



City of Philadelphia

City Council
Chief Clerk's Office
402 City Hall
Philadelphia, PA 19107

Legislation Text

File #: 120432, **Version:** 0

Authorizing the City Treasurer, on behalf of the City, to enter into an agreement with Wells Fargo Bank, N.A. for provision of payroll banking services to the City, under certain terms and conditions.

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. The Office of the City Treasurer, on behalf of the City, is hereby authorized to enter into an amendment agreement (the "Amendment Agreement") with Wells Fargo Bank, N.A. (formerly Wachovia Bank, N.A.) ("Wells Fargo"), substantially in the form set forth in Exhibit A, pursuant to which Wells Fargo shall continue to provide payroll banking services to the City, under certain terms and conditions.

SECTION 2. The City Solicitor shall include in said Amendment Agreement such terms and conditions as she may deem necessary to protect the interests of the City.

SECTION 3. The fair lending plan required by Section 19-201(8)(c)(ii) is attached hereto as Exhibit B.

Explanation:

EXHIBIT A

Contract Number 1020403-03

Original Contract Number 1020403

May 2012 F. Dutchie (vw)
City of Philadelphia

City Treasurer Office

STANDARD AMENDMENT AGREEMENT

THIS STANDARD AMENDMENT AGREEMENT ("Amendment Agreement") is made as of this ___ day of _____, 2012, and effective the 1st day of _____ July 2012 (the "Effective Date"), by and between THE CITY OF PHILADELPHIA (the "City"), by and through its City Treasurer's Office ("Department"), and WELLS FARGO BANK, N.A., formerly known as WACHOVIA BANK ("Provider"), a

national association with its principal place of business located at 1600 John F. Kennedy Boulevard, 4 Penn Center, Suite 810, Philadelphia, Pennsylvania 19103.

BACKGROUND

The City and Provider entered into a certain Contract, Contract Number 1020403, dated November 5, 2009, for an Initial Term from July 1, 2009 through June 30, 2010, which Contract includes the General Provisions, the Provider Agreement and any and all exhibits and attachments thereto (collectively, the "Base Contract"), wherein Provider agreed to render various Services to the City in accordance therewith; and

The City and Provider entered into an Amendment to the Base Contract, Contract Number 1020403-01, dated October 7, 2010, for the period July 1, 2010 to June 30, 2011, to add an Additional Term of twelve (12) months; and

The City and Provider entered into an Amendment to the Base Contract, as amended, Contract Number 1020403-02, dated September 15, 2011, for the period July 1, 2011 to June 30, 2012, to add an Additional Term of twelve (12) months; and

The City and Provider desire to enter into an Amendment to the Base Contract, as amended, Contract Number 1020403-03, for the period July 1, 2012 to June 30, 2013, to add an Additional Term of twelve (12) months.

The City and Provider have agreed to amend certain terms and conditions of the Base Contract, as amended, as set forth herein.

In consideration of the mutual obligations set forth herein, and each intending to be legally bound, the City and Provider covenant and agree as of the Effective Date as follows:

ARTICLE I: AMENDMENTS TO THE CONTRACT

With the exception of the following amendments set forth in this Amendment Agreement, and subject to councilmanic appropriation of funds, the terms and conditions of the Base Contract, as amended, shall be and remain in full force and effect:

1.1 Definitions.

Capitalized terms not otherwise defined herein shall have the meanings set forth in the Base Contract, as amended.

1.2 Term.

The Base Contract, as amended, is amended to add an Additional Term, commencing July 1, 2012 and expiring June 30, 2013.

1.3 Other Amendments.

The Base Contract, as amended, is amended, in accordance with the Exhibit listed below, which is attached to this Amendment Agreement and incorporated in the Base Contract, as amended, by reference:

S.A.A.-1: Exceptions to the General Provisions

IN WITNESS WHEREOF, the Parties, intending to be legally bound by all of the Contract Documents, have caused this Amendment Agreement to be executed by their respective duly authorized officers as of the date in the heading of this Amendment Agreement.

THE CITY OF PHILADELPHIA

Through: The City Treasurer's Office

APPROVED AS TO FORM
SHELLEY R. SMITH, CITY SOLICITOR

By:

Per _____
FRANCIOIS A. DUTCHIE
Divisional Deputy City Solicitor

Title:

CORPORATE SEAL:

**WELLS FARGO BANK, N.A.
FORMERLY KNOWN AS
WACHOVIA BANK**

By:

Title:

President or Vice-President

Attest:

Title:

(Ass't) Secretary or (Ass't) Treasurer

EXHIBIT S.A.A.-1

EXCEPTIONS TO THE GENERAL PROVISIONS

EXHIBIT S.A.A.-1

EXCEPTIONS TO THE GENERAL PROVISIONS

Article 14, Section 14.1 of the General Provisions is hereby amended to read as follows:

14.1 **Non-Discrimination; Fair Practices.** This Contract is entered into under the terms of the Philadelphia Home Rule Charter, as it may be amended from time to time, and in performing this Contract, Provider shall not discriminate or permit discrimination against any individual because of race, color, religion, ancestry, national origin, sex, gender identity, sexual orientation, age or disability. In addition, Provider shall, in performing this Contract, comply with the provisions of the Fair Practices Ordinance of The Philadelphia

Code (Chapter 9-1100) and the Mayor’s Executive Order No. 04-86 (prohibiting discrimination on the basis of Human Immunodeficiency Virus infection), as each may be amended from time to time and which, as applicable, prohibit, among other things, discrimination against individuals in employment, housing and real property practices, and/or public accommodation practices whether by direct or indirect practice of exclusion, distinction, restriction, segregation, limitation, refusal, denial, differentiation or preference in the treatment of a person on the basis of actual or perceived race, ethnicity, color, sex, sexual orientation, gender identity, religion, national origin, ancestry, age, disability, marital status, source of income, familiar status, genetic information or domestic or sexual violence victim status, or other act or practice made unlawful under Chapter 9-1100 or under the nondiscrimination laws of the United States or the Commonwealth of Pennsylvania. In the event of any breach of this Section 14.1 (Non-Discrimination; Fair Practices), the City may, in addition to any other rights or remedies available under this Contract, at law or in equity, suspend or terminate this Contract forthwith.

Article 14, Section 14.3 of the General Provisions is hereby amended to read as follows:

14.3 Minority, Woman and Disabled Business Enterprise Participation.

(a) Executive Orders 02-05 and 14-08. In accordance with Executive Orders 02-05 and 14-08 (the “Antidiscrimination Policy”), the City, acting through its Office of Economic Opportunity (“OEO”), 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 this Antidiscrimination Policy 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. Provider agrees to comply with the requirements of the Antidiscrimination Policy, and where participation ranges are established by OEO, Provider agrees, without limitation, to submit documentation responsive to each of the participation ranges established for the Contract.

(1) In furtherance of the purposes of the Antidiscrimination Policy, Provider agrees to the following:

a) Provider, 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 Contract (“Participant Agreement(s)”) for the services and in the dollar amount(s) and percentage(s) as specified in the M/W/DSBE Participation Exhibit to this Contract (the “Contract Commitment(s)”).

b) Provider shall secure the prior written approval of the Office of Economic Opportunity (“OEO”), before making any changes or modifications to any

Contract Commitments made by Provider 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 paid to its M/W/DSBE Subcontractors.

- c) Unless otherwise specified in a Participant Agreement as described in (1) (a) above, Provider shall, within five (5) business days after receipt of a payment from the City for work performed under the Contract, 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, Provider agrees to fully comply with the City's payment reporting process which may include the use of electronic payment verification systems.
- d) Provider shall, in the event of an increase in units of work and/or compensation under the Contract, increase its Contract Commitment(s) with its M/W/DSBE Subcontractors proportionately, which increase shall be reflected in the Participant Agreement(s). OEO may from time to time request documentation from Provider evidencing compliance with this provision.
- e) Provider 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 Participant Agreements, participation summary reports, M/W/DSBE Subcontractor invoices, telephone logs and correspondence with M/W/DSBE Subcontractors, cancelled checks and certification of payments. Provider shall maintain all documentation related to this Section for a period of five (5) years from the date of Provider's receipt of final payment under the Contract.
- f) Provider agrees that the City may, in its sole discretion, conduct periodic reviews to monitor Provider's compliance with the terms of this Antidiscrimination Policy.
- g) Provider agrees that in the event the City determines that Provider has failed to comply with any of the requirements of this Antidiscrimination Policy, including substantial compliance with any Contract Commitment, the City may, in addition to any other rights and remedies it may have under the Contract which includes termination of the Contract, exercise one or more of the following remedies which shall be deemed cumulative and concurrent:
 - 1) Debar Provider from proposing on and/or participating in any future contracts for a maximum period of three (3) years.

- 2) Recover as liquidated damages, i.e., without institution of a civil lawsuit, one percent (1%) of the total dollar amount of the Contract, which amount shall include any increase by way of amendments to the Contract, for each one percent (1%) (or fraction thereof) of the shortfall in Contract Commitment(s) to Provider's M/W/DSBE Subcontractors.

 - h) 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 pursuant to the Antidiscrimination Policy or by reason of this Contract 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 Contract nor shall it give rise to actions by any third parties including identified M/W/DSBE Subcontractors.
- (2) In the event the Provider is a non-profit, the Contract is not subject to M/W/DSBE participation ranges, but Provider shall demonstrate its compliance with the Antidiscrimination Policy in the following manner:
- a) Provide to the OEO annually, a written diversity program identifying the race, gender and ethnic composition of its board of directors, its employment profile, a list of all vendors that the non-profit does business with in its M/W/DSBE procurement program (e.g., "M/W/DSBE Supplier Diversity Program") and a statement of the geographic area(s) where its services are most concentrated; and

 - b) Demonstrate, to the OEO's satisfaction, that the non-profit's organization makes appropriate efforts to maintain a diverse workforce and board of directors and operates a fair and effective M/W/DSBE procurement program.
- (3) It is understood that false certification or representation made in connection with this Antidiscrimination Policy may be subject to prosecution under Title 18 Pa.C.S. Sections 4107.2 and 4904.

(b) **The Philadelphia Code Section 17-1402.** In accordance with Section 17-1402 (f) of The Philadelphia Code, the Provider shall during the Term of the Contract, disclose the name and title of each City officer or employee who directly or indirectly advised the Provider, any officer, director or management

employee of the Provider, or any Person representing the Provider that a particular Person could be used by the Provider to satisfy any goals established in the Contract for the participation of minority, women, disabled or disadvantaged business enterprises.

- (1) The Provider shall also disclose the date the advice was provided, and the name of such particular Person.
- (2) 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 Provider 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.

Article 14 of the General Provisions is hereby amended to add a new Section 14.9 which shall read as follows:

14.9 Protected Health Information.

(a) The City of Philadelphia is a “Covered Entity” under the federal Health Information Portability and Accountability Act (HIPAA). The City has designated the following certain City agencies as covered healthcare components of the City (“Covered Components”): The Ambulatory Health Services Unit of the Department of Public Health (DPH), the Office of Behavioral Health/Intellectual Disability Services (OBH/IDS), the Riverview Home managed by the Office of Supportive Housing, the Philadelphia Nursing Home managed by DPH, the Benefits Administration Unit of the Office of Human Resources, and the Emergency Medical Services Unit of the Philadelphia Fire Department. This list is subject to change, and any component of the City that the City in the future determines to be a Covered Component under HIPAA shall be deemed to be a Covered Component for purposes of this Subarticle 14.9.

(b) To the extent this Contract (i) is entered into with the City acting on behalf of a Covered Component, and/or (ii) requires the performance of services that will be delivered to or used by a Covered Component of the City (whether or not the City agency issuing the Contract is a Covered Component) and (iii) Provider is a Business Associate with respect to the City, Provider shall comply with the City’s “Terms and Conditions Relating to Protected Health Information” posted on the City’s website (at <https://secure.phila.gov/eContract/> under the “About” link) (“City PHI Terms”). The City PHI Terms are hereby incorporated in this Subarticle 14.9 as if fully set forth herein. (A printed version of the City PHI Terms, in the City’s sole discretion, may also be attached to this Contract.)

Article 14 of the General Provisions is hereby amended to add a new Section 14.10 which shall read as follows:

14.10 Philadelphia 21st Century Minimum Wage and Benefits Standard. If Provider is an Employer, as defined at Philadelphia Code Section 17-1303, with the exclusion of subcontractors and their employees, Provider shall comply with the minimum compensation standards by providing its employees with

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

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

A Provider subject to Chapter 17-1300 shall comply with all its requirements as they exist on the date when the Provider entered into its agreement with the City or when such agreement is amended. A Provider subject to Chapter 17-1300 who fails to comply with its provisions may, after notice and hearing before the Finance Director or such other officer or agency designated by the Mayor, be suspended from receiving financial assistance from the City or from bidding on and/or participating in future City contracts for up to three (3) years. Furthermore, the Council may, by resolution adopted after a public hearing, determine that there are reasonable grounds to believe that an employer subject to Chapter 17-1300 has failed to comply with its provisions, and that if such failure is established, then debarment would be an appropriate remedy for such failure. A copy of any such adopted resolution shall be forwarded to the Finance Director, or such other officer or agency designated by the Mayor, who shall without undue delay provide appropriate notice and opportunity for hearing, and after such hearing, make a final determination as to whether there has been a violation of Chapter 17-1300 and whether debarment, as provided by Chapter 17-1300, should be imposed. Such debarment shall be in addition to any of the other sanctions or remedies set forth in Chapter 17-1300. The debarment procedure by Council resolution shall be in addition to any other procedure for debarment established under Chapter 17-1300.

The Office of Labor Standards may grant a partial or total waiver of Section 17-1300 based on specific stipulated reasons elaborated in Section 17-1304 of the Philadelphia Code.

EXHIBIT B

FAIR LENDING PLAN