

**REQUEST FOR PROPOSALS**  
**FOR A**  
**STRATIFIED MANAGEMENT AND OPERATIONS AUDIT**  
**OF**  
**PHILADELPHIA GAS WORKS**

**ISSUING OFFICE**  
**PENNSYLVANIA PUBLIC UTILITY COMMISSION**  
**BUREAU OF AUDITS**

**RFP-PUC -2014-1**

**DATE OF ISSUANCE**

**APRIL 21, 2014**

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STRATIFIED MANAGEMENT AND OPERATIONS AUDIT  
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**TABLE OF CONTENTS**

	<u>Page No.</u>
Part I	GENERAL INFORMATION FOR OFFERORS 3
Part II	INFORMATION REQUIRED FROM OFFERORS 15
Part III	CRITERIA FOR SELECTION 22
Part IV	WORK STATEMENT 27
Exhibit I	FUNCTIONAL EVALUATION SUMMARY
Exhibit II	SUPPORTING FINANCIAL AND OPERATING DATA AND STATISTICS
Appendix A	NONCOLLUSION AFFIDAVIT
Appendix B	PROPOSAL COVER SHEET
Appendix C	DRAFT CONTRACT
Appendix D	NONDISCLOSURE AGREEMENT
Appendix E	NONDISCRIMINATION/SEXUAL HARASSMENT CLAUSE
Appendix F	INTEGRITY PROVISIONS
Appendix G	RESPONSIBILITY PROVISIONS
Appendix H	AMERICANS WITH DISABILITIES ACT PROVISIONS
Appendix I	SUBCONTRACTOR LIST
Appendix J	COMPANY INFORMATION

## CALENDAR OF EVENTS

The Commission will make every effort to adhere to the following schedule:

Activity	Responsibility	Date
Deadline to submit Questions via email to the Issuing Officer Nathan Paul at npaul@pa.gov.	Potential Proposers	May 2, 2014
Non-mandatory Pre-Proposal Conference on <u>May 8</u> at 1 p.m. in Hearing Room 2, Commonwealth Keystone Building, 400 North St., Harrisburg PA 17120. The Issuing Officer will take questions. Call-in information will be provided upon email request to the Issuing Officer.	Issuing Office/Potential Proposers	May 8, 2014
Answers to all Potential Proposer questions posted to the Commission website no later than <u>May 15</u> , at <a href="http://www.puc.pa.gov/contact_us/request_for_proposals.aspx">http://www.puc.pa.gov/contact_us/request_for_proposals.aspx</a>	Issuing Office	May 15, 2014
Please monitor website for all communications regarding the RFP on an ongoing basis. <a href="http://www.puc.pa.gov/contact_us/request_for_proposals.aspx">http://www.puc.pa.gov/contact_us/request_for_proposals.aspx</a>	Potential Proposers	Ongoing
Sealed proposal must be received by the Issuing Office at <b>address indicated in Section I-11 by <u>3 p.m.</u></b>	Proposers	<b>June 2, 2014 <u>3 p.m.</u></b>

## **REQUEST FOR PROPOSALS**

### **STRATIFIED MANAGEMENT AUDIT**

#### **PART I**

#### **GENERAL INFORMATION FOR THE CONTRACTOR**

**I-1. PURPOSE.** This Request for Proposals (“RFP”) provides interested contractors (“Offerors”) with sufficient information to enable them to prepare and submit proposals for consideration by the Pennsylvania Public Utility Commission (“Commission” or “PUC”) to conduct a Stratified Management and Operations Audit (“Management Audit”) of Philadelphia Gas Works (“PGW”, “Utility” or “Company”), and its relationship with its affiliates if applicable. The Management Audit is being conducted pursuant to the Commission's statutory authority at 66 Pa.C.S. §§ 331, 501, 506, and 516 (a) and (c).

**I-2. ISSUING OFFICE.** This RFP is issued by the Pennsylvania Public Utility Commission’s Bureau of Audits (“Issuing Office”). The Commission regulates and/or approves rates and tariffs for common and contract carriers, power, water, gas and communication utilities operating within the Commonwealth of Pennsylvania (“Commonwealth”). While the contract is between the named Utility and the contractor, the final selection, control and approval for payment of this audit is to be made by the Commission. The sole point of contact in the Commonwealth for this RFP shall be Nathan Paul, Audit Supervisor in the Pennsylvania Public Utility Commission’s Bureau of Audits, P.O. Box 3265, Harrisburg, PA 17105-3265, telephone number (717) 214-8249, fax (717) 783-9866, and email npaul@pa.gov, the Issuing Officer for this RFP. Please refer all inquiries to the Issuing Officer.

**I-3. SCOPE.** This RFP contains instructions governing the proposals to be submitted and the material to be included therein; a description of the service to be provided; requirements which must be met to be eligible for consideration; general evaluation criteria; and other requirements specific to this RFP that are to be met by each proposal.

**I-4. PROBLEM STATEMENT.** To assist the Commission in its task of regulation, Management Audits of the non-transportation utilities are conducted periodically. Such audits will be used by the Commission to determine the extent to which a utility's management has contained costs, developed reasonable long and short-range plans for its continued operation, provided proper service to the customers it serves, and provided proper management and organizational structure (*See also* IV-1 and IV-2). Potential sale of PGW: It should be noted that on March 3, 2014, an agreement in

principal for a sale of PGW was announced by the mayor; pending approvals from the City of Philadelphia and the Pennsylvania Public Utility Commission. The timeline for completion of this sale, if it is approved, is not certain. Consequently the Commission cannot predict the impact of the potential sale on the Management Audit, if any. Bidders should be aware that the Commission may seek to revise the scope of work by amending the contract, to reflect potential changes in the Commission audit requirements, if the sale is completed. If amendment of the contract is required due to completion of the sale during the Management Audit, the Commission will work with PGW and the contractor to amend the contract to reflect any needed changes in scope of work.

**I-5. TYPE OF CONTRACT.** It is proposed that if the Issuing Office enters into a contract as a result of this RFP, it will be a contract containing the proposed contract Terms and Conditions as shown in Appendix C, D, E, F, G, and H to the cover letter. This Request for Proposal, and the Proposal of the Offeror who is awarded the contract, shall be incorporated into the contract by reference and thereby shall be part of the contract. Payments to the contractor on a contract entered into as a result of this RFP will be made based upon hours actually expended on this engagement at rates quoted in the proposal (*See also* II-8). The final 10% of the amount specified for each phase of the Management Audit (*See also* II-8), less any disputed amounts, will be paid in the following manner:

- 5% upon release of the consolidated draft report (*See also* IV-4).
- 5% upon receipt of the Final Report (*See also* IV-4).

It is presumed that the Utility will cooperate fully with the contractor and will provide all relevant data, submitted pursuant to the Nondisclosure Agreement, as well as all employees with the direct knowledge necessary for the contractor to perform expeditiously its evaluation and draw conclusions. Total payments under this contract will not exceed the total cost quoted in the proposal. However, the total cost may be exceeded if, after the draft reports are released, the Utility comes forth with substantial quantities of new or additional information requiring significant review and analysis by the contractor. Those costs will be billed separately from the base contract amount at the contractor's proposal rates. Any amounts so billed may be reviewed by the Commission as to recoverability in a subsequent rate case.

**I-6. REJECTION OF PROPOSALS.** The Commission reserves the right to reject any and all proposals or portions thereof received as a result of this RFP, when it is in the best interest of the Commission. The Issuing Office, in its sole discretion, may undertake negotiations with Offerors whose proposals, in the judgment of the Issuing Office, show them to be qualified, responsible and capable of performing the Project. *See also* III-5, Potential Conflicts of Interest.

**I-7. INCURRING COSTS.** Neither the Commission nor the Utility is liable for any costs incurred by Offerors prior to issuance of a contract. The Offeror shall not begin compensable work until so notified by the Commission's Project Officer (*See also* I-24).

**I-8. PREPROPOSAL CONFERENCE.** The Issuing Office will hold a preproposal conference as specified in the RFP Cover Letter. The purpose of this conference is to provide opportunity for clarification of the RFP. Offerors should forward all questions to the Issuing Office in accordance with Part I, Section I-9 to ensure adequate time for analysis before the Issuing Office provides an answer. Offerors may also ask questions at the conference. The preproposal conference is for information only. Any verbal responses furnished during the conference will not be binding until they have been verified, in writing, by the Issuing Office. All questions and written answers will be posted on the PUC website, at [www.puc.state.pa.us](http://www.puc.state.pa.us), as an addendum to, and shall become part of, this RFP. Attendance at the preproposal conference is optional. Call-in information will be provided upon email request to the Issuing Officer.

**I-9. QUESTIONS & ANSWERS.** If an Offeror has any questions regarding this RFP, the Offeror must submit the questions by email (with the subject line "RFP-PUC-2014-1 Question") to the Issuing Officer named in Part I, Section I-2 of the RFP no later than the date indicated in the Cover Letter. The Offeror shall not attempt to contact the Issuing Officer by any other means. The Issuing Officer shall post the answers to the questions on the PUC website by the date stated in the Cover Letter.

All questions and responses as posted on the PUC website are considered as an addendum to, and part of, this RFP in accordance with RFP Part I, Section I-10. Each Offeror shall be responsible to monitor the PUC website for new or revised RFP information. The Issuing Office shall not be bound by any verbal information nor shall it be bound by any written information that is not either contained within the RFP or formally issued as an addendum by the Issuing Office. The Issuing Office does not consider questions to be a protest of the specifications or of the solicitation. The required protest process for Commonwealth procurements is described on the Department of General Services ("DGS") website at [www.dgs.state.pa.us](http://www.dgs.state.pa.us). Protests should be filed with the Issuing Officer.

**I-10. Addenda to the RFP.** If the Issuing Office deems it necessary to revise any part of this RFP before the proposal response date, the Issuing Office will post an addendum to the PUC website. It is the Offeror's responsibility to periodically check the PUC website for any new information or addenda to the RFP. Answers to the questions asked during the Question & Answer period also will be posted to the website as an addendum to the RFP.

**I-11. RESPONSE DATE.** To be considered, the proposal or any addendum thereto must arrive at the Issuing Office on or before the time and date specified in the RFP Cover Letter via the appropriate address listed below.

### **First Class Mail Address**

Nathan Paul  
Pennsylvania Public Utility Commission  
Bureau of Audits  
P.O. Box 3265  
Harrisburg, Pennsylvania 17105-3265

### **Overnight Delivery Address**

Nathan Paul  
Pennsylvania Public Utility Commission  
Bureau of Audits  
3<sup>rd</sup> Floor East, Commonwealth Keystone Building  
400 North Street  
Harrisburg, Pennsylvania 17120

Offerors mailing proposals should allow normal mail delivery time to insure timely receipt of their proposals. If, due to inclement weather, natural disaster, or any other cause, the Commonwealth office location to which proposals are to be returned is closed on the proposal response date, the deadline for submission will be automatically extended until the next Commonwealth business day on which the office is open, unless the Issuing Office otherwise notifies Offerors. The hour for submission of proposals shall remain the same. **Proposals received after the time and date specified in the cover letter will be rejected, unopened, and not considered regardless of the reason for the late submission.**

**I-12. PROPOSALS.** To be considered, Offerors must submit a complete response to this RFP, using the format provided in Part II. Each technical proposal must be submitted by mailing ten copies to the Issuing Office. In addition to the paper copies of the technical proposal, Offerors shall submit one **complete and exact** copy of the technical proposal on CD-ROM or Flash drive in Microsoft Office or Microsoft Office-compatible format. No other distribution of proposals will be made by the Offeror. Proposals must be signed by an official authorized to bind the Offeror to its provision. For this RFP, the proposal must remain valid for at least 120 days. Moreover, except as otherwise noted herein, the contents of the proposal of the selected contractor will become contractual obligations of the Contractor if a contract among the Commission, Utility and the successful contractor is entered. Notwithstanding anything herein to the contrary, if this RFP and/or any proposal conflicts with the terms and conditions of the fully executed and approved written audit contract from the Issuing Office and agreed to by and among the Commission, the Utility and the successful bidder, the following order of precedence shall apply: 1. audit contract; 2. RFP; and 3. proposal.

If the Issuing Office selects the Offeror's proposal for award, the contents of the selected Offeror's proposal will become, except to the extent the contents are changed through Best and Final Offers or negotiations, contractual obligations. Pursuant to the Pennsylvania *Right-to-Know Law*, Per Section 106 (b)(1) of the *Commonwealth Procurement Code*, 62 Pa. C.S. § 106 (b)(1), all proposals will be public records, except for parts of the proposals that show a bidder's financial information (such as tax records).

Each Offeror submitting a proposal specifically waives any right to withdraw or modify it, except that the Offeror may withdraw its proposal by written notice received at the Issuing Office's address for proposal delivery prior to the exact hour and date specified for proposal receipt. An Offeror or its authorized representative may withdraw its proposal in person prior to the exact hour and date set for proposal receipt, provided the withdrawing person provides appropriate identification and signs a receipt for the proposal. An Offeror may modify its submitted proposal prior to the exact hour and date set for proposal receipt only by submitting a new sealed proposal or sealed modification which complies with the RFP requirements.

The proposal should set forth broadly, but concisely, the areas that will be reviewed in response to the requirements in Part IV of this RFP. It should be specifically tailored to the areas undergoing the review and should be in sufficient depth to afford the Commission a thorough understanding of your study plan.

All work is to be done in a professional manner in accordance with the United States General Accounting Office's *Standards for Audit of Government Organizations, Programs, Activities, and Functions*, as applicable to public utilities, with audit emphasis on issues of management economy, efficiency and effectiveness; the National Association of Regulatory Utility Commissioners' *Consultant Standards and Ethics for the Performance of Management Analysis*; and the American Institute of Certified Public Accountants' *Statement on Standards for Consulting Services*. This must be addressed in the proposal.

**I-13. Small Diverse Business Information.** The Issuing Office encourages participation by small diverse businesses as prime contractors, and encourages all prime contractors to make a significant commitment to use small diverse businesses as subcontractors and suppliers.

A Small Diverse Business is a DGS-verified minority-owned business, woman-owned business, veteran-owned business or service-disabled veteran-owned business.

A small business is a business in the United States which is independently owned, not dominant in its field of operation, employs no more than 100 full-time or full-time equivalent employees, and earns less than \$7 million in gross annual revenues for building design, \$20 million in gross annual revenues for sales and services and \$25

million in gross annual revenues for those businesses in the information technology sales or service business.

Questions regarding this Program can be directed to:

Department of General Services  
Bureau of Small Business Opportunities  
Room 611, North Office Building  
Harrisburg, PA 17125  
Phone: (717) 783-3119  
Fax: (717) 787-7052  
Email: [gs-bsbo@pa.gov](mailto:gs-bsbo@pa.gov)  
Website: [www.dgs.state.pa.us](http://www.dgs.state.pa.us)

The Department's directory of BSBO-verified minority, women, veteran and service disabled veteran-owned businesses can be accessed from: [Searching for Small Diverse Businesses](#).

**I-14. PRIME CONTRACTOR RESPONSIBILITIES.** The prime contractor will be required to assume responsibility for all services offered in its proposal including those of any subcontractors. Further, the Commission and Utility will consider the prime contractor to be the sole point of contact with regard to contractual matters.

**I-15. ECONOMY OF PREPARATION.** The proposal should be a straight-forward, concise description of the Offeror's ability to meet the requirements of the RFP.

**I-16. ALTERNATE PROPOSALS.** The Issuing Office has identified the basic approach to meeting its requirements, allowing Offerors to be creative and propose their best solution to meeting these requirements. The Issuing Office will not accept alternate proposals.

**I-17. DISCUSSIONS FOR CLARIFICATION.** Offerors who submit a proposal may be required to make an oral or written clarification of their proposal to the Commission's Evaluation Committee to ensure thorough mutual understanding and Offeror responsiveness to the solicitation requirements. The Issuing Office will initiate requests for clarification.

**I-18. BEST AND FINAL OFFERS.**

- A. While not required, the Issuing Office reserves the right to conduct discussions with Offerors for the purpose of obtaining "best and final offers." To obtain best and final offers from Offerors, the Issuing Office may do one or more of the following, in any combination and order:

1. Schedule oral presentations;
  2. Request revised proposals; and
  3. Enter into pre-selection negotiations.
- B. The following Offerors will **not** be invited by the Issuing Office to submit a Best and Final Offer:
1. Those Offerors, which the Issuing Office has determined to be not responsible or whose proposals the Issuing Office has determined to be not responsive.
  2. Those Offerors whose score for their technical submittal of the proposal is less than 70% of the total amount of technical points allotted to the technical criterion.

The issuing office may further limit participation in the best and final offers process to those remaining responsible offerors which the Issuing Office has, within its discretion, determined to be within the top competitive range of responsive proposals.

- C. The Evaluation Criteria found in **Part III, Section III-4**, shall also be used to evaluate the Best and Final offers.

**I-19. COPIES OF PREVIOUS WORK.** Offerors who submit proposals must, as necessary, provide copies of recent previous relevant work products for review by the staff. These work products should be submitted at the same time as the proposal and may be redacted, as necessary, to preserve confidentiality.

**I-20. NEWS RELEASE.** Offerors shall not issue news releases, Internet postings, advertisements or any other public communications pertaining to this Project without prior written approval of the Issuing Office, and then only in coordination with the Issuing Office and the Company.

**I-21. RESTRICTION OF CONTACT.** From the issue date of this RFP until the Commission selects a proposal for award, the Issuing Officer is the sole point of contact concerning this RFP. Any violation of this condition may be cause for the Issuing Office to reject the offending Offeror's proposal. If the Issuing Office later discovers that the Offeror has engaged in any violations of this condition, the Issuing Office may reject the offending Offeror's proposal or rescind its contract award. Offerors must agree not to distribute any part of their proposals beyond the Issuing Office. An Offeror who shares

information contained in its proposal with other Commonwealth personnel and/or competing Offeror personnel may be disqualified.

## **I-22. DISCLOSURE OF PROPOSAL CONTENTS.**

a. Confidential Information. The Commonwealth is not requesting, and does not require, confidential proprietary information or trade secrets to be included as part of Proposers' submissions in order to evaluate proposals submitted in response to this RFP. Accordingly, except as provided herein, Proposers should not label proposal submissions as confidential or proprietary or trade secret protected. Any Proposer who determines that it must divulge such information as part of its proposal must submit the signed written statement described in subsection c. below and must additionally provide a redacted version of its proposal, which removes only the confidential proprietary information and trade secrets, for required public disclosure purposes.

b. Commonwealth Use. All material submitted with the proposal shall be considered the property of the Commonwealth of Pennsylvania and may be returned only at the Issuing Office's option. The Commonwealth has the right to use any or all ideas not protected by intellectual property rights that are presented in any proposal regardless of whether the proposal becomes part of a contract. Notwithstanding any Proposer copyright designations contained on proposals, the Commonwealth shall have the right to make copies and distribute proposals internally and to comply with public record or other disclosure requirements under the provisions of any Commonwealth or United States statute or regulation, or rule or order of any court of competent jurisdiction.

c. Public Disclosure. Public records requests for proposals are governed by and shall be handled in the following manner:

After the award of a contract pursuant to this RFP, all proposal submissions, including information in unsuccessful proposals, are subject to disclosure in response to a request for public records made under the Pennsylvania *Right-to-Know-Law*, 65 P.S. § 67.101, et seq. If a proposal submission contains confidential proprietary information or trade secrets, a signed written statement to this effect must be provided with the submission in accordance with 65 P.S. § 67.707(b) for the information to be considered exempt under 65 P.S. § 67.708(b)(11) from public records requests. Financial capability information submitted in response to Part II of this RFP is exempt from public records disclosure under 65 P.S. § 67.708(b)(26).

Proposers must designate all materials submitted to the Commission that are confidential or proprietary, or contain a trade secret, including financial information submitted to demonstrate the Proposer's economic capability (confidential information). Confidential information should be submitted in a separate document which is clearly marked as "confidential information" at the top of each page. A public version of such a

confidential document (i.e., a redacted version) should be submitted to the extent practicable and clearly marked as “public” at the top of each page. The Commission in its discretion may rely upon Proposers’ designation of such confidential information when responding to public requests for disclosure of information pursuant to the Pennsylvania *Right-to-Know Law*, 65 P.S. § 67.101 *et seq.*

In addition, the proposals will be discussed with the Utility on an informal basis. The Utility will be instructed to maintain strict confidentiality.

**I-23. DEBRIEFING CONFERENCES.** Offerors whose proposals are not selected will be notified of the name of the selected Offeror and given the opportunity to be debriefed. A request for debriefing will not alter the deadline for filing a Protest. The Issuing Office will schedule the time and location of the debriefing. The debriefing will not compare the Offeror with the other Offerors, other than the position of the Offeror’s proposal in relation to all other Offeror proposals. An Offeror’s exercise of the opportunity to be debriefed does not constitute the filing of a protest.

**I-24. TERM OF CONTRACT.** The term of the contract will commence on the Effective Date, which date shall be fixed by the Issuing Office after the contract has been fully executed by the Offeror, the Utility and the Commission and all approvals required by the Commonwealth contracting procedures have been obtained. The selected Offeror shall not start the performance of any work prior to the Effective Date of the contract and neither the Commission nor the Utility shall be liable to pay the selected Offeror for any service or work performed or expenses incurred before the Effective Date of the contract.

**I-25. COMMISSION PARTICIPATION.** A staff Project Officer will be designated by the Commission to coordinate the activities of the contractor with the Commission to insure satisfactory and timely performance of the contract when awarded. The Commission's Project Officer or his/her designate(s) will be the sole source of contact for the contractor in any discussions with the Commission.

The Commission's staff will take an active part in the Management Audit and the Offeror should be prepared to work with them throughout the course of the Management Audit. The Commission will rely upon its audit staff to answer various questions from time to time about the completed report and the management and operations of the Utility. It will be necessary, therefore, that the Commission's management audit staff be closely involved in the work of the contractor. This will include attending selected interviews, reviewing analytical procedures, and monitoring the Management Audit's progress as to scope, budget, work plans, time, etc. In any event, it is expected that the individual assigned to each task area will frequently discuss his/her progress informally and directly with the Commission's Project Officer or his/her designate(s). The Offeror's willingness to work with the Commission’s staff in the described manner should be explicitly stated in the proposal.

## **I-26. OFFEROR'S REPRESENTATIONS AND AUTHORIZATIONS.**

By submitting its proposal, each Offeror understands, represents, and acknowledges that:

- A. All of the Offeror's information and representations in the proposal are material and important, and the Issuing Office may rely upon the contents of the proposal in awarding the contract(s). The Commonwealth shall treat any misstatement, omission or misrepresentation as fraudulent concealment of the true facts relating to the Proposal submission, punishable pursuant to 18 Pa. C.S. § 4904.
- B. The Offeror has arrived at the price(s) and amounts in its proposal independently and without consultation, communication, or agreement with any other Offeror or potential offeror.
- C. The Offeror has not disclosed the price(s), the amount of the proposal, nor the approximate price(s) or amount(s) of its proposal to any other firm or person who is an Offeror or potential offeror for this RFP, and the Offeror shall not disclose any of these items on or before the proposal submission deadline specified in the Calendar of Events of this RFP.
- D. The Offeror has not attempted, nor will it attempt, to induce any firm or person to refrain from submitting a proposal on this contract, or to submit a proposal higher than this proposal, or to submit any intentionally high or noncompetitive proposal or other form of complementary proposal.
- E. The Offeror makes its proposal in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary or other noncompetitive proposal.
- F. To the best knowledge of the person signing the proposal for the Offeror, the Offeror, its affiliates, subsidiaries, officers, directors, and employees are not currently under investigation by any governmental agency and have not in the last **four** years been convicted or found liable for any act prohibited by State or Federal law in any jurisdiction, involving conspiracy or collusion with respect to bidding or proposing on any public contract, except as the Offeror has disclosed in its proposal.
- G. To the best of the knowledge of the person signing the proposal for the Offeror and except as the Offeror has otherwise disclosed in its proposal, the Offeror has no outstanding, delinquent obligations to the Commonwealth including, but not limited to, any state tax liability not being contested on appeal or other obligation of the Offeror that is owed to the Commonwealth.

- H. The Offeror is not currently under suspension or debarment by the Commonwealth, any other state or the federal government, and if the Offeror cannot so certify, then it shall submit along with its proposal a written explanation of why it cannot make such certification.
- I. The Offeror has not made, under separate contract with the Issuing Office, any recommendations to the Issuing Office concerning the need for the services described in its proposal or the specifications for the services described in the proposal.
- J. Each Offeror, by submitting its proposal, authorizes Commonwealth agencies to release to the Commonwealth information concerning the Offeror's Pennsylvania taxes, unemployment compensation and workers' compensation liabilities.
- K. Until the selected Offeror receives a fully executed and approved written contract from the Issuing Office, there is no legal and valid contract, in law or in equity, and the Offeror shall not begin to perform.

**I-27. NOTIFICATION OF SELECTION.** The Issuing Office will notify the selected Offeror of its selection for negotiation after the Commission has approved the Evaluation Committee's recommendation, taking into consideration all of the evaluation factors, the proposal that is the most advantageous to the Commission.

**I-28. RFP PROTEST PROCEDURE.** The RFP Protest Procedure is on the DGS website at <http://www.dgsweb.state.pa.us/comod/ProtestProcedures.doc>. A protest by a party not submitting a proposal must be filed within seven (7) calendar days after the protesting party knew or should have known of the facts giving rise to the protest, but no later than seven (7) days after the proposal submission deadline specified in the RFP Cover Letter. Offerors who submit a proposal may file a protest within seven (7) calendar days after the protesting Offeror knew or should have known of the facts giving rise to the protest. The date of filing is the date of receipt of the protest. A protest must be filed in writing with the Issuing Office as provided in Section I-11.

**I-29. USE OF ELECTRONIC VERSIONS OF THE RFP.** This RFP is being made available by electronic means. If an Offeror electronically accepts the RFP, the Offeror acknowledges and accepts full responsibility to insure that no changes are made to the RFP. In the event of a conflict between a version of the RFP in the Offeror's possession and the Issuing Office's version of the RFP, the Issuing Office's version shall govern.

**I-30. PAYMENT.** As provided in Section II.C of the Contract (Appendix C).

**I-31. KEY PERSONNEL.** Contractor agrees to notify the Commission at least 30 days in advance of a change in personnel used by the Contractor to perform Contract work, including changes in personnel at any subcontractors. Commission reserves the right to require Commission approval of changes in the Contractor's key personnel. Changes in key personnel should also include a transition period of appropriate length to ensure continuity of operations.

## **PART II**

### **INFORMATION REQUIRED FROM OFFERORS**

Offeror must submit their proposals in the format, including heading descriptions, outlined below. Prepare consecutively numbered pages with index tabs for each section outlined below. To be considered, the proposal must respond to all requirements in this part of the RFP. Any other information thought to be relevant, but not applicable to the enumerated categories, should be provided as an appendix to the proposal. All cost data relating to this proposal and all Disadvantaged Business cost data should be kept separate from and not included in the Technical Submittal. Each proposal shall consist of three (3) separately sealed submittals. The submittals are as follows:

- a) Technical Submittal, which includes the following: the technical portion of the proposal (10 copies), in response to Sections II-1 through II-6 and II-9 hereof, the Noncollusion Affidavit (1 copy) in response to Appendix A, and prior work samples (1 copy) in response to Section I-19 hereof;
- b) Small Diverse Business participation submittal, in response to Section II-7 hereof; and
- c) Cost Submittal (4 copies), in response to Section II-8 hereof.

The Issuing Office reserves the right to request additional information which, in the Issuing Office's opinion, is necessary to assure that the Offeror's competence, number of qualified employees, business organization, and financial resources are adequate to perform according to the contract.

The Issuing Office may make such investigations as deemed necessary to determine the ability of the Offeror to perform the work, and the Offeror shall furnish to the Issuing Office all such information and data for this purpose as requested by the Issuing Office. The Issuing Office reserves the right to reject any proposal if the evidence submitted by, or investigation of, such Offeror fails to satisfy the Issuing Office that such Offeror is properly qualified to carry out the obligations of the contract and to complete the work specified.

**II-1. STATEMENT OF THE PROBLEM.** State in succinct terms your understanding of the problem presented or services required by this RFP.

**II-2. MANAGEMENT SUMMARY.** Include a narrative description of the proposed effort and a list of the items to be delivered or services to be provided.

**II-3. WORK PLAN.** Task descriptions are to be the guide in your technical plan for accomplishing the work as it relates to Phase I and each Pre-Identified Area or Issue

of Phase II. The task descriptions should be in sufficient depth to afford the Commission a thorough understanding of your work plan. A written description of how you propose to document the audit trail must also be included (*See also* IV-3). Offerors are cautioned that their proposal may be rejected if their work plan does not include specific recommendations as to how each of the task descriptions is to be accomplished.

**II-4. PRIOR EXPERIENCE.** Submit a statement of similar management audits conducted in the previous five (5) years. This would also apply to a subcontractor if appropriate. Experience shown should be work done by individuals who will be assigned to this project as well as that of your company including work samples of management audit reports or similar project reports completed by your firm. Projects referred to should be identified and the name of the client shown, including the name, address and phone number of the responsible official of the client, company or agency who may be contacted.

**II-5. PERSONNEL.** Include the names of all personnel, including personnel employed by any subcontractors, – executive, professional, management analysts, systems analysts, auditors, staff consultants, subcontractors, etc., - that will be engaged in the work and the services they will perform. Include through a resume or similar document their education and specific experience/role(s) in auditing and management evaluations (especially for stationary utilities and focus areas of this Management Audit), and as an expert witness, must be included. In addition, personnel employed by the "finalist" shall be subject to personal interviews by Commission staff if requested. These interviews would be conducted at the Commission offices in Harrisburg prior to the final selection of a contractor.

**II-6. STATEMENT OF POTENTIAL CONFLICTS OF INTEREST.** The Offeror shall identify any relationships between itself or its employees and the Utility or its employees. This would include any work currently being performed by the Offeror or any work performed by the Offeror during the past five (5) years related to the Utility, including work performed in an adversarial proceeding. If there have been no such relationships, a statement to that effect is to be included in the proposal. The Offeror shall identify any relationships between itself and its employees and any Consumer Advocate agency or non-profit corporation involved in a proceeding with the Utility or its regulated affiliates. This would include any work currently being performed by the Offeror or any work performed by the Offeror during the past five (5) years, including work performed in an adversarial proceeding with the Utility or its regulated affiliates. If there have been no such relationships, a statement to that effect is to be included in the proposal. (*See also* III-5.)

## **II-7. SMALL DIVERSE BUSINESS PARTICIPATION SUBMITTAL.**

- A. To receive credit for being a Small Diverse Business or for subcontracting with a Small Diverse Business (including purchasing supplies and/or services through a purchase agreement), an Offeror must include proof of Small Diverse Business qualification in the Small Diverse Business participation submittal of the proposal, as indicated below:

A Small Diverse Business verified by BSBO as a Small Diverse Business must provide a photocopy of their verification letter.

- B. In addition to the above verification letter, the Offeror must include in the Small Diverse Business participation submittal of the proposal the following information:

1. ***All*** Offerors must include a numerical percentage which represents the total percentage of the work (as a percentage of the total cost in the Cost Submittal) to be performed by the Offeror and not by subcontractors and suppliers.
2. ***All*** Offerors must include a numerical percentage which represents the total percentage of the total cost in the Cost Submittal that the Offeror commits to paying to Small Diverse Businesses (SDBs) as subcontractors. To support its total percentage SDB subcontractor commitment, Offeror must also include:
  - a) The percentage and dollar amount of each subcontract commitment to a Small Diverse Business;
  - b) The name of each Small Diverse Business. The Offeror will not receive credit for stating that after the contract is awarded it will find a Small Diverse Business.
  - c) The services or supplies each Small Diverse Business will provide, including the timeframe for providing the services or supplies.
  - d) The location where each Small Diverse Business will perform services.
  - e) The timeframe for each Small Diverse Business to provide or deliver the goods or services.
  - f) A subcontract or letter of intent signed by the Offeror and the Small Diverse Business (SDB) for each SDB identified in the SDB Submittal. The subcontract or letter of intent must identify the specific work, goods or services the SDB will perform, how the work, goods or services relates to the project, and the specific timeframe during the term of the contract and any option/renewal periods when the work, goods or services will be performed or provided. In addition, the subcontract or letter of intent must identify the fixed percentage commitment and

associated estimated dollar value that each SDB will receive based on the total value of the initial term of the contract as provided in the Offeror's Cost Submittal. Attached is a letter of intent template which may be used to satisfy these requirements.

g) The name, address and telephone number of the primary contact person for each Small Diverse Business.

3. The total percentages and each SDB subcontractor commitment will become contractual obligations once the contract is fully executed.

4. The name and telephone number of the Offeror's project (contact) person for the Small Diverse Business information.

C. The Offeror is required to submit **two** copies of its Small Diverse Business participation submittal. The submittal shall be clearly identified as Small Diverse Business information and sealed in its own envelope, separate from the remainder of the proposal.

D. A Small Diverse Business can be included as a subcontractor with as many prime contractors as it chooses in separate proposals.

E. An Offeror that qualifies as a Small Diverse Business and submits a proposal as a prime contractor is not prohibited from being included as a subcontractor in separate proposals submitted by other Offerors.

**II-8. COST AND PRICE ANALYSIS.** The information requested in this section is required to support the reasonableness of your quotation and is for internal use. Part IV of the RFP provides a description of the work requirements for the diagnostic review and in-depth analyses. The proposed cost must be provided for each consultant by type of expense (including per hour billing rate) separately for their Phase I Diagnostic Review hours and each Phase II Pre-Identified Area or Issue listed in IV-2 of the RFP. **This portion of the proposal shall be clearly identified as the Cost Proposal and four (4) copies sealed in an envelope, separate from the remainder of the proposal.** Please refer to Section I-22 regarding confidential information. Offerors should direct in writing to the Issuing Office pursuant to **Part I, Section I-9**, of this RFP any questions about whether a cost or other component is included or applies. All Offerors will then have the benefit of the Issuing Office's written answer so that all proposals are submitted on the same basis. To facilitate our review of your cost proposal and to satisfy the requirements of this section, use the format below:

## PHASE I – DIAGNOSTIC REVIEW

### Personnel Costs: <sup>1</sup>

<u>Name &amp; Title</u>	<u>Hours</u>	<u>Rate per Hour</u>	<u>Dollars</u>
-----------------------------	--------------	--------------------------	----------------

<b>Subtotal</b>	_____		_____
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### Personnel Expenses: <sup>1</sup>

Hotel  
Per Diem  
Air Transportation  
Ground Transportation  
Miscellaneous Expenses

<b>Subtotal</b>			_____
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### Equipment: <sup>2</sup>

Personal Computers  
Printers  
Project Management & Communication Software

<b>Subtotal</b>			_____
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### Supplies & Materials: <sup>1</sup>

Word Processing  
Computer  
Copying  
Communication  
Miscellaneous

<b>Subtotal</b>			_____
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<b>Total Phase I Costs</b>			=====
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<sup>1</sup> Same procedure if any subcontractor(s) is to be used.

<sup>2</sup> Estimate – Not to exceed price. Actual billing to be at cost.

## PHASE II – PRE-IDENTIFIED AREAS OR ISSUES <sup>3</sup>

### Personnel Costs: <sup>1</sup>

<u>Name &amp; Title</u>	<u>Hours</u>	<u>Rate per Hour</u>	<u>Dollars</u>
-----------------------------	--------------	--------------------------	----------------

### **Subtotal**

### Personnel Expenses: <sup>1</sup>

Hotel  
Per Diem  
Air Transportation  
Ground Transportation  
Miscellaneous Expenses

### **Subtotal**

### Supplies & Materials: <sup>1</sup>

Word Processing  
Computer  
Copying  
Communication  
Miscellaneous

### **Subtotal**

### **Total Issue #1 Costs**

(Repeat for other areas or issues as applicable)

### **Total Phase II Costs** (Total for all Pre-Identified Areas or Issues)

## PHASE III – FOCUSED ANALYSIS

Total Phase I Costs

x 0.5

### **Total Phase III Costs** <sup>4</sup>

### **Total Management Audit Costs** (Total Phase I, Phase II, and Phase III Costs)

<sup>1</sup> Same procedure if any subcontractor(s) is to be used.

<sup>3</sup> All Phase II costs must be assigned to an individual area or issue.

<sup>4</sup> Phase III costs shall be 50% of the total costs allocated to Phase I (Diagnostic Review). After completion of the Diagnostic Review, a proposal including cost and price information, in similar format to Phases I and II, shall be submitted to demonstrate the cost benefit of proceeding with a focused analysis of areas or issues (*See also* IV-2).

**II-9. TIME ESTIMATES.** For each task in the Work Plan, estimate the elapsed time and indicate the number of staff hours required for completion. Include a Project Schedule type display, time related, showing each event. In addition, provide a schedule indicating the estimated staff hours each individual (project management or lead personnel, professional support personnel, and administrative support personnel) will spend on the various functions or task areas in Phase I and on each Pre-Identified Area or Issue in Phase II. **Note that the schedule of estimated staff hours each individual will spend on the various task areas must be included in the Technical Submittal as well as in the separately bound Cost Submittal.**

## **PART III**

### **CRITERIA FOR SELECTION**

**III-1. MANDATORY RESPONSIVENESS REQUIREMENTS.** To be eligible for selection, a proposal must be:

- a) Timely received from an Offeror; and
- b) Properly signed by the Offeror.

**III-2. TECHNICAL NONCONFORMING PROPOSALS.** The two (2) Mandatory Responsiveness Requirements set forth in **Section III-1** above (a-b) are the only RFP requirements that the Commonwealth will consider to be *non-waivable*. The Issuing Office reserves the right, in its sole discretion, to (1) waive any other technical or immaterial nonconformities in an Offeror's proposal, (2) allow the Offeror to cure the nonconformity, or (3) consider the nonconformity in the scoring of the Offeror's proposal.

**III-3. EVALUATION.** The Issuing Office has selected a committee of qualified personnel to review and evaluate timely submitted proposals. Independent of the committee, BSBO will evaluate the Small Diverse Business participation submittal and provide the Issuing Office with a rating for this component of each proposal. The Issuing Office will notify in writing of its selection for negotiation the responsible Offeror whose proposal is determined to be the most advantageous to the Commonwealth as determined by the Issuing Office after taking into consideration all of the evaluation factors.

**III-4. CRITERIA FOR SELECTION.** The following criteria will be used in evaluating each proposal. In order for a proposal to be considered for selection for best and final offers or selection for contract negotiations, the total score for the technical submittal of the proposal must be greater than or equal to 70% of the available technical points.

A. Technical: The Issuing Office has established the weight for the Technical criterion for this RFP as **50 %** of the total points. Evaluation will be based upon the following in order of importance:

- 1. **WORK PLAN.** Emphasis here is on the soundness of approach and reasonableness of the time allowances proposed. Evaluated under this criterion will be the techniques to be used for collecting and analyzing data; the sequence and relationships of major work steps; and methods of managing the Management Audit. Also considered in this category will be the Offeror's compliance with specific RFP requirements as well as its understanding of the Commission's work involved, and the need for project management controls and adequate quantification (and support for the

quantification), where possible, for all findings, conclusions, and recommendations.

2. **PROFESSIONAL PERSONNEL.** This refers to the competence and appropriate assignment of the project management or lead personnel, professional support personnel, and administrative support personnel who are proposed for each Phase I task and each Pre-Identified Area or Issue of Phase II. Qualifications of personnel will be measured by education and experience, with particular reference to experience on projects similar to that described in the RFP.
3. **PRIOR WORK.** This includes the ability of the Offeror to meet the terms of the RFP, especially the time constraint and the quality, relevancy and recency of projects completed by the Offeror. Technical expertise and operational auditing techniques, knowledge of the gas utility industry, and independence with respect to present and historical utility company relationships will be considered.

B. Cost: The Issuing Office has established the weight for the Cost criterion for this RFP as **30** % of the total points.

C. Small Diverse Business Participation:

BSBO has established the weight for the Small Diverse Business (SDB) participation criterion for this RFP as **20** % of the total points. Each SDB participation submittal will be rated for its approach to enhancing the utilization of SDBs in accordance with the below-listed priority ranking and subject to the following requirements:

1. A business submitting a proposal as a prime contractor must perform 60% of the total contract value to receive points for this criterion under any priority ranking.
2. To receive credit for an SDB subcontracting commitment, the SDB subcontractor must perform at least fifty percent (50%) of the work subcontracted to it.
3. A significant subcontracting commitment is a minimum of five percent (5%) of the total contract value.
4. A subcontracting commitment less than five percent (5%) of the total contract value is considered nominal and will receive reduced or no additional SDB points depending on the priority ranking.

**Priority Rank 1:** Proposals submitted by SDBs as prime offerors will receive 150 points. In addition, SDB prime offerors that have significant subcontracting commitments to additional SDBs may receive up to an additional 50 points (200 points total available).

Subcontracting commitments to additional SDBs are evaluated based on the proposal offering the highest total percentage SDB subcontracting commitment. All other Offerors will be scored in proportion to the highest total percentage SDB subcontracting commitment within this ranking. *See formula below.*

**Priority Rank 2:** Proposals submitted by SDBs as prime contractors, with no or nominal subcontracting commitments to additional SDBs, will receive 150 points.

**Priority Rank 3:** Proposals submitted by non-small diverse businesses as prime contractors, with significant subcontracting commitments to SDBs, will receive up to 100 points. Proposals submitted with nominal subcontracting commitments to SDBs will receive points equal to the percentage level of their total SDB subcontracting commitment.

SDB subcontracting commitments are evaluated based on the proposal offering the highest total percentage SDB subcontracting commitment. All other Offerors will be scored in proportion to the highest total percentage SDB subcontracting commitment within this ranking. *See formula below.*

**Priority Rank 4:** Proposals by non-small diverse businesses as prime contractors with no SDB subcontracting commitments shall receive no points under this criterion.

To the extent that there are multiple SDB Participation submittals in Priority Rank 1 and/or Priority Rank 3 that offer significant subcontracting commitments to SDBs, the proposal offering the highest total percentage SDB subcontracting commitment shall receive the highest score (or additional points) available in that Priority Rank category and the other proposal(s) in that category shall be scored in proportion to the highest total percentage SDB subcontracting commitment. Proportional scoring is determined by applying the following formula:

$$\frac{\text{SDB \% Being Scored}}{\text{Highest \% SDB Commitment}} \times \frac{\text{Points/Additional}}{\text{Points Available*}} = \text{SDB Points}$$

*Priority Rank 1 = 50 Additional Points Available*

*Priority Rank 3 = 100 Total Points Available*

Please refer to the following webpage for an illustrative chart which shows SDB scoring based on a hypothetical situation in which the Commonwealth receives proposals for each Priority Rank:

[http://www.portal.state.pa.us/portal/server.pt/community/rfp\\_scoring\\_formulas\\_overview/20124](http://www.portal.state.pa.us/portal/server.pt/community/rfp_scoring_formulas_overview/20124)

**III-5. POTENTIAL CONFLICTS OF INTEREST.** In order to ensure a completely independent review and provide maximum credibility to the resultant report, if the interested Offeror has performed similar work or financial audits for the Utility, the contractor must disclose this information to the Commission. Additionally, any work performed by the Offeror in relation to the Utility on behalf of another party, including work performed in an adversarial proceeding, must be disclosed. The Offeror is required to explain, in detail, the measures that will be taken to avoid any conflict of interest or appearance of impartiality that may arise as a consequence of this contract. The Issuing Office will determine, on a case-by-case basis, whether such prior activity creates an actual or potential conflict of interest that bars the Offeror's proposal from consideration. Moreover, the contractor selected will not be permitted to perform subsequent work for the Utility or any of its affiliates for a period of one year following completion of the Management Audit without the Commission's approval. In addition, the Commission may also review its potential conflict of interest findings with the Utility. The Utility shall have the right to perform its own conflict of interest investigation and report the results back to the Issuing Office prior to selection of the contractor. (*See also* II-6.)

**III-6. OFFEROR RESPONSIBILITY.** To be responsible, an Offeror must submit a responsive proposal and possess the capability to fully perform the contract requirements in all respects and the integrity and reliability to assure good faith performance of the contract.

In order for an Offeror to be considered responsible for this RFP and therefore eligible for selection for best and final offers or selection for contract negotiations:

- A. The total score for the technical submittal of the Offeror's proposal must be greater than or equal to **70%** of the **available technical points**.

Further, the Issuing Office will award a contract only to an Offeror determined to be responsible in accordance with the most current version of Commonwealth Management Directive 215.9, Contractor Responsibility Program.

**III-7. FINAL RANKING AND AWARD.**

- A. After any best and final offer process conducted, the Issuing Office will combine the evaluation committee's final technical scores, BSBO's final small diverse business participation scores, the final cost scores, in accordance with the relative weights assigned to these areas as set forth in this Part.

- B. The Issuing Office will rank responsible offerors according to the total overall score assigned to each, in descending order.
- C. The Issuing Office must select for contract negotiations the offeror with the highest overall score; PROVIDED, HOWEVER, THAT AN AWARD WILL NOT BE MADE TO AN OFFEROR WHOSE PROPOSAL RECEIVED THE LOWEST TECHNICAL SCORE AND HAD THE LOWEST COST SCORE OF THE RESPONSIVE PROPOSALS RECEIVED FROM RESPONSIBLE OFFERORS. IN THE EVENT SUCH A PROPOSAL ACHIEVES THE HIGHEST OVERALL SCORE, IT SHALL BE ELIMINATED FROM CONSIDERATION AND AWARD SHALL BE MADE TO THE OFFEROR WITH THE NEXT HIGHEST OVERALL SCORE.
- D. The Issuing Office has the discretion to reject all proposals or cancel the request for proposals, at any time prior to the time a contract is fully executed, when it is in the best interests of the Commonwealth. The reasons for the rejection or cancellation shall be made part of the contract file.

**PART IV**  
**WORK STATEMENT**

**IV-1. GENERAL OBJECTIVES.** The Commission seeks proposals for the performance of a Management Audit of the Utility designated in I-1. The objectives of this Management Audit include the determination of what improvements, if any, can be accomplished in the management and operations of the Utility pursuant to Section 522(b) of the Public Utility Code 66 Pa.C.S. §522(b). Specifically, it is intended that the Management Audit encourage economies, efficiencies or improvements which benefit the Utility and its ratepayers and identify which, if any, cost saving measures can be instituted. The ultimate purpose is to explore economically practical opportunities for giving ratepayers lower rates and/or better service.

Potential sale of PGW: It should be noted that on March 3, 2014, an agreement in principal for a sale of PGW was announced by the mayor; pending approvals from the City of Philadelphia and the Pennsylvania Public Utility Commission. The timeline for completion of this sale, if it is approved, is not certain. Consequently the Commission cannot predict the impact of the potential sale on the Management Audit, if any. Bidders should be aware that the Commission may seek to revise the scope of work by amending the contract, to reflect potential changes in the Commission audit requirements, if the sale is completed. If amendment of the contract is required due to completion of the sale during the Management Audit, the Commission will work with PGW and the contractor to amend the contract to reflect any needed changes in scope of work.

**IV-2. AUDIT PHASES.** The Management Audit will consist of two or three phases: a diagnostic review (Phase I), an in-depth analysis of Pre-Identified Areas or Issues (Phase II), and a potential focused analysis (Phase III) resulting from the diagnostic review.

**PHASE I – DIAGNOSTIC REVIEW.** The first phase will consist of a diagnostic review. This diagnostic review will assess the condition of each functional area or business unit against evaluative criteria or expected business practice. The review will be sufficient to determine if the appropriate management controls, systems and processes are in place to identify significant problems, if any, requiring additional focused analysis. Findings and recommendations will be rendered based on the work plans, data requests, analysis and interviews evaluating performance against the evaluative criteria or expected business practice. Interviews must be conducted not only with Company personnel but also with the Company's labor union(s) and other relevant external parties to obtain their input into the identification of the appropriate areas for detailed analysis. All recommendations should be quantified except where quantification is impossible.

**PHASE II- PRE-IDENTIFIED AREAS OR ISSUES.** The second phase of the Management Audit will consist of an in-depth analysis of the Pre-Identified Areas or Issues listed below. However, the Commission may eliminate any or all of these areas or issues prior to awarding the contract if the Commission determines that the proposed costs of analyzing them outweigh the benefits to be derived. The contract amount for the scope of work eliminated shall be removed accordingly. The work necessary for this component will be sufficient to make specific recommendations for change and will include projected costs and benefits resulting from the proposed changes.

### **PRE-IDENTIFIED AREAS OR ISSUES**

1. The Successful Contractor will assess Philadelphia Gas Works (PGW) governance policies, practices, procedures, and PGW's conformity with the spirit of the Sarbanes-Oxley Act of 2002. This assessment will, at a minimum, include a review of:

- The structure, function, and interrelationships of PGW senior management, the Philadelphia Facilities Management Corporation (PFMC) Board of Directors (Board), the City of Philadelphia, the Mayor, the City Council, and the Philadelphia Gas Commission (PGC). Determine if there are overlapping responsibilities between the PFMC and the PGC.
- The independence, backgrounds, and areas of expertise of the PFMC's Board of Directors' Audit Committee members.
- PGW's ethics and conflict of interest policies and enforcement.
- The specific levels of responsibility, decision making authority and lines of communication. Determine if sufficient responsibilities are assigned to the PFMC.
- Any efforts by PGW to voluntarily follow the corporate governance guidelines of the Securities and Exchange Commission and the Public Company Accounting Oversight Board.
- PGW's internal controls and risk management policies and procedures.
- Corporate culture and the Company's focus on safety.
- The process used to select the external audit firm, and the method and degree of communication between the external auditors and the Board's Audit Committee.
- Any plan or policies related to rotation of external auditors.

- Any policies related to the amount and type of non-audit services provided by the external audit firm and other audit firms, including the methodology used to approve this type of work.
  - The internal audit function's independence and functionality, and the frequency and extent of interaction with the Board's Audit Committee.
  - Any planned changes that may impact PGW's corporate governance.
  - Implementation and progress of PGW's Business Transformation Project; resulting operational improvements; and realized and/or projected savings related to Business Transformation initiatives.
2. The Successful Contractor will evaluate the effectiveness and efficiency of PGW's financial management function. This evaluation is to include, but not limited to, the following:
- An assessment of PGW's financial modeling capabilities and the adequacy of processes used for establishing, monitoring and revising capital and operating budgets and forecasts.
  - The cost effectiveness of PGW's current capital structure.
  - The reasonableness of PGW's annual payment to the City of Philadelphia, as well as any other transfer between PGW and any other municipal entities or organizations including the reimbursement of actual costs to PFMC incurred in managing PGW.
  - The management and effectiveness of interest rate swap agreements in use.
  - Cost controls associated with employee benefits; management of pension fund costs and unfunded liability levels; unfunded liability levels of the other post employee benefits (OPEB) account; compliance with its obligation to annually fund its OPEB; and management of the trust fund established in accordance with the Irrevocable Trust Fund Agreement dedicated for the sole benefit of the OPEB.
  - Cost effectiveness and management of the demand side management program and impact on utility operations.

3. The Successful Contractor will analyze the effectiveness of PGW's diversity and equal employment opportunity (EEO) programs and activities, to include state and federally-required filings. This evaluation is to include, but not limited to, an assessment of the following:

- The recent employment levels and trends in the mix of minority and women employees and the volumes and trends in purchases and contracting arrangements with minority, women and persons with disability-owned businesses.
- PGW's complement of minority and female employees as compared to its customer mix and labor market.
- The degree of PGW's conformity with the Commission's Policy Statement on Diversity at Major Jurisdictional Utility Companies at 52 Pa. Code § 69.801 – 69.809 and compliance with all other Commission orders and directives related to utilities' diversity efforts.
- The number of minority, female, and persons with disability-owned vendors with whom the Company contracts for goods and services reflective of the available vendors; and any programs, policies or procedures for achieving goals or objectives regarding purchases from these vendors.
- The effectiveness of PGW's recruiting, advertising, training, promotion and retention practices with respect to EEO.
- The effectiveness of the Company's internal procedures for addressing complaints from individuals who allege that they have been discriminated against due to their race, religion, age, national origin, sex, or disability.
- The adequacy of PGW's EEO plan (i.e., are the goals challenging, etc.) and how various levels of management are held accountable for achieving these goals.

4. The Successful Contractor will assess PGW's gas operations and related system reliability performance. This should include, but NOT be limited to, the following:

- A review and analysis of Gas Operations staffing levels relative to:
  - a) the trend of full-time equivalent employees (and contractors)
  - b) the age of gas operation employees by job category to identify future gaps in qualified personnel due to pending retirements, etc.
  - c) internal efforts to address future manpower requirements.

- A review of contractor oversight policies and procedures including verification of work performed; payment for services received, etc.
- A review and assessment of PGW's efforts to comply with the Distribution Integrity Management Program.
- A review of unaccounted for gas levels, cost impact, and the methodology used to tabulate and track unaccounted for gas levels and trends.
- Extent of PGW's leak detection efforts, leaks per mile, leak categorization, and leak backlog.
- A review of PGW's emergency preparedness specifically including its emergency response, business continuity, physical security and cyber security plans and compliance with the Commission's regulations at 52 Pa. Code § 101, including but not limited to, filing of annual self-certification forms.
- A review of PGW's LNG facilities to determine whether the Company has utilized its assets in the most optimal manner.
- A review and determination if gas leak emergency response times are reasonable and procedures for coordinating and conducting emergency gas and electric shut-offs in PGW's service territory.

5. The Successful Contractor will examine PGW's customer service, billing, and collection functions in detail. When evaluating PGW's customer service, billing, and collection policies and procedures, the Successful Contractor will consider all applicable Commission regulations in Title 52 of the Pennsylvania Code, including the changes that have occurred as a result of the state law known as Act 201 of 2004, codified as Chapter 14 of Title 66 of the Pennsylvania Consolidated Statutes (or Public Utility Code) or any subsequent updates to Act 201.

Among the areas or issues to be addressed in this examination are:

- Reasonableness of PGW's call center's overall performance and performance trends as compared to the rest of the industry, and the call center's staffing levels.
- Review of the operational, customer billing, and cost impacts of the soft-off program (i.e., procedure whereby a technician is not dispatched to "turn-off" the meter for a final read but rather the meter is monitored for unauthorized usage.)

- Review and assess customer complaint procedures, including the adequacy of PGW's practices for measuring customer complaints, and trends in PGW's consumer complaint rates, justified complaint rates and complaint response times.
- Review of PGW's accounts receivables and collection policies and procedures including but not limited to: aging of customer accounts and amounts of arrearages, procedures for reducing the number/amounts of uncollectible accounts, collections efforts and actual results, the cost effectiveness of its field collection procedures, levels of PGW's uncollectible account write-offs trends in 10-day termination notices, and service reconnections.
- Review the effectiveness of customer payment and customer assistance programs including: the use of budget billing, make-up bills, electronic fund transfer, Customer Assistance Program (CAP), Senior CAP, etc.
- Review and assess PGW's Landlord Cooperation Program (i.e., this program governs the process whereby 66 Pa.C.S. § 1414 permits PGW to place a lien against a landlord's property due to unpaid bills by a tenant).
- Review the effectiveness of PGW's meter replacement and testing program; Automatic Meter Reading (AMR) replacement schedule; and the effect on the accuracy of customer bills.
- Evaluate PGW's policies and procedures for minimizing and reducing theft of service or unauthorized usage.

**PHASE III – FOCUSED ANALYSIS.** The third phase of the Management Audit, if deemed necessary, would be an in-depth analysis of specific areas or issues resulting from the diagnostic review (i.e., Phase I). In order to initiate this phase of the audit, the consultant will be required to demonstrate to the Project Officer that proceeding with a focused analysis will lead to recommendations for providing better service, improving operations, or, in general, be cost beneficial. **This analysis will only be undertaken if the successful contractor has written approval from the Issuing Office to pursue specific areas or issues resulting from the diagnostic review.** The focused analysis will be sufficient to make specific recommendations for change and will include projected costs and benefits resulting from the proposed changes.

**IV-3. REPORTS AND PROJECT CONTROL.** Although the Management Audit will be paid for by the Utility, the contractor should realize that the Commission is the principal client. Consequently, there will be no direct reporting by the contractor to the Utility without prior Commission staff approval. It is necessary that the Commission

maintain control of this engagement and that it and the Utility be kept abreast of the audit progress. Therefore, periodic oral and written reports will be necessary in addition to the frequent informal contact between the consultant's staff and the Commission's staff. These reports, as well as other documentation required from the contractor, are described below:

Audit Trail/Working Papers – The contractor should have a working paper system in place (either automated or manual) that allows a reader of the audit report to track supporting documentation for any part of the report (statements of fact, findings, conclusions, recommendations). At a minimum, the working papers should identify the: (1) source of the information presented; (2) nature and extent of the work done and conclusions reached; and (3) appropriate cross references to an indexed copy of the report, bulk file items, and other working papers. This system should allow a Commission staff person to trace a statement in a sample finding report to the original source document (e.g., interview write-up, calculations, analysis, written observations, etc.).

Working papers, including appropriate supporting data, will be retained by the contractor for three (3) years following the release of the Final Report by the Commission. During this period, the working papers (hard copy and/or electronic) will be turned over to the Commission if requested. In addition, a duplicate electronic copy of the working papers and appropriate supporting data will be provided to the Project Officer.

Weekly Informal Reports – Each week, the contractor should report to the Commission staff electronically or by phone the interviews and site visits scheduled for the following week.

Monthly Written Status Reports – Based on the task plan submitted with the proposal, the monthly reports should consist of two parts:

1. General narrative briefly describing progress to date and outlining reasons for any discrepancies between the task plan schedule and progress to date. This narrative should also contain a statement indicating the status of the study in relation to time – ahead, behind, or on schedule.
2. Status sheet indicating actual hours logged by category (i.e., project manager, senior analyst or auditor, junior analyst or auditor, etc.), cost of materials and supplies, and other costs, showing percentage of each in relation to proposal costs.

Monthly reports should be in the hands of the Project Officer by the 5<sup>th</sup> working day following the month's end and shall be submitted for each month worked.

Monthly Oral Reports – Considering the number of projects underway, the Commission staff may not be able to work with the contractor continuously throughout the Management Audit. Therefore, the contractor may be required to present a detailed oral report. The presentation would be given by the senior consultant/auditor responsible for each task area. Generally, the Commission staff will schedule these updates on a monthly basis in Harrisburg.

Project Management Reports – For each pre-identified area or approved subject of a focused analysis, the contractor must submit a detailed outline for Commission review when 50% to 65% of the field work has been completed. For each task area listed in the contractor's proposal, a detailed outline must be submitted to the Commission for review when 65% of the field work for that task has been completed. The 35% holdback for each area is necessary to permit the Commission's Bureau of Audit staff to reallocate, where appropriate, the contractor's man-hours and dollars to assure successful completion of the Management Audit.

Automation – In order to manage this project efficiently, personal computers will be used by the contractor and the staff of the Issuing Office. The contractor should select the hardware and software necessary for project management, scheduling, and reporting. The software must be compatible with the Commission's network software (i.e., Microsoft Office) and be capable of handling project scheduling, weekly progress reporting, document tracking and retrieval, invoice auditing and routine project electronic mail functions between the contractor, the Commission's staff, and the Utility.

**IV-4. DEVELOPMENT OF FINAL REPORT.** The procedure to develop the Final Report will be completed in two steps. A detailed description of each step is listed below:

DRAFT REPORT – The draft report of each chapter, task area or issue, and the appendix will be sent to the Commission for review upon completion. The Commission staff will approve the release of the report sections by the contractor to the Utility for its review. This process will insure that material facts having an impact on the findings are not omitted. If the Utility wishes to submit written review comments, they should do so within fifteen (15) business days of receipt of the draft report sections to both the contractor and the Commission for review. A final consolidated draft will be prepared after the Utility has submitted all its written comments on the draft report. The Utility will submit any new comments to the Commission and the successful contractor within ten (10) business days of receipt of the consolidated draft. An exit conference will be held at the request of any of the parties, if deemed necessary.

FINAL REPORT – The Commission requires the Final Report to include the following, written in terminology that will be understandable to the various persons generally familiar with the subject areas:

1. Introduction which will include the objectives, scope and approach to the audit. No Executive Summary is to be included in the report.
2. Recommendations for immediate changes that management can institute involving potential cost savings, increased revenue, or other benefits. It will be necessary that recommendations be justified and accompanied by adequate backup information.

In providing adequate backup information for those recommendations involving cost savings or increased revenue, the successful contractor should include the following (as applicable) for a specific time period(s):

- Operating costs incurred before implementation of the recommendation.
- Operating costs to be incurred after implementation of the recommendation.
- Costs of implementing the recommendation.
- Savings after consideration of implementation costs.

Although the contractor's report should emphasize opportunities for improvement, findings of superior management and operating effectiveness are also encouraged to the extent that they can be documented.

3. An overall evaluation of each task or function reviewed using the Commission-established uniform set of criteria shown in Exhibit I.
4. A prioritization schedule which lists all recommendations.
5. A schedule summarizing dollar quantification of the contractor's findings.
6. The contractor will gather all the necessary data to complete Exhibit II, entitled "Supporting Financial and Operating Data and Statistics," and include it as an appendix to the Management Audit.
7. The contractor agrees that the Final Report will contain a provision in its preamble that will state that "the findings, conclusions, and recommendations contained in the Management Audit are the findings, conclusions, and

recommendations of the Contractor only, and, as such, are not necessarily agreed to by the Utility or the Commission."

**IV-5. REPORT COPIES.** The contractor shall provide 40 copies of the Final Report (including one unbound copy suitable for reproduction) to the Commission and 12 copies of the Final Report (including one unbound copy suitable for reproduction) to the Utility. The contractor shall also provide an electronic version of the Final Report that is compatible with the Commission's network software.

**IV-6. TESTIMONY.** The Contractor is required to stand behind its conclusions and recommendations by testifying and by aiding in the preparation of testimony by Commission staff, if necessary, in any future rate case or other proceeding before the Commission or for proceedings in other venues. The Contractor is required to provide factual support for its conclusions and recommendations in such testimony. The Contractor's staff involved in providing such testimony shall be compensated at the hourly rates indicated in the Proposal. These costs will be paid in accordance with the payment methods of the contract; however, those costs will be in addition to and billed separately from the base contract amount of the salary rates provided in the Contractor's Proposal.

**IV-7. SMALL DIVERSE BUSINESS PARTICIPATION.**

All contracts containing Small Diverse Business participation must also include a provision requiring the selected contractor to meet and maintain those commitments made to Small Diverse Businesses at the time of proposal submittal or contract negotiation, unless a change in the commitment is approved by the BSBO. All contracts containing Small Diverse Business participation must include a provision requiring Small Diverse Business subcontractors to perform at least **50%** of the subcontracted work.

The selected contractor's commitments to Small Diverse Businesses made at the time of proposal submittal or contract negotiation shall, to the extent so provided in the commitment, be maintained throughout the term of the contract and through any renewal or extension of the contract. Any proposed change must be submitted to BSBO, which will make a recommendation to the Contracting Officer regarding a course of action.

If a contract is assigned to another contractor, the new contractor must maintain the Small Diverse Business participation of the original contract.

The selected contractor shall complete the Prime Contractor's Quarterly Utilization Report (or similar type document containing the same information) and submit it to the contracting officer of the Issuing Office and BSBO within **10** workdays at the end of each quarter the contract is in force. This information will be used to determine the actual dollar amount paid to Small Diverse Business subcontractors and suppliers. Also, this

information will serve as a record of fulfillment of the commitment the selected contractor made and for which it received Small Diverse Business participation points. If there was no activity during the quarter then the form must be completed by stating “No activity in this quarter.”

NOTE: EQUAL EMPLOYMENT OPPORTUNITY AND CONTRACT COMPLIANCE STATEMENTS REFERRING TO COMPANY EQUAL EMPLOYMENT OPPORTUNITY POLICIES OR PAST CONTRACT COMPLIANCE PRACTICES DO NOT CONSTITUTE PROOF OF SMALL DIVERSE BUSINESS STATUS OR ENTITLE AN OFFEROR TO RECEIVE CREDIT FOR SMALL DIVERSE BUSINESS UTILIZATION.

## EVALUATIVE CRITERIA

The purpose of the Management Audit is to provide the Commission and the Utility with an objective evaluation of the state of the Utility's operation in each of the functional or task areas subject to the audit. In this respect, findings in each functional or task area must be placed in proper perspective in order to provide the Commission, Utility, and public with an objective evaluation.

To this end we have developed evaluative criteria to rate each function. This rating is an evaluation of each function's operating or performance level relative to its optimum as of the time of the Management Audit. The evaluation takes into account each utility's resources, requirements, constraints, and operating environment. In some areas comparative data is useful and can be used. For the most part, however, each rating is utility specific; i.e., the rating of one utility cannot be directly compared with that of another.

Following are the evaluative criteria:

- MEETS EXPECTED PERFORMANCE LEVEL
- MINOR IMPROVEMENT NECESSARY
- MODERATE IMPROVEMENT NECESSARY
- SIGNIFICANT IMPROVEMENT NECESSARY
- MAJOR IMPROVEMENT NECESSARY

## FUNCTIONAL EVALUATION SUMMARY

<u>Function or Task Area</u>	<u>Evaluative Ratings</u>					<u>Reference Chapter</u>
	<u>Meets Expected Performance Level</u>	<u>Minor Improvement Necessary</u>	<u>Moderate Improvement Necessary</u>	<u>Significant Improvement Necessary</u>	<u>Major Improvement Necessary</u>	

**Gas Utility Management Audit**  
**Supporting Financial and Operating Data and Statistics**

An appendix will be provided in the management audit which details the Company's financial performance and provides statistical data for the last five (5) years.

The successful contractor's appendix will be divided into two (2) sections.

Section I - The Company's Annual Data and Compound Growth Percentage by Category.

Section II - Comparative Analysis of the Company to a select group of appropriate gas utilities.

Categories of the data presented must include the following but will not be limited to these items alone:

- A. Total Net Plant in Service
- B. Sales Dollars and Sales Volume (MCF) by customer class
- C. Number of Customers by class (Year-end)
- D. Number of Employees (Year-end)
- E. Expenses delineated by account as follows:
  - 1. Distribution Expense
    - Operations (#870 - #881)
    - Maintenance (#885 - #894)
  - 2. Customer Account Expenses
    - Operation (#901 - #905)
  - 3. Customer Services and Information Expense
    - Operations (#907 - #910)
  - 4. Sales Expenses
    - Operations (#911 - #916)
  - 5. Administrative and General Expenses
    - Operations (#920 - #931)
    - Maintenance (#932)
- F. Miles of Distribution Lines and/or Transmission Lines.
- G. Performance ratios based on the above information. For example: Expenses per MCF, expense per thousand customers, and expenses per mile of distribution and/or transmission line.

## **INSTRUCTIONS FOR NONCOLLUSION AFFIDAVIT**

1. This Noncollusion Affidavit is material to any contract/purchase order awarded pursuant to this bid. According to section 4507 of Act 57 of May 15, 1998, 62 Pa. C.S. § 4507, governmental agencies may require Noncollusion Affidavits to be submitted with bids.

2. This Noncollusion Affidavit must be executed by the member, officer or employee of the bidder who makes the final decision on prices and the amount quoted in the bid.

3. Bid rigging and other efforts to restrain competition, and the making of false sworn statements in connection with the submission of bids are unlawful and may be subject to criminal prosecution. The person who signs the affidavit should examine it carefully before signing and assure himself or herself that each statement is true and accurate, making diligent inquiry, as necessary, of all other persons employed by or associated with the bidder with responsibilities for the preparation, approval or submission of the bid.

4. In the case of a bid submitted by a joint venture, each party to the venture must be identified in the bid documents, and an affidavit must be submitted separately on behalf of each party.

5. The term “complementary bid” as used in the affidavit has the meaning commonly associated with that term in the bidding process, and includes the knowing submission of bids higher than the bid of another firm, any intentionally high or noncompetitive bid, and any other form of bid submitted for the purpose of giving a false appearance of competition.

6. Failure to submit an affidavit with the bid proposal in compliance with these instructions may result in disqualification of the bid.

**NONCOLLUSION AFFIDAVIT**

Contract/Requisition No. \_\_\_\_\_

State of \_\_\_\_\_:

County of \_\_\_\_\_: s.s.

I state that I am \_\_\_\_\_ **(Title)** of \_\_\_\_\_ **(Name of Firm)** and that I am authorized to make this affidavit on behalf of my firm, and its owners, directors, and officers. I am the person responsible in my firm for the price(s) and the amount of this bid.

I state that:

(1) The price(s) and amount of this bid have been arrived at independently and without consultation, communication or agreement with any other contractor, bidder or potential bidder.

(2) Neither the price(s) nor the amount of this bid, and neither the approximate price(s) nor approximate amount of this bid, have been disclosed to any other firm or person who is a bidder or potential bidder, and they will not be disclosed before bid opening.

(3) No attempt has been made or will be made to induce any firm or person to refrain from bidding on this contract, or to submit a bid higher than this bid, or to submit any intentionally high or noncompetitive bid or other form of complementary bid.

(4) The bid of my firm is made in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary or other noncompetitive bid.

(5) \_\_\_\_\_ **(Name of Firm)**, its affiliates, subsidiaries, officers, directors, and employees are not currently under investigation by any governmental agency and have not in the last four years been convicted or found liable for any act prohibited by state or federal law in any jurisdiction, involving conspiracy or collusion with respect to bidding on any public contract, except as follows:

I state that \_\_\_\_\_ **(Name of Firm)** understands and acknowledges that the above representations are material and important, and will be relied on by \_\_\_\_\_ **(Name of Purchasing Agency)** in awarding the contract(s)/purchase order(s) for which this bid is submitted. I understand and my firm understands that any misstatement in this affidavit is and shall be treated as fraudulent concealment from the Purchasing Agency of the true facts relating to the submission of this bid.

\_\_\_\_\_  
(Signature)\_\_\_\_\_  
(Signatory's Name)\_\_\_\_\_  
(Signatory's Title)

SWORN TO AND SUBSCRIBED  
BEFORE ME THIS \_\_\_\_\_ DAY  
OF \_\_\_\_\_ 20\_\_\_\_

\_\_\_\_\_  
My Commission Expires \_\_\_\_\_\_\_\_\_\_  
Notary Public

**PROPOSAL COVER SHEET**  
**Stratified Management and Operations Audit of Philadelphia Gas Works**

**COMMONWEALTH OF PENNSYLVANIA**  
**Pennsylvania Public Utility Commission**  
**Audit Bureau**  
**RFP-PUC-2014-1**

**Enclosed in one package are three separately sealed submittals that constitute the proposal of the Proposer identified below for the above-referenced RFP:**

<b>Proposer Information:</b>	
Proposer Name	
Proposer Mailing Address	
Proposer Website	
Proposer Contact Person	
Contact Person's Phone	
Contact Person's Fax	
Contact Person's E-Mail	
Proposer Federal ID Number	

<b>Submittals Enclosed and Separately Sealed:</b>	
<input type="checkbox"/>	Technical Submittal
<input type="checkbox"/>	Disadvantaged Business Submittal
<input type="checkbox"/>	Cost Submittal

<b>Signature</b>	
Signature of an official authorized to bind the Proposer to the provisions contained in the Proposer's proposal:	
Printed Name	
Title	
Date	

**FAILURE TO COMPLETE, SIGN AND RETURN THIS FORM WITH THE PROPOSER'S PROPOSAL MAY RESULT IN THE REJECTION OF THE PROPOSER'S PROPOSAL**

**STRATIFIED MANAGEMENT  
AUDIT CONTRACT  
  
FOR A  
  
MANAGEMENT AND OPERATIONS AUDIT  
  
OF  
  
PHILADELPHIA GAS WORKS**

**ISSUING OFFICE  
  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**RFP-PUC-2014-1**

**DATE OF ISSUANCE**

## STRATIFIED MANAGEMENT AUDIT CONTRACT

This contract to perform a Stratified Management and Operations Audit (“Management Audit”) of Philadelphia Gas Works is entered into by \_\_\_\_\_ (“Consultant” or “Contractor”), Philadelphia Gas Works and Philadelphia Facilities Management Corporation, solely in its capacity as operator and manager of the City owned Philadelphia Gas Works, under and pursuant to an Agreement with the City of Philadelphia dated December 29, 1972, as amended (collectively “PGW”, “Company” or “Utility”), and the Pennsylvania Public Utility Commission (“Commission”). The Management Audit is being conducted pursuant to the Commission's statutory authority at 66 Pa. C.S. §§ 331, 501, 506, and 516.

### **I. Covenants of the Parties**

The parties to this contract agree and promise that:

A. Subject in all respects to the terms and conditions of this contract and to the duties and limitations contained in the statutory and common law of the Commonwealth of Pennsylvania, the Consultant shall perform the Management Audit for the Commission. The Management Audit shall be completed as outlined in and in accordance with the promises, warranties and representations contained in the Consultant’s Cost and Technical Proposal (“Proposal”) and the Request For Proposals (“RFP”). To the extent that they relate to the Consultant’s responsibilities hereunder, the Proposal and RFP are incorporated into the terms of this contract. The Consultant shall perform its obligations in a professional manner in accordance with the United States General Accounting Office's *Standards for Audit of Government Organizations, Programs, Activities, and Functions*, as applicable to public utilities, with audit emphasis on issues of management economy, efficiency and effectiveness; the National Association of Regulatory Utility Commissioners’ *Consultant Standards and Ethics for the Performance of Management Analysis*, and the American Institute of Certified Public Accountants’ *Statement on Standards for Consulting Services*.

B. The Utility shall cooperate with the authorized efforts of the Consultant and shall pay the Consultant promptly upon submission to it of invoices for payment as described below. Subject to the terms and conditions of this contract and the statutory and common law of Pennsylvania, the Utility shall make available to the Consultant all employees with the direct knowledge and data necessary for the Consultant to evaluate expeditiously and draw conclusions. Every effort shall be made by the parties to limit disruption to both the Utility’s ongoing operations and to the performance of the Consultant’s work plan contained in the Proposal and RFP.

C. The Commission by its agent, the Project Officer, as described below, shall have the right and opportunity to participate actively in conducting the Management Audit in cooperation with the Consultant and the Utility, and to this end shall have immediate access to all data, models, and other materials or information provided to the Consultant by the Utility except that the Consultant and the Utility may withhold such data, models,

materials, or information to which the Commission does not otherwise have a right of access or inspection. The Commission shall be advised if any data, models, materials, or information is being so designated and may contest such designation. In addition, the Commission by its agent, the Project Officer, shall approve the Consultant's invoices as is described in Part II. C. hereof.

## **II. Audit Procedures**

### **A. Commission's Project Officer/Utility Representative**

1. The Commission has designated **Porus Irani** in the Pennsylvania Public Utility Commission's Bureau of Audits, P.O. Box 3265, Harrisburg, Pennsylvania 17105-3265, telephone number (717) 787-7234, and email **pirani@pa.gov** (and/or his designated alternative) as its staff contact (Project Officer) for the Management Audit and has authorized him/her to act on behalf of the Commission under this contract except where noted herein. The Project Officer may appoint members of his/her staff to represent him/her in participating in the conduct of this Management Audit.

2. The Utility designates Nicholas Vaccarino (and/or his or her designated alternative) as the Utility Representative. All communications related to scope of work, cost, schedule, personnel, management, data and information requests, interview schedules, etc., of the Management Audit shall be directed to the Utility Representative. The Utility Representative shall be given advance notification of the identities of Commission and Consultant personnel who will be on the Utility premises and the dates of their visits to specific Utility facilities when possible.

3. The Project Officer and Utility Representative shall have primary responsibility and authority on behalf of the Commission and the Utility, respectively, to administer this contract and to agree upon procedures for coordinating the efforts of the Utility and the Consultant (however, amendments to this contract shall be made only as provided hereinafter in Part III. B.).

4. The parties agree to communicate fully with each other through the designated representatives and to keep each other informed of all pertinent matters and developments relating to the Management Audit.

5. The Consultant shall provide the Project Officer with reasonable notice of and opportunity to attend all meetings with the Utility in order to ensure that the Project Officer shall have adequate opportunity to accommodate his schedule without unduly delaying the progress of the project. If the Consultant wishes to conduct any aspect of the

Management Audit without providing an opportunity for the Project Officer to so participate, it must obtain the prior written approval of the Project Officer.

6. The Utility will provide an atmosphere conducive to the free flow of information between the Consultant and the Utility's employees. Any process which may inhibit employees from expressing their ideas, opinions or suggestions should be discouraged. Except for those limited circumstances where the information sought covers numerous task areas, interviews will be conducted on a one-on-one basis. Where the Consultant believes that it would be more effective to interview several individuals at once, this should be scheduled with the Project Officer and the Utility Representative.

7. The Utility will provide notice to all employees that a Management Audit is being conducted. This notice should inform the employees of their opportunity to provide input on a confidential basis regarding the management effectiveness and operating efficiency of the Company. The direct phone numbers of the Consultant and the Commission's Project Officer, as well as their mailing and e-mail addresses and fax numbers, should be included in the notice.

#### B. Project Review

1. After the Project Officer has reviewed the draft report, the Consultant may revise the report as deemed necessary by the Consultant. Thereafter, the Project Officer will authorize release of the draft report to the Utility.

2. The Utility shall have the opportunity to review the draft report after release has been authorized by the Project Officer. The Utility may submit written comments to the Consultant and the Project Officer with regard to any of the Consultant's findings, conclusions, and recommendations in the draft report. If the Utility wishes to submit written comments on the draft report, it should do so within fifteen (15) business days of the Utility's receipt of the draft report sections. Upon request, the Project Officer may approve an extension for the Utility's draft report comments.

3. After the Utility has submitted its written comments on the draft report to the Project Officer and the Consultant, a final consolidated draft will be prepared. The Utility shall have the opportunity to review the final consolidated draft report after release has been authorized by the Project Officer. The Utility may submit written comments to the Consultant and the Project Officer with regard to any of the Consultant's findings, conclusions, and recommendations in the final consolidated draft report. If the Utility wishes to submit written comments, it should do so within ten (10) business days of the Utility's receipt of the final consolidated draft report sections. Upon request, the Project Officer may approve an extension for the Utility's final consolidated draft report comments. An exit conference will be held at the request of any of the parties, if deemed necessary by any of the

parties. Every effort shall be made to limit the exit conference to a discussion of major issues that can be completed in approximately one-half day. The written comments of the Utility will not be contained in the Final Report unless deemed appropriate for inclusion by the Consultant.

4. The draft reports issued by the Consultant shall not be released, especially to any third party. For these purposes, the Utility's consultants, employees, officers and agents, and Commission staff, are not considered to be third parties and (i) the Utility can release the draft reports to its own consultants, employees, officers and agents with the understanding that such persons will treat the draft reports as proprietary and confidential, and (ii) the Commission can release the draft reports to its own staff with the understanding that such persons will treat the draft reports as proprietary and confidential.

5. The Consultant agrees that the Final Report will contain an opening provision that will state that "the findings, conclusions, and recommendations contained in the Management Audit are the findings, conclusions, and recommendations of the Consultant only and as such are not necessarily agreed to by the Utility or the Commission."

6. The Final Report of the Consultant, after review by the Project Officer, shall be submitted only by the Project Officer to the Utility or any other party.

7. The Final Report may be made public at the discretion of the Commission, subject to confidential and proprietary information protections of Utility-specific information and subject to 66 Pa.C.S. § 335(d).

#### C. Expenses and Payment

1. The Consultant shall submit an invoice to the Project Officer every month detailing its services and expenses, including dates when services were rendered, as categorized in the Proposal, for conducting the Management Audit.

2. The Project Officer shall have the right and opportunity to approve, in whole or in part, each invoice and then submit it to the Utility, which shall then make prompt payment directly to the Consultant within 30 days of its receipt of the Project Officer's written approval, of the amount of any invoice that has been approved for payment. The basis for the Project Officer's approval shall be a finding that the expenses are reasonable, necessary and correct and billed in accordance with the provisions of this contract. Such approval or payment may be withheld if the following items are not included in the invoice.

- a) a list of the individuals, by name and title, who have worked on the Management Audit during the invoice period;

- b) the hourly rates of these individuals as stated in the Proposal;
- c) the number of hours spent by each individual on the Management Audit;
- d) a listing by category of materials and supplies purchased during the invoice period;
- e) a list of transportation costs by each individual incurring transportation costs during the invoice period and the basis for calculating such costs; and
- f) the specific dates when services were rendered.

3. The approval of the Project Officer may also be withheld as to any costs that are not just, reasonable, or in conformity with costs in the Proposal.

4. The total amount paid the Consultant under this contract shall not exceed ~~\$xxx, xxx~~ (~~\$xxx,xxx~~ for Phase I, ~~\$xxx,xxx~~ for Phase II, and ~~\$xxx,xxx~~ for Phase III); except as noted below:

- a) If, after the draft report is released, the Utility comes forth with substantial quantities of new or additional information requiring significant review and analysis by the Consultant, additional reasonable billings, on an hourly basis, over and above the contracted amount may be allowed by the Project Officer. The Consultant shall bill all such fees on invoices separate from those specified in paragraph C-1 above and at the hourly rates specified in its Proposal. All such invoices shall be submitted to the Project Officer for approval before the invoices are sent to the Utility for payment.

(1) Prior to the Project Officer approving any such additional billing:

(a) the Consultant must thoroughly document:

- (i) that the subject upon which information is now being provided was generally discussed in an interview or included in a data request; and

- (ii) that the information, which is now being provided, is critical to the understanding of a particular task area that is the subject of the Consultant's report.
  - (b) the Utility must be given the opportunity to demonstrate that it provided complete responses to all requests for information and data from the Consultant.
  - (c) the Project Officer must consider the Consultant's staff hours available to complete the project.
- b) In the event that the Consultant is required to testify before the Commission in any contested litigation that results from the Management Audit findings and conclusions or from matters noted in "a" above, except for litigation resulting from a dispute regarding Consultant's billings, the reasonable costs of presenting the Management Audit findings and conclusions will be paid for by the Utility at the Consultant's standard hourly compensation rates specified in its Proposal. The tasks involved in effectively presenting the Management Audit findings and conclusions would typically include preparation of responses to interrogatories, review of utility witness testimony, consultation with staff attorneys, preparation of cross examination, preparation of direct testimony, review of any rebuttal testimony, preparation of surrebuttal testimony, and preparation of input to staff briefs. Notwithstanding anything to the contrary set forth herein, the Utility shall not be responsible for any costs whatsoever with regard to the provisions of testimony or any investigation by the Consultant that occurs more than four years following the issuance of the Final Report.

5. In any invoice, if the costs for any individual expenditure exceed corresponding costs in the Proposal by 10% or more, they will not be approved unless prior written approval for the expenditure has been obtained from the Project Officer. In no case, however, may the total contract cost be exceeded.

6. No expenditures will be reimbursed if they were incurred before the effective date of this contract.

7. The final 10% of the amount for each phase of the Management Audit as specified in C. 4 above, less any disputed amounts, will be paid in the following manner:

- 5% upon release of the draft report to the Utility.
- 5% upon receipt by the Utility and the Commission of the Final Report.

This does not apply to any amounts that may be billed under 4. a) above.

8. All charges for services and other costs charged by the Consultant are subject to review at any time by the Utility and the Commission.

### **III. Other Rights of Parties**

#### **A. Commission's Right to Disapprove Expenditures**

The Commission shall have the right to approve or disapprove invoice expenditures and may adjust payment to the Consultant for the amount of any disapproved expenditure. The Consultant will not be paid for any cost incurred for services not in compliance with the terms of this contract. Nothing herein shall preclude the Utility from questioning the reasonableness or propriety of any invoice, or any portion of an invoice, submitted by the Consultant, prior to payment of the same.

#### **B. Commission's Right to Make Amendments and Changes to Contract**

Subject to the terms and conditions of this contract and to the statutory and common law of the Commonwealth of Pennsylvania, the Commission shall have the right to make changes in the Statement of Work in the Proposal, provided that any such changes are within the general scope of the Statement of Work, that payment for work performed under such changes shall be made pursuant to the Proposal, and that the total cost of this contract is not exceeded. Approval of the Utility for such changes shall not be required; however, prior to making any such change the Commission will consult with the Utility.

#### **C. Confidentiality**

1. The parties recognize that it will be necessary for the Consultant to review certain proprietary information of the Utility in order to complete the Management Audit. Accordingly, the Consultant, the Utility, and the Commission have executed a Nondisclosure Agreement that is attached hereto as Appendix D and incorporated by reference.

2. The executed contract, the selected proposal, and the Final Report may be released by the Commission, subject to confidentiality restrictions and restrictions as set forth in Section II.B.7 and the Nondisclosure Agreement (Appendix D hereto), without notification to the Consultant or the Utility. Any information that is not otherwise public will be released only after consent of the Consultant and the Utility, except that upon completion of the

Management Audit, the Commission shall have the right to release any information concerning this Management Audit, except as otherwise precluded by law, this contract or the Nondisclosure Agreement (Appendix D hereto).

3. If the release is to the media, the Commission agrees to inform the Utility prior to such release and to provide a copy of the release to the Utility.

4. No release of any information concerning the Management Audit other than the existence and nature of the investigation may be made by the Consultant or the Utility without the prior written approval of the Project Officer. This limitation shall not apply to the Utility after release of information contained in the Management Audit by the Commission.

#### D. Termination

The Commission reserves the right to terminate this contract with thirty (30) days' notice to the Consultant and the Utility if the Consultant's performance is unsatisfactory and not in keeping with the Proposal and the RFP, or for any breach of the terms contained herein. This provision shall not be construed as a limitation on other remedies for breach of this contract by the Consultant.

### **IV. Other Agreements by the Parties**

#### A. Non-Discrimination Clause

During the term of this contract, as it affects any individual employed under this contract, the Consultant agrees as follows:

1. The Consultant shall not discriminate against an applicant for employment, any independent contractor, any socially/economically restricted business or any other person because of gender identity, sexual orientation, race, color, religious creed, ancestry, national origin, age, or disability.

2. The Consultant shall take affirmative action to ensure that applicants are employed and that employees or agents are treated fairly during employment, without regard to their gender identity, sexual orientation, race, color, religious creed, ancestry, national origin, age, or disability. Such affirmative action shall include, but is not limited to the following: employment upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection of training.

B. Status of Consultant

The parties hereto agree that the Consultant and any agents and employees of the Consultant shall act, in the performance of this contract, in an independent capacity and not as officers, employees or agents of the Commission or the Utility.

C. Interest of Consultant

The Consultant warrants that it presently has no interest and promises that it shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. The Consultant agrees that in the performance of this contract, it shall not knowingly employ any person having such interest. The Consultant further certifies that no member of the board of the Consultant or any of its officers or directors have such an adverse interest. Consultant personnel who perform the services are employees of the Consultant (or its subcontractors) and the Consultant will be solely responsible for payment of compensation to such persons. The Consultant agrees to indemnify and hold harmless the Commission, Philadelphia Gas Works, Philadelphia Facilities Management Corporation, and the City of Philadelphia, and each of their respective officers, for any claim asserted against the Commission, Philadelphia Gas Works, Philadelphia Facilities Management Corporation, the City of Philadelphia or their respective officers alleging that any of them is an employer, co-employer or joint employer of any Consultant personnel. The Consultant will assume full responsibility for payment of all federal, state, provincial and local taxes, withholding or contributions imposed or required under unemployment insurance, social security and income tax laws with respect to such persons. Should the Commission, Philadelphia Gas Works, Philadelphia Facilities Management Corporation, or the City of Philadelphia or any of their respective officers be required to pay any amount to a governmental agency for failure to withhold any amount as may be required by law, the Consultant agrees to indemnify the Commission, Philadelphia Gas Works, Philadelphia Facilities Management Corporation, and the City of Philadelphia and their respective officers for any amount so paid, including interest, penalties and fines. The Consultant is not an agent of the Commission, Philadelphia Gas Works, Philadelphia Facilities Management Corporation, or the City of Philadelphia and has no authority to represent the Commission, Philadelphia Gas Works, Philadelphia Facilities Management Corporation, or the City of Philadelphia as to matters, except as expressly authorized in this contract.

D. Disputes

All questions arising between the parties hereto respecting any matter pertaining to this contract or any part thereof or any breach of contract arising thereunder shall be referred to the Project Officer. Any dispute which cannot be settled by negotiations among the parties after submission to the Project Officer shall then be submitted to the Commission for

resolution. The provisions of this paragraph D shall not be construed to limit the remedies of the Consultant and the Utility for breach of this contract, nor shall it limit the Utility's right to appeal to the Commonwealth Court. This provision shall not be construed as an arbitration provision that provides the Commission with arbitration powers.

E. Conflicts Between Contract and Proposal

In the event of a conflict between the terms and provisions of the RFP, the Proposal and/or this contract, the following order of precedence shall apply: 1. contract; 2. RFP and 3. Proposal.

F. Integration Clause

This contract, together with its attachments, constitutes the entire agreement between the parties, subject to the provisions of paragraph "G. Amendments" below. No other agreements, whether oral or written, or outside conditions, warranties, or understandings regarding the subject matter of this contract shall be deemed to exist or bind any of the parties hereto.

G. Amendments

No amendment or modification changing the scope or terms of this contract shall have any force or effect unless it is in writing and signed by all parties.

H. Applicable Law

This contract shall be interpreted, construed, and governed by the laws of the Commonwealth of Pennsylvania.

I. Assignment and Delegation

Neither this contract nor any of its benefits or duties may be assigned or delegated by subcontract or otherwise, except for those subcontracts specifically identified in this contract, without prior written approval by the Project Officer, who shall first consult with the Utility. Any subcontract shall contain all of the provisions of this contract.

J. Severability

If any provision of this contract is invalid or inconsistent with law, the remainder of the contract shall not be affected thereby.

K. Non-Waiver

No provision of this contract can be waived by any party unless made in writing and signed by the party against whom waiver is sought; nor shall the failure by any party to, at any time or on multiple occasions, require performance of any provision hereof be construed as a waiver of future enforcement thereof; nor shall waiver by any party of any breach hereof be construed as a waiver of any future breach.

L. Time of the Essence

Time is of the essence in this contract and any failure to perform any of the terms hereof in the time and manner specified shall be deemed a material breach of this contract.

M. Effective Dates

The effective date of this contract shall be fixed by the Issuing Office after the contract has been fully executed by the Offeror, the Utility and by the Commission and all approvals required by the Commonwealth contracting procedures have been obtained. All services must be completed within ## weeks after the effective date, unless the Project Officer and Consultant shall agree in writing to an extension at no additional cost.

N. Sales and Use Tax

PGW is not subject to federal, state or local sales or use taxes or federal excise tax. The Consultant hereby assigns to PGW all of its right, title and interest in any sales or use tax which may be refunded as a result of any materials purchased in connection with this contract and unless directed by PGW, Consultant shall not file a claim for any sales or use tax refund subject to this assignment. Consultant authorizes PGW, in its own name or the name of Consultant, to file a claim for a refund of any sales or use tax subject to this assignment.

O. Insurance

During the performance of the work covered by this contract, the Consultant shall procure and maintain, at its sole cost and expense with no additional cost to the Utility, insurance with companies that have an A. M. Best's rating of not less than A- and acceptable to the Utility, coverage limits of not less than stipulated below:

1. Workers' Compensation Insurance as required by statute.
2. Employer's Liability coverage is to be carried with minimum limits of \$500,000 each accident/\$500,000 disease-policy limit/\$500,000 disease-each employee.
3. Commercial General Liability Insurance with limits of not less than \$1,000,000 Each Occurrence; \$1,000,000 General Aggregate; \$1,000,000 Products/Completed Operations and \$1,000,000 Personal/Advertising Injury. The policy shall also cover liability arising from Blanket Contractual, Broad Form Property Damage, liability assumed under an insured contract (including the tort liability of another assumed in a business contract) and Personal Injury (coverage for discrimination, defamation, harassment, malicious prosecution, slander and mental anguish). ISO endorsement CG 21 39 10 93 (Contractual Liability Limitation) shall not apply to this contract. This insurance shall be excess over any other insurance, whether primary, excess, contingent, or on any other basis, that is available to the contractor or its subcontractor covering liability for damages because of Bodily Injury or Property Damage for which the contractor has been included as an Additional Insured.
4. Commercial Automobile Liability Insurance covering all owned, non-owned and hired vehicles with limits of not less than \$1,000,000 Combined Single Limit for Bodily Injury and Property Damage. Such policy must contain a "Severability of Interests" clause.
5. Excess/Umbrella Liability Insurance with limits of not less than \$2,000,000 in any one claim or occurrence. Coverage shall include, but not be limited to, coverage provided by any underlying insurance. Underlying insurance shall include all liability coverage required by this contract except Professional Liability as outlined below.
6. Employment Practices Liability Insurance with limits (including defense costs) of not less than \$2,000,000 in any one claim or occurrence. Policy shall include Third Party Liability coverage. Coverage can be written on a stand-alone form or in a combined coverage format. Under an occurrence form, coverage required shall be maintained in full force and effect under the policy for the duration of the contract. Under a claims made form, should an Extended Discovery Period or "tail" coverage be required in the event coverage is terminated, such coverage must be maintained for a period of not less than one (1) year.

7. Professional Liability Errors & Omissions coverage with limits of not less than \$2,000,000, with a deductible not to exceed \$50,000. Errors & Omissions coverage shall be applicable to any occurrence arising out of the performance of services required under the contract. Coverage under an occurrence form shall be maintained in full force and effect under the policy during the contract period. Under the policy's claims made form, continuous coverage is required. Should an Extended Discovery Period or "tail" coverage be required in the event coverage is terminated, such coverage must be maintained for a period of not less than three (3) years.

8. Fidelity/Blanket Crime Insurance with an Employee Dishonesty limit of not less than \$5,000,000 shall be submitted to the Utility prior to the commencement of services. Consultant shall maintain Third Party (includes money, securities, client's property and other properties) coverage under the Crime policy.

Consultant's insurance coverage shall be primary insurance as respects the Commission, Philadelphia Gas Works, Philadelphia Facilities Management Corporation and the City of Philadelphia and each of their respective officers, employees, directors, boards, subcontractors and agents. Any insurance maintained by the Utility will be excess and non-contributory.

The Commission, Philadelphia Gas Works, Philadelphia Facilities Management Corporation and the City of Philadelphia and each of their respective officers, employees, directors, boards, subcontractors and agents shall be included as Additional Insured on the policies referred to in 3, 4 and 5 above. Copies of the actual Additional Insured Endorsements are required.

All certificates and policies shall contain a provision that coverage afforded will not be cancelled or materially altered until at least thirty (30) days prior written notice has been given to the Commission, Philadelphia Gas Works, Philadelphia Facilities Management Corporation and the City of Philadelphia and each of their respective officers, employees, directors, boards, subcontractors and agents.

A certificate of insurance evidencing all above coverage shall be filed with the Utility prior to the commencement of work.

It shall be the responsibility of the Consultant to ensure that all subcontractors carry insurance of not less than coverage and limits specified herein. Proper evidence of this compliance must be forwarded to the Utility prior to the inception of any work by subcontractor.

Renewal certificates and policies, as required, shall be forwarded to the Utility for as long as Consultant performs the work as specified in this contract.

P. Indemnity

The Consultant agrees and undertakes to indemnify and hold harmless the Commission, Philadelphia Gas Works, Philadelphia Facilities Management Corporation, and the City of Philadelphia, and each of their respective officers, employees, directors, boards, subcontractors, and agents against all liabilities, claims, damages, causes of action, judgments, costs and expenses, including attorneys' fees, arising out of or in any way resulting from the Consultant's performance under this contract, including but not limited to personal injury or property damage, and including but not limited to injury or damage to the person or property (including loss of data) of the Commission, Philadelphia Gas Works, Philadelphia Facilities Management Corporation, the City of Philadelphia or the Consultant, or their respective officers, agents, employees, directors, boards, or subcontractors, and shall, at the request of the indemnified party, defend, at Consultant's sole expense, any and all actions brought against the Commission, Philadelphia Gas Works, Philadelphia Facilities Management Corporation, the City of Philadelphia, and each of their respective officers, employees, directors, boards, commissions, and agents based upon any such claims or demands.

Q. LIMITATION OF LIABILITY

**IN NO EVENT, WHETHER BASED ON CONTRACT, INDEMNITY, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, SHALL THE COMMISSION, PHILADELPHIA GAS WORKS, PHILADELPHIA FACILITIES MANAGEMENT CORPORATION, THE CITY OF PHILADELPHIA, AND EACH OF THEIR RESPECTIVE OFFICERS, EMPLOYEES, DIRECTORS, BOARDS, SUBCONTRACTORS, AND AGENTS BE LIABLE TO THE CONSULTANT FOR SPECIAL INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES WHATSOEVER INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS OR REVENUE OR COST OF CAPITAL.**

This Section IV.Q. should not be deemed to rescind the Utility's obligation to timely pay Commission approved invoices pursuant to Section II.C.2 of this contract, provided however, that in no event shall the Utility be liable for the types of damages set forth in this Section IV.Q whether related to payment of invoices or otherwise.

R. Final Report Copies

The Consultant shall provide 40 copies of the Final Report (including one unbound copy suitable for reproduction) to the Commission and 12 copies of the Final Report (including one unbound copy suitable for reproduction) to the Utility. The Consultant shall also provide an electronic version of the Final Report that is compatible with the Commission's and the Utility's network software.

S. Immunity

Nothing contained in this contract shall be construed as a waiver of the immunity of the Commonwealth or the Commission against suit.

T. Potential Conflicts of Interest

In order to insure a completely independent audit and provide maximum credibility to the resultant report, the consulting firm selected will not be permitted to perform subsequent work for the Utility for a period of one year following completion of the audit without the approval of the Commission.

U. Jurisdiction

It is understood and agreed that this Management Audit shall be limited to matters within the jurisdiction of the Commission.

V. Gratuities

The Consultant, on behalf of itself and its employees, agents, and subcontractors, warrants that no gratuity, payment, gift, service or other item of value has been or will be offered to any Utility or Commission employee or to any family member or designee, associate or agent of any Utility or Commission employee. The tendering of any such gratuity, payment, gift, service or item of value to a Utility or Commission employee or to any family member or designee, associate or agent of any Utility or Commission employee, is an act of default and shall give rise to an immediate right of termination by the Commission of this contract. In addition, the Consultant will be liable to the Commission for any damages, direct, indirect or consequential, as a result of the tendering of any such gratuity, payment, gift, service or item of value to a Utility or Commission employee or to any family member or designee, associate or agent of any Utility or Commission employee, whether such action is caused by the Consultant, its employees, agents or subcontractors.

W. Consultant Representations and Covenants.

Consultant makes the following representations and covenants which shall continue during the term of this Agreement:

1. Certificate of Non-Indebtedness. Consultant hereby certifies and represents that Consultant and Consultant's parent company(ies) and subsidiary(ies) are not

currently indebted to the City of Philadelphia, Philadelphia Gas Works or Philadelphia Facilities Management Corporation (for purposes of this Section W.1, collectively the "City"), and will not at any time during the term of this contract (including any extensions) be indebted to the City, for or on account of any delinquent taxes (including, but not limited to, taxes collected by the City on behalf of the School District of Philadelphia), liens, judgments, fees or other debts for which no written agreement or payment plan satisfactory to the City has been established. In addition to any other rights or remedies available to Utility at law or in equity, Consultant acknowledges that upon any breach or failure to conform to this certification Utility shall have the right to, and may, at the option of Utility, withhold payments otherwise due to Consultant, and, if such breach or failure is not resolved to Utility's satisfaction within a reasonable time frame as specified by Utility in writing, offset any such indebtedness against said payments and/or the termination of this contract for default (in which case Consultant shall be liable for all excess costs and other damages including reasonable attorney's fees resulting from the termination).

2. Business Privilege License. If Consultant is a "business" as defined in The Philadelphia Code, Section 19-2601, Consultant has a valid business privilege license, issued by the City of Philadelphia's Department of Licenses and Inspections, to do business in the City of Philadelphia.
3. Subcontractor Licensure; Non-Delinquency. Each subcontractor (if any) holds a valid current business privilege license to do business in Philadelphia, if required by applicable law.

X. PFMC Liability

It is understood and agreed that in entering into this contract, PFMC does so solely in its capacity as operator and manager of the municipally-owned Philadelphia Gas Works under the Agreement dated December 29, 1972 between PFMC and the City of Philadelphia, as amended from time to time, and not otherwise; and further, that any payments required to be made by PFMC as a result of or arising out of its entering into this contract shall be made solely from the revenues of the Philadelphia Gas Works.

Y. Contractor agrees to comply with the requirements of Appendices D, E, F, G, and H, which are hereby fully incorporated into this Contract by reference.

**IN WITNESS THEREOF**, intending to be legally bound, the Consultant, Utility, and the Commission, have caused this Contract to be approved and executed under their signatures with a duplicate copy being provided to each of the parties.

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(Consultant)

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(Date)

Philadelphia Gas Works by Philadelphia Facilities Management Corporation

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(Utility)

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(Date)

Pennsylvania Public Utility Commission

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Robert C. Gramola  
Director of Administration  
Pennsylvania Public Utility Commission

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(Date)

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Bohdan R. Pankiw  
Chief Counsel  
Pennsylvania Public Utility Commission

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(Date)

### **Nondisclosure Agreement**

Philadelphia Gas Works by Philadelphia Facilities Management Corporation, solely in its capacity as operator and manager of the City owned Philadelphia Gas Works, under and pursuant to an Agreement with the City of Philadelphia dated December 29, 1972, as amended (collectively "Utility"), the Pennsylvania Public Utility Commission ("Commission") and //4// ("Consultant"), and Consultant's authorized representatives, intending to be legally bound, hereby agree as follows:

1. As part of the Stratified Management and Operations Audit to be conducted pursuant to the Stratified Management Audit Contract, it may be necessary for the Consultant to review data, books, records, and documents of the Utility that are considered by the Utility to be confidential proprietary business information (proprietary information).

2. The proprietary information may include certain information of an affiliate of the Utility or other party providing information, which is contained within such books, records, and documents.

3. In order to safeguard more effectively the proprietary information, the Consultant will designate certain authorized representative(s) to receive and review the proprietary information submitted by the Utility or other entity. Said authorized representatives will agree to be bound by this Nondisclosure Agreement and will sign it prior to receiving any proprietary information and will furnish, upon request, to the Utility or other entity a signed copy of the Nondisclosure Agreement executed by such authorized representative(s). Proprietary information will not be accessible by anyone who has not signed the Nondisclosure Agreement.

4. With respect to proprietary information provided under this Agreement, the Consultant and its authorized representatives shall:

- (a) hold the proprietary information in confidence;
- (b) restrict disclosure of the proprietary information only to persons authorized under this Agreement (as identified in Paragraph 3) who have a need to know;
- (c) use the proprietary information solely in connection with the Consultant's work on the Management Audit;

- (d) except as provided in Paragraph 8 below, not disclose the proprietary information publicly or privately to any third party in any manner, unless such third party has signed this Nondisclosure Agreement; and
- (e) advise the Consultant's representatives of their obligation with respect to the proprietary information.

5. The Consultant may make proprietary information available to the Commission's Staff under this Agreement; provided, however, that in the event of disclosure, the Commission's Staff shall also be bound by the terms of this Appendix. Nothing in this Appendix shall be construed as preventing access by the Commission (outside the scope of this Management Audit) to the data, books, records, and documents of the Utility as permitted by the statutory and common law of the Commonwealth of Pennsylvania.

6. All proprietary information and copies made thereof provided to the Consultant and Commission's Staff must be returned to the Utility no later than three months beyond the finalization of the Consultant's Report or three months after the close of a proceeding directly resulting from the Management Audit, whichever is later.

7. After providing the Utility an opportunity to comment, either the Consultant or the Commission's Staff may assert at any time that any document claimed to be proprietary is in fact non-proprietary. Any disagreement as to the proprietary or non-proprietary nature of a particular document or information shall be resolved by action of the Commission.

8. Proprietary information that is provided to the Consultant and/or Commission Staff will be protected from disclosure as proprietary information under 66 Pa. C.S. §335(d) until such time as the Commission (or court of competent jurisdiction, if an appeal of a Commission determination is taken) rules that the documents are non-proprietary and, therefore, subject to public disclosure.

9. If the Utility wishes to seek additional measures of protection with respect to the specific proprietary data of a particularly sensitive nature or to claim that specific documents are subject to a privilege that precludes disclosure to any party, then it is incumbent upon the Utility to demonstrate that need to the Project Officer. In the event the Utility and the Project Officer are unable to agree, the Utility may seek a determination from the Commission.

10. The Consultant recognizes that the provisions of this Appendix are vitally important to the welfare of the Utility and other entities providing information pursuant to the Management Audit and that money damages may not be an adequate remedy for any violation by the Consultant thereof. Accordingly, in the event of any breach or violation by the Consultant of the provisions thereof, the Utility or other entity may

institute and maintain a proceeding to compel specific performance by the Consultant thereof or to issue an injunction restraining such breach or violation hereunder by the Consultant.

11. Nothing in this Appendix shall otherwise affect, abridge, increase, or decrease the statutory authority of the Commission to investigate or inspect the facilities and data, books, records, and documents of the Utility, or to examine records of the cost to the Utility's affiliates for providing services or furnishing property to the Utility (where applicable).

12. Nothing contained in this Appendix shall affect, abridge, increase, or decrease the ability of the Utility to appeal to the Commonwealth Court to protect its rights.

13. This Nondisclosure Agreement may be executed in counterpart.

IN WITNESS WHEREOF, intending to be legally bound, the Consultant, the Utility, and the Commission; have caused this Nondisclosure Agreement to be approved and executed under their signatures, as Appendix D to their Stratified Management Audit Contract, with a duplicate copy being provided to each of the parties.

by \_\_\_\_\_  
(Consultant) (Date)

by \_\_\_\_\_  
(Utility) (Date)

\_\_\_\_\_  
Robert C. Gramola  
Director of Administration  
Pennsylvania Public Utility Commission (Date)

\_\_\_\_\_  
Bohdan R. Pankiw  
Chief Counsel  
Pennsylvania Public Utility Commission (Date)

**APPENDIX E**  
**NONDISCRIMINATION/SEXUAL HARASSMENT CLAUSE**

During the term of this Contract, CONTRACTOR agrees as follows:

1. In the hiring of any employees for the manufacture of supplies, performance of work, or any other activity required under this Contract or any subcontract, CONTRACTOR, subcontractor, or any person acting on behalf of CONTRACTOR or subcontractor, shall not, by reason of gender, race, creed, or color, discriminate against any citizen of this PUC who is qualified and available to perform the work to which the employment relates.
2. Neither 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 this Contract on account of gender, race, creed, or color.
3. CONTRACTOR and each subcontractor 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. CONTRACTOR and each subcontractor 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 this Contract relates.
5. CONTRACTOR and each subcontractor shall, within the time periods requested by the PUC, furnish all necessary employment documents and records to and permit access to its books, records, and accounts by the PUC and the Department of General Services, for purposes of investigation to ascertain compliance with the provisions of this Nondiscrimination/Sexual Harassment Clause. If CONTRACTOR or subcontractor does not possess documents or records reflecting the necessary information requested, it shall furnish such information on reporting forms supplied by the PUC or the Department of General Services.
6. CONTRACTOR shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subcontract so that those provisions applicable to subcontractors will be binding upon each subcontractor.
7. The PUC may cancel or terminate this Contract, and all money due or to become due under this Contract may be forfeited for a violation of the terms and conditions of this Nondiscrimination/Sexual Harassment Clause. In addition, the PUC may proceed with debarment or suspension and may place CONTRACTOR in the Contractor Responsibility File.

## **APPENDIX F INTEGRITY PROVISIONS**

1. For purposes of these Integrity Provisions, the words “confidential information,” “consent,” “financial interest,” “gratuity,” and “CONTRACTOR” shall have the following definitions.

a. “Confidential information” means information that (1) is not already in the public domain; (2) is not available to the public upon request; (3) is not or does not become generally known to CONTRACTOR from a third party without an obligation to maintain its confidentiality; (4) has not become generally known to the public through an act or omission of Contractor; or (5) has not been independently developed by CONTRACTOR without the use of confidential information of the PUC.

b. “Consent” means written permission signed by a duly authorized officer or employee of the PUC, provided that where the material facts have been disclosed, in writing, by prequalification, bid, proposal, or contractual terms, the PUC shall be deemed to have consented by virtue of execution of this Contract.

c. “Financial Interest” means:

- (1) ownership of more than a 5% interest in any business; or
- (2) holding a position as an officer, director, trustee, partner, employee, or the like, or holding any position of management.

d. “Gratuity” means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind.

e. “Immediate family” means a spouse and any unemancipated child.

f. “CONTRACTOR” means the individual or entity that has entered into this Contract with the PUC, including directors, officers, partners, managers, key employees, and owners of more than a 5% interest.

g. “Political contribution” means any payment, gift, subscription, assessment, contract, payment for services, dues, loan, forbearance, advance or deposit of money or any valuable thing, to a candidate for public office or to a political committee, including but not limited to a political action committee, made for the purpose of influencing any election in the PUC of Pennsylvania or for paying debts incurred by or for a candidate or committee before or after any election.

2. CONTRACTOR shall maintain the highest standards of honesty and integrity in the performance of this Contract and shall take no action in violation of state or federal laws, regulations, or other requirements that govern contracting with the PUC.

3. CONTRACTOR shall be subject to the obligations of confidentiality with which lawyers must comply under the applicable Rules of Professional Conduct.

4. CONTRACTOR shall establish and implement a written business integrity policy, which includes, at a minimum, the requirements of these provisions as they relate to CONTRACTOR's employee activity with the PUC and PUC employees, and which is distributed and made known to all employees of CONTRACTOR.

5. CONTRACTOR, its affiliates, agents and employees shall not influence, or attempt to influence, any PUC employee to breach the standards of ethical conduct for PUC employees set forth in the *Public Official and Employees Ethics Act*, 65 Pa.C.S. §§1101 et seq.; the *State Adverse Interest Act*, 71 P.S. §776.1 et seq.; and the *Governor's Code of Conduct*, *Executive Order 1980-18*, 4 Pa. Code §7.151 et seq., or to breach any other state or federal law or regulation.

6. CONTRACTOR, its affiliates, agents and employees shall not, in connection with this or any other Contract with the PUC, directly or indirectly, offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for the decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty by any officer or employee of the PUC.

7. CONTRACTOR, its affiliates, agents and employees shall not, in connection with this or any other Contract with the PUC, directly or indirectly, offer, give, or agree or promise to give to anyone any gratuity for the benefit of or at the direction or request of any officer or employee of the PUC.

8. CONTRACTOR, its affiliates, agents and employees shall not offer, give, or agree or promise to give any gratuity to a PUC official or employee or to any other person, the acceptance of which would violate the *Governor's Code of Conduct*, *Executive Order 1980-18*, 4 Pa. Code §7.151 et seq. or any statute, regulation, statement of policy, management directive or any other published standard of the PUC.

9. Except with the consent of the PUC, neither CONTRACTOR nor anyone in privity with CONTRACTOR shall accept or agree to accept from, or give or agree to give to, any person, any gratuity from any person in connection with the performance of work under this Contract except as provided therein.

10. CONTRACTOR shall not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material on this project, unless the financial interest is disclosed to the PUC in writing and the Office of PUC consents to CONTRACTOR's financial interest no later than CONTRACTOR's submission of the contract signed by CONTRACTOR, and prior to PUC execution of the contract.

11. CONTRACTOR, its affiliates, agents and employees shall not disclose to others any information, documents, reports, data, or records provided to, or prepared by, CONTRACTOR under this Contract without the prior written approval of the PUC, except as required by the *Pennsylvania Right-to-Know Law*, 65 P.S. §§ 67.101-3104, or other applicable law or as otherwise provided in this Contract. Any information, documents, reports, data, or

records secured by CONTRACTOR from the PUC or a third party in connection with the performance of this Contract shall be kept confidential unless disclosure of such information is:

- a. Approved in writing by the PUC prior to its disclosure; or
- b. Directed by a court or other tribunal of competent jurisdiction unless the contract requires prior PUC approval; or
- c. Required for compliance with federal or state securities laws or the requirements of national securities exchanges; or
- d. Necessary for purposes of CONTRACTOR's internal assessment and review; or
- e. Deemed necessary by CONTRACTOR in any action to enforce the provisions of this Contract or to defend or prosecute claims by or against parties other than the PUC; or
- f. Permitted by the valid authorization of a third party to whom the information, documents, reports, data, or records pertain; or
- g. Otherwise required by law.

12. CONTRACTOR certifies that neither it nor any of its officers, directors, associates, partners, limited partners or individual owners has not been officially notified of, charged with, or convicted of any of the following and agrees to immediately notify the PUC in writing if and when it or any officer, director, associate, partner, limited partner or individual owner has been officially notified of, charged with, convicted of, or officially notified of a governmental determination of any of the following:

- a. Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property.
- b. Commission of fraud or a criminal offense or other improper conduct or knowledge of, approval of or acquiescence in such activities by CONTRACTOR or any affiliate, officer, director, associate, partner, limited partner, individual owner, or employee or other individual or entity associated with:
  - (1) obtaining;
  - (2) attempting to obtain; or
  - (3) performing a public contract or subcontract.

CONTRACTOR's acceptance of the benefits derived from the conduct shall be deemed evidence of such knowledge, approval or acquiescence.

- c. Violation of federal or state antitrust statutes.
- d. Violation of any federal or state law regulating campaign contributions.

- e. Violation of any federal or state environmental law.
- f. Violation of any federal or state law regulating hours of labor, minimum wage standards or prevailing wage standards; discrimination in wages; or child labor violations.
- g. Violation of the *Act of June 2, 1915 (P.L.736, No. 338)*, known as the *Workers' Compensation Act*, 77 P.S. 1 *et seq.*
- h. Violation of any federal or state law prohibiting discrimination in employment.
- i. Debarment by any agency or PUC of the federal government or by any other state.
- j. Any other crime involving moral turpitude or business honesty or integrity.

CONTRACTOR acknowledges that the PUC may, in its sole discretion, terminate the contract for cause upon such notification or when the PUC otherwise learns that CONTRACTOR has been officially notified, charged, or convicted.

13. CONTRACTOR must, (as required by *Section 1641* of the *Pennsylvania Election Code*) file a report of political contributions with the Secretary of the PUC on or before February 15 of the next calendar year. The report must include an itemized list of all political contributions known to CONTRACTOR by virtue of the knowledge possessed by every officer, director, associate, partner, limited partner, or individual owner that has been made by:

- a. Any officer, director, associate, partner, limited partner, individual owner or members of the immediate family when the contributions exceed an aggregate of one thousand dollars (\$1,000) by any individual during the preceding year; or
- b. Any employee or members of his immediate family whose political contribution exceeded one thousand dollars (\$1,000) during the preceding year.

To obtain a copy of the reporting form, CONTRACTOR shall contact the Bureau of Commissions, Elections and Legislation, Division of Campaign Finance and Lobbying Disclosure, Room 210, North Office Building, Harrisburg, PA 17120.

14. CONTRACTOR shall comply with requirements of the *Lobbying Disclosure Act*, 65 Pa.C.S. § 13A01 *et seq.*, and the regulations promulgated pursuant to that law. Actions by outside lobbyists on behalf of CONTRACTOR are not exempt and must be reported.

15. When CONTRACTOR has reason to believe that any breach of ethical standards as set forth in law, the Governor's Code of Conduct, or in these provisions has occurred or may occur, including but not limited to contact by a PUC officer or employee which, if acted upon, would violate such ethical standards, CONTRACTOR shall immediately notify the PUC in writing.

16. CONTRACTOR, by execution of this Contract and by the submission of any bills or invoices for payment pursuant thereto, certifies and represents that it has not violated any of these Integrity Provisions.

17. CONTRACTOR shall cooperate with the Office of the Inspector General in its investigation of any alleged PUC employee breach of ethical standards and any alleged CONTRACTOR non-compliance with these provisions. CONTRACTOR agrees to make identified employees of CONTRACTOR available for interviews at reasonable times and places. CONTRACTOR, upon the inquiry or request of the Inspector General of the PUC or any of that official's agents or representatives, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Inspector General to CONTRACTOR's integrity and compliance with these provisions. Such information may include, but shall not be limited to, CONTRACTOR's business or financial records, documents, or files of any type or form that refer to or concern this Contract. Such information shall be retained by CONTRACTOR for a period of three years beyond the termination of this Contract unless otherwise provided by law.

18. For violation of any of the above provisions, the PUC may terminate this and any other Contract with CONTRACTOR, claim liquidated damages in an amount equal to the value of anything received in breach of these provisions, claim damages for all additional costs and expenses incurred in obtaining another CONTRACTOR to complete performance hereunder, and debar and suspend CONTRACTOR from doing business with the PUC. These rights and remedies are cumulative, and the use or nonuse of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those the PUC may have under law, statute, regulation or otherwise.

**APPENDIX G  
RESPONSIBILITY PROVISIONS**

1. CONTRACTOR certifies, for itself and all its subcontractors, that as of the date of its execution of this Contract, that neither CONTRACTOR, nor any subcontractors, nor any suppliers are under suspension or debarment by the PUC or any governmental entity, instrumentality, or authority and, if CONTRACTOR cannot so certify, then it agrees to submit, along with its Contract, a written explanation of why such certification cannot be made.

2. CONTRACTOR also certifies, that as of the date of its execution of this Contract, it has no tax liabilities or other PUC obligations.

3. CONTRACTOR's obligations pursuant to these provisions are ongoing from and after the effective date of this Contract through the termination date thereof. Accordingly, CONTRACTOR shall have an obligation to inform the PUC if, at any time during the term of this Contract, is becomes delinquent in the payment of taxes, or other PUC obligations, or if it or any of its subcontractors are suspended or debarred by the PUC, the federal government, or any other state or governmental entity. Such notification shall be made within 15 days of the date of suspension or debarment.

4. The failure of CONTRACTOR to notify the PUC of its suspension or debarment by the PUC, any other state, or the federal government shall constitute an event of default of this Contract with the PUC.

5. CONTRACTOR agrees to reimburse the PUC for the reasonable costs of investigation incurred by the Pennsylvania Office of Inspector General for investigations of CONTRACTOR's compliance with the terms of this or any other Contract between CONTRACTOR and the PUC, which results in the suspension or debarment of CONTRACTOR. Such costs shall include, but shall not be limited to, salaries of investigators, including overtime, travel, and lodging expenses; and expert witness and documentary fees. CONTRACTOR shall not be responsible for investigative costs for investigations that do not result in CONTRACTOR's suspension or debarment.

6. CONTRACTOR may obtain a current list of suspended and debarred PUC contractors either by searching the Internet at [www.dgs.state.pa.us](http://www.dgs.state.pa.us), or by contacting the:

Department of General Services  
Office of Chief Counsel  
603 North Office Building  
Harrisburg, Pennsylvania 17125  
Phone: (717) 783-6472  
Fax: (717) 787-9138

**APPENDIX H  
THE AMERICANS WITH DISABILITIES ACT PROVISIONS**

1. Pursuant to federal regulations promulgated under the authority of *The Americans With Disabilities Act*, 28 C.F.R. § 35.101, *et seq.*, CONTRACTOR understands and agrees that it shall not cause any individual with a disability to be excluded from participation in this Contract or from activities provided for under this Contract on the basis of the disability. As a condition of accepting this Contract, CONTRACTOR agrees to comply with the *General Prohibitions Against Discrimination*, 28 C.F.R. § 35.130, and all other regulations promulgated under Title II of *The Americans With Disabilities Act* which are applicable to all benefits, services, programs, and activities provided by the PUC of Pennsylvania through contracts with outside contractors.

2. CONTRACTOR shall be responsible for and agrees to indemnify and hold harmless the PUC of Pennsylvania from all losses, damages, expenses, claims, demands, suits, and actions brought by any party against the PUC of Pennsylvania as a result of CONTRACTOR's failure to comply with the provisions of Paragraph 1 of this Appendix.

**APPENDIX I  
SUBCONTRACTOR LIST**

Gap International, Inc.

Contact: Jonathan Winder

700 Old Marple Road

Springfield, PA 19064

Ph.: 610-328-0308

Email: [Jonathan.Winder@gapinternational.com](mailto:Jonathan.Winder@gapinternational.com)

Web: [www.gapinternational.com](http://www.gapinternational.com)

Potential participation areas:

Training and Development, Leadership, and Organization

Power Consultants, Inc.

Contact: Mr. David Goldsmith

755 Opossum Lake Road

Carlisle, PA 17015

Ph.: 717-218-5462

Fax: 717-218-5467

Email: [dgoldsmith@dejazzd.com](mailto:dgoldsmith@dejazzd.com)

Potential participation areas:

Engineering and Operations

Strategic Workplace Solutions Inc

Contact: Carol Rovello, President

6 Marlborough Drive

Asheville, NC 28805

Cell: 828-280-6253

Email: [carol@strategic-workplace-solutions.com](mailto:carol@strategic-workplace-solutions.com)

Web: [www.strategic-workplace-solutions.com](http://www.strategic-workplace-solutions.com)

**APPENDIX J  
COMPANY INFORMATION**

- **City – PFMC Management Agreement**
- **Philadelphia Gas Works Management Team Organizational Chart**
- **Links to Information Related to Philadelphia Gas Works**

CITY-PFMC MANAGEMENT AGREEMENT  
AS AMENDED THROUGH BILL NO. 020246 (APPROVED 5/15/2002)  
[UNOFFICIAL COMPILATION AND RESTATEMENT]

AGREEMENT made this 29th day of December, 1972, by and between the CITY OF PHILADELPHIA (hereinafter called "City"), and PHILADELPHIA FAC ruT MANAGEMENT CORPORATION, a corporation organized and existing under the laws of the State of Pennsylvania (hereinafter called "Company").

WITNESSETH:

WHEREAS, the City is the owner of a group of real and personal assets known as the Philadelphia Gas Works ("Gas Works"); and

WHEREAS, the City desires to provide quality gas and electric services to its citizens at reasonable rates through the Gas Works; and

WHEREAS, the Gas Works' Strategic Plan contains among its five strategies product and market expansion; and

WHEREAS, an increase in the Gas Works' revenues will lessen the financial burden from competition in the gas business and therefore lessen the financial burden on current gas customers; and

WHEREAS, the Company is a non-profit corporation organized for the specific purpose of operating the Philadelphia Gas Works.

NOW, THEREFORE, the parties to this Agreement, intending to be legally bound, agree as follows:

SECTION I

*General*

1. The City hereby authorizes Company on the terms and conditions herein set forth to manage and operate all the property, real and personal, collectively known as the Gas Works, for the sole and exclusive benefit of City; provided, however, City may retrieve from the Gas Works any property or equipment which City determines to be unnecessary to the efficient and economic operation of the Gas Works.
2. City, to the extent that it has or shall have the authority or power so to do, authorizes and empowers Company to maintain, change, alter, replace, repair and operate the Gas Works and appurtenances along and beneath the surfaces of the highways, streets, avenues, lanes, alleys, ways and public places in City, for the supply and distribution of gas, subject to provisions

hereinafter set forth. For these purposes Company may enter upon, occupy and open all said highways, streets, avenues, lanes, alleys, ways and public places, and supply and distribute gas through pipes laid therein.

3. (a) Subject to the limitations of subparagraphs 3(b) and 3(c), City, to the extent it has or shall have the authority or power so to do, authorizes and empowers Company to operate the Gas Works for the acquisition, marketing, brokering, aggregation and supply of electric power to persons, businesses and other entities situate within the City of Philadelphia. This authorization shall be exercised through a Venture Agreement with QST Energy, Inc. (the "Venture Agreement") relating to the PECO Energy Company Electric Pilot Program which Company is further authorized to negotiate. The Venture Agreement shall provide for such steps as may be necessary to acquire, market, broker, aggregate and supply safe, efficient and reliable electric power within the City and such other terms and conditions as the City Solicitor deems necessary or appropriate in the interests of the City.

(b) Company shall take no action of any kind to carry out the authorization set forth in subparagraph 3(a) after December 31, 1998 without further City Council authorization by ordinance. Any request to extend the authorization beyond December 31, 1998 shall be made no later than May 1, 1998 and the request for extension shall be submitted along with a report showing how well and whether the pilot program has performed in meeting the following performance goals:

The Gas Works' articulated performance goals include: (i) obtaining one thousand customers in all customer classes; (ii) testing the effectiveness and the adaptability of the Gas Works' current application and technology processes and procedures as they apply to a competitive business environment; (iii) no out-of-pocket costs to the Gas Works; (iv) retaining 90% of customers who have selected PGW/QST; (v) obtaining one hundred customers who had originally selected other competitors as their supplier; and (vi) achieving a customer satisfaction rating of 7 (on a scale of 1 to 10) as determined by customer surveys.

Within ten (10) calendar days of the effective date of the Venture Agreement, the Gas Works shall provide a written report to the Mayor, City Council and the Gas Commission regarding the plan to meet its obligations in subparagraph 3(c)(iii). In addition, the Gas Works shall provide a written monthly status report to the Mayor, City Council and the Gas Commission regarding the progress made in attaining each of the foregoing performance goals in the preceding month. The report shall be submitted to the Mayor and filed with the Gas Commission and the Chief Clerk and the Council President on the 15th day of each month.

(c) Any other provisions of this Agreement to the contrary notwithstanding, the authorization set forth in subparagraph 3(a) is granted subject to the satisfaction of the following conditions:

(i) The Venture Agreement with QST Energy, Inc. must be approved or confirmed by City Council Resolution prior to the adoption, by ordinance of City Council, of Bill No. 970647.

- (ii) QST Energy, Inc. shall indemnify, defend and hold harmless the City, the Gas Works and Company, and their respective officers, directors, employees and agents, from any and all losses, costs (including, but not limited to, litigation costs and counsel fees), claims, suits in law or equity, actions, damages, liability and expenses arising out of or relating to the acquisition, marketing, brokering, aggregation, operation, supply, and/or distribution of energy in connection with the Venture Agreement, whether caused in whole or in part by any acts or omission of QST Energy, Inc., City, the Gas Works or Company (including their respective officers, directors, agents, employees and contractors). This obligation to indemnify, defend and hold harmless City, the Gas Works and Company, and their respective officers, directors, employees and agents, shall survive the termination or expiration of the Venture Agreement.
- (iii) The Venture Agreement shall provide that there is no obligation on the part of City, Gas Works or Company to provide any funds on or after October 23, 1997 in the performance of Company's obligations and duties under the Venture Agreement and the Venture Agreement shall prohibit the expenditure of any City, Gas Works or Company funds other than for the support of in kind contributions provided by existing staff on the Gas Works' payroll. Company shall make no commitment, financial or otherwise to QST Energy, Inc beyond the use of Gas Works' staff, materials, supplies and equipment existing as of October 23, 1997 and in absolutely no event shall any General Fund revenues of the City be made available in support of or in connection with the Venture Agreement.
- (iv) The Venture Agreement shall provide that QST Energy, Inc. shall have and maintain insurance in such types and limits as deemed appropriate by the City, including, but not limited to, general liability insurance, workers' compensation/employer liability insurance, automobile liability insurance, and professional liability insurance, all as necessary.
- (v) The Venture Agreement shall provide that QST Energy, Inc. shall not compete, directly or indirectly, with the Company in the acquisition, marketing, brokering, aggregation, operation, supply, and/or distribution of electric power or of gas to persons, businesses and other entities situate within the City of Philadelphia, in each instance, for a period of no less than one (1) year after the earlier of the termination or expiration of the Venture Agreement or December 31, 1998, without further City Council authorization.

(d) Additionally, subject to the limitations of subparagraphs 3(d)(1) and 3(d)(2), City, to the extent it has or shall have the authority or power so to do, authorizes and empowers Company to operate the Gas Works for the acquisition, marketing, brokering, aggregation and supply of electric power to persons, businesses and other entities situate within the City of Philadelphia through a venture with a Pennsylvania licensed electricity generation supplier. This authorization shall be exercised subject to the following conditions.

(1) For an interim period beginning no earlier than June 15, 1998 and ending no later than December 31, 1998, the Gas Works is authorized to negotiate and enter into an interim venture agreement (the "Interim Venture Agreement") with a Pennsylvania licensed

electricity generation supplier in which that license shall be used as a basis for securing electric supply customers in the interim period. The Interim Venture Agreement shall provide for such steps as may be necessary to acquire customers and market inside the City, together with such other terms and conditions as the City Solicitor deems necessary or appropriate in the interests of the City as follows.

(A) The partner shall be selected on the basis of certain criteria, which shall include but not be limited to:

- (i) relevant skills and experience, which may include gas and electricity experience in the wholesale markets, significant national presence, ownership of low-cost electric generation and natural gas assets; and extensive risk management expertise; and
  - (ii) financial strength, which may include willingness and ability to make a financial commitment to the venture and good record of profitability; and
  - (iii) other relevant strengths, which may include a good track record for partnering, a corporate culture compatible with that of the Gas Works; exclusive supply and asset management services; and willingness to covenant not to compete in the Gas Works' target markets.
- (B) The Interim Venture Agreement shall provide that the Gas Works shall not incur any out-of-pocket expenses and that all such expenses shall be borne by the partner. The disbursement of the Venture gains shall reflect the Gas Works' share of these expenses and shall be delineated in the Final Venture Agreement.
- (C) The Interim Venture Agreement shall provide that failure of City Council to approve the Final Venture Agreement by December 31, 1998 shall result in the termination of the Interim Venture Agreement without fault or penalty to to City or the Gas Works.

(2) No later than September 15, 1998, PGW shall submit the Final Venture Agreement to Council for its approval. Approval of the Final Venture Agreement by City Council shall act as authorization for the Company to operate the Gas Works for the acquisition, marketing, brokering, aggregation and supply of electric power to persons, businesses and other entities situate within the City of Philadelphia after December 31, 1998 under such terms and conditions as are set forth in the Final Venture Agreement.

4. During the term of this Agreement, Company will maintain the Gas Works for the sole and exclusive benefit of the City, including all additions, extensions, betterments, and improvements made thereto, in good order and efficient operating condition. Upon termination of this Agreement by expiration of the term or by any other means, City, its agents, servants, or employees shall be entitled without further payment to Company to use all processes established at the Gas Works for the manufacture or distribution of gas of any type or kind or for the

acquisition, marketing, brokering, aggregation or supply of electric power pursuant to Section I, Paragraph 3. To the extent that use of any such process is authorized by a contract with a third party, City may at its option either continue the use of such process in accordance with the terms of such contract or may discontinue use of such process.

5. Company shall not assign or subcontract this Agreement or any rights hereunder to any person or corporation, nor delegate any duties hereunder.

6. Company's primary obligation shall be to apply the highest standards of management practice and diligence to the operation of the Gas Works.

7. Company shall provide the following personnel for the operation of the Gas Works:

- (a) a chief executive officer;
- (b) a chief operating officer;
- (c) a chief financial officer; and
- (d) such other personnel as deemed appropriate by Company.

All such personnel shall be subject to the approval of the Gas Commission, which approval shall not be unreasonably withheld. In the event the Gas Commission fails to approve any such personnel they shall be replaced by approved personnel forthwith.

8. Company shall file semi-annual reports with the Gas Commission setting forth all salaries, fringe benefits, expenses and costs incurred by Company in carrying out its duties and responsibilities under the terms and conditions of this Agreement.

## SECTION II

### *Production, Purchase and Delivery of Gas*

1. The Company shall take all reasonable steps to insure that the capacity of the Gas Works to manufacture, provide and distribute gas is at all times sufficient for the estimated maximum requirements of gas users in the City of Philadelphia.
2. Company may purchase natural gas or other gas from other parties pursuant to contracts and agreements for such purchases which are first submitted to the Gas Commission for its recommendations and approved by City Council; except that in temporary or emergency situations, Company may purchase natural or other gas from other parties and then seek the approval for such purchase or purchases from the Gas Commission and City Council within 30 days after the initiation of such purchase. In the event such temporary purchase shall be disapproved such supply if continuing shall immediately terminate. Company shall have the right to contract with others for the distribution and/or transmission of such gas to the Gas Works

or its facilities which are ancillary, attendant or related in any manner to purchase of gas after such contracts are first submitted to the Gas Commission for its recommendations and approved by City Council.

3. Company, to the extent permitted by the lawfully constituted authorities, may enlarge or extend the facilities for the distribution of gas to an agreed-upon customer meter location as may be necessary to meet the demand for gas. In any situation where such enlargement or extension of the Gas Works' facilities will place an unreasonable financial burden upon the then existing customers, in view of the anticipated revenues to be expected from such enlargement or extension Company shall make reasonable charges for the same as defined from time to time in Company regulations which are approved by the Gas Commission.
4. The intention of this Agreement is that all changes, additions, extensions, betterments, improvements, alterations and replacements in the Gas Works and in the mains, pipes and appurtenances thereof, and in the property needed to meet the demands for gas as herein provided, shall be made in such a way and manner as shall maintain the Gas Works in good order and condition with the best and most economical processes in use that are customary in the best regulated gas works, to the extent permitted by funds available for said purposes.
5. All openings, excavations and repaving shall be made subject to such general rules, regulations, specifications, ordinances and such Acts of Assembly as may apply, as from time to time shall be in force concerning the opening, excavation and repaving of streets and the protection of travel along the same, and the trenches shall be refilled and repaved with the same material and character of paving as before they were opened, unless otherwise ordered by the Streets Commissioner. Refilling and making opening safe for traffic shall be completed by Company within five (5) days after the pipe, services, or mains have been laid, and said repaving shall be completed, weather permitting, within sixty (60) days thereafter.
6. All ordinances, rules and regulations of City regulating the safety of the piping and fixtures of houses or buildings shall be binding upon Company.

### SECTION III

#### *Standards of Gas and Electricity*

##### *1. General*

Company may supply straight natural gas in accordance with the standards provided for in the General Terms and Conditions of the supplier Company's Tariffs on file with the Federal Energy Regulatory Commission and incorporated by reference in the Agreements for the purchase of natural gas, to which the Company, City and Supplier companies are parties. Also for supplemental purposes, the Company may, as necessary, supply other gases interchangeable and compatible with natural gas.

Company may supply electric power in accordance with all applicable laws, regulations and standards established or administered by the Federal Energy Regulatory Commission and the Pennsylvania Public Utilities Commission pursuant to Section 1, Paragraph 3 of this Agreement.

*2. Testing--Facilities and Inspection*

Adequate facilities for testing the heating value and purity of the gas shall be provided at the Gas Works' expense and equipped with calorimeters for continuously determining the heating value of the gas, apparatus for determining presence of sulphureted hydrogen in the gas, apparatus for determining total sulphur content, apparatus for determining total ammonia content, apparatus for determining specific gravity of the gas and such other apparatus customary and necessary for such purposes, or which will be found to improve the rapidity and accuracy of such testing.

The location of testing facilities shall be selected by Company, and approved by Gas Commission.

The design and accuracy of all testing apparatus when desired by City, Gas Commission or Company shall be certified by the National Institute of Standards and Technology. [Formerly the United States Bureau of Standards.]

Standards and tests specified herein may be changed and altered from time to time as recommended by Company and approved by Gas Commission.

City and Gas Commission shall have the right at all times by its proper officers, during the term of this Agreement, to test the quality and pressure of gas. Full facilities for these purposes shall be afforded by Company. All such tests shall be made in the presence of a representative of Company. Accurate written records of such test shall be maintained by Company.

*3. Heating Value--Requirements And Determination*

The monthly average total heating value of the gas, when determined as provided below, shall not be less than 950 British Thermal Units per cubic foot, measured at a temperature of 60° Fahrenheit and a pressure of 30 inches of mercury. The daily average total heating value shall not differ from the monthly average total heating value to such extent as to interfere with the satisfactory functioning of consumer appliances.

The total heating value of the gas shall be continuously recorded daily unless prevented by circumstances beyond the Company's control.

The monthly average total heating value of the gas shall be the average of the daily averages of the total heating value for that month.

The daily average total heating value shall be the average of 24-hourly readings.

*4. Purity--Requirements and Determination*

*Sulphureted Hydrogen--*The gas shall contain not more than a trace of sulphureted hydrogen. The gas shall be considered to contain not more than a trace of sulphureted hydrogen if a strip of white filter paper moistened with a solution containing five per cent by weight of lead acetate is not distinctly darker than a second paper freshly moistened in the same solution after the first paper has been exposed to the gas for one and one-half minutes in an apparatus of approved form through which the gas is flowing at the rate of approximately 5 cubic feet per hour, the gas not impinging directly from a jet upon the test paper.

*Total sulphur--*The gas shall contain in each 100 cubic feet not more than 30 grains of total sulphur.

*Ammonia--*The gas shall contain in each 100 cubic feet not more than 5 grains of ammonia.

*5. Pressure Regulations*

Company shall maintain pressures throughout the City within limits compatible with the satisfactory utilization of gas and as more fully defined in the Rules and Regulations of the Company's Tariff and as approved from time to time by the Gas Commission.

Company shall take pressure readings continuously in representative locations throughout the City, which readings shall be available to representatives of City and the Gas Commission upon request for a period of one year prior to the date of such request, or in compliance with the rules issued from time to time by the Gas Commission.

Gas Commission may order Company by written notice to adjust pressures to acceptable limits for satisfactory utilization of gas, and due diligence shall be employed by Company to adjust pressures at such points to within such acceptable limits. If compliance with the order of the Gas Commission shall require the installation of new apparatus or mains, Company shall be allowed six (6) months, after the necessary financing has been secured to obtain permits for opening of streets and for the laying of the mains and the installation of the necessary apparatus.

## SECTION IV

*Accounting Methods; Operating Budget and Forecast; Capital Budget and Forecast; Temporary Financing and Financial Statements**1. Accounting Methods**(a) In General*

The accounts and reporting shall be on the accrual methods in which the accounting for depreciation shall be as described in subsection 1(b) herein. The Gas Works revenues and expenses shall be operated and accounted for on an extended period basis from July 1, 1981 to August 31, 1981, and on a fiscal year basis commencing September 1, 1982 and terminating August 31, 1983 and from September 1 to August 31 from year to year thereafter. Accounting shall be employed to show separately the operating accounts and the capital accounts. Operating and capital accounts shall follow generally the classifications specified by the Public Utility Commission of Pennsylvania, expanded or altered, as required by the Director of Finance to portray the special charges and special accounting prescribed in this agreement.

*(b) Depreciation*

There shall be established and maintained a reserve for depreciation reasonably estimated to be adequate to care for the retirement (due to exhaustion, wear and tear and obsolescence) of property at original cost. The amount necessary to be credited to the reserve each year for such purposes shall be charged to operations

*(c) Employee Retirement Costs*

There shall be provided for and charged to operations annually retirement cost for retired employees and employees still in service on the following basis:

For retired employees, the amount necessary to meet current payments to them under their retirement schedules.

An additional amount, as determined by the Director of Finance, shall be placed in a retirement fund to be held and invested by the Sinking Fund Commission. Such additional amount shall be determined by the Director of Finance after taking into consideration the current payrolls, the retirement schedules then in effect applicable to various classes of employees and the extent to which it appears desirable and reasonable to build up such fund in current and future years. To this end, the Director of Finance at appropriate times shall obtain competent actuarial advice and shall have available at all times a report made within the immediately preceding five (5) years by a competent actuary based upon an actuarial investigation of the pertinent factors with the costs to be paid by the Gas Works. Payment out of such funds shall be subject to the approval of the Director of Finance as to amounts and when and how payable.

Any proposed change in the retirement plan, schedule or system recommended by Company first shall be transmitted to the Director of Finance for his approval and then transmitted to City Council for its approval, for which purpose there shall be made available to the City Council an appropriate actuarial report prepared under the direction of the Director of Finance.

No employee of Company shall be entitled to be paid a retirement or separation allowance unless and until he can establish his direct and immediate and exclusive connection as such employee with the Gas Works whether under the present operator or former operator.

All such retirement and separation allowances which are paid during the continuance of this agreement and the terms of which, as so approved, require their continued payment after its termination, shall be thereafter paid by City, or City shall cause the same to be paid by any person succeeding to the operation of the Gas Works.

## *2. Budgets*

### *(a) Operating Budget and Forecast*

There shall be prepared annually an operating budget for the ensuing year and an operating forecast for four (4) years comprising the ensuing year and the three (3) years next following. Such budget and forecast shall be prepared by Company with the aid of the Director of Finance; shall be consistent with the accounting methods prescribed in Section IV (1); and in general shall be in form and extent satisfactory to the Director of Finance and Gas Commission. The operating budget and forecast shall be subject to the approval of the Gas Commission.

### *(b) Capital Budget and Forecast*

There shall be prepared annually a proposed capital budget for the ensuing year and a forecast for six (6) years comprising the ensuing year and the five (5) years next following. Such budget and forecast shall be prepared by Company; shall be consistent with the accounting methods prescribed in Section IV(1); and in general be in form and extent satisfactory to the Director of Finance and the Gas Commission.

The proposed budget and forecast first shall be transmitted to the Director of Finance and the Gas Commission for their recommendations thereon. The Director of Finance and Gas Commission shall transmit such budget and forecast together with their recommendations thereon to City Council for its approval. The submission of the proposed budget and forecast to the Director of Finance and Gas Commission by Company shall be made in sufficient time for their review and for the Director of Finance and Gas Commission in turn to submit the said budget and forecast together with their recommendations thereon to City Council no later than the middle of the fourth month preceding the beginning of the Gas Works' fiscal

year, so that City Council may act on it at least thirty (30) days prior to the next ensuing fiscal year.

The capital budget and forecast shall include a showing of the nature of the proposed capital additions and replacements, the amounts needed therefor and how the funds required are to be supplied as between

- (i) funds generated within the business through charges to customers or otherwise; and
- (ii) funds to be obtained through capital loans.

At any time during the fiscal year, or before the budget accounts are closed for the year, the division between (i) and (ii) above may, if conditions so warrant, be changed or the total thereof increased upon recommendation of the Director of Finance and the Gas Commission and upon approval by City Council.

In the event that capital loans are required in any year under (ii) above, plans therefor shall be submitted to the Director of Finance for approval of the amount of loan and the method of effecting it, and then transmitted to City Council for its approval.

*(c) Expenditures Pursuant to Budgets*

All expenditure and commitments therefor shall be made pursuant to such approved budgets and subject to rules and regulations, if any, promulgated by the Gas Commission in connection therewith.

*3. Temporary Financing*

Short-term loans not exceeding twenty million dollars in amount or twelve months in duration may be negotiated in anticipation of revenues, except that short-term loans exceeding twenty million dollars but not exceeding forty-five million dollars in amount may be negotiated in anticipation of revenues for Fiscal Year 1982 of the Gas Works and may be outstanding during the period July 1, 1981 through June 30, 1982. If such loans are required, plans therefor shall be submitted to the Gas Commission and the Director of Finance for approval of amount of loan. The amount of any such loan shall also be subject to the approval by resolution or by ordinance of City Council.

The Gas Works may also receive temporary advances from the City in anticipation of revenues which are anticipated to be received by the Gas Works provided that such advances do not exceed twenty million dollars in amount or twenty-four months in duration; provided further, however, that during the period June 30, 1981 through June 30, 1983, and the period September 1, 2000 through August 31, 2002, such advances may exceed twenty million dollars but shall not exceed forty-five million dollars in amount, and may exceed twenty-four months but not exceed seventy-two months in duration. The amount of each such advance shall

be subject to the prior approval of the Director of Finance and the Gas Commission and to the approval by resolution or by ordinance of City Council.

In addition to the foregoing authorized borrowings, loans not exceeding one hundred million dollars in aggregate principal amount at any time outstanding may be incurred for financing accounts receivable and the purchase of inventory for the Gas Works, as authorized by applicable law. If such loans are required, plans therefor shall be submitted to the Gas Commission and the Director of Finance for approval of the aggregate principal amount of such loans which may be outstanding at any single time. Such aggregate principal amount shall also be subject to approval by resolution or by ordinance of City Council.

#### *4. Financial Statements*

Company shall within a reasonable time after the close of the Gas Works' fiscal year furnish to the Mayor, the Gas Commission, the City Controller, the City Solicitor, the Director of Finance and City Council a financial statement of such year in form and extent satisfactory to the Director of Finance and Gas Commission. Such financial statement shall be audited by a certified public accountant in accordance with generally accepted accounting principles.

All books, records and accounts of the Gas Works shall be kept separate and apart from all other books, records and accounts of Company. The City Controller and the Director of Finance and Gas Commission may examine or cause to be examined the books, records and accounts of Gas Works for the purpose of auditing and reporting upon such financial statement to the Mayor, the Gas Commission, the City Council, the City Solicitor and the Director of Finance; and the Director of Finance, Gas Commission and the City Controller shall at all times hereafter, for such purpose or for the purpose of ascertaining any facts in relation to the operation of the Gas Works and the performance of the obligations of Company, have full and free access at all reasonable hours to the related books, records and accounts of Gas Works.

Company shall furnish the Mayor, the Gas Commission, the City Controller, the City Solicitor, the Director of Finance and City Council with copies of regular interim financial or operating reports, prepared for periods within the fiscal year, which any such parties may reasonably request.

### SECTION V

#### *Insurance; Eminent Domain*

##### *1. Insurance*

Company shall insure against loss the buildings, machinery, and equipment and other property of the Gas Works and other risks to the Gas Works, all of which shall be insured

to the extent that such property and risks of gas companies are usually insured except that the Gas Commission may provide otherwise in its discretion.

*2. Eminent Domain*

In the event that Company shall be lawfully required to remove or reconstruct any portion of the Gas Works, or to acquire additional land or property therefor, in consequence of the taking of any of the land or property of the said Gas Works by the United States, the State of Pennsylvania or the City of Philadelphia, in the exercise of the right of eminent domain, or for any other reason whatsoever, the cost and expense thereof shall be accorded appropriate accounting treatment.

SECTION VI

*Gas Commission*

- 1      The Gas Commission as it is presently constituted shall be retained.
2. The Gas Commission shall consist of the City Controller, two members appointed by City Council and two members appointed by the Mayor.
3. The members of the Gas Commission appointed by the Mayor shall be designated for four year terms to hold office until their successors are appointed and qualified. The City Controller shall hold office during his incumbency and until his successor has been elected and qualified. The members of the Gas Commission appointed by City Council shall be designated for four year terms, to hold office until their successors are appointed and qualified. The terms of all members of the Gas Commission shall terminate if this agreement is terminated by either party prior to the expiration of their respective terms.
4. Members of the Gas Commission shall receive compensation as fixed by City Council from time to time.
5. The Gas Commission shall have the power and authority to obtain such professional services and to employ experts, consultants and such other personnel as in its judgment shall be deemed necessary, their compensation and expenses to be considered an operating expense of the Gas Works.
6. A statement of the expenses of the Gas Commission shall be filed annually by the Gas Commission with the City Controller and copies thereof transmitted to the Mayor, the City Solicitor, the Director of Finance and City Council.
7. Company shall keep the Gas Commission fully informed of its plans for operation, improvement, extension and betterment of the Gas Works.

8. The Gas Commission shall hold regular meetings and shall conduct all Commission business thereat. The City Solicitor and the Director of Finance or their designates or deputies shall and the Chief Executive Officer of the Gas Works or his designates may attend all such meetings of the Gas Commission.
9. The Gas Commission shall have the responsibility for the overseeing of the operation of the Gas Works by the Company. All power not specifically granted to the Company shall reside in the Gas Commission.

## SECTION VII

### *Gas Rates*

1. The Gas Commission shall fix and regulate rates and charges for supplying gas to customers, other than the City and the Board of Education, without further authorization of City Council, which (together with revenues for gas supplied to the City and to the Board of Education and other revenues of the Gas Works qualifying as "project revenues" as such term is defined in Section 2 of The First Class City Revenue Bond Act) will, in each fiscal year produce revenues, at a minimum:

(a) Sufficient to pay all of the operation and maintenance costs and expenses of conducting the Gas Works enterprise and to pay the interest and amortization becoming due in such fiscal year on debt incurred for the Gas Works, including, but not limited to:

- (i) Charges for depreciation as prescribed in Section IV 1. (b);
- (ii) Charges for employees' retirement costs as prescribed in Section IV 1.(c);
- (iii) A management fee to Company equal to the actual cost to Company of managing the Gas Works but not to exceed the sum of:

(A) The amount needed to pay or provide for the payment of base salaries for the Chief Executive Officer, Chief Operating Officer and Chief Financial Officer and to pay the other expenses of the Company, not to exceed the following amounts for the specified fiscal years:

FY1996	\$700,000
FY1997	\$725,000
FY1998	\$750,000
FY1999	\$775,000
FY2000	\$800,000
FY2001 and thereafter	The prior fiscal year's maximum amount adjusted to reflect the percentage change in the Consumer Price

Index for All Urban Consumer (CPI-U). All Items Index, Philadelphia, Pennsylvania, United States Department of Labor, Bureau of Labor Statistics, as most recently published and available to the Director of Finance on March 1 of each such fiscal year; and

(B) Incentive compensation, if any, awarded to Company management at the discretion of Company's Board of Directors, in total amount not to exceed \$150,000 per annum and in an amount per employee not to exceed \$75,000 per annum. Incentive compensation shall be payable only pursuant to performance standards established, and performance measured against such standards, by the Board of Directors of the Company. The performance standards shall include standards which the Board of Directors determines, from time to time, to be important for the improved operations of the Gas Works such as the achievement of the Gas Works' financial plan, customer service, billing and collection efficiencies and development of new revenues (other than from general rate increases).

The Gas Works shall reimburse Company against vouchers on the first day of each calendar month for monies expended for the operation of the Gas Works in the previous calendar month.

(iv) Expenses of the Gas Commission; and

(v) All sinking fund charges payable in respect of principal and interest on all obligations of the City issued for or with respect to the Gas Works and, with respect to Gas Works Revenue Bonds issued pursuant to The First Class City Revenue Bond Act, such additional amount as may be required to comply with any rate covenant and sinking fund reserve requirement approved by ordinance of City Council in connection with the authorization or issuance of Gas Works Revenue Bonds.

(b) Sufficient also (together with the excess on a cumulative basis of internally generated funds available for the purposes set forth below in this subparagraph (b) of prior years beginning after June 30, 1974, to the extent that such excess shall not have been applied to such purposes and shall be available for the payment of general expenses of such fiscal year and, subject and subordinate to the payment or provision for payment of all operation and maintenance costs and all sinking fund and sinking fund reserve requirements as set forth in subparagraph (a) of this subsection 1., together with the excess funds provided by revenues of such fiscal year not required for such purposes):

(i) To make base payments to the City in the aggregate annual *principal* amount of \$18,000,000 payable in the amount of \$4,500,000 on each February 1, March 1, April 1 and May 1, provided that the Gas Works may defer this payment to any time between said due date and June 30 of each year in which event it shall be assessed interest on the principal amount of prevailing rates, to be determined by the Director of Finance and the Gas Works, from the said due date of the date of payment or such different amounts at such different times, not greater in annual aggregate principal amount, as City Council shall prescribe;

- (ii) To provide appropriations, to the extent not otherwise provided, for prepayment of debt and for capital additions which have been determined by the Gas Commission to be reasonable and which have been approved by City Council; and
- (iii) To provide cash, or equivalent, for working capital in such reasonable amounts as may be determined by Company to be necessary and as shall be approved by the Gas Commission.

(c) Anything to the contrary herein contained notwithstanding, Company may continue to budget and report revenues and expenses in the form and by the methods heretofore used and the Gas Works shall continue to pay out of its revenues all of the expenses set forth in this subsection 1, and all other expenses necessary and proper to the operation of the Gas Works, excepting only the Company's own personnel and administrative costs which are payable out of the management fee. For the purposes of clauses (a) and (b) of this subsection 1., to the extent that operating expenses do not represent an actual outflow of funds (e.g., depreciation) such amount may be included in ascertaining whether revenues are sufficient to meet other costs, expenses and requirements of said clauses (a) and (b). Company shall at all times to the extent of its authority observe and comply with all terms, covenants and provisions of all ordinances enacted by City Council relating to the Gas Works including without limitation, ordinances enacted pursuant to The First Class City Revenue Bond Act authorizing Gas Works Revenue Bonds.

- 2. Upon any change in the rates for gas, the Gas Commission, at least thirty (30) days prior to the effective date thereof, shall notify City Council and give public notice by advertisement once in one or more daily newspapers having a circulation of at least 10,000 published in the City of Philadelphia, of the rates for gas to be charged.
- 3. Company shall furnish to the City and the Board of Education, delivered in their various public buildings along the lines of its mains, such amounts of gas as may be required by the City or the said Board. Rates for gas for such public purposes shall be established from time to time by the Gas Commission upon the recommendations of Company and subject to approval by City Council.
- 4. In connection with any gas rate study or matter related thereto, Company shall furnish the Gas Commission such data as may reasonably be required therefor.
- 5. In the delineation of rate schedules for gas, the Gas Commission shall establish and apply non-discriminatory rates based on suitable and reasonable classification of the services provided, taking into consideration the preparation of such schedules, the nature and purpose of the use, the quantity used, the time of year when used, the available supply of gas and other competing fuels, the maximum demand, and such other factors, including state, and federal laws, regulations or guide lines, as may be appropriate to the economics of the purchase, manufacture, distribution and sale of gas and consistent with the intent and purpose of this ordinance and/or

Agreement. Such rates may provide for sufficient revenue to stabilize them over a reasonable number of years.

6. If conditions warrant, the Company shall pay to the City, but only from any excess described in clause (b) of subsection 1. of this Section VII, such amounts, in addition to those set forth in clause (b) (i) of subsection 1. of this Section VII, as may be determined and agreed upon by the Gas Commission and City Council.
7. The Gas Commission is authorized to establish rates for gas users authorizing a reduction in gas rates, in the amount of 20% of charges for non-heating and heating purposes to his residence, for any individual 65 years of age or older, residing in the City of Philadelphia, who directly makes payment to the operator of the Gas Works for gas services at his residence. In order to qualify for any rate reduction a person must first apply to the Philadelphia Gas Works for a rate reduction at least thirty days before the next scheduled meter reading. The reduction shall then take effect at the start of the succeeding billing period.
8. Notwithstanding any provisions to the contrary contained herein, no payments will be made to the City under subparagraph (b) of Paragraph 1 or under Paragraph 6 of this Section VII until the \$20,000,000 Gas Works Temporary Loan Note, Series of 1980, of the City has been paid in full with interest.

## SECTION VIII

### *Purchases and Sales of Non-Gas Items*

1. Except in the purchase of unique articles or articles which for any other reason cannot be obtained in the open market, or, except in the purchase or sale of electricity pursuant to Section 1, Paragraph 3, competitive bids shall be secured, pursuant to procurement standards adopted and promulgated by the Gas Commission, before any purchase, by contract or otherwise, is made or before any contract is awarded for material and supplies, construction, alterations, repairs or maintenance or for rendering any services to Company other than professional services or for the purchase of any other item, thing or service, and the purchase shall be made from or the contract shall be awarded to the lowest responsible bidder."
2. All residuals and by-products from operations, unserviceable property or equipment shall be sold to the highest responsible bidder pursuant to standards adopted and promulgated by the Gas Commission in a manner similar to that required for awards of contracts for the purchase of goods and services.
3. All acquisitions, sales and leases of real estate proposed by or for the Gas Works by Company shall be submitted to the Gas Commission for its action and approval, and shall be submitted to City Council for its approval by ordinance.

## SECTION IX

### *Legal Services*

The Law Department of the City of Philadelphia shall be the legal advisor for the Gas Commission and the Gas Works. It shall supervise, direct, and control all of the law work of the Gas Commission and the Gas Works including, but not limited to, litigation or other legal representation, investigation, and drafting of documents including contracts, bonds and all other legal instruments for the Gas Commission and the Gas Works.

The City Solicitor shall determine whether legal services for the Gas Works shall be performed by other counsel, and in such event he shall designate such counsel and the compensation therefor in his sole discretion.

All legal services rendered, by the Law Department and by other special legal counsel, to the Gas Commission and to the Gas Works shall be billed to the Gas Works and shall be payable out of gas revenues.

## SECTION X

### *Company's Obligations During Disputes*

No disputes between City and Company concerning any of the terms or provisions of this Agreement shall release Company from its obligations to manufacture, provide and supply gas in accordance with the terms and provisions hereof during the existence of this Agreement.

## SECTION XI

### *Definitions*

The following terms are defined for purposes of this Agreement as set forth below:

1. *Director of Finance* - The Director of Finance of the City of Philadelphia.
2. *City Solicitor* - The City Solicitor of the City of Philadelphia.
3. *City Controller* - The City Controller of the City of Philadelphia.
4. *Mayor* - The Mayor of the City of Philadelphia.
5. *City Council* - The City Council of the City of Philadelphia.

6. *Streets Commissioner* - The Commissioner of the Department of Streets of the City of Philadelphia.
7. *Gas Works* - All of the property, both personal and real, including mains and pipes, which together constitute the plant and equipment of the Philadelphia Gas Works.
8. *Non-Gas Items* - Non-gas items include but are not limited to every tangible or intangible article, item or thing except natural gas and substitute natural gas.

## SECTION XII

### *Term*

The term of this Agreement shall be for a period of two (2) years commencing January 1, 1973. Said term shall be subject to cancellation by City at any time, or upon the expiration of said two (2) years, upon ninety (90) days notice. No such cancellation shall be effective unless and until such cancellation shall have been approved by resolution or ordinance of City Council. In the absence of such notice, the term shall be extended for further two (2) year periods upon the terms and conditions herein.

## SECTION XIII

### *Other Agreements*

1. Unless approved by the Gas Commission, no contract or agreement with a third party, including without limitation any union contract covering Gas Works personnel, entered into by Company or at its direction on behalf of the Gas Works during the term of this Agreement shall provide by its terms that it shall terminate or expire in the event that this Agreement between City and Company shall terminate or expire.
2. The City agrees and hereby does, indemnify and hold harmless the Directors, the officers and the employees of Company, individually and collectively, while acting within the scope of their employment, against and from any and all personal liability, actions, causes of action, and any and all claims made against them whatever in their capacities as Directors, Officers or employees of Company with regard to this Agreement.

## SECTION XIV

### *Counterparts*

This Agreement may be executed in counterparts, all of which taken together shall constitute one document.

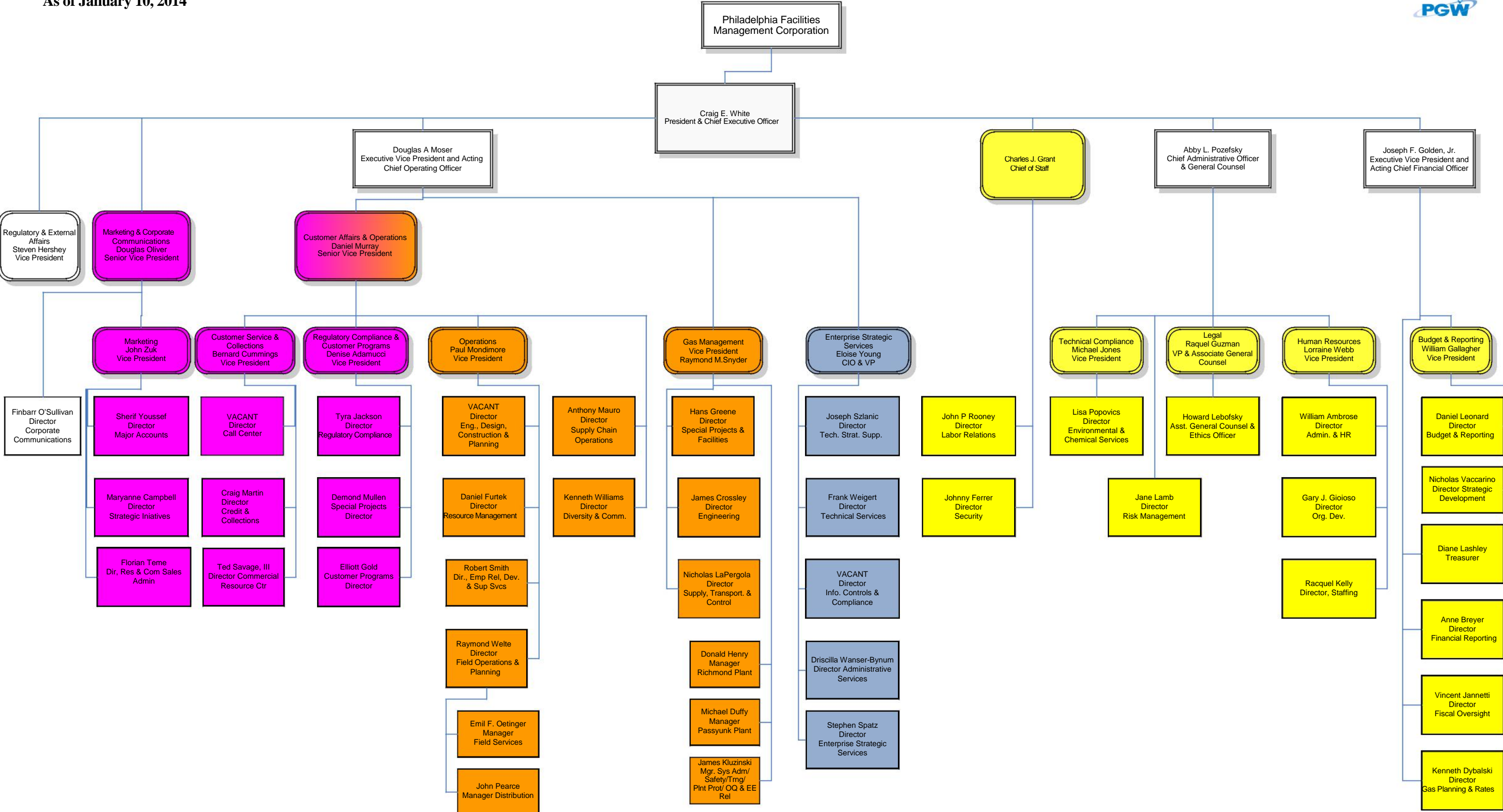
## SECTION XV

### *Effectiveness*

This Agreement shall not be effective or binding upon the parties unless it has been approved by an effective ordinance of City Council and has been ratified by the Board of Directors of Company.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement, the corporate seal of the City of Philadelphia has been duly affixed by the Mayor of said City, and the corporate seal of the Philadelphia Facilities Management Corporation has been duly affixed by an authorized officer thereof, the day and year first above written.

[signatures of parties omitted]



## **Links to Information Related to Philadelphia Gas Works (PGW)**

**The following links provide information on PGW:**

Philadelphia Gas Works Home Page:

<http://www.pgworks.com/>

Link to PGW's Financial Report for 2013

<http://www.pgworks.com/residential/about-us/pgw-financials>

Link to PGW's tariffs

<http://www.pgworks.com/index.php/Business/customer-care/tariffs>

**The following links are to documents on the Pennsylvania. Public Utility Commission's (PUC) Website related to PGW:**

Main PUC web page

<http://www.puc.pa.gov/>

Utility Industry main page (Click on Natural Gas)

[http://www.puc.pa.gov/utility\\_industry.aspx](http://www.puc.pa.gov/utility_industry.aspx)

Management Audit Report Released December 2008 (includes appendices)

<http://www.puc.pa.gov/pcdocs/1032666.pdf>

PGW's Implementation Plan Submitted in Response to the Management Audit Report (January 2009)

<http://www.puc.pa.gov/pcdocs/1164008.doc>

Management Efficiency Investigation Report Released July 2012

<http://www.puc.pa.gov/pcdocs/1189752.pdf>

PGW's Implementation Plan Submitted in Response to the MEI Report (August 2012)

<http://www.puc.pa.gov/pcdocs/1189740.doc>

To access other documents related to PGW on the Public Utility Commission's website perform the following searches at:

[http://www.puc.pa.gov/about\\_puc/search\\_results.aspx](http://www.puc.pa.gov/about_puc/search_results.aspx)

To locate recent activities/proceedings type the utility name in the “utility name” field (i.e., Philadelphia Gas)