

RESOLUTION NO. 67 - 2019

Moved by: [Signature]

A Resolution ratifying an agreement between the Pennsylvania Historical and Museum Commission (PHMC) and the City of Harrisburg (City) providing for the transfer of the Harrisburg City Archives to the care, custody, and control of the Pennsylvania Historical and Museum Commission.

**WHEREAS**, the History Code, 37 Pa. C.S. §305(2) authorizes the City to transfer its public records to the PHMC; and

**WHEREAS**, the PHMC is authorized to receive and become the legal custodian of those records by Section 305(2) of the History Code; and

**WHEREAS**, the PHMC has agreed to maintain the records in accordance with professional archival standards; and

**WHEREAS**, the City desires to transfer its archival material to the PHMC; and

**WHEREAS**, the form of the Agreement is attached and incorporated as Exhibit "A".

**NOW, THEREFORE, BE IT AND IT IS HEREBY RESOLVED, BY THE COUNCIL OF THE CITY OF HARRISBURG**, that the Agreement submitted to the Pennsylvania Historical and Museum Commission for the purposes of transfer of City archival material is hereby ratified.

**BE IT FURTHER RESOLVED** that the Mayor, City Controller and other appropriate City officials are authorized and directed to take all steps necessary to further effectuate the purpose of this Resolution.

I second this resolution [Signature]

Passed by City Council October 8, 2019

Wanda R. Williams

President of City Council

Attest [Signature]

City Clerk

- Approved
- Returned to City Council with objections

YEAS	NAYS
<input checked="" type="checkbox"/> MR. ALLATT	
<input checked="" type="checkbox"/> MS. BOWERS	
<input checked="" type="checkbox"/> MS. DANIELS	Excused
<input checked="" type="checkbox"/> MS. GREEN	
<input checked="" type="checkbox"/> MR. MADSEN	
<input checked="" type="checkbox"/> MR. MAJORS	
<input checked="" type="checkbox"/> MS. WILLIAMS	
Yeas <u>6</u>	
Nays <u>0</u>	

# **EXHIBIT A**

**INTERGOVERNMENTAL AGREEMENT**  
**THE PENNSYLVANIA HISTORICAL AND MUSEUM COMMISSION**  
AND  
**THE CITY OF HARRISBURG**  
**FOR THE CARE OF THE**  
**HARRISBURG CITY ARCHIVES**

THIS Intergovernmental Agreement (the "Agreement") is effective the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between the Pennsylvania Historical and Museum Commission, an independent agency, having its principal place of business at 300 North Street, Fifth Floor, Harrisburg, Pennsylvania 17120 ("PHMC") and the City of Harrisburg, a municipality and the capital city of the Commonwealth of Pennsylvania, having its principal place of business as 10 North Second Street, Harrisburg, Pennsylvania 17101(the "City").

**WHEREAS**, Section 305 of The History Code (37 Pa. C.S. § 305(2)) designates PHMC as the legal custodian of any public records transferred to it by any Commonwealth agency or political subdivision; and

**WHEREAS**, Section 305 of The History Code (37 Pa. C.S. § 305(2)) also authorizes the head of any political subdivision to transfer its public records to PHMC; 37 Pa. C.S. § 305(2); and

**WHEREAS**, the City desires to transfer its records to PHMC, and PHMC, through the Pennsylvania State Archives, has determined that it is willing to receive and care for the City's records.

**NOW THEREFORE**, intending to be legally bound hereby, the City and PHMC agree as follows:

1. **Transfer.** The City agrees to transfer all records, in its possession, that are part of the Harrisburg City Archives ("HCA") to PHMC within a time frame agreed upon by both parties after the effective date of this Agreement. The City may make future transfers of the HCA records to PHMC on a periodic basis, subject to the approval of PHMC.
2. **Term.** This Agreement shall be in effect from the date that this Agreement is approved as to form and legality by the Commonwealth of Pennsylvania Attorney General (the "Effective Date") until terminated by either party in accordance with Section 12 of this Agreement.
3. **Discrete Collection.** PHMC will assign the transferred records an identifier, such as a unique manuscript group number.
4. **Confidentiality.** The City will mark or identify prior to transfer to the Pennsylvania State Archives any records that are not subject to public access or disclosure. PHMC will protect those records from impermissible disclosure. PHMC will provide its standard level of security in an effort to protect the HCA records.

5. **Attribution.** Where applicable, PHMC will distinguish records from this collection with the phrase "These records form part of the Harrisburg City Archives".
6. **Access and Use.** Upon the City's transfer of the HCA records to PHMC, PHMC shall have exclusive authority to manage those HCA records, determine how the HCA records are formatted and displayed and through which medium the records will be made available. Pursuant to this Agreement, PHMC is authorized to manage the conservation of the HCA records. The City agrees that it will not transfer digital copies of files that it has transferred to PHMC, to any other entity without the express written consent of PHMC.
7. **Ownership.** Where legally permissible, the City grants to PHMC a perpetual, non-exclusive, royalty-free, irrevocable license to possess, use, display, reproduce and distribute items from the HCA records. The City warrants that it has all the rights and permissions necessary to grant this license to PHMC. When possible, at the time of the City's transfer of HCA records, it must notify PHMC, in writing, if a third party has an ownership interest in the HCA records.
8. **Withdrawal.** The City may not withdraw records from PHMC unless the Mayor of the City and the Executive Director of PHMC both provide his or her written consent to the City's withdrawal request. This provision survives the termination of this Agreement.
9. **Standard of Care.** PHMC will care for the HCA records in accordance with professional archival standards equal to similar records kept in the Archives.
10. **Alienated Records.** The City will make a reasonable effort to identify and recover records that belong in the HCA but which are not currently in the possession of the City. Upon recovery, the City will transfer those records to PHMC.
11. **Termination.** The City or PHMC may terminate this Agreement at any time by giving 90 (ninety) calendar days written notice to the other party.
12. **Governing Law.** This Agreement shall be governed by and interpreted and enforced in accordance with the laws of the Commonwealth of Pennsylvania and the decisions of the Pennsylvania courts.
13. **Compliance with Law.** All records subject to this agreement shall be handled in accordance with the laws of the Commonwealth of Pennsylvania including, but not limited to, the Municipal Records Act 53 P.S. §1381 *et seq.*
14. **Notices.** All notices given hereunder shall be made by United States mail to the addresses set forth above in the recitals.
15. **Amendment.** This Agreement shall only be amended when agreed to in writing by both parties.





**Exhibit A**  
**Standard Commonwealth Terms and Conditions**

**I. Nondiscrimination/Sexual Harassment Clause, as per MD 215.16 (Amended):**

The Contractor agrees:

1. In the hiring of any employee(s) for the manufacture of supplies, performance of work, or any other activity required under the contract or any subcontract, the Contractor, each subcontractor, or any person acting on behalf of the Contractor or subcontractor shall not discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the *Pennsylvania Human Relations Act* (PHRA) and applicable federal laws, against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.
2. Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the PHRA and applicable federal laws, against or intimidate any employee involved in the manufacture of supplies, the performance of work, or any other activity required under the contract.
3. Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the PHRA and applicable federal laws, in the provision of services under the contract.
3. Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate against employees by reason of participation in or decision to refrain from participating in labor activities protected under the *Public Employee Relations Act*, *Pennsylvania Labor Relations Act* or *National Labor Relations Act*, as applicable and to the extent determined by entities charged with such Acts' enforcement, and shall comply with any provision of law establishing organizations as employees' exclusive representatives.
4. The Contractor and each subcontractor shall establish and maintain a written nondiscrimination and sexual harassment policy and shall inform their employees in writing of the policy. The policy must contain a provision that sexual harassment will not be tolerated and employees who practice it will be disciplined. Posting this Nondiscrimination/Sexual Harassment Clause conspicuously in easily-accessible and well-lighted places customarily frequented by employees and at or near where the contracted services are performed shall satisfy this requirement for employees with an established work site.
5. The Contractor and each subcontractor shall not discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of PHRA and applicable federal laws, against any subcontractor or supplier who is qualified to perform the work to which the contract relates.

7. The Contractor and each subcontractor represents that it is presently in compliance with and will maintain compliance with all applicable federal, state, and local laws, regulations and policies relating to nondiscrimination and sexual harassment. The Contractor and each subcontractor further represents that it has filed a Standard Form 100 Employer Information Report ("EEO-1") with the U.S. Equal Employment Opportunity Commission ("EEOC") and shall file an annual EEO-1 report with the EEOC as required for employers' subject to *Title VII of the Civil Rights Act of 1964*, as amended, that have 100 or more employees and employers that have federal government contracts or first-tier subcontracts and have 50 or more employees. The Contractor and each subcontractor shall, upon request and within the time periods requested by the Commonwealth, furnish all necessary employment documents and records, including EEO-1 reports, and permit access to their books, records, and accounts by the contracting agency and the Bureau of Diversity, Inclusion and Small Business Opportunities for purpose of ascertaining compliance with provisions of this Nondiscrimination/Sexual Harassment Clause.
8. The 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.
9. The Contractor's and each subcontractor's obligations pursuant to these provisions are ongoing from and after the effective date of the contract through the termination date thereof. Accordingly, the Contractor and each subcontractor shall have an obligation to inform the Commonwealth if, at any time during the term of the contract, it becomes aware of any actions or occurrences that would result in violation of these provisions.
10. The Commonwealth may cancel or terminate the contract and all money due or to become due under the contract may be forfeited for a violation of the terms and conditions of this Nondiscrimination/Sexual Harassment Clause. In addition, the agency may proceed with debarment or suspension and may place the Contractor in the Contractor Responsibility File.

**II. Americans with Disabilities Act Clause, as per MD 215.12:**

1. Pursuant to federal regulations promulgated under the authority of The Americans With Disabilities Act, 28C.F.R. Section 35.101 et seq., the 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, the Contractor agrees to comply with the "General Prohibitions Against Discrimination," 28 C.F.R. Section 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 Commonwealth of Pennsylvania through contracts with outside contractors.
2. The Contractor shall be responsible for and agrees to indemnify and hold harmless the Commonwealth of Pennsylvania from all losses, damages, expenses, claims,



demands, suits, and actions brought by any third party against the Commonwealth of Pennsylvania as a result of the Contractor's failure to comply with the provisions of Subparagraph a. above.

**III. Sovereign Immunity and Commonwealth Held Harmless Provisions:**

1. The Contractor shall hold the Commonwealth harmless from and indemnify the Commonwealth against any and all third party claims, demands and actions based upon or arising out of any activities performed by the Contractor and its employees and agents under this Contract, provided the Commonwealth gives Contractor prompt notice of any such claim of which it learns. Pursuant to the Commonwealth Attorneys Act (71 P.S. Section 732-101, et seq.), the Office of Attorney General (OAG) has the sole authority to represent the Commonwealth in actions brought against the Commonwealth. The OAG may, however, in its sole discretion and under such terms as it deems appropriate, delegate its right of defense. If OAG delegates the defense to the Contractor, the Commonwealth will cooperate with all reasonable requests of Contractor made in the defense of such suits.
2. Notwithstanding the above, neither party shall enter into any settlement without the other party's written consent, which shall not be unreasonably withheld. The Commonwealth may, in its sole discretion, allow the Contractor to control the defense and any related settlement negotiations.

**IV. Right to Know Clause:**

1. The Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104, ("RTKL") applies to this Contract. For the purpose of these provisions, the term "the Commonwealth" shall refer to the contracting Commonwealth agency.
2. If the Commonwealth needs the Contractor's assistance in any matter arising out of the RTKL related to this Sublease agreement, it shall notify the Contractor using the legal contact information provided in this Contract. The Contractor, at any time, may designate a different contact for such purpose upon reasonable prior written notice to the Commonwealth.
3. Upon written notification from the Commonwealth that it requires the Contractor's assistance in responding to a request under the RTKL for information related to this Contract that may be in the Contractor's possession, constituting, or alleged to constitute, a public record in accordance with the RTKL ("Requested Information"), the Contractor shall:
  - a. Provide the Commonwealth, within ten (10) calendar days after receipt of written notification, access to, and copies of, any document or information in the Contractor's possession arising out of this Contract that the Commonwealth reasonably believes is Requested Information and may be a public record under the RTKL; and





- b. Provide such other assistance as the Commonwealth may reasonably request, in order to comply with the RTKL with respect to this Contract.
4. If the Contractor considers the Requested Information to include a request for a Trade Secret or Confidential Proprietary Information, as those terms are defined by the RTKL, or other information that the Contractor considers exempt from production under the RTKL, the Contractor must notify the Commonwealth and provide, within seven (7) calendar days of receiving the written notification, a written statement signed by a representative of the Contractor explaining why the requested material is exempt from public disclosure under the RTKL.
5. The Commonwealth will rely upon the written statement from the Contractor in denying a RTKL request for the Requested Information unless the Commonwealth determines that the Requested Information is clearly not protected from disclosure under the RTKL. Should the Commonwealth determine that the Requested Information is clearly not exempt from disclosure, the Contractor shall provide the Requested Information within five (5) business days of receipt of written notification of the Commonwealth's determination.
6. If the Contractor fails to provide the Requested Information within the time period required by these provisions, the Contractor shall indemnify and hold the Commonwealth harmless for any damages, penalties, costs, detriment or harm that the Commonwealth may incur as a result of the Contractor's failure, including any statutory damages assessed against the Commonwealth.
7. The Commonwealth will reimburse the Contractor for any costs associated with complying with these provisions only to the extent allowed under the fee schedule established by the Office of Open Records or as otherwise provided by the RTKL if the fee schedule is inapplicable.
8. The Contractor may file a legal challenge to any Commonwealth decision to release a record to the public with the Office of Open Records, or in the Pennsylvania Courts, however, the Contractor shall indemnify the Commonwealth for any legal expenses incurred by the Commonwealth as a result of such a challenge and shall hold the Commonwealth harmless for any damages, penalties, costs, detriment or harm that the Commonwealth may incur as a result of the Contractor's failure, including any statutory damages assessed against the Commonwealth, regardless of the outcome of such legal challenge. As between the parties, the Contractor agrees to waive all rights or remedies that may be available to it as a result of the Commonwealth's disclosure of Requested Information pursuant to the RTKL.
9. The Contractor's duties relating to the RTKL are continuing duties that survive the expiration of this Contract and shall continue as long as the Contractor has Requested Information in its possession.

**V. Offset Clause/Payment:**

1. The Commonwealth shall put forth reasonable efforts to make payment by the required payment date. The required payment date is: (a) the date on which payment is due under the terms of the Contract; (b) thirty (30) days after a proper invoice actually is received at the "Bill To" address if a date on which payment is due is not specified in the Contract (a "proper" invoice is not received until the Commonwealth accepts the service as satisfactorily performed); or (c) the payment date specified on the invoice if later than the dates established by (a) and (b) above. Payment may be delayed if the payment amount on an invoice is not based upon the price(s) as stated in the Contract. If any payment is not made within fifteen (15) days after the required payment date, the Commonwealth may pay interest as determined by the Secretary of Budget in accordance with Act No. 266 of 1982 and regulations promulgated pursuant thereto. Payment should not be construed by the Contractor as acceptance of the service performed by the Contractor. The Commonwealth reserves the right to conduct further testing and inspection after payment, but within a reasonable time after performance, and to reject the service if such post payment testing or inspection discloses a defect or a failure to meet specifications. The Contractor agrees that the Commonwealth may set off the amount of any state tax liability or other obligation of the Contractor or its subsidiaries to the Commonwealth against any payments due the Contractor under any contract with the Commonwealth.
2. The Commonwealth shall have the option of using the Commonwealth purchasing card to make purchases under the Contract or Purchase Order. The Commonwealth's purchasing card is similar to a credit card in that there will be a small fee which the Contractor will be required to pay and the Contractor will receive payment directly from the card issuer rather than the Commonwealth. Any and all fees related to this type of payment are the responsibility of the Contractor. In no case will the Commonwealth allow increases in prices to offset credit card fees paid by the Contractor or any other charges incurred by the Contractor, unless specifically stated in the terms of the Contract or Purchase Order.

#### **VI. Minimum Wage Provision:**

1. **Enhanced Minimum Wage.** Contractor/Lessor agrees to pay no less than \$12.00 per hour to its employees for all hours worked directly performing the services called for in this Contract/Lease, and for an employee's hours performing ancillary services necessary for the performance of the contracted services or lease when such employee spends at least twenty per cent (20%) of their time performing ancillary services in a given work week.
2. **Adjustment.** Beginning July 1, 2019, and annually thereafter, the minimum wage rate shall be increased by \$0.50 until July 1, 2024, when the minimum wage reaches \$15.00. Thereafter, the minimum wage rate would be increased by an annual cost-of-living adjustment using the percentage change in the Consumer Price Index for All Urban Consumers (CPI-U) for Pennsylvania, New Jersey, Delaware, and Maryland. The applicable adjusted amount shall be published in the Pennsylvania Bulletin by March 1 of each year to be effective the following July 1.
3. **Exceptions.** These Enhanced Minimum Wage Provisions shall not apply to employees:

- a. exempt from the minimum wage under the Minimum Wage Act of 1968;
  - b. covered by a collective bargaining agreement;
  - c. required to be paid a higher wage under another state or federal law governing the services, including the Prevailing Wage Act and Davis-Bacon Act; or
  - d. required to be paid a higher wage under any state or local policy or ordinance.
4. **Notice.** Contractor/Lessor shall post these Enhanced Minimum Wage Provisions for the entire period of the contract conspicuously in easily-accessible and well-lighted places customarily frequented by employees at or near where the contracted services are performed.
  5. **Records.** Contractor/Lessor must maintain and, upon request and within the time periods requested by the Commonwealth, furnish all employment and wage records necessary to document compliance with these Enhanced Minimum Wage Provisions.
  6. **Sanctions.** Failure to comply with these Enhanced Minimum Wage Provisions may result in the imposition of sanctions, which may include, but shall not be limited to, termination of the contract or lease, nonpayment, debarment or referral to the Office of General Counsel for appropriate civil or criminal referral.
  7. **Subcontractors.** Contractor/Lessor shall include the provisions of these Enhanced Minimum Wage Provisions in every subcontract so that these provisions will be binding upon each subcontractor.

**INTER**

**OFFICE**

# MEMO

To: HARRISBURG CITY COUNCIL  
From: Kirk Petroski, City Clerk  
LEGISLATIVE APPROVAL FORM

Date:

LEGISLATIVE APPROVAL FORM/CERTIFICATE OF ACCEPTANCE

BILL NO. -2019 RESOLUTION NO. <sup>67</sup>-2019

THE ABOVE LISTED ITEM WAS WRITTEN AND PREPARED FOR FINAL INTRODUCTION AT THE HARRISBURG CITY SOLICITOR'S OFFICE ON:

  
Assistant City Solicitor

9-12-19  
Date

Requested by Department/Bureau: Administration

Department/Bureau Contact Person: Mayor

For Action on or before:

The attached was received in the Office of the City Clerk for introduction on

\_\_\_\_\_  
Received by: 

Date: 9-12-19