

## LEASE AGREEMENT DILWORTH PLAZA

This Lease Agreement ("Lease") is made this <sup>14</sup>~~26~~ day of August, 2011 (the "Effective Date"), by and between THE CITY OF PHILADELPHIA, acting through the DEPARTMENT OF PUBLIC PROPERTY ("City" or "Landlord") and CENTER CITY DISTRICT, a body corporate and politic existing under the laws of the Commonwealth of Pennsylvania ("CCD" or "Tenant").

### Background

A. The City is a body politic and corporate organized and existing under the laws of the Commonwealth of Pennsylvania.

B. CCD is a special services district formed under the Commonwealth of Pennsylvania's Municipality Authorities Act to provide security, cleaning, promotion, and capital improvement services that supplement but do not replace, both basic services provided by the City of Philadelphia and the responsibilities of property owners located in the district.

C. The City owns the area surrounding City Hall, including the west side of City Hall, which is known as Dilworth Plaza. The premises located between and bounded generally by City Hall, JFK Boulevard to the curb line, 15th Street to the curb line, and South Penn Square to the curb line, in the City of Philadelphia and is more particularly described in Exhibit A (the "Premises"), attached hereto and made a part hereof. The Premises shall include both surface areas (the "Surface") as well as concourse level areas (the "Concourse") as indicated in Exhibit A. The Premises shall not contain any property subject to that certain Leaseback Agreement, as amended, between the City and the Southeastern Pennsylvania Transportation Authority ("SEPTA") dated September 27, 1968.

D. Tenant has located or will secure funding for approximately ninety percent (90%) of the Reconstruction Work (as hereinafter defined in Background paragraph G to this Lease) from sources other than the City, including Tenant's own funds. Upon commencement of this Lease, Tenant shall implement the Development Plan (as hereinafter defined) and perform the Reconstruction Work. Once Tenant completes the Reconstruction Work, Tenant will exercise its statutory role of supplementing but not replacing City services and will undertake the responsibility of maintaining, managing and operating the Premises in accordance with the Operations Plan (as hereinafter defined in Section 2.10).

E. The Premises currently surrounds and is above various existing and planned SEPTA facilities, including but not limited to elevators and related machinery rooms, stairs, passageways, access ways, fare lines, shafts, chases, including but not limited to lines, cables, wires, pipes, conduits, and similar items, and equipment (collectively, the "SEPTA Facilities"). Tenant will enter into a separate agreement with SEPTA to perform certain work in, on or with respect to the SEPTA Facilities and the Subsurface Infrastructure (as hereinafter defined in Section 1.04(a)(2)(i)) (such work is collectively, the "SEPTA Work"). Certain of the stairs,

passageways, and access ways will be closed from time to time and others may, but need not, be kept open during the term of this Lease and may be altered or relocated from time to time in order to provide pathways from underground SEPTA transit facilities to the street level or underground concourses within or outside of the Premises (the "Interim SEPTA Pathways"). Tenant will provide reasonable notice to, and coordinate such activities with, the City. By separate agreement with SEPTA, Tenant, subject to the prior written consent of the Commissioner of Public Property of the Landlord, may permit SEPTA to have reasonably necessary access to such portions of the Premises, from time to time, whether by lease, sublease, or license. Tenant shall be responsible for coordination of the work SEPTA performs with the Reconstruction Work. Landlord acknowledges that SEPTA must have access to the Premises for early phase work, prior to commencement of City Work (as hereinafter defined) by Tenant, in connection with SEPTA's Broad Street improvements and the Reconstruction Work (as hereinafter defined), and Landlord shall not unreasonably withhold Landlord's consent to such access by SEPTA.

F. The outer perimeter of the Surface of the Premises currently includes certain traffic signals and street light facilities, and associated equipment and lines located as shown on Exhibit A and designated as Relocated Light Fixture and Relocated Traffic Signal. Tenant will replace or install new equipment or cause them to be relocated to positions shown on Exhibit A and designated as Relocated Light Fixture and Relocated Traffic Signal. (Such replacement, installation, and relocation work and modification of certain curbs and sidewalks are collectively referred to as "City Work, and shall be performed by Tenant.")

G. CCD will perform or cause to be performed the Improvements and alterations of the Premises and the City Work as generally described in the Exhibit B (the "Development Plan"), attached hereto and made a part hereof. CCD shall schedule construction of the Improvements in coordination with the SEPTA Work, the City Work, and, if applicable, other work by SEPTA that may be performed by either SEPTA or by CCD for SEPTA. Collectively, construction of the Improvements and performance of the SEPTA Work and City Work is referred to as the "Reconstruction Work."

H. On December 16, 2010, City Council approved Ordinance No. 100842, which provides for execution and delivery of this Lease, which ordinance was signed by Mayor Michael A. Nutter on December 21, 2010.

NOW THEREFORE, in consideration of the mutual covenants of City and CCD, and for other good and valuable consideration the receipt of which is acknowledged, City and CCD, intending to be legally bound, agree as follows:

## **ARTICLE 1**

### **BACKGROUND; PREMISES**

1.01 The Background is hereby incorporated by reference.

1.02 Commencing as of the Commencement Date (as defined in Section 3.01), City leases to Tenant and Tenant leases from City the Premises as it is constituted from time to time, subject to the terms and conditions of this Lease.

1.03 At all times during the Term (as defined below), the Premises shall be and remain owned by and titled in the City. No legal title or easement shall be deemed to be created or vested in Tenant by anything contained in this Lease.

1.04 (a)(1) Upon the Commencement Date, Tenant accepts the Premises, including all improvements on the Premises, in their "AS IS" condition, including without limitation:

- i. the zoning applicable to the Premises;
- ii. any Surface and Concourse level conditions of the Premises; and
- iii. all latent and patent defects and hazards.

(2) Notwithstanding the foregoing, Tenant is not responsible for:

(i) the condition of foundations, beams, columns and other supporting structures, appurtenances, and materials, including but not limited to lines, cables, wires, pipes, conduits, and similar items, whether load bearing or not, below the Surface or, if there is Concourse below a portion of the Surface, below the Concourse (collectively, the "Subsurface Infrastructure"). Tenant shall have no liability for or obligation to cure or correct defects and hazards in the Subsurface Infrastructure or damage to the Improvements (as hereinafter defined) as a result of defects and hazards in the Subsurface Infrastructure; or

(ii) any condition in or affecting the Premises and existing as of the Commencement Date and not addressed by Tenant nor required to be addressed in the Reconstruction Work. Such conditions include, but are not limited to, seepage through walls not rebuilt by Tenant or leakage, discharge, disposal, or migration of any material, including but not limited to water flow into the Premises from sources outside of the Premises or facilities not included within the Premises. Tenant shall have no liability for or obligation to cure or correct such conditions or damage to the Improvements caused by such conditions.

(b) Upon the Commencement Date, Tenant accepts the Premises without representation, covenant or warranty, express or implied, in fact or in law, by Landlord. Tenant agrees that it shall have no recourse to Landlord as to the title to the Premises, encumbrances, restrictions and conditions in, on, or about the Premises, the nature, condition or usability of the Premises, or the use or uses to which the Premises or any part of the Premises may be put. Tenant is leasing the Premises without reliance on any information which may have been obtained from Landlord, except as otherwise set forth in this Lease.

(c) Without in any way limiting this Section, Landlord makes no representation or warranty regarding compliance by the Premises with any Applicable Law (as defined in Article 20 below), including but not limited to compliance with laws regulating hazardous substances and that law commonly known as the Americans With Disabilities Act of 1990, P.L. Sections 101-336, codified generally at 42 U.S.C. §§ 12101 et seq., and all rules, regulations and guidelines promulgated pursuant to that law ("ADA"), as any or all of the foregoing may be amended from time to time. Tenant shall be responsible for violations of Applicable Law that it causes or permits, but Tenant shall not be responsible for, nor shall

Tenant be required to cure violations of Applicable Law which exist on the Commencement Date. The City shall not be responsible for violations of the ADA arising from City Work or designed or constructed by Tenant.

(d) Landlord shall provide the limited City services set forth in Exhibit C (the ‘**Limited City Services**’), at the Landlord’s sole cost and expense in a manner consistent with and to a standard of that which the City provides for other Center City public space owned by the City. Other than providing the Limited City Services, Landlord shall have no obligation whatsoever to maintain, repair or operate the Premises or any part of the Premises, and any and all such maintenance and repair required by Tenant shall be performed by or caused to be performed by Tenant, except as otherwise set forth in this Lease, at Tenant’s sole cost and expense in accordance with and to the extent required by the terms of this Lease.

(e) Except for Landlord’s obligation to provide Limited City Services set forth or referred to in Section 1.04(d) above, this Lease does not impose any obligation of the City to appropriate or spend money for maintenance or repairs of the Premises at any time, or for any matter or cause, arising from or related to this Lease. Nevertheless, in the event of casualty loss to the Premises, and despite the fact that there will be insurance proceeds available, Landlord shall cooperate with Tenant in seeking any funds necessary, in excess of insurance proceeds, to repair and upgrade the Premises.

1.05 Subject to Sections 1.04(a)(2)(i) and (ii), Landlord shall not in any event be liable for any injury or damage to any property or to any person occurring in, on, or about the Premises and its appurtenances, nor to any property, whether belonging to Tenant or any other person, caused by any fire, breakage, leakage, defect or hazardous condition in any part of the Premises, or from water, rain, snow, or other material that may leak into, issue or flow from any part of the Premises, from the drains, pipes, or plumbing work of the same, or from any place or quarter, or due to the use, misuse or abuse of all or any of the hatches, openings, installations of any kind whatsoever which may now or hereafter be erected or constructed in or on the Premises, or from any kind of injury which may arise from any other condition whatsoever existing on the Premises throughout the Term (as defined in Section 3.01) not caused by Landlord’s, or its employees’, contractors’, or agents’, acts or omissions, acting within the scope of their employment or contract.

## **ARTICLE 2**

### **USE; CONDITIONS PRECEDENT TO LEASE TERM; PROHIBITED USE**

2.01 Tenant shall implement the Development Plan, perform the Reconstruction Work, and thereafter occupy, use, manage, operate, and maintain or cause the Premises and Improvements to be managed, operated and maintained for open space, pedestrian and public use, including installing information and interpretative, transit, visitor, and historical signs as Tenant shall deem necessary or convenient, in accordance with the Operations Plan.

(a) If an Unanticipated Hazard (as hereinafter defined) arises which would, in Tenant’s reasonable determination, increase the cost of the Reconstruction Work by more than \$1,000,000, Tenant may notify Landlord of such fact in writing, restore the Premises to

substantially their condition before the Unanticipated Hazard was determined, and terminate this Lease. An "Unanticipated Hazard" is any of the following:

- (i) conditions at the site or adjacent to the site that are subsurface or otherwise concealed physical conditions or unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist.
- (ii) discovery at the site or adjacent to the site of human remains or the existence of burial markers, or archaeological sites.
- (iii) by unavoidable casualties not covered by insurance or other causes or delays beyond the Tenant's control.

2.02 Tenant shall not perform or allow the performance of any Reconstruction Work unless and until Tenant has obtained all necessary permits, certifications, and licenses as contemplated by this Lease and as otherwise required by Applicable Law. Landlord shall cooperate with and support the Tenant to facilitate the issuance of all necessary permits, certifications, and licenses.

2.03 Tenant shall not sell, distribute or permit the presence (other than storage within the Café) in, on, or about the Premises of any liquor or malt or brewed beverages as defined in the Pennsylvania Liquor Code, currently codified at 47 P.S. §§ 1-101 et seq. (collectively, "Alcoholic Beverages"), during normal work-week and working hours (which, for purposes of this Lease, shall be Mondays through Fridays, from 7:00 a.m. through 5:00 p.m., during days when City offices are open for general business) on any portion of the Premises, including the Café, without first obtaining Landlord's prior written approval. Other than as restricted by the foregoing sentence and by Applicable Law, Tenant may sell, distribute and permit the presence of Alcoholic Beverages in the Café (including its outdoor seating) during all hours permitted by Applicable Law, and outside of the Café during non-recurring, special events. All such Alcoholic Beverages shall be for consumption on the Premises, and shall not be for off-Premises consumption.

2.04 Tenant shall not use the Premises or permit any Permitted Licensees (as defined in Section 9), employees, agents or contractors to use the Premises in violation of any Applicable Law or in violation of this Lease. Tenant or its agents acting in that capacity shall not: i) cause any act to be done or any condition to exist in, on, or about the Premises or any part of the Premises; ii) cause any article to be brought onto the Premises which is dangerous or which may, in law, constitute a nuisance, public or private; or iii) do anything which may void or make voidable any insurance then in force with respect to the Premises or any part of the Premises.

2.05 Tenant shall not permit the Premises or any part of the Premises to be used in any manner as might tend to impair the City's title to any or all of the Premises, or in such manner as might make possible a claim or claims of adverse usage or adverse possession by the public or of implied dedication of any or all of the Premises.

2.06 Tenant may permit commercial activities on the Premises, provided that such commercial activities are consistent with the Operations Plan.

2.07 Tenant shall provide or contract for all services and equipment necessary and desirable to safely occupy, use, and operate the Premises and fulfill its obligations under this Lease, other than the Limited City Services provided by Landlord.

2.08 Fees for leasing or licensing use of the Premises from Tenant shall be consistent with the Operations Plan.

2.09 Subject to Section 8.03, during the Reconstruction Work, neither the public nor the Landlord shall have access to the Improvements except in the event of emergencies, nor shall the City permit any events or activities on the Premises that might interfere with the Reconstruction Work. Thereafter, the Premises shall be open for public use and enjoyment except as necessary for maintenance, preparation for special events, and as may be necessary otherwise for public safety, including crowd control.

2.10 Landlord and Tenant shall jointly agree upon an operations plan before the Commencement Date (the "Operations Plan"), and shall attach the Operations Plan to this Lease as Exhibit E. The Operations Plan will:

(a) Include a list of City-scheduled events (the "Annual City Events") and provide for other events to be scheduled by CCD ("Public Use Events").

(b) Acknowledge the control by the City of licensing events on City-owned property with the understanding that Tenant will control the full management responsibility for licensing, including scheduling and coordinating all events on the Surface (including Annual City Events and Public Use Events) in a manner that does not interfere or conflict with Tenant's responsibilities and rights under Section 2.10(e) below.

(c) Annual City Events are those known to or contemplated by City to occur for the following twelve (12) month period on the Surface (the "Annual City Event Schedule"), which Annual City Event Schedule will be updated at least three (3) months prior to the termination of each Annual City Event Schedule cycle. If they are not updated, they shall remain unchanged. During the Term of the Lease, City may add, delete and substitute Annual City Events provided that the Annual City Events, in their totality, do not vary significantly in terms of character, size and frequency from twelve (12) month period to twelve (12) month period, and further provided that such changes are communicated to CCD within the foregoing three (3) months update period.

(d) Tenant recognizes and acknowledges that there may be certain events that have not been regularly scheduled ("Special Events"), and the Tenant and the City will cooperate with each other in facilitating Special Events. Whenever possible, Landlord and Tenant shall endeavor to schedule Special Events in the special events zone located on the north apron of City Hall as designated in Exhibit A ("Special Events Zone"). Special Events which cannot be scheduled in the Special Events Zone shall be scheduled within the Premises provided appropriate advance notice is provided to Tenant relative to the size, duration and nature of the Special Event. If Tenant reasonably expects Special Events scheduled on the Premises to involve the Special Events Zone, Tenant shall use reasonable efforts to notify Landlord in advance.

(i) For those Special Events in which the Mayor or his or her representative is not to be on Surface and participating in the event, the event holder shall be required to reimburse Tenant for costs associated with the Special Event consistent with the Operations Plan. For those Special Events which are initiated and sponsored by the Mayor's office and for which the Mayor or his or her representative is on the Surface and leading or actively participating in the event, the event holder shall not be required to reimburse Tenant for costs associated with a Podium, PA/Sound System and Platform/Stage for the Special Event; nevertheless, for any and all events the City will continue to be responsible for Limited City Services.

(ii) The Parties hereto acknowledge that there are or may be certain ad-hoc or spontaneous events or gatherings forming at the Premises or which appear to be intending to use the Premises, including political or civic gatherings and demonstrations. The City agrees to make the Special Events Zone available for such events, and the City will endeavor to promptly relocate such events to the Special Events Zone, using, as appropriate, the City's police, security, crowd control personnel, or other methods reasonably deemed necessary under the circumstances.

(e) Allow the Tenant to raise sufficient revenue from operating the Premises to perform its repair and maintenance obligations under this Lease while upgrading the facilities at and continuing the public use of the Premises.

(f) The Operations Plan shall also provide for City cooperation in the use of adjoining streets in connection with the Reconstruction Work and parking, deliveries and scheduling.

### **ARTICLE 3 TERM; RENEWAL**

3.01 The "Initial Term" of this Lease shall begin on the date (the "Commencement Date") that Tenant completes installation of a fence (the "Construction Fence") around the Premises on the Surface and the Concourse so that Tenant may commence construction. Such completion is anticipated to be on or about June 1, 2011, but not later than July 1, 2012, provided, however, the Parties will agree on reasonable extensions based on unforeseeable events or special circumstances. The Initial Term shall terminate on the twenty (20) year anniversary of the Commencement Date (the "Termination Date"). Tenant shall have the right to renew this Lease for an additional period not to exceed ten (10) years from the Termination Date (the "Renewal Term") by written notice to Landlord given at least six (6) months in advance of the Termination Date. The Initial Term and the Renewal Term are collectively referred to herein as the "Term." If Tenant renews this Lease, the Termination Date shall become the thirty (30) year anniversary of the Commencement Date.

3.02 Other than in the case of force majeure, in the event that Tenant does not commence construction on or before July 1, 2013, Landlord shall have the right to cancel this Lease by providing by written notice to Tenant.

3.03 Tenant shall have a right of entry to the Premises prior to the Commencement Date for testing and evaluation purposes and to install the Construction Fence. Prior to conducting any invasive tests, Tenant shall comply with the insurance provisions of this Lease. Such installation shall be completed within four (4) weeks after it is commenced. During the period for installation of the Construction Fence, Tenant and its contractors shall maintain all insurance otherwise required during the Term. The City shall not be responsible for the fence, either before or after the commencement of the term of this Lease.

3.04 In advance of the Commencement Date, Tenant shall send a written correspondence to Landlord identifying the Commencement Date. Such correspondence shall be attached to this Lease as Exhibit F.

#### **ARTICLE 4 RENT**

4.01 The rent for the Premises shall be One Dollar (\$1.00) per year ("Rent") all of which for the entire term is payable in advance, receipt whereof is hereby acknowledged.

4.02 Tenant agrees to promptly pay, or cause to be promptly paid, as additional rent ("Additional Rent"), without demand and without set-off,

(i) any and all sums which become due as specified in this Lease or by reason of any default of Tenant or failure on Tenant's part to comply with the terms of this Lease;

(ii) any and all damages, costs, and expenses which Landlord may suffer or incur by reason of any default of Tenant or failure on Tenant's part to comply with the terms of this Lease;

(iii) any and all damages to the Premises caused by any act, omission, or negligence of Tenant, its officers, employees, agents, contractors, subcontractors, licensees, or other Tenant-scheduled occupants of the Premises;

(iv) any and all sums which Tenant may be required to pay to Landlord or any utility provider or any other third party under any other provision(s) of this Lease; and

(v) any and all taxes, assessments and other governmental charges, general or special, ordinary or extraordinary, of any kind and nature whatsoever (including all penalties and interest thereon) which, at any time on and after the Commencement Date and during the remainder of the Term, may be assessed, levied, imposed upon, or become due and payable in respect of, the Premises or any part thereof, or any use or occupation of the Premises.

#### **ARTICLE 5 IMPROVEMENTS AND ALTERATIONS**

5.01 In this Lease, "Improvements" shall mean permanent improvements constructed by CCD on the Premises in accordance with the terms herein; it shall not include improvements or construction that is City Work or SEPTA Work. In addition, unless otherwise specified, all references to the Premises shall include the Improvements, and all Improvements shall become part of the Premises upon completion. Separate references to the Premises and Improvements shall not be deemed to exclude the Improvements from the Premises wherever the term "Premises" is used by itself.



(a) Personal property, such as but not limited to tables, chairs and similar furnishings; equipment for sound and lighting; temporary or portable stage facilities; temporary or portable markets, ice rink, and sales kiosks; and temporary signage (collectively, "Personalty") are not Improvements, and may be installed and removed as necessary or convenient for the operation of the Premises. Permanent signage facilities, whether electronic or otherwise, shall be operated and maintained by Tenant in accordance with the Operations Plan, and the permanent signage facilities themselves shall be Improvements.

5.02 Except as explicitly provided in this Lease, Tenant or any Permitted Licensee (defined below in Section 9) shall not make, permit or construct any renovations, replacements, additions or alterations, including installation of fixtures and trade fixtures ("Alterations") upon or otherwise modify or alter the Premises or any of the Improvements in any way not consistent with the Development Plan without the prior review and written consent of the City. However, no Alteration that is entirely inside of the café to be constructed on the northerly portion of the Surface (the "Café") or other structure already consented to by the City or provided for in the Development Plan shall require approval of the City, as Landlord; however, all permitting and code compliance review and enforcement powers of the City shall apply to the Café. The City's approval of any Alterations may be conditioned upon a requirement that Tenant or any Permitted Licensee provide the City with a performance and payment bond satisfactory to the City in all respects and other requirements reasonably deemed necessary or prudent to protect the interests of the City. The City shall endeavor to review Tenant's or any Permitted Licensees' request for approval of its proposed Alterations within thirty (30) days of receipt of Tenant's request. City's failure to inform Tenant whether City approves Tenant's request within thirty (30) days shall be construed to constitute approval by City, provided Tenant's request for approval references the thirty (30) days deemed approved language of this section of the Lease. If the City does not approve any request, it shall notify Tenant, and, together with its notice of disapproval, the City shall supply its suggestions for alternatives that it would approve, and the parties shall promptly and cooperatively attempt to agree upon the Alterations. Installation, removal, and alterations to Personalty are not Alterations, and may be performed as necessary or convenient for the operation of the Premises.

5.03 Any Alterations approved by the Landlord and Alterations not requiring approval shall be made by Tenant or any Permitted Licensee at Tenant's or any Permitted Licensees' sole cost and expense, in a workman-like manner, and in compliance with all Applicable Laws.

5.04 Upon approval by Landlord, any and all plans and specifications for Alterations shall become part of this Lease as though fully set forth herein, and Tenant or any Permitted Licensee shall diligently cause work to be completed in strict accordance with such documents. Upon completion, Alterations shall become part of the Premises.

5.05 Except as expressly provided otherwise by Landlord in any consent or approval required under this Article 5, all Alterations performed on the Premises or any of the Improvements shall, upon completion of construction of the Improvements, become part of the Premises, except that any Café Improvements and Alterations shall be owned by CCD during the

term of this Lease and shall become the property of the Landlord upon expiration or earlier termination of this Lease.

5.06 Review, approval, or consent pursuant to this Lease by the Landlord or any representative of the Landlord of any plans, work or other materials submitted or performed by Tenant or any Permitted Licensee in connection with this Lease shall not constitute any representation, warranty, or guaranty by Landlord as to the quality, substance, or compliance with Applicable Laws of the matter reviewed or approved. At all times Tenant or any Permitted Licensee, as applicable, shall use its own respective independent judgment as to the accuracy and quality of all such matters. Review, approval, or consent under this Lease by Landlord or any representative of Landlord shall not constitute or be construed to constitute approval otherwise required under Applicable Laws by any and all departments, boards and commissions of the City of Philadelphia in connection with the Tenant's obligations under this Lease or any Permitted Licensee under any permitted license agreements. Upon completion of the work of Tenant or any Permitted Licensee in connection with this Lease, Tenant shall deliver to the City as-built plans and any operation and maintenance manuals in both hard copy and PDF format.

5.07 Except for the sidewalk, upon completion, City Work shall become owned, controlled, and maintained by City, and shall be the sole responsibility of City both during and after the Term. Upon completion, the sidewalk surrounding the Premises shall become part of the Premises. Traffic signals and standard highway fixtures, including street lights, shall be maintained by the City; pedestrian scale lights installed by Tenant shall be maintained by Tenant. Provisions regarding SEPTA Work shall be governed by a separate agreement with SEPTA, but for the purposes of this Lease, it is intended that improvements made pursuant to the SEPTA Work shall be owned, controlled, and maintained by SEPTA, and Tenant shall have no responsibility for SEPTA Work, other than its construction, during and after the Term. Security cameras currently located in the Premises will be removed by Tenant during the Reconstruction Work, and re-installed upon completion of the Reconstruction Work.

## **ARTICLE 6 UTILITIES, SERVICES, INSURANCE AND COSTS**

6.01 Except as specifically set forth in this Lease, Landlord is not obligated, and shall not be required, to render or pay for any services of any kind to Tenant or the Premises other than the Limited City Services. However, if Landlord requires Tenant to schedule an event not on the Annual City Event Schedule and not involving the Mayor or his or her representative as on Premises participants in the event, before Tenant shall be required to schedule the event, the event holder shall be responsible for supplying necessary insurance coverage and reasonably satisfactory assurance of payment to Tenant of costs and fees consistent with the Operations Plan.

## **ARTICLE 7 MAINTENANCE AND REPAIR OF PREMISES; FIXTURES; SECURITY**

7.00 In this Lease, the terms “Repairs” and “Repair” shall include all necessary and prudent repairs, replacements, renewals, and alterations, whether ordinary or extraordinary, foreseen or unforeseen, and whether capital in nature or otherwise.

7.01 (a) Except as set forth in Section 7.01(a)(i), Tenant shall, at its sole cost and expense, maintain, or cause to be maintained, the Premises in good condition and repair and in compliance with all Applicable Laws. Any Alterations intended to be temporary in nature shall be removed and need not be maintained once the period of their intended use has passed.

(i) Landlord shall be responsible for the cost of Repairs to the Improvements, Personalty, and City Work caused by the acts or omissions of Landlord, its employees, contractors, or agents acting within the scope of their employment or contract, including, but not limited to, damage caused in connection with repairs to City Hall. Such damage shall be repaired by Tenant at Landlord’s sole cost and expense, unless Tenant authorizes Landlord in writing to make such repairs.

(ii) Landlord shall not allow City vehicles or other vehicles under City control to traverse or park on the Premises, except in the event of an emergency.

(b) Without limiting the foregoing subsection 7.01(a), Tenant shall, at its sole cost and expense, maintain and Repair or cause the maintenance and Repair of all structural and nonstructural parts of the Improvements, but this section shall not require Tenant to maintain, repair or replace Subsurface Infrastructure and Tenant shall have no liability for or obligation to cure or correct defects and hazards in the Subsurface Infrastructure or damage to the Improvements as a result of defects and hazards in the Subsurface Infrastructure.

(c) All Repairs made or caused to be made by Tenant shall be at least equal in quality to the original item repaired.

7.02 Tenant shall provide the services set forth in Exhibit C attached hereto and made a part hereof as the “Limited Tenant Services,” at Tenant’s sole cost and expense. Tenant shall be responsible for ADA compliance of Improvements that are within the premises and under the Tenant’s control. Tenant shall only be responsible for performance of City Work in a manner that is ADA compliant up to and through the time of completion of its construction and transfer to the City, at which time Tenant’s responsibility shall end.

7.03 Intentionally omitted

7.04 Except as otherwise set forth in this Lease, Landlord shall not be required to furnish any services or facilities or to maintain, Repair, build or rebuild any part of the Premises, including but not limited to the Improvements, and Tenant expressly waives any and all rights to make Repairs to the Premises or any part thereof at the expense of Landlord as may be provided for in any law now in effect or enacted in the future. Tenant assumes full and sole responsibility and liability for the condition, construction, improvement, operation, Repair, replacement, equipping, maintenance, and management of the Premises and the Improvements on the Premises, except as otherwise set forth in this Lease.

7.05 Nothing contained in this Lease shall be construed in any way as constituting the consent or request of the City, express or implied, to any contractor, subcontractor, laborer or materialman for the performance of any labor or the furnishing of any materials for any specific Alteration, addition, improvement, Repair or other work to the Premises or any part thereof, nor as giving Tenant any right, power or authority to contract for or permit the rendering of any services or the furnishing of any materials that would give rise to the filing of any lien against the interest of Landlord in the Premises or any part thereof.

7.06 Subject to Section 5.02, Tenant shall not install any fixtures in or on the Premises or any of the Improvements without the prior written approval of the Landlord, unless such fixtures are consistent with the Development Plan or are located entirely inside of the Café or other structure already consented to by the City or provided for in the Development Plan. Upon the expiration or earlier termination of this Lease, Tenant shall promptly remove any and all trade fixtures and restore any damage to the Premises or any of the Improvements caused by the installation or removal of any and all trade fixtures and shall return the Premises to Landlord in clean and in good condition, ordinary wear and tear and damage by casualty excepted.

7.07 Landlord shall not have any obligation to provide security for the Premises, except to the extent included within the Limited City Services. Tenant shall promptly pay or cause to be paid any tax or levy imposed by any governing authority in connection with the maintenance of security and fire alarm and suppression systems on the Premises.

7.08 Without limiting any other provision of this Lease, Tenant shall not place, erect, hang, or paint any sign in, on, or about the Premises that is not consistent with the Operations Plan and Applicable Law.

7.09 Tenant shall be responsible for maintenance of all trees, shrubs, and landscaping growing on the Premises.

7.10 Landlord may, at its sole option, perform any or all Repairs that may be necessary by reason of Tenant's default pursuant to Section 15.01(c)(i) and notice pursuant to Section 15.01(c) to make any such Repairs. Nothing in this Lease shall create or imply any duty on the part of Landlord to make any such Repairs or do any such work, and performance of any Repairs by Landlord shall not constitute a waiver of any default of Tenant in failing to perform the same. Landlord shall not in any event be liable to Tenant for inconvenience, annoyance, or disturbance, by reason of making such Repairs or on account of bringing materials, supplies and equipment onto the Premises during the course of any Repairs or other work on the Premises; provided however, that Landlord shall use commercially reasonable efforts to minimize interference with scheduled activities in the Premises. Tenant shall pay to Landlord, upon demand, as Additional Rent, the actual cost of any and all such Repairs performed by Landlord due to Tenant's act, omission, or failure to perform any Repairs or other work required under this Article 7 or this Lease generally.

## **ARTICLE 8**

### **ENTRY ON PREMISES BY LANDLORD**

8.01 City shall have the right to enter and traverse the Premises as a member of the public and to enter the Premises at any time as may be necessary or prudent for City to perform its governmental functions. In addition, subject to reasonable restrictions in connection with the Café, Tenant hereby permits City, any of City's authorized representatives, and any persons authorized by City, to enter all areas of the Premises, including but not limited to the Improvements, at all times, for the purpose of carrying out normal governmental functions and Landlord activities, including but not limited to the following, after reasonable notice to CCD:

- (a) inspecting the Premises in order to determine whether Tenant has complied or is complying with the terms and conditions of this Lease;
- (b) carrying out any purpose necessary, incidental or connected to the performance of Landlord's obligations or exercise of Landlord's rights under this Lease;
- (c) performing any work to City Hall which requires accessing or occupying a portion of the Premises;
- (d) making any Repairs or performing any work on the Premises as provided in Article 7 above.

8.02 City reserves the right to access any portion of the Premises on behalf of itself or any other government agency, transportation agency or public utility throughout the term of this Lease. This includes the right to construct or reconstruct any facility on or beneath the Premises which the City determines necessary. City, or any entity acting pursuant to this Section, must coordinate such entry with Tenant and must use reasonable efforts to refrain from interfering with Tenant's activities on the Premises. Consistent with Section 7.01(a)(i), City, or any entity acting pursuant to this Section, shall restore any Improvements affected by the entry and construction or reconstruction. City shall use reasonable efforts to minimize the impact on the Premises of any work performed pursuant to this Section.

8.03 If City requires entry pursuant to this Article 8 while Reconstruction Work is ongoing, City shall coordinate its entry and any work it will perform or cause to be performed in order not to materially adversely affect the Reconstruction Work..

8.04 The City acknowledges that CCD is the recipient of a Federal grant through the United States Department of Transportation and administered by the Federal Transit Administration ("FTA"), which funds, in part, the Reconstruction Work. The City further acknowledges that pursuant to FTA grant requirements CCD must demonstrate and retain satisfactory continuing control over the use of the Premises. The City agrees that it will not exercise its right of entry (or any other right(s) permitted under this Lease) in a manner which compromises or otherwise diminishes CCD's obligation to retain satisfactory continuing control over the use of the Premises.

## ARTICLE 9

## SPECIAL PROVISIONS AND REQUIREMENTS

9.01 Public Use of the Premises: Tenant acknowledges and understands that the Premises are part of the public space of the City of Philadelphia and as such exist for the enjoyment of the citizens of Philadelphia. Throughout the Term, subject to the terms and conditions of this Lease and to the extent contemplated in any Permitted License (defined below in Section 9.02), Tenant shall maintain and Repair the Premises, keep them in good order and repair and available for the use and enjoyment of the general public, and not interfere with or impede public access to or over the Premises, subject only to any Permitted License granted by Tenant for third parties to use the Premises in accordance with Section 9.02 below, and except as necessary for maintenance, preparation for special events, and as may be necessary otherwise for public safety, including crowd control.

9.02 Tenant May License the Premises:

(a) Tenant may execute one or more written license(s) for portions of the Premises ("Permitted License(s)") with various entities ("Permitted Licensee(s)") in order to implement the Operations Plan; provided, that such Permitted License(s) shall not unreasonably interfere with use of the Premises by the general public. Examples of Permitted License(s) that would not unreasonably interfere with use of the Premises by the general public include, but are not limited to, an ice skating rink, outdoor markets, the Café, and concerts. Charging a fee, for example, but not limited to, for seats at a concert or use of ice skating equipment, shall not be deemed to be an unreasonable interference. Tenant shall use a transparent and competitive selection process to determine Permitted Licensee(s), and prior to Tenant entering into any Permitted License(s) or other agreement, Tenant must provide Landlord with adequate information regarding any proposed Permitted Licensee(s) and their respective related entities, such information required may include, but is not limited to, Permitted Licensee(s) audited financial records for the three (3) previous years (if available), related experience, a proposed business plan for five (5) years, proposed menu and the list of items which will be sold, and any other information the City deems necessary. Tenant shall obtain Landlord's written approval before any Permitted License or other agreement is executed by Tenant and any proposed Permitted Licensee or before any material change to any Permitted License is accepted by Tenant.

(b) Tenant is prohibited from allowing the sale of cigarettes, tobacco or tobacco related products on the Premises in any Permitted License(s).

(c) If Tenant or any Permitted Licensee is selling goods which the City has not approved, Tenant will use commercially reasonable efforts to cause Permitted Licensee(s) to immediately cease selling such goods.

(d) If Tenant executes any Permitted License(s) as contemplated by this Section 9.02, then such Permitted License shall be subject to all the terms and conditions of this Lease.

9.03 License Fees: Tenant agrees that any and all fees charged to Permitted Licensee(s), however described or characterized in any Permitted License(s), and any fees otherwise collected by Tenant, less reasonable reserves and amortization of improvements by Tenant (including reimbursement to Tenant of its equity, if any, contributed in connection with the Improvements), must be used for the purpose of maintaining the Premises and making Repairs, including replacements and improvements to the Premises, and may be used for programming on the Premises, mortgage payments, if any, and return of CCD's equity in the project, if any. If, at the end of each calendar year during the Term of the Lease, there are funds remaining after paying all expenses to maintain the Premises, less reasonable reserves and amortization of improvements by Tenant (including reimbursement to Tenant of its equity, if any, contributed in connection with the Improvements), Tenant shall allocate such funds to loan or mortgage payments, if any, return of CCD's equity, capital improvements, additional programming of on-site events, or to enhancing other public spaces in Center City, Philadelphia, as Tenant shall determine in its reasonable discretion, and Tenant shall segregate funds, fees, and other income relating to this Lease in Tenant's accounting system. Tenant will submit all financial reports in accordance with Article 31.

9.04 CCD agrees that any incidental use (including licenses) of the Premises will comply with uses permitted under applicable Federal laws, regulations, directives, and FTA circulars.

## **ARTICLE 10 INDEMNIFICATION OF CITY**

10.00 In this Lease, the term "City" shall include the City of Philadelphia, its officials, officers, agents, boards, commissions, employees, successors and assigns; the term "Tenant" shall include Tenant and its officers, agents, boards, successors, assigns, subtenants, students, contractors, subcontractors, employees, and licensees.

10.01 Tenant shall, and shall cause all Permitted Licensees to, indemnify, defend and hold harmless the City, from and against any and all losses, claims, suits, actions, damages, expenses (including but not limited to attorneys' fees and litigation costs), and liabilities, including but not limited to those in connection with loss of life, bodily and personal injury, or damage to property (real or personal, and regardless of ownership), which occur, in whole or in part, as a result of: (a) any act or omission of Tenant; (b) the use, operation, occupancy or maintenance of the Improvements (or any part(s) thereof) by Tenant; (c) the exercise of any right or performance of any obligation by Tenant under or pursuant to this Lease; (d) the condition of the Premises or any part(s) thereof, other than conditions existing as of the Commencement Date. This indemnity shall not apply to any act, omission, incident, violation, enforcement action, lawsuit, or condition first arising or first occurring prior to the Commencement Date.

10.02 In case any action or proceeding is brought against the City relating to any matter for which Tenant has indemnified City, Tenant, upon written notice from City, shall at Tenant's sole cost and expense (including without limitation counsel fees and court costs), resist or defend such action or proceeding by counsel approved by the City Solicitor of the City in writing; provided that no approval of counsel shall be required in each and every instance where the claim is resisted or defended by counsel of an insurance carrier obligated to so resist or defend

such claim, and provided also that the City may engage at its expense its own counsel to participate in the defense of any such claim. Without limiting the generality of Article 25, the provisions of this Article 10 shall survive the expiration or termination of this Lease.

## **ARTICLE 11**

### **INSURANCE; WAIVER OF SUBROGATION [I NEED TO DOUBLE CHECK THAT RISK MANAGEMENT HAS APPROVED THIS SECTION]**

11.01 Tenant shall procure and maintain, at its sole cost and expense, and shall require all of its Permitted Licensee(s), contractors, subcontractors, concessionaires and consultants performing work to procure and maintain, insurance covering its employees, invitees and the Premises, in the types and minimum limits of coverage specified below throughout the term of this Agreement. All insurance shall be procured from reputable insurers who are acceptable to the City and authorized to do business in the Commonwealth of Pennsylvania. All insurance herein, except Workers' Compensation and Employers Liability, Professional Liability and Contractor's Pollution Liability, shall be written on an "occurrence" basis and not a "claims-made" basis.

(a) **WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY**

- (i) Workers Compensation – Statutory Limits;
- (ii) Employers Liability:  
\$100,000 Each Accident - Bodily Injury by Accident;  
\$100,000 Each Employee - Bodily Injury by Disease;  
\$500,000 Policy limit - Bodily Injury by Disease;
- (iii) Other states' insurance including Pennsylvania
- (iv) The Policy shall be specifically endorsed with Waiver of Right to Recover from Others Endorsement (WC 00 0313) where permitted by state law, naming the City.

(b) **GENERAL LIABILITY INSURANCE**

- (i) Limit of Liability: \$1,000,000 per occurrence for bodily injury (including death) and property damage liability; \$1,000,000 personal and advertising injury; \$2,000,000 general aggregate for products and completed operations. The City may require higher limits of liability if, in the City's sole discretion, the potential risk so warrants.
- (ii) Coverage: Including but not limited to premises, operations, personal injury liability (employee exclusion deleted); employees as additional insureds, cross liability, broad form property damage (including completed operations and loss of use) liability, explosion, collapse and underground damage (XCU), products and completed operations; independent contractors, and blanket contractual liability (including liability for Employee Injury assumed under a Contract) provided by the Standard ISO



Policy Form CG 00 01. Policy may NOT include the restrictive Endorsement CG 24 26 (Amendment of Insured Contract Definition) or any other provision excluding coverage for the City's sole negligence which has been assumed by contract.

(c) COMMERCIAL AUTOMOBILE LIABILITY INSURANCE

- (i) Limit of Liability: \$1,000,000 per occurrence combined single limit for bodily injury (including death) and property damage liability;
- (ii) Coverage: Owned, hired and non-owned vehicles (Any Auto).

(d) PROFESSIONAL LIABILITY INSURANCE (FOR ARCHITECTS, ENGINEERS AND ENVIRONMENTAL CONSULTANTS, IF APPLICABLE)

- (i) Limit of Liability: \$2,000,000 per occurrence.
- (ii) Coverage: Error and omissions including liability assumed under Contract.
- (iii) Professional Liability insurance may be written on a claims-made basis provided that coverage for occurrences happening during the performance of the work required under this Contract shall be maintained in full force and effect under the policy or "tail" coverage for a period of at least three (3) years after completion of the work.

(e) "ALL RISK" PROPERTY INSURANCE covering all building structures, improvements, betterments, plate glass, equipment, trade fixtures, merchandise, business personal property and any other property in Tenant's care, custody and control in the amount equal to the full replacement value of the Premises with no penalty for coinsurance.

(f) BUILDER'S RISK: During the period of any construction on the Premises, Tenant shall maintain "all risk" builder's risk insurance in an amount equal to the anticipated completion value of the project under construction. The coverage shall remain in full force and effect during the construction of the structures and shall insure against physical loss or damage to all property incorporated or to be incorporated in the Project and cover the interests of Contractor and all Subcontractors performing work under the Project. Coverage shall include jobsite temporary buildings used for storage of property to be incorporated into the Project and shall cover reasonable compensation for Contractor's or Subcontractor's services and expenses required as a result of an insured loss. The policy shall be written on a Replacement cost Basis (with no co-insurance clause) and shall include Offsite Storage Locations Coverage (coverage for property to be incorporated into the Project). Contractor shall be responsible for any damage to their owned, leased or rented tools and equipment.

(g) CONTRACTOR'S POLLUTION LEGAL LIABILITY

- (i) Limit of Liability: \$2,000,000 each incident/\$4,000,000 aggregate for bodily injury (including death) and property damage.
  - (ii) Coverage shall include sudden, accidental and gradual occurrences; release of contaminants; and hostile fire pollution. Coverage may be written on a claims-made basis provided that coverage for occurrences happening during the construction period may be maintained in full force and effect under the policy or "tail" coverage for a period of at least two (2) years beginning from the time the construction work is completed.
- (h) Umbrella Liability Insurance at limits totaling \$10,000,000 per occurrence when combined with insurance required under (a), (b) and (c) above.

11.02

(a) Insurance against such other hazards, risks or perils, and in such amounts as reasonably may be requested by the City and at the time are customarily insured against with respect to improvements similar in character, size, general location, use and occupancy of the Premises.

(b) During the construction period, coverages required hereby may be maintained by Tenant's contractors.

11.03 The City of Philadelphia, its respective officers, employees and agents, and SEPTA, its respective, officers, employees and agents shall be named as additional insureds on all policies required hereunder except the Workers Compensation and Employers' Liability. All such policies shall include an endorsement stating that the coverage afforded these parties as additional insureds are primary to any other coverage available to them.

11.04 Certificates of insurance evidencing the required coverage shall be submitted to the City's Risk Management Division, One Parkway, 1515 Arch Street, 14th Floor, Philadelphia, PA 19102, within ten (10) days after the execution date of this Agreement. Tenant shall furnish certified copies of the original policies of all insurance required under this Agreement at any time within ten (10) days after written request by the City.

11.05 The insurance requirements set forth herein shall in no way be intended to modify, limit or reduce the indemnifications made in this Agreement by Tenant to the City or to limit Tenant's liability under this Agreement to the limits of the policy(ies) of insurance required to be maintained by Tenant under this Agreement.

11.06 Self Insured Retentions/Deductibles: None of the policies of insurance required by this Agreement shall contain self insured retentions, deductibles or any other retention in excess of Fifty Thousand Dollars (\$50,000), unless agreed to in writing by the City.

11.07 All insurance policies shall provide for at least thirty (30) days prior written notice to be given to the City in the event the coverage is materially changed, canceled or not renewed. At least ten (10) business days prior to the expiration of each policy, Tenant shall deliver to the city a certificate of insurance evidencing the replacement policy(ies) to become effective immediately upon the expiration or termination of the previous policy(ies).

11.08 In the event the Tenant fails to cause such insurance to be maintained, the City shall not be limited in the proof of any damages which the City may proclaim against Tenant or any other person or entity in the amount of the insurance premium or premiums not paid or incurred and which would have been payable upon such insurance, but the City shall be entitled to recover damages for such breach the uninsured amount of any loss, damages and expenses of suit and costs, including without limitation reasonable cancellation fees, suffered or incurred during any period when Tenant shall have failed or neglected to provide the insurance as required herein.

11.09 All insurance money paid on account of damage to or destruction of the Premises, less the actual cost, fees and expenses, if any, incurred in connection with the adjustment of the loss, shall be applied to the payment of cost of the restoration, repairs, replacement, rebuilding or alterations, of the Premises including without limitation the cost of temporary repairs to the Premises pending the completion or permanent restoration, repairs, replacements, rebuilding or alteration of the Premises.

11.10 Waiver of Recovery/Subrogation: The Contractor waives all rights of recovery and shall cause its Insurers to waive their rights of subrogation against all required additional insureds and any of their officers, employees and agents for loss or damage covered by any of the insurance maintained by the contractor pursuant to this Agreement. The Workers Compensation Policy shall be specifically endorsement with Waiver of Right to Recover from Others Endorsement (WC 00 0313).

## **ARTICLE 12 RELEASE**

12.01 In consideration for the rights granted to Tenant under this Lease, Tenant does hereby remise, quitclaim, release and forever discharge, and by these presents does for Tenant's successors and assigns, agents, employees, contractors, subcontractors, officers, directors, students, licensees, Permitted Licensee(s), subtenants, and any person claiming under or through them, hereby remise, quitclaim, release and forever discharge, the City, its officials, officers, agents, boards, commissions, employees, successors and assigns (acting officially or otherwise), from any and all, and all manner of, actions and causes of action, suits, claims and demands whatsoever in law or in equity which Tenant or any of them may have against the City, its officials, officers, agents, boards, commissions, employees, successors and assigns, relating in any way whatsoever, directly or indirectly, to (a) this Lease or the Premises; or (b) the existence, condition, operation, use or occupancy of any part(s) of the Premises by Tenant, its successors and assigns, agents, employees, contractors, subcontractors, officers, directors, students,

licensees, subtenants and any person claiming under or through them, but this sentence shall not apply to the breach by the City of its obligations under this Lease. Tenant hereby voluntarily and knowingly assumes all risk of loss, damage and injury, including death, that may be sustained by Tenant, its successors and assigns, agents, employees, contractors, subcontractors, officers, directors, students, licensees, subtenants and any person claiming under or through them in connection with the Premises, other than that arising out of the City's, or its employees', contractors', or agents', acts or omissions, acting within the scope of their employment or contract.

### **ARTICLE 13 SUBLETTING & ASSIGNMENT**

13.01 Subject to Article 9 with respect to Permitted Licensees, Tenant may not transfer or assign this Lease, either in whole or in part, or mortgage, pledge or otherwise encumber this Lease, or the Leasehold estate demised hereunder without on each occasion first obtaining the prior written consent of Landlord, which may be withheld in Landlord's sole discretion. Tenant agrees that in the event of any approved transfer, assignment, lease, sublease, or other encumbrance of this Lease, Tenant will, nevertheless, remain liable for the performance of its agreements and obligations under this Lease, and will require any transferee, assignee, or Permitted Licensee, as the case may be, to execute and deliver to Landlord an assumption of liability agreement, in form satisfactory to the Landlord, including, without limitation, the transferee's or assignee's ratification of, and agreement to be bound by, all of the provisions of this Lease. The failure or refusal of a transferee, assignee, Permitted Licensee or Subtenant to execute and deliver an assumption of liability agreement shall not release such transferee, assignee, Permitted Licensee or subtenant from its liability to Landlord as set forth in this Lease. SEPTA Facilities now in place, those which are relocated, and Interim SEPTA Pathways are not in violation of this Section 13.01, nor are leases, subleases or licenses to SEPTA contemplated by Background paragraph E.

13.02 Any consent by Landlord to a transfer or assignment of this Lease by Tenant shall not constitute a waiver of future compliance by Tenant of the provisions of this Article 13 or a release of Tenant from the full performance by Tenant of any of the provisions of this Lease.

### **ARTICLE 14 SURRENDER OF PREMISES; HOLD OVER TENANCY**

14.01 Tenant shall and will on the last day of the Term, or upon any earlier termination of this Lease, as the case may be, surrender and deliver up the Premises into the possession and use of Landlord without objection or delay, in good order, condition and repair, as required by this Lease, reasonable wear and tear and damage by casualty excepted, free and clear of all lettings and occupancies, and free and clear of all liens and encumbrances other than any created by Landlord.

14.02 Upon the expiration or earlier termination of this Lease, no Improvements shall be removed by Tenant. But, consistent with Section 7.06, Tenant shall removed trade fixtures from the Premises, for which Tenant shall make no claim for costs or expenses against Landlord

relating to such removal and shall promptly repair all damage caused by such removal. If Tenant fails to remove any trade fixtures or Personalty upon the expiration or earlier termination of this Lease, Landlord may deem the property to have been abandoned by Tenant and Landlord may either retain the property as its property or dispose of it or them, without accountability to Tenant, in such manner as Landlord may see fit, including but not limited to selling such property and retaining the proceeds or demolishing and removing such property. If Landlord elects to remove the Tenant's or any other person's trade fixtures or Personalty from the Premises, Tenant shall promptly reimburse Landlord for all costs of removal and restoration of the Premises upon demand from Landlord.

14.03 Landlord shall not be responsible for any loss or damage occurring to any property owned by Tenant or any subtenant or sub-subtenant or Permitted Licensee, other than that arising out of the City's, or its employees', contractors', or agents', acts or omissions, acting within the scope of their employment or contract.

14.04 If, without the execution of a new lease or a written extension of this Lease, Tenant shall, with or without the consent of Landlord, hold over after the expiration of the Term, Tenant shall be deemed to be occupying the Premises as a Tenant from month-to-month, and such tenancy may be terminated by Landlord upon 30-days written notice. Tenant shall occupy the Premises during any month-to-month tenancy pursuant to all the other terms, covenants and conditions set forth in this Lease.

14.05 Without limiting the generality of Article 25, the provisions of this Article shall survive the expiration or termination of this Lease.

## **ARTICLE 15**

### **DEFAULT OF TENANT; TERMINATION PROVISIONS; REMEDIES**

15.01 Tenant will be in default of this Lease upon the occurrence of one or more of the following:

(a) Tenant's failure to pay Rent or Additional Rent due hereunder within ten (10) days after written notice of any such failure has been given by Landlord to Tenant;

(b) Tenant's failure to comply with the limitations on use the Premises set forth in Section 2.01 within thirty (30) days from receiving written notice from Landlord;

(c) Tenant's failure in keeping, observing or performing any of the material terms, covenants or conditions contained in this Lease on Tenant's part to be kept, observed or performed within thirty (30) days from receiving written notice from Landlord, or, if such failure is due to any Permitted Licensee not performing under any Permitted License within forty-five (45) days from receiving written notice from Landlord, (or such longer period as may be reasonably necessary so long as Tenant, or Permitted Licensee is diligently pursuing the cure of such failure) including but not limited to the following:

- (i) failure to perform or cause to be performed the Improvements and alterations of the Premises and the City Work as generally described in the Development Plan;
- (ii) failure to maintain and Repair the Improvements;
- (ii) except in the event of an emergency as set forth in Section 7.01 above, performing any Alterations without the prior approval of City;
- (iii) failure to perform the Alterations in accordance with Section 9.01;
- (iv) execution of a sublease or license in violation of Article 13 or the terms of which violates Section 9.02
- (v) except as contemplated by Section 2.09, interference with or obstruction of public access to and across the Premises and public use of the Premises in violation of Section 9.01 resulting from the act or omission of Tenant, or any Permitted Licensee(s);
- (vi) obstruction or prevention of City access to the Premises in violation of Article 8 resulting from the act or omission of Tenant, or any Permitted Licensee(s);
- (vii) failure to obtain or maintain insurance in accordance with Article 11;
- (viii) failure to prevent a lien from attaching to or being filed against the Premises arising out of any act or omission by Tenant or any Permitted Licensee.

(d) Tenant files or shall have filed against it a petition of bankruptcy or for arrangement, reorganization or other relief concerning its indebtedness under any federal or state statute, or makes an assignment for the benefit of creditors, or is adjudicated bankrupt or declared insolvent by the decree of a court of competent jurisdiction, or initiates any proceedings for, or consents to, the appointment of a receiver or similar official of its assets, or if any such proceeding is initiated against it, and any such proceeding or receivership shall continue unstayed and in effect for a period of sixty (60) days, or admits in writing its inability to pay its debts generally as they become due, or if Tenant takes any action in contemplation of any of the foregoing.

(e) Any representation or warranty made by Tenant in this Agreement is false or becomes untrue in any material respect and such representation or warranty remains untrue for thirty (30) days after notice thereof is delivered to Tenant.

(f) Tenant at any time fails to comply with Applicable Law in any material respect and such failure to comply continues for thirty (30) days after Tenant learns of such failure or any Permitted Licensee(s) at any time fails to comply with Applicable Law in any material respect and Tenant fails to use commercially reasonable efforts to cause the Permitted Licensee(s) to cure such failure within forty (45) days after Tenant learns of such failure.

15.02 Upon a default by Tenant, Landlord shall be entitled to do one or more of the following:

- (a) bring legal action to recover all Rent and Additional Rent which is over due, if any;

(b) declare the Lease immediately terminated and upon such termination Tenant shall immediately vacate the Premises and remove Tenant's property other than the Improvements from the Premises in accordance with Section 14.02 above;

(c) bring legal action to repossess the Premises;

(d) declare the Rent and all items of Additional Rent for the entire balance of the Term, immediately due and payable, together with all other charges, payments, costs, and expenses payable by Tenant as though such amounts were payable in advance on the date the event of default occurred;

(e) bring legal action against Tenant to recover damages suffered by Landlord arising out of Tenant's default;

(f) require Tenant to assign all of its rights, title and interest in the Improvements to the City;

(g) seek all rights and remedies available at law or in equity.

15.03 Tenant hereby expressly waives, so far as permitted by law, the service of any notice of intention to enter or re-enter provided for in any statute now existing or enacted in the future, or of the institution of legal proceedings to that end, and Tenant, for and on behalf of itself and all persons claiming through or under Tenant also waives any and all right of redemption or re-entry or re-possession or to restore the operation of this Lease in case Tenant shall be dispossessed by a judgment or by warrant of any court or judge or in case of entry, re-entry or re-possession by Landlord. Tenant hereby waives trial by jury in any claim, action, proceeding or counterclaim brought by either of the parties hereto against the other on any matter whatsoever arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant, Tenant's use or occupancy of the Premises or any claim of injury or damage.

15.04 No failure by Landlord to insist upon the strict performance of any provision of this Lease or to exercise any right or remedy consequent upon a default thereof, and no acceptance by Landlord of full or partial Rent or Additional Rent during the continuance of any such default, shall constitute a waiver of any such provision. No provision of this Lease to be kept, observed or performed by Tenant, and no default thereof, shall be waived, altered or modified except by a written instrument executed by Landlord. No waiver of any default shall affect or alter this Lease, but each and every provision of this Lease shall continue in full force and effect with respect to any other then existing or subsequent default thereof.

15.05 Tenant shall be liable for and shall promptly pay upon demand all of Landlord's actual and reasonable costs, charges and expenses, including the fees of counsel, agents and others retained by Landlord (or, if Landlord uses its own employees for such services, the amount that Landlord would have paid had it engaged the services of outside counsel or others) incurred by Landlord (a) in any litigation in which Tenant causes Landlord to become involved,

and (b) in connection with any action brought by Landlord to enforce any right or remedy against Tenant upon a default by Tenant under this Lease.

15.06 Tenant expressly waives the benefits of all present and future laws exempting any goods on the Premises, or elsewhere, from distraint, levy, or sale in any legal proceedings taken by the Landlord to enforce any rights under this Lease.

15.07 No right or remedy herein conferred upon or reserved to Landlord is intended to be exclusive of any other right or remedy herein or by law provided, but each shall be cumulative and in addition to every other right or remedy given herein or now or hereinafter existing at law or in equity or by statute. The City acknowledges a Federal interest in the Reconstruction Work and agrees that it will take no action which compromises or otherwise diminishes such interest.

## **ARTICLE 16 COMPLETE AGREEMENT**

16.01 This Lease sets forth all the promises, agreements, conditions, and understandings between Landlord and Tenant relative to the Premises and the Reconstruction Work and improvements now existing or in the future constructed on the Premises, and there are no promises, agreements, conditions or understandings, either oral or written, between them other than as herein set forth. Notwithstanding the foregoing, the parties have entered into a written access agreement for testing on or beneath the Premises and the parties may enter into additional written license agreements for space adjacent to the Premises or within City Hall to assist Tenant to fulfill its obligations under this Lease.

## **ARTICLE 17 CITY'S RIGHT TO ENFORCE STRICTLY**

17.01 Any law, usage or custom to the contrary notwithstanding, Landlord shall have the right at all times to enforce all provisions of this Lease in strict accordance with their terms, notwithstanding any conduct or custom on the part of Landlord in refraining from so doing at any time or times, or from enforcing its rights hereunder strictly in accordance with the same. Any such conduct or custom shall not be construed as having created a custom in any way or manner contrary to any specific provision of this Lease, or as having in any way or manner modified the same.

## **ARTICLE 18 MEMBERSHIP**

18.01 In accordance with Chapter 17-400 of The Philadelphia Code, Tenant agrees that its payment or reimbursement of membership fees or other expenses associated with participation by its employees in an exclusionary private organization, insofar as such participation confers an employment advantage or constitutes or results in discrimination with regard to hiring, tenure of employment, promotions, terms, privileges or conditions of employment, on the basis of race, color, sex, sexual orientation, gender identity, religion,



national origin or ancestry, constitutes, without limiting the generality of Article 15, a substantial breach of this Lease entitling Landlord to all rights and remedies provided in this Lease or otherwise available in law or equity.

18.02 Tenant agrees to include the immediately preceding paragraph, with appropriate adjustments for the identity of the parties, in all Leases, contracts and subcontracts which are entered into for work to be performed pursuant to this Lease.

18.03 Tenant further agrees to cooperate with the Commission on Human Relations of the City in any manner which the Commission deems reasonable and necessary for the Commission to carry out its responsibilities under Chapter 17-400 of The Philadelphia Code. Failure to so cooperate shall constitute, without limiting the generality of Article 15, a substantial breach of this Lease entitling Landlord to all rights and remedies provided in this Lease or otherwise available in law or equity.

## **ARTICLE 19 LEASE BINDING**

19.01 This Lease shall be binding upon Landlord and Tenant, their successors and assigns, subject to the provisions of Article 13 above.

## **ARTICLE 20 COMPLIANCE WITH LAWS, ORDINANCES AND REGULATIONS**

20.00 (a) In this Lease, the term "Applicable Law(s)" shall mean all present and future federal, state, and municipal laws, ordinances, codes, notices, orders, rules regulations and requirements relating to Tenant, Permitted Licensee or any Subtenant or sub-subtenant, the condition, use or manner of use of the Premises, and the property of which the Premises is a part, including but not limited to the following: (a) that certain Federal legislation commonly known as the "Americans With Disabilities Act of 1990," PL Sections 101-336, codified generally at 42 U.S.C. Sections 12101 et seq., (b) all laws governing or regulating the use, presence or disposal of "Hazardous Substances" (as defined below), (c) the "Fair Practices Ordinance" (codified in The Philadelphia Code, at Chapter 9-1100), (d) The Home Rule Charter, (e) The Philadelphia Code, and (f) all laws and regulations related to fire suppression mechanisms and plans.

(b) In this Lease, the term "Hazardous Substances" shall mean: (i) asbestos, flammables, volatile hydrocarbons, petroleum products, natural gas, and synthetic gas and shall include, but not be limited to, substances defined as "hazardous substances", "hazardous wastes", "toxic substances," "pollutants," or "contaminants" as those terms are used in any Applicable Laws; (ii) any and all other materials or substances that any governmental agency or unit having appropriate jurisdiction shall determine from time to time are harmful, toxic or dangerous or are otherwise required to be removed, cleaned up or remediated.

(c) In this Lease, the term "Contamination" shall mean the uncontained presence of Hazardous Substances in, on, or about the Premises, or arising at any

time from the Premises, which may require remediation or removal under any of the Applicable Laws.

20.01 Tenant at its sole cost and expense shall perform all activities undertaken pursuant to this Lease in compliance with all Applicable Laws. Tenant acknowledges that the condition of the Premises may not presently comply with all Applicable Laws and agrees that, to the extent Tenant, or any Permitted Licensee constructs, installs or performs Improvements, or any other Alterations or any Repairs, it shall be Tenant's responsibility to cause such construction, installation or performance to occur in accordance with the terms of this Lease and all Applicable Laws.

20.02 The City acknowledges a Federal interest in the Reconstruction Work and agrees that it will take no action seeking compliance with non-Federal Applicable Laws to the extent that such laws conflict with Federal Applicable Laws..

## **ARTICLE 21 NOTICES**

21.01 All notices, requests, and other communications required under this Lease shall be in writing and shall be sent by (a) United States registered or certified mail, return receipt requested, postage prepaid, (b) hand delivery with receipt obtained, or (c) by a nationally recognized overnight courier service providing receipted proof of delivery, addressed as follows:

If intended for Landlord:      Public Property Commissioner  
   City Hall, 7th Floor  
   Philadelphia, PA 19102

with a copy to:                      Divisional Deputy City Solicitor - Real Estate  
   City of Philadelphia Law Department  
   1515 Arch Street, 17th Floor  
   Philadelphia, PA 19102

and with a copy to:                Risk Manager  
   City of Philadelphia Risk Management Division of Finance  
   1515 Arch Street, 14th Floor  
   Philadelphia, PA 19102

If intended for the Tenant:      President and CEO of Center City District  
   660 Chestnut Street  
   Public Ledger Building  
   Philadelphia, PA 19106

With a copy to:                      Bernard B. Kolodner, Esquire  
   Kleinbard Bell and Brecker LLP  
   One Liberty Place, 46th Floor  
   1650 Market Street  
   Philadelphia, PA 19103

or to such other individual or address as the party to receive notice may from time to time designate by written notice to the other party in the manner above described. The effective date of any notice given by either party will be the date such notice is either received or rejected by the addressee.

## **ARTICLE 22 CAPTIONS AND SECTION NUMBERS**

22.01 The captions, article numbers and paragraph numbers appearing in this Lease are inserted only as a matter of convenience and in no way shall be construed as defining or limiting the scope or intent of the provisions of this Lease nor in any way affecting this Lease.

## **ARTICLE 23 PARTIAL INVALIDITY**

23.01 If any provision of this Lease or the application thereof to any party or circumstance shall, to any extent, be adjudged invalid or unenforceable by a court of competent jurisdiction, the remainder of this Lease, or the application of such provision to parties or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

## **ARTICLE 24 AMENDMENT AND MODIFICATION**

24.01 This Lease shall not be amended, modified or supplemented unless by agreement in writing signed by both Landlord and Tenant. No oral representations, whenever made, by any official, commissioner, or employee of Landlord shall be effective to amend the terms of this Lease. Landlord's failure to respond orally or in writing to any request or offer from Tenant to modify or waive any of Tenant's obligations under this Lease does not constitute Landlord's consent to Tenant's request or offer, and Tenant promises to strictly comply with its obligations under this lease unless and until its request or offer is explicitly accepted in writing by Landlord.

## **ARTICLE 25 SURVIVAL**

25.01 Any and all provisions set forth in this Lease which, by its or their nature, would reasonably be expected to be performed after the expiration or earlier termination of this Lease shall survive and be enforceable after the expiration or earlier termination of this Lease. Any and all liabilities, actual or contingent, which shall have arisen in connection with this Lease, shall survive any expiration or termination of this Lease.

## **ARTICLE 26**

### **FIRE OR CASUALTY DAMAGE**

26.01 (a) Material Destruction. If in the Landlord's judgment the Premises shall be substantially or totally destroyed by fire, explosion, windstorm, tornado or other casualty, or if the Premises should be damaged so that, in the Landlord's sole discretion, Tenant's ability to use the Premises for the purposes set forth in this Lease will be impaired for a period greater than one (1) year after written notice by Tenant to Landlord of the destruction ("Material Destruction"), Landlord shall have the option of terminating this Lease as of the date of the subject Material Destruction by delivering to Tenant written notice of termination, whereupon this Lease shall absolutely cease and terminate and the parties shall be relieved of all future liabilities; provided that the insurance proceeds as set forth in Article 11 shall be applied first pursuant to any applicable loan documents and then to reimburse Tenant for its equity investment in the Reconstruction Work. If Landlord does not terminate this Lease, Tenant shall use insurance proceeds to the extent available to restore the Premises to their condition prior to the damage, and Landlord and Tenant shall cooperate in seeking any funds necessary, in excess of insurance proceeds, to repair the Premises. If the insurance proceeds exceed the cost to repair the Premises, including soft costs, excess proceeds shall be separately earmarked for ongoing capital improvements to the Premises.

(b) Partial Destruction. If the damage by fire, explosion, windstorm, tornado or other casualty can, in the sole discretion of the Landlord, be reasonably rebuilt or repaired within one (1) year from the date of the written notification by Tenant to Landlord of the destruction ("Partial Destruction"), this Lease shall not terminate as a result of such casualty, Tenant shall promptly repair the Partial Destruction at the sole cost and expense of Tenant, including use of insurance proceeds, and Tenant shall be obligated to continue this Lease. In addition, Landlord and Tenant shall cooperate in seeking any funds necessary, in excess of insurance proceeds, to repair the Premises. If the insurance proceeds exceed the cost to repair the Premises, including soft costs, excess proceeds shall be separately earmarked for ongoing capital improvements to the Premises.

## **ARTICLE 27**

[Intentionally Omitted]

## **ARTICLE 28**

### **GOVERNING LAW; WAIVER OF JURY TRIAL; VENUE**

28.01 This Lease shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania, to that extent that such laws do not conflict with Federal Applicable Laws as set forth in paragraph 20.02.

28.02 Tenant expressly waives trial by jury in any action, proceeding, or counterclaim arising out of or in any way connected to this Lease.

28.03 All suits or other actions arising from this Lease shall be brought in the Court of Common Pleas for Philadelphia County.

## **ARTICLE 29 TIME OF THE ESSENCE**

29.01 Time is of the essence in Tenant's performance of its obligations and duties under this Lease.

## **ARTICLE 30 THIRD PARTY BENEFICIARY**

30.01 Nothing in this Lease is intended nor shall it be deemed or construed to confer any benefit or right upon any party other than Landlord and CCD, apart from the acknowledged Federal interest in the Reconstruction Work.

## **ARTICLE 31 TENANT'S RECORDS; ANNUAL REPORTS; AUDIT OF AFFAIRS**

31.01 Tenant shall keep complete and accurate books of accounts and other records relating to its use and occupancy of the Premises, including but not limited to its construction of the Improvements, maintenance of the Premises, and the management of any Permitted Licensee(s) on the Premises, within the City of Philadelphia and maintained in accordance with generally accepted accounting principles.

31.02 City, or its duly authorized representatives, shall have the right to inspect and audit all of Tenant's books of account and other records for the Premises required by this Lease at all reasonable times and at such place as the City may reasonably prescribe.

31.03 (a) Tenant shall submit to City within sixty (60) days following each Lease Year during the Initial Term or any Renewal Term, a report which includes a description of the activities undertaken by Tenant on or with respect to the Premises and a detailed income and expenses statement for the most recently completed fiscal year of Tenant with respect to the Premises including but not limited to an accounting of all income and expenditures, and license fees stipulated in Article 9.04, License Fees. Tenant shall also promptly submit any supplemental reports, documents, records, and other information that the City may require with respect to Tenant's operations of the Premises.

(b) Tenant shall submit annually to the City a list of the members of its Board of Directors and its corporate officers. Tenant shall notify the City immediately of any change in the composition of its Board of Directors and officers.

## **ARTICLE 32 CERTIFICATION OF NON-INDEBTEDNESS**

32.01 Tenant's hereby certifies and represents that Tenant and Tenant's parent company(ies), subsidiary(ies), and affiliate(s), if any, and Tenant's Directors and Officers are not currently indebted to the City, other than debts incurred in the ordinary course of business, and will not at any time during the Term 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 except to the extent as may be permitted by Applicable Laws. In addition to any other rights or remedies available to the City under this Lease or at law or in equity, Tenant acknowledges that any breach or failure to conform to this certification may, if such breach or failure is not resolved to the City's satisfaction within a reasonable time frame specified by the City in writing, result in the termination of this Lease for default (in which case Tenant shall be liable for all excess costs and other damages, including but not limited to those set forth in Article 15 of the Lease, resulting from the termination). Nothing set forth in this Article shall limit the generality of Article 15.

32.02 Tenant shall require contractors performing work in connection with this Lease to be bound by the following provision and Tenant shall cooperate fully with the City in exercising the rights and remedies described below or otherwise available at law or in equity:

Subcontractor (the "Subcontractor") hereby certifies and represents that Subcontractor and Subcontractor's parent company(ies) and subsidiary(ies) are not currently indebted to the City of Philadelphia ("City"), other than debts incurred in the ordinary course of business, and will not at any time during the term of Tenant's Lease with the City ("Lease"), including any extensions or renewals thereof, 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 except to the extent as may be permitted by Applicable Laws. In addition to any other rights or remedies available at law or in equity, Subcontractor acknowledges that any breach of or failure to conform to this certification may, at the option and direction of the City, result in the termination of the Lease (in which case Subcontractor will be liable for all excess costs and other damages resulting from the termination).

### **ARTICLE 33 QUIET ENJOYMENT**

33.01 So long as Tenant shall (i) pay the Rent, Additional Rent, and other charges herein provided within the respective times provided therefore, and (ii) observe and perform all covenants, terms and conditions on Tenant's part to be observed and performed, Tenant shall peaceably and quietly hold and enjoy the Premises for the Term without hindrance or interruption by Landlord or anyone lawfully claiming through Landlord, subject, however, to the terms and conditions of this Lease.

### **ARTICLE 34 APPROVALS BY CITY; SUBMISSIONS TO CITY**

34.01 Without limiting Section 5.06, unless otherwise stated explicitly in this Lease, any review, approval, permission, or consent that Tenant is required to obtain from the City under this Lease shall not be valid or effective unless obtained or confirmed in writing from the Commissioner of Public Property or the Commissioner's designee. Unless otherwise specified, all reports, notices, plans, specifications, certificates, requests for approval, and submissions required of Tenant by this Lease shall be submitted to the Commissioner of Public Property or the Commissioner's designee.

## **ARTICLE 35 LIMITATION OF LIABILITY**

35.01 In any action brought to enforce the obligations of Tenant arising under this Lease, the judgment or decree shall be enforceable against Tenant only to the extent of Tenant's interest in this Lease and its interests in any Permitted Licenses. No such judgment or decree shall provide for or allow execution on, nor be a lien on, any other assets of Tenant, or of any director, officer, employee, agent, or other representative of Tenant.

## **ARTICLE 36 PHILADELPHIA 21ST CENTURY MINIMUM WAGE AND BENEFITS STANDARD**

36.01 In accordance with Chapter 17-1300 of the Philadelphia Code, Tenant represents that it shall comply with the requirements of this Chapter as the terms of that chapter exist on the date of execution of this Lease, subject to any waiver that may be issued. Tenant shall promptly provide to the City documents and information verifying its compliance with this Chapter and be subject to sanctions for non-compliance pursuant to that chapter, subject to any waiver that may be issued. To the extent not subject to a waiver, Tenant will notify its affected employees with regard to the wages that are required to be paid pursuant to this Chapter.

## **ARTICLE 37 TENANT'S DUTIES AND COVENANTS PURSUANT TO 17-1400**

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

37.02 Unless approved by the City to the contrary, any approvals required by the Philadelphia Code Chapter 17-1400 to be performed by the City Solicitor shall be performed by Tenant by its President and CEO; any approvals required to be performed by the Director of Finance shall be performed by Tenant by its Chief Financial Officer; and any approvals required to be performed by the Mayor shall be performed by Tenant by its President and CEO.

## **ARTICLE 38 ECONOMIC OPPORTUNITY PLAN**

38.01 Notwithstanding any other provision of this Lease, and unless inapplicable because of federal or state grant provisions, Tenant shall not begin construction of the Work until Tenant has obtained the City's approval of an economic opportunity plan ("Economic Opportunity Plan", attached hereto as Exhibit D) setting forth Tenant's goals with respect to the participation of Minority, Female and Disabled Owned Disadvantaged Business Enterprises in the construction, alteration, Maintenance, Repair, and operation of the Premises and other Improvements and with respect to the employment of disadvantaged, minority and female persons.

38.02 Unless inapplicable because of federal or state grant provisions, Tenant shall comply with its Economic Opportunity Plan in all phases of (1) Tenant's design, engineering, and construction of the Premises and the Improvements, (2) Tenant's alteration, Maintenance, and Repair of the Premises, all other Improvements, and other parts of the Premises, and (3) Tenant's operation of the Building, the Improvements, and other parts of the Premises.

## **ARTICLE 39 FEDERAL REQUIREMENT**

39.01 The City and CCD acknowledge that the CCD, as the recipient of a Federal grant for the Reconstruction Work, must comply with all Federal Applicable Laws, including, but not limited to, all Applicable Laws, certifications, assurances, and other requirements referenced and/or set forth in Grant Agreement between the United States Department of Transportation, the Federal Transit Administration, and the Center City District, a copy of shall be attached as Exhibit G upon execution.

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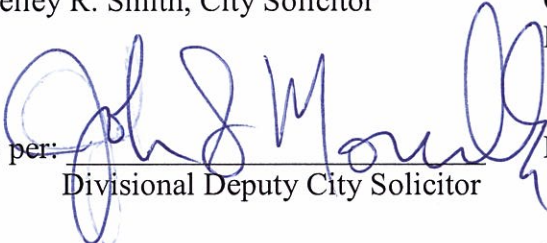


IN WITNESS WHEREOF, intending to be legally bound, the parties hereto have caused this Lease to be executed the day and year first above written.

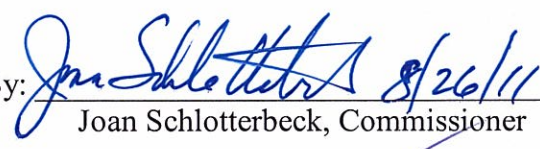
Approved as to form by  
Shelley R. Smith, City Solicitor

LANDLORD:  
CITY OF PHILADELPHIA, through the  
DEPARTMENT OF PUBLIC PROPERTY

As per:

  
Divisional Deputy City Solicitor

By:

 8/26/11  
Joan Schlotterbeck, Commissioner


TENANT:  
CENTER CITY DISTRICT

[SEAL]

By:

  
Paul Levy, President and CEO

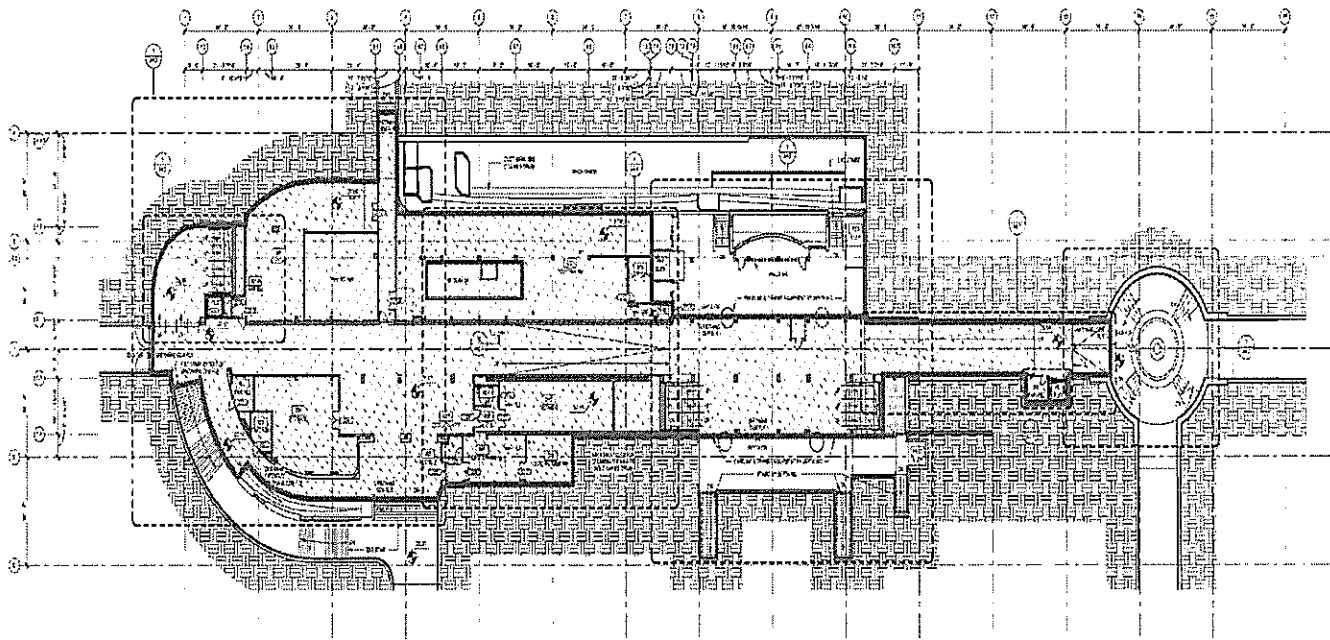
By:

  
Secretary/Treasurer

## **LIST OF EXHIBITS**

Exhibit A:	Premises
Exhibit B:	Development Plan
Exhibit C:	City and Tenant Services
Exhibit D:	Economic Opportunity Plan
Exhibit E:	Operations Plan (to be inserted before the Commencement Date: See Section 2.01)
Exhibit F:	Commencement Date Letter (to be inserted once the Commencement Date is determined)
Exhibit G:	Grant Agreement (to be inserted once the Grant Agreement is executed)

[illegible]



**NOT FOR CONSTRUCTION**

CONSULTING ENGINEER  
ARCHITECT  
DATE: 10/15/10

CONSULTING ENGINEER  
ARCHITECT  
DATE: 10/15/10

CONSULTING ENGINEER  
ARCHITECT  
DATE: 10/15/10

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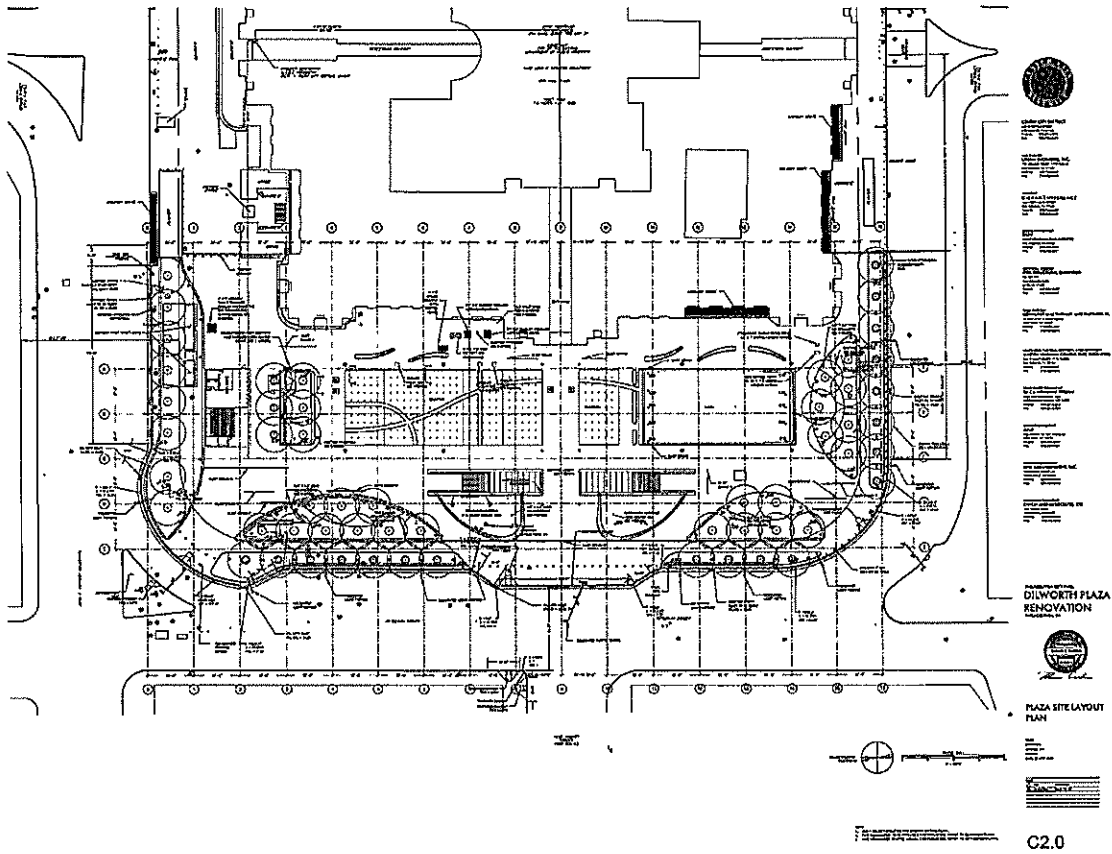
CONSULTING ENGINEER  
ARCHITECT  
DATE: 10/15/10

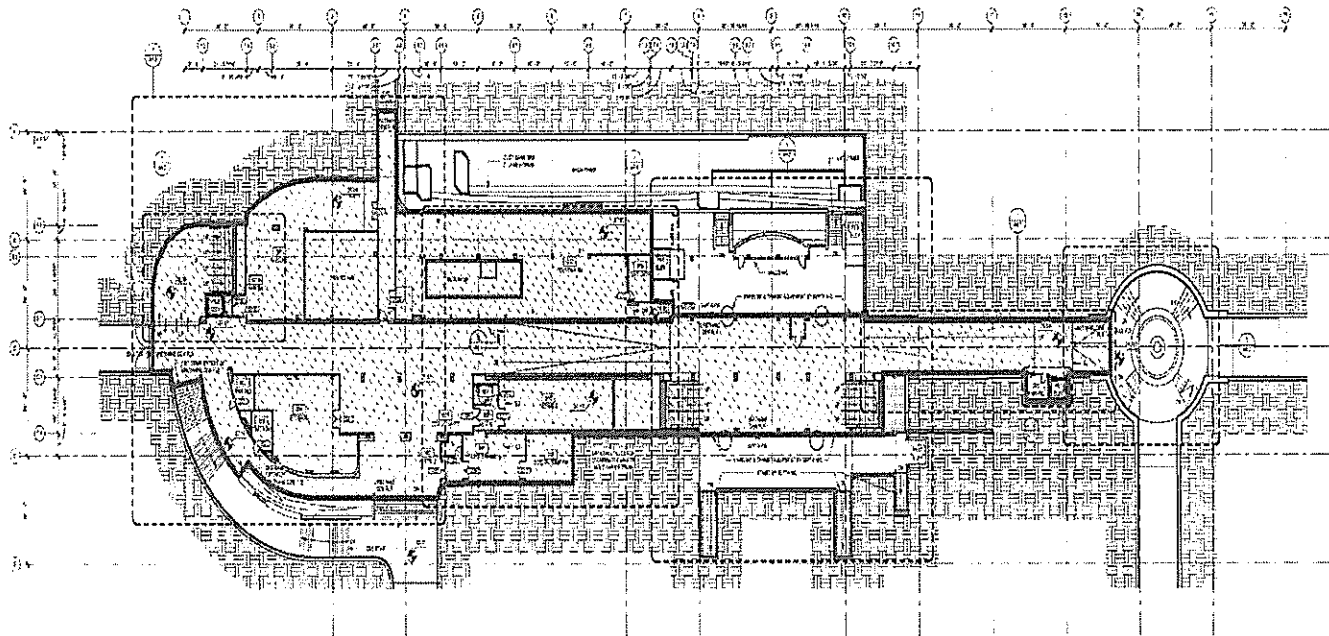
**DILWORTH PLAZA  
RENOVATION**

**LEASE EXHIBIT-  
UPPER  
CONCOURSE**

A1.1

## Exhibit B Development Plan





**NOT FOR CONSTRUCTION**

**CONSULTING ENGINEER**  
 JAMES H. HARRIS, INC.  
 1000 MARKET STREET  
 PHILADELPHIA, PA 19104

**DESIGNER**  
 HENNINGSEN, INC.  
 1000 MARKET STREET  
 PHILADELPHIA, PA 19104

**OWNER**  
 FREIGHT FRIEFLER  
 1000 MARKET STREET  
 PHILADELPHIA, PA 19104

**ARCHITECT**  
 J.H. HARRIS, INC.  
 1000 MARKET STREET  
 PHILADELPHIA, PA 19104

**STRUCTURAL ENGINEER**  
 J.H. HARRIS, INC.  
 1000 MARKET STREET  
 PHILADELPHIA, PA 19104

**MECHANICAL ENGINEER**  
 J.H. HARRIS, INC.  
 1000 MARKET STREET  
 PHILADELPHIA, PA 19104

**ELECTRICAL ENGINEER**  
 J.H. HARRIS, INC.  
 1000 MARKET STREET  
 PHILADELPHIA, PA 19104

**PLUMBING ENGINEER**  
 J.H. HARRIS, INC.  
 1000 MARKET STREET  
 PHILADELPHIA, PA 19104

**HEATING ENGINEER**  
 J.H. HARRIS, INC.  
 1000 MARKET STREET  
 PHILADELPHIA, PA 19104

**ACoustical ENGINEER**  
 J.H. HARRIS, INC.  
 1000 MARKET STREET  
 PHILADELPHIA, PA 19104

**ENVIRONMENTAL ENGINEER**  
 J.H. HARRIS, INC.  
 1000 MARKET STREET  
 PHILADELPHIA, PA 19104

**SAFETY ENGINEER**  
 J.H. HARRIS, INC.  
 1000 MARKET STREET  
 PHILADELPHIA, PA 19104

**PROJECTING ENGINEER**  
**DILWORTH PLAZA**  
**RENOVATION**  
**PHILADELPHIA**

**LEASE EXHIBIT -**  
**UPPER**  
**CONCOURSE**

A1.1

## **Exhibit C**

### **City and Tenant Services**

#### **Limited City Services:**

1. Police patrolling/protection: Police shall walk through the Premises with the same frequency as they do otherwise in Center City and be deployed routinely by the City for any major event occurring on the Premises for the full length of the event
2. Trash pickup, except from Café, with the same frequency as is performed otherwise in Center City
3. Rodent Control: The Health Department shall make inspections of the Premises with the same frequency as it does otherwise in Center City
4. Fire/ambulance services; Rescue Squad deployment for any major event occurring on the Premises for the full length of the event
5. Road maintenance to adjacent streets, as necessary
6. Maintenance of vehicular lighting fixtures and traffic control signals adjacent to Premises, as necessary and promptly upon identification of a malfunction or damage
7. Maintenance/replacement of damaged signage (other than those signs maintained by Tenant pursuant to item #14, below) at the Premises as necessary
8. Utility charges, excluding the Café
9. To facilitate Tenant's performance of the Reconstruction Work, Landlord shall supply Tenant's contractors with as much space as is reasonably requested by Tenant to be used as the field offices of Tenant's contractors, which space shall be located within City Hall, provided such space is available or can be made available by City.
10. Storage facility for Personalty

#### **Limited Tenant Services:**

1. Maintain street and pole lighting within the park, including light bulbs
2. Power wash sidewalks, monthly April – November
3. Repair/replace trash receptacles
4. Remove graffiti, as needed
5. Litter pick up, 3 times per day
6. Prune trees/shrubs, as needed
7. Mow and maintain grass, as needed
8. Rake leaves, as needed
9. Plant and maintain flower beds, annually
10. Repair/replace sidewalks, as needed
11. Maintain/repair/replace irrigation systems, as needed
12. Repair/replace benches
13. Repair/maintain fountain and water features
14. Maintenance/replacement of damaged CCD signage at the Premises

## **Exhibit D Economic Opportunity Plan**

### **City of Philadelphia Economic Opportunity Plan Development of Dilworth Plaza**

#### **I. Introduction, Definitions and Goals**

The City of Philadelphia ("City") and the Center City District ("CCD") strongly encourage the use of certified Minority ("MBE"), Women ("WBE"), Disabled ("DSBE") and Disadvantaged<sup>1</sup> ("DBEs") Business Enterprises (collectively, "M/W/DSBEs") and minority and female workers in all aspects of the Dilworth Plaza Development Site located at the west side of City Hall ("Project"). In support of this objective, CCD will require that all its contractors engaged in all tiers of this Project ("Contractor") to commit to this Economic Opportunity Plan ("Plan").

This Plan contains ranges of projected M/W/DSBE utilization and goals for the employment of minority and female workers in connection with the Project. This Plan shall be a part of and incorporated into the resulting agreement(s) between CCD and its contractors ("Participants").

Participants hereby verify that all information submitted to the Office of Economic Opportunity ("OEO") in response to this Plan, is true and correct and is notified that the submission of false information is subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn falsification to authorities and 18 Pa.C.S. Section 4107.2 (a)(4) relating to fraud in connection with minority business enterprises or women's business enterprises.

For the purposes of this Plan, MBE, WBE, DBE and DSBE shall refer to certified businesses so recognized by OEO. Only the work or supply effort of firms that are certified as M/W/DSBEs by an OEO approved certifying agency<sup>2</sup> will be eligible to receive credit as a Best and Good Faith Effort. In order to be counted, certified firms must successfully complete and submit to the OEO an application to be included in the OEO Registry which is a list of registered M/W/DSBEs maintained by the OEO and available online at [www.phila.gov/oeo/directory](http://www.phila.gov/oeo/directory).

For this Plan, the term "Best and Good Faith Efforts," the sufficiency of which shall be in the sole determination of the City, means: efforts, the scope, intensity and appropriateness of which are designed and performed to foster meaningful and representative opportunities for participation by M/W/DSBEs and an appropriately diverse workforce and to achieve the objectives herein stated. Best and Good Faith Efforts are rebuttably presumed met, when commitments are made within the M/W/DSBE Participation Ranges established for this development and a commitment is made to employ a diverse workforce as enumerated herein.

A portion of the Project, related to transportation improvements, is the subject of a Federal Transportation Authority grant (the FTA Grant). Portions of the Project governed by the terms and conditions to be entered into in connection with the FTA Grant will be governed by federal

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<sup>1</sup>Disadvantaged Business Enterprises ("DBEs") are those socially or economically disadvantaged minority and woman owned businesses certified under 49 C.F.R. Part 26.

<sup>2</sup>A list of "OEO approved certifying agencies" can be found at [www.phila.gov/oeo](http://www.phila.gov/oeo)



law, and the provisions of this Plan shall be subject and subordinate to the applicable federal law.

## II. Goals

### 1. M/W/DSBE Participation Ranges

As a benchmark for the expression of "Best and Good Faith Efforts" to provide meaningful and representative opportunities for M/W/DSBEs in the Project, the following participation ranges have been established. These participation ranges represent, in the absence of discrimination in the solicitation and selection of M/W/DSBEs, the percentage of M/W/DSBE participation that is reasonably attainable through the exercise of Best and Good Faith Efforts. These percentages relate to the estimated annual cost of the Operations Phase of this Project; the Construction Phase of this Project is funded through U.S. Department of Transportation's Federal Transit Administration ("FTA") and an appropriate goal for Disadvantaged Business Enterprises will be established by CCD.<sup>3</sup>

In order to maximize opportunities for as many businesses as possible, a firm that is certified in two or more categories (e.g. MBE and WBE) will only be credited toward one participation range as either an MBE or WBE. The firm will not be credited toward more than one category. These ranges are based upon an analysis of factors such as the nature, size and scope of the anticipated contracts and the availability of MBEs and WBEs to participate in these contract opportunities:

MBE		WBE
18%	- 25%	12% - 15%
Operations		Operations

### 2. Workforce Goals

CCD agrees to cause its contractors employed in the Construction Phase of the Project to exhaust their Best and Good Faith Efforts to employ minority persons and females in its workforce of apprentices and journeymen at the following levels<sup>4</sup>:

Minority Apprentices – 50% of all hours worked by all apprentices  
Minority Journeymen – 32% of all journey hours worked across all trades  
Female Apprentices – 7% of all hours worked by all apprentices  
Female Journeypersons - 7% of all hours worked across all trades

<sup>3</sup> As a benchmark for CCD's consideration, SEPTA's overall FTA Disadvantaged Business Enterprise Goal is 13.5%.

<sup>4</sup> These goals, which have been adopted by the Economic Opportunity Cabinet, are the recommendations of the Mayor's Commission on Construction Industry Diversity.

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#### **IV. Responsiveness**

A. CCD shall identify all M/W/DSBE commitments and other agreements evidencing its and CCD's contractors' Best and Good Faith efforts to contract with M/W/DSBEs and employ minority persons and females at the levels stated herein on the form entitled, "M/W/DSBE Participation and Workforce Commitments." The identified commitments constitutes a representation that the M/W/DSBE is capable of providing commercially useful goods or services relevant to the Project and that CCD or its contractors has entered into legally binding commitments with the listed M/W/DSBEs for the work or supply effort described and the dollar/percentage amount(s) set forth on the form. In calculating the percentage of M/W/DSBE participation, the standard mathematical rules apply in rounding off numbers. In the event of inconsistency between the dollar and percentage amounts listed on the form, the percentage will govern.

B. M/W/DSBE commitments are to be memorialized in a written subcontract agreement. Letters of intent, quotations, contracts, subcontracts and any other documents evidencing commitments with M/W/DSBEs, including the M/W/DSBE Participation and Workforce Commitments Form become part of this Plan.

C. OEO will review the M/W/DSBE commitments for the purpose of determining whether Best and Good Faith Efforts have been made. OEO reserves the right to request further documentation and/or clarifying information at any time during the Project term.

#### **V. Compliance and Monitoring of Best and Good Faith Efforts**

A. CCD agrees to cooperate with OEO in its compliance monitoring efforts, and to submit, upon the request of OEO, documentation relative to CCD's implementation of this Plan, including the items described below:

- Copies of signed contracts and purchase orders with M/W/DSBE subcontractors;
- Evidence of payments (cancelled checks, invoices, etc.) to subcontractors and suppliers to verify participation; and
- Telephone logs and correspondence relating to M/W/DSBE commitments.
- To the extent required by law, CCD shall ensure that all its on-site contractors maintain certified payrolls which include a breakout of hours worked by minority and female apprentices and journeypersons; these documents are subject to review by OEO.

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B. Prompt Payment of M/W/DSBEs

CCD agrees and shall cause all its contractors to ensure that all M/W/DSBEs participating in the Project receive payment for their work or supply effort within thirty (30) business days after receipt of a proper invoice following satisfactory performance.

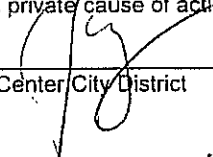
C. Oversight Committee

CCD, in consultation with the OEO, will establish and identify the members of a Project Oversight Committee, including CCD's General Contractor and Construction Manager, Office of Economic Opportunity and the District Councilperson, or her designee.

The first meeting of the Project Oversight Committee shall be called by CCD within one (1) month of the initiation of this Project and shall meet on a regular basis during all phases of the Project. Participants will engage in monitoring, reporting and problem solving activities which are to include regular meetings to address all matters relevant to further development of the Plan, carrying out implementation and the successful completion of the Project.

**VI. Remedies and Penalties for Non-Compliance**

A. CCD agrees that its compliance with the requirements of this Plan is a material inducement for City Council's approval of Ordinance No.100842. Failure to comply with the Plan may subject CCD to any applicable remedies and penalties contained in Sections 17-1605 and 17-1606 of the Philadelphia Code or remedies and penalties otherwise available at law or in equity. Notwithstanding the foregoing, no privity of contract exists between the City and any M/W/DSBE identified in any contract resulting from implementation of the Plan. Neither CCD nor the City intends to give or confer upon any such M/W/DSBE any legal rights or remedies in connection with subcontracted services under any law or policy or by any reason of any contract resulting from implementation of this Plan except such rights or remedies that the M/W/DSBE may seek as a private cause of action under any legally binding contract to which it may be a party.

  
\_\_\_\_\_  
Center City District

7/15/11  
Date

[See Best and Good Faith Efforts Forms Attached]

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DOCUMENTATION OF BEST AND GOOD FAITH EFFORT		
DEPARTMENT OF COMMERCE OFFICE OF ECONOMIC OPPORTUNITY (OEO)		
Minority (MBE), Woman (WBE), Disabled (DSBE) and Disadvantaged (DBE) Business Enterprises <sup>1</sup>		
Project TITLE -	NAME OF OWNER/DEVELOPER	
<i>List below ALL MBE/WBE/DSBE/DBEs<sup>2</sup> that were solicited regardless of whether a commitment was made.</i>		
<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> DSBE <input type="checkbox"/> M-DBE <sup>2</sup> <input type="checkbox"/> W-DBE <sup>2</sup>	Please Specify Work to be Performed and/or Type of Supply Effort	By Phone
Company Name		
Address		
Contact Person		
Telephone Number Fax #		
<input type="checkbox"/> Subcontractor <input type="checkbox"/> Supplier		
OEO CERTIFICATION #		
<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> DSBE <input type="checkbox"/> M-DBE <sup>2</sup> <input type="checkbox"/> W-DBE <sup>2</sup>	Please Specify Work to be Performed and/or Type of Supply Effort	By Phone
Company Name		
Address		
Contact Person		
Telephone Number Fax #		
<input type="checkbox"/> Subcontractor <input type="checkbox"/> Supplier		
OEO CERTIFICATION #		
<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> DSBE <input type="checkbox"/> M-DBE <sup>2</sup> <input type="checkbox"/> W-DBE <sup>2</sup>	Please Specify Work to be Performed and/or Type of Supply Effort	By Phone
Company Name		
Address		
Contact Person		
Telephone Number Fax #		
<input type="checkbox"/> Subcontractor <input type="checkbox"/> Supplier		
OEO CERTIFICATION #		

<sup>1</sup>MBE/WBE/DSBE/DBEs listed above must be certified prior to bid submission.  
<sup>2</sup>Bidder should attach quotation with this form, but the City reserves the right to request this information which shall be provided by the bidder. If the bidder makes a commitment with a DBE, bidder shall indicate.

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**Exhibit E**  
**Operations Plan**

**Exhibit F**  
**Commencement Date Letter**

**Exhibit G**  
**Grant Agreement**