

GROUND SUBLEASE

[Philadelphia Zoo Parking Garage at 3404L W. Girard Avenue]

THIS GROUND SUBLEASE (the “**Sublease**”), is made _____, 2012, between the Philadelphia Authority for Industrial Development, a Pennsylvania political and corporate body (“**PAID**”), and the Zoological Society of Philadelphia (the “**Subtenant**”), a Pennsylvania not-for-profit corporation.

BACKGROUND

A. By contract dated September 24, 1973 (the “**Master Agreement**”), the Fairmount Park Commission gave the Subtenant a license to use the zoological gardens at 34th Street and Girard Avenue (the “**Zoo**”). The initial term of the Master Agreement was 25 years and was scheduled to expire on September 23, 1998. The Master Agreement term renewed for an additional 25-year period which expires September 23, 2023.

B. The Subtenant desires to construct a multistory parking garage (the “**Garage**”) to create additional parking spaces for Zoo patrons and relieve parking congestion near the Zoo and in West Fairmount Park.

C. The Subtenant’s construction of the Garage is part of Subtenant’s proposed “Intermodal Transportation Project,” which includes planned improvements to Subtenant’s other parking facilities and to public rights-of-way that will make patron access to the Zoo easier and safer. Attached as **Exhibit B** is a drawing and narrative description of the proposed Intermodal Transportation Project.

D. The City of Philadelphia Department of Parks and Recreation (the “**Department**”) has approved the Subtenant’s final design plans for the Garage Facilities (the “**Final Designs**”). The City’s written approval of the Final Designs and a list of the Final Designs is attached as **Exhibit C** and is a part of this Sublease.

E. By an ordinance numbered as Bill No. _____, approved _____, 2012 (and signed by the Mayor on _____, 2012), Philadelphia City Council authorized the Commissioner of Parks and Recreation to execute a Master Ground Lease on behalf of the City with PAID. A copy of Bill No. _____, is attached as **Exhibit D** to this Sublease.

F. The City and PAID executed the Master Lease before or contemporaneously with PAID’s and the Subtenant’s execution of this Sublease. A copy of the Master Lease is attached as **Exhibit E** to this Sublease.

G. On May 22, 2012, PAID's Board of Directors authorized the President of PAID to execute this Sublease. A copy of PAID's resolution is attached as **Exhibit F** to this Sublease.

H. This Sublease provides for PAID's sublease of land to Subtenant for Subtenant to construct, maintain, and operate the Garage.

ACCORDINGLY, PAID and the Subtenant, intending to be legally bound, agree as follows:

DEFINITIONS AND EXHIBITS

In this Sublease, words and phrases defined in the preamble and background have their assigned meanings, and the words and phrases listed below are defined as follows:

"Alteration" includes

1. a material change to any structural element of the Garage Facilities or other capital element of the Garage Facilities;
2. a material change to any building system of the Garage Facilities;
3. a material replacement of any structural element of the Garage Facilities or any other capital element of the Garage Facilities, or replacement of the entire Garage Facilities;
4. a mural on any part of the Garage Facilities or on a material attached to the Garage Facilities; and
5. any material change to the external appearance of the Garage Facilities.

"Alteration" does not include a change in landscaping that has been approved in advance by the First Deputy.

"Applicable Laws" includes all present and future federal, state, and municipal laws, ordinances, codes, notices, orders, rules, regulations, and requirements, relating to the Premises, this Sublease, the Subtenant, Contractors, Subtenant's construction of the Garage Facilities, and Subtenant's maintenance, repair, management, operation, and Alteration of the Garage Facilities. Applicable Laws include but are not limited to (1) all laws that govern or regulate the use, presence, treatment, and disposal of hazardous substances and environmental contamination, (2) the Philadelphia Home Rule Charter and the Philadelphia Code, (3) the Department's regulations, (4) zoning approvals, and (5) Art Commission approval.

“**City**” means the City of Philadelphia and all its departments, boards, commissions, agencies, offices, officials, officers, employees, representatives, successors and assigns.

“**Commencement Date**” means the date of this Sublease.

“**Contractor**” and “**Contractors**” mean all the Subtenant’s consultants, contractors and subcontractors, at all levels, involved in the design and construction of the Garage Facilities and in the operation, management, maintenance, repair, replacement, or Alteration of the Garage Facilities.

“**Deadline to Start Construction**” means 5:00 p.m. on the second anniversary of the Commencement Date, except as that date may be extended in accordance with Section 2.3 and Section 16.9, as those sections are limited by the provisions of Section 2.4.

“**Economic Opportunity Plan**” and “**EOP**” mean a plan for hiring Contractors owned by disadvantaged business enterprises, including businesses owned by women, minorities, or disabled persons, and for employment of Philadelphia residents, in connection with construction, management, and operation of the Garage. Subtenant’s Economic Opportunity Plan is set forth in **Exhibit J**.

“**Event of Default**” has the meaning given it in Section 11.1.

“**Final Designs**” has the meaning given it in Background paragraph D.

“**First Deputy**” means the First Deputy Commissioner, Parks and Facilities, an official in the Department, and any official of the City who succeeds to the powers and duties of the First Deputy.

“**Force Majeure Event**” has the meaning given it in Section 16.9.

“**Garage**” has the meaning given it in Background paragraph B above and includes all related improvements and ancillary facilities for it.

“**Garage Facilities**” means the Garage together with all the other improvements, fixtures, equipment, systems, conduits, lines, landscaping, and developments of every kind constructed on, installed in, or otherwise placed in or on the Premises by Subtenant.

“**Invasive Species**” includes any tree, flower, vine, or other vegetation that is identified or listed as invasive with respect to the native species of vegetation of the Delaware Valley by

1. the Commonwealth of Pennsylvania Department of Agriculture;

2. the National Park Service and United States Fish and Wildlife Service;
3. the United States Department of Agriculture; or
4. any successor department or agency to any of the departments and agencies listed in 1—3 above.

“**Master Agreement**” has the meaning given it in Background paragraph A.

“**Master Lease**” means the Master Ground Lease between the City and PAID regarding the Premises, as the Master Lease may be duly amended in accordance with its terms.

“**Native Species**” means trees, flowers, vines, and other vegetations that are native to the Philadelphia region. “Native Species” does not include any Invasive Species.

“**Partial Taking**” has the meaning given it in Section 10.1.

“**Party**” means either PAID or Subtenant.

“**Plans and Specifications**” has the meaning given it in Section 4.4.

“**Premises**” means the land Subleased to the Subtenant subject to the provisions of this Sublease and is described in **Exhibit A**. The Premises does not include any public utility lines or public conduits that cross under or over the Premises, but the Premises does include utility lines and conduits on or under the Premises that serve the Garage or the Zoo, if any, and that connect to public utility lines or public conduits.

“**Project**” includes site preparation, soil erosion controls required prior to the start of Subtenant’s construction of the Garage Facilities, construction of the Garage Facilities, all landscaping and clean up after the construction is complete; and all other activities by Subtenant to complete its construction of the Garage Facilities.

“**Remedies**” has the meaning given it in Section 11.3.

“**Sublease**” has the meaning given it in the preamble and includes all duly executed amendments to the Sublease.

“**Sublease Ending Date**” means the date the Term or this Sublease expires, is terminated, or otherwise ends.

“**Subtenant**” has the meaning given it in the Preamble.

“**Surface Parking Lots**” means Zoological Drive, the Giraffe Lot, and the Sedgeley Parking Area.

“**Temporary Parking**” has the meaning given it in Section 4.6.

“**Term**” has the meaning given it in Section 2.1.

“**Zoo**” has the meaning given it in Background paragraph A.

Exhibit A – Premises (Definition)

Exhibit B – Intermodal Transportation Project – Drawing and Narrative Description (Background paragraph C)

Exhibit C – Final Designs and City Approval (Background paragraph D)

Exhibit D – City Authorizing Ordinance _____ (Background paragraph E)

Exhibit E – Master Ground Lease (Background paragraph F)

Exhibit F – PAID Resolution (Background paragraph G)

Exhibit G – Revenue Share Requirements (Section 3.4.2)

Exhibit H – Sign Controls (Section 3.7.3)

Exhibit I – Certification of Non-Indebtedness (Section 13.5.2)

Exhibit J – Subtenant’s Economic Opportunity Plan (Section 13.6)

Exhibit K – Subtenant’s Corporate Documents (Section 14.2)

Exhibit L – Subtenant Resolution (Section 14.3)

SECTION 1.

SUBLEASE; CONDITION OF PREMISES; NO FINANCIAL OBLIGATION ON CITY; FEE

1.1. **Sublease.** Subject to the other provisions of this Sublease, starting on the Commencement Date, the PAID subleases to the Subtenant, and the Subtenant subleases from PAID, the Premises for the Term.

1.2. **Condition of Premises.** Under a license given by the Fairmount Park Commission, Subtenant has used the Premises as a surface parking lot for several decades. PAID expressly disclaims all representations and warranties about the Premises and the condition of the Premises. Subtenant has no recourse to PAID or the City as to the condition of the Premises. The Subtenant has entered into this Sublease based solely upon its investigation of the Premises and without reliance upon any information provided by PAID or the City. The Subtenant accepts the Premises in its “AS IS” condition, including

- 1.2.1. all patent and latent defects and hazards,
- 1.2.2. all surface and subsurface conditions of the Premises,
- 1.2.3. the environmental condition of the Premises,
- 1.2.4. encumbrances, liens, encroachments on or affecting the Premises,
- 1.2.5. existing uses of or affecting the Premises,
- 1.2.6. agreements and restrictions of record affecting the Premises,
- 1.2.7. the nature or usability of the Premises, or the use or uses to which the Premises or any part of the Premises may be put, including but not limited to the suitability of the Premises for Subtenant's intended use under this Sublease,
- 1.2.8. the potential impact on the Premises of nearby railroad tracks and the structures, poles, towers, conduits, lines, and other improvements, fixtures, and equipment ancillary to the railroad tracks,
- 1.2.9. all violations of Applicable Laws in or on the Premises,
- 1.2.10. the zoning applicable to the Premises,
- 1.2.11. all public rights-of-way over and through the Premises; and
- 1.2.12. the City's title to the Premises and any defects in the City's title.

1.3. Sublease Subject to Master Lease; Premises Owned By City. Despite any other provision of this Sublease, this Sublease is subject to the Master Lease. Despite any other provision of this Sublease, this Sublease does not create, grant, or give to Subtenant any legal title, easement or other interest in the Premises other than a Subleasehold.

1.4. No Financial Obligation on City. **DESPITE ANY OTHER PROVISION OF THIS SUBLEASE, THIS SUBLEASE DOES NOT IMPOSE ANY OBLIGATION ON PAID OR ON THE CITY TO APPROPRIATE OR SPEND MONEY AT ANY TIME OR FOR ANY REASON, EXCEPT ONLY AS PROVIDED IN SECTION 7.1.**

1.5. Fee. Subtenant shall pay to PAID a one-time fee of \$5,000 on or before the Commencement Date.

SECTION 2.

TERM; DEADLINE TO START CONSTRUCTION; EFFECT OF FAILURE TO MEET DEADLINE

2.1. Term. The term of this Sublease (the "Term") starts on the Commencement Date and ends on the date which is 29 years and six calendar months after the Commencement Date, except as the Term may be reduced under the provisions of Section 2.5.

2.2. Condition to Full Term. The full duration of the Term under Section 2.1 is subject to the following condition precedent: Subtenant must have in good faith started

construction of the Garage Facilities before the Deadline to Start Construction. For purposes of determining whether the condition stated above is satisfied, Subtenant will be deemed to have started construction of the Garage Facilities if Subtenant starts physical construction on the Premises and breaks ground pursuant to the Plans and Specifications.

2.3. Extension of Deadline to Start Construction. Despite the provisions of Section 2.2, Subtenant may request a one-time, one-year extension of the Deadline to Start Construction at any time before the original deadline, subject to the following:

2.3.1. If the Subtenant timely requests an extension of the Deadline to Start Construction, PAID may not withhold, condition or delay its approval unreasonably.

2.3.2. If Subtenant cannot show to PAID's reasonable satisfaction that Subtenant has in good faith and diligently sought to begin construction, then PAID will not be acting unreasonably if it denies Subtenant's request made pursuant to this Section 2.3 to extend the Deadline to Start Construction.

2.4. Limit to Extension of Deadline to Start Construction. Whether Subtenant extends the Deadline to Start Construction under the provisions of Section 2.3, or whether the Deadline to Start Construction is extended by a Force Majeure Event, the Deadline to Start Construction may not in any event be extended for more than a total of one year (which, when added to the original deadline, would make the Deadline to Start Construction a total of three years after the Commencement Date).

2.5. Reduction of Term. If Subtenant does not satisfy the condition precedent set forth in Section 2.2 regarding the Deadline to Start Construction, then at 12:01 a.m. on the day after the Deadline to Start Construction as such deadline may have been extended in accordance with Section 16.9 and Section 2.3 and limited by the provisions of Section 2.4, the Term becomes co-terminus with the term of the Master Agreement.

SECTION 3.

USE OF PREMISES; OPERATION OF GARAGE FACILITIES; LIMITED USE FOR UNSATISFIED CONDITION

3.1. Use. Subtenant shall use the Premises to construct, maintain, and operate the Garage Facilities for year-round use by Subtenant's patrons, employees and invitees. Subtenant may also use the Garage to provide parking for members of the public.

3.2. Change Of Permitted Use For Failure To Meet Deadline To Start Construction. Despite Section 3.1, if Subtenant does not start construction by the Deadline to Start

Construction, Subtenant may use the Premises only as a surface parking lot, and Subtenant shall use the Premises only for that purpose.

3.3. Operation Generally. Subject to the other provisions of this Sublease, Subtenant may, in its sole discretion, decide all matters regarding operation of the Garage Facilities and the Premises.

3.4. Parking Fees.

3.4.1. Subtenant may in its sole discretion establish and charge fees for use of parking spaces on the Premises and charge rent to sub-subtenants.

3.4.2. Subtenant shall promptly pay to the City a portion of Subtenant's revenue from operation of the Garage in accordance with **Exhibit G**.

3.5. Hours Of Operation. Subtenant may operate the Garage during the days and hours that Subtenant chooses in its sole discretion.

3.6. Naming of Garage.

3.6.1. Subtenant may name the Garage, or any individual elements of the Garage Facilities, in Subtenant's sole discretion, provided

A. the name of the Garage and any individual elements of the Garage Facilities must retain the phrase "Centennial District" even if another name is added to the facility;

B. the name may not refer to any entity whose principal business is the manufacture, sale, or provision of tobacco products, alcohol, firearms, or gambling, or any products or activities that are prohibited from billboard advertisements or business operations within 1,000 feet of a school; and

C. each sign bearing a name of an element of the Garage Facilities is subject to Section 3.7.3.

3.6.2. After the Sublease Ending Date, the City may name the Garage Facilities in the City's sole discretion, except as provided in the next sentence. If the Sublease Ending Date occurs before expiration of the full Term of 29 years and six calendar months, any name that the Subtenant has designated for the Garage or any individual elements of the Garage Facilities before the Sublease Ending Date remain in effect through the earlier of (A) the term of Subtenant's applicable agreement establishing the naming rights for the Garage or any individual elements of the Garage Facilities, as the

case may be, or (B) the balance of what would have been the full Term. If the Sublease Ending Date occurs before what would be expiration of the full Term, this Section 3.6.2 survives the Sublease Ending Date through the end of what would be the full Term.

3.6.3. Subtenant may retain all proceeds paid to it for naming rights of the Garage and the individual elements of the Garage Facilities.

3.7. Signs.

3.7.1. Subtenant shall not post, hang, paint, or otherwise display any sign on the outside of the Garage or on the Garage Facilities without the advance approval of the City. Despite the preceding sentence, Subtenant may display on the outside of the Garage and the Garage Facilities signs for parking facility operations (such as directional or instructional signs), signs on the inside of windows of the Garage Facilities that promote Subtenant exhibits or events, and replacement of exhibit or event information on signage framing already approved by the City on the outside of the Garage. If as a condition of its approval of a proposed sign identifying the Garage or the Garage Facilities the City requires Subtenant to include reference to the Centennial District, Fairmount Park, the Department, or the Department's logo, or all of them, Subtenant may determine the type and size of those references, in Subtenant's reasonable discretion.

3.7.2. Subtenant shall cause all signs posted, hung, painted, or otherwise displayed on the Premises to comply with Applicable Laws.

3.7.3. Without limiting the effect of Section 3.7.2, Subtenant shall cause its signs on the Premises to comply with the requirements and limitations described in **Exhibit H.**

3.8. Contractors to Operate. Subject to Section 13.5 (Only Legally Qualified Contractors) and to Section 13.6 (Economic Opportunity Plan), despite the prohibition against Subtenant's assignment or delegation of this Sublease under Section 16.3 (No Assignment), Subtenant may enter into one or more sub-subleases or management agreements for operation of the Garage Facilities, but those sub-subleases and management agreements do not relieve the Subtenant from its obligations under this Sublease or from any of the restrictions, limitations, and conditions applicable to Subtenant under this Sublease. The acts and omissions of Subtenant's Contractors are deemed the acts and omissions of Subtenant.

3.9. Safety of Persons on the Premises. The Subtenant, at its sole cost and expense, shall take all reasonably prudent measures to provide for the safe use of the Premises, including persons entering, exiting, and in, the Garage.

3.10. Uses Prohibited. The Subtenant shall not use the Premises for any use not expressly permitted by this Sublease.

SECTION 4.
CONSTRUCTION; COSTS; ALTERATIONS; MAINTENANCE AND REPAIRS

4.1. No Cost To City. Subtenant shall design, construct, maintain, repair, replace, and improve the Garage Facilities at no cost to PAID or the City.

4.2. Right to Apply For Grant. Despite Section 4.1, Subtenant may in its sole discretion apply to the City for one or more grants to support construction of the Garage Facilities.

4.3. Subtenant's Design of Garage Facilities.

4.3.1. Subtenant shall not make any change to the Final Designs without the City's prior, written approval.

4.3.2. Subtenant shall obtain all approvals required by Applicable Laws for the Final Designs, including the approval of the Philadelphia Art Commission.

4.3.3. If any commission, department, or other body with authority to review and approve or reject the Final Designs under Applicable Laws requires Subtenant to change the Final Designs, Subtenant shall submit the changes to the City for approval under Section 4.3.1.

4.4. Subtenant's Plans and Specifications; Parking Spaces.

4.4.1. Subtenant shall cause its plans and specifications for construction of the Garage Facilities (the "**Plans and Specifications**") to conform to the Final Designs.

A. Subject to Applicable Laws regarding zoning, Subtenant shall cause the Garage to include a minimum of 625 parking spaces (or up to 683 parking spaces as permitted by a zoning variance the Subtenant obtained before the Commencement Date).

B. Subtenant shall cause the Garage to include 15 handicap parking spaces that meet the dimensional requirements set forth in Applicable Laws. Subtenant shall cause the remaining parking spaces in the Garage to measure not less than 8½ feet by not less than 18 feet (as permitted by a zoning variance the Subtenant obtained before the Commencement Date).

4.4.2. Subtenant's Plans and Specifications for landscaping, stormwater management, lighting, and improvements to the Girard Avenue streetscape are subject to the prior, written approval of the City. If the City objects to any element of the Plans and Specifications for landscaping, stormwater management, lighting, or Girard Avenue streetscape improvements, then Subtenant shall in good faith consult with City officials to make the necessary changes required by the City. Following the City's approval of the Plans and Specifications for landscaping, stormwater management, lighting, and Girard Avenue streetscape improvements, Subtenant shall not change those Plans and Specifications without the City's prior, written approval.

4.4.3. Subtenant shall obtain all approvals required under Applicable Laws for the Plans and Specifications.

4.4.4. If Subtenant is required by Applicable Laws to make changes to the Plans and Specifications for landscaping, stormwater management, lighting, or Girard Avenue streetscape improvements following the City's approval of them under Section 4.4.2, Subtenant shall resubmit those revised Plans and Specifications for the City's approval under Section 4.4.2.

4.5. No Construction Before Required Permits Issued. Subtenant shall, at its sole cost and expense, obtain all necessary permits, licenses, and approvals required by Applicable Laws to construct the Garage Facilities, including foundation permits, construction permits, zoning permits and any necessary zoning variances or certifications. Subtenant shall not start construction of the Garage Facilities until Subtenant has obtained all necessary permits, licenses, and approvals required by Applicable Laws to construct the Garage Facilities.

4.6. Patron Parking During Construction. Subtenant shall, at no cost to PAID or the City, make arrangements for its patrons' parking while the Garage Facilities are under construction (the "**Temporary Parking**"). Subtenant may not satisfy the Temporary Parking requirements by use of City-owned property other than (1) the Surface Lots and (2) City-owned land leased to other tenants. In the case of City-owned land leased to another tenant, Subtenant shall make its own arrangements with that tenant for use of any of that tenant's parking facilities for Temporary Parking.

4.7. Construction In Conformance With Approved Plans. Subtenant shall construct the Garage Facilities in strict conformance with the Final Designs approved by the City and those elements of the Plans and Specifications approved by the City pursuant to Section 4.4.2. After the Subtenant starts construction of the Garage Facilities, Subtenant shall pursue the construction to completion diligently and without delay or interruption. Subtenant shall construct the Garage Facilities in a good and workmanlike manner, and in compliance with Applicable Laws.

4.8. Environmental Protections During Construction. Subtenant shall take all measures required by Applicable Laws to limit soil erosion during construction of the Garage Facilities, and to prevent dirt, dust, debris, and refuse from construction of the Garage Facilities to issue, blow, or flow from the Premises to areas outside the Premises.

4.9. Inspection of Construction. Subtenant shall permit the City and its representatives to inspect construction of the Garage Facilities from time to time following the City's reasonable advance notice to Subtenant.

4.10. City Cooperation. Subject to Article 12 (Approvals By City Under This Sublease), Subtenant may ask the City to cooperate with the Subtenant in the Subtenant's pursuit of the approvals Subtenant must obtain under Applicable Laws related to initial construction of the Garage Facilities.

4.11. Alterations. After Subtenant completes initial construction of the Garage Facilities, Subtenant shall not make any Alteration to the Garage Facilities without the prior, written approval of the City. All of Subtenant's proposed Alterations are subject to all the procedures, requirements, and limitations set forth in Section 4.3 through 4.9 regarding Subtenant's construction of the Garage Facilities.

4.12. Native Species. Subtenant shall not plant, place, or maintain Invasive Species on any part of the Premises. Subtenant shall plant, place, and maintain on the Premises plantings that are either consistent with a landscaping plan that has been approved by the City or that are Native Species.

4.13. No Consent To Contractors Or Liens.

4.13.1. All Contractors and other persons are notified by this Section 4.13 that they may not look to PAID or the City, or to the assets of either PAID or the City, for payment or satisfaction of any costs or expenses in connection with the design, construction, maintenance, repair, Alteration, or replacement of the Garage Facilities.

4.13.2. PAID and the City are not liable to any Contractors or other persons for payment or compensation arising under or related to this Sublease has no power, right or authority to subject PAID's or the City's respective estate in the Premises and the Garage Facilities to any mechanic's or materialman's lien or claim of lien.

4.13.3. Subtenant shall include Section 4.13.1 and 4.13.2 (with appropriate adjustment for the names of the parties) in every contract with its Contractors related to

the design, construction, maintenance, repair, Alteration, or replacement of the Garage Facilities.

SECTION 5.
MAINTENANCE AND REPAIR

5.1. Maintenance. Subtenant shall, at no cost to PAID or the City, maintain the entire Premises or cause the maintenance of the entire Premises, in good and attractive condition. Without limiting application of the preceding sentence, at no cost to PAID or the City

5.1.1. Subtenant shall perform

A. all necessary and prudent repairs and replacements to all paving, buildings and other structures, and to all other capital elements of the Garage Facilities;

B. trash and litter collection and disposal;

C. landscaping; and

D. snow and ice removal.

5.1.2. Subtenant shall maintain, repair, and (when needed) replace all sidewalks and curbs in front of the Garage Facilities along Girard Avenue and between the Garage Facilities and the Zoo entrance.

5.1.3. Subtenant shall promptly remove from, or cover graffiti on, the Premises.

5.1.4. Subtenant shall repair all fencing on the Premises.

5.2. Geographic Extent of Subtenant's Maintenance. Subtenant's obligation to maintain the Premises extends to

5.2.1. the boundary around the Premises;

5.2.2. all sidewalks, curbs, and driveways on or adjoining the Premises; and

5.2.3. all fixtures, street furniture, and landscaping Subtenant installs in or along those adjoining sidewalks, curbs, and driveways.

5.3. Repairs, Replacements and Improvements. Without limiting Section 5.1 and Section 5.2, the Subtenant, at no cost to PAID or the City, shall make all necessary and prudent capital repairs, replacements, and improvements to keep the Garage Facilities attractive, safe, in good order and repair, and in good operating condition.

SECTION 6.
OWNERSHIP OF THE GARAGE FACILITIES

6.1. Ownership: Garage Facilities During Term. Throughout the Term, Subtenant is the owner of the Garage Facilities (but not the underlying Premises). In addition, throughout the Term, in relation to PAID and the City, Subtenant has exclusive care, custody, and control of the Premises, including but not limited to all improvements on the Premises.

6.2. Ownership: Garage Facilities After Term. Upon the Sublease Ending Date, title to the improvements on the Premises automatically vests in the City, without the need for the execution, filing, or recording of any document, and without any obligation on the City to pay or otherwise compensate the Subtenant, except only as provided in Section 7.1. Despite the preceding sentence, following the Sublease Ending Date, Subtenant shall promptly execute all documents the City may reasonably request in order to confirm that title to the Garage Facilities has vested in the City. Subtenant's obligations under this Section 6.2 survive the Sublease Ending Date.

SECTION 7.
EXPIRATION OF MASTER SUBLEASE; COMPENSATION TO SUBTENANT FOR GARAGE FACILITIES

7.1. Master Sublease Non-Renewal. Despite Section 6.2 (Ownership: Garage Facilities After Term), if the Master Agreement is not renewed by the City, then the Subtenant may terminate this Sublease as of the date the Master Agreement expires and, in that event, PAID shall obligate the City to pay to the Subtenant the actual value of the Garage Facilities, but not consequential or indirect damages. The obligations of PAID under this Section 7.1 survive the Lease Ending Date.

SECTION 8.
LIABILITIES, INDEMNIFICATION, RELEASE, INSURANCE

8.1. Liabilities. The Subtenant shall pay all costs and liabilities arising from or related to its construction, ownership, management, operation, maintenance, repair, replacement,

Alteration, and improvement of the Garage Facilities and all other improvements on the Premises or related to the Garage Facilities.

8.2. Indemnity. The Subtenant shall promptly indemnify, defend and hold harmless PAID and the City (including but not limited to their respective officials, officers, directors, members, employees, agents, and representatives), from and against any and all losses, costs and expenses (including but not limited to litigation costs, settlement fees and expenses, and counsel fees and expenses), claims, suits, actions, damages, liability and expenses, arising out of or resulting in whole or in part from the Subtenant's construction, operation, maintenance, repair, alteration and replacement of the Garage Facilities or relating to Subtenant's activities under this Sublease and all of Subtenant's other obligations under this Sublease, including, but not limited to, those in connection with loss of life, bodily injury, personal injury, damage to property (regardless of ownership), contamination or adverse effects on the environment, intentional acts, failure to maintain a drug-free work site and workforce and any other breach of this Sublease, regardless of the inherent nature of the work and regardless of whether or not the loss, cost, claim, suit, action, damage, liability, or expense is caused in whole or in part by the negligent act or omission of the City. The Subtenant's indemnification obligations under this provision do not negate, abridge or reduce other rights of PAID or the City or the indemnification obligations of Subtenant which otherwise exist under this Sublease or under law or at equity. The Subtenant shall further promptly indemnify, defend and hold harmless PAID and the City from and against any and all claims, demands, liens, causes of action, liabilities and judgments of any kind asserted against PAID or the City, or both of them, by any Contractor or supplier of Subtenant on account of or relating to the furnishing of services, work, labor, materials or equipment for the Subtenant under this Sublease. The Subtenant's obligations to indemnify, defend, and hold harmless PAID and the City do not extend to claims and liabilities arising solely from PAID's or the City's gross negligence or willful misconduct.

8.3. Defense. If any action, proceeding, or claim is brought or asserted against PAID or the City, or both of them, for which the Subtenant has agreed to indemnify, defend, and hold harmless PAID and the City pursuant to Section 8.2 above, then, upon PAID's or the City's notice to the Subtenant, the Subtenant shall, at its sole cost and expense, promptly resist or defend the action, proceeding, or claim by counsel approved by PAID or the City, or both of them, as the case may be, in writing. The Subtenant is not obligated to obtain PAID's or the City's approval of counsel in each and every instance where the action, proceeding, or claim is resisted or defended by counsel of an insurance carrier obligated to resist or defend the action, proceeding, or claim.

8.4. Release. In consideration for the rights the City gave to PAID under the Master Lease and PAID has given to the Subtenant by this Sublease, the Subtenant, for itself and its trustees, officers, directors, employees, agents, successors, assigns, and Contractors, and any person claiming by, through, or under the Subtenant or any of them, releases and forever

discharges PAID and the City from any and all, and all manner of, actions and causes of action, suits, claims and demands in law or in equity that the Subtenant or any of them may have against PAID or the City relating in any way, directly or indirectly, to the Premises and all conditions now or in the future existing in, on, or about the Premises.

8.5. Survival. Subtenant's obligations under Section 8.2, Section 8.3, and Section 8.4, survive the Sublease Ending Date.

8.6. Insurance.

8.6.1. Subtenant shall procure and maintain, at its sole cost and expense, and shall require all of its Contractors, concessionaires and consultants performing work for Subtenant under this Sublease to procure and maintain, insurance covering its operations and the Premises, in the types and minimum limits of coverage specified below throughout the Term. Subtenant shall cause all insurance to be procured from reputable insurers who are acceptable to the City and authorized to do business in the Commonwealth of Pennsylvania. Subtenant shall cause all insurance required in this Section, except Workers' Compensation and Employers Liability, Professional Liability and Contractor's Pollution Liability, to be written on an "occurrence" basis and not a "claims-made" basis.

A. WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY

A.1. Workers Compensation – Statutory Limits;

A.2. 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;

A.3. 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 and PAID.

B. GENERAL LIABILITY INSURANCE

B.1. 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.

B.2. 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 (Insurance Service Office) 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 PAID's or the City's sole negligence which has been assumed by contract.

C. COMMERCIAL AUTOMOBILE LIABILITY INSURANCE

C.1. Limit of Liability: \$1,000,000 per occurrence combined single limit for bodily injury (including death) and property damage liability;

C.2. Coverage: Owned, hired and non-owned vehicles.

D. PROFESSIONAL LIABILITY INSURANCE (FOR ARCHITECTS, ENGINEERS AND ENVIRONMENTAL CONSULTANTS)

D.1. Limit of Liability: \$2,000,000 per occurrence.

D.2. Coverage: Error and omissions including liability assumed under Contract.

D.3. 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 Sublease shall be maintained in full force and effect under the policy or "tail" coverage for a period of at least three 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 Subtenant'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, Subtenant 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 all of Subtenant's Contractors 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 Contractors' 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). Each Contractor is responsible for any damage to its owned, Subleased or rented tools and equipment.

G. CONTRACTOR'S POLLUTION LEGAL LIABILITY

G.1. Limit of Liability: \$2,000,000 each incident/\$4,000,000 aggregate for bodily injury (including death) and property damage.

G.2. 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 Term of this Sublease may be maintained in full force and effect under the policy or "tail" coverage for a period of at least two years beginning from the time the work under this contract is completed.

H. UMBRELLA LIABILITY INSURANCE

Limits of Liability: \$10,000,000 per occurrence when combined with insurance required above under A.2 (Employers Liability), B. (General Liability), and C. (Commercial Auto Liability).

- I. Higher minimum limits of the policies listed above, and insurance against other hazards, risks or perils, and in amounts, as the City may reasonably request and at the time are customarily insured against with respect to improvements and activities similar to the Premises in character, size, use and occupancy.

8.6.2. Subtenant shall cause PAID and the City to be named as additional insureds on all policies required under Section 8.6 except the policies for Workers Compensation and Employers' Liability and Professional Liability. Subtenant shall cause all policies required under Section 8.6 to include an endorsement stating that the coverage afforded PAID and the City as additional insureds is primary to any other coverage available to them.

8.6.3. Subtenant shall cause certificates of insurance evidencing the required coverage to be submitted to the City's Risk Management Division, One Parkway, 1515 Arch Street, 14th Floor, Philadelphia, PA 19102, within 10 days after the Commencement Date and subsequently at least once each year. Subtenant shall furnish certified copies of the original policies of all insurance required under this Section at any time within 10 days after the City's written request.

8.6.4. The insurance requirements set forth in this Section 8.6 do not modify, limit or reduce Subtenant's indemnifications of PAID and the City under this Sublease or limit Subtenant's liability under this Sublease to the limits of the policy(ies) of insurance this Sublease requires Subtenant to maintain.

8.6.5. Self Insured Retentions/Deductibles: None of the policies of insurance required by this Sublease may contain self insured retentions, deductibles or any other retention in excess of \$50,000, unless agreed to in writing by PAID and the City, each in its sole discretion.

8.6.6. Subtenant shall cause all insurance policies to provide for at least 30 days prior written notice to be given to PAID and the City in the event the coverage is materially changed, canceled or not renewed. At least 10 business days prior to the expiration of each policy, Subtenant shall deliver to the City a certificate of insurance evidencing the replacement policy(ies) that will become effective immediately upon the expiration or termination of the previous policy(ies). If for any reason any of Subtenant's insurers does not provide 30 days prior written notice to PAID and the City in the event its coverage is materially changed, canceled, or not renewed, Subtenant shall promptly notify the City and PAID and include an explanation of Subtenant's arrangements to immediately obtain substitute insurance.

8.6.7. If Subtenant fails to cause the required types and amounts of insurance to be maintained, PAID and the City are not limited in the proof of any damages which PAID and

the City, or either of them, may assert against Subtenant or any other person or entity to the amount of the insurance premium or premiums not paid or incurred and which would have been payable upon the insurance. Rather, PAID and the City may recover as damages for Subtenant's breach the entire uninsured amount of any loss and damages, and expenses of suit and costs, including without limitation reasonable cancellation fees, suffered or incurred during any period when Subtenant shall have failed or neglected to provide the insurance as required herein.

8.6.8. 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, Subtenant shall apply to either (1) 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 of permanent restoration, repairs, replacements, rebuilding or Alteration of the Premises, or (2) restoration of the Premises to its condition prior to Subtenant's entry onto the Premises, subject to the Department's reasonable satisfaction.

8.6.9. Waiver of Recovery/Subrogation. The Subtenant waives all rights of recovery, and shall cause its insurers (and each of its contractor's and subcontractor's insurers) to waive their rights of subrogation, against all required additional insureds and any of their officials, officers, employees and agents for loss or damage covered by any of the insurance maintained by the Subtenant or its contractors and subcontractors pursuant to this Sublease. Subtenant shall cause the Workers Compensation Policy to be specifically endorsed with the Waiver of Right to Recover from Others Endorsement (WC 00 0313).

SECTION 9.
DAMAGE TO GARAGE FACILITIES

9.1. Damage. If the Garage Facilities suffer a casualty, then

9.1.1. the Subtenant shall promptly take all necessary and prudent action to secure the undamaged portion of the Garage Facilities and to ensure the safety of persons and property in, on, and about the Garage Facilities; and

9.1.2. the Subtenant shall decide whether to repair or replace the Garage Facilities or to remove the remaining portions of the Garage Facilities, and the Subtenant shall notify the City of the Subtenant's decision not later than 90 days following the casualty.

9.2. Repair or Replacement; Removal.

9.2.1. If the Subtenant decides to repair or replace the Garage Facilities following a casualty, then the Subtenant shall diligently and in good faith proceed to design and implement the repair or replacement. Any repair or replacement of some or all of the Garage Facilities by the Subtenant following a casualty is an Alteration under this Sublease. The Subtenant's repair or replacement of the Garage Facilities following any casualty is subject to the procedures and requirements of Sections 4.3 through 4.9. Subtenant shall perform the repair or replacement at its sole cost and expense, which may include without limitation all insurance proceeds received by the Subtenant following the casualty.

9.2.2. If the Subtenant decides to remove the remaining Garage Facilities following a casualty, then

A. the Subtenant shall diligently and in good faith proceed to demolish and remove the remaining portions of the Garage Facilities;

B. the Subtenant shall either, in its discretion, (1) restore the Premises to its condition prior to this Sublease as a surface parking lot, or (2) restore the Premises to open, landscaped park land to the reasonable satisfaction of the First Deputy, except that as part of the restoration to landscaped park land the Subtenant may use newly planted Native Species in place of mature plant materials; and

C. (1) if Subtenant has elected to restore the Premises to its prior condition as a surface parking lot, Subtenant may use the Premises as a surface parking lot subject to the provisions of this Sublease, or

(2) if Subtenant restores the Premises to open, landscaped park land, this Sublease automatically terminates upon the Subtenant's completion of the restoration of the Premises.

9.3. Casualty At End Of Term. If a casualty to the Garage Facilities occurs during the last five years of the Term, and if the Subtenant elects not to replace the Garage Facilities, then the City may, in its sole discretion, elect to replace the Garage Facilities. If the City decides to repair or replace the Garage Facilities and notifies the Subtenant of the City's decision, then Subtenant shall pay for the repair or replacement up to the full amount of insurance proceeds received by the Subtenant arising from or related to the casualty.

SECTION 10.
CONDEMNATION

10.1. Partial Taking. If some of the Garage Facilities are taken by eminent domain (“**Partial Taking**”), then

10.1.1. Subtenant shall promptly take all necessary and prudent action to secure the uncondemned portion of the Premises and Garage Facilities and to ensure the safety of persons and property in, on, and about the Premises, and

10.1.2. Subtenant shall decide whether to continue to use the remaining portions of the Premises and Garage Facilities or to demolish and remove the Garage Facilities altogether, and the Subtenant shall notify the City of the Subtenant’s decision not later than 90 days following the condemnation.

10.2. Repair or Replacement; Removal.

10.2.1. If Subtenant decides to continue using the remaining portion of the Garage Facilities following a Partial Taking, then Subtenant shall diligently and in good faith proceed to design and implement all necessary and prudent Alterations to replace the Garage Facilities. Subtenant’s Alterations to the Garage Facilities following a Partial Taking are subject to the procedures and requirements of Sections 4.3 through 4.9. Subtenant shall perform the Alterations at its sole cost and expense, which may include without limitation all condemnation proceeds received by Subtenant following the Partial Taking.

10.2.2. If Subtenant decides to remove the remaining Garage Facilities following a Partial Taking, then

A. the Subtenant shall diligently and in good faith proceed to demolish and remove the remaining portions of the Garage Facilities,

B. the Subtenant shall either, in its discretion, (1) restore the Premises to its condition prior to this Sublease as a surface parking lot, or (2) restore the Premises to open, landscaped park land to the reasonable satisfaction of the First Deputy, except that as part of the restoration to landscaped park land the Subtenant may use newly planted Native Species in place of mature plant materials; and

C. (1) if Subtenant has elected to restore the Premises to its prior condition as a surface parking lot, Subtenant may use the Premises as a surface parking lot subject to the provisions of this Sublease, or

(2) if Subtenant restores the Premises to open, landscaped park land, this Sublease automatically terminates upon the Subtenant's completion of the restoration of the Premises.

10.3. Total Taking. If all of the Premises is taken by eminent domain, then this Sublease automatically terminates on effective date of the taking.

10.4. Condemnation Awards. If some or all of the Premises is taken by eminent domain

10.4.1. PAID may claim compensation from the condemning authority for the value of its interest in the Premises and Garage Facilities and any other items and interests to which PAID is entitled under Applicable Law;

10.4.2. the Subtenant may claim compensation from the condemning authority for the value of its interest in the Premises and Garage Facilities and any other items and interests to which the Subtenant is entitled under Applicable Law. In no event, however, may the Subtenant's claim or award reduce PAID's or the City's respective claims and awards arising out of the condemnation; and

10.4.3. PAID and the Subtenant may each appear in and defend against the condemnation as they deem proper in accordance with their own interests. To the extent possible, Subtenant shall cooperate with PAID and the City to maximize the condemnation proceeds payable by reason of the condemnation. To avoid multiplicity of actions and to minimize their respective expenses, to the extent permissible under Applicable Laws (including but not limited to procedural rules), the Subtenant shall join all issues between it and PAID and the City that are required to be resolved pursuant to this Section in any condemnation proceeding.

10.5. Temporary Taking. If the temporary use of some or all of the Premises or Garage Facilities are taken by eminent domain, this Sublease remains in effect. The Subtenant is entitled to receive all awards, damages, compensation and proceeds payable by the condemnor by reason of the condemnation for periods prior to the Sublease Ending Date. The City is entitled to all those awards, damages, compensation and proceeds for periods after the Sublease Ending Date.

SECTION 11.

DEFAULT

11.1. Events of Default. Subtenant will commit an “**Event of Default**” if it fails to comply with any provision of this Sublease.

11.2. Notice and Cure Period. Before PAID may exercise any of its Remedies set forth in Section 11.3, PAID must notify the Subtenant of the Event of Default, and

11.2.1. if the Event of Default is of a nature that it reasonably can be cured within 60 days after the delivery of PAID’s notice, the Subtenant must have failed to cure the Event of Default on or before 60 days after the delivery of PAID’s notice.

11.2.2. if the Event of Default is of a nature that it reasonably cannot be cured within 60 days after the delivery of PAID’s notice, then

A. the Subtenant must have failed to start in good faith to cure the Event of Default within the 60 day period; or

B. the Subtenant must have failed to continuously and diligently pursue the cure to completion.

11.2.3. if the Event of Default is of a nature that it cannot be cured, then

A. the Subtenant must have failed to take all action and make all payments necessary to make PAID and the City whole within 60 days after the delivery of the PAID’s notice, and

B. the Subtenant must have failed to give PAID and the City adequate assurance in writing within 60 days after the delivery of PAID’s notice that the Subtenant will not commit the Event of Default again.

11.3. Remedies. If the Subtenant commits an Event of Default and fails to take the appropriate action required in Section 11.2 to cure the Event of Default following PAID’s delivery of notice of the Event of Default, then PAID may do one or more of the following (“**Remedies**”):

11.3.1. Suspend this Sublease.

11.3.2. Terminate this Sublease.

11.3.3. Sue the Subtenant for damages or equitable relief or both.

PAID's exercise of one remedy does not estop PAID from subsequently exercising one or more of its other Remedies.

SECTION 12.
APPROVALS BY CITY UNDER THIS SUBLEASE;
CITY IS THIRD PARTY BENEFICIARY OF SUBLEASE

12.1. City Approvals Under Sublease Not Approval Under Applicable Laws. The City's approval of Subtenant's designs, plans, and specifications for the Garage Facilities, including the Final Design Plans and the Plans and Specifications, and the City's approval of any report, information, or request that Subtenant provides to City under this Sublease or that is related to this Sublease, is not approval by any City department, board, or commission otherwise required under Applicable Laws. The City's help for Subtenant to obtain any approval required under Applicable Laws is not itself the approval required under Applicable Laws.

12.2. City Approval Under Sublease Not A Representation or Warranty. The City's approval of Subtenant's designs, plans, and specifications for the Garage Facilities, or its approval of any report, information, or request that Subtenant provides to City under this Sublease or that is related to this Sublease, is not a representation or warranty by the City regarding the accuracy or suitability, or any other quality, of the designs, plans, specifications, report, information, or request. The City's help for Subtenant to obtain any approval required under Applicable Laws is not a representation or warranty by the City regarding the accuracy, suitability, or any other quality of the matter for which the Subtenant seeks approval. Throughout the Term, the Subtenant is relying on its own independent investigation as to the accuracy, suitability, and quality of all the matters for which it seeks approval under Applicable Laws.

12.3. Effectiveness Of City Approvals Under Sublease.

12.3.1. Wherever this Sublease requires Subtenant or another person to obtain the City's review, consent, approval, or determination under this Sublease (apart from any review, consent, approval, or determination under Applicable Laws), the review, consent, approval, or determination will be effective only if obtained from or made by the First Deputy and in the manner this Sublease requires.

12.3.2. Wherever this Sublease requires Subtenant or another person to obtain the review, consent, approval, or determination under this Sublease of a City official, department or agency other than the First Deputy (apart from any review, consent, approval, or determination under Applicable Laws), the review, consent, approval, or

determination will be effective only if obtained from or made by the specified official, department, or agency and in the manner this Sublease requires.

12.4. Approvals by City. Except where the provisions of this Sublease expressly require separate approvals by both PAID and the City, any approval given by City in connection with any obligation of Subtenant under this Sublease is deemed approval by PAID. Wherever this Sublease requires the approval of both PAID and the City, Subtenant may submit the matter requiring the approval simultaneously to PAID and the City. Any approval, consent, or permission given, and any review conducted, by the First Deputy is deemed to be an approval, consent, permission or review, as the case may be, by PAID and is binding on PAID.

12.5. City is Third Party Beneficiary of Sublease.

12.5.1. The City is a third party beneficiary of this Sublease.

12.5.2. The City may exercise and enforce all of PAID's rights and remedies under this Sublease directly against Subtenant and all of the covenants, conditions, requirements and limitations applicable to Subtenant under this Sublease.

12.5.3. Without limiting the application of the preceding provisions of this Section 12.5, the City is a third party beneficiary of, and may enforce directly against Subtenant, all the provision in this Sublease that (A) require Subtenant to obtain the approval of the First Deputy or other City official, board, department, or commission, or (B) require the Subtenant to submit any design, plan, specification, report, certificate, or other document or matter for the review and approval of the First Deputy or other City official.

SECTION 13.

APPLICABLE LAWS; CITY HOME RULE CHARTER AND PHILADELPHIA CODE REQUIREMENTS

13.1. Applicable Laws. In exercising all its rights and fulfilling all its obligations under this Sublease, the Subtenant shall at all times comply with Applicable Laws.

13.2. Non-Discrimination. In the Subtenant's use of the Premises under this Sublease, the Subtenant shall not discriminate or permit discrimination against any person because of age, race, color, religion, national origin, ancestry, physical disability, sex, sexual orientation, or gender identity.

13.3. Non-Indebtedness. By executing this Sublease, the Subtenant represents and warrants that the Subtenant is not currently 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 reasonably satisfactory to the City has been established. The Subtenant shall not be indebted to the City at any time during the Term 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.

13.4. No Gifts to City Officials.

13.4.1. In accordance with Executive Order No. 3-11, issued by the Mayor of Philadelphia on January 25, 2011, Subtenant shall not offer, make or render, any "Gift" to any official or employee where the receipt of the Gift would be prohibited under Section 2 of that Executive Order.

13.4.2. Any person who offers or gives anything of value to any City official or employee the receipt of which would violate Executive Order No. 001-11 may be subject to sanctions with respect to future City contracts to the extent expressly stated in that Executive Order.

13.4.3. As used in this Section 13.4, "Gift" means any conveyance of anything of value, including a gift, gratuity, favor, entertainment, invitation, food, drink, or loan, unless consideration of equal or greater value is conveyed in return. "Gift" does not include a political contribution otherwise reported as required by law, or a commercially reasonable loan made in the ordinary course of business.

13.5. Only Legally Qualified Contractors. Throughout the Term,

13.5.1. the Subtenant shall hire only Contractors that

A. are not delinquent to the City of Philadelphia for taxes; and

B. have made all disclosures regarding political contributions that would be required if those contractors bid for, or were awarded, contracts directly by the City, and

C. are not otherwise disqualified from receiving any contract from the City.

13.5.2. Subtenant shall include the "Certification of Non-Indebtedness" set forth in **Exhibit I** in all its contracts for design, construction, and operation of the Garage Facilities, with appropriate adjustment to identify the parties;

13.5.3. Subtenant shall cooperate with the City and share all information reasonably desired by City officials in order to ensure that the Subtenant complies with this Section 13.5.

13.6. Economic Opportunity Plan. Subtenant shall comply with the EOP set forth in **Exhibit J**.

SECTION 14.
REPRESENTATIONS AND WARRANTIES BY SUBTENANT

14.1. Good Standing of Subtenant. Subtenant represents and warrants that Subtenant was validly formed and validly exists under Pennsylvania Law.

14.2. Subtenant Documents. Subtenant represents and warrants that it is a tax-exempt charitable organization qualified under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended. Subtenant represents and warrants that the documents attached as **Exhibit K** are true and complete copies of Subtenant's articles of incorporation, by laws, and IRS letter confirming the Subtenant's exempt status from tax under federal law.

14.3. Authority to Execute Sublease. Subtenant represents and warrants that the persons signing this Sublease in the name of the Subtenant have been authorized to do so by resolution of the Subtenant's board of directors. Subtenant represents and warrants that attached as **Exhibit L** is a true copy of a resolution passed by the Subtenant's board authorizing the individuals to sign this Sublease on behalf of the Subtenant, and that the resolution remains in effect without any modification.

SECTION 15.
NOTICE

15.1. Notice. To be effective, each notice, request, approval or consent by either party to the other under this Sublease must be made in writing, addressed as provided in Section 15.2, and given by one or more of the following methods:

15.1.1. hand delivery by courier service, with delivery receipt obtained;

15.1.2. overnight delivery by a recognized national overnight delivery service, with delivery receipt obtained; or

15.1.3. registered or certified United States mail, with return receipt requested.

15.2. Addresses. All notices under this Sublease must be addressed as provided below:

15.2.1. If to PAID:

Chairman
Philadelphia Authority for Industrial Development
2600 Centre Square West
1500 Market Street
Philadelphia, PA 19102

with a copy to:

Philadelphia Authority for Industrial Development
c/o Philadelphia Industrial Development Corporation
Vice President – Corporate Counsel
2600 Centre Square West
1500 Market Street
Philadelphia, PA 19102

and to:

First Deputy Commissioner, Parks and Facilities
City of Philadelphia Department of Parks and Recreation
One Benjamin Franklin Parkway – 10th Floor
1515 Arch Street
Philadelphia, PA 19102

and to:

City Solicitor
City of Philadelphia Law Department
One Benjamin Franklin Parkway – 17th Floor
1515 Arch Street
Philadelphia, PA 19102

15.2.2. If to the Subtenant:

President
Philadelphia Zoo

34th Street and Girard Avenue
Philadelphia, PA 19131

with a copy to:

Chief Financial Officer
Philadelphia Zoo
34th Street and Girard Avenue
Philadelphia, PA 19131

with a copy to:

David I. Haas, Esquire and David E. Loder, Esquire
Duane Morris LLP
30 South 17th Street
Philadelphia, PA 19103-4196

15.3. Delivery. Notice given in any of the manners provided in Section 15.1 is effective upon delivery or upon the recipient's refusal to accept delivery.

15.4. Change of Address. PAID and Subtenant each may change the officials to receive notice on its behalf, or change the address to which to send notice, or both, by providing notice to the other in accordance with Sections 15.1 and 15.2.

SECTION 16. **GENERAL PROVISIONS**

16.1. Sections and Captions. Unless otherwise stated, all references in this Sublease to sections, exhibits, attachments, and schedules, are to the sections, exhibits, attachments, and schedules of this Sublease. The captions used in this Sublease are for convenience only and do not limit or extend the meaning of any part of this Sublease.

16.2. Severability. If any provision of this Sublease is invalid or illegal, the remainder of this Sublease will remain in effect and the invalid or illegal provision will be enforceable if and to the extent reformed by court order.

16.3. No Assignment. Subtenant may not assign this Sublease or any of its rights under this Sublease, and shall not delegate any of its obligations under this Sublease. Assignments and delegations prohibited by this Section 16.3 include assignments by merger or by operation of law. Any purported assignment or delegation by Subtenant in violation of this Section 16.3 is

void. Subject to the provisions of Section 3.8 (Contractors to Operate), however, Subtenant may enter into one or more agreements with Contractors.

16.4. Successors and Assigns. Subject to Section 16.3 (No Assignment), this Sublease binds and benefits PAID and Subtenant and their respective permitted successors and assigns.

16.5. No Joint Venture; No Third Party Beneficiaries.

1. This Sublease does not create a partnership, joint venture, association, or other relationship between PAID and Subtenant other than that of landlord and Subtenant .

2. No person or entity is a third party beneficiary of this Sublease; except

A. for the City as provided in Section 12.5 (City is Third Party Beneficiary), and

B. that any person or entity for whom Subtenant has designated a name for the Garage or any individual elements of the Garage Facilities is a third party beneficiary of the provisions of Section 3.6 (Naming of Garage).

16.6. No Amendments; Amendments to Master Lease.

1. This Sublease may not be amended by oral agreement, custom, or course of conduct. This Sublease may only be amended by a written agreement executed for PAID by persons holding the same titles as the officials who have executed this Sublease and for the Subtenant by duly authorized officers of the Subtenant.

2. The following apply with respect to any amendment to be made to the Master Lease:

A. Any amendment to the Master Lease that would affect either the rights or obligations of the Subtenant is subject to the prior approval of the Subtenant in its sole discretion.

B. Any amendment of the Master Lease that does not affect either the rights or obligations of the Subtenant is subject to the prior approval of the Subtenant in its reasonable discretion.

16.7. No Implied Consent. PAID's or the City's failure to respond orally or in writing to any request or offer from the Subtenant to modify or waive any of the Subtenant's obligations under this Sublease is not PAID's or the City's consent to the Subtenant's request or offer.

PAID and the Subtenant shall each comply with its respective obligations under this Sublease unless and until a request or offer to waive any provision of this Sublease is expressly accepted in writing by the party benefited by the required performance or any request or offer to modify a provision of this Sublease is agreed to in a written amendment made in accordance with Section 16.6 (No Amendments).

16.8. Time Of The Essence. Time is of the essence for the Subtenant's performance of its obligations under this Sublease and observance of all restrictions, limitations, and conditions applicable to the Subtenant under this Sublease.

16.9. Force Majeure Event.

16.9.1. In this Sublease, a "**Force Majeure Event**" means:

A. an earthquake, volcanic eruption, hurricane, tornado, extreme weather, or similar act of God, or fire, casualty, strikes, lockouts, other labor stoppages (but not including strikes, lockouts, or other labor stoppages involving Subtenant or its own employees or Contractors);

B. failure of other parties to provide (or general shortage of) labor, equipment, facilities, materials or supplies, for which Subtenant cannot mitigate the effect of the failure or shortage by reasonable commercial means;

C. failure of transportation or of power;

D. riots, insurrection, war; or

E. any other event or circumstance similar to those listed in A—D above;

where the event or circumstance is beyond the control of a Party and either prevents or delays that Party from fulfilling its obligation under this Sublease or from satisfying a condition under this Sublease, despite that Party exercising reasonable efforts to initiate alternative means to fulfill the obligation or satisfy the condition.

16.9.2. Subject to the conditions of Sections 16.9.3 and 16.9.4 below, if a Force Majeure Event occurs, then for the duration of the Force Majeure Event:

A. the Party affected by the Force Majeure Event is relieved of any obligation under this Sublease that the Force Majeure Event prevents or delays the Party from fulfilling, and

B. any deadline for the affected Party to satisfy a condition under this Sublease that the Force Majeure Event prevents or delays the Party from satisfying is delayed. Without limiting the effect of this Section 16.9.2.B, but subject to Sections 16.9.3 and 16.9.4 below, a Force Majeure Event may delay the Deadline to Start Construction.

16.9.3. A Force Majeure Event relieves the Subtenant of an obligation under this Sublease, or delays a deadline for the Subtenant to satisfy a condition under this Sublease, only if the Subtenant promptly gives PAID and the City written notice of the occurrence of the Force Majeure Event, describing the nature of the event, the obligation or condition that the event prevents the Subtenant from fulfilling or satisfying, and giving an estimate of the total delay the event will cause.

16.9.4. Despite the provisions of Sections 16.9.2 and 16.9.3 above, in no event does a Force Majeure Event relieve the Subtenant of an obligation or delay a deadline to satisfy a condition for more than one year from the start of the Force Majeure Event.

16.10. Integration Clause. This Sublease is the final, complete, and exclusive expression of PAID's and the Subtenant's agreements regarding the matters contemplated by this Sublease. All prior negotiations and agreements between PAID and the Subtenant regarding the matters contemplated by this Sublease are merged into this Sublease.

16.11. Independent Sublease. This Sublease applies solely to the Garage Facilities and the Premises. This Sublease does not apply to any other real property or personal property administered by the Subtenant pursuant to the Master Agreement or to the Surface Parking Lots. This Sublease does not create any guidelines or precedent whatsoever for the Subtenant's administration of any other property under the Master Agreement or its use of the Surface Parking Lots.

16.12. Interpretation.

16.12.1. PAID and the Subtenant each participated in the negotiation and writing of this Sublease. Therefore, the rule of interpretation that any ambiguity in this Sublease must be construed against the drafter of the agreement does not apply to this Sublease.

16.12.2. Unless expressly stated otherwise, wherever used in this Sublease, the words "include," "includes," and "including," mean "including but not limited to."

16.13. Counterparts. This Sublease may be executed in one or more counterparts, each of which is an original and all of which together are one agreement.

16.14. Recording. The Subtenant shall, at its sole cost and expense, record a memorandum of Sublease with respect to this Sublease, and a memorandum of Master Lease with respect to the Master Lease, in the Recorder of Deeds Office for Philadelphia. The Subtenant shall obtain PAID's approval of the form of memorandum of Sublease prior to filing it, which PAID may not unreasonably withhold, condition, or delay. The Subtenant shall promptly provide a copy of the memorandums as filed and recorded to both PAID and to the City and shall cooperate with PAID and the City to terminate the filings and recordings promptly upon the Sublease Ending Date. Subtenant's obligations under this Section 16.14 survive the Sublease Ending Date.

16.16. Choice of Law, Venue. The laws of the Commonwealth of Pennsylvania govern all matters arising under or related to this Sublease. PAID and the Subtenant each shall file all claims under this Sublease in the Common Pleas Court for Philadelphia County.

16.17. Waiver of Jury Trial. **PAID AND SUBTENANT EACH KNOWINGLY, INTENTIONALLY, AND VOLUNTARILY WAIVES ITS RIGHT TO A JURY TRIAL IN ANY ACTION ARISING UNDER OR RELATED TO THIS SUBLEASE.**

AS EVIDENCE OF THEIR CONSENT TO THE PROVISIONS OF THIS SUBLEASE, PAID and Subtenant have each caused this Sublease to be executed and delivered by their duly authorized officers effective as of the date set forth in the preamble.

APPROVED AS TO FORM
on behalf of PAID

**LANDLORD:
PHILADELPHIA AUTHORITY FOR
INDUSTRIAL DEVELOPMENT**

Per: _____
Ilene Burak
Vice President – Corporate Counsel
PIDC

By: _____
Thomas A. K. Queenan,
Chairman

**SUBTENANT:
ZOOLOGICAL SOCIETY OF
PHILADELPHIA**

By: _____
Name: Vikram Dewan, President

EXHIBIT A

to
Ground Sublease
Between
Philadelphia Authority for Industrial Development
And
Zoological Society of Philadelphia

DESCRIPTION OF PREMISES

Zebra Lot

Legal Description

BEGINNING at a point in the existing southeasterly right-of-way line of Girard Avenue (100 feet wide) a distance of 594.73 feet from the easterly right-of-way line of 38th Street (60 feet wide) in the 24th Ward of the City of Philadelphia, thence extending:

1. South 9° 49' 37" East along a railroad's westerly right-of-way line a distance of 170.28 feet to a point; thence extending,
2. South 42° 43' 22" West along a railroad's northwesterly right-of-way line a distance of 200 feet to a point; thence extending,
3. South 48° 03' 23" West along a railroad's northwesterly right-of-way line a distance of 278.59 feet to a point; thence extending,
4. North 9° 49' 37" West along a railroad's easterly right-of-way line a distance of 440 feet to a point in the aforementioned line of Girard Avenue; thence extending,
5. North 80° 10' 23" East along the aforementioned line of Girard Avenue a distance of 394.73 feet to the point and place of beginning.

Containing 123,037 square feet or 2.825 acres more or less.

EXHIBIT B

to
Ground Sublease
Between
Philadelphia Authority for Industrial Development
And
Zoological Society of Philadelphia

INTERMODAL TRANSPORTATION PROJECT –
DRAWING AND NARRATIVE DESCRIPTION

The Zoological Society of Philadelphia (“the Zoo”) is planning to construct a 650± car parking garage as part of the Intermodal Improvements Project. This will be the first phase of a two phase project of improvements to the roadways and access in and around the Zoo. These intermodal improvements will provide year-round parking solutions and improved transit facilities for the Zoo, allowing for expanded operations, while also serving neighboring communities, enhancing existing revitalization efforts within the Centennial District, Museum District and university campuses.



Draft: May 22, 2012.a

EXHIBIT C

to
Ground Sublease
Between
Philadelphia Authority for Industrial Development
And
Zoological Society of Philadelphia

FINAL DESIGNS AND CITY APPROVAL

PHILADELPHIA
**PARKS &
RECREATION**

PHILADELPHIA PARKS & RECREATION
CAPITAL PROJECT REVIEW
DECISION FORM

Date 7 May 2012

Applicant Nina Bisbee
Philadelphia Zoo
3400 West Girard Avenue
Philadelphia, PA 19104

Project **Philadelphia Zoo Intermodal Transportation Center
Parking Garage Only**

Description Parking Garage design as presented at 4 May 2012
Parks & Facilities senior staff meeting. Separate
approvals will be provided for the streetscape and
signage packages as this information is submitted by the
Zoo to Parks & Recreation.

Anticipated Completion Spring 2013

Recommendation

<input type="checkbox"/>	Conceptual Approval
<input type="checkbox"/>	Conceptual Approval with conditions as noted
<input type="checkbox"/>	Final Approval
<input checked="" type="checkbox"/>	Final Approval with conditions as noted
<input type="checkbox"/>	Refusal

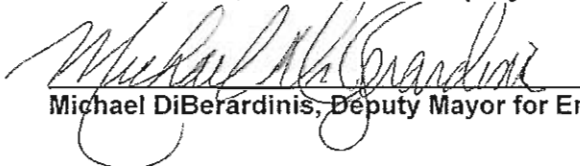
Conditions

- 1.) Review and approval of pre-cast concrete colors.
- 2.) Review and approval of fretted glass for elevator and
stair tower facing Girard Avenue.
- 3.) Streetscape and signage review and approvals to be
provided separately.

Philadelphia Parks & Recreation approval is not an endorsement for any exception or
variance the project may require from other boards or commissions.



Mark A. Focht, FASLA, First Deputy Commissioner, Parks & Facilities



Michael DiBerardinis, Deputy Mayor for Environmental and Community Resources

cc: Zoning Administrator, Licenses & Inspection
William J. Burke, Philadelphia Art Commission
Lawrence Copeland, Law
Stephanie Craighead, Chris Dougherty, Bob Allen, Parks & Recreation

Exhibit C

**Final Design (List of all drawings in the Final Construction Documents Package
dated March 20th, 2012)**

Attachment #1

- Drawing List -

COVER

CIVIL / SITE / LANDSCAPE

CS-0201	EXISTING CONDITIONS AND DEMOLITION PLAN
CS-1001	SITE PLAN
CS-1501	GRADING PLAN
CS-1701	UTILITY PLAN
CS-2001	LANDSCAPE PLAN
CS-2002	ULTIMATE LANDSCAPE PLAN
CS-6001	SITE CONSTRUCTION DETAILS
CS-6002	SITE CONSTRUCTION DETAILS
CS-6003	SITE CONSTRUCTION DETAILS
CS-8001	SOIL EROSION AND SEDIMENT CONTROL PLAN
CS-8501	EROSION AND SEDIMENT CONTROL DETAILS

ARCHITECTURAL

A0.1	CODE ANALYSIS
A0.2	OPENNESS ANALYSIS
A1.1	GROUND TIER ARCHITECTURAL PLAN
A1.1A	GROUND TIER ARCHITECTURAL PLAN - ALTERNATES
A1.2	TYP. (SECOND & THIRD) TIER ARCHITECTURAL PLAN
A1.2A	TYP. (SECOND & THIRD) TIER ARCHITECTURAL PLAN - ALTERNATES
A1.3	TOP (FOURTH) TIER ARCHITECTURAL PLAN
A1.3A	TOP (FOURTH) TIER ARCHITECTURAL PLAN - ALTERNATES
A1.4	PARKING STRIPING DETAILS
A1.5	ENLARGED PLANS AND SECTIONS
A1.6	ENLARGED ELEVATIONS AND REFLECTED CEILING PLAN
A1.7	ENLARGED ELEVATIONS AND DETAILS
A2.1	BUILDING ELEVATIONS
A2.2	BUILDING ELEVATIONS
A2.3	ENLARGED ELEVATIONS AND DETAILS
A2.4	ENLARGED ELEVATIONS AND DETAILS

- A3.1 WALL SECTIONS AND DETAILS
- A3.2 WALL SECTIONS AND DETAILS

- A4.1 DOOR AND ROOM FINISH SCHEDULES AND DETAILS

- AS1.1 ELEVATOR/STAIR #1 PLANS
- AS1.2 ELEVATOR/STAIR #1 PLANS
- AS1.3 ELEVATOR/STAIR #1 PLANS
- AS1.4 ELEVATOR/STAIR #1 ELEVATIONS
- AS1.5 ELEVATOR/STAIR #1 ELEVATIONS
- AS1.6 ELEVATOR/STAIR #1 SECTIONS
- AS1.7 ELEVATOR/STAIR #1 SECTIONS
- AS1.8 ELEVATOR/STAIR #1 SECTIONS
- AS1.9 ELEVATOR/STAIR #1 DETAILS
- AS1.10 ELEVATOR/STAIR #1 DETAILS
- AS1.11 ELEVATOR/STAIR #1 DETAILS
- AS1.12 ELEVATOR/STAIR #1 DETAILS

- AS2.1 STAIR #2 PLANS, SECTIONS AND DETAILS
- AS2.2 STAIR #2 SECTIONS AND DETAILS

- AS3.1 PEDESTRIAN RAMP PLANS - ALTERNATE #1
- AS3.2 PEDESTRIAN RAMP ELEVATIONS - ALTERNATE #1
- AS3.3 PEDESTRIAN RAMP SECTIONS - ALTERNATE #1
- AS3.4 PEDESTRIAN RAMP DETAILS - ALTERNATE #1

- G1.1 SIGNAGE AND GRAPHICS DETAILS
- G1.2 SIGNAGE AND GRAPHICS DETAILS

STRUCTURAL

- S0.1 GENERAL NOTES
- S0.2 GENERAL DETAILS
- S0.3 GENERAL DETAILS

- S1.1 FOUNDATION PLAN AND DETAILS
- S1.2 ENLARGED FOUNDATION PLANS AND DETAILS

- S2.1 FOUNDATION SECTIONS AND DETAILS

- S3.1 GROUND TIER STRUCTURAL PLAN
- S3.2 TYP. (SECOND & THIRD) TIER STRUCTURAL PLAN
- S3.3 TOP (FOURTH) TIER STRUCTURAL PLAN

- S4.1 PRECAST TEE/BEAM DETAILS
- S4.2 ENLARGED COLUMN PLAN DETAILS
- S4.3 ENLARGED COLUMN / WALL DETAILS

- S5.1 PRECAST STRUCTURAL DETAILS
- S5.2 PRECAST STRUCTURAL DETAILS

MECHANICAL

- M0.1 MECHANICAL INDEX SHEET
- M0.2 MECHANICAL SCHEDULES AND DETAILS

- M1.0 MECHANICAL PARTIAL FLOOR PLANS, SCHEDULES AND NOTES

PLUMBING / FIRE PROTECTION

- P0.1 NOTES, SCHEDULES AND LEGEND

- P1.0 GROUND TIER PLAN
- P2.0 SECOND AND THIRD TIER TYPICAL PLAN
- P3.0 FOURTH TIER PLAN
- P4.0 SINGLE LINE RISER DIAGRAMS
- P5.0 RISER DIAGRAM AND DETAILS

ELECTRICAL

- E0.1 ELECTRICAL SPECIFICATIONS, NOTES, LEGENDS AND ABBREVIATIONS
- E0.2 ELECTRICAL SITE PLAN
- E0.3 ELECTRICAL SCHEDULES
- E0.4 ELECTRICAL SCHEDULES
- E0.5 ELECTRICAL SCHEDULES
- E0.6 ELECTRICAL SCHEDULES

- E1.1 GROUND TIER POWER PLAN
- E1.2 FIRST TIER POWER PLAN
- E1.3 TYP.(SECOND AND THIRD) TIER POWER PLAN
- E1.4 TOP TIER POWER PLAN

- E2.1 GROUND TIER LIGHTING PLAN
- E2.2 SECOND TIER LIGHTING PLAN
- E2.3 THIRD TIER LIGHTING PLAN
- E2.4 TOP TIER LIGHTING PLAN
- E2.5 THIRD AND FOURTH TIER (ALTERNATE #2) LIGHTING PLAN

- E3.1 FIRST TIER SECURITY PLAN
- E3.2 TYP.(SECOND AND THIRD) TIER SECURITY PLAN
- E3.3 TOP TIER SECURITY PLAN

- E4.1 ELECTRICAL DETAILS AND DIAGRAMS
- E4.2 ELECTRICAL DETAILS AND DIAGRAMS

Exhibit D

to
Ground Sublease
Between
Philadelphia Authority for Industrial Development
And
Zoological Society of Philadelphia

CITY AUTHORIZING ORDINANCE

[To Follow]

EXHIBIT E

to
Ground Sublease
Between
Philadelphia Authority for Industrial Development
And
Zoological Society of Philadelphia

MASTER GROUND LEASE

MASTER GROUND LEASE

[Philadelphia Zoo Parking Garage at 3404L W. Girard Avenue]

THIS MASTER GROUND LEASE (the “**Lease**”), is made _____, 2012, between the City of Philadelphia, through its Department of Parks and Recreation (the “**City**”) and the Philadelphia Authority for Industrial Development, a Pennsylvania political and corporate body (“**Tenant**”).

BACKGROUND

A. By contract dated September 24, 1973 (the “**Master Agreement**”), the Fairmount Park Commission gave the Zoological Society of Philadelphia a license to use the zoological gardens at 34th Street and Girard Avenue (the “**Zoo**”). The initial term of the Master Agreement was 25 years and was scheduled to expire on September 23, 1998. The Master Agreement term renewed for an additional 25-year period which expires September 23, 2023.

B. The Zoological Society of Philadelphia desires to construct a multistory parking garage (the “**Garage**”) to create additional parking spaces for Zoo patrons and relieve parking congestion near the Zoo and in West Fairmount Park.

C. The Zoological Society of Philadelphia’s construction of the Garage is part of a proposed “Intermodal Transportation Project,” which includes planned improvements to the other parking facilities that serve the Zoo and to public rights-of-way that will make patron access to the Zoo easier and safer. The Intermodal Transportation Project is described in Exhibit B to the Sublease (defined below).

D. The City of Philadelphia Department of Parks and Recreation (the “**Department**”) has approved the Zoological Society of Philadelphia’s final design plans for the Garage Facilities (the “**Final Designs**”). The City’s written approval of the Final Designs and a list of the Final Designs is attached as Exhibit C to the Sublease.

E. By an ordinance numbered as Bill No. _____, approved _____, 2012 (and signed by the Mayor on _____, 2012), Philadelphia City Council authorized the Commissioner of Parks and Recreation to execute a Master Ground Lease on behalf of the City with Tenant. A copy of Bill No. _____, is attached as Exhibit D to the Sublease.

F. By resolution number _____, Tenant’s Board of Directors authorized the President of Tenant to execute this Lease. A copy of Tenant’s resolution number _____ is attached as Exhibit E to the Sublease.

G. This Lease provides for the City's lease to Tenant of land that the Zoological Society of Philadelphia wishes to use to construct, maintain, and operate the Garage, and requires the Tenant to execute the Sublease with the Zoological Society of Philadelphia as subtenant ("**Subtenant**").

ACCORDINGLY, the City and Tenant, intending to be legally bound, agree as follows:

DEFINITIONS AND EXHIBITS

In this Lease, words and phrases defined in the preamble and background have their assigned meanings, words and phrases listed below are defined as set forth below, and capitalized words and phrases not defined in this Lease have the meanings assigned to them in the Sublease:

"Applicable Laws" includes all present and future federal, state, and municipal laws, ordinances, codes, notices, orders, rules, regulations, and requirements, relating to the Premises, this Lease, Tenant, and Tenant's activities under this Lease. Applicable Laws include but are not limited to (1) all laws that govern or regulate the use, presence, treatment, and disposal of hazardous substances and environmental contamination, (2) the Philadelphia Home Rule Charter and the Philadelphia Code, (3) the regulations of the Philadelphia Department of Parks and Recreation, (4) zoning approvals, and (5) Art Commission approval.

"City" has the meaning assigned to it in the Preamble and includes all the City's departments, boards, commissions, agencies, offices, officials, officers, employees, representatives, successors and assigns.

"Claims" has the meaning given to it in Section 8.2.1.

"Indemnified Party" and **"Indemnified Parties"** have the meaning given them in Section 8.2.1.

"Lease" has the meaning given it in the preamble and includes all duly executed amendments to the Lease.

"Lease Commencement Date" means the date of this Lease.

"Lease Ending Date" means the date the Lease Term or this Lease expires, is terminated, or otherwise ends.

"Lease Party" means either the City or PAID.

“**Lease Term**” has the meaning given it in Section 2.1.

“**Losses**” has the meaning assigned to it in Section 8.2.1.

“**Master Agreement**” has the meaning given it in Background paragraph A.

“**PAID**” means the Tenant.

“**PIDC**” means the Philadelphia Industrial Development Corporation.

“**Premises**” is described in **Exhibit A**. The Premises does not include any public utility lines or public conduits that cross under or over the Premises.

“**Subtenant**” has the meaning given it in Background paragraph G.

“**Zoo**” has the meaning given it in Background paragraph A.

Exhibit A – Premises (Definition)

Exhibit B – Certification of Non-Indebtedness (Section 13.5.2)

SECTION 1.

LEASE; CONDITION OF PREMISES; NO FINANCIAL OBLIGATION ON CITY

1.1. **Lease.** Subject to the other provisions of this Lease, starting on the Commencement Date, the City leases to Tenant, and Tenant leases from the City, the Premises for the Term.

1.2. **Condition of Premises.** Under a license given by the Fairmount Park Commission, Subtenant has used the Premises as a surface parking lot for several decades. The City expressly disclaims all representations and warranties about the Premises and the condition of the Premises. Tenant has no recourse to the City as to the condition of the Premises. The Tenant has entered into this Lease based solely upon its investigation of the Premises and without reliance upon any information provided by the City. Tenant accepts the Premises in its “AS IS” condition, including

- 1.2.1. all patent and latent defects and hazards,
- 1.2.2. all surface and subsurface conditions of the Premises,
- 1.2.3. the environmental condition of the Premises,
- 1.2.4. encumbrances, liens, encroachments on or affecting the Premises,
- 1.2.5. existing uses of or affecting the Premises,

- 1.2.6. agreements and restrictions of record affecting the Premises,
- 1.2.7. the nature or usability of the Premises, or the use or uses to which the Premises or any part of the Premises may be put,
- 1.2.8. the potential impact on the Premises of nearby railroad tracks and the structures, poles, towers, conduits, lines, and other improvements, fixtures, and equipment ancillary to the railroad tracks,
- 1.2.9. all violations of Applicable Laws in or on the Premises,
- 1.2.10. the zoning applicable to the Premises,
- 1.2.11. all public rights-of-way over and through the Premises; and
- 1.2.12. the City's title to the Premises and any defects in the City's title.

1.3. Sublease Subject to Lease; Premises Owned By City. Despite any other provision of this Lease, the Sublease is subject to this Lease. Despite any other provision of this Lease, this Lease does not create, grant, or give to Tenant any legal title, easement or other interest in the Premises other than a leasehold.

1.4. No Financial Obligation on City. **DESPITE ANY OTHER PROVISION OF THIS LEASE, THIS LEASE DOES NOT IMPOSE ANY OBLIGATION ON THE CITY TO APPROPRIATE OR SPEND MONEY AT ANY TIME OR FOR ANY REASON, EXCEPT ONLY AS PROVIDED IN SECTION 7.**

SECTION 2.

TERM; DEADLINE TO START CONSTRUCTION

2.1. Term. The term of this Lease (the "**Lease Term**") starts on the Lease Commencement Date and ends on the date which is 29 years six calendar months and one day after the Lease Commencement date, except as the Lease Term may be reduced under the provisions of Section 2.5.

2.2. Condition to Full Term. The full duration of the Lease Term under Section 2.1 is subject to the following condition precedent: the Subtenant must have in good faith started construction of the Garage Facilities before the Deadline to Start Construction under the Sublease, as the deadline may be extended according to the provisions of the Sublease.

2.5. Reduction of Term. If Subtenant does not satisfy the condition precedent set forth in Section 2.2 of the Sublease regarding the Deadline to Start Construction and the Term of the Sublease is reduced in accordance with Section 2.5 of the Sublease, the Lease Term of this Lease expires one day after expiration of the reduced Term of the Sublease.

SECTION 3.

USE OF PREMISES; PARKING FEES; NAMING OF GARAGE; SIGNS; USES PROHIBITED

3.1. Use. Tenant shall execute and deliver the Sublease with the Subtenant either contemporaneously with Tenant's execution of this Lease or promptly following its execution of the Lease. Except only for its execution of the Sublease with Subtenant, Tenant shall not execute any sublease, license, or other use agreement regarding the Premises.

3.4. Parking Fees. The City may enforce the Subtenant's obligation under Section 3.4 of the Sublease to promptly pay to the City a portion of the Subtenant's revenue from operation of the Garage.

3.6. Naming of Garage.

3.6.1. Under the Sublease, the Subtenant may name the Garage, or any individual elements of the Garage Facilities, in the Subtenant's sole discretion, as provided in the Sublease.

3.6.2. After the Sublease Ending Date, the City may name the Garage Facilities in the City's sole discretion, except as provided in the next sentence. If the Sublease Ending Date occurs before expiration of the full Term of 29 years and six calendar months, any name that the Subtenant has designated for the Garage or any individual elements of the Garage Facilities in accordance with the Sublease before the Sublease Ending Date remains in effect through the earlier of (A) the term of the Subtenant's applicable agreement establishing the naming rights for the Garage or any individual elements of the Garage Facilities, as the case may be, or (B) the balance of what would have been the full Term of the Sublease. If the Sublease Ending Date occurs before what would be expiration of the full Term of the Sublease, this Section 3.6.2 survives the Sublease Ending Date through the end of what would have been the full Term of the Sublease.

3.6.3. Under the Sublease, Subtenant may retain all proceeds paid to it for naming rights of the Garage and the individual elements of the Garage Facilities.

3.7. Signs. Whenever the Subtenant submits a proposed sign for the City's review and requests the City's approval of the sign, the City shall not withhold its approval unreasonably.

3.10. Uses Prohibited. Tenant shall not use the Premises for any purpose not expressly permitted by this Lease.

SECTION 4.
CONSTRUCTION COSTS; CITY INSPECTION; CITY COOPERATION

4.1. No Cost To City. The City is not obligated to design, construct, maintain, repair, replace, and improve the Premises or any improvements on the Premises. The City is not obligated to appropriate or spend money at any time for the design, construction, maintenance, repair, replacement, or improvement of the Premises or any improvements on the Premises.

4.2. Right to Apply For Grant. Under Sublease Section 4.2, Subtenant may in its sole discretion apply to the City for one or more grants to support construction of the Garage Facilities. The City is not obligated to consider or approve any application by the Subtenant for one or more grants to support construction of the Garage Facilities.

4.3. Subtenant's Design of Garage Facilities. Whenever the Subtenant submits to the City a proposed change to the Final Designs pursuant to the Sublease, the City may not withhold its approval unreasonably.

4.4. Subtenant's Plans and Specifications. Whenever the Subtenant submits its Plans and Specifications to the City pursuant to the Sublease, the City may not withhold its approval unreasonably.

4.9. Inspection of Construction. Following the City's reasonable advance notice to the Subtenant, the City may enter the Premises to inspect any construction occurring on the Premises.

4.10. City Cooperation. If the Subtenant asks the City to cooperate with it in pursuit of approvals required under Applicable Laws related to construction on the Premises, then, subject to Article 12 (Approvals By City Under This Lease), the City shall, in its discretion, cooperate with the Subtenant. The City is not obligated to incur any expense in connection with the Subtenant's pursuit of approvals required by Applicable Laws, and is not obligated to testify before any City department, board, or commission.

4.11. Alterations. Whenever the Subtenant submits proposed Alterations to the City pursuant to the Sublease, the City may not withhold its approval unreasonably.

SECTION 5.
[RESERVED]

SECTION 6.
OWNERSHIP OF IMPROVEMENTS DURING LEASE TERM

6.1. Ownership: Garage Facilities During Term. Throughout the Lease Term, the City does not own any improvements constructed on the Premises by Tenant or the Subtenant, and has no care, custody, and control of any improvements constructed on the Premises by Tenant or the Subtenant. Throughout the Term, Tenant has no care, custody, and control of any improvements constructed on the Premises by the Subtenant.

6.2. Ownership: Garage Facilities After Term. Upon the Lease Ending Date, title to the improvements on the Premises automatically vests in the City, without the need for the execution, filing, or recording of any document, and without any obligation on the City to pay or otherwise compensate Tenant or the Subtenant; except only as provided in Section 7.1.

SECTION 7.
**EXPIRATION OF MASTER SUBLEASE AND
COMPENSATION TO SUBTENANT FOR GARAGE FACILITIES**

7.1. Master Agreement Non-Renewal.

1. If the City does not renew the Master Agreement, and

2. if following the City's non-renewal of the Master Agreement the Subtenant terminates the Sublease under Section 7.1 of the Sublease,

then ownership of the Garage Facilities automatically vests in the City as provided in Section 6.2 of the Sublease, and

A. the City shall pay the actual value of the Garage Facilities to Subtenant,

B. but the City is not obligated in any event to pay to the Subtenant any consequential or indirect damages.

SECTION 8.
TORT CLAIMS ACT, INDEMNIFICATION, RELEASE

8.1. Tort Claims Act. Nothing in this Lease or the Sublease waives or amends any immunity, defense, or right that the Landlord or Tenant, and their respective officials, officers,

directors, members, employees, agents, or representatives, have under the Pennsylvania Political Subdivisions Tort Claims Act (codified at Title 42, Chapter 85, of the Pennsylvania Consolidated Statutes Annotated, as applicable) or under other Applicable Laws.

8.2. Indemnity.

8.2.1. To the extent

A. Subtenant fails to provide reasonable and timely indemnification against Claims or Losses (as defined below) pursuant to the Sublease, and

B. those Claims or Losses are not covered by an insurance policy maintained by a third party (other than PIDC) for the benefit of Tenant pursuant to the terms of the Sublease,

the City shall, to the extent permitted by Applicable Laws and subject to Section 8.1 (Tort Claims Act), indemnify, defend and hold harmless Tenant, PIDC, and their respective directors, members, officials, officers, employees, agents and representatives (each an **“Indemnified Party”**, and collectively, the **“Indemnified Parties”**), from and against all suits, claims or causes of action (collectively, **“Claims”**), and all liabilities, losses, obligations, damages, penalties, costs, charges, expense, judgments and amounts paid in settlement (including, without limitation, reasonable attorneys’ fees) of every kind (collectively, **“Losses”**), which may be imposed upon, incurred by or asserted against an Indemnified Party arising out of or relating to or arising in connection with Tenant’s entering into this Lease or the Sublease, Tenant’s performance of its obligations under this Lease or under the Sublease, or any acts or omissions relating to Tenant’s involvement under this Lease or under the Sublease; except in each case to the extent that the Claims and Losses are attributable to the willful misconduct, fraud or gross negligence of any Indemnified Party.

8.2.2. In consideration of City’s undertaking to indemnify Tenant as provided in Section 8.2.1., Tenant shall cooperate with the City to enforce the rights of Tenant under any insurance policy maintained by any third party (other than PIDC) under which Tenant is an additional or named insured, and to enforce any indemnification rights to which Tenant may be entitled under the Sublease (including any rights against Subtenant or any third party), and the City and Tenant shall pursue all those third party insurance policies and indemnitors diligently with respect to all Claims or Losses which may be properly asserted in good faith against them. The City shall be subrogated to the rights of Tenant under those insurance policies and indemnification rights; provided, however, the City does not have, and expressly waives, any right of subrogation under any insurance policies maintained by Tenant.

8.2.3. To the extent

A. Subtenant fails to provide reasonable and timely indemnification against Claims or Losses pursuant to the Sublease, and

B. that Claims or Losses are not covered by an insurance policy maintained by a third party (other than PIDC) for the benefit of the City pursuant to the terms of the Sublease,

Tenant shall, to the extent permitted by Applicable Laws and subject to Section 8.1 (Tort Claims Act), indemnify, defend and hold harmless the City, and its officials, officers, employees, agents and representatives, from and against all Claims and Losses which may be imposed upon, incurred by or asserted against the City and its officials, officers, employees, agents and representatives arising out of or relating to or arising in connection with (1) the performance or breach of the obligations or representations of Tenant under this Lease or the Sublease, or (2) any other acts or omissions of Tenant or any of its directors, members, officers officials, employees, agents and attorneys providing services relating to the Sublease or this Lease, in each case insofar as those Claims or Losses arise directly or indirectly from the willful misconduct, fraud or gross negligence of Tenant or any Indemnified Party. The liability of Tenant, PIDC and any other Indemnified Party under this Section 8.2.3 is limited solely to Tenant's interest under this Lease, and the lien of any judgment is restricted to that amount.

8.2.4. The obligations of City and Tenant under Section 8.2.1, Section 8.2.2, and Section 8.2.3, survive the Lease Expiration Date.

SECTION 9.

DAMAGE TO GARAGE FACILITIES

9.1. Damage. If the Garage Facilities suffer a casualty and the Subtenant decides under Sublease Section 9.2.2 to remove the remaining Garage Facilities and restore the Premises to open landscaped park land, the First Deputy may not unreasonably withhold its satisfaction with Subtenant's restoration.

9.3. Casualty At End Of Term. If a casualty to the Garage Facilities occurs during the last five years of the Term, and if the Subtenant elects not to replace the Garage Facilities, then the City may, in its sole discretion, elect to replace the Garage Facilities.

SECTION 10.
CONDEMNATION

10.1. Partial Taking. If a Partial Taking of the Garage Facilities occurs and the Subtenant elects under Sublease Section 10.2.2 to remove the remaining Garage Facilities and restore the Premises to open, landscaped park land, the First Deputy may not unreasonably withhold its satisfaction with Subtenant's restoration.

10.3. Total Taking. If all of the Premises is taken by eminent domain, then this Lease automatically terminates on the effective date of the taking.

10.4. Condemnation Awards. If some or all of the Premises is taken by eminent domain

10.4.1. City may claim compensation from the condemning authority for the value of its interest in the Premises and Garage Facilities and any other items and interests to which the City is entitled under Applicable Law;

10.4.2. Tenant and Subtenant may claim compensation from the condemning authority for the value of their respective interest in the Premises and Garage Facilities and any other items and interests to which the Tenant and Subtenant are respectively entitled under Applicable Law. In no event, however, may Tenant's or Subtenant's claim or award reduce the City's claim and award arising out of the condemnation; and

10.4.3. City, Tenant, and Subtenant may each appear in and defend against the condemnation as they deem proper in accordance with their own interests. To the extent possible, Tenant shall cooperate with the City to maximize the condemnation proceeds payable by reason of the condemnation. To avoid multiplicity of actions and to minimize their respective expenses, to the extent permissible under Applicable Laws (including but not limited to procedural rules), Tenant shall join all issues between it and the City that are required to be resolved pursuant to this Section in any condemnation proceeding.

10.5. Temporary Taking. If the temporary use of some or all of the Premises or Garage Facilities are taken by eminent domain, this Lease remains in effect. Subtenant is entitled to receive all awards, damages, compensation and proceeds payable by the condemnor by reason of the condemnation for periods prior to the Sublease Ending Date. The City is entitled to all those awards, damages, compensation and proceeds for periods after the Sublease Ending Date.

SECTION 11.

[RESERVED]

SECTION 12.
APPROVALS BY CITY UNDER THIS LEASE;
CITY IS THIRD PARTY BENEFICIARY OF SUBLEASE

12.1. City Approvals Not Approval Under Applicable Laws. The City's approval of Subtenant's designs, plans, and specifications for the Garage Facilities, including the Final Design Plans and the Plans and Specifications, and the City's approval of any report, information, or request that Subtenant provides to City under this Lease or the Sublease, or that is related to this Lease or the Sublease, is not approval by any City department, board, or commission otherwise required under Applicable Laws. The City's help for Subtenant to obtain any approval required under Applicable Laws is not itself the approval required under Applicable Laws.

12.2. City Approval Not A Representation or Warranty. The City's approval of Subtenant's designs, plans, and specifications for the Garage Facilities, or its approval of any report, information, or request that Subtenant provides to City under this Lease or the Sublease, is not a representation or warranty by the City regarding the accuracy or suitability, or any other quality, of the designs, plans, specifications, report, information, or request. The City's help for Subtenant to obtain any approval required under Applicable Laws is not a representation or warranty by the City regarding the accuracy, suitability, or any other quality of the matter for which the Subtenant seeks approval.

12.3. Effectiveness Of City Approvals.

12.3.1. Wherever this Lease or the Sublease requires Tenant or Subtenant, as the case may be, or another person, to obtain the City's review, consent, approval, or determination (apart from any review, consent, approval, or determination under Applicable Laws), the review, consent, approval, or determination will be effective only if obtained from or made by the First Deputy and in the manner this Lease or the Sublease requires, as the case may be.

12.3.2. Wherever this Lease or the Sublease requires Tenant or the Subtenant, as the case may be, or another person, to obtain the review, consent, approval, or determination of a City official, department or agency other than the First Deputy (apart from any review, consent, approval, or determination under Applicable Laws), the review, consent, approval, or determination will be effective only if obtained from or made by the specified official, department, or agency and in the manner this Lease or the Sublease requires, as the case may be.

12.4. Approvals by City Bind PAID. Except where the provisions of the Sublease expressly require separate approvals by both the City and PAID (as landlord under the Sublease), any approval given by the City in connection with any obligation of Subtenant under the Sublease is deemed approval by PAID (as landlord under the Sublease). Wherever the Sublease requires the approval of both the City and PAID (as landlord under the Sublease), the Subtenant may submit the matter requiring the approval simultaneously to the City and PAID. Any approval, consent, or permission given, and any review conducted, by the First Deputy is deemed to be an approval, consent, permission or review, as the case may be, by PAID as landlord under the Sublease and is binding on PAID as landlord under the Sublease.

12.5. Society is Third Party Beneficiary of Provisions of Lease.

12.5.1. The Subtenant is a third party beneficiary of the following provisions of this Lease:

- Section 1.1 (Lease)
- Section 2.1 (Term)
- Section 2.3 (Extension of Deadline to Start Construction)
- Section 3.1 (Use)
- Section 3.6 (Naming of Garage)
- Section 3.7 (Signs)
- Section 4.3 (Subtenant's Design of Garage Facilities)
- Section 4.4 (Subtenant's Plans and Specifications)
- Section 4.10 (City Cooperation)
- Section 4.11 (Alterations)
- Section 7.1 (Master Agreement Non-Renewal)
- Section 9.1 (Damage)
- Section 10 (Condemnation)
- Section 12.4 (Approvals By City Bind PAID)
- Section 12.5.2 (Subtenant's Enforcement)
- Section 15 (Notice)
- Section 16.6 (No Amendment)

12.5.2. Subtenant's Enforcement. The Subtenant may exercise and enforce directly against the City all of Tenant's rights and remedies under the provisions of this Lease listed in Section 12.5.1.

SECTION 13.

APPLICABLE LAWS; CITY HOME RULE CHARTER AND PHILADELPHIA CODE REQUIREMENTS

13.1. Applicable Laws. In exercising all its rights and fulfilling all its obligations under this Lease, the Tenant shall at all times comply with Applicable Laws.

13.2. Non-Discrimination. In the Tenant's use of the Premises under this Lease, the Tenant shall not discriminate or permit discrimination against any person because of age, race, color, religion, national origin, ancestry, physical disability, sex, sexual orientation, or gender identity.

13.3. Non-Indebtedness. By executing this Lease, Tenant represents and warrants that the Tenant is not currently 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 reasonably satisfactory to the City has been established. Tenant shall not be indebted to the City at any time during the Term 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.

13.4. No Gifts to City Officials.

13.4.1. In accordance with Executive Order No. 3-11, issued by the Mayor of Philadelphia on January 25, 2011, Tenant shall not offer, make or render, any "Gift" to any official or employee where the receipt of the Gift would be prohibited under Section 2 of that Executive Order.

13.4.2. Any person who offers or gives anything of value to any City official or employee the receipt of which would violate Executive Order No. 001-11 may be subject to sanctions with respect to future City contracts to the extent expressly stated in that Executive Order.

13.4.3. As used in this Section 13.4, "Gift" means any conveyance of anything of value, including a gift, gratuity, favor, entertainment, invitation, food, drink, or loan, unless consideration of equal or greater value is conveyed in return. "Gift" does not include a political contribution otherwise reported as required by law, or a commercially reasonable loan made in the ordinary course of business.

13.5. Only Legally Qualified Contractors. Throughout the Term, with respect to its activities on the Premises,

13.5.1. the Tenant shall hire only Contractors that

- A. are not delinquent to the City of Philadelphia for taxes; and
- B. have made all disclosures regarding political contributions that would be required if those contractors bid for, or were awarded, contracts directly by the City, and
- C. are not otherwise disqualified from receiving any contract from the City.

13.5.2. Tenant shall include the "Certification of Non-Indebtedness" set forth in **Exhibit H** in all its contracts for its activities on the Premises, with appropriate adjustment to identify the parties;

13.5.3. Tenant shall cooperate with the City and share all information reasonably desired by City officials in order to ensure that the Tenant complies with this Section 13.5.

SECTION 14.
[RESERVED]

SECTION 15.
NOTICE

15.1. Notice. To be effective, each notice, request, approval or consent by either party to the other under this Lease must be made in writing, addressed as provided in Section 15.2, and given by one or more of the following methods:

- 15.1.1. hand delivery by courier service, with delivery receipt obtained;
- 15.1.2. overnight delivery by a recognized national overnight delivery service, with delivery receipt obtained; or
- 15.1.3. registered or certified United States mail, with return receipt requested.

15.2. Addresses. All notices under this Lease must be addressed as provided below:

- 15.2.1. If to City:

First Deputy Commissioner, Parks and Facilities
City of Philadelphia Department of Parks and Recreation
One Benjamin Franklin Parkway – 10th Floor
1515 Arch Street
Philadelphia, PA 19102

and to:

City Solicitor
City of Philadelphia Law Department
One Benjamin Franklin Parkway – 17th Floor
1515 Arch Street
Philadelphia, PA 19102

15.2.2. If to PAID:

President
Philadelphia Authority for Industrial Development
2600 Centre Square West
1500 Market Street
Philadelphia, PA 19102

with a copy to:

Ilene Burak, Esquire
Philadelphia Authority for Industrial Development
2600 Centre Square West
1500 Market Street
Philadelphia, PA 19102

with a copy to the Subtenant as follows:

President
Philadelphia Zoo
34th Street and Girard Avenue
Philadelphia, PA 19131

and a copy to:

David I. Haas, Esquire and David E. Loder, Esquire

Duane Morris LLP
30 South 17th Street
Philadelphia, PA 19103-4196

15.3. Delivery. Notice given in any of the manners provided in Section 15.1 is effective upon delivery or upon the recipient's refusal to accept delivery.

15.4. Change of Address. The City and Tenant each may change the officials to receive notice on its behalf, or change the address to which to send notice, or both, by providing notice to the other in accordance with Sections 15.1 and 15.2.

SECTION 16. **GENERAL PROVISIONS**

16.1. Sections and Captions; Non-Sequential Numbering. Unless otherwise stated, all references in this Lease to sections, exhibits, attachments, and schedules, are to the sections, exhibits, attachments, and schedules of this Lease. The captions used in this Lease are for convenience only and do not limit or extend the meaning of any part of this Lease. Sections of this Lease are intentionally numbered to correspond to provisions of the Sublease. The non-sequential numbering of sections in this Lease does not reflect any omission or any mistake by either Lease Party.

16.2. Severability. If any provision of this Lease is invalid or illegal, the remainder of this Lease will remain in effect and the invalid or illegal provision will be enforceable if and to the extent reformed by court order.

16.3. No Assignment. Tenant may not assign this Lease or any of its rights under this Lease, and shall not delegate any of its obligations under this Lease. Assignments and delegations prohibited by this Section 16.3 include assignments by merger or by operation of law. Any purported assignment or delegation by Tenant in violation of this Section 16.3 is void.

16.4. Successors and Assigns. Subject to Section 16.3 (No Assignment), this Lease binds and benefits the City and Tenant and their respective permitted successors and assigns.

16.5. No Joint Venture; No Third Party Beneficiaries.

1. This Lease does not create a partnership, joint venture, association, or other relationship between the City and Tenant other than that of landlord and tenant.

2. No person or entity is a third party beneficiary of this Lease; except

A. for the Subtenant as provided in Section 12.5 (Subtenant is Third Party Beneficiary), and

B. that any person or entity for whom Subtenant has designated a name for the Garage or any individual elements of the Garage Facilities is a third party beneficiary of the provisions of Section 3.6 (Naming of Garage).

3. All Contractors and other persons are notified by this Section 16.5 that they may not look to the City for payment or other compensation arising under or related to this Lease or any sublease. The City is not liable to any Contractors or other persons for payment or compensation arising under or related to this Lease.

16.6. No Amendments. This Lease may not be amended by oral agreement, custom, or course of conduct. This Lease may not be amended without the prior, written approval of Subtenant, subject to Section 16.6 of the Sublease. This Lease may only be amended by a written agreement executed for the City by the person holding the same title as the official who has executed this Lease for the City and for the Tenant by duly authorized officers of the Tenant.

16.7. No Implied Consent. City's failure to respond orally or in writing to any request or offer from the Tenant to modify or waive any of the Tenant's obligations under this Lease is not the City's consent to the Tenant's request or offer. The Tenant shall comply with its obligations under this Lease unless and until a request or offer to waive any provision of this Lease is expressly accepted in writing by the City or any request or offer to modify a provision of this Lease is agreed to in a written amendment made in accordance with Section 16.6 (No Amendments).

16.8. Time Of The Essence. Time is of the essence for the Tenant's performance of its obligations under this Lease and observance of all restrictions, limitations, and conditions applicable to the Tenant under this Lease.

16.9. Force Majeure Event.

16.9.1. In this Lease, a "**Force Majeure Event**" means:

A. an earthquake, volcanic eruption, hurricane, tornado, extreme weather, or similar act of God, or fire, casualty, strikes, lockouts, other labor stoppages (but not including strikes, lockouts, or other labor stoppages involving Tenant or its own employees or contractors);

B. failure of other parties to provide (or general shortage of) labor, equipment, facilities, materials or supplies, for which Tenant cannot mitigate the effect of the failure or shortage by reasonable commercial means;

C. failure of transportation or of power;

D. riots, insurrection, war; or

E. any other event or circumstance similar to those listed in A—D above;

where the event or circumstance is beyond the control of a Lease Party and either prevents or delays that Lease Party from fulfilling its obligation under this Lease or from satisfying a condition under this Lease, despite that Lease Party exercising reasonable efforts to initiate alternative means to fulfill the obligation or satisfy the condition.

16.9.2. Subject to the conditions of Sections 16.9.3 and 16.9.4 below, if a Force Majeure Event occurs, then for the duration of the Force Majeure Event:

A. the Lease Party affected by the Force Majeure Event is relieved of any obligation under this Lease that the Force Majeure Event prevents or delays the Lease Party from fulfilling, and

B. any deadline for the affected Lease Party to satisfy a condition under this Lease that the Force Majeure Event prevents or delays the Lease Party from satisfying is delayed.

16.9.3. A Force Majeure Event relieves the Tenant of an obligation under this Lease, or delays a deadline for the Tenant to satisfy a condition under this Lease, only if the Tenant promptly gives the City written notice of the occurrence of the Force Majeure Event, describing the nature of the event, the obligation or condition that the event prevents the Tenant from fulfilling or satisfying, and giving an estimate of the total delay the event will cause.

16.9.4. Despite the provisions of Sections 16.9.2 and 16.9.3 above, in no event does a Force Majeure Event relieve the Tenant of an obligation or delay a deadline to satisfy a condition for more than one year from the start of the Force Majeure Event.

16.10. Integration Clause. This Lease is the final, complete, and exclusive expression of the City and Tenant's agreements regarding the matters contemplated by this Lease. All prior negotiations and agreements between the City and Tenant regarding the matters contemplated by this Lease are merged into this Lease.

16.11. [Reserved.]

16.12. Interpretation.

16.12.1. The City and Tenant each participated in the negotiation and writing of this Lease. Therefore, the rule of interpretation that any ambiguity in this Lease must be construed against the drafter of the agreement does not apply to this Lease.

16.12.2. Unless expressly stated otherwise, wherever used in this Lease, the words “include,” “includes,” and “including,” mean “including but not limited to.”

16.13. Counterparts. This Lease may be executed in one or more counterparts, each of which is an original and all of which together are one agreement.

16.14. Recording. The Tenant may, at its sole cost and expense, record a memorandum of Lease with respect to this Lease in the Recorder of Deeds Office for Philadelphia. The Tenant must, however, obtain the City’s approval of the form of memorandum of Lease prior to filing it, which the City may not unreasonably withhold, condition, or delay. If the Tenant does file a memorandum of Lease, then the Tenant shall promptly provide a copy of the memorandum as filed and recorded to the City and shall cooperate with the City to terminate the filing and recording promptly upon the Lease Ending Date. The Tenant’s obligations under this Section 16.14 survive the Lease Ending Date.

16.16. Choice of Law, Venue. The laws of the Commonwealth of Pennsylvania govern all matters arising under or related to this Lease. The City and Tenant each shall file all claims under this Lease in the Common Pleas Court for Philadelphia County.

16.17. Waiver of Jury Trial. **THE CITY AND TENANT EACH KNOWINGLY, INTENTIONALLY, AND VOLUNTARILY WAIVES ITS RIGHT TO A JURY TRIAL IN ANY ACTION ARISING UNDER OR RELATED TO THIS LEASE.**

AS EVIDENCE OF THEIR CONSENT TO THE PROVISIONS OF THIS LEASE, the City and Tenant have each caused this Lease to be executed and delivered by their duly authorized officers effective on the date set forth in the preamble.

APPROVED AS TO FORM
Shelley R. Smith, City Solicitor

**LANDLORD:
PHILADELPHIA AUTHORITY FOR
INDUSTRIAL DEVELOPMENT**

Per: _____
Lawrence K. Copeland
Senior Attorney
City of Philadelphia Law Dept.

By: _____
Michael DiBerardinis,
Deputy Mayor & Commissioner

**TENANT:
PHILADELPHIA AUTHORITY FOR
INDUSTRIAL DEVELOPMENT**

By: _____
Thomas A. K. Queenan, Chairman

Draft: May 22, 2012.a

EXHIBIT F

to
Ground Sublease
Between
Philadelphia Authority for Industrial Development
And
Zoological Society of Philadelphia

PAID RESOLUTION

[To Follow]

Draft: May 22, 2012.a

EXHIBIT G

to
Ground Sublease
Between
Philadelphia Authority for Industrial Development
And
Zoological Society of Philadelphia

REVENUE SHARE REQUIREMENTS

The Philadelphia Zoo

Proposed Financial Agreement with the Department of Parks and Recreation

1. The first three years of this agreement will not provide for any payments to the Department of Parks and Recreation, as the Philadelphia Zoo initiates garage operations, maximizes efficiencies and bears the burden of the greatest financial and operating risk.

All payments noted in this agreement are contingent upon the Philadelphia Zoo generating a sufficient economic return on the parking garage so that any payments to the Department of Parks and Recreation will not create an annual operating deficit for the garage, or create a condition of non-compliance with bank or financing covenants . If any payment does cause an operating deficit for the garage, or a condition of non-compliance with bank or financing covenants, payments to the Department of Parks and Recreation will be limited to an amount that results in a break-even bottom line for the Philadelphia Zoo parking garage entity, and brings the parking garage into compliance with bank or financing covenants.

2. The Philadelphia Zoo agrees to accrue a payment of \$10,000 in year one, \$15,000 in year two and \$25,000 in year three, to be paid at the end of year Three.
3. At the end of year four and through year six, the Philadelphia Zoo will make annual payments to the Department of Parks and Recreation, in each year that 80,000 or more paid guest cars (cars paying the full retail rate) use the garage, according to the following schedule:
 - End of year four, a payment in the amount of \$25,000
 - End of year five, a payment in the amount of \$37,500
 - End of year six, a payment in the amount of \$50,000
 - The Zoo will pay Parks & Recreation the amount of \$25,000 in any year during this period that 80,000 or less paid guest cars use the garage.

4. At the end of year seven and through year ten, the Philadelphia Zoo will make annual payments to the Department of Parks and Recreation according to the following terms:
 - 80,000 but less than 85,000 paid cars using garage = \$50,000
 - 85,000 but less than 90,000 paid cars using garage = \$60,000
 - 90,000 but less than 95,000 paid cars using garage = \$70,000
 - 95,000 but less than 100,000 paid cars using garage = \$80,000
 - 100,000 but less than 105,000 paid cars using garage = \$90,000
 - 105,000 or more paid cars using garage = \$100,000
5. The Department of Parks and Recreation agrees to direct all financial payments received from the Philadelphia Zoo under this agreement for the operating, programming or capital needs of the Centennial District.
6. At the end of year ten, or sooner if agreeable to both parties, the Department of Parks and Recreation and the Philadelphia Zoo will review the economic terms of this agreement and make any revisions that are mutually negotiated and agreed upon by both parties. The Philadelphia Zoo agrees that the minimum annual payments to the Department of Parks and Recreation in years eleven through twenty, and during each subsequent ten year period, will be no less than the average of the three highest payments made to the Department of Parks and Recreation during the preceding ten year period adjusted for inflation using the Consumer Price Index for the five prior years, if the Zoo parks 100,000 or more paid cars annually. If the Zoo parks less than 100,000 paid cars annually in any one year the Zoo will make annual payments to the Department of Parks and Recreation according to the following terms:
 - 80,000 but less than 85,000 paid cars using the garage - \$50,000
 - 85,000 but less than 90,000 paid cars using the garage - \$60,000
 - 90,000 but less than 95,000 paid cars using the garage - \$70,000
 - 95,000 but less than 100,000 paid cars using the garage - \$80,000

Draft: May 22, 2012.a

EXHIBIT H

to
Ground Sublease
Between
Philadelphia Authority for Industrial Development
And
Zoological Society of Philadelphia

SIGN CONTROLS

Sign Controls

Tenant shall not erect or maintain any sign on the exterior of the Garage or outdoor space of the Premises unless Tenant has first obtained the written approval of the First Deputy. In addition, Tenant shall comply with the conditions imposed by the Department in its approval of any of Tenant's designs, plans, or specifications in accordance with the Master Lease.

1. In the event of a conflict between these sign controls and the requirements of either the Philadelphia Code or the Art Commission, the more stringent requirements control.
2. Each sign on the Premises must be accessory to Tenant's use of the Premises under the Sublease or accessory to the Zoo, and is permitted only if it complies in every respect with the applicable requirements of the Philadelphia Code.
3. The Garage Facilities may have a sign, including a freestanding sign, identifying the name, use or purpose of the Garage Facilities. The total area of the permitted sign may not exceed four square feet for each lineal foot of width of building frontage along Girard Avenue.
4. A freestanding sign structure on the ground may not exceed 20 feet in height, measured from the average level of ground of the lot to the top of the structure.
5. Signs may be illuminated by interior lighting or lighting directed toward the sign; provided, that the illumination must be focused upon the sign itself so as to prevent glare upon the surrounding areas; but in no case may signs be illuminated by neon, flashing, animated or intermittent illumination.
6. Temporary signs are permitted for a period of up to one year for the purpose of advertising any special exhibition at the Zoo.
7. The following signs are prohibited:
 - A. Signs that revolve.
 - B. Signs that are intended to be capable of free-movement or oscillation.
 - C. Any revolving device which causes intermittent flashes or light to be projected.

EXHIBIT I

to
Ground Sublease
Between
Philadelphia Authority for Industrial Development
And
Zoological Society of Philadelphia

CERTIFICATION OF NON-INDEBTEDNESS

[To Follow]

EXHIBIT J

to
Ground Sublease
Between
Philadelphia Authority for Industrial Development
And
Zoological Society of Philadelphia

SUBTENANT'S ECONOMIC OPPORTUNITY PLAN

Centennial District Intermodal Transportation Center at the Philadelphia Zoo Economic Opportunity Plan

I. Introduction

The Zoo is America's first zoo and among the most visited attractions in the Greater Philadelphia Region. Nearly all of the Zoo's 1.2 million annual visitors arrive by car. The Zoo's attendance is heavily weighted to the spring and summer months (April through September) which account for nearly 80% of all visitors and 35% of the annual attendance arrives during the spring and summer weekends. The volume and peak demand nature of Zoo visitation places a tremendous burden on the current parking facilities which are spread among five (5) separate lots located in the area near, but not contiguous with the Zoo. During times of heavy visitation the Zoo makes use of a sixth lot in Fairmount Park across the Girard Avenue Bridge in an attempt to accommodate overflow parking demand. The layout and location of the Zoo's parking facilities is a source of confusion to visitors that detracts from, and is inconsistent with, the overall visitor experience to the Zoo's exhibits.

I. Project and Plan

The project consists of two distinct scopes of work that comprise The Centennial District Intermodal Transportation Center at the Philadelphia Zoo (referred to hereafter as the "Project") for The Zoological Society of Philadelphia (referred to hereafter as the "Owner") on parcels of ground located on Girard Avenue proximate to the Philadelphia Zoo at 3400 West Girard Avenue, in the City of Philadelphia, Pennsylvania. The purpose, standards and procedures of this Plan have been developed in consultation with State and local funding agencies and reflect relevant policies and the expressed wishes of the Owner as set forth herein. Participants shall include consultants, construction management, prime contractors, sub-contractors and vendors of supplies, equipment and materials. All participants will be obligated to fully comply with the requirements of the Plan.

A. Project Scope.

Project Scope A includes the following key components:

Traffic Improvements-

- Intersection/signal improvements at 34th Street and the westbound I-76 off-ramp
- Intersection/signal improvements at 34th Street and Girard Avenue
- Intersection/signal improvements at Girard Avenue and I-76 on/off ramps, including alignment with access to/from existing (Zebra) parking lot
- Digital signage to better direct traffic

Intermodal Improvements-

- Crosswalk and signal at existing trolley stop in the middle of Girard Avenue
- Bus stops including pull-outs on both the north and the south sides of Girard Avenue to accommodate existing and expanded bus service
- Pedestrian improvements on Girard Avenue including new sidewalks, lighting, landscaping, way-finding and branding
- Pedestrian improvements on 34th Street including lighting way-finding and branding
- Pedestrian improvements on Zoo Drive including sidewalks
- Improvements to existing parking lots

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Project Scope B includes the following key components:

- Parking garage: 683± car garage located on Girard Avenue

B. Duration.

This Plan shall apply to contracts awarded and procurements by the Owner and all Participants throughout the entire length of the Project.

C. Statement of Objectives.

The Objectives set forth in the Plan shall be incorporated in all requests for proposals, bid packages and solicitations for the Projects and communicated to all Participant levels.

II. Definitions and Procedures for Scope A

A. DEFINITIONS

- 1) Disadvantaged Business Enterprise or DBE means a for-profit small business concern:
 - i) That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and
 - ii) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.
- 2) Small business concern means, with respect to firms seeking to participate as DBEs in DOT-assisted contracts, a small business concern as defined pursuant to section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR part 121) that also does not exceed the cap on average annual gross receipts specified in §26.65(b).
- 3) Socially and economically disadvantaged individual means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is:
 - i) Any individual who the PA UCP finds to be a socially and economically disadvantaged individual on a case-by-case basis.
 - ii) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
 - a) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;
 - b) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
 - c) "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
 - d) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the

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Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;

- e) "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
 - f) Women;
 - g) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.
- 4) DBE Goal means the amount of DBE participation stated by the Zoo in the Request for Proposals. This DBE Goal is stated in terms of total project cost and is based on the availability of DBEs to perform work related to the project.
 - 5) Certified DBE means those firms certified by the Pennsylvania Unified Certification Program (PA UCP). Refer to the PA UCP website at www.paucp.com for a list of certified DBEs. All firms listed on the PA UCP website are certified and are eligible to participate as a DBE on federally funded projects.

For more information regarding the PA UCP or DBE Certification, please contact the City's Office of Economic Opportunity (OEO) 215 686-6372.

B. FAILURE TO COMPLY WITH DBE REQUIREMENTS

- 1) Failure of a prime contractor to meet the DBE Goal and failure to provide a verifiable "good faith effort" in a response to the RFP will result in rejection of the proposal.
- 2) Failure by a prime contractor and subcontractors to carry out the DBE requirements constitutes a breach of contract and may result in termination of the contract or action as appropriate.
- 3) Upon completion of the project, the Zoo and the City will review the actual DBE expenditures to determine compliance with the DBE Goal. If the DBE Goal is not met, written explanation from the contractor will be reviewed by the City. If the shortfall in meeting the DBE Goal is determined to be unjustified and unwarranted, the Zoo and the City may impose sanction(s) as appropriate.
- 4) Failure to comply with any DBE requirements may result in termination of the contract, being barred from proposing on Zoo RFPs for up to three years, or any other remedy, as the Zoo and the City deems appropriate.

C. PROCEDURES

- 1) In response to a Request for Proposal, a prime contractor must make a "good faith effort" to subcontract a portion of the project work to a certified DBE(s). This portion should be equal to or greater than the DBE Goal stated in the Request for Proposal. Efforts to subcontract work include but are not limited to:
 - i) Efforts made to solicit through all reasonable and available means (e.g. use of the PA UCP DBE Directory, attendance at pre-bid meetings, advertising and/or written notices) the interest of all certified DBEs who have the capability to perform the work

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of the contract. The proposer must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.

- ii) Efforts made to select portions of the work to be performed by DBEs in order to increase the likelihood that the DBE Goal will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.
 - iii) Efforts made to provide interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
 - iv) Efforts made to negotiate in good faith with interested DBEs. It is the proposer's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work. A proposer using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as the contract goal into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a proposer's failure to meet the contract DBE Goal, as long as such costs are reasonable. Also, the ability or desire of a proposer to perform the work of a contract with its own work force does not relieve the proposer of the responsibility to make good faith efforts. Proposers are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.
 - v) Failure to accept a DBE as being unqualified without sound reasons based on a thorough investigation of their capabilities is not acceptable. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of quotes in the contractor's efforts to meet the DBE Goal.
 - vi) Efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.
 - vii) Efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
 - viii) Utilizing the PA UCP DBE Directory of certified firms.
- 2) The prime contractor is prohibited from requiring any DBE to agree not to provide subcontracted effort to other proposers.
 - 3) At the proposal presentation stage, once a DBE has agreed to perform work as a subcontractor, the prime must provide the business name of the DBE with address, contact person, phone number, PA UCP DBE Certification Number and anniversary date, a detailed

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narrative description of the service and role to be provided by the DBE , and the percent of the proposal's cost to be contractually allocated to the DBE. In the event, as a result of contract negotiations the City alters the scope of services that would be allocated to the identified DBE prior to award of the contract, the prime contractor may alter its DBE commitment(s) but remains obligated to continue its good faith efforts to furnish DBE participation commensurate with the DBE Goal. A letter of intent from the prime contractor representing that the DBE has agreed to enter into a subcontract if the prime contractor is successful must be furnished at the City's request and is subject to confirmation by the identified DBE. Such letter shall represent a legally binding commitment to use that DBE in the dollar/percentage amount and for the services indicated.

- 4) If a DBE cannot be located or if the percent of total proposal cost allocated to the DBE is less than the DBE Goal, the prime contractor must provide a "good faith effort." The "good faith effort" must explain and document the effort made by the prime contractor to obtain DBE participation. Documentation must be verifiable and must include:
 - i) The names, addresses, phone and facsimile numbers of DBEs who were contacted, the dates of initial contact and the follow-up efforts made by the prime contractor;
 - ii) A description of the information provided to the DBE to define the work to be performed;
 - iii) Documentation of the reasons why any DBE contacted would not agree to participate.
- 5) If the proposal of the selected contractor contains a "good faith effort" because the proposal fails to meet the established DBE Goal, the Zoo and the City will review the "good faith effort" provided by the contractor. If the "good faith effort" is deemed satisfactory, the "good faith effort" will be approved. In such case the contractor shall continue a "good faith effort" throughout the life of the contract to increase the DBE participation to meet the contract DBE Goal. If the Zoo and the City cannot accept the "good faith effort" submitted by the contractor, the proposal will be considered non-responsive and the Zoo will notify the contractor that the proposal is rejected. The contractor will be given an opportunity to appeal the good faith effort determination to the City's Good Faith Efforts Review Committee which shall consist of representative(s) of the City who were not involved in the non-responsiveness determination. The determination of the Good Faith Efforts Review Committee shall be final.
- 6) Any proposal that does not meet the DBE Goal and does not provide a "good faith effort" which identifies DBEs who were solicited for participation in the project, will be rejected without further review of the proposal. Use of a DBE certified by other certifying agencies and not by the PA UCP or use of a DBE whose DBE eligibility has been removed by the PA UCP will result in rejection of the proposal.
- 7) The prime contractor must provide the Zoo with executed versions of the subcontract with the DBE within 90 days from the date of the notice to proceed given on the prime contract. Failure to provide the executed subcontract will result in a temporary stop of work on the 91st day of the contract until an acceptable DBE subcontract is provided to the City. Any time period involved in such a temporary stop of work will not extend the period of performance of the contract nor be accepted by the Zoo as a justification for project time extension

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- 8) The prime contractor shall include the Disadvantaged Business Enterprise Requirements in all subcontracts. Subcontractors must conform to the intent of these requirements.
- 9) If it becomes necessary to replace a DBE subcontractor during the contract, make a “good faith effort” to re-contract the same or other work with another certified DBE firm. Such an effort must include:
 - i) Alert the Zoo immediately and document the problem in writing;
 - ii) Contact available individual qualified DBEs in an effort to re-contract work to fulfill the DBE Goal stated in the Request for Proposal; and
 - iii) Provide the Zoo with copies of all new DBE subcontracts (and additional “good faith effort” information) if the original DBE Goal is not met) by the close of business of the 7th calendar day of the Zoo’s receipt of written notice of the need to replace a DBE.
- 10) Inform the Zoo, in writing, of any situation in which payments are not made to the DBE Subcontractor as required by the subcontract.
- 11) Keep records necessary for compliance with DBE utilization obligations by indicating:
 - i) The number of DBE and non-DBE subcontractors and the type of work, materials or services performed in the project;
 - ii) Efforts to secure DBE firms whenever a subcontractor is contemplated during a contact;
 - iii) Documentation of all communication to obtain the services of DBEs on a project;
 - iv) The amounts paid to DBEs by invoice period;
- 12) Upon completion of a DBE’s work, the prime contractor must submit a certification of the actual amount paid to the DBE. If the actual amount paid is less than the amount of the subcontract, an explanation is required and subject to the review and action of the Zoo.

D. COUNTING DBE PARTICIPATION

- 1) If the contractor submitting the proposal and serving as prime contractor is a certified DBE, count the dollar amount of the work to be performed by the DBE toward the DBE Goal.
- 2) If the materials or supplies are purchased from a DBE supplier performing as regular dealer, count 60 percent of the cost of the materials or supplies toward DBE Goal. A regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.
- 3) If the materials or supplies are obtained from a DBE manufacturer, count 100 percent of the cost of the materials or supplies toward DBE Goal. A manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.
- 4) Count toward the DBE Goal 100% of expenditures of DBE services including professional, technical consultant or managerial services. Count fees or commissions charged for providing any bonds or insurance specifically required for the performance of the contract.

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- 5) Any services to be performed by a DBE are required to be project related. The use of DBEs is in addition to all other equal opportunity requirements of the contract.

III. Definitions and Procedures for Scope B

- A. The Owner is committed to provide meaningful and representative opportunities for minority-owned, women-owned and disabled-owned business enterprises, and economically disadvantaged-owned business enterprises (collectively referred to hereafter as “M/W/DS-BEs”) and individuals that are locally based in all phases of the Project. It is expected all Participants make the same commitment. Each Participant shall not, and furthermore, shall ensure that their associates, partners or representatives shall not, discriminate on the basis of race, color, religion, sex or natural origin in the award and performance of contracts pertaining to the Project or with respect to any and all related employment practices.
- B. All participants in the Project shall observe and be subject to the enforcement of all relevant City of Philadelphia, Commonwealth of Pennsylvania and federal laws, ordinances, orders, rules and/or regulations regarding M/W/DS-BE firms and locally-based business enterprises. Furthermore, affirmative action will be taken, consistent with sound procurement policies and applicable laws to ensure that M/W/DS-BE firms are afforded a meaningful and representative opportunity to participate in contracts relating to the Project.
- C. For the purposes of this Plan, the term “minority” shall refer to the following: African American or Black (all persons having origins in any of the Black African racial groups); Hispanic/Latino (all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese culture or origin regardless of race); Asian and Pacific Islander (all persons having origins from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, Hong Kong, India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka; in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent or the Pacific Islands); and Native Americans (which includes all persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians).
- D. Agencies and representatives of the City of Philadelphia Office of Economic Opportunity (OEO) and/or Commonwealth of Pennsylvania may be consulted regarding the appropriate inclusion of M/W/DS-BE firms and socially/economically disadvantaged professionals in this Project as outlined in this Plan and with regard to its implementation.
- E. **Good Faith Efforts.**
Participants shall reasonably exhaust the use of best and good faith efforts as defined hereunder to provide appropriate participation and utilization opportunities for M/W/DS-BE firms. All Project contractors and vendors will be required to do likewise, consistent with best and sound procurement practices, and with applicable law. *Best and good faith efforts* will be deemed adhered to when a Participant meets the criteria set forth in this section and demonstrates and

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documents its efforts throughout the length of the Project. If the established ranges for inclusion of M/W/DS-BE firms are not met, a Participant must submit a Subcontracting/Vendor Plan showing how *best and good faith efforts* were made to achieve said ranges. This plan must include, but not be limited to, the following:

- Written request for assistance to the Owner three (3) business days prior to the bid due date.
- Solicitation through newspapers, periodicals advertisements, job fairs, etc. that focus on construction and are minority-owned and/or focused.
- Telephone logs.
- Evidence of solicitation to qualified and OEO certified M/W/DS-BE firms.
- Bid results and reasons as to why no awards were made to M/W/DS-BE firms.
- Use of City/MBEC-certified business firms via their directory.
- Correspondence between contracting firm and any M/W/DS-BE firms.
- Attendance logs and/or records of any scheduled pre-bid or pre-proposal meeting
- Specific, general and technical assistance offered and provided to M/W/DS-BE firms related to their portion of the project.
- Proof there was notification of and access to bid documents at company or other office locations for open and timely review.

F. Monitoring of *Best and Good Faith Efforts*.

Owner requirements relative to monitoring of *best and good faith efforts* of Participants engaged in the Project shall be established by the Owner in consultation with appropriate city, state and federal agencies and/or private professional entities to include (in addition to further measures as may be required) the following:

- 1) Participants shall submit copies of signed contracts and purchase orders with M/W/DS-BE subcontractors.
- 2) Participants shall be ready to provide evidence of payments to their subcontractors, sub-consultants and supply vendors for participation verification. This documentation should be provided monthly or included with every request for payment to Contractors.
- 3) At the conclusion of work, the Subcontractor shall provide a statement or other evidence of the actual dollar amounts paid to M/W/DS-BE subcontractors.
- 4) All On-site Contractors shall be prepared to submit "certified" payrolls listing the following items for all on-site employees:
 - i) Full name
 - ii) Social Security number
 - iii) Full address
 - iv) Trade classification (e.g., laborer, carpenter, apprentice, electrician, plumber, and foreman)
 - v) Gender
 - vi) Race
 - vii) Hours worked

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- viii) All withholding (e.g., laborer, local, state, FICA, etc.)
 - ix) Name of Contractor and Indication of Prime for Subcontractors
 - x) Name of Project
- 5) Certified payroll reports shall be signed by an authorized company officer.
- 6) The Participant shall comply with all applicable requirements of any federal, state or local law ordinance or regulation relating to contract and payroll compliance.

G. Documentation of *Best and Good Faith Efforts* and Compliance.

Two components have been established to facilitate the inclusion of M/W/DS-BE firms as contractors and vendors, and minority /female/local residents as Project site workforce participants:

- 1) **M/W/DS-BE contracting and vending participation levels:** the basis for each determination will be the total dollar amount of the bid/contract OR the total dollar amount of the bid/contract for the identified Project task.
- 2) **Minority/Female/Local Resident Employment Participation Levels:** the basis for each determination will be the projected total on-site field employee hours divided by the number of minority, female and local residents' employee hours anticipated to be performed on the Contractor's payroll, and each of the Contractor's on-site subcontractors payrolls.

H. Certified M/W/DS-BE Firms

- 1) Only businesses that are owned, managed and controlled, in both form and substance, as M/W/DS-BE firms shall participate in this Project's Economic Opportunity Plan. To ensure this standard, all businesses, including joint ventures, must be certified by the Philadelphia Office of Economic Opportunity (OEO) or members of the Pennsylvania Unified Certification Program (UCP) <http://www.paucp.com>. Both agencies are authorized to certify such enterprises.
- 2) M/W/DS-BE certification should not be the sole determination of a Bidder's or Contractor's financial or technical ability to perform specified work. The Owner reserves the right to evaluate the Contractor's or Subcontractor's ability to satisfy financial, technical, or other criteria separate and apart from said certifications before bid opening. Pre-qualification conditions and requirements shall be conveyed in a fair, open and non-discriminatory manner to all.
- 3) The Owner recognizes that M/W/DS-BE certifications may expire or the firm may experience de-certification by an authorized governmental entity. Certifications that expire during a firm's participation on a particular phase of the Project may be counted toward overall goals for participation ranges. However, said firm MUST become re-certified prior to consideration for future goal credit in the Project's Plan. If a firm has been de-certified, said firm would not be eligible to participate.

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- 4) An M/W/DS-BE and/or DBE submitting as the prime contractor is required, like all other Participants, to submit a bid and/or RFP that is responsive to the Reauthorized Executive Order 02-05, and applicable law, and will only receive credit, in its certification category, for the amount of its own work or supply effort on the specified work in the bid and or RFP. In order to maximize opportunities for as many businesses as possible, a firm that is credited in two or more categories (e.g. MBE and WBE, or WBE and DSBE) will only receives credit as either an MBE or WBE or DSBE. The firm will not be credited toward more than one category. Bidders/Respondents will note with their submission which category, MBE or WBE or DSBE, is submitted for credit.

I. Non-Compliance

- 1) In cases where the Owner has cause to believe that a Participant, acting in good faith, has failed to comply with the provisions of the Plan, the Owner, with the assistance and consultation of the appropriate agencies and professional entities, shall attempt to resolve the noncompliance through conciliation and persuasion.
- 2) In conciliation, the Participant must satisfy the Owner that they have made their *best and good faith efforts* to achieve the agreed upon participation goals by certified M/W/DBE firms. *Best and good faith efforts* on the part of the Participant/Contractor include:
 - i) Entering into a contractual relationship with the designated M/W/DBE firm in a timely, responsive and responsible manner, and fulfilling all contractual requirements, including payments, in said manner.
 - ii) Notifying all parties, including the Owner, the M/W/DS-BE firm, and all relevant Participants, of any problems in a timely manner.
 - iii) Requesting assistance from the Owner in resolving any problems with any M/W/DS-BE firm.
 - iv) Making every reasonable effort to appropriately facilitate successful performance of contractual duties by a M/W/DS-BE firm through timely, clear and direct communications.
- 3) In cases where the Owner has cause to believe that any Participant has failed to comply with the provisions of the Plan, they shall conduct an investigation.
- 4) After affording the Participant notice and an opportunity to be heard, the Owner is authorized to take corrective, remedial and/or punitive action. Such actions may include, but are not limited to:
 - i) Declaring the Participant as non-responsible and/or non-responsive, with a determination as ineligible to receive the award of a contract, continue a contract and/or ineligible for any other future contracts affiliated with this Plan;
 - ii) Suspending the violating Participant from doing business with the Owner;

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- iii) Withholding payments to the violating Participant; and/or
 - iv) Pursuing and securing any relief which the Owner may deem to be necessary, proper, and in the best interest of the Owner and the Project, consistent with applicable policy and law.
- 5) A Participant may appeal a determination of non-compliance with this Plan by filling a written grievance with the Owner.
- 6) Within five (5) working days the Owner shall issue and serve a written notice/determination, together with a copy of the grievance as filed, to all persons named in the grievance.

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IV. Participation Goals and Ranges

SCOPE A

The following contract ranges have been set for **Scope A** of the Project:

Contracts	DBE Firms
Professional Services	7%
Construction Contractors	7%

SCOPE B

The following employment goals have been set for **Scope B** of the Project:

Employment	Minorities	Females	Disabled
Construction Workforce	30%	5%	0%

The following contract ranges have been set for **Scope B** of the Project:

Contracts	Minority Owned	Female Owned	Disabled Owned
Professional Services	25%	5%	0%
Construction Contractors	20%	5%	Encouraged

V. Guidelines for Joint Venturing

A. Joint Venture relationships with certified M/W/DS-BE firms must meet the following criteria in order to receive credit towards participation goals:

- 1) The M/W/DS-BE/DBE partner(s) must be certified by MBEC, UCP or a qualified governmental agency authorized by law to certify such enterprises prior to proposal/bid submission.
- 2) The M/W/DS-BE/DBE partner(s) must be substantially involved in significant phases of the contract including, but not limited to, the performance (with its own work force) of a portion of the on-site work, and of administrative responsibilities, such as bidding, planning, staffing and daily management.

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- 3) The business arrangements must be customary (i.e., each partner shares in the risk and profits of the joint venture commensurate with their respective ownership interests).
- 4) If a certified partner is an MBE, WBE DSBE or DBE, the participation will be credited only to the extent of the partner's ownership interest in the joint venture; there will remain a requirement to meet M/W/DS-BE/DBE goals.

Draft: May 22, 2012.a

EXHIBIT K

to
Ground Sublease
Between
Philadelphia Authority for Industrial Development
And
Zoological Society of Philadelphia

SUBTENANT'S CORPORATE DOCUMENTS

[To Follow]

EXHIBIT L

to
Ground Sublease
Between
Philadelphia Authority for Industrial Development
And
Zoological Society of Philadelphia

SUBTENANT RESOLUTION

[To Follow]