

City of Philadelphia



(Bill No. 180108)

AN ORDINANCE

Authorizing the City of Philadelphia to enter into lease agreements with the Philadelphia Authority for Industrial Development under which the City would lease to PAID on a project-by-project basis certain land and facilities in the Fairmount Park system, recreation centers, playgrounds and branches in the Free Library of Philadelphia system, and which would permit PAID to sublease such Facilities on a project-by-project basis to other organizations in conformity with the Economic Development Financing Law, Act 1967-102 (P.L. 251), as amended, all under certain terms and conditions.

WHEREAS, The City of Philadelphia has authorized the issuance of certain bonds ("Rebuild Bonds") by the Philadelphia Authority for Industrial Development ("PAID") for improvements to certain land and facilities in the Fairmount Park system, recreations centers, playgrounds and branches in the Free Library of Philadelphia system (collectively, the "Facilities"), by ordinance, Bill No. 170206, signed into law on June 28, 2017;

WHEREAS, Bill No. 170206 established certain requirements, including submittal of a Project Statement, an annual line-item budget and an Economic Opportunity Plan for approval by Resolution, that must be met prior to conveying interests in City-owned real estate for purposes related to the Rebuild Bonds; and

WHEREAS, The requirements of Bill No. 170206 have been met; NOW THEREFORE,

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. This Commissioner of Public Property, the Commissioner of Parks and Recreation, and the Director of the Free Library of Philadelphia, on behalf of the City of Philadelphia, are authorized to enter into lease agreements ("Leases") with PAID, substantially in the form of Exhibit "A" attached to this ordinance, under which the City would lease to PAID on a project-by-project basis the Facilities as identified in Exhibit "B," and which would permit PAID to sublease some or all of the individual Facilities on a project-by-project basis to charitable organizations that wish to make capital repairs, renovations, and improvements to the Facilities.

SECTION 2. This ordinance authorizes the City Solicitor to review and approve the Leases and all instruments and documents necessary to effectuate this Ordinance, including PAID's form of sublease and also authorizes the appropriate City officials to

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execute and deliver those instruments and documents. In accordance with this ordinance, the City Solicitor may require in those documents all provisions the City Solicitor determines are necessary and proper to protect the interests of the City of Philadelphia and carry out the purpose of this Ordinance.

EXHIBIT "A" Form of City PAID Lease Agreement

LEASE AGREEMENT

THIS LEASE AGREEMENT (this "**Lease**") is made the ____ day of _____, 201__, effective the ____ day of _____, 2017 (the "**Effective Date**"), by and between **THE CITY OF PHILADELPHIA**, acting by and through its **DEPARTMENT OF PUBLIC PROPERTY [DEPARTMENT OF PARKS & RECREATION][FREE LIBRARY OF PHILADELPHIA]** (the "**City**"), and **PHILADELPHIA AUTHORITY FOR INDUSTRIAL DEVELOPMENT ("PAID")**.

BACKGROUND

A. The City is the fee simple owner and operator of certain park, libraries, playgrounds, recreation centers and other facilities (each a "**Facility**" and, collectively, the "**Facilities**") which the City wishes to develop, renovate, and improve under its program commonly known as "Rebuild" in a manner which will provide greater recreational and educational opportunities for the citizens of and visitors to the City.

B. The City wishes from time to time and on a project-by-project basis to lease certain of the Facilities to PAID (the "**Premises**"), in its role as a conduit financing authority under the Pennsylvania Economic Development Financing Law, Act No. 102 of the General Assembly of the Commonwealth of Pennsylvania approved August 23, 1967 (P.L. 251), as amended and supplemented from time to time (the "**Act**"), for further sublease to charitable organizations (each a "**Subtenant**" and collectively "**Subtenants**") who wish to make capital repairs, renovations and improvements to the Facilities (the "**Renovations**"), provide public programming and other services at the Premises (the "**Permitted Use**"). Under the terms of sublease agreements between PAID and Subtenants (each a "**Sublease**" and, collectively, "**Subleases**"), PAID will grant Subtenants the right to perform the Permitted Use at the Premises, in accordance with the terms and conditions thereof.

D. By resolution dated _____, the Board of Directors of PAID has authorized the execution of this Lease.

E. By Bill No. _____, enacted _____, 201__, Philadelphia City Council authorize the Commissioner of Public Property, the Commissioner of the Department of Parks & Recreation and the Director of the Free Library of Philadelphia to lease the Facilities to PAID for further sublease to Subtenants for the Permitted Use.

F. PAID is entering into this Lease to accomplish the public purposes set forth in the Act.

THEREFORE, in consideration of the mutual promises contained in this Lease, and intending to be legally bound by this Lease, the City and PAID mutually covenant and agree as follows:

1. **LEASE OF PREMISES.**

A. The **Project Review Team** (as defined in Bill No. 170206, effective June 28, 2017) made a recommendation to PAID and the City for certain projects to be performed at _____ (the "**Project Recommendation**"). The Project Recommendation is attached hereto and made a part hereof as **Exhibit "1"**. The City and PAID have reviewed and approved the Project Recommendation. The certain Facility which was the subject of the Project Recommendation are the "Premises", and the project approved as part of the Project Recommendation is the Renovations.

B. Subject to process detailed in Section 1(A) above and the terms and conditions of this Lease, the City leases to PAID and PAID leases from the City the Premises for a term necessary for the Permitted Use, provided, however, that PAID will grant a sublease to _____ (the "**Subtenant**") to perform the Permitted Use at the Premises, pursuant to the terms and conditions of this Lease.

C. (1) At all times during the Term (defined in **Section 2.(A)**), the Premises shall be and shall remain owned by and titled in the City. No legal title or easement shall be deemed to be created or vested in PAID, the Subtenant or any other subtenant, licensee or other occupant by anything contained in this Lease.

(2) Notwithstanding Section 1(C)(1), for the duration of Renovations, the City and PAID hereby agree that PAID will hold legal title to the Renovations, provided, however, that such holding of legal by PAID will not authorize either of them to, and the City and PAID agree that neither of them will, file with the City's Department of Records or in any other governmental office any information or statement with respect to this Lease, the Sublease, or otherwise with respect to such temporary holding of legal title by PAID, and provided further that such legal title held by PAID will not include any right to enjoy any warranty associated with the holding of legal title to the Renovations. Upon the expiration or termination of this Lease or upon the City's acceptance of Renovations, legal title to the Renovations will automatically revert to the City without any action being required of any party. No legal title to the Renovations will be deemed or construed to have been created or vested in any Subtenant by anything in this Lease or in the Sublease. Upon the expiration or termination of this Lease or the Sublease, title and all other indicia of ownership to all Renovations, including warranties, if any, associated therewith, will remain vested in the City.

(3) The City requires, and PAID shall include in the Sublease, an option for the Subtenant to purchase the Renovations. The Sublease shall require the Subtenant to meet the following terms and conditions in order to purchase the Renovations. The Sublease will state that option may be exercised only upon Subtenant's timely delivery of notice to PAID and the City and upon satisfaction of all the following conditions:

1. Payment by the Subtenant to the City of a sum equivalent to the greater of:

(a) One hundred twenty percent (120%) of all development sums expended by PAID for the Renovations, plus interest thereon at a rate determined by the City in its reasonably exercised sole discretion; or

(b) fair market value of the Renovations, as determined by an independent appraiser selected by the City with the cost of such appraisal to be paid by the Subtenant, at the time the Subtenant seeks to acquire title thereto; or

(c) all amounts required to redeem or defease Bonds (as defined below) within forty-five (45) days of notice

2. Delivery to the City of a written opinion of the City's bond counsel, reasonable fees for which will be paid by the Subtenant, concluding that the vesting of title to the Renovations in the Subtenant will neither adversely impact the status of and City or PAID bonds ("**Bonds**") issued to finance the cost of the Renovations nor adversely impact the tax-exempt status of the interest thereon.

3. Delivery to the City of a written opinion of counsel to the City, to be selected by the City in its reasonably exercised sole discretion, reasonable fees for which will be paid by the Subtenant, concluding that the vesting of title to the Renovations in the Subtenant does not violate any federal or state agreement, law, statute, ordinance or regulation applicable to the City.

4. Delivery to the City of a written opinion of outside counsel to the Subtenant concluding that the vesting of title to the Renovations in the Subtenant does not violate any federal or state agreement, law, statute, ordinance or regulation applicable to the Subtenant.

5. Inclusion in any document conveying ownership of the Renovations to the Subtenant that the Renovations must be owned, maintained and used by the Subtenant for park, recreational or library purposes.

6. Inclusion in any document conveying ownership of the Renovations to the Subtenant a right of first refusal in favor of the City to purchase from the Subtenant the Renovations, for the cost of development funds expended by PAID for the Renovations, prior to any sale of the Renovations to another interested purchaser.

7. Securing of all necessary City approvals for the purchase of the Renovations including, but not limited to, all approvals required from the Philadelphia City Council.

8. Such other conditions as the City and PAID determine are reasonably necessary for the issuance of bonds.

The Sublease will require that for the Subtenant to exercise its option to take title to any Renovation as set forth above, it must so notify the City in writing within ten (10) days after the City accepts the completed Renovation.

The Sublease will state that the option for Subtenant to purchase a Renovation shall not exist independent of the rights conferred by this Lease or the Sublease. The Sublease shall further state that any right of Subtenant to exercise an option to purchase Renovations shall terminate upon the expiration or termination of this Lease and the Sublease.

D. (1) PAID accepts the Premises in their "AS IS" condition as of the Effective Date, including, without limitation:

- i. the surface and/or subsurface conditions of the Premises;
- ii. the City's title to the Premises;
- iii. any liens, encumbrances or restrictions on the Premises and/or the use of the Premises;
- iv. the suitability of the Premises for any use;
- v. the compliance by or of the Premises, including any Improvements thereon, with any of the Applicable Laws (defined in Section 4 (B)), including, without limitation, any Applicable Law regulating zoning, Hazardous Substances (defined in Section 4 (B)(2)) or the Americans With Disabilities Act of 1990, P.L. Sections 101-336, codified generally at 42 U.S.C. §§ 12101 et. seq., and all rules, regulations and guidelines promulgated pursuant to that law ("ADA"), as any or all of the foregoing may be amended from time to time;
- vi. access to the Premises; or
- vii. the present uses and non-uses of the Premises.

(2) The Sublease shall require the Subtenant to assume the risk that adverse physical, environmental, economic or legal conditions may exist with respect to the Premises and that Subtenant shall have no recourse to City for the same.

2. **TERM.**

A. **Term.** The term of this Lease will commence upon the Effective Date and terminate (i) one (1) day prior to the first anniversary of the Effective Date, or (ii) the acceptance of the Renovations of the City, whichever is earlier (the “**Term**”). The City will have the option to renew the Term for additional periods of up to one (1) year each thereafter (each a “the “**Renewal Term**”) upon notice to PAID prior to the end of the then applicable Term or Renewal Term, unless PAID provides written notice to the City at least thirty (30) days prior to the commencement of the Renewal Term of its desire not to renew this Lease. The length of time for which PAID occupies and leases particular Premises and will sublease particular Premises to Subtenants shall be determined by the process described in Sections 1(A) and (B).

B. **Termination by City.** Notwithstanding anything to the contrary contained in this Lease, the City will have the right at any time during the Term or any Renewal Term to terminate this Lease upon thirty (30) days’ prior written notice to PAID and the Subtenant (the “**Termination Notice**”). Upon such notice the Sublease will terminate in accordance with its terms, and PAID will cause the Subtenant, and those in occupancy under the Subtenant, to promptly cease performing the Renovations and promptly vacate the Premises, and, except as otherwise provided, this Lease will terminate on the termination date set forth in the Termination Notice and be of no further force or effect.

3. **RENT.** PAID will pay, as rent during the Term and any Renewal Term, the sum of One Dollar (\$1.00) per twelve (12) month period (“**Rent**”). PAID will pay Rent to the City, payable to "The City of Philadelphia" at the office of the City at the address stated in Section 21 or to such other party or to such other address as the City may designate from time to time by written notice to PAID. For the purposes of this Lease, all Rent plus any and all fees or moneys due hereunder are hereinafter sometimes referred to collectively as "Rent".

4. **USE OF PREMISES.**

A. **Permitted Use.** The Sublease shall state that the Subtenant shall use the Premises only for the Permitted Use and shall not use or permit the Premises to be used for any other purpose without the prior written approval of the City and shall not take or omit to take any action so as to cause interest on any tax-exempt Bonds to be no longer excluded from gross income for purposes of Federal income taxation, throughout the term of such Bonds. Each Subtenant shall agree to comply with all directions from the City with respect to maintaining the tax-exempt status of such Bonds. Each Subtenant shall also agree to maintain its status as an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the “**Code**”) and represent that its use of the Renovations does not and will not constitute an unrelated trade or business determined under section 513(a) of the Code.

B. Compliance with Laws and Other Requirements.

(1) The term “**Applicable Laws**” shall mean all present and future federal, state and municipal laws (including common law), ordinances, codes, notices, orders, rules, regulations and requirements relating to Subtenant, the condition, use or manner of use of the Premises and the real property of which the Premises is a part, including but not limited to the following: (a) the ADA, (b) all laws governing or regulating the use, presence and/or disposal of Hazardous Substances, (c) the “Fair Practices Ordinance” (codified in The Philadelphia Code, at Chapter 9-1100), (d) The Philadelphia Code, and (d) all laws and regulations related to fire suppression mechanisms and plans.

(2) the term “**Hazardous Substances**” shall mean any substance which is or becomes regulated under any Environmental Law, including, without limitation, any substance which is (i) gasoline, petroleum products, explosives, radioactive materials, including by-product, source and/or special nuclear material and solid wastes, polychlorinated biphenyls or related or similar materials, asbestos or material containing asbestos; (ii) defined, designated or listed as a “hazardous substance,” “regulated substance,” “hazardous material,” “solid waste,” “hazardous waste,” “residual waste,” “municipal waste” or “industrial waste” under any “Environmental Law.”

(3) the term “**Environmental Law**” shall mean any provision of Applicable Law pertaining to health, safety or environmental protection, including without limitation such laws or regulations pertaining to the storage, transportation, handling, disposal, discharge, presence or use of Hazardous Substances, including, without limitation, (i) CERCLA; (ii) the Hazardous Materials Transportation Act, as amended, 49 U.S.C. §1801, et seq.; (iii) the Resource Conservation Recovery Act of 1976, as amended, 42 U.S.C. §6901, et seq.; (iv) the Federal Water Pollution Control Act, 33 U.S.C. §1251, et seq.; (v) the Clean Streams Law, Pa. Stat. Ann. tit. 35, §691.1, et seq.; (vi) the Solid Waste Management Act, Pa. Stat. Ann. tit. 35, §6018.101, et seq.; (vii) the Hazardous Sites Clean-Up Act, Pa. Stat. Ann. tit. 35, §6020.101, et seq.; (viii) the Storage Tank and Spill Prevention Act (35 P.S. §6021.101, et seq.), and (ix) in the regulations adopted and publications promulgated with respect thereto.

(4) The Sublease shall state that the Subtenant, shall comply with all Applicable Laws. The Sublease shall state that if during the Renovations any violation of the Applicable Laws occurs on the Premises, the Subtenant shall take immediate action to remove such violation and to bring the Premises into compliance with all Applicable Laws.

(5) The Sublease shall require the Subtenant to represent, warrant and covenant that: (a) the Premises will not be used in violation of the use requirements set forth in Article 4; (b) the Subtenant will not cause or maintain a public nuisance at the Premises; and (c) the Subtenant will not bring, generate, treat, store, use or dispose of Hazardous Substances at the

Premises other than office and cleaning supplies used, stored and disposed of in accordance with Environmental Laws.

5. **UTILITIES; TAXES.**

A. The City will provide and maintain the mains and conduits necessary to supply utilities to the Premises. The City agrees to pay all charges and fees for public and private utilities now or at any time in the future serving the Premises, including without limitation telephone, electric, sewer rents, water and stormwater meter and water and stormwater charges as they become due.

B. The City shall pay any applicable federal, state and local taxes and assessments imposed on the Premises and the Subtenant's use and occupancy of the Premises as and when the same become due, and before any penalty or late charge is assessed or comes into effect.

6. **MAINTENANCE AND REPAIRS OF PREMISES.**

A. With the exception of the Renovations, the City shall, at its sole cost and expense, maintain the Premises, including all structural and nonstructural portions of the Premises, water supply systems, storm and sanitary sewer disposal systems, the fire suppression systems, heating, ventilation, air conditioning and electrical systems, in good condition and repair and in compliance with all Applicable Laws, reasonable wear and tear and damage by insured casualty excepted.

B. The City shall maintain all portions of the Premises, together with all sidewalks and landscaped areas adjoining the Premises, in a clean and orderly condition, free of garbage, rubbish, dirt, snow and ice. The City shall remove graffiti from, or cover graffiti on, the Premises within five (5) days of its application, or such lesser time as may be required by Applicable Laws.

C. Subject to the limitations of Section 10(A), the City shall collect and dispose of all trash, rubbish and garbage in accordance with Applicable Laws.

D. The Sublease shall state that the Subtenant shall not cause or suffer any waste, disfigurement or injury to the Premises. The Sublease shall require the Subtenant to promptly repair (or cause the repair of) any injury, disfigurement or damage to the Premises caused by the Subtenant, its officers, employees, agents, representatives, contractors, subcontractors, licensees, or caused by any other person, including but not limited to injury or damage caused by vandalism or malicious mischief.

7. **INDEMNIFICATION.**

A. **Indemnification by City.**

(1) To the extent (i) Subtenant fails to provide reasonable and timely indemnification against Claims or Losses (as defined below) pursuant to the Sublease, and (ii) that

Claims or Losses are not covered by an insurance policy maintained by a third party (other than Philadelphia Industrial Development Corporation (“**PIDC**”)) for the benefit of PAID pursuant to the terms of the Sublease, the City agrees, to the extent permitted by Applicable Laws and subject to Section 8(C) hereof, to indemnify, defend and hold harmless PAID, 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 PAID’s entering into this Lease or the Sublease, the performance of PAID’s obligations hereunder or thereunder, or any acts or omissions relating to PAID’s involvement hereunder or thereunder; except in each case to the extent that the Claims and Losses are attributable to the willful misconduct, fraud or gross negligence of any such Indemnified Party.

(2) In consideration of this undertaking by the City, PAID shall cooperate with the City to enforce the rights of PAID under any insurance policy maintained by any third party (other than PIDC) under which PAID is an additional or named insured, and to enforce any indemnification rights to which PAID may be entitled under the Sublease (including any rights against Subtenant or any third party) and the City and PAID agree to pursue all such 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 PAID under such insurance policies and indemnification rights; provided, however, it is expressly agreed that the City shall not have, and expressly waives, any right of subrogation under any insurance policies maintained by PAID.

B. Indemnification by PAID. To the extent (i) Subtenant fails to provide reasonable and timely indemnification against Claims or Losses pursuant to the Sublease, and (ii) 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, PAID agrees, to the extent permitted by Applicable Laws and subject to Section 8(C) hereof, to indemnify, defend and hold harmless the City, and its directors, members, 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 officers, officials employees and agents arising out of or relating to or arising in connection with (i) the performance or breach of the obligations or representations of PAID under this Lease or the Sublease, or (ii) any other acts or omissions of PAID or any of its directors, members, officers officials, employees, agents and attorneys providing services relating thereto or hereunder, in each case insofar as such Claims or Losses arise directly or indirectly from the willful misconduct, fraud or gross negligence of PAID or any Indemnified Party. The liability of PAID, PIDC and any other Indemnified Party hereunder is limited solely to PAID’s interest under this Lease, and the lien of any judgment shall be restricted thereto.

C. Indemnification by Subtenant. The Sublease will require Subtenant to indemnify and hold harmless each of PAID, PIDC and the City as well as their respective agents, employees, boards, and commissions to the extent deemed necessary by the City and PAID.

D. Survival. Without limiting the effect of Section 8(C) hereof, this Section 7 shall survive expiration or termination of this Lease

8. RELEASE.

A. Release by Subtenant. Except to the extent set forth in the Sublease, the Sublease will require Subtenant, for itself, its officers, directors, employees, and agents, to release each of the City, PAID and PIDC, and each of their respective officers, officials, directors, representatives, employees, and agents to the extent deemed necessary by the City's Risk Management and Law Department, PAID and PIDC.

B. Limitation on City Liability. Except as otherwise set forth in any applicable inter-governmental agreement between PAID and the City, the City will have no liability under this Lease or the Sublease to PAID or anyone claiming through or under PAID.

C. No Waiver of Defenses or Immunities. Nothing in this Lease or the Sublease will be construed to waive or amend any defense or immunity, which the City or PAID, or their officers, agents, officials, members, representatives, or employees may have under Title 42, Chapter 85 of the Pennsylvania Consolidated Statutes Annotated, as amended, or other Applicable Law.

9. DEFAULT; REMEDIES.

A. Default Defined. PAID will be in default of this Lease if it:

(1) defaults under any of the terms and conditions of the Sublease;

(2) fails to observe and perform any other provision or covenant of this Lease to be observed or performed by PAID, where such failure continues for ten (10) days after written notice thereof to PAID provided, however, that if the nature of the default is such that the same cannot reasonably be cured within such ten (10) day period, PAID will not be deemed to be in default if PAID within such period commences such cure and thereafter diligently prosecutes the same to completion, but in no event for longer than thirty (30) days after written notice to PAID; and/or

(3) suffers the filing of a petition by or against PAID for relief under bankruptcy or insolvency laws or for its reorganization or for the appointment pursuant to any local, state or federal bankruptcy or insolvency law of a receiver or trustee of any part of PAID's or property; or, an assignment by PAID of a material portion of its assets for the benefit of creditors; or, the taking possession of the property of PAID or by any local, state or federal governmental officer or agency or court-appointed official for the dissolution or liquidation of PAID or for the operating, either temporary or permanent, of PAID's business, provided, however, that if any such action is

commenced against, the same will not constitute a default if PAID causes the same to be dismissed or discharged within sixty (60) days after the filing of same.

B. Remedies of the City. Upon the occurrence of any event of default set forth in this Section 9 or elsewhere in the Lease, the City, at its option, may take all or any of the following actions:

- (1) declare this Lease terminated;
- (2) exercise any and all other remedies available at law, equity, and under this Lease.

C. No Waiver. No failure by the City to insist upon the strict performance of any term, covenant, agreement, provision, condition or limitation of this Lease or to exercise any right or remedy consequent upon a breach of this Lease, and no acceptance by the City of full or partial performance during the continuance of any such breach, will constitute a waiver of any such breach or of such term, covenant, agreement, provision, condition or limitation. No breach may be waived except by a written instrument signed by the City. This Lease will continue in full force and effect with respect to any other then existing or subsequent breach of this Lease notwithstanding any waiver or a breach by the City.

10. CARE OF RENOVATIONS.

PAID shall ensure that the Sublease will require Subtenant to:

A. Refuse Removal. Provide a complete and proper arrangement for the frequent and adequate sanitary handling and disposal, away from the Premises, of all trash, garbage and other refuse caused as a result of Subtenant activities and the activities of its contractors in connection with the Renovations. Provide, or causes it contractor(s) to provide, and use compactor type metal receptacles or other City-approved alternate equipment for all such garbage, trash and other refuse. Piling of boxes, cartons, barrels, pallets, or other similar items, in an unsightly or unsafe manner, on or about the Renovations or Premises, is prohibited.

B. Remove Property Upon Termination. Upon the termination of the Sublease in any manner whatsoever, Subtenant shall remove Subtenant's property and that of any other person claiming by, through or under Subtenant on the Premises and quit and deliver the Premises and the Renovations to the City peaceably and quietly in as good order and condition as the same are now in or hereafter may be put in by the City or Subtenant, reasonable use and wear thereof excepted. Property not removed by the Subtenant from the Premises at the termination of this Lease, however terminated, may be considered abandoned and the City may dispose of the same as it deems expedient with reasonable cost to be billed to Subtenant.

C. No Undesirable Use. Not use or occupy, or suffer or permit the use or occupancy of, the Premises or the Renovations, in any manner or by anything, in any way, in the sole but reasonable judgment of City, which would impair the appearance, character or reputation of the Premises or cause the discharge of objectionable fumes, vapors or odors into the Premises or the mechanical facilities thereof or impair the appearance, character or reputation of the Premises or tend to impair or interfere with the use of any of the other areas of the Airport or result in discomfort or annoyance or inconvenience to the City or any other tenants or occupants of the Premises, or increase the risk of fire or other casualty to the Renovations or the Premises.

D. No Lien. Not permit a mechanic's lien for any labor or materials to attach to the whole or any part of the Renovations or Premises; require the execution and filing of lien waivers satisfactory to the City by all contractors and subcontractors; and agree that if a mechanic's lien is filed upon all or any portion of the Renovations or Premises, the Subtenant will protect and save harmless the City, PAID and PIDC against any loss, liability or expense whatsoever, by reason thereof and will defend at its own expense such actions or proceedings as may be necessary to remove such lien from the records within ten (10) days of notice to Subtenant of the existence of said lien.

11. SUBLETTING AND ASSIGNING. Except as expressly permitted pursuant to this Lease or the Sublease, PAID will not assign, hypothecate or suffer or permit any involuntary assignment, attachment or execution upon this Lease or any interest herein or sublet the Premises or the Renovations or any part of either. Any of the foregoing acts (including any transfers, assignments or other dispositions that are involuntary or are by operation of law) will be void and shall, at the option of the City, entitle the City to terminate this Lease.

12. FIRE OR OTHER CASUALTY. If the spaces, objects or items constituting the Premises or the Renovations are materially damaged by fire or other casualty, then PAID will grant to the City the right to either (a) terminate this Lease, or (b) notify PAID that the City will repair such damage, in which event this Lease will not terminate. The Sublease will require the Subtenant to acknowledge notice that the City will not obtain insurance of any kind on the Premises or the Renovations, and it is Subtenant's obligation to obtain such insurance as provided in Section 14 below.

13. LIABILITY. Neither the City nor PAID, nor the City's or PAID's agents, servants, and employees will be liable for, and the Sublease will require Subtenant to release and relieve such parties from, any and all liability in connection with any and all damage to or loss of property, loss or interruption of business occurring to Subtenant, its subtenants, invitees or any other person in or about or arising out of the Renovations or the Premises to the extent deemed necessary by the City's Risk Management and the Law Department.

14. **INSURANCE.**

A. **Subtenant Insurance Requirements.** The Sublease will require the Subtenant, prior to taking occupancy of the Premises or performing the Permitted Use, to purchase and maintain in full force and effect, and promptly pay all premiums for, the types of insurance deemed necessary and required by the City, in its sole discretion.

B. **Insurance Requirements for Subtenant's Contractors.** The Sublease will provide that any construction contractor hired directly by Subtenant to perform any design, construction, renovations or repairs to the areas, objects or items constituting the Renovations or the Premises will be required to obtain and maintain in full force and effect during any construction period any and all insurances deemed necessary and required by the City, in its sole discretion.

15. **SUBORDINATION.** This Lease will be subject and subordinate at all times to the lien of any mortgages and/or ground leases and/or other encumbrances, now or hereafter placed on the Renovations or the Premises by the City without the necessity of any further instrument or act on the part of the Subtenant to effectuate such subordination, but the Sublease will require that Subtenant covenant and agree to execute and deliver upon demand such further instrument or instruments evidencing such subordination of this Lease to the lien of any such mortgage or mortgages and/or ground rent and/or other encumbrances as will be desired by any mortgagee or proposed mortgagee or by any person. Notwithstanding the foregoing, the party secured by any such mortgage, ground lease or encumbrance (the "**Secured Party**") will have the right to recognize this Lease and, in the event of any foreclosure sale or other possession, by a Secured Party, this Lease will continue in full force and effect at the option of the Secured Party, and PAID will and the Sublease will require Subtenant to execute, acknowledge and deliver any instrument that has for its purpose and effect a subordination to the lien of this Lease.

16. **SURRENDER.** PAID covenants and agrees, and the Sublease will require Subtenant to covenant and agree, that upon the expiration or sooner termination of this Lease or the completion of any Renovation, as the case may be, PAID and Subtenant will deliver up and surrender possession of the Renovations and the Premises, as the case may be, in a condition satisfactory to the City, including any improvements or additions that constituted Renovations, as the case may be, in accordance with the terms hereof, normal wear and tear excepted, and damage caused by the gross negligence or willful misconduct of the City excepted.

17. **INSTALLATIONS AND ALTERATIONS BY SUBTENANT.** Except for the Renovations, PAID will not make and the Sublease will not allow Subtenant to make any alterations, additions or improvements in or to the Renovations or Premises without the City's prior written consent in each instance obtained. Any such alterations, additions or improvements will (i) be in accordance with complete plans and specifications approved by the City, (ii) be performed in a good and workmanlike manner and in compliance with all Applicable Laws, (iii) be made only by contractors or mechanics approved by the City and who (A) carry insurance in type and amount acceptable to the City and (B) have filed, prior to commencement of any work, lien bonds,

lien waivers or the like in such form as is acceptable to the City in the City's reasonably exercised sole discretion, and (iv) be made at Subtenant's sole expense and at such times and in such manner as the City may from time to time designate.

18. **ENVIRONMENTAL MATTERS.**

Compliance with Law. The Sublease will require that all Renovations to be undertaken by Subtenant will comply with all Environmental Laws. The Sublease will require Subtenant to obtain all permits, leases, or approvals and will make all notifications as required by Environmental Laws. The Sublease will require Subtenant to at all times comply with the terms and conditions of any such permits, leases, approvals, or notifications.

A. **Notices.** In the Sublease PAID will require Subtenant to immediately provide to City copies of:

- (1) applications or other materials submitted by Subtenant to any governmental agency in compliance with Environmental Laws except for proprietary information which might be contained in such applications or other materials which may be inspected at Premises;
- (2) any notification submitted to Subtenant or its contractors, subcontractors or agents pursuant to Environmental Laws with respect to the existence of a potentially adverse environmental impact of a condition at the Premises or related proceedings;
- (3) any permit, lease, approval, or amendment or modification thereto granted pursuant to Environmental Laws relating to this Lease or the Renovations
- (4) upon City's request at reasonable times any record or manifest required to be maintained by Subtenant pursuant to Environmental Laws relating to this Lease and the Renovations; and
- (5) any notice of violation, summons, order, complaint, or any correspondence threatening or relating to any of the foregoing received pertaining to compliance with Environmental Laws, as relates to this Lease and the Sublease.

C. **Site Contamination.** The Sublease will provide that Subtenant will not cause nor permit any contractor, subcontractor or agent to cause contamination of the Premises by Hazardous Substances. The Sublease will provide that Subtenant will at all times handle and cause its contractors, subcontractors and agents to at all times handle Hazardous Substances, regulated substances, hazardous wastes and materials and substances in a manner which will not cause an undue risk of contamination of the Premises. For purposes of this Section, the term "contamination" means the uncontained presence of hazardous substances, regulated substances, hazardous waste or damage resulting from the Subtenant's use of or activities in the Premises.

D. Indemnification. The Sublease will require Subtenant to agree to indemnify and to hold harmless the City, PIDC and PAID of, from, and against any and all expenses, losses, or liability suffered by the City, PIDC and PAID by reason of Subtenant's breach of any of the provisions of this Section 18 to the extent deemed necessary by the City's Risk Management and the Law Department..

E. Inspection. The Sublease will require Subtenant to grant the City the option, at reasonable times after reasonable advance notice and in the presence of an employee or agent of Subtenant, except in the event of an emergency, at any time, to enter the Premises to conduct reasonable inspections, tests, samplings, or other investigations in connection with Subtenant's obligations under the provisions of this Section 18.

F. Remedies.

(1) The Sublease will require Subtenant to grant the City the authority such that, upon breach by Subtenant or its contractors, subcontractors or agents of any provisions of the Environmental Matters section of the Sublease that is not promptly cured or for which Subtenant is not actively and diligently pursuing a cure, clean-up, remediation or the like to the satisfaction of the City, the City may at its reasonably exercised sole discretion terminate this Lease by written notice to Subtenant, whereupon Subtenant will immediately stop work on the Renovations and vacate the Premises and the City may immediately reenter all the Premises.

(2) The parties recognize that no adequate remedy at law may exist for a breach by Subtenant of the Environmental Matters section of the Sublease. Accordingly, the City may obtain specific performance of any provision of Environmental Matters section of the Sublease, which will provide expressly that Subtenant agrees to PAID or the City obtaining specific performance of any provision of the Environmental Matters section Sublease.

(3) This Section 18(F) will not be construed to limit any remedies which the City may have against Subtenant at law or equity for a breach of the Environmental Matters section of the Sublease.

G. Survival. The provisions of this Section 18 will survive the termination of this Lease and the Environmental Matters section of the Sublease will survive termination of the Sublease. No subsequent modification or termination of this Lease by agreement of the parties or otherwise will be construed to waive or to modify any provision of this Section 18 unless the termination or modification agreement or other document so states in writing.

19. NON-DISCRIMINATION.

A. Local Requirements.

(1) This Lease is entered into under the terms of the Philadelphia Home Rule Charter and in the exercise of the privileges herein granted, PAID will not discriminate nor permit discrimination and will require Subtenant under the terms of the Sublease not to discriminate and not to permit discrimination against any person because of race, ethnicity, color, sex (including pregnancy, childbirth, or a related medical condition), sexual orientation, gender identity, religion, national origin, ancestry, age, disability, marital status, familial status, genetic information, or domestic or sexual violence victim status. Without limiting any other provision of this Lease, PAID agrees to and will require Subtenant under the terms of the Sublease to comply with the Fair Practices Ordinance of the City of Philadelphia (Section 9-1100 of the Philadelphia Code), as amended from time to time.

(2) PAID covenants and agrees and will require Subtenant under the terms of the Sublease to covenant and agree that in accordance with Chapter 17-400 of the Philadelphia Code, payment or reimbursement of membership fees or other expenses associated with participation by its employees in an exclusionary private organization, insofar as such participation confers an employment advantage or constitutes or results in discrimination with regard to hiring, tenure of employment, promotions, terms, privileges or conditions of employment, on the basis of race, color, sex, sexual orientation, religion, national origin or ancestry constitutes a substantial breach of this Lease entitling PAID and the City to all rights and remedies provided in this Lease or otherwise available in law or equity.

(3) PAID agrees to include and will require Subtenant under the terms of the Sublease to agree to include the immediately preceding Subsection 19(A)(2), with appropriate adjustments for the identity of the parties, in all subcontracts which are entered into for work to be performed pursuant to this Lease and the Sublease.

(4) PAID further agrees to cooperate and will require Subtenant under the terms of the Sublease to cooperate with the Commission on Human Relations of the City of Philadelphia in any manner which the said Commission deems reasonable and necessary for the Commission to carry out its responsibilities under Chapter 17-400 of the Philadelphia Code. Failure to so cooperate will constitute a substantial breach of this Lease entitling the City to all rights and remedies provided herein or otherwise available in law or equity.

5. During the term of this Lease, PAID will grant and will require Subtenant under the terms of the Sublease to grant to the City Controller the right to audit the affairs of PAID or Subtenant, respectively, relating to the subject matter hereof to the extent required under Section 6-400 of the Home Rule Charter. In order to facilitate such an audit, upon prior reasonable notice, PAID or Subtenant will provide the Controller with reasonable access to PAID's or Subtenant's books and financial records.

20. **THE CITY'S RIGHT TO ENTER.** Notwithstanding anything herein, the City and PAID will have, and PAID will require Subtenant under the terms of the Sublease to grant to the City and PAID, the right, at all times, to enter upon the Premises upon at least twenty-four (24) hours prior written notice (except in the case of (i) emergencies when no such prior notice will be necessary, (ii) parts of the Premises that are normally accessible to the public or the City's employees, contractors, subcontractors, or agents during the normal course of business when no such notice will be necessary) for the purpose of inspecting same and/or of making any repairs thereto and performing any work thereon (including any which may be necessary by reason of Subtenant' failure to make any repairs or perform any maintenance work required to be performed by Subtenant, and also including the right to install, maintain, repair, replace or remove water or sewer pipes, electrical lines, gas pipes, or any other utilities or services on the Premises or Renovations). PAID will require Subtenant under the terms of the Sublease to acknowledge and agree that third parties may at certain times designated by the City need access to the Premises and Renovations and will accommodate such access requests.

21. **NOTICES.**

All notices, requests for approvals and other communications under this Lease will be effectively given only if in writing and sent by United States registered or certified mail, return receipt requested, postage prepaid, or by a nationally recognized and receipted overnight courier service (such as Federal Express) guaranteeing next business day delivery, addressed as follows:

If intended for the City:

with a copy to:

City of Philadelphia Law Department

1515 Arch Street, 1th Floor

Philadelphia, PA 19102-1595

Attention: Chief Deputy City Solicitor, Economic Development & Investments

Unit

If intended for PAID:

Philadelphia Authority for Industrial Development

2600 Centre Square West, 1500 Market Street

City of Philadelphia

BILL NO. 180108 continued

Certified Copy

Philadelphia, Pennsylvania 19102

Attention: Chairman

with a copy to:

Ilene Burak, Esq.

Senior Vice President and General Counsel

Philadelphia Industrial Development Corporation

2600 Centre Square West, 1500 Market Street

Philadelphia, Pennsylvania 19102

or to such other addresses of which the City of PAID will have given notice as herein provided.

All such notices, requests and other communications will be deemed to have been sufficiently given for all purposes hereof on the third (3rd) business day after proper mailing thereof (in the case of United States registered or certified mail) or on the date of the delivery thereof to a courier service as aforesaid, and may be given on behalf of either party by its counsel. Copies of all notices provided hereunder will be provided to the City at the address above.

22. **CITY STANDARD PROVISIONS.** PAID agrees, in its performance under this Lease, to comply with the City's Standard Provisions, attached hereto and made a part hereof as **Exhibit "2"**.

23. **MISCELLANEOUS PROVISIONS.**

A. **Force Majeure.** The City and PAID will be excused for the period of any delay in the performance of any obligations hereunder when prevented from so doing by cause or causes beyond PAID's or City's control which will include, without limitation, theft, act of God or public enemy, injunction, riot, strike, insurrection, war, acts of terror, court order, or any order of any governmental authorities, other than PAID or the City, having jurisdiction over the Renovations or Premises.

B. Survival of Obligations. Any obligations of City or PAID accruing prior to the expiration of this Lease shall survive the termination of this Lease, and City or PAID shall promptly perform all such obligations whether or not this Lease has expired.

C. No Recordation. This Lease will not be filed or recorded in any office of public record, and the recordation hereof by PAID will be deemed an event of default hereunder.

D. Successors. Subject to the provisions of this Lease, the respective rights and obligations provided in this Lease will bind and will inure to the benefit of the parties hereto, their legal representatives, heirs, successors and assigns.

E. Governing Law. This Lease will be construed, governed and enforced in accordance with the substantive laws of the Commonwealth of Pennsylvania without regard to the choice of law doctrine thereof.

F. Severability. If any provisions of this Lease or portions thereof are held to be invalid, void or unenforceable, the remaining provisions of this Lease or portions thereof will in no way be affected or impaired and such remaining provisions or portions thereof will remain in full force and effect.

G. Captions. Any heading preceding the text of the several Sections and Subsections hereof are inserted solely for the convenience of reference and will not constitute a part of this Lease, nor will they affect its meaning, construction or effect.

H. Certain Definitions. As used in this Lease, the word "person" will mean and include, where appropriate, an individual, corporation, partnership or other entity; the plural will be substituted for the singular, and the singular for the plural where appropriate; and words of any gender will mean and include any other gender.

I. Waiver of Jury Trial. **It is mutually agreed that the City and PAID hereby waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other as to any matters arising out of or in any way connected with this Lease. Further, PAID will require Subtenant under the terms of the Sublease to agree to waive trial by jury in any action, proceeding or counterclaim brought by either of the parties to the Sublease against the other, as to any matters arising out of or in any way connected with the Sublease.**

J. Third Party Beneficiaries. Other than PIDC, this Lease will not (directly, indirectly, contingently or otherwise) confer or be construed as conferring any rights or benefits on any person or party that is not named as a party hereto or a permitted assignee or transferee of any party hereto.

K. City's Right to Enforce the Sublease. The Sublease shall state that the City shall have the right to directly enforce the terms of the Sublease, by pursuing all remedies available to PAID pursuant to the Sublease, including legal and equitable proceedings against Subtenant, to compel performance by the Subtenant of its obligations under the Sublease.

L. Entire Agreement. This Lease (including the Exhibits hereto), the Sublease, and the Intergovernmental Agreement between the City and PAID contain all the agreements, conditions, understandings, representations and warranties made between the parties hereto with respect to the subject matter hereof and supersedes all prior negotiations and proposals (either written or oral). This Lease may not be modified or terminated orally or in any manner other than by an agreement in writing signed by both parties hereto or their respective successors in interest.

M. Approval by City. Unless otherwise explicitly set forth in this Lease, wherever this Lease requires the acceptance, approval, consent, permission, or agreement of the City, such acceptance, approval, consent, permission, or agreement will be valid only if made by the in writing.

N. Intergovernmental Agreement. To facilitate the transactions contemplated by this Lease and the Sublease, the City and PAID will enter into an Intergovernmental Cooperation Agreement of even date herewith ("IGA"). The parties expressly agree that in the event of any potential conflict in the terms of this Lease or the Sublease with the IGA, the terms of the IGA shall be given precedence and take priority over the terms of this Lease or the Sublease.

O. Limitation on PAID's Liability.

(1) No provision herein or in any related document, shall be construed so as to give rise to a pecuniary liability of PAID or any of their members, officers, agents or employees, or to give rise to a charge upon the general credit or assets (other than its interest in this Lease) of PAID or such members, officers, agents or employees; any pecuniary liability hereunder of PAID or PIDC under any theory of law, including tort or contract, shall be limited exclusively to its interest in this Lease and the lien of any judgment shall be restricted thereto.

(2) In the exercise of the power of PAID and its members, officers, agents or employees pursuant to this Lease or any related document, neither PAID nor its members, officers, agents or employees shall be accountable to the City for any action taken or omitted by PAID or its members, officers, agents or employees in good faith and reasonably believed by PAID or its members, officers, agents or employees to be authorized or within its rights or powers conferred upon it in this Lease. PAID and such persons shall be protected in their acting on any paper or document reasonably believed by them to be genuine, and they may conclusively rely upon the advice of counsel and may (but need not) require further evidence of any fact or matter before taking any action.

City of Philadelphia

BILL NO. 180108 continued

Certified Copy

P. Counterparts. This Lease may be executed in one or more identical counterparts, each of which will be deemed an original, and all of which, together, will comprise a single agreement.

SIGNATURES FOLLOW

IN WITNESS OF THE MUTUAL PROMISES SET FORTH ABOVE, and intending to be legally bound by this Lease, the City and PAID have caused this Lease to be executed by their duly authorized representatives and officers as of the day and year first above written.

THE CITY:

THE CITY OF PHILADELPHIA,

acting through its

Approved as to form

Sozi Pedro Tulante, City Solicitor

Per: _____

By: _____

PAID:

Approved as to form:

**PHILADELPHIA AUTHORITY FOR
INDUSTRIAL DEVELOPMENT**

Per: _____

By: _____

Ilene Burak, Esq.

Senior Vice President & General Counsel

Name: _____

Title: Chairman

EXHIBIT “1”

PROJECT RECOMMENDATION

EXHIBIT "2"

CITY STANDARD PROVISIONS

Defined Terms

Capitalized terms used in this Exhibit and not defined herein shall have the meanings ascribed to them in the Lease. Reference in this Exhibit to the "City" shall mean the City of Philadelphia, in its municipal capacity.

Prohibited Gifts

(ii) Pursuant to Executive Order No. 10-16, issued by the Mayor of Philadelphia, no City official or employee in the Executive and Administrative branch of City government shall solicit or accept, directly or indirectly, a "Gift" (as defined below) from a person who, at the time, or within twelve (12) months preceding the time a Gift is received:

- (1) is seeking, or has sought, official action from that officer or employee;
- (2) has operations or activities regulated by the officer's or employee's department, agency, office, board or commission, or, in the case of members of the Mayor's Cabinet, has operations or activities that are regulated by any department, agency, office, board or commission within the Executive and Administrative branch;
- (3) has a financial or other substantial interest in acts or omissions taken by that officer or employee, which the officer or employee is able to affect through official action; or
- (4) is a "Registered Lobbyist" (as defined below).

(ii) PAID understands and agrees that if it offers anything of value to any City official or employee under circumstances the receipt of which would violate Executive Order No. 10-16, PAID shall be subject to sanctions with respect to future City contracts. Such sanctions may range from disqualification from participation in a particular contract to debarment or loss of financial assistance, depending on the nature of the violation. In addition, PAID's breach of this Subsection will constitute a default by PAID and the City to all rights and remedies provided in the Lease or otherwise available at law or in equity.

(iii) As used in this Subsection, "Gift" means a payment, subscription, advance, forbearance, rendering or deposit of money, services entertainment, invitation, food, drink, travel or lodging or anything of value given to, or for the benefit of, a City officer or employee, unless consideration of equal or greater value is received. "Gift" shall not include a political contribution otherwise reportable as required by law, a commercially reasonable loan made in the ordinary course of business, such as a home mortgage loan, or a gift received from a family member of the officer or employee.

(iv) As use in this Subsection, "Registered Lobbyist" means any person that engages in lobbying on behalf of a principal for economic consideration, and is registered as such,

pursuant to the requirements of Section 20-1202 of The Philadelphia Code, including an attorney at law while engaged in lobbying.

Certification of Non-Indebtedness

(a) PAID hereby certifies and represents to City that PAID and PAID's parent company(ies) and subsidiary(ies), affiliate(s), if any, are not currently indebted to the City, and will not during the Term of the Lease be indebted to the City, for or on account of any delinquent taxes (including, but not limited to, taxes collected by the City on behalf of the School District of Philadelphia), liens, judgments, fees or other debts for which no payment plan satisfactory to the City has been established.

In addition to any other rights or remedies available to the City at law or in equity, PAID acknowledges that any breach or failure to conform to this certification may, at the option and direction of the City, result in the withholding of payments otherwise due to PAID in connection with the Lease and, if such breach or failure is not resolved to the City's satisfaction within a reasonable time frame specified by the City in writing, may result in the offset of any such indebtedness against said payments otherwise due to PAID and/or the termination of the Lease for default (in which case PAID will be liable for all excess costs and other damages resulting from the termination).

(b) Any breach or failure to conform to the aforesaid certification shall constitute a default by PAID and entitle the City to exercise any rights or remedies available to it under the Lease, and at law and in equity.

Audit of Affairs.

During the Term of the Lease, the City Controller shall have the right to audit the affairs of PAID to the extent required under Section 6-400 of the Home Rule Charter. In order to facilitate such an audit, upon prior reasonable notice, PAID must provide the Controller with reasonable access to the PAID's books and financial records.

Fair Practices

PAID agrees, in performing the Lease, to comply with the provisions of the Fair Practices Ordinance, Chapter 9-1100 of The Philadelphia Code (as it may be amended from time to time, the "**Code**"), which prohibits, inter alia, denial of or interference with the employment opportunities of an individual based upon his or her race, ethnicity, color, sex (including pregnancy, childbirth, or a related medical condition), sexual orientation, gender identity, religion, national origin, ancestry, age, disability, marital status, familial status, genetic information, or domestic or sexual violence victim status.

Business, Corporate and Slavery Era Insurance Disclosure

PAID, in the procurement of goods and services purchased pursuant to the Lease, will abide by the provisions of Section 17-104(2) of the Code.

Entities Doing Business in Northern Ireland, Iran or Sudan

PAID, in the procurement of goods and services purchased pursuant to the Lease, will abide by the provisions of Section 17-104(4) of the Code. City approval shall be required for any waivers from compliance with the provisions of Code Subsections 17-104(4) (a) or (b).

Wrap-Up Insurance Program

PAID shall, in the Sublease, require Subtenant to comply with Section 17-108 of the Code. To the extent that any Renovation is considered a "Covered Public Works Project", as defined in Section 17-108(1)(d) of the Code, and to extent that the City imposes a "Wrap-Up Insurance Program, as defined in Section 17-108(1)(b) of the Code.

No Alcohol Advertisements

PAID shall not place (or permit placement) on the Premises any advertisements for alcohol.

Nondiscrimination

(a) In accordance with Chapter 17-400 of the Code, PAID agrees that its payment or reimbursement of membership fees or other expenses associated with participation by its employees in an exclusionary private organization, insofar as such participation confers an employment advantage or constitutes or results in discrimination with regard to hiring, tenure of employment, promotions, terms, or privileges or conditions of employment on the basis of race, color, sex, sexual orientation, religion, national origin or ancestry, constitutes a substantial breach of the Lease entitling the City to all rights and remedies provided in the Lease or otherwise available at law or in equity.

(b) PAID agrees to include subparagraph (a) of this Section, with appropriate adjustments for the identity of the parties, in all subcontracts which are entered into for work to be performed pursuant to the Lease.

(c) PAID further agrees to cooperate with the Commission on Human Relations (the "Commission") in any manner which the said Commission deems reasonable and necessary for the Commission to carry out its responsibilities under Chapter 17-400 of the Code, and failure to do so constitutes a substantial breach of the Lease entitling the City to all rights and remedies provided in the Lease or otherwise available at law or in equity.

Employment of Low and Moderate Income Persons

PAID, in the execution of any “covered construction contract,” as that term is defined in Section 17-1001(4) of the Code, will abide by the provisions of Sections 17-1002 and 17-1003 of the Code relating to Contract Requirements and Reporting Requirements, as though the Lease were directly subject to such provisions.

21st Century Minimum Wage and Benefits Standard

(a) PAID is the recipient of a City lease as provided in Chapter 17-1300 of the Code (“Philadelphia 21st Century Minimum Wage and Benefits Standard”), accessible at <http://www.amlegal.com/library/pa/philadelphia.shtml>. If PAID or any subcontractor or subrecipient at any tier is also an “**Employer**,” as that term is defined in Section 17-1302 of the Code (more than 5 employees), and further described in Section 17-1303 of the Code, then absent a waiver, during the Term of the Lease (including the Renewal Term), in addition to any applicable state and federal requirements, PAID shall provide, and shall enter into subcontracts and otherwise cause any subcontractors or subrecipients at any tier that are also Employers to provide, their respective covered “**Employees**,” as that term is defined in Section 17-1302 of the Code (persons who perform work for a covered Employer that arises directly out of the Lease), with at least the minimum wage standard and minimum benefits standard, and required notice thereof, stated in Chapter 17-1300 of the Code (as it may be amended from time to time). A summary of the current requirements is as follows:

(1) Minimum Wage

(a) commencing as of January 1, 2016, for wages to be provided on and after January 1 of each year during which the Term (including the Renewal Term) is in effect, provide their covered employees with an hourly wage, excluding benefits, that is no less than the result of multiplying \$12 by the then current CPI Multiplier as annually adjusted. For purposes of determining the minimum hourly wage required, the CPI Multiplier is calculated annually by the City’s Director of Finance by dividing the most recently published Consumer Price Index for all Urban Consumers (CPI-U) All Items Index, Philadelphia, Pennsylvania, as of each January 1, by the most recently published CPI-U as of January 1, 2015. The then current minimum hourly wage applicable to City contractors and subcontractors will be posted on the City’s web site.

(b) Notwithstanding the above requirements, the minimum wage required by Chapter 17-1300 may not be less than 150% of the generally applicable federal minimum wage. However, to the extent an increase in the federal minimum wage would increase the required City minimum wage due to the 150% requirement, such new 150% requirement will take effect only at the start of the Renewal Term, if any, commencing on or after the date of the new federal requirement.

(2) Minimum Benefits

(a) to the extent an Employer provides health benefits to any of its employees, provide each full-time, non-temporary, non-seasonal covered Employee with health benefits at least as valuable as the least valuable health benefits that are provided to any other full-time employees of the Employer; and

(b) provide to each full-time, non-temporary, non-seasonal covered Employee at least the minimum number of earned sick leave days required by Code Section 17-1305(2).

(b) If covered, absent a waiver, PAID shall promptly provide to the City all documents and information as the City may require verifying its compliance, and that of all subcontractors and subrecipients under the Lease, with the requirements of Chapter 17-1300. Each subcontractor and subrecipient that is an Employer shall notify each affected Employee what wages and benefits are required pursuant to Chapter 17-1300.

(c) Absent a waiver, an Employer subject to Chapter 17-1300 shall comply with all their requirements as they exist on the date when the PAID entered into the Lease with the City or when the Lease is amended. PAID shall take such steps as are necessary to notify its subcontractors and subrecipients of these requirements, and to cause such subcontractors or subrecipients to notify lower-tier subcontractors and subrecipients of these requirements, including, without limitation, by incorporating this Section of Exhibit "2", with appropriate adjustments for the identity of the parties, in its subcontracts with such subcontractors or subrecipients. PAID, subcontractor or subrecipient at any tier subject to Chapter 17-1300 that fails to comply with these provisions may, after notice and hearing before the Director of Finance or such other officer or agency designated by the Mayor, be suspended from receiving financial assistance from the City or from bidding on and/or participating in future City contracts, whether as a prime contractor or a subcontractor, for up to three (3) years. Council may also initiate a similar suspension or debarment process. Such suspension or debarment shall be in addition to any of the other sanctions or remedies set forth in Chapter 17-1300 or the Lease.

(d) Without limiting the applicability of Section 9 of the Lease, PAID's failure to comply, or the failure of subcontractors or subrecipients at any tier to comply, with the requirements of Chapter 17-1300 shall constitute a substantial breach of the Lease entitling the City to all rights and remedies provided in the Lease or otherwise available at law or in equity.

(e) PAID's covered Employees shall be deemed third-party beneficiaries of PAID's representation, warranty, and covenant to the City under this Section of Exhibit "2" (but not of any other Section of the Lease or this Exhibit "2"), and the covered Employees of a subcontractor or subrecipient at any tier that is also a covered Employer shall be deemed third-party beneficiaries of their Employer's representation, warranty and covenant to PAID or PAID's subcontractors or subrecipients at any tier, as the case may be, under this Section of Exhibit "2".

(f) The Office of Labor Standards may grant a partial or total waiver of Chapter 17-1300 based on specific stipulated reasons elaborated in Section 17-1304 of the Code. An overview offering guidance on the applicability of, and requirements placed on City contractors and subcontractors by Chapter 17-1300 of the Code is available on the City's website at <https://secure.phila.gov/eContract/> under the "About" link; see "Minimum Wage and Equal Benefits Ordinances Impacting Some City Contractors."

Duties and Covenants Pursuant to 17-1400

PAID shall abide by the provisions of Section 17-1400 of the Code in awarding any contract(s) pursuant to the Lease as though such contracts were directly subject to the provisions of Chapter 17-1400, except that the exception set forth at Subsection 17-1406(8) shall apply to PAID if PAID were listed in that Subsection.

City of Philadelphia

BILL NO. 180108 continued

Certified Copy

Unless approved by the City to the contrary, any approvals required by Section 17-1400 of the Code to be performed by the City Solicitor shall be performed by PAID's or its agent's General Counsel; any approvals to be performed by the Director of Finance shall be performed by PAID's or its agent's Chief Financial Officer; and any approval required to be performed by the Mayor shall be performed by the PAID's Chairman.

EXHIBIT “B”

List of Facilities Authorized for Lease Agreements with PAID

Council District 1
Sites
Capitolo Playground
Cohocksink Recreation Center
Harrowgate Park
Heitzman Recreation Center
Murphy Recreation Center
Powers Park, Richmond Library
Trenton & Auburn Playground

Council District 2
Sites
Chew Playground
Francis J Meyers Recreation Center
Library Branch – Paschalville
Marian Anderson Recreation Center
Vare Recreation Center
James Finnigan Playground

Council District 3
Sites
Cobbs Creek Environmental Center
Cobbs Creek Park & Rec Center
Kingsessing Recreation Center, Kingsessing Library
Library Branch - Blanche A. Nixon
Malcolm X Memorial Park
Miles Mack Playground
West Mill Creek Playground

Council District 4
Sites
Parkside Fields, West Fairmount Park
Carroll Park
John C. Anderson Cultural Center, Wynnefield Library
Library Branch - Haverford Avenue
Mander Playground
Pearlman Sports Center
Shepard Recreation Center
Carousel House

Council District 5
Sites
Cecil B Moore Recreation Center
Hancock Playground
Fotteral Square
Athletic Recreation Center
8th & Diamond Playground
Fishtown Recreation Center, Fishtown Library
Martin Luther King Recreation Center, Cecil B Moore Library
East Poplar Playground

Council District 6
Sites
Disston Recreation Center
Frank Glavin Playground
Moss Playground
Russo Park Playground
Vogt Recreation Center
Pleasant Hill Park

Council District 7
Sites
McPherson Square
Mcveigh Recreation Center
Nelson Playground
Piccoli Playground
Rivera Recreation Center
Waterloo Playground

Council District 8
Sites
Barrett Playground
Belfield Recreation Center
Happy Hollow Recreation Center
Jerome Brown Playground
Library Branch - Nicetown-Tioga
Panati Playground
Vernon Park

Council District 9
Sites
Olney Recreation Center, Hammond and Nedro
Lawncrest Recreation Center, Lawncrest Library
Cherashore Playground
Zeihler Playground
Library Branch - West Oak Lane

Council District 10
Site
Gifford Playground
Hayes Playground
Fox Chase Recreation Center
Pelbano Recreation Center

City of Philadelphia

BILL NO. 180108 continued

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CERTIFICATION: This is a true and correct copy of the original Bill, Passed by the City Council on June 7, 2018. The Bill was Signed by the Mayor on June 20, 2018.

A handwritten signature in cursive script, reading "Michael A. Decker".

Michael A. Decker
Chief Clerk of the City Council