City of Philadelphia

City Council
Chief Clerk's Office
402 City Hall
Philadelphia, PA 19107

BILL NO. 100793
(As Amended, 12/1/10)

Introduced November 18, 2010

Councilmember Clarke

Referred to the
Committee on Public Property and Public Works

AN ORDINANCE

Authorizing the Department of Public Property to enter into an easement agreement with the Pennsylvania Department of General Services allowing the Department of General Services to use portions of 1515 Arch Street under certain terms and conditions; authorizing the Department of General Services, or its designees to construct, use and maintain a marquee attached to the proposed building to be located at the northwest corner of 15th and Arch Streets and projecting over the footways of 15th and Arch Streets; and authorizing the Department of General Services, or its designees to construct, use and maintain a foundation encroachment under the footways of 15th, Arch and Cherry Streets, under certain terms and conditions.

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. The Commissioner of Public Property is hereby authorized to enter into an easement agreement ("Easement Agreement") with the Department of General Services allowing the Department of General Services or its designees to use portions of 1515 Arch Street for the following purposes:

(i) for pedestrian ingress and egress to and from the proposed staff entrance for the proposed new Family Court Center ("FCC") to be located at the northwest corner of 15th and Arch Streets;
(ii) to provide secure bicycle storage for the FCC and for pedestrian and bicycle ingress and egress to and from the proposed storage area;
(iii) to construct and maintain underground utilities for the benefit of the proposed FCC; and
(iv) to permit construction of the proposed FCC with northwesterly-facing windows.

SECTION 2. The Easement Agreement shall be substantially in the form set forth in Exhibit "A" attached hereto, with such changes as the City Solicitor deems necessary or appropriate to protect the interests of the City.

SECTION 3. Permission is hereby granted to the Department of General Services, or its designees, to construct, use and maintain a continuous, wrap-around marquee attached to the proposed building to be located at the northwest corner of 15th and Arch Streets that will encroach upon portions of 15th and Arch Streets as follows ("Marquee"):

> The proposed Marquee projects approximately seven feet (7'-0") onto the north footway of Arch Street, and is approximately eighty-nine feet seven inches (89'-7") in length, with a minimum clearance of approximately eleven feet (11'- 0") above Arch Street.
>
> The proposed Marquee projects approximately seven feet (7'-0") onto the west footway of 15th Street, and is approximately two hundred two feet and ten and one-half inches (202'-10 ½") in length, with a minimum clearance of approximately eleven feet seven and one-half inches (11'-7 1/2") above 15th Street.

SECTION 4. Permission is hereby granted to the Department of General Services, or its designees, to construct, use and maintain a foundation encroachment that will encroach under portions of 15th, Arch and Cherry Streets as follows ("Foundation Encroachment"):

> The foundation footing parallel to 15th Street is 292'-0" long, encroaching 4'-6" to the east of the 15th Street property line, starting at depths ranging from 29'-8" to 34'-1" below the first floor elevation (Philadelphia vertical datum 27.45') and extending 5'-0" further in depth.
>
> The foundation footing parallel to Arch Street is 132'-6" long, encroaching 4'-6" to the south of the Arch Street property line, starting at depths ranging from 29'-8" to 34'-1" below the first floor elevation (Philadelphia vertical datum 27.45') and extending 5'-0" further in depth.
>
> The foundation footing parallel to Cherry Street is 132'-6" long, encroaching 4'-6" to the north of the Cherry Street property line, starting at depths ranging from 29'-8" to 34'-1" below the first floor elevation (Philadelphia vertical datum 27.45') and extending 5'-0" further in depth.

SECTION 5. The construction, use and maintenance of the Marquee described in Section 3 and the Foundation Encroachment described in Section 4 shall be in accordance

with the applicable laws, rules and regulations of the City of Philadelphia, and specifically those of the Department of Streets, and the Pennsylvania Department of Labor and Industry. The Department of Streets, in its sole, unreviewable discretion, may allow minor variations in the dimension limits of the Marquee described in Section 3 and the Foundation Encroachment described in Section 4, within standard tolerances of current engineering practices.

SECTION 6. Before exercising any rights or privileges under this Ordinance, the Department of General Services or its designee must first obtain and have their contractor(s) obtain all required permits, licenses and approvals from all appropriate departments, boards, agencies or commissions. No such department, board, agency or commission shall be required to issue any such permit, license or approval solely because this Ordinance has been enacted, it being the express intent of this Ordinance not to supersede any other provision of law governing the issuance of such permits, licenses or approvals however, issuance of any such permit, license or approval shall not be unreasonably withheld or delayed.

SECTION 7. In addition, before exercising any rights and privileges under this Ordinance, the Department of General Services or its designee shall enter into an agreement ("Encroachment Agreement") with the appropriate City departments, satisfactory to the City Solicitor and to the Office of Chief Counsel for the Department of General Services, to provide that the Department of General Services or its designee *inter alia*:

(a) agree that upon one hundred and eighty (180) days notice from the City, the Department of General Services or its designee, if funds are available, shall remove the Marquee, or any portion thereof, without cost or expense to the City when given written notice to do so by the City of Philadelphia to accommodate a municipal or municipal-sponsored construction project;

(b) furnish the City with documentation in a form and content acceptable to the City that the Department of General Services self-assumes liabilities and obligations to insure the compliance with all the terms and conditions of this Ordinance and the Encroachment Agreement, however, nothing in the Easement Agreement, Ordinance, or Encroachment Agreement shall be deemed to waive or otherwise affect the sovereign immunity of the Commonwealth and its agencies, officers, and employees, or to subject any Commonwealth party to any liability not expressly authorized by law;

(c) secure all necessary permits, licenses and approvals from all appropriate departments, agencies, boards or commissions of the City as may be required by regulation or law;

(d) assume the costs of all changes and adjustments to, and relocation or abandonment of City utilities and City structures wherever located on the project site as may be necessary by reason of the construction of the Marquee or Foundation Encroachment;

(e) carry, or require its contractors to carry, public liability and property damage insurance throughout the construction stage, co-naming the City of Philadelphia as an additional insured party, in such amounts as indicated in the construction contract documents, or in lieu thereof, submit documentation in form and content acceptable to the City that the Department of General Services is self-insured and is providing the City of Philadelphia the same coverage and benefits had the insurance requirements been satisfied by an insurance carrier authorized to do business in the Commonwealth of Pennsylvania, however, nothing in the Easement Agreement, Ordinance, or Encroachment Agreement shall be deemed to waive or otherwise affect the sovereign immunity of the Commonwealth and its agencies, officers, and employees, or to subject any Commonwealth party to any liability not expressly authorized by law;

(f) insure that all construction contractors for the Marquee and Foundation Encroachment carry public liability and property damage insurance, naming the City of Philadelphia as an insured party, in such amounts as indicated in the construction contract documents and as satisfactory to the City Solicitor; and

(g) give the City and all public utility companies the right-of-access, ingress and egress for the purpose of inspection, maintenance, alteration, relocation or reconstruction of any of their respective facilities which may lie within the public right-of-way of any affected streets.

SECTION 8. The City Solicitor and the Office of Chief Counsel for the Department of General Services shall include in the Encroachment Agreement such other terms and conditions as shall be deemed necessary to protect the interests of the City and the Commonwealth.

SECTION 9. The permission granted to the Department of General Services and their designee to construct, use and maintain the Marquee described in Section 3 and Foundation Encroachment described in Section 4 shall expire without any further action by the City of Philadelphia if the Department of General Services has not entered into an Encroachment Agreement and satisfied all the requirements of the Encroachment

Agreement that are listed in Section 7 of this Ordinance within one (1) year after this Ordinance becomes law.

SECTION 10. This Ordinance shall not become effective unless the sum of two hundred dollars ($200.00), toward costs thereof, is paid into the City Treasury within sixty (60) days after the date this Ordinance becomes law.

EXHIBIT "A"

EASEMENT AGREEMENT

AGREEMENT AND GRANT OF EASEMENT

THIS AGREEMENT AND GRANT OF EASEMENT (the "**Easement Agreement**" or "**Agreement**") is made _____, 2010, between **CITY OF PHILADELPHIA**, a corporate and body politic organized and existing under Pennsylvania laws, acting by and through its Department of Public Property (the "**City**") with the joinder of the **PHILADELPHIA AUTHORITY FOR INDUSTRIAL DEVELOPMENT** ("**PAID**"), and the **COMMONWEALTH OF PENNSYLVANIA**, acting by and through the Pennsylvania Department of General Services, a Commonwealth agency (the "**Grantee**").

BACKGROUND

A. PAID is the owner of certain real property located at 1515-29 Arch Street in the City of Philadelphia, Philadelphia County, Commonwealth of Pennsylvania (the "**One Parkway Parcel**"), as more fully described in **Exhibit A** attached to and made part of this Easement Agreement.

B. PAID entered into a lease agreement dated November 1, 1996 (the "**Lease**") with the City of Philadelphia (the "**City**") for the One Parkway Parcel. Under Section 8.4(a)(ii)(A) of the Lease, the City, with the joinder of PAID, may grant easements and other rights and privileges in the nature of easements.

C. Grantee is the owner of the air rights estate of certain real property located at 1503-11 Arch Street, as more fully described in **Exhibit B** attached to and made part of this Easement Agreement (the "**Grantee's Parcel**").

D. Grantee's Parcel is adjacent and contiguous to the One Parkway Parcel.

E. In conjunction with the City, the Commonwealth of Pennsylvania and the First Judicial District, Grantee plans to construct a commercial building on Grantee's Parcel to be used as the Family Court Center (the "**FCC**"), as shown on the site plan attached to this Agreement as **Exhibit C** (the "**Site Plan**").

F. The parties desire to enter into this Easement Agreement to provide Grantee with easements necessary and desirable for its development and operation of Grantee's Parcel as the FCC.

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

1. **Incorporation**. The Background above is incorporated herein by reference.

2. **Grant of Easements**.

2.1 Subject to the terms and conditions of this Easement Agreement, the City for itself, its successors and assigns hereby grants to Grantee, its successors and assigns:

2.1.1 an exclusive, perpetual easement in, on, over, and upon a portion of the One Parkway Parcel, as more fully described in **Exhibit D** ("**Staff Entrance Easement Area**"), for pedestrian ingress and egress to and from the proposed FCC Staff Entrance ("**Staff Entrance Easement**");

2.1.2 a non-exclusive, perpetual easement in, on, over, and upon a portion of the One Parkway Parcel, as more fully described in **Exhibit E** ("**Bicycle Storage Easement Area**") for the purpose of providing secure bicycle storage and for pedestrian and bicycle ingress and egress to and from such storage area ("**Bicycle Storage Easement**");

2.1.3 non-exclusive, perpetual easement in, on, over, and upon a portion of the One Parkway Parcel, as more fully described in **Exhibit E** ("**Utility Easement Area**"), for the purpose of constructing, installing, operating, maintaining and repairing underground utilities for the benefit of the Grantee's Parcel ("**Utility Easement**"); and

2.1.4 a non-exclusive, perpetual no-build easement over a portion of the One Parkway Parcel, lying above a plane at 38.45 feet above Philadelphia Datum as more fully described in **Exhibit F** ("**No-Build Easement Area**"), for the purpose of permitting construction of the FCC with windows facing the No-Build Easement Area in compliance with [cite variance to be obtained] ("**No-Build Easement**"). The City shall have the right to use and enjoy fully the No-Build Easement Area, but shall not construct or permit to be constructed any buildings or permanent structures in the No-Build Easement Area.

2.2 The grant of the Staff Entrance Easement, Bicycle Storage Easement, Utility Easement and No-Build Easement (collectively referred to as the "**Easements**") and the rights of Grantee and the public in the Easement Areas are expressly subject to all existing rights in the One Parkway Parcel which rights are of record and are recorded in the Recorder's Office.

2.3 Grantee shall not: (i) exact, impose, collect or require any fee, charge, compensation or other thing of value for use of the Easement Areas (defined below); or (ii) construct any structures, buildings or other improvements on, or otherwise improve, the Easement Areas in a manner inconsistent with the purposes for which the Easements are granted. In this Easement Agreement, the Staff Entrance Easement Area, Bicycle Easement Area, Utility Easement Area, and No-Build Easement Area are collectively referred to as the "**Easement Areas**."

3. **Condition of Easement Areas**.

3.1 Grantee agrees that its exercise of the Easements granted in this Easement Agreement is subject to the "AS IS" condition of the Easement Areas, including all defects latent and patent. The City makes no representation as to the condition of the Easement Areas or their suitability for the uses intended by Grantee. Grantee agrees that any and all precautions required by Grantee for the safe exercise of the Easements shall be performed by Grantee and/or its contractors at no cost to the City.

3.2 Grantee shall be solely responsible, at its sole cost and expense, to take all steps necessary and desirable to prevent any injury or damage to all persons and property in, on or about the Easement Areas arising in connection with Grantee's exercise of the Easements granted in this Easement Agreement.

3.3 Grantee shall be, and after termination or expiration of this Easement Agreement shall remain, liable for any and all injury to persons or property caused in whole or in part by Grantee's exercise of the Easements granted under this Easement Agreement. The Indemnitees (as hereinafter defined) shall be, and after termination or expiration of this Easement Agreement, shall remain, liable for any and all injury to persons or property as set forth in this Easement Agreement. Nothing in this Easement Agreement shall be deemed to waive or otherwise affect the sovereign immunity of the Commonwealth, and its agencies, officers, and employees, or to subject any Commonwealth party to any liability not expressly authorized by law.

3.4 Grantee shall have the authority to lease the FCC to the City. The Easement Agreement and its conditions are perpetual and appurtenant to and shall rune with Grantee's Parcel.

4. **Construction; Maintenance and Repair; Limitation**.

4.1 Grantee, at its sole cost and expense, shall improve the Staff Entrance and Bicycle Storage Easement Areas and may demolish, construct and reconstruct improvements in these Easement Areas (Grantee's improvement, renovation, demolition, construction and reconstruction in the Easement Areas shall be referred to in this Agreement collectively as the "**Work**"); provided, however, that Grantee shall not perform any Work unless and until Grantee has obtained the City's or the Department of Labor and Industry's prior, written approval of such Work, which shall not be unreasonably withheld or delayed.

4.2 Grantee shall, at its sole cost and expense, take all steps necessary and desirable to accomplish the safe and efficient completion of its Work and to prevent damage to all areas and improvements adjoining the Easement Areas.

4.3 Grantee, its assigns or lessors, shall, at its sole cost and expense, operate and maintain the Easement Areas in safe and good condition, including but not limited to the maintenance and repair of any Grantee's improvements contained in the Easement Areas and the removal of dirt, rubbish, debris, snow and ice from the Easement Areas. The City shall have no responsibility whatsoever to construct, maintain or repair the Easement Areas, including but not limited to the improvements located in, on or about the Easement Areas; provided, however, that the City shall be responsible for the construction, maintenance and repair of any of the City's improvements, if any.

4.4 Grantee, its assigns or lessors, shall promptly repair all damage to the One Parkway Parcel, including the Easement Areas, resulting from the Work or from the exercise of Grantee's rights and obligations under this Easement Agreement, and shall restore the One Parkway Parcel, including the Easement Areas, in a first class, good and workmanlike manner to substantially the same condition as existed prior to the Work or the exercise of those rights and obligations.

4.5 Except as explicitly provided in this Easement Agreement, Grantee's exercise of the Easements granted by City to the Grantee in this Easement Agreement shall not impair the City's use of the Easement Areas in any manner whatsoever. The City shall not impair the Grantee's use of Easement Areas; however, the City shall have the right to temporarily close off and to dig through and under the Easement Areas at any and all times as the City deems necessary and appropriate to maintain, repair, replace, install, and remove public utilities beneath the Easement Areas and for all other municipal purposes. The City shall give Grantee prior written notice of any such temporary closure (except in the case of emergency) and shall coordinate its work with Grantee in order to minimize disruption to the FCC.

4.6 Grantee, its assigns or lessors, shall be required to temporarily relocate, at Grantee's, its assigns or lessors' sole cost and expense, any and all utilities placed by Grantee with the Easement Areas, that in the City's reasonable judgment interfere with the City's rights, easements, and privileges to construct, use, operate, inspect, remove, maintain, rehabilitate, replace, repair, restore, and rebuild any and all existing or future water, drainage, sewer, gas, and other public utilities together with manifolds, valves, and all necessary and useful appurtenances and improvements thereto, including any replacements and repairs, located within, in, on, under, through, or across the Easement Areas.

4.7 The City reserves the right to dedicate, for water, drainage, sewer, gas, and other public utility purposes, any and all portions of the Easement Areas onto the City Plan, without any liability whatsoever to Grantee, it successors and assigns and any of the invitees and guests.

5. **Term**. This Easement Agreement shall commence as of the last date each of the following shall have occurred (the "**Commencement Date**"): (a) this document shall have been fully executed; (b) all insurance documentation required under Section 6 below shall have been submitted to the City and approved by the City's Risk Manager; and (c) City Council shall have enacted a final ordinance authorizing the City to enter into this Easement Agreement; and shall terminate as provided in Section 8 of this Easement Agreement.

6. **Insurance**.

6.1 Grantee, its assigns or lessors, shall procure and maintain at its sole cost and expense, and shall cause its contractor(s) to procure and maintain at their respective cost and expense throughout the continuance of this Easement Agreement, insurance covering the exercise of the Easements granted in this Easement Agreement of the types and minimum limits of coverage specified below. All insurance shall be procured from reputable insurers who are acceptable to the City and authorized to do business in the Commonwealth of Pennsylvania. All insurance required herein, except the Professional Liability and Pollution Legal Liability insurance, shall be written on an "occurrence" basis and not a "claims-made" basis. In no event shall Grantee or its contractors perform any services or other work until Grantee has delivered or caused to be delivered to the City's Risk Management Division the required evidence of insurance coverage.

6.1.1 Workers Compensation & Employers' Liability

A. Workers' Compensation - Statutory limit;

B. Employers' Liability:

$500,000.00 Each Accident -Bodily Injury by Accident $500,000.00 Each Employee -Bodily Injury by Disease $500,000.00 Policy Limit -Bodily Injury by Disease

C. Other states' insurance including Pennsylvania.

D. The Workers Compensation Policy shall be specifically endorsed with Waiver of Right to Recover from Others Endorsement.

6.1.2 General Liability Insurance

A. Limit of Liability:

$2,000,000 per occurrence combined single limit for bodily injury (including death) and property damage liability. $1,000,000 personal and advertising injury; $2,000,000 general aggregate and $2,000,000 aggregate for products and completed operations.

B. Coverage:

Premises operations;
Blanket contractual liability;
Personal injury liability (employee exclusion deleted); Products and completed operations;
Independent contractors;
Employees as additional insureds;
Cross liability;
Broad form property damage liability (including completed operations and loss of use) liability and explosion, collapse, and underground hazards, care custody and control exemption excluded.

6.1.3 Automobile Liability

A. Limit of Liability:

$2,000,000 per occurrence combined single limit for bodily injury (including death) and property damage liability.

B. Coverage:
Owned, non-owned and hired vehicles.

6.2 In addition to the requirements in Section 6.1, Grantee shall cause its contractors to procure and maintain at their respective cost and expense throughout the continuance of this Easement Agreement, the following insurance:

6.2.1 Umbrella Liability

Limit of Liability: $25,000,000 per occurrence/aggregate over all applicable coverage.

6.2.2 Builder's Risk

Contractor(s) shall procure and maintain a "Special Causes of Loss" Builder's Risk Policy, which shall insure against physical loss or damage to all property incorporated or to be incorporated in the Project and covering the interests of the contractor and all subcontractors performing work under the Project. Coverage shall include jobsite temporary buildings used for storage of property to be incorporated into the Project and shall cover reasonable compensation for contractor's or subcontractor's services and expenses required as a result of an insured loss. The policy shall be written on a Replacement Cost Basis (with no co-insurance clause) and shall include Offsite Storage Locations Coverage (coverage for property to be incorporated into the Project), Transit Coverage, Flood, Earthquake, Wind/Hail, Collapse and Boiler and Machinery Coverage and shall contain an endorsement allowing "Permission to Occupy."

6.2.3 <u>Pollution Legal Liability</u>

Contractor shall maintain insurance covering losses caused by Pollution Conditions that arise from the operations described under the scope of services of this Easement Agreement.

A. Limit of Liability:

$2,000,000 per claim/aggregate

B. Coverage:

Including but not limited to sudden, accidental and gradual occurrences; release of contaminants; hostile fire pollution; environmental cleanup/remediation; legal defense costs.

C. Insurance may be written on a claims-made. If written on a claims-made basis, the contractor warrants that any retroactive date applicable to coverage under the policy precedes the effective date of this Easement Agreement; and that continuous coverage will be maintained or an Extended Discovery Period will be purchased for a period of two (2) years after expiration or termination of this Easement Agreement.

6.2.4 <u>Professional Liability</u>

A. Limit of Liability:

$1,000,000 per claim, $2,000,000 aggregate with a deductible not to exceed $10,000.

B. Coverage:

Environmental investigation, testing, consulting, architectural, engineering or remediation services errors and omissions including liability assumed under contract.

C. Professional Liability Insurance may be written on a claims-made basis provided that coverage for occurrences happening during the performance of the services required under this Easement Agreement shall be maintained in full force and effect under the policy or "tail" coverage for a period of at least two (2) years after completion of the services.

6.3 The City, PAID and their respective officers, employees and agents, shall be named as additional endorsed insureds on all policies required under this Easement Agreement except the Workers Compensation and Employers' Liability. All such policies shall include an endorsement stating that the coverage afforded these parties as additional insureds will be primary to any other coverage available to them.

6.4 Certificates of Insurance and copies of the endorsement evidencing the required coverage for Grantee shall be submitted to the City, Risk Management, 1515 Arch Street – 14th Floor, Philadelphia, PA 19102, Attention: Debbie Lawton, on the execution date of this Easement Agreement and at least five (5) business days prior to the exercise of the Easements granted pursuant to this Agreement. Grantee shall furnish certified copies of the original policies of all insurance required under this Easement Agreement at any time within ten (10) days after written request by the City.

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

6.6 Grantee shall furnish the City with proof that the premiums for all insurance required hereunder have been paid in full. Such proof shall be provided in writing at the time of the delivery of the certificates of insurance.

6.7 In the event Grantee fails to cause such insurance to be maintained, the City shall not be limited in the proof of any damages which the City may claim against Grantee (or any other person or entity) of the amount of the insurance premium or premiums not paid or incurred and which would have been payable upon such insurance, but the City shall also be entitled to recover as damages for such breach the uninsured amount of any loss, damages and expenses of suit and costs, suffered or incurred (not in excess of the amount of insurance required to be carried hereunder) during any period when Grantee shall have failed or neglected to provide insurance as required herein.

6.8 The insurance requirements set forth herein shall in no way be intended to modify, limit or reduce the indemnifications made in this Easement Agreement by Grantee to the City or to limit Grantee's liability under this Easement Agreement to the limits of the policies of insurance required to be maintained by Grantee hereunder. However, nothing in this Easement Agreement shall be deemed to waive or otherwise affect the sovereign immunity of the Commonwealth, and its agencies, officers, and employees, or to subject any Commonwealth party to any liability not expressly authorized by law.

6.9 From time to time during the Term of this Easement Agreement, the City in its reasonable discretion may, by written notice to Grantee, require Grantee to obtain additional amounts and/or types of insurance. Grantee shall obtain such additional amounts and/or types of insurance as required by the City on or before thirty (30) days from receipt of City's notice requiring such additional amounts and/or types of insurance.

7. **Indemnification**.

7.1 In any contract entered into following the date of this Easement Agreement, Grantee shall cause its contractors to indemnify, defend, and hold harmless the City, PAID, and their officials, directors, commissioners, officers, employees, agents, successors and assigns (collectively, "**Indemnitees**") from and against any and all losses, claims, suits, actions, damages, expenses (including but not limited to attorneys' and experts' fees and litigation costs), and liabilities, including but not limited to those in connection with loss of life, bodily and personal injury, or damage to property (real or personal, and regardless of ownership), which occur or arise, in whole or in part, as a result of or in connection with (a) any work or thing done, or any violation of Applicable Law (defined in Section 9 below), in, on or about the Easement Areas or any part of the Easement Areas or in connection with this Agreement by Grantee, (b) any act or omission of Grantee, or any of its officers, employees, agents, contractors, servants, licensee, or invitees, or anyone for whom Grantee is legally

responsible ("**Grantee Parties**"), (c) the use, non-use, possession, occupancy, operation, maintenance, or management of the Easement Areas or any part of the Easement Areas by Grantee or any of its officers, employees, agents, contractors, servants, licensee, or invitees, or anyone for whom Grantee is legally responsible, (d) the exercise of any right and/or performance of any obligation by Grantee under or pursuant to this Agreement, (e) the condition of the Easement Areas or any part of the Easement Areas, for which Grantee is responsible pursuant to this Easement Agreement, (f) any accident, injury, or damage to any person or property occurring in, on, or about the Easement Areas or any part of the Easement Areas, and (g) any failure on the part of Grantee to keep, observe and perform any of the terms, covenants, agreements, provisions, conditions or limitations contained in this Easement Agreement on Grantee's part to be kept; provided, however, that Grantee shall not be obligated to indemnify the Indemnitees, and the Indemnitees shall continue to be responsible for, any losses, claims, suits, actions, damages, expenses, or liabilities caused by the negligence or willful misconduct of the Indemnitees or any of them, or the violation of any of the obligations of the Indemnitees pursuant to this Easement Agreement.

7.1.1 City shall cause its contractors performing work in the Easement Areas to indemnify Grantee and Grantee Parties from and against any and all losses, claims, suits, actions, damages, expenses (including but not limited to attorneys' and experts' fees and litigation costs), and liabilities, including but not limited to those in connection with loss of life, bodily and personal injury, or damage to property (real or personal), which occur or arise, in whole or in part, as a result of or in connection with any work performed by contractor in, on or about the Easement Areas or any part of the Easement Areas.

7.1.2 Nothing contained herein shall waive or amend any defense or immunity which the Indemnitees may have under the Pennsylvania Political Subdivision Tort Claim Act, 42, C.S.A. Section 8541, et. seq, or any similar or comparable local, state or federal law or statute.

7.1.3 Nothing contained herein shall be deemed to waive or otherwise affect the sovereign immunity of the Commonwealth, and its agencies, officers, and employees, or to subject any Commonwealth party to any liability not expressly authorized by law.

7.2 If any action or proceeding is brought against the Indemnitees relating to any matter for which Grantee's contractors have indemnified the Indemnitees, then, upon written notice from the Indemnitees, or any of them, Grantee's contractors shall, at its sole cost and expense, resist or defend such action or proceeding by counsel reasonably approved by the City Solicitor in writing; provided that no approval of counsel shall be required in each and every instance where the claim is resisted or

defended by counsel of an insurance carrier obligated to so resist or defend such claim; and provided also that the City may engage at its expense its own counsel to participate in the defense of any such claim.

7.3 Without limiting the generality of Section 21 below, the provisions of this Section 7 shall apply without limitation for the continuation of this Easement Agreement and survive and be enforceable the expiration or earlier termination of this Easement Agreement.

8. **Termination; Default**.

8.1 Any breach, violation or failure by Grantee to comply with the provisions of this Easement Agreement shall constitute a default which shall permit the City to terminate or suspend this Easement Agreement and/or exercise all remedies available at law or equity, including but not limited to the right to seek specific performance.

8.2 Without limiting the generality of Section 8.1, the City shall have the right to terminate or suspend this Easement Agreement upon the occurrence of any of the following (each, an "**Event of Default**"):

8.2.1 Grantee uses any of the Easement Areas for purposes other than those stated in this Easement Agreement;

8.2.2 Grantee abandons or discontinues use of any of the Easement Areas, other than on a temporary basis;

8.2.3 the Easement Areas are no longer necessary for the purposes stated in this Easement Agreement; or

8.2.4 Grantee does not commence construction of the FCC within one (1) year of the Commencement Date.

8.3 Prior to exercising any remedy available to it upon an Event of Default, the City shall give Grantee written notice of the default and the opportunity to cure the default within thirty (30) days of the City's notice.

8.4 Upon termination of this Easement Agreement, Grantee and its successors and assigns shall, without charge, execute, acknowledge and deliver to the City and its successors and assigns such instruments in recordable form as may be requested to confirm the termination of this Easement Agreement and the lapse, abandonment, termination or expiration of the rights granted in the Easement Areas.

9. **Compliance with Laws**.

9.1 Grantee shall comply with all present and future federal, state and local laws, ordinances, order, rule regulations, building codes, and all other applicable governmental requirements ("**Applicable Law(s)**"), including but not limited to environmental law requirements and restrictions, in performing Work and exercising the Easements granted under this Easement Agreement. Grantee shall obtain or cause its contractor(s) to obtain any and all permits and approval required for each and every Work project and, to the extent required by Applicable Law, shall require that all Work be done by properly certified workers. This Easement Agreement shall not be construed to constitute an approval or permit required to be given by a City Department or agency under Applicable Law.

9.2 In conducting Work and in the exercise of the Easements, Grantee shall require its contractor(s) to take all steps necessary to prevent contractor's creation of any condition which would cause **Contamination** (defined below) or increase any existing Contamination at the Easements Areas.

9.3 The term "**Contamination**" or "**Contaminants**" shall mean the uncontained presence of Hazardous Substances (defined below) in, on, or about the Easement Areas in quantities or condition which may require remediation under Applicable Law.

9.4 The term "Hazardous Substance(s)" shall mean (i) asbestos, flammables, volatile hydrocarbons, industrial solvents, explosives, chemicals, radioactive material, petroleum and petroleum products, natural gas and synthetic gas, which are regulated by any Applicable Law, and shall include, but not be limited to, substances defined as "hazardous substances", "hazardous wastes", "toxic substances", "pollutants", or "contaminants" as those terms are used in any Applicable Law, and any and all materials and substances which by reason of their composition or characteristics are toxic or constitute hazardous waste under any and all Applicable Law, and any and all materials and substances which by reason of their composition or characteristics are toxic or constitute hazardous waste under any and all Applicable Law, and (ii) any an all other materials or substances that any governmental agency having appropriate jurisdiction shall determine from time to time are harmful, toxic, or dangerous or are otherwise required to be removed, cleaned up or remediated.

10. **Release**. In consideration of the Easements granted by the City to Grantee, Grantee does hereby remise, quitclaim, release and forever discharge, and does for Grantee's successors and assigns, and Grantee's agency, employees, officers, trustees, contractors and subcontractors, and any person claiming under or through them, hereby remise, quitclaim, release and forever discharge, the City, PAID and their respective officials, officers, employees, agents, successors and assigns, (acting officially or otherwise), from any and all, and all manner of, actions and causes of action, suits, claims

and demands whatsoever in law or in equity which Grantee or any of them may have against the City, PAID and their respective officials, officers, employees, agents, successors and assigns, relating in any way whatsoever to any condition in, on or about the Easement Areas or relating in any way to the exercise of any rights or performance of any obligations under this Easement Agreement, other than those obligations of the City expressly set forth under this Easement Agreement.

11. **Assignment**. Grantee shall not transfer or assign its interests under this Easement Agreement without the prior, written approval of the City.

12. **Standard City Provisions**. Grantee shall comply with all applicable City contract provisions, attached as **Exhibit G** and made part of this Easement Agreement.

13. **Notices**. All notices or other communications required or permitted to be given under the terms of this Easement Agreement shall be in writing, sent by certified mail, postage prepaid, return receipt requested, or by private carrier guaranteeing next day service, addressed as follows:

If to the City, addressed as follows:

Department of Public Property
City Hall, Room 790
Philadelphia, PA 19107
Attn: Commissioner

With a copy to:

City of Philadelphia Law Department
1515 Arch Street, 17th Floor
Philadelphia, PA 19102
Attn: Divisional Deputy City Solicitor, Real Estate

If to Grantee, addressed as follows:

Deputy Secretary for Public Works
Department of General Services
18th & Herr Streets
Harrisburg, PA 17125

With copies to:

Chief Counsel
Department of General Services

603 North Office Building
Harrisburg, PA 17125

or to such other address as the parties may designate in writing by providing thirty (30) days written notice from time to time.

14. **No Waiver**. No extensions or indulgence granted to Grantee shall operate as a waiver of any of the City's rights under this Easement Agreement. Any remedy set forth in this Easement Agreement shall be in addition to all other remedies otherwise available in law or equity.

15. **Headings**. The headings in this Easement Agreement are for convenience only and are not a part of this Easement Agreement. The headings do not in any way define, limit, describe, or amplify the provision of this Easement Agreement or the scope or intent thereof.

16. **Counterparts**. This Easement Agreement may be executed in one or more counterparts, each of which is an original, and all of which together are a single agreement.

17. **Entire Agreement**. This Easement Agreement is the final and exclusive agreement of the City and Grantee regarding the subject matter of this Easement Agreement. This Easement Agreement supersedes all prior negotiations or agreements regarding the subject matter of this Easement Agreement.

18. **Severability**. If any provision of this Easement Agreement is illegal or unenforceable, that provision is severed from this Easement Agreement and the other provisions remain in effect.

19. **Binding Effect**. The Easements granted under this Easement Agreement shall at all times be deemed to be, and shall be, a continuing covenant running with the land, and shall be binding upon and in favor of the City, Grantee and their successors and assigns.

20. **Survival**. Any and all agreements set forth in this Easement Agreement which, by its or their nature, would reasonably be expected to be performed after the expiration or earlier termination of this Easement Agreement shall survive and be enforceable after the expiration or earlier termination of this Easement Agreement. Any and all liabilities, actual or contingent, which shall have arisen during the Term of this Easement Agreement, shall survive any termination of this Easement Agreement.

21. **Governing Law; Jurisdiction; Waiver of Jury Trial**. The laws of Pennsylvania govern all matters with respect to this Easement Agreement. The parties to

this Easement Agreement agree to submit to the jurisdiction of courts, whether federal or state, located in Philadelphia, Pennsylvania.

22. **Amendments**. This Easement Agreement may not be amended orally, but may only be amended by written agreement signed by both the City, with the joinder of PAID, and Grantee.

[The remainder of this page left blank intentionally; signature page follows.]

IN WITNESS WHEREOF, the City, with the joinder of PAID, and Grantee intending to be legally bound hereby have executed this Easement Agreement the day and year first above written.

Approved as to Form
Shelley R. Smith, City Solicitor

By:_____
Deputy City Solicitor

CITY:
CITY OF PHILADELPHIA through
the Department of Public Property

By:_____
Commissioner of Public Property

Joinder for the purposes of consenting to the grant of easement: PHILADELPHIA AUTHORITY FOR INDUSTRIAL DEVELOPMENT

By: _____
Chairman

GRANTEE:
DEPARTMENT OF GENERAL SERVICES

By: _____
Acting Secretary of DGS

APPROVED AS TO FORM AND LEGALITY:

_____
Chief Counsel, DGS Date

_____
Office of General Counsel Date

_____
Office of Attorney General Date

COMMONWEALTH OF PENNSYLVANIA :
: SS
COUNTY OF PHILADELPHIA :

On this day _____, before me, a Notary Public, the undersigned officer, personally appeared Joan Schlotterbeck, who acknowledged herself to be the Commission of Public Property and that she as such Commissioner, being authorized to do so, executed the foregoing instrument for the purposes therein contained.

_____
Notary Public

My commission expires:

COMMONWEALTH OF PENNSYLVANIA :
: SS
COUNTY OF PHILADELPHIA :

I, the undersigned officer, hereby certified that before me personally appeared on this day _____, Chairman of The Philadelphia Authority for Industrial Development, who being authorized to do so, executed the foregoing instrument for the purposes therein contained, by signing the name of PAID, Chairman of The Philadelphia Authority for Industrial Development.

WITNESS my hand and official seal this ____ day of _____, 2010.

_____

Notary Public

My commission expires:

COMMONWEALTH OF PENNSYLVANIA :
: SS
COUNTY OF :

On the ___ day of _____, 2010, before me, a notary public in and for the Commonwealth and County aforesaid, the undersigned officer, personally appeared _____, who acknowledged herself to be _____, and that he as such _____ executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

_____

___

Notary Public

My commission expires:

EXHIBIT A
DESCRIPTION OF ONE PARKWAY PARCEL

EXHIBIT B
DESCRIPTION OF GRANTEE'S PARCEL

EXHIBIT C

SITE PLAN

EXHIBIT D
STAFF ENTRANCE EASEMENT AREA

EXHIBIT E
BICYCLE STORAGE AND Utility EASEMENT AREAs

EXHIBIT F
no-build easement area

EXHIBIT G
STANDARD CITY PROVISIONS

Nondiscrimination.

This Easement Agreement is entered into under the terms of the Philadelphia Home Rule Charter and in its performance under this Agreement, and therefore Grantee shall not discriminate, nor permit discrimination, against any person because of race, color, religion, national origin or sex. In the event of such discrimination, the City may terminate this Easement Agreement forthwith or exercise any other remedy provided to the City in this Easement Agreement or at law or in equity. The foregoing shall not be construed to limit or restrict the City's right to terminate this Easement Agreement at any time, as set forth in the Easement Agreement.

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

Grantee agrees to include subparagraphs (a) and (b) of this Section 12, with appropriate adjustments for the identity of the parties, in all subcontracts which are entered into for work to be performed pursuant to this Easement Agreement.

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

Fair Practices.

Grantee agrees, in exercising its rights under this Easement Agreement, to comply with the provisions of the Fair Practices Ordinance of The Philadelphia Code (Chapter 9-1100) and the Mayor's Executive Order No. 4-86, as they may be amended from time to time, both of which prohibit, inter alia, discrimination against persons with AIDS in employment and services.

Certificate of Non-Indebtedness

Grantee hereby certifies and represents to the City that Grantee and Grantee's parent company (ies), if any, are not currently indebted to the City, and will not during the term of this Easement Agreement be indebted to the City, for or on account of any delinquent taxes (including, but not limited to, taxes collected by the City on behalf of the School District of Philadelphia), liens, judgments, fees or other debts for which no written agreement or payment plan satisfactory to the City has been established. Licensee shall require all contractors and subcontractors performing work on the Easement Areas during the term of this Easement Agreement, to certify that they are not currently indebted to the City and shall not be indebted to the City during the term of this Easement Agreement for or on account of any delinquent taxes (including, but not limited to, taxes collected by the City on behalf of the School District of Philadelphia), liens, judgments, fees or other debts for which no written agreement or payment plan satisfactory to the City has been established. Any breach or failure to conform to the aforesaid certifications shall constitute a default by Grantee and entitle the City to exercise any rights or remedies available to it under this Easement Agreement or otherwise available at law or in equity.

Americans With Disabilities Act.

Grantee understands and agrees that no individual with a disability shall, on the basis of the disability, be excluded from participation in the Easement Agreement or from activities or Services provided under the Easement Agreement. As a condition of accepting and executing the Easement Agreement, Grantee shall comply with all provisions of the Americans With Disabilities Act (the "Act"), 42 U.S.C. §§12101 - 12213, and all regulations promulgated thereunder, as the Act and regulations may be amended from time to time, which are applicable (a) to Grantee, (b) to the benefits, Services, activities, facilities and programs provided in connection with the Easement Agreement, (c) to the City, or the Commonwealth of Pennsylvania, and (d) to the benefits, services, activities, facilities and programs of the City or of the Commonwealth, and, if any funds under the Easement Agreement are provided by the federal government, which are applicable to the federal government and its benefits, services, facilities, activities, facilities and programs. Without limiting the applicability of the preceding sentence, Grantee shall comply with the "General Prohibitions Against Discrimination," 28 C.F.R. Part 35.130, and all other regulations promulgated under Title II of "The Americans With Disabilities Act," as they may be amended from time to time, which are applicable to the benefits, services, programs and activities provided by the City through contracts with outside contractors.

Federal Laws.

Grantee shall comply with the provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d - 2000d.7), Section 504 of the Federal Rehabilitation Act of 1973 (29 U.S.C. § 794), The Age Discrimination Act of 1975, (42 U.S.C. §§ 6101 - 6107), Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681), and 45 C.F.R. Part 92, as they may be amended from time to time, which together prohibit discrimination on the basis of race, color, national origin, sex, handicap, age and religion.

No Prohibited Gifts to City Officials.

Pursuant to Executive Order 002-04, no official or employee in the Executive and Administrative Branch of the City shall solicit or accept, directly or indirectly, anything of value, including any gift, gratuity, favor, entertainment or loan from any of the following sources:

(1) A person seeking to obtain business from, or who has financial relations with, the City;

(2) A person whose operations or activities are regulated or inspected by any City agency;

(3) A person engaged, either as principal or attorney, in proceedings before any City agency or in court proceedings in which the City is an adverse party;

(4) A person seeking legislative or administrative action by the City; or

(5) A person whose interests may be substantially affected by the performance or nonperformance of the official's or employee's official duties.

Grantee understands and agrees offering anything of value to a City official or employee under circumstances where the receipt of such item would violate the provisions of this Executive Order shall be a default of this Easement Agreement.

Duties and Covenants Pursuant to Procurement Code.

Grantee shall abide by the provisions of the Procurement Code (62 Pa.C.S. § 101 et.seq.) in awarding any contract(s) pursuant to this Easement Agreement.