

RESPONSE TO
LANCE HAVER'S INTERROGATORIES (SET III)
AND
REQUESTS FOR PRODUCTION OF DOCUMENTS
QUESTIONS 1-37

Dated: May 2023

1 **LH-III-1.** PLEASE SUPPLY ALL OF THE INFORMATION AND DOCUMENTS
2 PROMISED IN PWD'S RESPONSES TO LH-II DISCOVERY REQUESTS;
3 INCLUDING BUT NOT LIMITED TO THE POSITIONS THAT ARE
4 LOCATED IN PWD'S OFFICES AT 1101 MARKET STREET, THE
5 CONTRACT (S) FOR THE RENOVATIONS OF THE OFFICE SPACES,
6 LETTERS SHOWING THAT PWD HAS SOUGHT LOWER OFFICE SPACE
7 THE AMOUNT SPENT ON THE CONSULTANTS HELPING PWD WITH THE
8 CURRENT RATE INCREASE.

9
10 **RESPONSE:**

11 PWD's existing long-term lease for 1101 Market Street is less expensive than offices of
12 comparable size in the area. The existing lease predates the rate case. See, response to LH-
13 II-5.

14
15 For additional information in response to LH-III-1 see response attachment.

16
17 **RESPONSE PROVIDED BY:** Philadelphia Water Department
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

LH-III-2. IN THE LAST YEAR, PLEASE PROVIDE THE NAME OF ANY AND ALL CONSULTANTS HIRED TO FIND COST SAVINGS, THE AMOUNT SPENT ON THOSE CONTRACTS AND THE WORK PRODUCT FROM THE CONSULTANTS HIRED.

RESPONSE:

Please see response to LH-II-7.

RESPONSE PROVIDED BY: Philadelphia Water Department

1 **LH-III-3.** IN THE LAST 5 YEARS, THE NAME OF ANY AND ALL VENDORS HIRED
2 TO PREFORM SERVICES FOR PWD THAT WERE NOT LOCATED IN THE
3 CITY OF PHILADELPHIA. SPECIFICALLY, BUT NOT LIMITED TO, THE
4 NAME OF THE COMPANY AND ITS LOCATION THAT WAS HIRED TO
5 MAKE APPOINTMENTS TO SCHEDULE METER REPLACEMENTS AND
6 THE TOTAL AMOUNT OF ITS CONTRACT, THE NAME AND LOCATION
7 OF THE COMPANY HIRED TO DO METER READING AND BILLING IF
8 THE OFFICES ARE BEING RENOVATED, PLEASE SUPPLY THE
9 CONTRACT FOR THE RENOVATIONS, THE TOTAL COST OF THE
10 RENOVATIONS AND WHO APPROVED THE RENOVATIONS
11

12 **RESPONSE:**

13 The Water Department does not maintain a separate list of the requested data.
14

15 Please refer to the following website for additional information regarding the City's
16 procurement processes:

17
18 [Procurement Department | Homepage | City of Philadelphia](#)
19

20 Please refer to the following website for available retrospective reports regarding awarded
21 contracts:

22
23 [FY23_2nd Qtr_10.1.22_12.31.22_DRAFT.xlsx \(phila.gov\)](#)
24

25 Please also the following reports from the City's use of minority-, women-, and disabled-
26 owned businesses participating on contracts (including the Water Department's
27 contracts):"
28

[Office of Economic Opportunity Annual Reports | Department of Commerce | City of Philadelphia](#)

RESPONSE PROVIDED BY: Philadelphia Water Department

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **LH-III-4.** RAFTELIS, THE CONSULTANT PWD IS USING SAYS ON ITS WEB PAGE,
2 “RAFTELIS HELPS LOCAL GOVERNMENTS AND UTILITIES THRIVE BY
3 PROVIDING MANAGEMENT CONSULTING EXPERTISE TO HELP
4 TRANSFORM LOCAL GOVERNMENTS AND UTILITIES,” PLEASE
5 PROVIDE ANY AND ALL RECOMMENDATIONS RAFTELIS HAS MADE
6 TO TRANSFORM PWD.

7
8 **RESPONSE:**

9 Raftelis has generally provided recommendations in three areas. First, Raftelis conducted
10 a Management Audit of Customer Service functions. This report was included in the as
11 Exhibit HL - 2, attached to PWD Statement 8 of the 2016 General Rate Proceeding.
12 Secondly, Raftelis works with PWD on developing, implementing, and refining its
13 Customer Assistance Plan offerings. Finally, Raftelis works with PWD on providing
14 reporting related to PWD Rate Case filings.

15
16 **RESPONSE PROVIDED BY:** Raftelis Financial Consultants, Inc.
17
18
19
20
21
22
23
24
25
26
27
28

1 **LH-III-5.** RAFTELIS, ON ITS WEB PAGE STATES: “PROVIDING MANAGEMENT
2 CONSULTING SERVICES TO HELP UTILITY LEADERS CREATE THE
3 CHANGE THEY SEEK” WHAT CHANGE, OTHER THAN A 20% RATE
4 INCREASE IS PWD SEEKING? PLEASE PROVIDE ANY AND ALL
5 STUDIES, REPORTS OR ANY WRITTEN DOCUMENTS OR SUMMARIES
6 OF DISCUSSIONS SUBMITTED BY RATELIS TO HELP PWD CREATE THE
7 CHANGE IT SEEKS.

8
9 **RESPONSE:**

10 Raftelis recommendations are covered in LH-III-4, and substantial additional written and
11 numerical reporting related to customer assistance programs has been provided in
12 response to Public Advocate interrogatories.

13
14 **RESPONSE PROVIDED BY:** Raftelis Financial Consultants, Inc.
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **LH-III-6.** PLEASE PRODUCE ALL STUDIES AND/OR REVIEWS THAT PWD
2 AND/OR ITS CONSULTANTS RELIED UPON, BEFORE THE RATE
3 INCREASE WAS FILED, THAT LED TO PWD REJECTING LOWER COST
4 OFFICE SPACE LEASING.

5
6 **RESPONSE:**

7 Please see response to LH-III-1.

8
9 **RESPONSE PROVIDED BY:** Philadelphia Water Department

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **LH-III-7.** PLEASE PROVIDE AND ALL RECOMMENDATIONS FOR CHANGE
2 RAFTELIS HAS MADE
3

4 **RESPONSE:**

5 Raftelis' work with PWD and related recommendations are discussed in LH-III-4 and LH-
6 III-5.
7

8 **RESPONSE PROVIDED BY:** Raftelis Financial Consultants, Inc.
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **LH-III-8.** PAGE 10, QUESTION 14: PWD EXHIBIT 2 PRESENTS THE
2 DEPARTMENT'S EVALUATION OF THE CONSOLIDATED IMPACT OF ITS
3 PROPOSED RATE REQUESTS ON THE TYPICAL MONTHLY BILL OF
4 RESIDENTIAL AND SMALL COMMERCIAL CUSTOMERS. PLEASE
5 PROVIDE THE STUDY, WHO AUTHORED THE STUDY, AND THE DATE
6 THE STUDY WAS COMPLETE OF THE IMPACT ON THE BUDGET OF THE
7 AVERAGE RATE PAYER. PLEASE EXPLAIN WHY THE STUDY WAS NOT
8 INCLUDED IN THE FILING. IF NO SUCH STUDY WAS DONE, PLEASE
9 EXPLAIN WHY PWD DOES NOT CONSIDER IT IMPORTANT TO SEE THE
10 IMPACT RATE INCREASES HAVE ON RESIDENT'S BUDGETS.

11
12 **RESPONSE:**

13 Black & Veatch developed the Cost of Service Study, as presented in PWD Statement 2
14 Schedule BV-2, that serves as the basis for the proposed revenue adjustments and associated
15 rate schedules.

16
17 PWD evaluates its rates against the Median Household Income (MHI) to assess the relative
18 impacts of PWD's proposed rates on the typical customer combined bills. In addition, PWD
19 performs a peer comparison against other similar utilities to assess overall affordability.
20 This analysis is presented in PWD Statement 2A Schedule FP-1, FY23 Summary & Five-
21 Year Financial Projection Plan. As shown on Slide 26, PWD's combined bill based on
22 proposed rates for FY 2024 is 1.8% of Philadelphia's MHI. This falls below the affordability
23 threshold recommended by industry standards including the EPA's affordability assessment
24 guidelines.

25
26 PWD also has multiple customer assistance programs for low-income customers to help
27 them with their water bills. Please see The Annual Report to the Mayor on the Tiered
28 Assistance Program (TAP), cited in PWD Statement 5 on Page 7. The TAP caps bills for

1 qualified residential customers at between 2% and 4% of their household income based on
2 where their household income stands with respect to the current Federal Poverty Level. This
3 report also discusses the number of customers receiving the PWD's senior citizen discount.
4

5 **RESPONSE PROVIDED BY:** Philadelphia Water Department
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **LH-III-9.** PLEASE EXPLAIN WHERE PWD'S WITNESSES EXPECT RATE PAYERS
2 TO FIND THE ADDITIONAL FUNDS TO PAY THE INCREASE WATER
3 BILLS. AND IF PWD WITNESSES NEVER CONSIDERED WHERE A RATE
4 PAYER WOULD FIND THE EXTRA MONEY, PLEASE EXPLAIN HOW
5 PWD'S WITNESSES KNOW IF THE RATE INCREASE IS AFFORDABLE,
6 OR IN THE ALTERNATIVE IF PWD'S WITNESSES DO NOT CONSIDER
7 AFFORDABILITY IMPORTANT ENOUGH TO REVIEW STUDY AND
8 PREPARE TESTIMONY ABOUT.

9
10 **RESPONSE:**

11 Please see response to LH-III-8.

12
13 **RESPONSE PROVIDED BY:** Philadelphia Water Department
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

LH-III-10. PLEASE LIST ALL BOND COUNSELS WITH THEIR FEES ON AN EXCEL SPREAD SHEET USED IN THE LAST 5 YEARS.

RESPONSE:

The requested data does not exist in the format requested. Please see response LH-III-1.

RESPONSE PROVIDED BY: Philadelphia Water Department

1 **LH-III-11***. PLEASE PROVIDE ANY AND ALL LETTERS TO PGW SEEKING TO
2 COMBINE SERVICES, SUCH AS BILLING AND COLLECTIONS, AS A
3 COST CUTTING STRATEGY.
4

5 **RESPONSE:**

6 After reasonable investigation, no letters have been identified that capture the information
7 requested.
8

9 **RESPONSE PROVIDED BY:** Philadelphia Water Department
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

28 * The questions with an asterisk have been renumbered to account for duplicate numbers in the original set of questions received.

1 **LH-III-12***. ARE BOND COUNSELS HIRED THROUGH A COMPETITIVE BID
2 PROCESS? IF NOT, PLEASE EXPLAIN HOW BOND COUNSELS ARE
3 CHOSEN AND ALL LETTERS AND/OR EMAILS SENT FROM PWD
4 REQUESTING BOND COUNSEL LOWER ITS FEES TO HELP RATE
5 PAYERS KEEP UP WITH RISING COSTS.
6

7 **RESPONSE:**

8 Yes, bond counsel is selected through a competitive process.
9

10 **RESPONSE PROVIDED BY:** The City of Philadelphia
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **LH-III-13***. PLEASE PROVIDE ANY AND ALL TESTIMONY SUBMITTED BY ANY
2 PWD CONSULTANT AND/OR STAFF OPPOSING A RATE ANY RATE
3 INCREASE BEFORE ANY REGULATORY BODY
4

5 **RESPONSE:**

6 No such testimony with respect to water, sewer and stormwater rates, have been identified
7 within the last five years for PWD staff and the consulting team supporting this rate
8 proceeding.
9

10 **RESPONSE PROVIDED BY:** Philadelphia Water Department
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **LH-III-14***. PLEASE PROVIDE IN WHAT FISCAL YEAR THE COST SAVINGS PLAN
2 FOR PURCHASING PROCEDURES WILL BEGIN AND THE TOTAL
3 AMOUNT OF SAVINGS.
4

5 **RESPONSE:**

6 Please see responses to LH-II-7 and LH-II-12.
7

8 Please also see response to City Council Questions.
9

10 Please also note that purchasing is governed by City procurement policy and subject to a
11 competitive bidding process.
12

13 **RESPONSE PROVIDED BY:** Philadelphia Water Department
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **LH-III-15***. TESTIMONY PWD STATEMENT 2 PAGE 5 “THE DEPARTMENT HAS NO
2 CHOICE BUT TO REQUEST RATE RELIEF. THE STANDARDS,
3 ESTABLISHED BY CITY COUNCIL, REQUIRE THAT REVENUES (RATES)
4 BE AT LEAST EQUAL TO OPERATING EXPENSE AND DEBT SERVICE
5 REQUIREMENTS. REVENUES AT THE REQUESTED RATES ARE
6 PROJECTED TO MEET THE MANDATORY FINANCIAL METRICS AND TO
7 BE SUFFICIENT TO PAY ALL OF THE PROJECTED EXPENSES IN THE
8 RATE PERIOD.” IS THIS A FACTUAL STATEMENT, THAT THE
9 DEPARTMENT HAS NO CHOICE? IN THEORY, COULD NOT CITY
10 COUNCIL REQUIREMENTS BE MET BY LOWERING OPERATING COSTS?
11 OR A COMBINATION OF LOWERING OPERATING COSTS AND
12 REPLACING HIGH INTEREST RATE BONDS WITH LOWER INTEREST
13 RATE BONDS?

14
15 **RESPONSE:**

16 Yes. This is a factual statement. PWD needs rate relief based on operating conditions such
17 as price increases and the need to invest in our infrastructure. The vast majority of PWD’s
18 costs for which additional revenues are needed are non-discretionary (e.g., chemicals,
19 personnel costs, materials and supplies).

20
21 PWD cannot simply reduce costs or budget without potentially jeopardizing the level of
22 service provided to our customers and more importantly their health and safety. In
23 addition PWD must comply with its regulatory requirements (see PWD Exhibit 5).

24
25 PWD has and continues to pursue low-interest loans to save costs on the capital programs,
26 which will provide realized benefits over several years. PWD also has robust customer
27 assistance programs to assist residents facing affordability issues. We believe that
28

1 investing in our infrastructure will ensure that the system is resilient, efficient, and reliable
2 to provide quality service to our residents.

3
4 PWD also routinely reviews its refinancing opportunities and when market conditions are
5 favorable executes refundings for savings.

6
7 **RESPONSE PROVIDED BY:** Philadelphia Water Department

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **LH-III-16***. IN FY 2023 PWD SOUGHT AND RECEIVED “A MID-YEAR” TRANSFER
2 FROM THE CITY’S GENERAL FUND, ACCORDING TO PWD STATEMENT
3 2 PAGE 6. HOW DID THE PWD DECIDE HOW MUCH TO ASK FOR?
4 PLEASE SUPPLY ANY AND ALL WRITTEN CORRESPONDENCE WITH
5 ANY AND ALL COUNCIL MEMBERS SHOWING PWD REQUEST A
6 HIGHER AMOUNT THAN WHAT PWD RECEIVED.

7
8 **RESPONSE:**

9 PWD did not request a mid-year transfer from the City’s General Fund. The mid-year
10 transfer cited in the above question is a transfer within the Water Fund and represents a
11 mid-year budget increase request.

12
13 Information regarding the mid-year transfer is available here:

14
15 [City of Philadelphia - File #: 220869 \(legistar.com\)](#)

16
17 PWD’s mid-year transfer request was needed to cover increased operating expenses
18 related to chemical and power costs, among others. PWD did not request General Fund
19 support for these expenses, nor did the Water Department receive any funds from the
20 General Fund as a result of this budget increase request.

21
22 Please also refer to PWD Rebuttal Statement 5, Schedule GA-1.

23
24 **RESPONSE PROVIDED BY:** Philadelphia Water Department
25
26
27
28

1 **LH-III-17*.** PLEASE SUPPLY ANY AND ALL WRITTEN CORRESPONDENCE WITH
2 THE MAYOR AND/OR HIS STAFF FROM THE PWD SEEKING GREATER
3 FUNDS THAN WHAT WAS GRANTED IN THE TRANSFER.
4

5 **RESPONSE:**

6 Please see response to LH-III-16.
7

8 Please also refer to PWD Rebuttal Statement 5, Schedule GA-1.
9

10 **RESPONSE PROVIDED BY:** Philadelphia Water Department
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **LH-III-18***. PWD STATEMENT 2 PAGE 6: “WITHOUT A RATE INCREASE PWD
2 “WOULD BE REQUIRED TO MAKE A SUBSTANTIAL WITHDRAWAL
3 FROM CASH RESERVES TO MEET OBLIGATIONS AND MINIMUM DEBT
4 SERVICE COVERAGE REQUIREMENTS. THE DEPLETION OF CASH
5 RESERVES WOULD LEAVE THE DEPARTMENT WITH FEW OPTIONS ON
6 A GOING-FORWARD BASIS TO FULFILL ITS MISSION OF PROVIDING
7 HIGH-QUALITY, RELIABLE SERVICE TO ITS CUSTOMERS.” CAN IT TO
8 BE INFERRED THAT THERE IS NO LAW THAT WOULD PROHIBIT
9 WITHDRAWING FROM THE CASH RESERVES?
10

11 **RESPONSE:**

12 The Rate Ordinance (Philadelphia Code, Chapter 13-101), provides, in pertinent part,
13 under Section (4) Standards for Rates and Charges, that: “The rates and charges shall be
14 such as shall yield to the City ... such additional amounts as shall be required to comply
15 with any rate covenant and sinking fund reserve requirements approved by ordinance of
16 Council in connection with the authorization or issuance of water, sewer and storm water
17 revenue bonds...” and that “In fixing rates and charges ... the Board shall determine ...
18 minimum levels of reserves to be maintained during the rate period. When determining
19 such ... minimum levels of reserves, the Board shall consider all relevant information
20 presented including, but not limited to, peer utility practices, best management practices
21 and projected impacts on customer rates.”
22

23 Rate Stabilization Funds (RSF), if utilized in lieu of necessary rate relief, must be
24 replenished thereby necessitating the very rate relief sought to be avoided by its initial
25 application.
26
27
28

1 Further, note the described potential implications of no revenue adjustment and the
2 reduction of reserves beyond levels cited in PWD's credit rating reports as provided in
3 PWD Statement 2.

4
5 **RESPONSE PROVIDED BY:** Philadelphia Water Department
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

LH-III-19*. PLEASE LIST THE FEW OPTIONS AVAILABLE TO PWD, THAT PWD TESTIMONY SAYS EXIST, THAT WOULD ALLOW IT PWD TO FULFILL ITS MISSION IF PWD USED A TRANSFER FROM THE CASH RESERVES TO MAKE THE RATE INCREASE UNNECESSARY.

RESPONSE:

Please see responses to LH-II-7 and LH-II-12.

RESPONSE PROVIDED BY: Philadelphia Water Department

1 **LH-III-20***. PWD 2 A, PAGE 9 “THE SYSTEM MADE A DEPOSIT TO THE RATE
2 STABILIZATION FUND (“RSF”) AT THE END OF FY 2022 TOTALING \$15
3 MILLION.” WAS THE 15 MILLION DOLLAR DEPOSIT INTO THE RSF
4 VOLUNTARY OR REQUIRED BY LAW? HOW ELSE COULD THE 15
5 MILLION HAVE BEEN USED?
6

7 **RESPONSE:**

8 The deposit of the \$15 million was discretionary as part of prudent financial management
9 to reserve surplus funds for future needs. The \$15 million was determined at the end of
10 fiscal year 2022 so there was no way to plan its use in FY22. However, this transfer to the
11 RSF was used to support the FY23 mid-year transfer due to inflationary pressures on
12 chemical, energy etc.
13

14 As also noted in the memorandum from bond counsel (Schedule FP-2), the 1989 General
15 Bond Ordinance dictates the priority of payment and the flow of revenues collected from
16 rates in and out of the funds and accounts of the Water Fund.
17

18 **RESPONSE PROVIDED BY:** Philadelphia Water Department
19
20
21
22
23
24
25
26
27
28

1 **LH-III-21***. PLEASE STATE AS OF TODAY, HOW MUCH IS IN THE RATE
2 STABILIZATION FUND, WHERE THE FUND IS KEPT, IF THE BANK THAT
3 THE FUNDS ARE KEPT IN HAS ANY RETAIL BRANCHES IN THE CITY
4 OF PHILADELPHIA, EMPLOYS ANY PHILADELPHIANS, MARKETS
5 MORTGAGES TO PHILADELPHIA RESIDENTS.
6

7 **RESPONSE:**

8 Refer to the City's Annual Comprehensive Financial Report:

9 [https://www.phila.gov/departments/office-of-the-director-of-finance/financial-](https://www.phila.gov/departments/office-of-the-director-of-finance/financial-reports/#/?table=Annual%2520Comprehensive%2520Financial%2520Report&q=Annual%20Comprehensive%20Financial%20Report%20FY2022)
10 [reports/#/?table=Annual%2520Comprehensive%2520Financial%2520Report&q=Annual](https://www.phila.gov/departments/office-of-the-director-of-finance/financial-reports/#/?table=Annual%2520Comprehensive%2520Financial%2520Report&q=Annual%20Comprehensive%20Financial%20Report%20FY2022)
11 [%20Comprehensive%20Financial%20Report%20FY2022](https://www.phila.gov/departments/office-of-the-director-of-finance/financial-reports/#/?table=Annual%2520Comprehensive%2520Financial%2520Report&q=Annual%20Comprehensive%20Financial%20Report%20FY2022)
12
13 [FY 2022 - Printer's Proof Version #3.pdf \(phila.gov\)](#)

14
15 As presented on pdf page 41 of 230, the Rate Stabilization Fund Balance at the end of FY
16 2022 was \$139.7 million.

17
18 The Rate Stabilization Fund is specifically held at US Bank. US Bank has a branch in
19 Philadelphia.

20
21 The City of Philadelphia Treasurer's office determines the bank which holds the Rate
22 Stabilization Fund.

23
24 **RESPONSE PROVIDED BY:** Philadelphia Water Department
25
26
27
28

1 **LH-III-22***. PWD 2 A PAGE 13: “FROM BOTH AN OPERATIONAL AND A CREDIT
2 RATING PERSPECTIVE IT IS ESSENTIAL FOR THE DEPARTMENT TO
3 SUSTAIN DEBT SERVICE COVERAGE LEVELS SIGNIFICANTLY ABOVE
4 THE MINIMUM LEVELS REQUIRED BY THE RATE COVENANTS TO
5 PROVIDE RATING AGENCIES AND BONDHOLDERS COMFORT” PLEASE
6 SUPPLY ANY AND ALL WRITTEN CONCERNS REGARDING THE
7 “COMFORT OF THE RATE PAYERS” THAT WERE INCLUDED IN THE
8 RATE FILING.

9
10 **RESPONSE:**

11 In PWD Statement 2A, the Financial Panel has testified:

12
13 “The depletion of cash reserves would leave the Department with few options on a going-
14 forward basis to fulfill its mission of providing high-quality, reliable service to its
15 customers.” (pg. 6 of 26)

16
17 “Without additional debt, the Department’s ability to fund upgrades, repairs and
18 replacements of infrastructure will be limited. As explained in PWD Statements 3 and 4,
19 financial support for Capital Improvement Program is critically needed to avoid
20 jeopardizing the Department’s ability to appropriately invest in infrastructure
21 improvements that are needed to maintain system reliability and customer service levels
22 as well as pay for increased operating expenses.” (pg. 24 of 26)

23
24 Please also refer to the response to LH-III-8.

25
26 **RESPONSE PROVIDED BY:** Philadelphia Water Department
27
28

1 **LH-III-23***. PLEASE LIST ANY AND ALL STRATEGIES CONSIDERED THAT WOULD
2 ALLOW PWD TO AVOID RAISING COVERAGE LEVELS
3 “SIGNIFICANTLY ABOVE THE MINIMUM LEVELS REQUIRED BY THE
4 COVENANTS.

5
6 **RESPONSE:**

7 Please see responses to LH-II-7 and LH-II-12.
8

9 **RESPONSE PROVIDED BY:** Philadelphia Water Department
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **LH-III-24***. PWD 2- A PAGE 16 “THE DEPARTMENT’S ONLY SOURCE OF REVENUE
2 IS THROUGH ITS CUSTOMER BASE.” DOES THIS MEAN IF PWD MIS
3 SPENDS MONEY, OR HAS MONEY EMBEZZLED, OR SIMPLY MAKES
4 DECISION’S THAT IN RETROSPECTIVE WERE NOT COST EFFECTIVE
5 THE RATE PAYERS MUST PAY FOR MIS SPENDING, EMBEZZLEMENT
6 OR BAD DECISIONS?
7

8 **RESPONSE:**

9 PWD derives its revenues from rates and charges for providing service to its customers.
10

11 **RESPONSE PROVIDED BY:** Philadelphia Water Department
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **LH-III-25***. IF NOT, PLEASE PROVIDE AN EXPLANATION FOR HOW BAD
2 DECISIONS, WASTEFUL SPENDING AND/OR EMBEZZLEMENT IS PAID
3 FOR.

4
5 **RESPONSE:**

6 See response to LH-III-24.

7
8 **RESPONSE PROVIDED BY:** Philadelphia Water Department

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **LH-III-26***. IS IT POSSIBLE FOR THE CITY OF PHILADELPHIA TO GIVE AND/OR
2 GRANT PWD REVENUE OR FUNDS IN PLACE OF REVENUE?
3

4 **RESPONSE:**

5 Please refer to PWD Rebuttal Statement 5, Schedule GA-1.
6

7 **RESPONSE PROVIDED BY:** Philadelphia Water Department
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **LH-III-27***. PWD 2-A PAGE 17—" AS REFLECTED IN THE DEPARTMENT'S
2 FINANCIAL PLAN, APPROXIMATELY 90% OF THE DEPARTMENT'S
3 CAPITAL COSTS WILL BE FUNDED WITH SIZEABLE DEBT ISSUANCE.
4 WHAT PERCENTAGE OF BORROWING WILL COME FROM FEDERAL,
5 STATE OR ANY OTHER GOVERNMENT OR GOVERNMENT SUPPORTED
6 FUND?

7
8 **RESPONSE:**

9 See PWD Statement 7, Schedule BV-1, Table C-8, Lines 8 and 10 for the WIFIA and
10 PENNVEST Loan amounts for FY 2023 to FY 2028. Based upon current projections
11 14.71% of the overall projected capital expenses for FY 2023 to FY 2028 will be
12 supported by federal and state funding in the form of low interest loans.

13
14 **RESPONSE PROVIDED BY:** Black & Veatch Management Consulting, LLC.
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **LH-III-28***. WHAT DEBT COVERAGE RATIO IS REQUIRED BY FEDERAL DOLLARS
2 ALLOCATED BY THE BIDEN ADMINISTRATION OR THROUGH THE
3 PENN VEST FUND?
4

5 **RESPONSE:**

6 Debt service on both WIFIA and PENNVEST loans is senior debt under the General
7 Ordinance. Minimum senior debt service coverage requirements per the General
8 Ordinance are 1.2x.
9

10 **RESPONSE PROVIDED BY:** Philadelphia Water Department
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **LH-III-29***. WHY IS PWD CONCERNED ABOUT INCREASING DEBT COVERAGE
2 RATIOS FOR MONEY BORROWED FROM GOVERNMENT OR
3 GOVERNMENT SUPPORTED ENTITIES? IF IT IS NOT, PLEASE BREAK
4 DOWN WHICH BONDS DOES PWD SEEK TO INCREASE DEBT
5 COVERAGE RATIO FOR AND WHICH BONDS IT DOES NOT SEEK TO
6 INCREASE THE RATIO.

7
8 **RESPONSE:**

9 Debt service on both WIFIA and PENNVEST loans and other publicly issued revenue
10 bonds is senior debt under the General Ordinance. Minimum debt service coverage
11 requirements per the General Ordinance are 1.2x.

12
13 **RESPONSE PROVIDED BY:** Philadelphia Water Department
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **LH-III-30***. PWD 2-A PAGE 18: “BOND INVESTORS MAY ALSO REACT NEGATIVELY
2 TO ANY FAILURE TO SUPPORT NEEDED RATE RELIEF.” IS IT FAIR TO
3 ASSUME FROM THIS STATEMENT THAT THERE IS THE POSSIBILITY
4 THAT BOND INVESTORS WILL NOT REACT NEGATIVELY IF THERE IS
5 A “FAILURE TO SUPPORT NEEDED RATE RELIEF” OR IS THIS
6 STATEMENT NOT ACCURATE?

7
8 IF IT IS NOT ACCURATE, PLEASE EXPLAIN WHY IT IS PART OF PWD’S
9 TESTIMONY. IF IT IS ACCURATE, PLEASE STATE FOR THE RECORD IF
10 BOND INVESTORS MAY GET “COMFORT” FROM INSURING A BOND OR
11 OFFERING A “BACK STOP” FOR A BOND.

12
13 **RESPONSE:**

14 The language used in Statement 2A is consistent with the language used in the Rating
15 Agency reports. Please refer to the Rating Agency reports included in PWD Statement 2A
16 Schedule FP-3.

17
18 **RESPONSE PROVIDED BY:** Philadelphia Water Department
19
20
21
22
23
24
25
26
27
28

1 **LH-III-31***. PLEASE PWD 2-A PAGE 21 “CAN THE DEPARTMENT REDUCE ITS
2 BUDGET TO PARTIALLY OFFSET THE PROPOSED RATE INCREASES?
3

4 A21. NO — NOT IF THE DEPARTMENT IS TO PURSUE NECESSARY
5 MAINTENANCE ACTIVITIES AND MAINTAIN CURRENT LEVELS OF
6 SERVICE.” DOES THIS MEAN THAT THE DEPARTMENT LOOKED AT
7 ALL OPPORTUNITIES FOR COST SAVINGS AND FOUND THERE WERE
8 NONE? NOT EVEN AN OPPORTUNITY TO SAVE .005%? IF SO, PLEASE
9 PROVIDE A LIST OF ALL COST SAVINGS STRATEGIES EXAMINED, AND
10 THE REASONS WHY ALL THE STRATEGIES WERE REJECTED.
11

12 **RESPONSE:**

13 Please see responses to LH-II-7 and LH-II-12.
14

15 PWD employed a vigorous budget process through which all requests for funding are
16 reviewed and justified. There are several cost saving measures that were considered and
17 implemented including 1) refunding of outstanding debt, 2) securing of low-interest loans,
18 3) relaxing some financial metrics, 4) reduction appropriation for SMIP/GARP program.
19

20 PWD is not aware of any viable cost saving strategy that was rejected. Some strategies
21 evaluated included 1) holding flat investment in the infrastructure while costs are rising
22 was rejected as it would result in long-term underinvestment, 2) economizing on chemical
23 would be a risky strategy given example in other utilities, 3) setting financial metrics at
24 the minimum would be another risky strategy as any minor downturn would result in
25 technical default on bond covenant, 4) drawing down significantly on reserve would result
26 in PWD inability to respond effectively to emergencies and could be viewed as credit
27 negative by rating agencies thereby increasing cost of borrowing.
28

1 **RESPONSE PROVIDED BY:** Philadelphia Water Department

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **LH-III-32***. PWD 2-A PAGE 25—“WITH THAT IN MIND, THE DEPARTMENT DID NOT
2 PROJECT THAT THE CITY WOULD ALLOCATE ANY AMOUNTS UNDER
3 ARPA TO PWD FOR FY 2024 OR FY 2025” PLEASE PROVIDE ALL
4 WRITTEN REQUESTS TO THE MAYOR AND/OR CITY COUNCIL FOR
5 FUNDS FROM ARPA TO BE ALLOCATED TO THE PWD.
6

7 I. IF PWD FAILED TO SEEK ANY FUNDS, IN WRITING FROM THE
8 MAYOR OR FROM COUNCIL, PLEASE EXPLAIN THE FAILURE TO
9 SEEK THE FUNDS.
10

11 **RESPONSE:**

12 Please refer to PWD Rebuttal Statement 5, Schedule GA-1.
13

14 **RESPONSE PROVIDED BY:** Philadelphia Water Department
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **LH-III-33***. HOW MANY HOUSEHOLDS DID PWD PROJECT IT WOULD BE ABLE TO
2 HELP ENROLL IN THE LIHWAP PROGRAM? HOW MANY HOUSEHOLDS
3 DID ENROLL?
4

5 **RESPONSE:**

6 LIHWAP is a State program. PWD did not project program participation and has no say in
7 program approvals. PWD has no way to know the number of households eligible for
8 LIHWAP.
9

10 As of March 2023, 7,666 PWD accounts were enrolled and have received \$13.6 Million in
11 assistance from LIHWAP.
12

13 **RESPONSE PROVIDED BY:** Philadelphia Water Department
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **LH-III-34*.** WHAT PERCENTAGE OF ELIGIBLE HOUSEHOLDS ENROLLED IN
2 LIHWAP?

3

4 **RESPONSE:**

5 See response to LH-III-33.

6

7 **RESPONSE PROVIDED BY:** Philadelphia Water Department

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1 **LH-III-35***. PWD 4 PAGE 11 “THE CHALLENGES ASSOCIATED WITH THE HIRING OF
2 NEW STAFF HAS RESULTED IN THE TRANSFER OF SOME PROJECT
3 TASKS FROM PWD PERSONNEL TO SERVICE CONTRACTS WITH
4 OUTSIDE VENDORS” PLEASE LIST THE NAMES OF ANY AND ALL
5 “OUTSIDE VENDORS” REFERENCED IN THIS STATEMENT, WHERE THE
6 “OUTSIDE VENDORS” LOCATE THEIR BUSINESS AND BUSINESS
7 HEADQUARTER, THE NUMBER OF PHILADELPHIA RESIDENTS THE
8 OUTSIDE VENDOR EMPLOYS COMPARED TO EMPLOYEES LIVING
9 OUTSIDE OF THE CITY; HOW THE OUTSIDE BUSINESS VENDOR WAS
10 HIRED, IF THE OUTSIDE VENDOR USES ONLY UNIONIZED
11 EMPLOYEES, THE MINIMUM WAGE OF THE “OUTSIDE VENDOR” THE
12 RATIO OF AVERAGE WORKER TO THE VENDOR’S CEO AND WHICH OF
13 THE OUTSIDE VENDORS HAS PROFIT SHARING FOR ITS EMPLOYEES.

14
15 PLEASE SUPPLY THE PERCENTAGE OF GOODS AND SERVICES
16 PURCHASED BY PWD THAT COME FROM PHILADELPHIA BASED
17 BUSINESSES USING PHILADELPHIA EMPLOYEES AS EMPLOYEES, THE
18 NUMBER OF SUPPLIERS THAT ARE UNIONIZED, THE NUMBER OF
19 SUPPLIERS THAT HAVE PROFIT SHARING WITH ITS RESPECTIVE
20 EMPLOYEES AND EACH COMPANIES’ AVERAGE WORKER TO CEO
21 SALARY.

22
23 **RESPONSE:**

24 Please see response to LH-III-3. After reasonable investigation, no report responsive to
25 the remainder of this request is available.

26
27 **RESPONSE PROVIDED BY:** Philadelphia Water Department
28

1 **LH-III-36***. PLEASE PWD 7 PAGE 12 B. “WHOLESALE OPERATING REVENUES”
2 CURRENTLY, AQUA PENNSYLVANIA (“AQUA”) IS THE WATER
3 DEPARTMENT’S ONLY WHOLESALE WATER CUSTOMER. WHOLESALE
4 WATER REVENUES ARE PROJECTED USING THE ESTIMATED BILLED
5 WATER VOLUME ESTIMATED BASED ON THE HISTORICAL THREE-
6 YEAR AVERAGE FOR AQUA” PLEASE PROVIDE THE NAME AND
7 COMPANY WHICH EMPLOYEES THE PERSON OR PERSONS WHO HELP
8 PWD DECIDE WHAT THE APPROPRIATE CHARGE IS FOR WHOLE SALE
9 WATER. PLEASE PROVIDE IF THAT PERSON AND/OR HER FIRM HAS
10 ANY CONTRACT(S) WITH AQUA.
11

12 **RESPONSE:**

13 Black & Veatch prepared the cost of service analysis for water and wastewater wholesale
14 calculations. The wholesale water cost of service allocations for Aqua PA are explained in
15 PWD Statement 7, Schedule BV-2: Water and Wastewater Cost of Service Report,
16 Section 4.3.2. Black & Veatch does not have any contracts with Aqua PA.
17

18 **RESPONSE PROVIDED BY:** Black & Veatch Management Consulting, LLC
19
20
21
22
23
24
25
26
27
28

1 **LH-III-37***. HOW MUCH DOES PWD RECEIVED FOR EVERY DOLLAR BILLED?
2 WHAT IS THE PWD COLLECTION RATE? HOW DOES THIS COMPARE
3 TO PGW'S COLLECTION RATE? WHAT IS THE NATIONAL AVERAGE
4 FOR WATER AND SEWER UTILITIES COLLECTION RATES?
5

6 **RESPONSE:**

7 PWD's collection rate is presented in PWD Statement 6 and PWD Exhibit 5.
8

9 It is our understanding that PGW achieved 24-month collection rates of 96.7% in FY
10 2022, 96.1% in FY 2021, and 96.6% in FY 2020.

11 See <https://www.puc.pa.gov/pcdocs/1775746.pdf>
12

13 After reasonable investigation, no report capturing the national average collection rate for
14 water and sewer utilities was identified.
15

16 **RESPONSE PROVIDED BY:** Philadelphia Water Department
17
18
19
20
21
22
23
24
25
26
27
28

CONTRACT # 2020-07-PWD

CONTRACTOR AGREEMENT

THIS AGREEMENT, made this 21st day of June, 2020, between COMMERCIAL CONSTRUCTION INC. (hereinafter called the "Contractor") and GIRARD ESTATE LEASEHOLD (hereinafter called the "Owner") by KENNEDY-WILSON PENNSYLVANIA MANAGEMENT INC., its managing agent (hereinafter defined "KWPMI"), not personally but solely on behalf of our tenant, The City of Philadelphia - Philadelphia Water Department (hereinafter called the "Tenant") for services to be performed at that certain property located at 1101 Market Street, Philadelphia, PA 19107 (hereinafter called the "Property").

WITNESSETH

1. **The Work.** Contractor shall furnish and install in a thoroughly workmanlike manner and to the complete satisfaction of Owner all the work (the "Work") described in Exhibit "A," including all necessary scaffolding, equipment, labor and materials. The materials and labor to be furnished and performed hereunder shall consist of everything that is necessary and required in connection with the proper installation of all the Work to be performed by the Contractor.

2. **Time of Commencement and Completion.** Contractor recognizes that time is of the essence in this Contract and Contractor shall commence the Work one day following receipt of permits (anticipated to be 8/3/20), and shall pursue such Work diligently with adequate materials, labor and equipment so as to provide for continuous, uninterrupted progress in the performance of the Work. Subject to Article 12(d), or as otherwise may be mutually agreed upon in writing, the Work shall be completed on or before sixty five (65) days following commencement. Should Contractor fail to carry on the Work with sufficient personnel or materials and thereby cause delay of the Work covered herein, or if Contractor should be adjudged bankrupt or become insolvent, or if he should fail to make prompt payment for materials or labor, or if he should otherwise be guilty of a violation of any provision of this Agreement, then Owner may, without prejudice to any other right or remedy Owner may have and after giving Contractor seven days written notice, either a) terminate the employment of Contractor under this Agreement and relet the Work at the sole cost and expense of Contractor, in which event the contractor agrees that no materials, machinery or tools belonging the Contractor shall be removed from the job until completion; or b) hold Contractor to this Agreement and have the right to engage additional labor and/or materials at Contractor's sole cost and expense as Owner may deem necessary for proper performance hereunder. In either event, Owner is hereby authorized to deduct from the Contract Sum, as hereinafter defined, the cost of such additional labor and/or materials.

3. **The Contract Sum.** Owner agrees to pay Contractor for the performance of the Work, the total sum of ✓ \$609,941.00 (Six Hundred Nine Thousand Nine Hundred Forty-One and 00/100 Dollars), subject to adjustment as provided for herein. Owner shall make payments to the Contractor in accordance with Paragraph 4 of this Agreement. The final payment shall be made upon 1) final completion of all Work by the Contractor; 2) final approval and acceptance of the Work by Owner; and 3) complete and proper documentation satisfactory to and as may be required by Owner in substantiation of the payment

requested by Contractor. If the Contractor encounters conditions at the site that are: (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the contract documents; or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in this Agreement, the Contractor shall promptly provide notice to KWPMI before conditions are disturbed. If such conditions differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, the Contractor will be entitled to an equitable adjustment of the Contract Sum or the time for performance of the Work, or both.

4. **Payment.**

4.1 **General Provisions.**

4.1.1 **Schedule of Values.** The Contractor shall provide a schedule of values satisfactory to the Owner no more than five (5) days from the date of execution of this Agreement.

4.1.2 **Payment Use Restriction.** Payment received by the Contractor shall be used to satisfy the indebtedness owed by the Contractor to any person furnishing labor or materials for use in performing the Contractor's work on this project before it is used in any other manner.

4.1.3 **Payment Use Verification.** The Owner shall have the right at all times to contact the Contractor's subcontractors and suppliers to ensure that the same are being paid promptly by the Contractor for labor or materials furnished for use performing the Contractor's Work.

4.1.4 **Partial Lien Waivers and Affidavits.** As a prerequisite for payment, the Contractor shall provide, in a form satisfactory to the Owner, partial lien or claim waivers and affidavits from the Contractor, and its subcontractors and suppliers for the completed Contractor's Work. Such waivers may be made conditional upon payment.

4.1.5 **Contractor Payment Failure.** Upon payment by the Owner, Contractor shall promptly pay its lower tier sub-contractors and material suppliers the amounts to which they are entitled. In the event the Owner has reason to believe that obligations for labor and material incurred in the performance of the Contractor's Work are not being paid, the Owner may give written notice of such claim or lien to the Contractor and may take any steps deemed necessary to assure that progress payments are utilized to pay such obligations including but not limited to the issuance of joint checks. If upon receipt of said notice, the Contractor does not

- a. supply evidence to the satisfaction of the Owner that the money owing to the claimant(s) have been paid; or
- b. post a bond indemnifying the owner, any Mortgagee of the building or the site, the premises or accompanying land from any such claim or lien; then the Owner shall have the right to withhold from any payments due or to become due to the Contractor a reasonable amount to protect the Owner from any and all loss, damage or expense including attorney's fees arising out of or relating to any such claim or lien has been satisfied by the Contractor.

Notwithstanding the foregoing, the Contractor shall not be responsible for the removal of, or to bond off, or to indemnify the Owner with respect to, mechanics' liens filed for labor and materials for which the Owner has not made payment to the Contractor.

4.1.6 **Contractor Assignment of Payments.** The Contractor shall not assign any moneys due or to become due under this Contract or under any Change Order thereto, without the written consent of Owner, unless such assignment is intended to create a new security interest within the scope of Article 9 of the Uniform Commercial Code. Should Contractor assign all or any part of any moneys due or to become due under this Contract, to create a new security interest or of any other purpose, the instrument of assignment shall contain a clause to the effect that the assignee's right is and to any money due or to become due to the Subcontractor shall be subject to the claims of all persons, firms and corporations for services rendered of materials supplied for the performance of the Work under this contract and any Change Orders.

4.1.7 **Payment Not Acceptance.** Payments to the Contractor do not constitute or imply acceptance of any portion of the Contractor's Work.

4.2 **Progress Payments**

4.2.1 **Application.** The Contractor's first Application for Payment shall be accompanied by Contractor's affidavit and partial waiver of lien for the full amount of the payment and the Work covered thereby and conditioned only upon payment of such application. Each subsequent Application for Payment shall be accompanied by Contractor's and each sub-contractors affidavit and unconditional partial lien waiver for the amount of the previous application for payment and a conditional lien waiver from the contractor for the amount of the current application for payment.

4.2.2 **Retainage/Security.** The rate of retainage shall be equal 10% of the total contract value and shall insure the satisfactory completion of the Subcontractor's Work.

4.2.3 **Time of Application.** The Contractor shall submit progress payment applications to the Owner no later than the 25th day of each payment period for work performed up to and including the 25th day of the payment period indicating work completed.

4.2.4 **Stored Materials.** Unless otherwise provided in the Contract Documents, and if approved in advance by the Owner, applications for payment may not include materials and equipment not incorporated in the Contractor's Work or delivered to and stored at some other location unless agreed to in writing.

4.2.5 **Time of Payment.** Monthly Progress payments to the Contractor for satisfactory performance of the Contractor's Work shall be made no later than thirty (30) days after approved receipt by the Owner of application for payment by Contractor for the Contractor's Work.

4.2.6 **Payment Delay.** If for any reason not the fault of the Contractor, the Contractor does not receive a progress payment from the Owner within thirty (30) days after the date such payment is due, as defined in Subparagraph 4.2.5, then the Contractor, upon giving an additional seven (7) days written notice to the Owner, and without prejudice to and in addition to any other legal remedies, may stop work until payment of the full amount owing to the Contractor has been received. To the extent obtained by the Owner under the Contract Documents, the contract price shall be increased by the amount of the Contractor's reasonable cost of shutdown, delay, and start-up, which shall be effected by appropriate Change Order.

4.3 **Final Payment.**

4.3.1 **Application.** Upon acceptance of the Contractor's Work by the Owner, and upon the Contractor furnishing evidence of fulfillment of the Contractor's obligations in accordance with the Contract Documents and Subparagraph 4.3.2, the Owner shall process the Contractor's application for final payment without delay.

4.3.2 **Requirements.** Before the Owner shall be required to process the Contractor's application for final payment the Contractor shall submit to the Owner:

- a. an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Contractor's Work for which the owner or owner's property might in any way be liable, have been paid or otherwise satisfied;
- b. consent of surety to final payment, if required;
- c. satisfaction of required close-out procedures;
- d. certification that insurance required by the Contract Documents to remain in effect beyond final payment is in effect and will not be canceled or allowed to expire without at least thirty (30) days written notice to the Owner unless a longer period is stipulated in the Contract; and
- e. affidavits and final waivers of liens from the contractor, subcontractors and suppliers who have not previously furnished such affidavits and final waivers of lien. Final payment shall constitute a waiver of all claims by the Contractor relating to the Contractor's Work, but shall in no way relieve the Contractor of liability for the obligations assumed under Paragraph 7, or for faulty or defective work appearing after final payment.

4.3.3 **Time of Payment.** Final payment of the balance due of the Contract Price shall be made to the Contractor

- a. upon receipt of the waiver of all claims related to the Contractor's Work except for unsettled liens, unknown defective work, and noncompliance with the Contract Documents or warranties; and
- b. within thirty (30) days after receipt by the Owner of final approved application for payment for Contractor's Work.

5. **Changes in the Work.**

- a. Owner, without invalidating the Agreement, may order changes in the Work consisting of additions, deletions or modification, and the Contract Sum shall be adjusted accordingly. All such changes in the Work shall be authorized by a written Change Order signed by Owner or KWPMI;
- b. The adjustment, if any, in the Contract Sum resulting from a change in the Work shall be determined by mutual agreement of Owner and Contractor; provided, however, that in the event Owner and Contractor do not promptly agree upon the adjustment in the Contract Sum, the Contractor shall nevertheless proceed, upon the request of Owner, promptly to perform (without delay) the Work as changed, leaving such adjustment in the Contract Sum to later determination. The Contractor shall be entitled to receive payment for the undisputed portion of the cost pending final resolution of the cost.

6. **Agreements of Contractor.**

- a. Contractor shall pay all State and Federal payroll tax liabilities occasioned by labor on account of the Work and all Federal, State or other governmental sales and use taxes or similar levies on all materials, tools and equipment furnished under this Agreement;
- b. Contractor shall observe and comply with all laws, ordinances and regulations of all duly constituted governmental authorities and insurance rating agencies relating to the performance of the Work and the materials supplied hereunder, shall satisfy all the requirements of the inspectors, if any, and at Contractor's sole cost and expense shall apply for and obtain all necessary permits, licenses, or any other certificates required by said authorities;
- c. Contractor shall pay all royalties and license fees, if any, pertaining to the Work and the materials supplied hereunder;
- d. Contractor shall provide, at Contractor's sole cost and expense, adequate insurance in amounts and with carriers satisfactory to Owner, fully covering and indemnifying Owner, its agents or representatives and Contractor as their respective interests may appear against any loss because of injury or damage to persons, including death, or property (including adjacent property) caused by the Contractor during the performance of this Agreement and until actual completion of the Work covered herein. Such insurance shall be in accordance with the provisions of the Insurance Rider attached hereto as Exhibit "B";
- e. Contractor shall repair and replace all its work and materials damaged, lost, stolen or destroyed prior to actual completion of the Work, such repair and replacement to be at the sole cost and expense of Contractor, and Owner is hereby authorized to deduct from the Contract Sum and retain an amount sufficient to pay for such repairs and replacement in the event Contractor does not, in the opinion of Owner within a reasonable time after such damage, loss, theft or destruction, make such repairs and replacement;
- f. Contractor shall supply, install and maintain suitable protection for any and all pedestrian traffic within the vicinity of the Work. Said protection shall be in compliance within any and all City, State and Federal codes and further subject to Owner's approval;
- g. Contractor shall diligently, on a daily basis, remove rubbish and waste materials created from its operation on the Property and adjacent improvements as the Work progresses so as to maintain a clean, safe condition or

shall reimburse Owner at \$40.00 per man-hour for doing so. Upon completion of the Work, Contractor shall remove all of its tools, materials, equipment and rubbish from the Property and leave the job site broom clean. Owner is hereby authorized to deduct from the Contract Sum and retain \$40.00 per man-hour for said cleanup, in the event that Contractor does not, in the opinion of Owner, diligently clean up the job site on a daily basis.

- h. Prior to commencement of the Work and within ten (10) days of the signing of this Agreement, Contractor shall provide Owner with Insurance Certificates in accordance with the provisions of the Insurance Rider attached hereto as Exhibit "B";
- i. Contractor shall furnish Owner within five (5) days of request thereof, a written list of all sub-contractors to be used and all the vendors from which Contractor will purchase or has purchased materials used or to be used in the performance of the Work.

7. **Guarantee.** Unless otherwise addressed in Exhibit "A," Contractor shall guarantee at Contractor's sole cost and expense to promptly repair and replace any work and any materials used in such Work which may be found faulty or defective for a period of one (1) year after the Work is completed and accepted by the Owner. All Work which may be damaged because of such defect shall be promptly replaced or repaired by Contractor at its sole cost and expense. The guarantee period for any work and materials repaired and/or replaced shall run for a period of one (1) year after the repair or replacement of that Work is completed and accepted by the Owner.

8. **Waiver and Entire Agreement.** No payment on account, nor final payment, nor filing of any Notice of Completion, nor partial or entire use occupancy of the premises, by Owner, nor acceptance of the Work by Owner shall be construed in any way to be a waiver of any of the provisions of this Agreement. All negotiations and agreements are merged herein and there are no provisions, covenants or other agreements between the parties other than those contained herein or incorporated herein by reference and this Agreement is the entire Agreement between the parties hereto with respect to the subject matter hereof.

9. **Assignment and Subcontracting.** This Agreement shall not be assigned, in whole or in part or in any respect, nor subcontracted in whole by Contractor without the written consent of Owner being first had and obtained. Any such attempt to so assign or subcontract this Agreement by Contractor without the prior written consent of Owner shall be null and void and shall operate, at Owner's election, as an instant forfeiture and repudiation thereof by Contractor, and the rights of the parties shall be determined in the same manner as though Contractor has, at the time of such attempted assignment or subcontracting, failed and refused to continue his performance as required under this Agreement.

10. **Indemnification.** Contractor shall indemnify, defend and hold harmless Owner, KWPMI, and each of their respective directors, officers, employees, agents, successors and assigns from any and all claims, suits and causes of action for personal injury or property damage arising from or in any way caused by the performance of the Work hereunder or any acts by Contractor, its subcontractors and their respective agents, servants or employees or for infringement of patents or violation of patent rights, including all costs, expenses and attorney's fees incurred by an indemnified party in defending any claims, suits or causes of action that may arise.

11. **City Provisions.** Contractor acknowledges receipt of a copy of the "City Provisions" attached as an exhibit to a Lease between Owner and Philadelphia Authority for Industrial Development dated January 27, 2009, a true and correct copy of which is attached hereto as Exhibit C.

In accordance with Subsection (c) of the Nondiscrimination Section of those City Provisions, Contractor agrees:

- a. That Contractor shall not discriminate nor permit discrimination against any person because of race, color, sex, sexual orientation, religion, national origin or ancestry. In the event of such discrimination which goes uncured more than thirty (30) days after notice from Owner, Owner may terminate this Agreement forthwith or exercise any other remedy provided to Owner in this Agreement or at law or in equity. The foregoing shall not be construed to limit or restrict Owner's right to terminate this Agreement as set forth in other sections of this Agreement; and
 - b. That Contractor's 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 and 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 this Agreement entitling Owner to all rights and remedies provided in this Agreement or otherwise available at law or in equity.
12. **Miscellaneous.**
- a. Contractor shall afford any other contractors and materialmen the reasonable opportunity for the execution of their work and for the introduction and storage of their materials on the job site and shall properly coordinate its work with theirs. If any part of Contractor's work depends for proper execution or results upon the work of any other contractor, Contractor shall inspect and properly report in writing to Owner any defects in such work that render it unsuitable for proper execution and results. Proceeding with the Work hereunder shall constitute acceptance by Contractor of the other contractor's work as being fit and proper for the reception of its work. By virtue of the foregoing provisions, Contractor, as an independent contractor, will be held responsible for the satisfactory completion of the work;
 - b. Should Contractor cause damage to the work of any other contractor or to any parts of the Property, Contractor agrees to pay the amount of such damage and any incidental expenses in connection therewith incurred by Owner. Owner is hereby authorized to deduct such amount from the Contract Sum, and in the event such amount exceeds the Contract Sum due Contractor hereunder, Contractor shall promptly pay Owner the amount of such excess;

- c. Contractor shall perform as much of the Work as possible during normal working hours, with the Contractor's full knowledge that the building area where the Work is to be performed does and will continue to have normal business activity and traffic, and Contractor agrees that it will take every precaution to protect and show courtesy to the public and building personnel during the progress of the Work and that all Work and the delivery and storage of all equipment, supplies and materials shall be coordinated with and at the discretion of the property manager. Contractor further understands and agrees that reasonable access must be provided within the building area and that Contractor's Work shall at all times be confined and performed so as to provide minimal disturbance or interruption of the normal business operation of the Property;
- d. Should Contractor be unable to perform its covenants, obligations, duties and agreements as described herein and hereunder due to conditions beyond his control, said conditions being limited to casualties, acts or omissions of the Owner or KWPMI, or an employee, agent or contractor of either of them resulting in actual material delays (following notice from Contractor), strikes or labor difficulties, inclement weather conditions, civil disorder, war or other national emergencies, Contractor shall be allowed to extend the Work beyond the time limitation as described in Article 2 above, limited by the number of working days the Contractor was unable to perform its obligations as described herein, provided however, that Contractor shall immediately notify Owner of any such delays;
- e. All Work done and materials to be furnished hereunder must pass all applicable inspections, including, without limitation, inspection by Owner, KWPMI, Client, and/or Owner's duly authorized agents and representatives and all governmental and/or insurance inspections;
- f. Any and all notices hereunder, shall be in writing and posted in either the United States Mail, certified or registered mail, postage prepaid, or by overnight courier service to the respective parties at the following addresses:

TO CONTRACTOR
COMMERCIAL CONSTRUCTION INC.
1811 Bethlehem Pike #222
Flourtown, PA 19031

TO OWNER:
GIRARD ESTATE LEASEHOLD
c/o Kennedy-Wilson Pennsylvania Management
Inc.
1101 Market Street, Suite 105
Philadelphia, PA 19107
Attention: Richard J. McClure
Managing Director

- g. Owner hereby authorizes Contractor to take all direction hereunder from KWPMI.
- h. It is expressly understood and agreed, anything contained herein to the contrary notwithstanding, that each and all of the representations, warranties, covenants, undertakings, indemnities and agreements made by or on behalf of Owner or KWPMI, are not made for the purpose or with the intention of binding either Owner or KWPMI or any of their respective partners, shareholders, officers, directors, employees, trustees or agents in their individual capacities, but are made and intended solely for the purpose of binding and shall be enforceable

only to the extent of Owner's interest in the Property, and that no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against Owner, KWPMI or any of their respective partners, shareholders, officers, directors, employees, trustees or agents in their individual capacities (beyond Owner's interest in the Property), on account of any representation, warranty, covenant, undertaking, indemnity, or agreement of Owner or KWPMI, either express or implied, all such personal liability or responsibility, if any (beyond Owner's interest in the Property), being expressly waived and released by Contractor and by all persons claiming by, through or under the Agreement.

WITNESS WHEREOF, the parties hereto cause this Agreement to be executed by their duly authorized representatives as of the day and year first above written.

OWNER

GIRARD ESTATE LEASEHOLD, a Pennsylvania not-for-profit corporation

By: KENNEDY-WILSON PENNSYLVANIA
MANAGEMENT INC., a Delaware corporation,
its managing agent

By:


Richard J. McClure

Its:

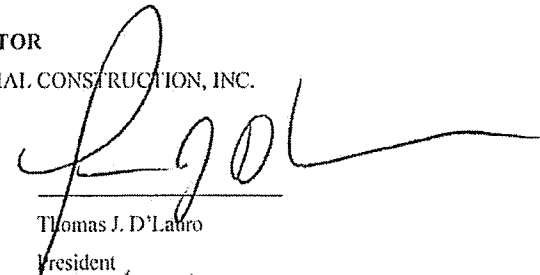
Managing Director

Date

CONTRACTOR

COMMERCIAL CONSTRUCTION, INC.

By:


Thomas J. D'Lauro

Its:

President

7/22/2020
Date

EXHIBIT "A"

The "Work"

**1101 Market – Philadelphia Water Department 4th Floor Partial Renovation
Contract # 2020-07-PWD**

Contractor shall provide all necessary labor, materials, equipment and supervision required to complete the following work in accordance with the following plans and specifications. All work is to conform to all applicable governing codes and regulations. The work is to include, but not limited to the following:

A. CONSTRUCTION DOCUMENTS

The following documents collectively comprise the scope of work and understanding between the parties relative to the renovation of the lobby/façade of the Property (the "Work").

DOCUMENT	DATE/SENT
CONTRACTOR RFP, 4th Floor Partial Renovation – Philadelphia Water Department – provided by KWP	06-10-20
Board of Directors of City Trusts – Supplier Diversity & Inclusion Program	06-11-20
KWP Contractor Rules and Regulations	06-11-20
CCI's Bid	06-25-20
RFI 001	06-19-20
Email Response to RFI 001	06-24-20

B. SCHEDULE OF VALUES

Item	Cost
Demolition	\$ 16,750
Rough & Finish Carpentry	\$ 0
Millwork	\$ 62,350
Metal Studs & Drywall	\$ 43,840
Door, Frames, & Hardware	\$ 14,065
Acoustical Ceilings	\$ 3,485
Carpet & Base	\$ 7,900
Floor Preparation - Allowance	\$ 2,000
Glazing	\$ 36,627
Painting	\$ 7,185
Wallcovering	\$ 0
Plumbing	\$ 88,000
Restroom Access	\$ 32,500
Appliances	\$ 3,770
Fire Protection - Sprinklers	\$ 10,600
Fire Extinguishers	\$ 0
Fire Suppression	\$ 0
HVAC	\$ 16,600
Electrical	\$ 122,600
Fire Alarm/Strobes - Simplex	\$ 0
Ceramic Tile	\$ 61,500
Signage	\$ 8,907
Window Treatments	\$ 2,944
	\$ 539,623
Allowances:	
Sub-Total	\$ 541,623
General Conditions	\$ 23,868
Permits	\$ 3,000
OH/Profit	\$ 35,000
Insurance/Taxes	\$ 6,450
Sub Total General Contractor Overhead	\$ 68,318
Total General Contractor	\$ \$609,941
Notes/Alternates:	
Alt 1. Tele/Data Install by GC	\$ 5,000
Alt 2. Raise Ceiling from 8'6" to 9' in elevator lobby	\$ 3,000
Alt 3. Provide F6 Pendant Light in Lieu of F6 Surface Mounted Light	\$ 0
Alt 3. Furnish and Install Additional Circuits at Load Center	\$ 2,500
Alt 4. AV Package	\$ 146,000
Alt 5. Waterproof Membrane for new gang restroom floor	\$ 5,170
Total Alternates	\$ 161,670
CONTRACTOR estimated date for substantial completion of Phase I	10/16/2020
CONTRACTOR's overhead and fee for any and all changes orders not contemplated above -- reflect as %	10%

Note: Building Ownership and the Tenant are tax-exempt entities. In the event that any of the costs above include PA or Philadelphia sales tax Contractor shall adjust the Contract Sum accordingly.

Additional Comments:

1. All work shall be done in strict accordance with the Construction Documents referenced herein.
2. Contractor shall coordinate all work with KWPMI prior to commencing the Work. Work hours/restrictions shall be as contemplated in the Construction Documents. Contractor shall provide necessary protection when performing work.
3. Contractor, at its sole cost and expense, shall obtain any and all L&I (or AHJ) approvals and permits prior to the commencement of the Work.
4. Immediately after the initial meeting with Contractor, Contractor shall further define and develop the critical path schedule, identifying all of the significant milestones and provide the same to Owner for approval. Said schedule shall be relatively consistent with that provided as part of Contractor's original proposal. Contractor shall make Owner aware of any long lead items which could jeopardize the timely completion of the project.
5. Contractor shall be responsible for working with and coordinating with Owner's security, elevator and/or telecom providers, if necessary.
6. Contractor shall ensure that all work shall be performed in a manner so as to minimize the impact on tenants' operations and/or that of the building. Contractor shall provide all necessary protection when performing work. Additionally, it should be noted that certain portions of the Work must be completed off hours, including but not limited to:
 - (A) Any noise producing work: tile removal, shooting into the deck, etc.
 - (B) Work required in adjacent tenant suites/occupant areas.
7. Contractor shall keep the job site neat and orderly at all times with adequate dust protection. If work is performed off hours, the area shall be left safe, clean and ready for the next business day.
8. Contractor to become familiar with all specified materials, inclusive of shipping, handling, storage and installation means and methods of the same.
9. Contractor acknowledges that other projects in the building will be completed simultaneous with Owner's project. As such, coordination of all material movements (demo and new construction materials) must be coordinated with KWPMI.
10. Contractor shall receive all deliveries via the loading dock, which shall be coordinated off-hours with KWPMI.
11. Contractor shall also be responsible for disposing/recycling of all demolition materials. The hauling of the debris shall be coordinated with KWPMI and shall be completed after hours, in accordance with the building rules and regulations.
12. Contractor affirms it is a licensed contractor, possessing good labor relations, capable of performing quality workmanship and working in harmony with Owner's contractors and sub-contractors and with other contractors and subcontractors working in the building. Said affirmation shall remain for the duration of the project and any warranty period.
13. Contractor shall present its proposed list of subs to Owner for approval prior to the commencement of the Work and identify any subs that are certified as MBE, WBE or DBE firms (Disadvantaged Businesses). Contractor has committed to obtaining 35-40% of contract value towards Disadvantaged Businesses). Contractor shall track as necessary to satisfy Tenant and/or Owner.
14. Contractor to maintain minutes for all project meetings, incorporating any edits required by the property or design team.
15. Contractor shall, if necessary, be responsible for any necessary sidewalk protection, as well as sidewalk and/or street closure permits.
16. Upon completion of the project (or each phase, Owner (and/or its representatives) and Contractor shall jointly develop a construction punchlist. The construction punchlist shall be completed by Contractor within five (5) business days of receipt from Owner. Should any item on this list not be completed within this time frame, Owner reserves the right to have this work completed at Contractor's expense.
17. Contractor covenants that it shall, on or before ten (10) days after the release of the final construction payment, pay any subcontractor, materialman and anyone else acting or claiming through or under Contractor. Contractor shall indemnify, defend and hold Owner harmless from and against the claim or lien and all direct or consequential loss resulting in any way from the filing of such claim or lien, and shall pay or cause to be paid to Owner the amount of

its loss, with interest and all expenses incident to Contractor's failure to pay any payment obligation within the ten (10) day period described above, including attorneys' fees, costs and other disbursements. Owner shall have the right to recover any and all sums from Contractor without prejudice and any amount due Owner as a result of this indemnity.

18. KWPMI and/or Tenant reserves the right to exercise any/all change orders identified in the Construction Documents at the cost as identified in the Schedule of Values contained herein without additional markup or fee.

EXHIBIT "B"
INSURANCE RIDER
CONSTRUCTION AGREEMENT

1. LIABILITY INSURANCE

I.1 The Contractor shall maintain at his own cost and expense the following insurance in amounts not less than those specified below and issued by insurance companies licensed to do business in the state where the project is located, with a current A.M. Best rating of A or better and a financial class of at least VIII and a Standard and Poor's Claims Paying Ability Rating of not less than AA-.

(i) Workers' Compensation

- A. Statutory Coverage in accordance with the laws of the state with jurisdiction, including Voluntary Compensation and Other States.
- B. Employer's Liability with limits of not less than \$1,000,000 each accident/injury, \$1,000,000 each employee/disease, \$1,000,000 disease/policy limit.

(ii) Commercial General Liability

- A. Coverage A - Bodily Injury and Property Damage Liability with a \$2,000,000 limit per occurrence per project.
- B. Coverage B - Personal and Advertising Injury Liability with a \$2,000,000 limit per person.
- C. Products and Completed Operations with a \$2,000,000 limit per occurrence and in the aggregate.
- D. General Aggregate with a \$4,000,000 limit per project.
- E. Above is to include Broad Form Contractual Liability, Independent Contractors, Broad Form Property Damage and Explosion, Collapse and Underground Hazards coverage.
- F. Additional Insured Endorsement CG2010 Form B or its equivalent.

(iii) Commercial Automobile Liability

- A. Bodily Injury and Property Damage Liability with a combined single limit in an amount not less than \$2,000,000 for each person in one accident, and \$2,000,000 for injuries sustained by two or more persons in any one accident.
- B. Above to include Non-Owned and Hired Car Coverage.

(iv) Umbrella Liability or Excess Liability

A. Following form over the primary coverage in an amount not less than \$5,000,000 each occurrence and in the aggregate.

(v) Additional Insured

Owner, Construction Manager, Manager and any other party designated by Owner shall be added as additional insured parties under Contractor's general liability, umbrella or excess liability, and automobile liability policies. All such policies shall be endorsed to include the following language:

"Coverage afforded the Additional Insureds under this policy shall be primary insurance. If the Additional Insureds have other insurance which is applicable to the loss, such other insurance shall be on an excess basis. The amount of the company's liability under this policy shall not be reduced by the existence of such other insurance."

The aforementioned insurance shall list as additional named insured the following parties as their interest may appear:

Girard Estate Leasehold, a Pennsylvania nonprofit corporation; Girard Estate Fee, a Pennsylvania nonprofit corporation; Kennedy Wilson Properties, Ltd.; Kennedy-Wilson Pennsylvania Management, Inc.; and their respective partners, members, agents, and employees.

- 1.2 Contractor, before commencing Work, will supply Owner with Certificate of Insurance evidencing compliance with the minimum requirements listed above along with copies of actual additional insured endorsements. Each certificate shall state that the insurance evidenced by such certificate will not be canceled or reduced without thirty (30) days prior written notice to the Owner.
- 1.3 Contractor shall maintain a file of Certificates of Insurance received from each subcontractor and/or sub-contractors of any tier.
- 1.4 Each subcontractor and/or Sub-subcontractors of any tier, shall maintain the following insurance in amounts not less than those specified below:
- (i) Workers' Compensation in accordance with the laws of the state with jurisdiction, and Employer's Liability in an amount not less than \$1,000,000.
 - (ii) Commercial General Liability
 - A. Coverage A - Bodily Injury and Property Damage Liability with a \$2,000,000 limit per occurrence per project.
 - B. Coverage B - Personal and Advertising Injury Liability with a \$2,000,000 limit per person.
 - C. Products and Completed Operations with \$2,000,000 limit per occurrence and in the aggregate.

- D. General Aggregate with a \$4,000,000 limit per project.
 - E. Owner, Manager and Owners Agents are to be named as additional insureds.
 - F. Above is to include Broad Form Contractual Liability, Broad Form Property Damage and Explosion, Collapse and Underground Hazards coverage.
- (iii) Comprehensive Automobile Liability
- A. Bodily Injury and Property Damage Liability with a combined single limit in an amount not less than \$1,000,000 for each person in one accident, and \$1,000,000 for injuries sustained by two or more persons in any one accident.
 - B. Above to include Employer's Non-Owned and Hired Car Coverage.
- (iv) Umbrella Liability or Excess Liability
- A. Following form over the primary coverage in an amount not less than \$2,000,000 each occurrence and in the aggregate.
- 1.5 Each subcontractor, and/or Sub-subcontractor of any tier, shall furnish Contractor before commencing work, Certificates of Insurance, evidencing compliance with the minimum requirements listed above including attachment of actual additional insured endorsement, and evidence that insurance afforded the additional insureds shall be considered primary insurance to any that might otherwise be available to the additional insureds. Each certificate shall state that the insurance evidenced by such certificate will not be canceled or reduced without thirty (30) days prior written notice to the Contractor. Subcontractors and/or Sub-subcontractors minimum insurance requirements can be waived only if so done in writing by the Owner.

2. PROPERTY INSURANCE

- 2.1 Unless otherwise provided, the Owner shall purchase and maintain property insurance upon the entire work at the site to the full insurable value thereof. This property insurance shall be written on the standard completed value form. This insurance shall include the interests of the Owner, Contractor and each Subcontractor and Sub-subcontractor in the work and shall insure against Fire, Extended Coverage and All Risk perils. This policy of insurance shall bear a deductible no greater than \$50,000 each occurrence.
- 2.2 The Owner shall file a copy of the policy with the Contractor upon receipt of same from the insurer.
- 2.3 The Owner, Contractor, Subcontractors and all Sub-subcontractors of any tier, waive all rights against each other for damage caused by fire or other perils to the extent covered by insurance provided under paragraph 2.1 or by other insurance covering the loss, except such rights as they may have to the proceeds of such insurance.

- 2.4 Any insured loss is to be adjusted with the Owner and made payable to the Owner as trustee for the insureds, as their interest may appear, subject to the requirements of any applicable mortgage clause and of paragraph 2.6.
- 2.5 If the Owner finds it necessary to occupy or use a portion of the work prior to substantial completion, such occupancy shall not commence prior to a time mutually agreed to by the Owner and Contractor. In the event of such occupancy the property insurance carrier shall be notified by the Contractor prior to occupancy.
- 2.6 The Owner as trustee shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within five days after the occurrence of loss to the Owners exercise of this power, and if such objection be made, arbitrators shall be chosen.

The Owner as trustee shall, in that case, make settlement with the insurers in accordance with the directions of such arbitrators. If distribution of the insurance proceeds by arbitration is required, the arbitrators will direct such distribution.

- 2.7 The Owner shall not be responsible for nor shall he insure the property of the Contractor, Subcontractors or Sub-subcontractors, including but not limited to, tools and equipment, located at the job site which is not intended to be incorporated into the work. The Contractor, Subcontractors, and Sub-subcontractors of any tier, shall be responsible for providing Fire, Theft or other insurance to protect their interests and the interest of the Owner in materials in transit or in storage off the site, until such materials are incorporated in the work.

Exhibit C

City Provisions

This Exhibit "C" is attached to and made a part of Amendment No. 2 to Master Lease and Lease dated January 27, 2009, by and among Girard Estate Leasehold, a Pennsylvania non-profit corporation ("Girard"), Philadelphia Authority for Industrial Development, a body politic and corporate ("PAID") and The City of Philadelphia, a body politic and corporate ("Tenant" or "City").

Defined Terms

Capitalized terms used and not defined in this Exhibit shall have the meanings ascribed to them in the Amendment.

Fair Practices

Girard agrees, in performing this Lease, 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.

Nondiscrimination

(a) This Lease is entered into under the terms of the Philadelphia Home Rule Charter and in its performance, Girard shall not discriminate nor permit discrimination against any person because of race, color, sex, sexual orientation, religion, national origin or ancestry. In the event of such discrimination which goes uncured more than thirty (30) days after notice from PAID, PAID may terminate this Lease forthwith or exercise any other remedy provided to PAID in this Lease or at law or in equity. The foregoing shall not be construed to limit or restrict PAID's right to terminate this Lease as set forth in other sections of this Lease.

(b) In accordance with Chapter 17-400 of The Philadelphia Code, Girard 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 this Lease entitling PAID to all rights and remedies provided in this Lease or otherwise available at law or in equity.

(c) Girard agrees to include subparagraphs (a) and (b) of this Section, with appropriate adjustments for the identity of the parties, in all subcontracts which are entered into for work to be performed on the Premises pursuant to this Lease.

(d) Girard further agrees to cooperate with the Commission on Human Relations 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.

Philadelphia 21st Century Minimum Wage Standard

Girard will comply with the requirements of Section 17-1300 of the Philadelphia Code as they exist on the date when the Girard entered into this Lease with PAID or as they exist on the date when any amendment is executed to this Lease. Girard will promptly provide to PAID upon request documents and information verifying its compliance with the requirements of Section 17-1300. Girard will notify its affected employees with regard to the wages that are required to be paid pursuant to this Section 17-1300.

Prohibited Gifts

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.

Girard understands and agrees that if it offers 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 subject to sanctions with respect to future City contracts. Such sanctions may range from disqualification from participation in a particular contract to debarment, depending on the nature of the violation.

Certification of Non-Indebtedness

(a) Girard hereby certifies and represents that Girard and Girard's parent company(ies) and subsidiary(ies) and affiliate(s), if any, are not currently indebted to the City, and will not during the term of this 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 written contract or payment plan satisfactory to the City has been established.

(b) Girard shall require all contractors and subcontractors performing repairs and/or alterations on the Premises to be bound by the following provision and PAID shall cooperate with the City in exercising the rights and remedies described below or otherwise available at law or in equity:

"Contractor ('Contractor') or Subcontractor ('Subcontractor') hereby certifies and represents that Contractor or Subcontractor, and Contractor or Subcontractor's parent company(ies) and their subsidiary(ies), are not currently indebted to The City of Philadelphia (the "City"), and will not at any time during the Term of PAID's Lease, dated _____, 200__ with the City (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 written contract or payment plan satisfactory to the City has been established."

(c) Any breach or failure to conform to the aforesaid certifications shall constitute a default by the Girard, if such default is not cured within thirty (30) days after Girard's receipt of written notice of such default, shall entitle PAID to exercise any rights or remedies available to it under this Lease, and at law and in equity.

MacBride Principles

(a) Girard, by execution of this Lease, certifies and represents that

(i) Girard (including any parent company, subsidiary, exclusive distributor or company affiliated with the PAID) does not have, and will not have at any time during the Term of this Lease (including any extensions or renewals thereof) , any investments, licenses, franchises, management agreements or operations in Northern

Ireland and (ii) no product or service to be provided to the PAID under this Lease will originate in Northern Ireland, unless Girard has implemented the fair employment principles embodied in the MacBride Principles.

(ii) In the performance of this Lease, Girard agrees that it will not utilize any suppliers, subcontractors or sublicensees at any tier (i) who have (or whose parent, subsidiary, exclusive distributor or company affiliate have) any investments, licenses, franchises, management agreements or operations in Northern Ireland, or (ii) who will provide products originating in Northern Ireland unless said supplier, sublicensee or subcontractor has implemented the fair employment principles embodied in the MacBride Principles. Girard further agrees to include the provisions of this Section with appropriate adjustments for the identity of the parties, in all subcontracts and supply agreements which are entered into in connection with the performance of this Lease.

(iii) Girard agrees to cooperate with the City's Director of Finance in any manner which the said Director of Finance deems reasonable and necessary to carry out the Director's responsibilities under Section 17-104 of The Philadelphia Code. Girard expressly understands and agrees that any false certification or representation in connection with this Section or any failure to comply with the provisions of this Section shall constitute a substantial breach of this Agreement entitling PAID to all rights and remedies provided in this Lease or otherwise available at law (including, but not limited to, Section 17-104 of The Philadelphia Code) or in equity. In addition, it is understood that false certification or representation is subject to prosecution under Title 18 Pa. C.S.A. Section 4904.

Business Corporate and Slavery Era Insurance Disclosure

Girard, after execution of this Lease, will complete an affidavit certifying and representing that the Girard (including any parent company, subsidiary, exclusive distributor or company affiliated with Girard) has searched any and all records of Girard or any predecessor company regarding records of investments or profits from slavery or slaveholder insurance policies during the slavery era. The names of any slaves or slaveholders described in those records must be disclosed in the affidavit. Girard expressly understands and agrees that any false certification or representation in connection with this Section or any failure to comply with the provisions of this Section shall constitute a substantial breach of this Lease entitling PAID to all rights and remedies provided in this Lease or otherwise available in law (including, but not limited to, Section 17-104 of The Philadelphia Code) or equity and the Lease will be deemed voidable. In addition, it is understood that false certification or representation is subject to prosecution under Title 18 Pa. C.S. Section 4904.

FY22

CONTRACT # 2021-06

CONTRACTOR AGREEMENT

THIS AGREEMENT, made this 17 day of June, 2021, between Clemens Construction Company, Inc. (hereinafter called the "Contractor") and GIRARD ESTATE LEASEHOLD (hereinafter called the "Owner") by KENNEDY-WILSON PENNSYLVANIA MANAGEMENT INC., its managing agent (hereinafter defined "KWPMI"), not personally but solely on behalf of our tenant, The City of Philadelphia – Philadelphia Water Department (hereinafter called the "Tenant") for services to be performed at that certain property located at 1101 Market Street, Philadelphia, PA 19107 (hereinafter called the "Property").

WITNESSETH

1. **The Work.** Contractor shall furnish and install in a thoroughly workmanlike manner and to the complete satisfaction of Owner all the work (the "Work") described in Exhibit "A," including all necessary scaffolding, equipment, labor and materials. The materials and labor to be furnished and performed hereunder shall consist of everything that is necessary and required in connection with the proper installation of all the Work to be performed by the Contractor.

2. **Time of Commencement and Completion.** Contractor recognizes that time is of the essence in this Contract and Contractor shall commence the Work promptly, and shall pursue such Work diligently with adequate materials, labor and equipment so as to provide for continuous, uninterrupted progress in the performance of the Work. Subject to Article 12(d), or as otherwise may be mutually agreed upon in writing, the Work shall be completed on or before the dates set forth in the project schedule, attached hereto as Exhibit "D." Should Contractor fail to carry on the Work with sufficient personnel or materials and thereby cause delay of the Work covered herein, or if Contractor should be adjudged bankrupt or become insolvent, or if he should fail to make prompt payment for materials or labor, or if he should otherwise be guilty of a violation of any provision of this Agreement, then Owner may, without prejudice to any other right or remedy Owner may have and after giving Contractor seven days written notice, either a) terminate the employment of Contractor under this Agreement and relet the Work at the sole cost and expense of Contractor, in which event the contractor agrees that no materials, machinery or tools belonging the Contractor shall be removed from the job until completion; or b) hold Contractor to this Agreement and have the right to engage additional labor and/or materials at Contractor's sole cost and expense as Owner may deem necessary for proper performance hereunder. In either event, Owner is hereby authorized to deduct from the Contract Sum, as hereinafter defined, the cost of such additional labor and/or materials.

3. **The Contract Sum.** Owner agrees to pay Contractor for the performance of the Work, the total sum of \$702,029.77 (Seven Hundred Two Thousand, Twenty-Nine and 77/100 Dollars), subject to adjustment as provided for herein. Owner shall make payments to the Contractor in accordance with Paragraph 4 of this Agreement. The final payment shall be made upon 1) final completion of all Work by the Contractor; 2) final approval and acceptance of the Work by Owner; and 3) complete and proper documentation satisfactory to and as may be required by Owner in substantiation of the payment requested

by Contractor. If the Contractor encounters conditions at the site that are: (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the contract documents; or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in this Agreement, the Contractor shall promptly provide notice to KWPMI before conditions are disturbed. If such conditions differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, the Contractor will be entitled to an equitable adjustment of the Contract Sum or the time for performance of the Work, or both.

4. **Payment.**

4.1 **General Provisions.**

4.1.1 **Schedule of Values.** The Contractor shall provide a schedule of values satisfactory to the Owner no more than five (5) days from the date of execution of this Agreement.

4.1.2 **Payment Use Restriction.** Payment received by the Contractor shall be used to satisfy the indebtedness owed by the Contractor to any person furnishing labor or materials for use in performing the Contractor's work on this project before it is used in any other manner.

4.1.3 **Payment Use Verification.** The Owner shall have the right at all times to contact the Contractor's subcontractors and suppliers to ensure that the same are being paid promptly by the Contractor for labor or materials furnished for use performing the Contractor's Work.

4.1.4 **Partial Lien Waivers and Affidavits.** As a prerequisite for payment, the Contractor shall provide, in a form satisfactory to the Owner, partial lien or claim waivers and affidavits from the Contractor, and its subcontractors and suppliers for the completed Contractor's Work. Such waivers may be made conditional upon payment.

4.1.5 **Contractor Payment Failure.** Upon payment by the Owner, Contractor shall promptly pay its lower tier sub-contractors and material suppliers the amounts to which they are entitled. In the event the Owner has reason to believe that obligations for labor and material incurred in the performance of the Contractor's Work are not being paid, the Owner may give written notice of such claim or lien to the Contractor and may take any steps deemed necessary to assure that progress payments are utilized to pay such obligations including but not limited to the issuance of joint checks. If upon receipt of said notice, the Contractor does not

- a. supply evidence to the satisfaction of the Owner that the money owing to the claimant(s) have been paid; or
- b. post a bond indemnifying the owner, any Mortgagee of the building or the site, the premises or accompanying land from any such claim or lien; then the Owner shall have the right to withhold from any payments due or to become due to the Contractor a reasonable amount to protect the Owner from any and all loss, damage or expense including attorney's fees arising out of or relating to any such claim or lien has been satisfied by the Contractor.

Notwithstanding the foregoing, the Contractor shall not be responsible for the removal of, or to bond off, or to indemnify the Owner with respect to, mechanics' liens filed for labor and materials for which the Owner has not made payment to the Contractor.

4.1.6 **Contractor Assignment of Payments.** The Contractor shall not assign any moneys due or to become due under this Contract or under any Change Order thereto, without the written consent of Owner, unless such assignment is intended to create a new security interest within the scope of Article 9 of the Uniform Commercial Code. Should Contractor assign all or any part of any moneys due or to become due under this Contract, to create a new security interest or of any other purpose, the instrument of assignment shall contain a clause to the effect that the assignee's right is and to any money due or to become due to the Subcontractor shall be subject to the claims of all persons, firms and corporations for services rendered of materials supplied for the performance of the Work under this contract and any Change Orders.

4.1.7 **Payment Not Acceptance.** Payments to the Contractor do not constitute or imply acceptance of any portion of the Contractor's Work.

4.2 **Progress Payments**

4.2.1 **Application.** The Contractor's first Application for Payment shall be accompanied by Contractor's affidavit and partial waiver of lien for the full amount of the payment and the Work covered thereby and conditioned only upon payment of such application. Each subsequent Application for Payment shall be accompanied by Contractor's and each sub-contractors affidavit and unconditional partial lien waiver for the amount of the previous application for payment and a conditional lien waiver from the contractor for the amount of the current application for payment.

4.2.2 **Retainage/Security.** The rate of retainage shall be equal 10% of the total contract value and shall insure the satisfactory completion of the Subcontractor's Work.

4.2.3 **Time of Application.** The Contractor shall submit progress payment applications to the Owner no later than the 25th day of each payment period for work performed up to and including the 25th day of the payment period indicating work completed.

4.2.4 **Stored Materials.** Unless otherwise provided in the Contract Documents, and if approved in advance by the Owner, applications for payment may not include materials and equipment not incorporated in the Contractor's Work or delivered to and stored at some other location unless agreed to in writing.

4.2.5 **Time of Payment.** Monthly Progress payments to the Contractor for satisfactory performance of the Contractor's Work shall be made no later than thirty (30) days after approved receipt by the Owner of application for payment by Contractor for the Contractor's Work.

4.2.6 **Payment Delay.** If for any reason not the fault of the Contractor, the Contractor does not receive a progress payment from the Owner within thirty (30) days after the date such payment is due, as defined in Subparagraph 4.2.5, then the Contractor, upon giving an additional seven (7) days written notice to the Owner, and without prejudice to and in addition to any other legal remedies, may stop work until payment of the full amount owing to the Contractor has been received. To the extent obtained by the Owner under the Contract Documents, the contract price shall be increased by the amount of the Contractor's reasonable cost of shutdown, delay, and start-up, which shall be effected by appropriate Change Order.

4.3 **Final Payment.**

4.3.1 **Application.** Upon acceptance of the Contractor's Work by the Owner, and upon the Contractor furnishing evidence of fulfillment of the Contractor's obligations in accordance with the Contract Documents and Subparagraph 4.3.2, the Owner shall process the Contractor's application for final payment without delay.

4.3.2 **Requirements.** Before the Owner shall be required to process the Contractor's application for final payment the Contractor shall submit to the Owner:

- a. an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Contractor's Work for which the owner or owner's property might in any way be liable, have been paid or otherwise satisfied;
- b. consent of surety to final payment, if required;
- c. satisfaction of required close-out procedures;
- d. certification that insurance required by the Contract Documents to remain in effect beyond final payment is in effect and will not be canceled or allowed to expire without at least thirty (30) days written notice to the Owner unless a longer period is stipulated in the Contract; and
- e. affidavits and final waivers of liens from the contractor, subcontractors and suppliers who have not previously furnished such affidavits and final waivers of lien. Final payment shall constitute a waiver of all claims by the Contractor relating to the Contractor's Work, but shall in no way relieve the Contractor of liability for the obligations assumed under Paragraph 7, or for faulty or defective work appearing after final payment.

4.3.3 **Time of Payment.** Final payment of the balance due of the Contract Price shall be made to the Contractor

- a. upon receipt of the waiver of all claims related to the Contractor's Work except for unsettled liens, unknown defective work, and noncompliance with the Contract Documents or warranties; and
- b. within thirty (30) days after receipt by the Owner of final approved application for payment for Contractor's Work.

5. **Changes in the Work.**
- a. Owner, without invalidating the Agreement, may order changes in the Work consisting of additions, deletions or modification, and the Contract Sum shall be adjusted accordingly. All such changes in the Work shall be authorized by a written Change Order signed by Owner or KWPMI;
 - b. The adjustment, if any, in the Contract Sum resulting from a change in the Work shall be determined by mutual agreement of Owner and Contractor; provided, however, that in the event Owner and Contractor do not promptly agree upon the adjustment in the Contract Sum, the Contractor shall nevertheless proceed, upon the request of Owner, promptly to perform (without delay) the Work as changed, leaving such adjustment in the Contract Sum to later determination. The Contractor shall be entitled to receive payment for the undisputed portion of the cost pending final resolution of the cost.
6. **Agreements of Contractor.**
- a. Contractor shall pay all State and Federal payroll tax liabilities occasioned by labor on account of the Work and all Federal, State or other governmental sales and use taxes or similar levies on all materials, tools and equipment furnished under this Agreement;
 - b. Contractor shall observe and comply with all laws, ordinances and regulations of all duly constituted governmental authorities and insurance rating agencies relating to the performance of the Work and the materials supplied hereunder, shall satisfy all the requirements of the inspectors, if any, and at Contractor's sole cost and expense shall apply for and obtain all necessary permits, licenses, or any other certificates required by said authorities;
 - c. Contractor shall pay all royalties and license fees, if any, pertaining to the Work and the materials supplied hereunder;
 - d. Contractor shall provide, at Contractor's sole cost and expense, adequate insurance in amounts and with carriers satisfactory to Owner, fully covering and indemnifying Owner, its agents or representatives and Contractor as their respective interests may appear against any loss because of injury or damage to persons, including death, or property (including adjacent property) caused by the Contractor during the performance of this Agreement and until actual completion of the Work covered herein. Such insurance shall be in accordance with the provisions of the Insurance Rider attached hereto as Exhibit "B";
 - e. Contractor shall repair and replace all its work and materials damaged, lost, stolen or destroyed prior to actual completion of the Work, such repair and replacement to be at the sole cost and expense of Contractor, and Owner is hereby authorized to deduct from the Contract Sum and retain an amount sufficient to pay for such repairs and replacement in the event Contractor does not, in the opinion of Owner within a reasonable time after such damage, loss, theft or destruction, make such repairs and replacement;
 - f. Contractor shall supply, install and maintain suitable protection for any and all pedestrian traffic within the vicinity of the Work. Said protection shall be in compliance within any and all City, State and Federal codes and further subject to Owner's approval;
 - g. Contractor shall diligently, on a daily basis, remove rubbish and waste materials created from its operation on the Property and adjacent improvements as the Work progresses so as to maintain a clean, safe condition or

shall reimburse Owner at \$60.00 per man-hour for doing so. Upon completion of the Work, Contractor shall remove all of its tools, materials, equipment and rubbish from the Property and leave the job site broom clean. Owner is hereby authorized to deduct from the Contract Sum and retain \$60.00 per man-hour for said cleanup, in the event that Contractor does not, in the opinion of Owner, diligently clean up the job site on a daily basis.

- h. Prior to commencement of the Work and within ten (10) days of the signing of this Agreement, Contractor shall provide Owner with Insurance Certificates in accordance with the provisions of the Insurance Rider attached hereto as Exhibit "B";
- i. Contractor shall furnish Owner within five (5) days of request thereof, a written list of all sub-contractors to be used and all the vendors from which Contractor will purchase or has purchased materials used or to be used in the performance of the Work.

7. **Guarantee.** Unless otherwise addressed in Exhibit "A," Contractor shall guarantee at Contractor's sole cost and expense to promptly repair and replace any work and any materials used in such Work which may be found faulty or defective for a period of one (1) year after the Work is completed and accepted by the Owner. All Work which may be damaged because of such defect shall be promptly replaced or repaired by Contractor at its sole cost and expense. The guarantee period for any work and materials repaired and/or replaced shall run for a period of one (1) year after the repair or replacement of that Work is completed and accepted by the Owner.

8. **Waiver and Entire Agreement.** No payment on account, nor final payment, nor filing of any Notice of Completion, nor partial or entire use occupancy of the premises, by Owner, nor acceptance of the Work by Owner shall be construed in any way to be a waiver of any of the provisions of this Agreement. All negotiations and agreements are merged herein and there are no provisions, covenants or other agreements between the parties other than those contained herein or incorporated herein by reference and this Agreement is the entire Agreement between the parties hereto with respect to the subject matter hereof.

9. **Assignment and Subcontracting.** This Agreement shall not be assigned, in whole or in part or in any respect, nor subcontracted in whole by Contractor without the written consent of Owner being first had and obtained. Any such attempt to so assign or subcontract this Agreement by Contractor without the prior written consent of Owner shall be null and void and shall operate, at Owner's election, as an instant forfeiture and repudiation thereof by Contractor, and the rights of the parties shall be determined in the same manner as though Contractor has, at the time of such attempted assignment or subcontracting, failed and refused to continue his performance as required under this Agreement.

10. **Indemnification.** Contractor shall indemnify, defend and hold harmless Owner, KWPMI, and each of their respective directors, officers, employees, agents, successors and assigns from any and all claims, suits and causes of action for personal injury or property damage arising from or in any way caused by the performance of the Work hereunder or any acts by Contractor, its subcontractors and their respective agents, servants or employees or for infringement of patents or violation of patent rights, including all costs, expenses and attorney's fees incurred by an indemnified party in defending any claims, suits or causes of action that may arise.

11. **City Provisions.** Contractor acknowledges receipt of a copy of the "City Provisions" attached as an exhibit to a Lease between Owner and Philadelphia Authority for Industrial Development dated January 27, 2009, a true and correct copy of which is attached hereto.

In accordance with Subsection (c) of the Nondiscrimination Section of those City Provisions, Contractor agrees:

- a. That Contractor shall not discriminate nor permit discrimination against any person because of race, color, sex, sexual orientation, religion, national origin or ancestry. In the event of such discrimination which goes uncured more than thirty (30) days after notice from Owner, Owner may terminate this Agreement forthwith or exercise any other remedy provided to Owner in this Agreement or at law or in equity. The foregoing shall not be construed to limit or restrict Owner's right to terminate this Agreement as set forth in other sections of this Agreement; and
- b. That Contractor's 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 and 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 this Agreement entitling Owner to all rights and remedies provided in this Agreement or otherwise available at law or in equity.

12. **Miscellaneous.**

- a. Contractor shall afford any other contractors and materialmen the reasonable opportunity for the execution of their work and for the introduction and storage of their materials on the job site and shall properly coordinate its work with theirs. If any part of Contractor's work depends for proper execution or results upon the work of any other contractor, Contractor shall inspect and properly report in writing to Owner any defects in such work that render it unsuitable for proper execution and results. Proceeding with the Work hereunder shall constitute acceptance by Contractor of the other contractor's work as being fit and proper for the reception of its work. By virtue of the foregoing provisions, Contractor, as an independent contractor, will be held responsible for the satisfactory completion of the work;
- b. Should Contractor cause damage to the work of any other contractor or to any parts of the Property, Contractor agrees to pay the amount of such damage and any incidental expenses in connection therewith incurred by Owner. Owner is hereby authorized to deduct such amount from the Contract Sum, and in the event such amount exceeds the Contract Sum due Contractor hereunder, Contractor shall promptly pay Owner the amount of such excess;

- c. Contractor shall perform as much of the Work as possible during normal working hours, with the Contractor's full knowledge that the building area where the Work is to be performed does and will continue to have normal business activity and traffic, and Contractor agrees that it will take every precaution to protect and show courtesy to the public and building personnel during the progress of the Work and that all Work and the delivery and storage of all equipment, supplies and materials shall be coordinated with and at the discretion of the property manager. Contractor further understands and agrees that reasonable access must be provided within the building area and that Contractor's Work shall at all times be confined and performed so as to provide minimal disturbance or interruption of the normal business operation of the Property;
- d. Should Contractor be unable to perform its covenants, obligations, duties and agreements as described herein and hereunder due to conditions beyond his control, said conditions being limited to casualties, acts or omissions of the Owner or KWPMI, or an employee, agent or contractor of either of them resulting in actual material delays (following notice from Contractor), strikes or labor difficulties, inclement weather conditions, civil disorder, war or other national emergencies, Contractor shall be allowed to extend the Work beyond the time limitation as described in Article 2 above, limited by the number of working days the Contractor was unable to perform its obligations as described herein, provided however, that Contractor shall immediately notify Owner of any such delays;
- e. All Work done and materials to be furnished hereunder must pass all applicable inspections, including, without limitation, inspection by Owner, KWPMI, Client, and/or Owner's duly authorized agents and representatives and all governmental and/or insurance inspections;
- f. Any and all notices hereunder, shall be in writing and posted in either the United States Mail, certified or registered mail, postage prepaid, or by overnight courier service to the respective parties at the following addresses:

TO CONTRACTOR

CLEMENS CONSTRUCTION COMPANY, INC.
1435 Walnut Street
Philadelphia, PA 19102

TO OWNER:

GIRARD ESTATE LEASEHOLD
c/o Kennedy-Wilson Pennsylvania Management
Inc.
1101 Market Street, Suite 105
Philadelphia, PA 19107
Attention: Richard J. McClure
Managing Director

- g. Owner hereby authorizes Contractor to take all direction hereunder from KWPMI.
- h. It is expressly understood and agreed, anything contained herein to the contrary notwithstanding, that each and all of the representations, warranties, covenants, undertakings, indemnities and agreements made by or on behalf of Owner or KWPMI, are not made for the purpose or with the intention of binding either Owner or KWPMI or any of their respective partners, shareholders, officers, directors, employees, trustees or agents in


their individual capacities, but are made and intended solely for the purpose of binding and shall be enforceable only to the extent of Owner's interest in the Property, and that no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against Owner, KWPMI or any of their respective partners, shareholders, officers, directors, employees, trustees or agents in their individual capacities (beyond Owner's interest in the Property), on account of any representation, warranty, covenant, undertaking, indemnity, or agreement of Owner or KWPMI, either express or implied, all such personal liability or responsibility, if any (beyond Owner's interest in the Property), being expressly waived and released by Contractor and by all persons claiming by, through or under the Agreement.

WITNESS WHEREOF, the parties hereto cause this Agreement to be executed by their duly authorized representatives as of the day and year first above written.

OWNER

GIRARD ESTATE LEASEHOLD, a Pennsylvania not-for-profit corporation

By: KENNEDY-WILSON PENNSYLVANIA
MANAGEMENT INC., a Delaware corporation,
its managing agent


By: 
Richard J. McClure

Its: Managing Director

6/17/21
Date

CONTRACTOR

CLEMENS CONSTRUCTION COMPANY, INC.

By: 
Its: VP Project Management

6/17/21
Date

EXHIBIT "A"**The "Work"****1101 Market – Philadelphia Water Department Restroom and Elevator Lobby Renovations
Contract # 2021-10**

Contractor shall provide all necessary labor, materials, equipment, and supervision required to complete the following work in accordance with the following plans and specifications. All work is to conform to all applicable governing codes and regulations. The work is to include, but not limited to the following:

A. CONSTRUCTION DOCUMENTS

The following documents collectively comprise the scope of work and understanding between the parties relative to the renovation of the restrooms and elevator lobbies for the Philadelphia Water Department (the "Work").

NO.	DOCUMENT	DATED/SENT
AN-0	Cover Sheet	03/24/2021
AN-1.2	2nd FLOOR LIFE SAFETY PLAN	03/24/2021
AN-1.3	3rd FLOOR LIFE SAFETY PLAN	03/24/2021
AN-1.5	5th FLOOR LIFE SAFETY PLAN	03/24/2021
AN-1.6	6th FLOOR LIFE SAFETY PLAN	03/24/2021
AN-2	GENERAL NOTES	03/24/2021
AN-3	ACCESSIBILITY DIAGRAMS	03/24/2021
A0-1	FLOORS 2,3,5 & 6 PARTIAL DEMOLITION PLAN	03/24/2021
A1-1	FLOORS 2,3,5 & 6 PARTIAL CONSTRUCTION PLAN	03/24/2021
A2-1	FLOORS 2,3,5 & 6 PARTIAL REFLECTED CEILING PLAN	03/24/2021
A4-1	FLOORS 2,3,5 & 6 PARTIAL FINISH PLANS AND SPECIFICATIONS	03/24/2021
A7-1	INTERIOR ELEVATIONS	03/24/2021
A8-1	INTERIOR DETAILS	03/24/2021
A9-1	DOOR SCHEDULE, DOOR & FRAMES, PARTITIONS, Rev #1	05/28/2021
M0-0	SYMBOLS, LEGANDS, AND ABBREVIATIONS – MECHANICAL	03/24/2021
M0-1	FLOORS 2,3,5 & 6 PARTIAL DEMOLITION PLAN – MECHANICAL	03/24/2021
M1-1	FLOORS 2,3,5 & 6 PARTIAL CONSTRUCTION PLAN – MECHANICAL	03/24/2021
M3-0	SCHEDULES AND DETAILS – MECHANICAL	03/24/2021
M4-0	SPECIFICATIONS – MECHANICAL	03/24/2021
P0-0	SYMBOLS, LEGANDS, AND ABBREVIATIONS – PLUMBING	03/24/2021
P0-1	FLOORS 2,3,5 & 6 PARTIAL DEMOLITION PLANS – PLUMBING	03/24/2021
P1-1	FLOORS 2,3,5 & 6 PARTIAL CONSTRUCTION PLANS – PLUMBING	03/24/2021
P3-0	SCHEDULES AND DETAILS – PLUMBING	03/24/2021
P4-0	SPECIFICATIONS – PLUMBING	03/24/2021
P4-1	SPECIFICATIONS – PLUMBING	03/24/2021
E0-0A	SYMBOLS, LEGENDS AND ABBREVIATIONS – ELECTRICAL	03/24/2021
E0-0B	GENERAL NOTES – ELECTRICAL	03/24/2021
E0-1	FLOORS 2,3,5 & 6 PARTIAL DEMOLITION PLANS – ELECTRICAL	03/24/2021
E1-1	FLOORS 2,3,5 & 6 PARTIAL CONSTRUCTION PLANS – LIGHTING	03/24/2021
E2-1	FLOORS 2,3,5 & 6 PARTIAL CONSTRUCTION PLANS – ELECTRICAL	03/24/2021
E3-0	ONE-LINE DIAGRAM AND SCHEDULES – ELECTRICAL	03/24/2021
E4-0	DETAILS – ELECTRICAL	03/24/2021
E5-0	SPECIFICATIONS – ELECTRICAL	03/24/2021
E5-1	SPECIFICATIONS – ELECTRICAL	03/24/2021
FA0-0	SYMBOLS, LEGENDS, AND ABBREVIATIONS – FIRE ALARM	03/24/2021
FA0-1	FLOORS 2,3,5 & 6 PARTIAL DEMOLITION PLANS – FIRE ALARM	03/24/2021
FA1-1	FLOORS 2,3,5 & 6 PARTIAL CONSTRUCTION PLANS – FIRE ALARM	03/24/2021

FA4-0	SPECIFICATIONS – FIRE ALARM	03/24/2021
FA4-1	SPECIFICATIONS – FIRE ALARM	03/24/2021
FP0-0	SYMBOLS, LEGENDS, AND ABBREVIATIONS – FIRE PROTECTION	03/24/2021
FP0-1	FLOORS 2,3,5 & 6 PARTIAL DEMOLITION PLANS – FIRE PROTECTION	03/24/2021
FP1-1	FLOORS 2,3,5 & 6 PARTIAL CONSTRUCTION PLANS – FIRE PROTECTION	03/24/2021
FP4-0	SPECIFICATIONS – FIRE PROTECTION	03/24/2021
FP4-1	SPECIFICATIONS – FIRE PROTECTION	03/24/2021
	Board of Directors of City Trusts – Supplier Diversity & Inclusion Policy	04/13/2021
	KWP Contractor Rules and Regulations	04/13/2021
	Clemens email transmittal / Proposal	04/29/2021
	Clemens email transmittal / Proposal	05/03/2021
	Clemens email transmittal / Proposal	05/04/2021

B. SCHEDULE OF VALUES

Item	Cost
Demolition	\$32,618.00
Millwork	\$51,851.34
Metal Studs & Drywall	\$128,308.52
Tile Floor/Wall	\$59,486.00
Floor Preparation	\$3,400.00
Glazing	\$112,377.00
Painting	\$5922.00
Plumbing	\$52,987.80
Restroom Accessories	\$22,900.00
4 th Floor Accessories – Accepted Alternate	\$4932.00
Fire Protection - Sprinklers	\$8,901.80
HVAC	\$16,400.00
Electrical	\$103,400.00
Branding Package	\$13,918.00
Allowances:	
MEP Conflict Allowance (included in Base Price)	\$4,000
Alternate Selected:	
Addition of Automatic Door Openers for Elevator Lobby Doors Rev 1	\$28,000
Sub-Total	\$645,402.46
General Conditions	\$33,639.09
Permit - Building Permit Allowance*	\$2,571
Insurance/Taxes/Fees	\$20,417.22
Sub Total General Contractor Overhead	\$56,627.31
Total General Contractor	\$702,029.77
Notes/Alternates:	
Premium cost for work to take place outside of normal business hours	\$83,642
Deduct for eliminating the 6 th floor elevator lobby and gang toilet rooms	(\$175,535)
Deduct to Eliminate back painted glass and provide level 5 finish	(\$31,400)
CONTRACTOR estimated date for substantial completion	2/15/2021 refer to exhibit "D"
CONTRACTOR's overhead and fee for any and all changes orders not contemplated above – reflect as %	8%

*All allowances shall be reconciled with appropriate documentation and where applicable, approved in advance by Owner.

Note: Tenant is a tax-exempt entity. In the event that any of the costs above include PA or Philadelphia sales tax Contractor shall adjust the Contract Sum accordingly.

Additional Comments:

1. All work shall be done in strict accordance with the Construction Documents referenced herein.
2. Project shall be phased in such a manner that limits the downtime and consistent with KWPMI and the Tenant's expectations. For the purposes hereof, it is anticipated that Phase 1 will include the 3rd and 5th floors and Phase 2 will include the 2nd and 6th floors.
3. Contractor shall coordinate all work with KWPMI prior to commencing the Work. Work hours/restrictions shall be as contemplated in the Construction Documents. Contractor shall provide necessary protection when performing work.
4. Contractor, at its sole cost and expense, shall obtain any and all L&I (or AHJ) approvals and permits prior to the commencement of the Work.
5. Immediately after the initial meeting with Contractor, Contractor shall further define and develop the critical path schedule, identifying all of the significant milestones and provide the same to Owner for approval. Said schedule shall be relatively consistent with that provided as part of Contractor's original proposal. Contractor shall make Owner aware of any long lead items which could jeopardize the timely completion of the project.
6. Contractor shall be responsible for working with and coordinating with Owner's and/or Tenant's security, elevator and/or telecom providers, if necessary.
7. Contractor shall recognize that the work contemplated herein is located in highly visible areas. As such, all work shall be performed in a manner so as to minimize the impact on tenants' operations and/or that of the building. Contractor shall provide all necessary (interior and exterior) protection when performing work. Additionally, it should be noted that certain portions of the Work must be completed off hours, including but not limited to: Any noise producing work: tile removal, shooting into the deck, etc.
8. Contractor shall keep the job site neat and orderly at all times with adequate dust protection. If work is performed off hours, the area shall be left safe, clean and ready for the next business day.
9. Contractor to become familiar with all specified materials, inclusive of shipping, handling, storage and installation means and methods of the same.
10. Contractor acknowledges that other projects in the building may be completed simultaneous with Owner's project. As such, coordination of all material movements (demo and new construction materials) must be coordinated with KWPMI.
11. Contractor shall receive all deliveries via the loading dock, which shall be coordinated off-hours with KWPMI at no additional cost.
12. Contractor shall also be responsible for disposing/recycling of all demolition materials. The hauling of the debris shall be coordinated with KWPMI and shall be completed after hours, in accordance with the building rules and regulations.
13. Contractor affirms it is a licensed contractor, possessing good labor relations, capable of performing quality workmanship and working in harmony with Owner's contractors and sub-contractors and with other contractors and subcontractors working in the building. Said affirmation shall remain for the duration of the project and any warranty period.
14. Contractor shall present its proposed list of subs to Owner for approval prior to the commencement of the Work and identify any subs that are certified as MBE, WBE or DBE firms. Contractor shall track as necessary to satisfy Owner.
15. Contractor to maintain minutes for all project meetings, incorporating any edits required by the property or design team.
16. Contractor shall be responsible for any necessary sidewalk protection, as well as sidewalk and/or street closure permits, if applicable.
17. Upon completion of the Work (or each phase, Tenant, Owner (and/or its representatives) and Contractor shall jointly develop a construction punchlist. The construction punchlist shall be completed by Contractor within five (5) business days of receipt from Owner. Should any item on this list not be completed within this time frame, Owner reserves the right to have this work completed at Contractor's expense.
18. Contractor covenants that it shall, on or before ten (10) days after the release of the final construction payment, pay any subcontractor, materialman and anyone else acting or claiming through or under Contractor. Contractor shall

indemnify, defend and hold Owner harmless from and against the claim or lien and all direct or consequential loss resulting in any way from the filing of such claim or lien, and shall pay or cause to be paid to Owner the amount of its loss, with interest and all expenses incident to Contractor's failure to pay any payment obligation within the ten (10) day period described above, including attorneys' fees, costs and other disbursements. Owner shall have the right to recover any and all sums from Contractor without prejudice and any amount due Owner as a result of this indemnity.

19. Any lifts and/or scaffolding should be reviewed to ensure that they do not exceed the floor loading for the area/building. The live load for the building is 100lbs/sf.
20. KWPMI and/or Tenant reserves the right to exercise any/all change orders identified in the Construction Documents at the cost as identified in the Schedule of Values contained herein without additional markup or fee.

EXHIBIT "B"
INSURANCE RIDER
CONSTRUCTION AGREEMENT

1. LIABILITY INSURANCE

1.1 The Contractor shall maintain at his own cost and expense the following insurance in amounts not less than those specified below and issued by insurance companies licensed to do business in the state where the project is located, with a current A.M. Best rating of A or better and a financial class of at least VIII and a Standard and Poor's Claims Paying Ability Rating of not less than AA-.

(i) Workers' Compensation

- A. Statutory Coverage in accordance with the laws of the state with jurisdiction, including Voluntary Compensation and Other States.
- B. Employer's Liability with limits of not less than \$1,000,000 each accident/injury, \$1,000,000 each employee/disease, \$1,000,000 disease/policy limit.

(ii) Commercial General Liability

- A. Coverage A - Bodily Injury and Property Damage Liability with a \$2,000,000 limit per occurrence per project.
- B. Coverage B - Personal and Advertising Injury Liability with a \$2,000,000 limit per person.
- C. Products and Completed Operations with a \$2,000,000 limit per occurrence and in the aggregate.
- D. General Aggregate with a \$4,000,000 limit per project.
- E. Above is to include Broad Form Contractual Liability, Independent Contractors, Broad Form Property Damage and Explosion, Collapse and Underground Hazards coverage.
- F. Additional Insured Endorsement CG2010 Form B or its equivalent.

(iii) Commercial Automobile Liability

- A. Bodily Injury and Property Damage Liability with a combined single limit in an amount not less than \$2,000,000 for each person in one accident, and \$2,000,000 for injuries sustained by two or more persons in any one accident.
- B. Above to include Non-Owned and Hired Car Coverage.

(iv) Umbrella Liability or Excess Liability

A. Following form over the primary coverage in an amount not less than \$5,000,000 each occurrence and in the aggregate.

(v) Additional Insured

Owner, Construction Manager, Manager and any other party designated by Owner shall be added as additional insured parties under Contractor's general liability, umbrella or excess liability, and automobile liability policies. All such policies shall be endorsed to include the following language:

"Coverage afforded the Additional Insureds under this policy shall be primary insurance. If the Additional Insureds have other insurance which is applicable to the loss, such other insurance shall be on an excess basis. The amount of the company's liability under this policy shall not be reduced by the existence of such other insurance."

The aforementioned insurance shall list as additional named insured the following parties as their interest may appear:

Girard Estate Leasehold, a Pennsylvania nonprofit corporation; Girard Estate Fee, a Pennsylvania nonprofit corporation; Kennedy Wilson Properties, Ltd.; Kennedy-Wilson Pennsylvania Management, Inc.; and their respective partners, members, agents, and employees.

1.2 Contractor, before commencing Work, will supply Owner with Certificate of Insurance evidencing compliance with the minimum requirements listed above along with copies of actual additional insured endorsements. Each certificate shall state that the insurance evidenced by such certificate will not be canceled or reduced without thirty (30) days prior written notice to the Owner.

1.3 Contractor shall maintain a file of Certificates of Insurance received from each subcontractor and/or sub-contractors of any tier.

1.4 Each subcontractor and/or Sub-subcontractors of any tier, shall maintain the following insurance in amounts not less than those specified below:

(i) Workers' Compensation in accordance with the laws of the state with jurisdiction, and Employer's Liability in an amount not less than \$1,000,000.

(ii) Commercial General Liability

A. Coverage A - Bodily Injury and Property Damage Liability with a \$2,000,000 limit per occurrence per project.

B. Coverage B - Personal and Advertising Injury Liability with a \$2,000,000 limit per person.

C. Products and Completed Operations with \$2,000,000 limit per occurrence and in the aggregate.

- D. General Aggregate with a \$4,000,000 limit per project.
 - E. Owner, Manager and Owners Agents are to be named as additional insureds.
 - F. Above is to include Broad Form Contractual Liability, Broad Form Property Damage and Explosion, Collapse and Underground Hazards coverage.
- (iii) Comprehensive Automobile Liability
- A. Bodily Injury and Property Damage Liability with a combined single limit in an amount not less than \$1,000,000 for each person in one accident, and \$1,000,000 for injuries sustained by two or more persons in any one accident.
 - B. Above to include Employer's Non-Owned and Hired Car Coverage.
- (iv) Umbrella Liability or Excess Liability
- A. Following form over the primary coverage in an amount not less than \$2,000,000 each occurrence and in the aggregate.
- 1.5 Each subcontractor, and/or Sub-subcontractor of any tier, shall furnish Contractor before commencing work, Certificates of Insurance, evidencing compliance with the minimum requirements listed above including attachment of actual additional insured endorsement, and evidence that insurance afforded the additional insureds shall be considered primary insurance to any that might otherwise be available to the additional insureds. Each certificate shall state that the insurance evidenced by such certificate will not be canceled or reduced without thirty (30) days prior written notice to the Contractor. Subcontractors and/or Sub-subcontractors minimum insurance requirements can be waived only if so done in writing by the Owner.

2. PROPERTY INSURANCE

- 2.1 Unless otherwise provided, the Owner shall purchase and maintain property insurance upon the entire work at the site to the full insurable value thereof. This property insurance shall be written on the standard completed value form. This insurance shall include the interests of the Owner, Contractor and each Subcontractor and Sub-subcontractor in the work and shall insure against Fire, Extended Coverage and All Risk perils. This policy of insurance shall bear a deductible no greater than \$50,000 each occurrence.
- 2.2 The Owner shall file a copy of the policy with the Contractor upon receipt of same from the insurer.
- 2.3 The Owner, Contractor, Subcontractors and all Sub-subcontractors of any tier, waive all rights against each other for damage caused by fire or other perils to the extent covered by insurance provided under paragraph 2.1 or by other insurance covering the loss, except such rights as they may have to the proceeds of such insurance.

- 2.4 Any insured loss is to be adjusted with the Owner and made payable to the Owner as trustee for the insureds, as their interest may appear, subject to the requirements of any applicable mortgage clause and of paragraph 2.6.
- 2.5 If the Owner finds it necessary to occupy or use a portion of the work prior to substantial completion, such occupancy shall not commence prior to a time mutually agreed to by the Owner and Contractor. In the event of such occupancy the property insurance carrier shall be notified by the Contractor prior to occupancy.
- 2.6 The Owner as trustee shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within five days after the occurrence of loss to the Owners exercise of this power, and if such objection be made, arbitrators shall be chosen.
- The Owner as trustee shall, in that case, make settlement with the insurers in accordance with the directions of such arbitrators. If distribution of the insurance proceeds by arbitration is required, the arbitrators will direct such distribution.
- 2.7 The Owner shall not be responsible for nor shall he insure the property of the Contractor, Subcontractors or Sub-subcontractors, including but not limited to, tools and equipment, located at the job site which is not intended to be incorporated into the work. The Contractor, Subcontractors, and Sub-subcontractors of any tier, shall be responsible for providing Fire, Theft or other insurance to protect their interests and the interest of the Owner in materials in transit or in storage off the site, until such materials are incorporated in the work.

Exhibit C

City Provisions

This Exhibit "C" is attached to and made a part of Amendment No. 2 to Master Lease and Lease dated January 27, 2009, by and among **Girard Estate Leasehold**, a Pennsylvania non-profit corporation ("Girard"), **Philadelphia Authority for Industrial Development**, a body politic and corporate ("PAID") and **The City of Philadelphia**, a body politic and corporate ("Tenant" or "City").

Defined Terms

Capitalized terms used and not defined in this Exhibit shall have the meanings ascribed to them in the Amendment.

Fair Practices

Girard agrees, in performing this Lease, 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.

Nondiscrimination

(a) This Lease is entered into under the terms of the Philadelphia Home Rule Charter and in its performance, Girard shall not discriminate nor permit discrimination against any person because of race, color, sex, sexual orientation, religion, national origin or ancestry. In the event of such discrimination which goes uncured more than thirty (30) days after notice from PAID, PAID may terminate this Lease forthwith or exercise any other remedy provided to PAID in this Lease or at law or in equity. The foregoing shall not be construed to limit or restrict PAID's right to terminate this Lease as set forth in other sections of this Lease.

(b) In accordance with Chapter 17-400 of The Philadelphia Code, Girard 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 this Lease entitling PAID to all rights and remedies provided in this Lease or otherwise available at law or in equity.

(c) Girard agrees to include subparagraphs (a) and (b) of this Section, with appropriate adjustments for the identity of the parties, in all subcontracts which are entered into for work to be performed on the Premises pursuant to this Lease.

(d) Girard further agrees to cooperate with the Commission on Human Relations 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.

Philadelphia 21st Century Minimum Wage Standard

Girard will comply with the requirements of Section 17-1300 of the Philadelphia Code as they exist on the date when the Girard entered into this Lease with PAID or as they exist on the date when any amendment is executed to this Lease. Girard will promptly provide to PAID upon request documents and information verifying its compliance with the requirements of Section 17-1300. Girard will notify its affected employees with regard to the wages that are required to be paid pursuant to this Section 17-1300.

Prohibited Gifts

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.

Girard understands and agrees that if it offers 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 subject to sanctions with respect to future City contracts. Such sanctions may range from disqualification from participation in a particular contract to debarment, depending on the nature of the violation.

Certification of Non-Indebtedness

(a) Girard hereby certifies and represents that Girard and Girard's parent company(ies) and subsidiary(ies) and affiliate(s), if any, are not currently indebted to the City, and will not during the term of this 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 written contract or payment plan satisfactory to the City has been established.

(b) Girard shall require all contractors and subcontractors performing repairs and/or alterations on the Premises to be bound by the following provision and PAID shall cooperate with the City in exercising the rights and remedies described below or otherwise available at law or in equity:

"Contractor ('Contractor') or Subcontractor ('Subcontractor') hereby certifies and represents that Contractor or Subcontractor, and Contractor or Subcontractor's parent company(ies) and their subsidiary(ies), are not currently indebted to The City of Philadelphia (the "City"), and will not at any time during the Term of PAID's Lease, dated _____, 200__ with the City (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 written contract or payment plan satisfactory to the City has been established."

(c) Any breach or failure to conform to the aforesaid certifications shall constitute a default by the Girard, if such default is not cured within thirty (30) days after Girard's receipt of written notice of such default, shall entitle PAID to exercise any rights or remedies available to it under this Lease, and at law and in equity.

MacBride Principles

(a) Girard, by execution of this Lease, certifies and represents that

(i) Girard (including any parent company, subsidiary, exclusive distributor or company affiliated with the PAID) does not have, and will not have at any time during the Term of this Lease (including any extensions or renewals thereof) , any investments, licenses, franchises, management agreements or operations in Northern

Ireland and (ii) no product or service to be provided to the PAID under this Lease will originate in Northern Ireland, unless Girard has implemented the fair employment principles embodied in the MacBride Principles.

(ii) In the performance of this Lease, Girard agrees that it will not utilize any suppliers, subcontractors or sublicensees at any tier (i) who have (or whose parent, subsidiary, exclusive distributor or company affiliate have) any investments, licenses, franchises, management agreements or operations in Northern Ireland, or (ii) who will provide products originating in Northern Ireland unless said supplier, sublicensee or subcontractor has implemented the fair employment principles embodied in the MacBride Principles. Girard further agrees to include the provisions of this Section with appropriate adjustments for the identity of the parties, in all subcontracts and supply agreements which are entered into in connection with the performance of this Lease.

(iii) Girard agrees to cooperate with the City's Director of Finance in any manner which the said Director of Finance deems reasonable and necessary to carry out the Director's responsibilities under Section 17-104 of The Philadelphia Code. Girard expressly understands and agrees that any false certification or representation in connection with this Section or any failure to comply with the provisions of this Section shall constitute a substantial breach of this Agreement entitling PAID to all rights and remedies provided in this Lease or otherwise available at law (including, but not limited to, Section 17-104 of The Philadelphia Code) or in equity. In addition, it is understood that false certification or representation is subject to prosecution under Title 18 Pa. C.S.A. Section 4904.

Business Corporate and Slavery Era Insurance Disclosure

Girard, after execution of this Lease, will complete an affidavit certifying and representing that the Girard (including any parent company, subsidiary, exclusive distributor or company affiliated with Girard) has searched any and all records of Girard or any predecessor company regarding records of investments or profits from slavery or slaveholder insurance policies during the slavery era. The names of any slaves or slaveholders described in those records must be disclosed in the affidavit. Girard expressly understands and agrees that any false certification or representation in connection with this Section or any failure to comply with the provisions of this Section shall constitute a substantial breach of this Lease entitling PAID to all rights and remedies provided in this Lease or otherwise available in law (including, but not limited to, Section 17-104 of The Philadelphia Code) or equity and the Lease will be deemed voidable. In addition, it is understood that false certification or representation is subject to prosecution under Title 18 Pa. C.S. Section 4904.



EXHIBIT D - PWD Lobby & Bathroom Reno
2, 3, 5 & 6 Floors

Thu 6/17/21

ID	Task Name	Duration	Start	Finish	Predecessors
1	PRECONSTRUCTION	42 days	Fri 6/25/21	Fri 8/13/21	
2	Bid Due Date	1 day?	Thu 4/29/21	Thu 4/29/21	
3	Notice to Proceed	0 days	Mon 6/7/21	Mon 6/7/21	
4	Shop Drawings/Sub 10 days		Mon 6/14/21	Fri 6/25/21	3FS+5 days
5	PROCUREMENT	20 days	Mon 6/21/21	Fri 7/9/21	
6	Light Fixtures	25 days	Mon 6/21/21	Fri 7/23/21	4SS+5 days
7	Lobby Doors	5 wks	Mon 6/28/21	Fri 7/30/21	4
8	Door Auto Opener	7 wks	Mon 6/28/21	Fri 8/13/21	4
9	Decorative Glass	6 wks	Mon 6/28/21	Fri 8/6/21	4
10	Millwork Fabrication	25 days	Mon 6/28/21	Fri 7/30/21	4
11	CONSTRUCTION	55 days	Mon 7/26/21	Fri 9/3/21	
12	Mobilization	1 day	Mon 7/26/21	Mon 7/26/21	6
13	Phase 1	28 days	Tue 7/27/21	Thu 9/2/21	
14	5th Floor Bathroom	28 days	Tue 7/27/21	Thu 9/2/21	
15	Select Demo	2 days	Tue 7/27/21	Wed 7/28/21	12
16	Plumbing Rough-in	4 days	Thu 7/29/21	Tue 8/3/21	15
17	Electrical Roug	7 days	Wed 8/4/21	Thu 8/12/21	16
18	Wall Prep	2 days	Fri 8/13/21	Mon 8/16/21	17
19	Ceilings	3 days	Tue 8/17/21	Thu 8/19/21	18
20	Wall/floor Finishes	4 days	Fri 8/20/21	Wed 8/25/21	19
21	Partitions		Thu 8/26/21	Tue 9/3/21	20
22	Final T/U	2 days	Wed 9/1/21	Thu 9/2/21	21
23	5th Floor Lobby	16 days	Thu 7/29/21	Thu 8/19/21	
24	Select Demo	2 days	Thu 7/29/21	Fri 7/30/21	15
25	Electrical Roug	3 days	Mon 8/2/21	Wed 8/4/21	24
26	Ceilings	3 days	Thu 8/5/21	Mon 8/9/21	25
27	Wall Prep	2 days	Tue 8/10/21	Wed 8/11/21	26
28	Lobby Doors	2 days	Thu 8/12/21	Fri 8/13/21	27,7
29	Wall	2 days	Mon 8/16/21	Tue 8/17/21	28,10
30	Final T/U	2 days	Wed 8/18/21	Thu 8/19/21	29
31	3rd Floor Lobby	16 days	Mon 8/2/21	Mon 8/23/21	
32	Select Demo	2 days	Mon 8/2/21	Tue 8/3/21	24
33	Electrical Rough-in	3 days	Wed 8/4/21	Fri 8/6/21	32
34	Ceilings	3 days	Mon 8/9/21	Wed 8/11/21	33

1-1-11



EXHIBIT D - PWD Lobby & Bathroom Reno
2, 3, 5 & 6 Floors

Thu 6/17/21

ID	Task Name	Duration	Start	Finish	Predecessors	June 1	6/13	July 1	7/11	7/25	August 1	8/12	8/16	8/18	8/20	8/22	September 1	9/5	9/19	October 1	10/3	10/17	
35	Wall Prep	2 days	Thu 8/12/21	Fri 8/13/21	34																		
36	Lobby Doors	2 days	Mon 8/16/21	Tue 8/17/21	35																		
37	Wall	2 days	Wed 8/18/21	Thu 8/19/21	36, 30																		
38	Final T/U	2 days	Fri 8/20/21	Mon 8/23/21	37																		
39	Phase 2	28 days	Wed 9/1/21	Fri 10/8/21																			
40	6th Floor Bathroom	28 days	Wed 9/1/21	Fri 10/8/21																			
41	Select Demo	2 days	Wed 9/1/21	Thu 9/2/21	21																		
42	Plumbing Rough-in	4 days	Fri 9/3/21	Wed 9/8/21	41																		
43	Electrical Rouf	7 days	Thu 9/9/21	Fri 9/17/21	42																		
44	Wall Prep	2 days	Mon 9/20/21	Tue 9/21/21	43																		
45	Ceilings	3 days	Wed 9/22/21	Fri 9/24/21	44																		
46	Wall/floor Finishes	4 days	Mon 9/27/21	Thu 9/30/21	45																		
47	Fixtures/Toilet Partitions	4 days	Fri 10/1/21	Wed 10/6/21	46																		
48	Final T/U	2 days	Thu 10/7/21	Fri 10/8/21	47																		
49	6th Floor Lobby	16 days	Fri 9/3/21	Fri 9/24/21																			
50	Select Demo	2 days	Fri 9/3/21	Mon 9/6/21	41																		
51	Electrical Rouf	3 days	Tue 9/7/21	Thu 9/9/21	50																		
52	Ceilings	3 days	Fri 9/10/21	Tue 9/14/21	51																		
53	Wall Prep	2 days	Wed 9/15/21	Thu 9/16/21	52																		
54	Lobby Doors	2 days	Fri 9/17/21	Mon 9/20/21	53																		
55	Wall Finishes/Pane	2 days	Tue 9/21/21	Wed 9/22/21	54																		
56	Final T/U	2 days	Thu 9/23/21	Fri 9/24/21	55																		
57	2nd Floor Lobby	23 days	Tue 9/7/21	Thu 10/7/21																			
58	Select Demo	2 days	Tue 9/7/21	Wed 9/8/21	50																		
59	Electrical Rough-in	3 days	Thu 9/9/21	Mon 9/13/21	58																		
60	Ceilings	3 days	Tue 9/14/21	Thu 9/16/21	59																		
61	Wall Prep	2 days	Fri 9/17/21	Mon 9/20/21	60																		
62	Lobby Doors	2 days	Tue 9/21/21	Wed 9/22/21	61																		
63	Wall Finishes/Pane	2 days	Thu 9/23/21	Fri 9/24/21	62																		
64	Final T/U	2 days	Mon 9/27/21	Tue 9/28/21	63																		
65	Substantial Completion	1 day	Thu 10/7/21	Thu 10/7/21	47, 63																		

H.P. Project # : 208.02.02

CONTRACT # 2022-10-PWD

CONTRACTOR AGREEMENT

THIS AGREEMENT, made this 19th day of October, 2022, between HAAS PETERS CONSTRUCTION GROUP, INC. (hereinafter called the "Contractor") and GIRARD ESTATE LEASEHOLD (hereinafter called the "Owner") by KENNEDY-WILSON PENNSYLVANIA MANAGEMENT INC., its managing agent (hereinafter defined "KWPMI"), not personally but solely on behalf of our tenant, The City of Philadelphia – Philadelphia Water Department (hereinafter called the "Tenant") for services to be performed at that certain property located at 1101 Market Street, Philadelphia, PA 19107 (hereinafter called the "Property").

WITNESSETH

1. **The Work.** Contractor shall furnish and install in a thoroughly workmanlike manner and to the complete satisfaction of Owner all the work (the "Work") described in Exhibit "A," including all necessary scaffolding, equipment, labor and materials. The materials and labor to be furnished and performed hereunder shall consist of everything that is necessary and required in connection with the proper installation of all the Work to be performed by the Contractor.

2. **Time of Commencement and Completion.** Contractor recognizes that time is of the essence in this Contract and Contractor shall commence the Work promptly, and shall pursue such Work diligently with adequate materials, labor and equipment so as to provide for continuous, uninterrupted progress in the performance of the Work. Subject to Article 12(d), or as otherwise may be mutually agreed upon in writing, the Work shall be completed on or before the dates set forth in the project schedule, attached hereto as Exhibit "D." Should Contractor fail to carry on the Work with sufficient personnel or materials and thereby cause delay of the Work covered herein, or if Contractor should be adjudged bankrupt or become insolvent, or if he should fail to make prompt payment for materials or labor, or if he should otherwise be guilty of a violation of any provision of this Agreement, then Owner may, without prejudice to any other right or remedy Owner may have and after giving Contractor seven days written notice, either a) terminate the employment of Contractor under this Agreement and relet the Work at the sole cost and expense of Contractor, in which event the contractor agrees that no materials, machinery or tools belonging the Contractor shall be removed from the job until completion; or b) hold Contractor to this Agreement and have the right to engage additional labor and/or materials at Contractor's sole cost and expense as Owner may deem necessary for proper performance hereunder. In either event, Owner is hereby authorized to deduct from the Contract Sum, as hereinafter defined, the cost of such additional labor and/or materials.

3. **The Contract Sum.** Owner agrees to pay Contractor for the performance of the Work, the total sum of \$796,322.00 (Seven Hundred Ninety-Six Thousand, Three Hundred Twenty Two and 00/100 Dollars), subject to adjustment as provided for herein. Owner shall make payments to the Contractor in accordance with Paragraph 4 of this Agreement. The final payment shall be made upon 1) final completion of all Work by the Contractor; 2) final approval and acceptance of the Work by Owner; and 3) complete and proper documentation satisfactory to and as may be required by Owner in substantiation

of the payment requested by Contractor. If the Contractor encounters conditions at the site that are: (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the contract documents; or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in this Agreement, the Contractor shall promptly provide notice to KWPMI before conditions are disturbed. If such conditions differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, the Contractor will be entitled to an equitable adjustment of the Contract Sum or the time for performance of the Work, or both.

4. Pavment.

4.1 General Provisions.

4.1.1 Schedule of Values. The Contractor shall provide a schedule of values satisfactory to the Owner no more than five (5) days from the date of execution of this Agreement.

4.1.2 Payment Use Restriction. Payment received by the Contractor shall be used to satisfy the indebtedness owed by the Contractor to any person furnishing labor or materials for use in performing the Contractor's work on this project before it is used in any other manner.

4.1.3 Payment Use Verification. The Owner shall have the right at all times to contact the Contractor's subcontractors and suppliers to ensure that the same are being paid promptly by the Contractor for labor or materials furnished for use performing the Contractor's Work.

4.1.4 Partial Lien Waivers and Affidavits. As a prerequisite for payment, the Contractor shall provide, in a form satisfactory to the Owner, partial lien or claim waivers and affidavits from the Contractor, and its subcontractors and suppliers for the completed Contractor's Work. Such waivers may be made conditional upon payment, however each subsequent payment request, must be accompanied by an unconditional lien waiver for prior payments made to both Contractor and its sub-contractors.

4.1.5 Contractor Payment Failure. Upon payment by the Owner, Contractor shall promptly pay its lower tier sub-contractors and material suppliers the amounts to which they are entitled. In the event the Owner has reason to believe that obligations for labor and material incurred in the performance of the Contractor's Work are not being paid, the Owner may give written notice of such claim or lien to the Contractor and may take any steps deemed necessary to assure that progress payments are utilized to pay such obligations including but not limited to the issuance of joint checks. If upon receipt of said notice, the Contractor does not

- a. supply evidence to the satisfaction of the Owner that the money owing to the claimant(s) have been paid; or
- b. post a bond indemnifying the owner, any Mortgagee of the building or the site, the premises or accompanying land from any such claim or lien; then the Owner shall have the right to withhold from any payments due or to become due to the Contractor a reasonable amount to protect the Owner from any and

all loss, damage or expense including attorney's fees arising out of or relating to any such claim or lien has been satisfied by the Contractor.

Notwithstanding the foregoing, the Contractor shall not be responsible for the removal of, or to bond off, or to indemnify the Owner with respect to, mechanics' liens filed for labor and materials for which the Owner has not made payment to the Contractor.

4.1.6 **Contractor Assignment of Payments.** The Contractor shall not assign any moneys due or to become due under this Contract or under any Change Order thereto, without the written consent of Owner, unless such assignment is intended to create a new security interest within the scope of Article 9 of the Uniform Commercial Code. Should Contractor assign all or any part of any moneys due or to become due under this Contract, to create a new security interest or of any other purpose, the instrument of assignment shall contain a clause to the effect that the assignee's right is and to any money due or to become due to the Subcontractor shall be subject to the claims of all persons, firms and corporations for services rendered of materials supplied for the performance of the Work under this contract and any Change Orders.

4.1.7 **Payment Not Acceptance.** Payments to the Contractor do not constitute or imply acceptance of any portion of the Contractor's Work.

4.2 **Progress Payments**

4.2.1 **Application.** The Contractor's first Application for Payment shall be accompanied by Contractor's affidavit and partial waiver of lien for the full amount of the payment and the Work covered thereby and conditioned only upon payment of such application. Each subsequent Application for Payment shall be accompanied by Contractor's and each sub-contractors affidavit and unconditional partial lien waiver for the amount of the previous application for payment and a conditional lien waiver from the contractor for the amount of the current application for payment.

4.2.2 **Retainage/Security.** The rate of retainage shall be equal 10% of the total contract value and shall insure the satisfactory completion of the Subcontractor's Work.

4.2.3 **Time of Application.** The Contractor shall submit progress payment applications to the Owner no later than the 25th day of each payment period for work performed up to and including the 25th day of the payment period indicating work completed.

4.2.4 **Stored Materials.** Unless otherwise provided in the Contract Documents, and if approved in advance by the Owner, applications for payment may not include materials and equipment not incorporated in the Contractor's Work or delivered to and stored at some other location unless agreed to in writing.

4.2.5 **Time of Payment** Monthly Progress payments to the Contractor for satisfactory performance of the Contractor's Work shall be made no later than thirty (30) days after approved receipt by the Owner of application for payment by Contractor for the Contractor's Work.

4.2.6 **Payment Delay**. If for any reason not the fault of the Contractor, the Contractor does not receive a progress payment from the Owner within thirty (30) days after the date such payment is due, as defined in Subparagraph 4.2.5, then the Contractor, upon giving an additional seven (7) days written notice to the Owner, and without prejudice to and in addition to any other legal remedies, may stop work until payment of the full amount owing to the Contractor has been received. To the extent obtained by the Owner under the Contract Documents, the contract price shall be increased by the amount of the Contractor's reasonable cost of shutdown, delay, and start-up, which shall be affected by appropriate Change Order.

4.3 **Final Payment**.

4.3.1 **Application**. Upon acceptance of the Contractor's Work by the Owner, and upon the Contractor furnishing evidence of fulfillment of the Contractor's obligations in accordance with the Contract Documents and Subparagraph 4.3.2, the Owner shall process the Contractor's application for final payment without delay.

4.3.2 **Requirements**. Before the Owner shall be required to process the Contractor's application for final payment the Contractor shall submit to the Owner:

- a. an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Contractor's Work for which the owner or owner's property might in any way be liable, have been paid or otherwise satisfied;
 - b. consent of surety to final payment, if required;
 - c. satisfaction of required close-out procedures;
 - d. certification that insurance required by the Contract Documents to remain in effect beyond final payment is in effect and will not be canceled or allowed to expire without at least thirty (30) days written notice to the Owner unless a longer period is stipulated in the Contract; and
 - e. affidavits and final waivers of liens from the contractor, subcontractors and suppliers who have not previously furnished such affidavits and final waivers of lien. Final payment shall constitute a waiver of all claims by the Contractor relating to the Contractor's Work, but shall in no way relieve the Contractor of liability for the obligations assumed under Paragraph 7, or for faulty or defective work appearing after final payment.
- 4.3.3 **Time of Payment**. Final payment of the balance due of the Contract Price shall be made to the Contractor upon receipt of the waiver of all claims related to the Contractor's Work except for unsettled liens, unknown defective work, and noncompliance with the Contract Documents or warranties; and
- a. within thirty (30) days after receipt by the Owner of final approved application for payment for Contractor's Work.

5. Changes in the Work.

- a. Owner, without invalidating the Agreement, may order changes in the Work consisting of additions, deletions or modification, and the Contract Sum shall be adjusted accordingly. All such changes in the Work shall be authorized by a written Change Order signed by Owner or KWPMI;
- b. The adjustment, if any, in the Contract Sum resulting from a change in the Work shall be determined by mutual agreement of Owner and Contractor; provided, however, that in the event Owner and Contractor do not promptly agree upon the adjustment in the Contract Sum, the Contractor shall nevertheless proceed, upon the request of Owner, promptly to perform (without delay) the Work as changed, leaving such adjustment in the Contract Sum to later determination. The Contractor shall be entitled to receive payment for the undisputed portion of the cost pending final resolution of the cost.

6. Agreements of Contractor.

- a. Contractor shall pay all State and Federal payroll tax liabilities occasioned by labor on account of the Work and all Federal, State or other governmental sales and use taxes or similar levies on all materials, tools and equipment furnished under this Agreement;
- b. Contractor shall observe and comply with all laws, ordinances and regulations of all duly constituted governmental authorities and insurance rating agencies relating to the performance of the Work and the materials supplied hereunder, shall satisfy all the requirements of the inspectors, if any, and at Contractor's sole cost and expense shall apply for and obtain all necessary permits, licenses, or any other certificates required by said authorities;
- c. Contractor shall pay all royalties and license fees, if any, pertaining to the Work and the materials supplied hereunder;
- d. Contractor shall provide, at Contractor's sole cost and expense, adequate insurance in amounts and with carriers satisfactory to Owner, fully covering and indemnifying Owner, its agents or representatives and Contractor as their respective interests may appear against any loss because of injury or damage to persons, including death, or property (including adjacent property) caused by the Contractor during the performance of this Agreement and until actual completion of the Work covered herein. Such insurance shall be in accordance with the provisions of the Insurance Rider attached hereto as Exhibit "B";
- e. Contractor shall repair and replace all its work and materials damaged, lost, stolen or destroyed prior to actual completion of the Work, such repair and replacement to be at the sole cost and expense of Contractor; and Owner is hereby authorized to deduct from the Contract Sum and retain an amount sufficient to pay for such repairs and replacement in the event Contractor does not, in the opinion of Owner within a reasonable time after such damage, loss, theft or destruction, make such repairs and replacement;
- f. Contractor shall supply, install and maintain suitable protection for any and all pedestrian traffic within the vicinity of the Work. Said protection shall be in compliance within any and all City, State and Federal codes and further subject to Owner's approval;



- g. Contractor shall diligently, on a daily basis, remove rubbish and waste materials created from its operation on the Property and adjacent improvements as the Work progresses so as to maintain a clean, safe condition or shall reimburse Owner at \$60.00 per man-hour for doing so. Upon completion of the Work, Contractor shall remove all of its tools, materials, equipment and rubbish from the Property and leave the job site broom clean. Owner is hereby authorized to deduct from the Contract Sum and retain \$60.00 per man-hour for said cleanup, in the event that Contractor does not, in the opinion of Owner, diligently clean up the job site on a daily basis.
- h. Prior to commencement of the Work and within ten (10) days of the signing of this Agreement, Contractor shall provide Owner with Insurance Certificates in accordance with the provisions of the Insurance Rider attached hereto as Exhibit "B";
- i. Contractor shall furnish Owner within five (5) days of request thereof, a written list of all sub-contractors to be used and all the vendors from which Contractor will purchase or has purchased materials used or to be used in the performance of the Work.

7. **Guarantee.** Unless otherwise addressed in Exhibit "A," Contractor shall guarantee at Contractor's sole cost and expense to promptly repair and replace any work and any materials used in such Work which may be found faulty or defective for a period of one (1) year after the Work is completed and accepted by the Owner. All Work which may be damaged because of such defect shall be promptly replaced or repaired by Contractor at its sole cost and expense. The guarantee period for any work and materials repaired and/or replaced shall run for a period of one (1) year after the repair or replacement of that Work is completed and accepted by the Owner.

8. **Waiver and Entire Agreement.** No payment on account, nor final payment, nor filing of any Notice of Completion, nor partial or entire use occupancy of the premises, by Owner, nor acceptance of the Work by Owner shall be construed in any way to be a waiver of any of the provisions of this Agreement. All negotiations and agreements are merged herein and there are no provisions, covenants or other agreements between the parties other than those contained herein or incorporated herein by reference and this Agreement is the entire Agreement between the parties hereto with respect to the subject matter hereof.

9. **Assignment and Subcontracting.** This Agreement shall not be assigned, in whole or in part or in any respect, nor subcontracted in whole by Contractor without the written consent of Owner being first had and obtained. Any such attempt to so assign or subcontract this Agreement by Contractor without the prior written consent of Owner shall be null and void and shall operate, at Owner's election, as an instant forfeiture and repudiation thereof by Contractor, and the rights of the parties shall be determined in the same manner as though Contractor has, at the time of such attempted assignment or subcontracting, failed and refused to continue his performance as required under this Agreement.

10. **Indemnification.** Contractor shall indemnify, defend and hold harmless Owner, KWPMI, and each of their respective directors, officers, employees, agents, successors and assigns from any and all claims, suits and causes of action for personal injury or property damage arising from or in any way caused by the performance of the Work hereunder or any acts by Contractor, its subcontractors and their respective agents, servants or employees or for infringement of patents or violation

of patent rights, including all costs, expenses and attorney's fees incurred by an indemnified party in defending any claims, suits or causes of action that may arise.

11. **City Provisions.** Contractor acknowledges receipt of a copy of the "City Provisions" attached as an exhibit to a Lease between Owner and Philadelphia Authority for Industrial Development dated January 27, 2009, a true and correct copy of which is attached hereto.

In accordance with Subsection (c) of the Nondiscrimination Section of those City Provisions, Contractor agrees:

- a. That Contractor shall not discriminate nor permit discrimination against any person because of race, color, sex, sexual orientation, religion, national origin or ancestry. In the event of such discrimination which goes uncured more than thirty (30) days after notice from Owner, Owner may terminate this Agreement forthwith or exercise any other remedy provided to Owner in this Agreement or at law or in equity. The foregoing shall not be construed to limit or restrict Owner's right to terminate this Agreement as set forth in other sections of this Agreement; and
- b. That Contractor's 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 and 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 this Agreement entitling Owner to all rights and remedies provided in this Agreement or otherwise available at law or in equity.

12. **Miscellaneous.**

- a. Contractor shall afford any other contractors and materialmen the reasonable opportunity for the execution of their work and for the introduction and storage of their materials on the job site and shall properly coordinate its work with theirs. If any part of Contractor's work depends for proper execution or results upon the work of any other contractor, Contractor shall inspect and properly report in writing to Owner any defects in such work that render it unsuitable for proper execution and results. Proceeding with the Work hereunder shall constitute acceptance by Contractor of the other contractor's work as being fit and proper for the reception of its work. By virtue of the foregoing provisions, Contractor, as an independent contractor, will be held responsible for the satisfactory completion of the work;
- b. Should Contractor cause damage to the work of any other contractor or to any parts of the Property, Contractor agrees to pay the amount of such damage and any incidental expenses in connection therewith incurred by Owner. Owner is hereby authorized to deduct such amount from the Contract Sum, and in the event such amount exceeds the Contract Sum due Contractor hereunder, Contractor shall promptly pay Owner the amount of such excess;

- c. Contractor shall perform as much of the Work as possible during normal working hours, with the Contractor's full knowledge that the building area where the Work is to be performed does and will continue to have normal business activity and traffic, and Contractor agrees that it will take every precaution to protect and show courtesy to the public and building personnel during the progress of the Work and that all Work and the delivery and storage of all equipment, supplies and materials shall be coordinated with and at the discretion of the property manager. Contractor further understands and agrees that reasonable access must be provided within the building area and that Contractor's Work shall at all times be confined and performed so as to provide minimal disturbance or interruption of the normal business operation of the Property;
- d. Should Contractor be unable to perform its covenants, obligations, duties and agreements as described herein and hereunder due to conditions beyond his control, said conditions being limited to casualties, acts or omissions of the Owner or KWPMI, or an employee, agent or contractor of either of them resulting in actual material delays (following notice from Contractor), strikes or labor difficulties, inclement weather conditions, civil disorder, war or other national emergencies, Contractor shall be allowed to extend the Work beyond the time limitation as described in Article 2 above, limited by the number of working days the Contractor was unable to perform its obligations as described herein, provided however, that Contractor shall immediately notify Owner of any such delays;
- e. All Work done and materials to be furnished hereunder must pass all applicable inspections, including, without limitation, inspection by Owner, KWPMI, Client, and/or Owner's duly authorized agents and representatives and all governmental and/or insurance inspections;
- f. Any and all notices hereunder, shall be in writing and posted in either the United States Mail, certified or registered mail, postage prepaid, or by overnight courier service to the respective parties at the following addresses:

TO CONTRACTOR

HAAS PETERS CONSTRUCTION GROUP, INC.
306 Baltimore Ave.
Folcroft, PA 19032

TO OWNER:

GIRARD ESTATE LEASEHOLD
c/o Kennedy-Wilson Pennsylvania Management
Inc.
1101 Market Street, Suite 105
Philadelphia, PA 19107
Attention: Richard J. McClure
Managing Director

- g. Owner hereby authorizes Contractor to take all direction hereunder from KWPMI.
- h. It is expressly understood and agreed, anything contained herein to the contrary notwithstanding, that each and all of the representations, warranties, covenants, undertakings, indemnities and agreements made by or on behalf of Owner or KWPMI, are not made for the purpose or with the intention of binding either Owner or

KWPMI or any of their respective partners, shareholders, officers, directors, employees, trustees or agents in their individual capacities, but are made and intended solely for the purpose of binding and shall be enforceable only to the extent of Owner's interest in the Property, and that no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against Owner, KWPMI or any of their respective partners, shareholders, officers, directors, employees, trustees or agents in their individual capacities (beyond Owner's interest in the Property), on account of any representation, warranty, covenant, undertaking, indemnity, or agreement of Owner or KWPMI, either express or implied, all such personal liability or responsibility, if any (beyond Owner's interest in the Property), being expressly waived and released by Contractor and by all persons claiming by, through or under the Agreement.

WITNESS WHEREOF, the parties hereto cause this Agreement to be executed by their duly authorized representatives as of the day and year first above written.

OWNER

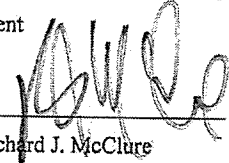
GIRARD ESTATE LEASEHOLD, a Pennsylvania not-for-profit corporation

By: KENNEDY-WILSON PENNSYLVANIA

MANAGEMENT INC., a Delaware corporation,

its managing agent

By:


Richard J. McClure

Its:

Managing Director

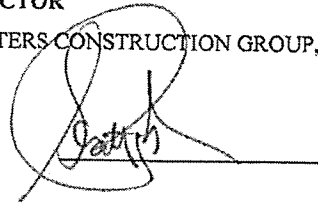
10/19/22

Date

CONTRACTOR

HAAS PETERS CONSTRUCTION GROUP, INC.

By:



Its:

Scott Peters / President

10.19.22

Date



EXHIBIT "A"

The "Work"

**1101 Market – Philadelphia Water Department Restroom and Elevator Lobby Renovations
Contract # 2022-10-PWD**

Contractor shall provide all necessary labor, materials, equipment, and supervision required to complete the following work in accordance with the following plans and specifications. All work is to conform to all applicable governing codes and regulations. The work is to include, but not limited to the following:

A. CONSTRUCTION DOCUMENTS

Drawings:

**City of Philadelphia for the Philadelphia Water Department
Office Space Renovations Floor 4**

No.	Description
AN-0	Cover Sheet, dated 06/29/2022; Revised 07/20/2022 and 09/09/2022
AN-2	GENERAL NOTES & ABBREVIATIONS, dated 06/29/2022
AN-3	ACCESSIBILITY DIAGRAMS, dated 06/29/2022
A0-1	FLOOR 4 PARTIAL DEMOLITION & RCP DEMOLITION, dated 06/29/2022
A1-1	FLOOR 4 PARTIAL CONSTRUCTION PLAN, dated 06/29/2022; Revised 07/20/2022 and 09/09/2022
A2-1	FLOOR 4 PARTIAL REFLECTED CEILING PLAN, dated 06/29/2022; Revised 07/20/2022 and 09/09/2022
A3-1	FLOOR 4 PARTIAL POWER & COMMUNICATION PLAN, dated 06/29/2022; Revised 07/20/2022 and 09/09/2022
A4-1	FLOOR 4 PARTIAL FINISH PLAN, dated 06/29/2022; Revised 07/20/2022 and 09/09/2022
A5-1	FLOOR 4 PARTIAL FURNITURE PLAN, DATED 06/29/2022; Revised 07/20/2022 and 09/09/2022
A7-1	INTERIOR ELEVATIONS & SECTIONS, dated 06/29/2022; Revised 07/20/2022 and 09/09/2022
A9-1	DOOR SCHEDULE & PARTITIONS, dated 06/29/2022; Revised 07/20/2022 and 09/09/2022
M0-0	SYMBOLS, LEGENDS, & ABBREVIATIONS – MECAHNICAL, dated 06/30/2022
M0-1	SPECIFICATIONS – MECHANICAL, dated 06/30/2022
M1-1	FLOOR 4 PARTIAL DEMOLITION PLAN – MECHANICAL, dated 06/30/2022
M2-1	FLOOR 4 PARTIAL CONSTRUCTION PLAN – MECHANICAL, dated 06/30/2022
M3-0	SCHEDULES AND DETAILS – MECHANICAL, dated 06/30/2022
E0-0	SYMBOLS, LEGENDS & ABBREVIATIONS – ELECTRICAL, dated 06/30/2022
E0-1	SPECIFICATIONS – ELECTRICAL, dated 06/30/2022
E0-2	SPECIFICATIONS – ELECTRICAL, dated 06/30/2022
E1-1	FLOOR 4 PARTIAL DEMOLITION PLAN – ELECTRICAL, dated 06/30/2022
E2-1	FLOOR 4 PARTIAL CONSTRUCTION PLAN – LIGHTING, dated 06/30/2022; Revised 07/20/2022 and 09/09/2022
E3-1	FLOOR 4 PARTIAL CONSTRUCTION PLAN – POWER & TELEDATA, dated 06/30/2022; Revised 07/20/2022 and 09/09/2022
E4-0	RISER DIAGRAM & SCHEDULES - ELECTRICAL, dated 06/30/2022
E5-0	ELECTRICAL DETAILS, dated 06/30/2022
FA0-0	SYMBOLS, LEGENDS, & ABBREVIATIONS – FIRE ALARM, dated 06/30/2022
FA0-1	SPECIFICATIONS – FIRE ALARM, dated 06/30/2022
FA0-2	SPECIFICATIONS – FIRE ALARM, dated 06/30/2022

FA1-1	FLOOR 4 PARTIAL DEMOLITION PLAN – FIRE ALARM, dated 06/30/2022
FA2-1	FLOOR 4 PARTIAL CONSTRUCTION PLAN – FIRE ALARM, dated 06/30/2022
FP0-0	SYMBOLS, LEGENDS, & ABBREVIATIONS – FIRE PROTECTION, dated 06/30/2022
FP0-1	SPECIFICATIONS – FIRE PROTECTION, dated 06/30/2022
FP1-1	FLOOR 4 PARTIAL DEMOLITION PLAN – FIRE PROTECTION, dated 06/30/2022
FP2-1	FLOOR 4 PARTIAL CONSTRUCTION PLAN – FIRE PROTECTION, dated 06/30/2022

Restroom and Office Space Renovations Floor 5

No.	Description
AN-0	Cover Sheet, dated 06/29/2022; Revised 07/20/2022 and 09/09/2022
AN-1	FLOOR 5 LIFE SAFETY PLAN, dated 06/29/2022
AN-2	GENERAL NOTES & ABBREVIATIONS, dated 06/29/2022
AN-3	ACCESSIBILITY DIAGRAMS, dated 06/29/2022
A0-1	FLOOR 5 PARTIAL DEMOLITION & PHASING PLANS, dated 06/29/2022
A0-2	FLOOR 5 PARTIAL REFLECTED CEILING DEMOLITION PLAN, dated 06/29/2022
A1-1	FLOOR 5 PARTIAL CONSTRUCTION PLAN, dated 06/29/2022; Revised 07/20/2022 and 09/09/2022
A2-1	FLOOR 5 PARTIAL REFLECTED CEILING PLAN, dated 06/29/2022; Revised 09/09/2022
A3-1	FLOOR 5 PARTIAL POWER & COMMUNICATION PLANS, dated 06/29/2022
A4-1	FLOOR 5 PARTIAL FINISH PLAN, dated 06/29/2022; Revised 07/20/2022 and 09/09/2022
A5-1	FLOOR 5 PARTIAL FURNITURE PLAN, dated 06/29/2022
A6-1	FLOOR 5 RESTROOM ENLARGED PLANS & ELEVATIONS, dated 06/29/2022; Revised 09/09/2022
A6-2	FLOOR 5 RECEPTION DESK ENLARGED PLANS, ELEVATIONS & DETAILS, dated 06/29/2022; Revised 09/09/2022
A7-1	INTERIOR ELEVATIONS, dated 06/29/2022; Revised 07/20/2022 and 09/09/2022
A8-1	INTERIOR DETAILS, dated 06/29/2022
A8-2	INTERIOR DETAILS, DOORS & DOOR SCHEDULE, dated 06-29-2022; Revised 07/20/2022 and 09/09/2022
A9-1	DETAILS, DOOR FRAMES & PARTITIONS, dated 06/29/2022; Revised 09/09/2022
M0-0	SYMBOLS, LEGENDS, & ABBREVIATIONS – MECHANICAL, dated 06/30/2022
M0-1	SPECIFICATIONS – MECHANICAL, dated 06/30/2022
M1-1	FLOOR 5 PARTIAL DEMOLITION PLAN – MECHANICAL, dated 06/30/2022
M2-1	FLOOR 5 PARTIAL CONSTRUCTION PLAN – MECHANICAL, dated 06/30/2022
M3-0	SCHEDULES & DETAILS – MECHANICAL, dated 06/30/2022
P0-0	SYMBOLS, LEGENDS & ABBREVIATIONS – PLUMBING, dated 06/30/2022
P0-1	SPECIFICATIONS – PLUMBING, dated 06/30/2022
P0-2	SPECIFICATIONS – PLUMBING, dated 06/30/2022
P1-1	FLOOR 5 PARTIAL DEMOLITION PLAN – PLUMBING, dated 06/30/2022
P2-1	FLOOR 5 PARTIAL CONSTRUCTION PLAN – PLUMBING, dated 06/30/2022
P3-0	SCHEDULES & DETAILS – PLUMBING, dated 06/30/2022
E0-0	SYMBOLS, LEGENDS & ABBREVIATIONS – ELECTRICAL, dated 06/30/2022
E0-1	SPECIFICATIONS – ELECTRICAL, dated 06/30/2022
E0-2	SPECIFICATIONS – ELECTRICAL, dated 06/30/2022

- E1-1 FLOOR 5 PARTIAL DEMOLITION PLAN - ELECTRICAL, dated 06/30/2022
- E2-1 FLOOR 5 PARTIAL CONSTRUCTION PLAN – LIGHTING, dated 06/30/2022
- E3-1 FLOOR 5 PARTIAL CONSTRUCTION PLAN – POWER & TELEDATA, dated 06/30/2022
- E4-0 RISER DIAGRAM & SCHEDULES – ELECTRICAL, dated 06/30/2022
- E5-0 DETAILS – ELECTRICAL, dated 06/30/2022
- FA0-0 SYMBOLS, LEGENDS, & ABBREVIATIONS – FIRE ALARM, dated 06/30/2022
- FA0-1 SPECIFICATIONS – FIRE ALARM, dated 06/30/2022
- FA0-2 SPECIFICATIONS – FIRE ALARM, dated 06/30/2022
- FA1-1 FLOOR 5 – PARTIAL DEMOLITION PLAN – FIRE ALARM, dated 06/30/2022
- FA2-1 FLOOR 5 – PARTIAL CONSTRUCTION PLAN – FIRE ALARM, dated 06/30/2022
- FP0-0 SYMBOLS, LEGENDS, & ABBREVIATIONS – FIRE PROTECTION, dated 06/30/2022
- FP0-1 SPECIFICATIONS – FIRE PROTECTION, dated 06/30/2022
- FP1-1 FLOOR 5 PARTIAL DEMOLITION PLAN – FIRE PROTECTION, dated 06/30/2022
- FP2-1 FLOOR 5 PARTIAL CONSTRUCTION PLAN – FIRE PROTECTION, dated 06/30/2022

RFP dated July 8, 2022 and all subsequent communications relating to Contractors bid.

Jefferson Center Building Rules and Regulations for Contractors
Supplier Diversity and Inclusion Program - The Board of Directors of City Trusts



B. SCHEDULE OF VALUES

Item	Cost
General Conditions	\$45,391.00
Demolition	\$26,846.00
Rough & Finish Carpentry	\$900.00
Millwork	\$81,160.00
Sealants	-
Door, Frames & Hardware	\$7,523.00
Metal Studs & Drywall	\$41,135.00
Acoustical Ceilings	\$45,945.00
Carpet & Base	\$44,500.00
Tile Floor/Wall	\$24,000.00
Floor Preparation	\$4,000.00
Glass Fronts, plus Hayworth	\$28,736.00
Glazing	\$39,028.00
Painting	\$14,000.00
Wallcovering	-
Plumbing	\$40,305.00
Restroom Accessories	\$5,112.00
Appliances	\$5,040.00
Fire Protection - Sprinklers	\$14,668.00
HVAC	\$25,800.00
Electrical	\$232,500.00
Fire Alarm/Strobes - Simplex/JCI	In electric
Other - additional for enhanced DBE/WBE/MBE	\$4,500.00
Sub-Total	\$731,089.00
Permits	\$7,747.00
Insurance/Fees	\$16,193.00
OH/Profit	\$41,293.00
Total General Contractor	\$796,322.00
GC's total overhead and fee for any/all changes orders not contemplated above - reflect as %	10%

*All allowances shall be reconciled with appropriate documentation and where applicable, approved in advance by Owner.

Note: Tenant is a tax-exempt entity. In the event that any of the costs above include PA or Philadelphia sales tax Contractor shall adjust the Contract Sum accordingly.

Additional Comments:

1. All work shall be done in strict accordance with the Construction Documents referenced herein.
2. Project shall be phased in such a manner that limits the downtime and consistent with KWPMI and the Tenant's expectations. Phasing to be completed as referenced in 7/8/22 RFP.
3. Contractor confirms that the 5th floor reception desk is incorporated in the base contract amount.
4. Contractor shall coordinate all work with KWPMI prior to commencing the Work. Work hours/restrictions shall be as contemplated in the Construction Documents. Contractor shall provide necessary protection when performing work.
5. Contractor, at its sole cost and expense, shall obtain any and all L&I (or AHJ) approvals and permits prior to the commencement of the Work.
6. Immediately after the initial meeting with Contractor, Contractor shall further define and develop the critical path schedule, identifying all of the significant milestones and provide the same to Owner for approval. Said schedule shall be relatively consistent with that provided as part of Contractor's original proposal. Contractor shall make Owner aware of any long lead items which could jeopardize the timely completion of the project.
7. Contractor shall be responsible for working with and coordinating with Owner's and/or Tenant's security, elevator and/or telecom providers, if necessary.
8. Contractor shall recognize that the work contemplated herein is located in highly visible areas. As such, all work shall be performed in a manner so as to minimize the impact on tenants' operations and/or that of the building. Contractor shall provide all necessary (interior and exterior) protection when performing work. Additionally, it should be noted that certain portions of the Work must be completed off hours, including but not limited to: Any noise producing work; tile removal, shooting into the deck, etc. as well as work in rooms 508, 511 and 512, unless otherwise mutually agreed.
9. Contractor shall keep the job site neat and orderly at all times with adequate dust protection. If work is performed off hours, the area shall be left safe, clean and ready for the next business day.
10. Contractor to become familiar with all specified materials, inclusive of shipping, handling, storage and installation means and methods of the same.
11. Contractor acknowledges that other projects in the building may be completed simultaneous with Owner's project. As such, coordination of all material movements (demo and new construction materials) must be coordinated with KWPMI.
12. Contractor shall receive all deliveries via the loading dock, which shall be coordinated off-hours with KWPMI at no additional cost.
13. Contractor shall also be responsible for disposing/recycling of all demolition materials. The hauling of the debris shall be coordinated with KWPMI and shall be completed after hours, in accordance with the building rules and regulations.
14. Contractor affirms it is a licensed contractor, possessing good labor relations, capable of performing quality workmanship and working in harmony with Owner's contractors and sub-contractors and with other contractors and subcontractors working in the building. Said affirmation shall remain for the duration of the project and any warranty period.
15. Contractor shall present its proposed list of subs to Owner for approval prior to the commencement of the Work and identify any subs that are certified as MBE, WBE or DBE firms. Contractor shall track as necessary to satisfy Owner.
16. Contractor to maintain minutes for all project meetings, incorporating any edits required by the property or design team.
17. Contractor shall be responsible for any necessary sidewalk protection, as well as sidewalk and/or street closure permits, if applicable.
18. Upon completion of the Work (or each phase, Tenant, Owner (and/or its representatives) and Contractor shall jointly develop a construction punchlist. The construction punchlist shall be completed by Contractor within five (5) business days of receipt from Owner. Should any item on this list not be completed within this time frame, Owner reserves the right to have this work completed at Contractor's expense.
19. Contractor covenants that it shall, on or before ten (10) days after the release of the final construction payment, pay any subcontractor, materialman and anyone else acting or claiming through or under Contractor. Contractor shall indemnify, defend and hold Owner harmless from and against the claim or lien and all direct or consequential loss resulting in any way from the filing of such claim or lien, and shall pay or cause to be paid

to Owner the amount of its loss, with interest and all expenses incident to Contractor's failure to pay any payment obligation within the ten (10) day period described above, including attorneys' fees, costs and other disbursements. Owner shall have the right to recover any and all sums from Contractor without prejudice and any amount due Owner as a result of this indemnity.

20. Any lifts and/or scaffolding should be reviewed to ensure that they do not exceed the floor loading for the area/building. The live load for the building is 100lbs/sf.
21. KWPMI and/or Tenant reserves the right to exercise any/all change orders identified in the Construction Documents at the cost as identified in the Schedule of Values contained herein without additional markup or fee.



EXHIBIT "B"
INSURANCE RIDER
CONSTRUCTION AGREEMENT

1. LIABILITY INSURANCE

1.1 The Contractor shall maintain at his own cost and expense the following insurance in amounts not less than those specified below and issued by insurance companies licensed to do business in the state where the project is located, with a current A.M. Best rating of A or better and a financial class of at least VIII and a Standard and Poor's Claims Paying Ability Rating of not less than AA-.

(i) Workers' Compensation

- A. Statutory Coverage in accordance with the laws of the state with jurisdiction, including Voluntary Compensation and Other States.
- B. Employer's Liability with limits of not less than \$1,000,000 each accident/injury, \$1,000,000 each employee/disease, \$1,000,000 disease/policy limit.

(ii) Commercial General Liability

- A. Coverage A - Bodily Injury and Property Damage Liability with a \$2,000,000 limit per occurrence per project.
- B. Coverage B - Personal and Advertising Injury Liability with a \$2,000,000 limit per person.
- C. Products and Completed Operations with a \$2,000,000 limit per occurrence and in the aggregate.
- D. General Aggregate with a \$4,000,000 limit per project.
- E. Above is to include Broad Form Contractual Liability, Independent Contractors, Broad Form Property Damage and Explosion, Collapse and Underground Hazards coverage.
- F. Additional Insured Endorsement CG2010 Form B or its equivalent.

(iii) Commercial Automobile Liability

- A. Bodily Injury and Property Damage Liability with a combined single limit in an amount not less than \$2,000,000 for each person in one accident, and \$2,000,000 for injuries sustained by two or more persons in any one accident.
- B. Above to include Non-Owned and Hired Car Coverage.

(iv) Umbrella Liability or Excess Liability

A. Following form over the primary coverage in an amount not less than \$5,000,000 each occurrence and in the aggregate.

(v) Additional Insured

Owner, Construction Manager, Manager and any other party designated by Owner shall be added as additional insured parties under Contractor's general liability, umbrella or excess liability, and automobile liability policies. All such policies shall be endorsed to include the following language:

"Coverage afforded the Additional Insureds under this policy shall be primary insurance. If the Additional Insureds have other insurance which is applicable to the loss, such other insurance shall be on an excess basis. The amount of the company's liability under this policy shall not be reduced by the existence of such other insurance."

The aforementioned insurance shall list as additional named insured the following parties as their interest may appear:

Girard Estate Leasehold, a Pennsylvania nonprofit corporation; Girard Estate Fee, a Pennsylvania nonprofit corporation; Kennedy Wilson Properties, Ltd.; Kennedy-Wilson Pennsylvania Management, Inc.; and their respective partners, members, agents, and employees.

- 1.2 Contractor, before commencing Work, will supply Owner with Certificate of Insurance evidencing compliance with the minimum requirements listed above along with copies of actual additional insured endorsements. Each certificate shall state that the insurance evidenced by such certificate will not be canceled or reduced without thirty (30) days prior written notice to the Owner.
- 1.3 Contractor shall maintain a file of Certificates of Insurance received from each subcontractor and/or sub-contractors of any tier.
- 1.4 Each subcontractor and/or Sub-subcontractors of any tier, shall maintain the following insurance in amounts not less than those specified below:
- (i) Workers' Compensation in accordance with the laws of the state with jurisdiction, and Employer's Liability in an amount not less than \$1,000,000.
 - (ii) Commercial General Liability
 - A. Coverage A - Bodily Injury and Property Damage Liability with a \$2,000,000 limit per occurrence per project.
 - B. Coverage B - Personal and Advertising Injury Liability with a \$2,000,000 limit per person.
 - C. Products and Completed Operations with \$2,000,000 limit per occurrence and in the aggregate.

- D. General Aggregate with a \$4,000,000 limit per project.
 - E. Owner, Manager and Owners Agents are to be named as additional insureds.
 - F. Above is to include Broad Form Contractual Liability, Broad Form Property Damage and Explosion, Collapse and Underground Hazards coverage.
- (iii) Comprehensive Automobile Liability
- A. Bodily Injury and Property Damage Liability with a combined single limit in an amount not less than \$1,000,000 for each person in one accident, and \$1,000,000 for injuries sustained by two or more persons in any one accident.
 - B. Above to include Employer's Non-Owned and Hired Car Coverage.
- (iv) Umbrella Liability or Excess Liability
- A. Following form over the primary coverage in an amount not less than \$2,000,000 each occurrence and in the aggregate.

- 1.5 Each subcontractor, and/or Sub-subcontractor of any tier, shall furnish Contractor before commencing work, Certificates of Insurance, evidencing compliance with the minimum requirements listed above including attachment of actual additional insured endorsement, and evidence that insurance afforded the additional insureds shall be considered primary insurance to any that might otherwise be available to the additional insureds. Each certificate shall state that the insurance evidenced by such certificate will not be canceled or reduced without thirty (30) days prior written notice to the Contractor. Subcontractors and/or Sub-subcontractors minimum insurance requirements can be waived only if so done in writing by the Owner.

2. PROPERTY INSURANCE

- 2.1 Unless otherwise provided, the Owner shall purchase and maintain property insurance upon the entire work at the site to the full insurable value thereof. This property insurance shall be written on the standard completed value form. This insurance shall include the interests of the Owner, Contractor and each Subcontractor and Sub-subcontractor in the work and shall insure against Fire, Extended Coverage and All Risk perils. This policy of insurance shall bear a deductible no greater than \$50,000 each occurrence.
- 2.2 The Owner shall file a copy of the policy with the Contractor upon receipt of same from the insurer.
- 2.3 The Owner, Contractor, Subcontractors and all Sub-subcontractors of any tier, waive all rights against each other for damage caused by fire or other perils to the extent covered by insurance provided under paragraph 2.1 or by other insurance covering the loss, except such rights as they may have to the proceeds of such insurance.

- 2.4 Any insured loss is to be adjusted with the Owner and made payable to the Owner as trustee for the insureds, as their interest may appear, subject to the requirements of any applicable mortgage clause and of paragraph 2.6.
- 2.5 If the Owner finds it necessary to occupy or use a portion of the work prior to substantial completion, such occupancy shall not commence prior to a time mutually agreed to by the Owner and Contractor. In the event of such occupancy the property insurance carrier shall be notified by the Contractor prior to occupancy.
- 2.6 The Owner as trustee shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within five days after the occurrence of loss to the Owners exercise of this power, and if such objection be made, arbitrators shall be chosen.
- The Owner as trustee shall, in that case, make settlement with the insurers in accordance with the directions of such arbitrators. If distribution of the insurance proceeds by arbitration is required, the arbitrators will direct such distribution.
- 2.7 The Owner shall not be responsible for nor shall he insure the property of the Contractor, Subcontractors or Sub-subcontractors, including but not limited to, tools and equipment, located at the job site which is not intended to be incorporated into the work. The Contractor, Subcontractors, and Sub-subcontractors of any tier, shall be responsible for providing Fire, Theft or other insurance to protect their interests and the interest of the Owner in materials in transit or in storage off the site, until such materials are incorporated in the work.

Exhibit C

City Provisions

This Exhibit "C" is attached to and made a part of Amendment No. 2 to Master Lease and Lease dated January 27, 2009, by and among Girard Estate Leasehold, a Pennsylvania non-profit corporation ("Girard"), Philadelphia Authority for Industrial Development, a body politic and corporate ("PAID") and The City of Philadelphia, a body politic and corporate ("Tenant" or "City").

Defined Terms

Capitalized terms used and not defined in this Exhibit shall have the meanings ascribed to them in the Amendment.

Fair Practices

Girard agrees, in performing this Lease, 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.

Nondiscrimination

(a) This Lease is entered into under the terms of the Philadelphia Home Rule Charter and in its performance, Girard shall not discriminate nor permit discrimination against any person because of race, color, sex, sexual orientation, religion, national origin or ancestry. In the event of such discrimination which goes uncured more than thirty (30) days after notice from PAID, PAID may terminate this Lease forthwith or exercise any other remedy provided to PAID in this Lease or at law or in equity. The foregoing shall not be construed to limit or restrict PAID's right to terminate this Lease as set forth in other sections of this Lease.

(b) In accordance with Chapter 17-400 of The Philadelphia Code, Girard 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 this Lease entitling PAID to all rights and remedies provided in this Lease or otherwise available at law or in equity.

(c) Girard agrees to include subparagraphs (a) and (b) of this Section, with appropriate adjustments for the identity of the parties, in all subcontracts which are entered into for work to be performed on the Premises pursuant to this Lease.

(d) Girard further agrees to cooperate with the Commission on Human Relations 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.

Philadelphia 21st Century Minimum Wage Standard

Girard will comply with the requirements of Section 17-1300 of the Philadelphia Code as they exist on the date when the Girard entered into this Lease with PAID or as they exist on the date when any amendment is executed to this Lease. Girard will promptly provide to PAID upon request documents and information verifying its compliance with the requirements of Section 17-1300. Girard will notify its affected employees with regard to the wages that are required to be paid pursuant to this Section 17-1300.

Prohibited Gifts

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.

Girard understands and agrees that if it offers 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 subject to sanctions with respect to future City contracts. Such sanctions may range from disqualification from participation in a particular contract to debarment, depending on the nature of the violation.

Certification of Non-Indebtedness

(a) Girard hereby certifies and represents that Girard and Girard's parent company(ies) and subsidiary(ies) and affiliate(s), if any, are not currently indebted to the City, and will not during the term of this 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 written contract or payment plan satisfactory to the City has been established.

(b) Girard shall require all contractors and subcontractors performing repairs and/or alterations on the Premises to be bound by the following provision and PAID shall cooperate with the City in exercising the rights and remedies described below or otherwise available at law or in equity:

"Contractor ("Contractor") or Subcontractor ("Subcontractor") hereby certifies and represents that Contractor or Subcontractor, and Contractor or Subcontractor's parent company(ies) and their subsidiary(ies), are not currently indebted to The City of Philadelphia (the "City"), and will not at any time during the Term of PAID's Lease, dated _____, 200__ with the City (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 written contract or payment plan satisfactory to the City has been established."

(c) Any breach or failure to conform to the aforesaid certifications shall constitute a default by the Girard, if such default is not cured within thirty (30) days after Girard's receipt of written notice of such default, shall entitle PAID to exercise any rights or remedies available to it under this Lease, and at law and in equity.

MacBride Principles

(a) Girard, by execution of this Lease, certifies and represents that

(i) Girard (including any parent company, subsidiary, exclusive distributor or company affiliated with the PAID) does not have, and will not have at any time during the Term of this Lease (including any extensions or renewals thereof), any investments, licenses, franchises, management agreements or operations in Northern

Ireland and (ii) no product or service to be provided to the PAID under this Lease will originate in Northern Ireland, unless Girard has implemented the fair employment principles embodied in the MacBride Principles.

(ii) In the performance of this Lease, Girard agrees that it will not utilize any suppliers, subcontractors or sublicensees at any tier (i) who have (or whose parent, subsidiary, exclusive distributor or company affiliate have) any investments, licenses, franchises, management agreements or operations in Northern Ireland, or (ii) who will provide products originating in Northern Ireland unless said supplier, sublicensee or subcontractor has implemented the fair employment principles embodied in the MacBride Principles. Girard further agrees to include the provisions of this Section with appropriate adjustments for the identity of the parties, in all subcontracts and supply agreements which are entered into in connection with the performance of this Lease.

(iii) Girard agrees to cooperate with the City's Director of Finance in any manner which the said Director of Finance deems reasonable and necessary to carry out the Director's responsibilities under Section 17-104 of The Philadelphia Code. Girard expressly understands and agrees that any false certification or representation in connection with this Section or any failure to comply with the provisions of this Section shall constitute a substantial breach of this Agreement entitling PAID to all rights and remedies provided in this Lease or otherwise available at law (including, but not limited to, Section 17-104 of The Philadelphia Code) or in equity. In addition, it is understood that false certification or representation is subject to prosecution under Title 18 Pa. C.S.A. Section 4904.

Business Corporate and Slavery Era Insurance Disclosure

Girard, after execution of this Lease, will complete an affidavit certifying and representing that the Girard (including any parent company, subsidiary, exclusive distributor or company affiliated with Girard) has searched any and all records of Girard or any predecessor company regarding records of investments or profits from slavery or slaveholder insurance policies during the slavery era. The names of any slaves or slaveholders described in those records must be disclosed in the affidavit. Girard expressly understands and agrees that any false certification or representation in connection with this Section or any failure to comply with the provisions of this Section shall constitute a substantial breach of this Lease entitling PAID to all rights and remedies provided in this Lease or otherwise available in law (including, but not limited to, Section 17-104 of The Philadelphia Code) or equity and the Lease will be deemed voidable. In addition, it is understood that false certification or representation is subject to prosecution under Title 18 Pa. C.S. Section 4904.

Exhibit D
Project Schedule



Acacia Financial Group

Proposed Billing Rates:

Transaction	Proposed Fee
Consulting Hourly Rates	
Co-President	\$350
Managing Director	\$350
Senior Vice President	\$325
Vice President	\$300
Asst. Vice President	\$250
Associate	\$250
Analyst	\$200

Public Financial Management

Proposed Billing Rates:

Position	Hourly Rate
Managing Directors/Directors	\$325
Senior Managing Consultants	\$300
Analysts	\$275
Associates	\$200

Andre C. Dasent, P.C.

Proposed Billing Rates:

Position	Hourly Rate
Partners of five or more years	\$225
Other Partners	\$200
Associates practicing law for five or more years	\$175
Other Associates	\$155
Paralegal	\$135

Ballard Spahr

Proposed Billing Rates:

Position	Hourly Rate
Senior Partner	\$740 - \$950
Junior Associate	\$425 - \$590

Black & Veatch

Proposed Billing Rates:

TITLE	HOURLY BILLING RATES (\$/HR)
BLACK & VEATCH	
Administrative	103.97
Analyst	169.74
Senior Analyst	180.35
Senior Associate	196.27
Engineer	196.27
Senior Engineer	223.87
Consultant	249.31
Senior Consultant	259.92
Manager	270.53
Senior Manager	281.14
Principal Consultant	312.97
Director	352.22
Managing Director	366.01

Black & Veatch Subconsultant Billing Rates:

JOB DESCRIPTION	HOURLY BILLING RATES (\$/HR)
Community Marketing Concepts, Inc.	
Administration Support Staff	84.87
Project Support Staff	159.14
Consultant, General	175.05
Consultant & Subject Matter Expert I	190.96
Consultant & Subject Matter Expert II	212.18
Principal	241.89
Chief Executive Officer	265.23

JOB DESCRIPTION	HOURLY BILLING RATES (\$/HR)
One Water Econ, LLC	
Economic Analyst	126.00
Senior Economist	157.50
Managing Economist	200.00
President and Lead Economist	246.75

JOB DESCRIPTION	HOURLY BILLING RATES (\$/HR)
Retra Studio, LLC	
Project Coordinator	124.00
Analyst	157.00
Consultant & Subject Matter Expert - Government Affairs	270.00
Principal	205.50

JOB DESCRIPTION	HOURLY BILLING RATES (\$/HR)
IBS Management & Consultancy Services, LLC	
Junior Consultant	79.57
Project Engineer	127.31
Consultant/Analyst	159.14
Lead Engineer	159.14
Senior Engineer	185.66
Senior Consultant	196.27
Project Manager	196.27
Managing Consultant	210.06
Project Coordinator	210.06
Sr. Manager	228.09
Partner/Director/Principal	265.23

JOB DESCRIPTION	HOURLY BILLING RATES (\$/HR)
Kash Srinivasan Group, LLC	
Associate – Level I	102.91
Associate – Level II	136.86
Associate – Level III	168.68
Facilitation Specialist	201.57
Principal	206.88

Raftelis

Proposed Billing Rates:

	TITLE (POSITION)	HOURLY BILLING RATE
RAFTELIS FINANCIAL CONSULTANTS, INC.		
	Chairman of the Board	\$475
	President and CEO	\$400
	Executive Vice President	\$350
	Vice President/Principal	\$325
	Director	\$325
	Senior Manager	\$285
	Manager	\$250
	Senior Consultant	\$225
	Consultant	\$195
	Associate	\$165
	Administration	\$90
SOA FINANCIAL		
	Owner/Principal	\$220
	Senior Consultant	\$150
SAY/DO STRATEGIES		
	Owner & Principal/Strategist	\$270
	Consultant, Subject Matter Expert	\$180
	Consultant, General	\$123
	Administrative Support Staff	\$90
PEER ENGINEERING		
	Principal Industrial Engineer (VI)	\$279
	Principal Management Consultant (VI)	\$254
	Principal Financial Consultant (VI)	\$231
	Principal Environmental Engineer (VI)	\$220
	Sr. O&M Technician (V)	\$176
	Sr. Data Analytics/Process Controls (V)	\$165
	Project Financial/Doc Mgt Consultant (IV)	\$129
	Environmental Engineer (III)	\$115
	O&M Technician (I)	\$82
MII TEK		
	Technical Support	\$200
	Project Management Support	\$200
	Consultant	\$190