *inter alia*, discrimination against persons with ADDS in employment and services.

6. Business Corporate and Slavery Era Insurance Disclosure. The Authority, after execution of this Agreement, will complete an affidavit certifying and representing that the Authority (including any parent company, subsidiary, exclusive distributor or company affiliated with the Authority) has searched any and all records of the Authority or any predecessor company regarding records of investments or profits from slavery or slaveholder insurance policies during the slavery era. The names of any slaves or slaveholders described in those records must be disclosed in the affidavit. The Authority expressly understands and agrees that any false certification or representation in connection with this Section or any failure to comply with the provisions of this Section shall constitute a substantial breach of this Agreement entitling the City to all rights and remedies provided in this Agreement or otherwise available in law (including, but not limited to, Section 17-104 of The Philadelphia Code) or equity and the Agreement will be deemed voidable. In addition, it is understood that false certification or representation is subject to prosecution under Title 18 Pa. C.S. Section 4904.

7. Duties and Covenants Pursuant to Chapter 17-1400.

7.1 The Authority shall abide by the provisions of Philadelphia Code Chapter 17-1400 in awarding any contract(s) pursuant to this Agreement as though such contracts were directly subject to the provisions of Chapter 17-1200, except that the exception set forth at Subsection 17-1406(8) shall apply to the Authority as if the Authority were listed in that subsection.

7.2 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 the Authority by its General Counsel; any approvals required to be performed by the Director of Finance shall be performed by the Authority by its Chief Financial Officer; and any approvals required to be performed by the Mayor shall be performed by the Authority by its Chairman.

City of Philadelphia

City of Philadelphia

BILL NO. 110832 continued

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BILL NO. 110832 continued

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CERTIFICATION: This is a true and correct copy of the original Bill, Passed by the City Council on December 8, 2011. The Bill was Signed by the Mayor on December 14, 2011.



Michael A. Decker
Chief Clerk of the City Council