

# EXHIBIT A



First Judicial District of Pennsylvania  
OFFICE OF THE COURT ADMINISTRATOR

336 CITY HALL  
PHILADELPHIA, PA. 19107  
(215) 686-2547  
Fax (215) 686-7485  
<http://courts.phila.gov>

February 10, 2006

Jeffrey B. Rotwitt, Esquire  
Obermayer Rebmann Maxwell & Hippel LLP  
One Penn Center - 19<sup>th</sup> Floor  
1617 John F. Kennedy Boulevard  
Philadelphia, Pennsylvania 19103-1895

Dear Mr. Rotwitt:

As agreed by Madame Justice Sandra Schultz Newman, Justice of the Supreme Court of Pennsylvania, (Liaison Justice to the FJD) and me, this letter shall confirm your representation on behalf of the First Judicial District of the Commonwealth of Pennsylvania as it relates to the acquisition of a Philadelphia Family Court facility.

Additionally, it is our mutual understanding that your fee will be satisfied by the party(ies) providing the facility.

Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Joseph A. Cairone".

Joseph A. Cairone  
Court Administrator

cc: Madame Justice Sandra Schultz Newman, Supreme Court of Pennsylvania  
President Judge C. Darnell Jones, II, Court of Common Pleas and  
Chair, Administrative Governing Board, First Judicial District

# EXHIBIT B



# OBERMAYER

REBMANN MAXWELL & HIPPEL LLP

*Attorneys At Law*

**Jeffrey B. Rotwitt, Esquire**  
Direct Dial: 215.665.3052  
E-mail: jbr@obermayer.com

One Penn Center – 19th Floor  
1617 John F. Kennedy Boulevard  
Philadelphia, PA 19103-1895  
P 215.665.3000  
F 215.665.3139  
www.obermayer.com

April 4, 2007

Donald W. Pulver  
President  
Oliver Tyrone Pulver Corporation  
Five Tower Bridge  
West Conshohocken, PA 19428

Re: 15<sup>th</sup> & Arch Streets  
Philadelphia, PA

Dear Don:

I am the tenant representative for Family Courts in their search for new facilities of approximately 500,000 SF in Philadelphia.

One of the excellent alternatives we are investigating is 15<sup>th</sup> and Arch Streets, Philadelphia. We expect to be in close contact with you over the next several months as we reach a decision.

No choice will be made unless and until a legally binding agreement is negotiated and signed by both parties.

Sincerely,

Jeffrey B. Rotwitt

/ddm

**Over a Century of Solutions**

Philadelphia  
Pennsylvania

Harrisburg  
Pennsylvania

Pittsburgh  
Pennsylvania

Cherry Hill  
New Jersey

Wilmington  
Delaware

# EXHIBIT C

**Mornell, Deborah**

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**From:** Kathy Forbush [KForbush@OTPCorp.Com]  
**Sent:** Monday, July 09, 2007 10:13 AM  
**To:** Rotwitt, Jeffrey  
**Subject:** Family Courts Financial Projections  
**Attachments:** FINANCIAL PROJECTIONS July 2007 WITH DWP NOTES 7.5.07.doc; FINANCIAL PROJECTIONS July 2007 7.5.07.doc

Happy Monday morning to you to you Jeff. Don asked me to email these projections to you.

Kathy

*Kathy Jo Forbush  
Office Manager  
Oliver Tyrone Pulver Corporation  
300 Barr Harbor Drive, Suite 750  
West Conshohocken, PA 19428  
Phone: (610) 834-3185  
Fax: (610) 834-2011*

7/9/2007

July 5, 2007

**FINANCIAL PROJECTIONS**

**FAMILY COURTS**

**15<sup>TH</sup> & ARCH STREETS**

**PHILADELPHIA, PA**

**529,500 SF COURTS**

**50 CAR PARKING**

**JULY 2007**

<u>CAPITAL BUDGET</u>	<u>\$/SF</u>	<u>\$</u>
Land	33.99	18,000,000
Sitework	2.83	1,500,000
Parking	10.39	5,500,000
Building	127.08	67,289,000
Interiors	74.75	39,580,125
F, F & E Allowance	15.00	7,942,500 ✓
Design Building	9.00	4,765,500
Design Interiors	5.00	2,647,500
Tenant Representation	7.00	3,706,500
Legal, Title, Permits	4.00	2,118,000
G&A 50/50 Jeff/Don	4.00	2,118,000
Development Fee 50/50 Jeff/Don	4.00	2,118,000
Financing	18.88	9,996,960
Contingency 50/16.7/16.7/16.7	<u>15.80</u>	<u>8,366,100</u>
Court/Contr/Jeff/Don	<u>\$331.72</u>	<u>\$175,645,740</u>

Annual Occupancy Cost

Financing Cost/Yr.

175,645,740 x 6% Constant

\$10,539,000 (19.90 Per SF)

Operating Costs/Yr. @ \$6.50/SF

3,442,000

Total Occupancy Costs

\$13,981,000 (26.40 Per SF)

*\$16 per sq ft  
210 courts*

*\$15*

July 5, 2007

**FINANCIAL PROJECTIONS**

**FAMILY COURTS**

**15<sup>TH</sup> & ARCH STREETS**

**PHILADELPHIA, PA**

**529,500 SF COURTS**

**50 CAR PARKING**

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Design Building	9.00	4,765,500
Design Interiors	5.00	2,647,500
Tenant Representation	7.00	3,706,500
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175,645,740 x 6% Constant

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Operating Costs/Yr. @ \$6.50/SF

3,442,000

Total Occupancy Costs

\$13,981,000 (26.40 Per SF)



# EXHIBIT D

## Rotwitt, Jeffrey

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**From:** Rotwitt, Jeffrey  
**Sent:** Wednesday, November 14, 2007 9:53 PM  
**To:** Ayres, Warren  
**Cc:** Sutherland, Hugh; Ryan, John; Weinstein, Michael  
**Subject:** RE: Family Court - transaction structure

Warren,

A few more observations.

**A (3) and (4)** To better clarify the parties, the entity (John Ryan knows the name) that owns the fee title to the Air Rights Estate is controlled by Don Pulver and we should call it "Site Owner". The Developer for the 5 year lease will be a to-be-formed entity to be controlled by Don and me. Importantly, there will be a large, but very fair, Tenant Representative Fee paid to ORM&H when this closes. The timing of the payment of the Developer Fee and the Tenant Representative Fee is to be determined, hopefully when the Bond offering closes, but perhaps some then and some each month until the Construction Documents are done, priced and the GC has commenced construction some 9 months after the architects have been released to start and paid from the Bond proceeds. ORM&H will also, if I get my way, be the law firm that structures all this and does all the zoning and land development work for legal fees in addition to the Tenant Rep Fee for the real estate and lobbying work I've basically already completed. Don has used Klehr and Hangley. The state and city will obviously have their own law firms too. I don't think the First Judicial District will, but who knows.

**B (7)** The City subsidy amounts are wrong and I've given Hugh materials that show the correct amounts which are the ones from my Sunday email.

Under the Home Rule Charter, City leases over one year must be able to be cancelled. The exception is if the City signs a lease with an Authority, so we could slide PIDA into the City's position (eliminate the ISA) and have the City sublease from the Authority (I assume there's no doubt that PIDA can lease for 30 years). This, however, extinguishes all City involvement and exposure after 30 years. For this to be revenue neutral as to the status quo, the City's commitments must be as perpetual as will be the state's and the state will own the building free of the PIDA/City lease and have to pay in year 31 (unless we change something) 100% of the building's operating costs.

So far the only way I've thought of around this is to have the City own some real estate interest in fee, whether to condo the building and let it have a floor or two either as sole owner (and have condo docs obligate it for common expenses) or buy a tenant in common interest in one or more of the condo floors in common with the state. If we follow this path, then we could ditch the lease structure and go back to the ISA structure and rather than the state buy back the city's interest under the ISA for \$1 at the end of 30 years, the city will actually own what is being bought at the end of the 30 years. **BUT**, now I'm a bit stumped with an ISA approach as to who will be the contra-party with the city on the ISA at the time of the Bond closing with the building being constructed by the Developer and paid for by the state by virtue of the two 5 year leases. Neither party will have a fee interest in anything to sell under a 30 year ISA. I guess it could sign it with the state but subject to the two 5 year leases. John and Hugh, we'll have to check on the binding nature on the city of an ISA for a condo unit that doesn't exist and is to be built by an entity NOT party to the ISA pursuant to two 5 year leases. Maybe it's okay.

Jeff

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**From:** Ayres, Warren  
**Sent:** Wednesday, November 14, 2007 3:17 PM  
**To:** Rotwitt, Jeffrey  
**Cc:** Sutherland, Hugh  
**Subject:** Family Court - transaction structure

<< File: PH1-#4218802-v2-Family\_Court\_-\_transaction\_structure.DOC >>

Attached is my second cut of the structuring proposal, which I think addresses all of the points raised in your Sunday e-mail. I am also sending a copy to HCS for his comment, because of his familiarity with these types of financing structures in general, and in particular because of his familiarity with the 5-year charter limitation on City leases.

# EXHIBIT E

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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 1589 Session of  
2007

---

INTRODUCED BY D. EVANS, JUNE 18, 2007

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SENATOR ARMSTRONG, APPROPRIATIONS, IN SENATE, REPORTED AS  
AMENDED, NOVEMBER 13, 2007

---

AN ACT

1 Providing for the capital budget for the fiscal year 2007-2008;  
2 itemizing public improvement projects, furniture and  
3 equipment projects, transportation assistance projects,  
4 redevelopment assistance capital projects, flood control  
5 projects, Keystone Recreation, Park and Conservation Fund  
6 projects, Environmental Stewardship Fund projects, Motor  
7 License Fund projects, State forestry bridge projects,  
8 PENNSYLVANIA FISH AND BOAT COMMISSION PROJECTS, Manufacturing <—  
9 Fund Projects and federally funded projects to be constructed  
10 or acquired or assisted by the Department of General  
11 Services, the Department of Community and Economic  
12 Development, the Department of Conservation and Natural  
13 Resources, the Department of Environmental Protection, THE <—  
14 PENNSYLVANIA FISH AND BOAT COMMISSION and the Department of  
15 Transportation, together with their estimated financial  
16 costs; authorizing the incurring of debt without the approval  
17 of the electors for the purpose of financing the projects to  
18 be constructed, acquired or assisted by the Department of  
19 General Services, the Department of Community and Economic  
20 Development, the Department of Conservation and Natural  
21 Resources, the Department of Environmental Protection, THE <—  
22 PENNSYLVANIA FISH AND BOAT COMMISSION or the Department of  
23 Transportation; stating the estimated useful life of the  
24 projects; providing an exemption; providing for limitation on  
25 certain capital projects, for special provisions for certain  
26 redevelopment assistance capital projects and for preemption  
27 of local ordinances for Department of Corrections projects;  
28 and making appropriations.

29 The General Assembly of the Commonwealth of Pennsylvania

1	(Base Project Allocation - \$600,000)	
2	(Design and Contingencies - \$150,000)	
3	(J) PROVIDE FOR A CAPITOL COMPLEX -	<—
4	CAPITAL REHABILITATION AND IMPROVEMENTS	
5	PROGRAM	25,000,000
6	(BASE PROJECT ALLOCATION - \$20,000,000)	
7	(DESIGN AND CONTINGENCIES - \$5,000,000)	
8	(K) DESIGN AND CONSTRUCTION OF A MULTI-	
9	AGENCY EMERGENCY OPERATIONS CENTER	35,000,000
10	(BASE PROJECT ALLOCATION - \$28,000,000)	
11	(DESIGN AND CONTINGENCIES - \$7,000,000)	
12	(III) LEBANON COUNTY	
13	(A) DESIGN AND CONSTRUCTION OF A MULTI-	
14	AGENCY EMERGENCY OPERATIONS CENTER	35,000,000
15	(BASE PROJECT ALLOCATION - \$28,000,000)	
16	(DESIGN AND CONTINGENCIES - \$7,000,000)	
17	(IV) PHILADELPHIA COUNTY	
18	(A) DEVELOPMENT AND CONSTRUCTION OF THE	
19	MILL CREEK COMMUNITY CENTER	12,000,000
20	(B) DEMOLITION AND ABATEMENT COSTS	
21	ASSOCIATED WITH THE PASCHALL HOMES	
22	REDEVELOPMENT PROJECT	8,600,000
23	(C) ENGINEERING RESEARCH AND EXTENSION	
24	BUILDING	30,000,000
25	(D) INFRASTRUCTURE IMPROVEMENTS FOR THE	
26	FORMER LIDDONFIELD HOMES AT TORRESDALE	
27	AVENUE AND JACKSON PLACE	10,000,000
28	(E) ACQUISITION OF SITE, DESIGN,	
29	CONSTRUCTION, INFRASTRUCTURE AND OTHER	
30	RELATED COSTS FOR THE FIRST JUDICIAL	

1	DISTRICT FAMILY COURT BUILDING	200,000,000
2	(8) Pennsylvania Historical and Museum Commission	
3	(i) Daniel Boone Homestead	
4	(A) Provide for site improvements and	
5	restore the boyhood home of Daniel	
6	Boone	960,000
7	(Base Project Allocation - \$800,000)	
8	(Design and Contingencies - \$160,000)	
9	(ii) Landis Valley Museum	
10	(A) Provide for the design and	
11	construction of a new maintenance	
12	building	960,000
13	(Base Project Allocation - \$800,000)	
14	(Design and Contingencies - \$160,000)	
15	(iii) Pennsbury Manor	
16	(A) Rehabilitate up to 23 buildings and	
17	site development of infrastructure	
18	throughout the site	1,920,000
19	(Base Project Allocation - \$1,600,000)	
20	(Design and Contingencies - \$320,000)	
21	(iv) Pennsylvania Lumber Museum	
22	(A) Reconfigure entrance to the building	
23	to permit one coordinated exhibit	
24	gallery rather than two disjointed	
25	galleries	2,400,000
26	(Base Project Allocation - \$2,000,000)	
27	(Design and Contingencies - \$400,000)	
28	(9) Department of Military and Veterans Affairs	
29	(i) Pittsburgh Hunt Readiness Center,	
30	Allegheny County	

1 (vi), (viii), (ix), (x)(B), (xi)(B), (xii)(B), (xiii), (xiv),  
2 (xv), (XVI) AND (XVIII) or section 7(1). <—

3 Section 20. Special contract provisions for Department of  
4 Conservation and Natural Resources projects.

5 Any Department of Conservation and Natural Resources public  
6 improvement project-eligible expenditure of funds incurred prior  
7 to the effective date of this act which is directly related to a  
8 ~~project~~ PUBLIC improvement capital project itemized in section <—  
9 3(3)(xxi) shall be considered eligible to be utilized as a  
10 portion of the expenditure of funds and may be considered as  
11 eligible for reimbursement from capital funds for a ~~project~~ <—  
12 PUBLIC improvement capital project itemized in section <—  
13 3(3)(xxi).

14 SECTION 21. DEPARTMENT OF GENERAL SERVICES AUTHORIZATION. <—

15 THE DEPARTMENT OF GENERAL SERVICES IS AUTHORIZED, SUBJECT TO  
16 EXECUTIVE APPROVAL AND AUTHORIZATION, TO CONSTRUCT THE FAMILY  
17 COURT BUILDING ITEMIZED IN SECTION 3(7)(IV)(E) BY CONTRACT  
18 AWARDED BY THE DEPARTMENT OF GENERAL SERVICES OR TO ACQUIRE THE  
19 FAMILY COURT BUILDING BY MEANS OF A LEASE WITH AN OPTION TO  
20 PURCHASE.

21 SECTION 22. PRECONDITION ON AIRPORT PROJECT.

22 NO AMOUNTS ALLOCATED TO THE PROJECT DESCRIBED IN SECTIONS  
23 5(C)(4)(I)(A) AND 6(40)(VI)(A) SHALL BE PAID OR OTHERWISE  
24 RELEASED UNTIL THE FOLLOWING CONDITIONS HAVE BEEN MET:

25 (1) THE PROJECT HAS BEEN APPROVED BY THE FEDERAL  
26 AVIATION ADMINISTRATION AND THE BUREAU OF AVIATION IN THE  
27 PENNSYLVANIA DEPARTMENT OF TRANSPORTATION.

28 (2) THAT THE REPORT SUBMITTED BY THE LEGISLATIVE BUDGET  
29 AND FINANCE COMMITTEE PURSUANT TO SENATE RESOLUTION 144 OF  
30 2007 RECOMMENDS THE CONSTRUCTION OF THE AIRPORT IN THE

# EXHIBIT F



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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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**HOUSE BILL**  
**No. 1589** Session of  
2007

---

INTRODUCED BY D. EVANS, JUNE 18, 2007

---

SENATOR ARMSTRONG, APPROPRIATIONS, IN SENATE, RE-REPORTED AS  
AMENDED, DECEMBER 4, 2007

---

AN ACT

1 Providing for the capital budget for the fiscal year 2007-2008;  
2 itemizing public improvement projects, furniture and  
3 equipment projects, transportation assistance projects,  
4 redevelopment assistance capital projects, flood control  
5 projects, Keystone Recreation, Park and Conservation Fund  
6 projects, Environmental Stewardship Fund projects, Motor  
7 License Fund projects, State forestry bridge projects,  
8 PENNSYLVANIA FISH AND BOAT COMMISSION PROJECTS, Manufacturing <—  
9 Fund Projects and federally funded projects to be constructed  
10 or acquired or assisted by the Department of General  
11 Services, the Department of Community and Economic  
12 Development, the Department of Conservation and Natural  
13 Resources, the Department of Environmental Protection, THE <—  
14 PENNSYLVANIA FISH AND BOAT COMMISSION and the Department of  
15 Transportation, together with their estimated financial  
16 costs; authorizing the incurring of debt without the approval  
17 of the electors for the purpose of financing the projects to  
18 be constructed, acquired or assisted by the Department of  
19 General Services, the Department of Community and Economic  
20 Development, the Department of Conservation and Natural  
21 Resources, the Department of Environmental Protection, THE <—  
22 PENNSYLVANIA FISH AND BOAT COMMISSION or the Department of  
23 Transportation; stating the estimated useful life of the  
24 projects; providing an exemption; providing for limitation on  
25 certain capital projects, for special provisions for certain  
26 redevelopment assistance capital projects and for preemption  
27 of local ordinances for Department of Corrections projects;  
28 and making appropriations.

29 The General Assembly of the Commonwealth of Pennsylvania

1	RELATED COSTS TO RENOVATE THE IRVIS	
2	OFFICE BUILDING	45,000,000
3	(BASE PROJECT ALLOCATION - \$40,000,000)	
4	(DESIGN AND CONTINGENCIES - \$5,000,000)	
5	(III) LEBANON COUNTY	
6	(A) DESIGN AND CONSTRUCTION OF A MULTI-	
7	AGENCY EMERGENCY OPERATIONS CENTER	35,000,000
8	(BASE PROJECT ALLOCATION - \$28,000,000)	
9	(DESIGN AND CONTINGENCIES - \$7,000,000)	
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11	(A) DEVELOPMENT AND CONSTRUCTION OF THE	
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13	(B) DEMOLITION AND ABATEMENT COSTS	
14	ASSOCIATED WITH THE PASCHALL HOMES	
15	REDEVELOPMENT PROJECT	8,600,000
16	(C) ENGINEERING RESEARCH AND EXTENSION	
17	BUILDING	30,000,000
18	(D) INFRASTRUCTURE IMPROVEMENTS FOR THE	
19	FORMER LIDDONFIELD HOMES AT TORRESDALE	
20	AVENUE AND JACKSON PLACE	10,000,000
21	(E) ACQUISITION OF SITE, DESIGN,	
22	CONSTRUCTION, INFRASTRUCTURE AND OTHER	
23	RELATED COSTS FOR THE FIRST JUDICIAL	
24	DISTRICT FAMILY COURT BUILDING TO BE	<—
25	LOCATED AT 15TH AND ARCH STREETS	200,000,000
26	(F) INFRASTRUCTURE AND IMPROVEMENTS,	<—
27	INCLUDING STREETScape AND OTHER RELATED	
28	COSTS FOR DEVELOPMENT PROJECT	10,000,000
29	(8) Pennsylvania Historical and Museum Commission	
30	(i) Daniel Boone Homestead	

# EXHIBIT G

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**From:** Rotwitt, Jeffrey  
**Sent:** Tuesday, December 04, 2007 10:41 PM  
**To:** Lois S. Hagarty; dpulver@otpcorp.com  
**Subject:** RE: Capital Budget

Yes I did, several times

---

**From:** Lois S. Hagarty [mailto:lhagarty@chhpartners.com]  
**Sent:** Tuesday, December 04, 2007 5:30 PM  
**To:** dpulver@otpcorp.com; Rotwitt, Jeffrey  
**Subject:** Capital Budget

The Senate Appropriations Committee amended and reported out the Capital Budget. The amendment added the following to the Family Court authorization:

“ to be located at 15<sup>th</sup> and Arch Streets. ”

Jeff, I assume that you did speak personally to Senator Fumo.

We should catch up, I will try to reach you tomorrow. I will be in Harrisburg. My number there if you want to try me is 717-230-8782.

Lois S. Hagarty  
CHH Partners LLC  
Centre Square West  
1500 Market Street, 40th Floor  
Philadelphia, PA 19102  
215-972-8592  
215-972-8190 (fax)

# EXHIBIT H

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**From:** Rotwitt, Jeffrey  
**Sent:** Wednesday, April 23, 2008 3:41 PM  
**To:** 'Lawrence, Dave '; 'Murphy, Margaret'; 'Dougherty, Kevin M.'  
**Cc:** 'Meyer, Susan'  
**Subject:** Family Court House - 15th and Arch Street  
**Attachments:** PH1-#4269368-v1-PDF\_-Agree\_\_to\_Develop.PDF

4/23/08

Dear David and Judges Murphy and Dougherty,

We had a very good meeting with Clarence D. Armbrister, Mayor Nutter's Chief of Staff, last Thursday and he was a quick study. We also think we have resolved the terms with the Parking Authority for the design and construction of the Courthouse to commence in earnest. We were promised that we would have a draft by today or tomorrow from the PPA's attorneys and that it would go to the PPA Board for its approval next Monday or Tuesday.

Hence, we could be in a position next week to resume the process that we commenced last month in Judge Dougherty's chambers. I would ask you to look at your calendars (including all of the senior administrators that should attend as they did in March) and let me know when we can reconvene the planning/design/construction meeting. I would suggest either Thursday or Friday of next week, May 1<sup>st</sup> and 2<sup>nd</sup> or the following Monday, May 5<sup>th</sup>. Time is now of the essence particularly if the 11<sup>th</sup> Street Lease has already been extended (still waiting to hear whether it was 36 or 42 months).

To this end, I include the Agreement to Lease we discussed in March which lays out succinctly the history of the search effort, the path from here to the commencement of construction and provides the vehicle for the Court's funding of the planning and design process from May 1, 2008 through April 31, 2009. While it is probable that the state's \$200 million will be available before the end of this calendar year, we wanted to cover all bases.

Jeff

**Jeffrey B. Rotwitt, Esquire**  
**Obermayer Rebmann Maxwell & Hippel LLP**  
One Penn Center, 19th Floor  
1617 John F. Kennedy Boulevard  
Philadelphia, PA 19103-1895  
Tel.: (215) 665-3052 Fax: (215) 665-3139  
E-Mail: [jbr@obermayer.com](mailto:jbr@obermayer.com)  
Visit us @: [www.obermayer.com](http://www.obermayer.com)

## **AGREEMENT TO DEVELOP AND TO LEASE**

This is an agreement made as of this \_\_\_\_ day of April, 2008, by and between **NORTHWEST 15th STREET ASSOCIATES** (hereinafter referred to as the "Landlord"), and the **FIRST JUDICIAL DISTRICT OF PENNSYLVANIA** (hereinafter referred to as the "Tenant").

### **BACKGROUND**

A. Landlord is the owner in fee of certain real property, being an estate consisting of the fee interest in the air rights located at the northwest corner of 15th and Arch Streets in the City of Philadelphia, County of Pennsylvania (the "Air Rights Property"). Landlord acquired the Air Rights Property pursuant to the provisions of a certain Agreement for Sale and Purchase of Real Estate dated June 13, 2003, as amended, by and between Landlord and The Philadelphia Parking Authority ("PPA"); and

B. PPA is the record owner of certain real property, being an estate consisting of the fee interest in the real property located immediately beneath the Air Rights Property (the "Underground Property", which together with the Air Rights Property constitute the "Site") and desires to have Landlord construct a parking garage in the Underground Property (the "Garage") pursuant to a certain Development Services Agreement dated as of March 8, 2004, as amended (the "Services Agreement"); and

C. Tenant retained Jeffrey B. Rotwitt ("Consultant") (i) to canvas the Philadelphia marketplace to investigate potential sites for the location of a building (the "Courthouse") to house a unified Family Court (the "Search Services"), (ii) to help effect a consensus among all germane political constituencies in support of the lease and/or construction of the Courthouse (the "Government Relations Services") and (iii) to create a viable financial and legal structure with the owner of the favored site for the development of the Courthouse (the "Development Services"), all with the understanding that Consultant shall receive compensation for all these services not from Tenant but rather from the transaction effecting the Courthouse; and

D. After a multi-year analysis by Consultant and Tenant of the financial and real estate issues associated with each of the numerous potential sites, the Search Services have culminated in Tenant having selected the Site as the location for the Courthouse; and

E. The Government Relations Services have borne fruit with a \$200 million line item (the "Line Item") in the pending state capital budget for the construction of the Courthouse at the Site ; and

F. As part of the Development Services and as was done with the owner of each potential site evaluated, Consultant has developed a preliminary target budget attached as Exhibit "A" (the "Budget") and a legal structure for the project

consistent with the Line Item involving PPA, Landlord, Tenant, the Commonwealth of Pennsylvania and the City of Philadelphia, and

G. As part of the Development Services, Consultant has become a constituent partner in Landlord and will co-develop the design, development and construction of the Garage and the Courthouse (together the "Building" and the overall development thereof, the "Project"); and

H. Tenant desires Landlord on a turnkey basis to design, develop and construct the Courthouse at the Site; and

I. Tenant and Landlord intend to enter into a lease of the Courthouse upon its substantial completion in accordance with cost parameters, designs and specifications approved by Tenant, subject to the terms and conditions set forth in this Agreement.

### **AGREEMENTS**

In consideration of the mutual promises and agreements herein set forth and good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the parties hereto agree as follows:

1. **Design of the Project; Development Services; General and Administrative Charges; Tenant Representation Services; Contractor Pre-Construction Services; Real Estate Taxes and Insurance.** It is contemplated that the process of designing and pricing the cost of the Project in accordance with (i) the Budget and (ii) the design criteria of the Tenant with respect to the Building and the PPA with respect to the Garage will last approximately sixteen (16) months, with a target completion date of October 31, 2009 (the "Design Phase"). It is further understood that a variety of services will be provided and expenses will accrue and be incurred by Landlord during the Design Phase, including, without limitation, preconstruction services, development services, general and administrative charges, real estate taxes, insurance and tenant representation services. Accordingly, during the Design Phase:

(i) As the developer of the Project and owner of the Building, at Landlord's sole cost and expense, Landlord shall select, retain, contract, supervise and coordinate the services of all architects, engineers, land planners and other experts and consultants at its sole discretion (collectively, the "Experts") necessary to provide architectural, engineering, land planning and other services for the development of the Project, including the preparation by such Experts of detailed plans, specifications and drawings for site improvements (such plans, specifications and drawings, upon approval by Landlord, Tenant and PPA (collectively, the "Participants") being hereinafter collectively referred to as the "Approved Plans"). All such contracts shall be in the name of Landlord.

(ii) Landlord shall coordinate with the Experts to obtain all subdivision and land development plan approvals and zoning variances and permits,



and shall negotiate all necessary agreements and permits with governmental authorities and utility companies to develop the Project.

(iii) Landlord shall have the sole right to retain such construction managers or general contractors (the "Construction Manager") as Landlord shall deem appropriate at Landlord's sole cost and expense, and shall negotiate the contract with the Construction Manager ("CM Agreement") for preconstruction and construction services. The final form of the contract with the Construction Manager for the construction of the Project may be a lump sum or guaranteed maximum price contract, as Landlord shall deem appropriate.

(iv) Landlord shall administer and enforce all obligations of the Construction Manager, the Experts and other contractors under their respective contracts.

(v) The Participants, the Experts and the Construction Manager shall meet weekly to effect the design and costing of the Project within the Budget and the design criteria that will be defined during the Design Phase. During this preconstruction period the Participants will use all good faith efforts to redesign and value engineer the Project so that the Project will accomplish the objectives of the Tenant and the PPA while still remaining within the Budget.

(vi) The Participants will negotiate and finalize the form of all agreements necessary (the "Necessary Agreements") to effect the Project among themselves, as well as the City of Philadelphia and the Commonwealth of Pennsylvania should they become involved. These agreements would include, among others, a Lease pursuant to which Tenant would occupy the Courthouse (the "Lease").

2. **Lease.** During the Design Phase, Tenant and Landlord shall negotiate and attempt to agree upon the form of the Lease. Tenant acknowledges and agrees that the Lease may be assigned to (or entered into by) a governmental or quasi-governmental entity, such as the Department of General Services, the City of Philadelphia or an authority serving Philadelphia, as part of a transaction in which the Air Rights will be purchased from Landlord for \$1,850,000.

3. **Advance Rent.** Tenant shall pay to Landlord on the first day of each month from the date of execution of this Agreement through the conclusion of the Design Phase and the construction of the Building until the substantial completion of the Building the sums set forth on Exhibit B hereto as advance rent ("Advance Rent"). Any Advance Rent paid by Tenant under this Agreement shall be increased by a time value interest factor of nine percent (9%) until the first day of the actual commencement of the term (the "Term") of the Lease (the Advance Rent, as so increased, the "Accreted Rent"). The Accreted Rent shall be deemed to have been advanced as pre-paid rent on the first day of the Term and shall be applied as level payments toward payment of rent under the Lease, amortized at an imputed interest rate of nine percent (9%) over the Term. Notwithstanding the foregoing, Landlord shall have no duty to repay and Tenant will have no right to receive

repayment of Accreted Rent in the event that Landlord and Tenant do not enter into the Lease by the Termination Date (as defined below).

4. **Commencement of Construction.** In the event the Necessary Agreements are not executed and delivered by October 31, 2009 (the "Termination Date"), or the Project is otherwise deemed on or before such date by Landlord to be economically infeasible, then this Agreement shall be deemed terminated, at the option of either party upon notice to the other, and all obligations of the parties hereunder shall cease except to the extent of unpaid Advance Rent due from Tenant to Landlord. In the event the Necessary Agreements are executed and delivered prior to the Termination Date, then construction is contemplated to commence within thirty (30) days after such date, and substantial completion is contemplated to occur within thirty (30) months thereafter, all as shall be more fully described in the Lease.

5. **Notices.** Any notice pursuant to this Agreement shall be given in writing by (i) personal delivery with signed receipt, or (ii) reputable overnight delivery service with proof of delivery, or (iii) United States Mail, postage prepaid, registered or certified mail, return receipt requested, or to such other address or to the attention of such other person as the addressee shall have designated by written notice sent in accordance herewith, and shall be deemed to have been given either at the time of personal delivery, or, in the case of expedited delivery service or mail, as of the date of first attempted delivery at the address and in the manner provided herein. Notices by a party may be given by the counsel for such party specified below. Unless changed in accordance with the preceding sentence, the addresses for notices given pursuant to this Agreement shall be as follows:

**If to Landlord:**

Northwest 15th Street Associates  
c/o Oliver Tyrone Pulver Corporation  
Five Tower Bridge, Suite 750  
West Conshohocken, PA 19428

**If to Tenant:**

Chief Deputy Court Administrator  
First Judicial District of Pennsylvania  
City Hall, Room 336  
Philadelphia, PA 19107

6. **Modifications.** This Agreement cannot be changed orally, and no agreement shall be effective to waive, change, modify or discharge it in whole or in part unless such agreement is in writing and is signed by the parties against whom enforcement of any waiver, change, modification or discharge is sought.

7. **Entire Agreement.** This Agreement, including the Exhibits, contains the entire agreement between the parties pertaining to the subject matter hereof

and fully supersedes all prior written or oral agreements and understandings between the parties pertaining to such subject matter.

8. **Counterparts**. This Agreement may be executed in counterparts, and all such executed counterparts shall constitute the same agreement. It shall be necessary to account for only one such counterpart in proving this Agreement.

9. **Severability**. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall nonetheless remain in full force and effect.

10. **Captions**. The section headings appearing in this Agreement are for convenience of reference only and are not intended, to any extent and for any purpose, to limit or define the text of any section or any subsection hereof.

11. **Construction**. The parties acknowledge that the parties and their counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any exhibits or amendments hereto.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed on the date first above written.

**NORTHWEST 15TH STREET  
ASSOCIATES,**  
a Pennsylvania limited partnership

By: **NORTHWEST 15TH OLIVER  
ASSOCIATES,**  
a Pennsylvania limited partnership,  
its general partner

By: **NORTHWEST 15TH OLIVER  
CORPORATION,**  
a Pennsylvania corporation,  
its general partner

By: \_\_\_\_\_  
Name: Donald W. Pulver  
Title: President

**FIRST JUDICIAL DISTRICT  
OF PENNSYLVANIA**

By: \_\_\_\_\_

## BUDGET

**FAMILY COURTS  
15<sup>TH</sup> & ARCH STREETS  
PHILADELPHIA, PA**

**APRIL 18, 2008**

**COURTS ABOVE GRADE 503,776 SF }  
COURTS BELOW GRADE 35,600 SF } 539,376 SF**

**PARKING BELOW GRADE 106,800 SF (250 CARS)**

<b><u>CAPITAL BUDGET</u></b>	<b><u>\$/SF</u></b>	<b><u>\$</u></b>
Land	12.04	6,496,000
Air Rights	3.46	1,866,000
Sitework	4.96	2,675,000
Parking for PPA	33.10	17,856,000
Building	135.98	73,342,000
Interiors	79.98	43,140,000
F, F & E Allowance	15.00	8,091,000
Design	16.15	8,711,000
Tenant Representation	7.37	3,976,000
Legal, Title, Permits, Taxes	6.00	3,236,000
G&A	4.85	2,615,000
Development Fee	4.85	2,615,000
Financing	28.92	15,600,000
Contingency	<u>18.13</u>	<u>9,781,000</u>
	<u><b>\$370.79</b></u>	<u><b>\$200,000,000</b></u>

EXHIBIT "B" MONTHLY ADVANCE RENT SCHEDULE  
FAMILY COURT

APRIL 18, 2008

	5/1/2008	7/1/2008	9/1/2008	11/1/2008	1/1/2009	3/1/2009	5/1/2009	7/1/2009	9/1/2009
	6/30/2008	8/31/2008	10/31/2008	12/31/2008	2/28/2009	4/30/2009	6/30/2009	8/31/2009	10/31/2009
LAND	1	2	3	4	5	6	7	8	9
AIR RIGHTS	-	-	-	-	-	-	-	-	-
SITework	-	-	-	-	-	-	-	-	-
PARKING for PPA	0	0	0	0	0	0	0	0	0
BUILDING	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	0
INTERIORS	-	-	-	-	-	-	-	-	-
FURNITURE, FIXTURES & EQUIPMENT ALLOWANCE	0	0	0	0	0	0	0	0	0
TENANT REPRESENTATION	150,000	150,000	150,000	150,000	150,000	150,000	150,000	150,000	150,000
DESIGN	396,416	562,416	730,403	949,250	895,250	954,416	954,416	954,416	105,634
LEGAL, TITLE, PERMITS, TAXES	100,000	100,000	50,000	100,000	50,000	50,000	50,000	50,000	50,000
G & A	150,000	150,000	150,000	150,000	150,000	150,000	150,000	150,000	150,000
DEVELOPER FEE	130,000	130,000	130,000	130,000	130,000	130,000	130,000	130,000	130,000
FINANCING	-	-	-	-	-	-	-	-	-
CONTINGENCY	100,000	50,000	50,000	50,000	50,000	50,000	50,000	50,000	50,000
TOTAL USES	1,046,416	1,162,416	1,280,403	1,549,250	1,445,250	1,504,416	1,504,416	1,504,416	635,634
CUMULATIVE USES	1,046,416	2,208,832	3,489,235	5,038,485	6,483,735	7,988,151	9,492,567	10,996,983	11,632,617
SOURCES	5,250,000	500,000	500,000	500,000	500,000	500,000	500,000	500,000	500,000
CUMULATIVE SOURCES	5,250,000	5,750,000	6,250,000	6,750,000	7,250,000	7,750,000	8,250,000	8,750,000	9,250,000

# EXHIBIT I

## **AGREEMENT TO DEVELOP AND TO LEASE**

This is an agreement made as of this \_\_\_\_ day of April, 2008, by and between **NORTHWEST 15th STREET ASSOCIATES** (hereinafter referred to as the "Landlord"), and the **FIRST JUDICIAL DISTRICT OF PENNSYLVANIA** (hereinafter referred to as the "Tenant").

### **BACKGROUND**

A. Landlord is the owner in fee of certain real property, being an estate consisting of the fee interest in certain air rights located at the northwest corner of 15th and Arch Streets in the City of Philadelphia, County of Pennsylvania (the "Air Rights Property"), as more fully described in Exhibit "A" attached hereto. Landlord acquired the Air Rights Property pursuant to the provisions of a certain Agreement for Sale and Purchase of Real Estate dated June 13, 2003, as amended, by and between Landlord and The Philadelphia Parking Authority ("PPA"); and

B. PPA is the record owner of certain real property, being an estate consisting of the fee interest in the real property located immediately beneath the Air Rights Property (the "Underground Property", which together with the Air Rights Property constitute the "Site") and desires to have Landlord construct a parking garage in the Underground Property (the "Garage") pursuant to a certain Development Services Agreement dated as of March 8, 2004, as amended (the "Services Agreement"); and

C. Tenant has undertaken a multi-year analysis of numerous potential sites for the location of a building of to house a unified Family Court (the "Courthouse"); and

D. Tenant has selected the Site as the location for the Courthouse; and

E. Tenant desires Landlord on a turnkey basis to develop, design and construct the Courthouse at the Site; and

F. Tenant intends to enter into a 20-year lease of the Courthouse upon its substantial completion in accordance with cost parameters, designs and specifications approved by Tenant, subject to the terms and conditions set forth in this Agreement; and

G. Landlord intends to so develop the Courthouse and the Garage (together the "Building" and the development thereof, the "Project") for lease to Tenant.

### **AGREEMENTS**

In consideration of the mutual promises and agreements herein set forth and good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the parties hereto agree as follows:

1. **Lease.** Tenant and Landlord shall negotiate and attempt to agree upon a lease for the Courthouse. Tenant acknowledges and agrees that this Lease may be assigned to (or entered into by) a governmental or quasi-governmental entity, such as the City of Philadelphia or an authority serving Philadelphia.

2. **Design of the Project.** It is contemplated that the process of designing and pricing the cost of the Project in accordance with (i) a target budget of not more than \$200 million (the "Budget") and (ii) the design criteria of the Tenant with respect to the Building and the PPA with respect to the Garage will last approximately fourteen (14) months, with a target completion date of June \_\_, 2009 (the "Design Phase"). During the Design Phase:

(i) As the developer of the Project and owner of the Building, at Landlord's sole cost and expense, Landlord shall select, retain, contract, supervise and coordinate the services of all architects, engineers, land planners and other experts and consultants at its sole discretion (collectively, the "Experts") necessary to provide architectural, engineering, land planning and other services for the development of the Project, including the preparation by such Experts of detailed plans, specifications and drawings for site improvements (such plans, specifications and drawings, upon approval by Landlord, Tenant and PPA (collectively, the "Participants") being hereinafter collectively referred to as the "Approved Plans"). All such contracts shall be in the name of Landlord.

(ii) Landlord shall coordinate with the Experts to obtain all subdivision and land development plan approvals and zoning variances and permits, and shall negotiate all necessary agreements and permits with governmental authorities and utility companies to develop the Project.

(iii) Landlord shall have the sole right to retain such construction managers or general contractors (the "Construction Manager") as Landlord shall deem appropriate at Landlord's sole cost and expense, and shall negotiate the contract with the Construction Manager ("CM Agreement") for preconstruction and construction services. The final form of the contract with the Construction Manager for the construction of the Project may be a lump sum or guaranteed maximum price contract, as Landlord shall deem appropriate.

(iv) Landlord shall administer and enforce all obligations of the Construction Manager, the Experts and other contractors under their respective contracts.

(v) The Participants, the Experts and the Construction Manager shall meet weekly to effect the design and costing of the Project within the Budget and the design criteria that will be defined during the Design Phase. During this preconstruction period the Participants will use all good faith efforts to redesign and value engineer the Project so that the Project will accomplish the objectives of the Tenant and the PPA while still remaining within the Budget.

(vi) The Participants will negotiate and finalize the form of all agreements necessary (the "Necessary Agreements") to effect the Project among



themselves, as well as the City of Philadelphia and the Commonwealth of Pennsylvania should they become involved. These agreements would include, among others, a Lease pursuant to which Tenant would occupy the Courthouse (the "Lease")

3. **Advance Rent.** Tenant shall pay to Landlord on the first day of each month from the date of execution of this Agreement through the conclusion of the Design Phase and the construction of the Building until the substantial completion of the Building the sums set forth on Exhibit B hereto as advance rent ("Advance Rent"). Any Advance Rent paid by Tenant under this Agreement shall be increased by a time value interest factor of nine percent (9%) until the first day of the actual commencement of the term (the "Term") of the Lease (the Advance Rent, as so increased, the "Accreted Rent"). The Accreted Rent shall be deemed to have been advanced as pre-paid rent on the first day of the Term and shall be applied as level payments toward payment of rent under the Lease, amortized at an imputed interest rate of nine percent (9%) over the two hundred forty (240) months of the Term. Notwithstanding the foregoing, Landlord shall have no duty to repay and Tenant will have no right to receive repayment of Accreted Rent in the event that Landlord and Tenant do not enter into the Lease by the Termination Date (as defined below).

4. **Commencement of Construction.** In the event the Necessary Agreements are not executed and delivered by August 7, 2009 (the "Termination Date"), or the Project is otherwise deemed on or before such date by Landlord to be economically infeasible, then this Agreement shall be deemed terminated, at the option of either party upon notice to the other, and all obligations of the parties hereunder shall cease except to the extent of unpaid Advance Rent due from Tenant to Landlord. In the event the Necessary Agreements are executed and delivered prior to the Termination Date, then construction is contemplated to commence within thirty (30) days after such date, and substantial completion is contemplated to occur within thirty (30) months thereafter, all as shall be more fully described in the Lease.

5. **Jeffrey B. Rotwitt.** Tenant and Landlord acknowledge that Jeffrey B. Rotwitt has assisted and may continue to assist Tenant in the process of selecting the site for the Courthouse. Tenant further understands that Mr. Rotwitt, directly or indirectly, may own an interest in Tenant or another entity involved in the ownership, development and operation of the Project. Tenant and Landlord, being sophisticated, hereby waive any conflict of interest with regard to Mr. Rotwitt's participation in these matters as recited herein. Tenant and Landlord further waive any claim against one another based upon the facts and circumstances outlined in this Section 5.

6. **Notices.** Any notice pursuant to this Agreement shall be given in writing by (i) personal delivery with signed receipt, or (ii) reputable overnight delivery service with proof of delivery, or (iii) United States Mail, postage prepaid, registered or certified mail, return receipt requested, or to such other address or to the attention of such other person as the addressee shall have designated by

written notice sent in accordance herewith, and shall be deemed to have been given either at the time of personal delivery, or, in the case of expedited delivery service or mail, as of the date of first attempted delivery at the address and in the manner provided herein. Notices by a party may be given by the counsel for such party specified below. Unless changed in accordance with the preceding sentence, the addresses for notices given pursuant to this Agreement shall be as follows:

**If to Landlord:**

Northwest 15th Street Associates  
c/o Oliver Tyrone Pulver Corporation  
Five Tower Bridge, Suite 750  
West Conshohocken, PA 19428

**If to Tenant:**

Chief Deputy Court Administrator  
First Judicial District of Pennsylvania  
City Hall, Room 336  
Philadelphia, PA 19107

7. **Modifications.** This Agreement cannot be changed orally, and no agreement shall be effective to waive, change, modify or discharge it in whole or in part unless such agreement is in writing and is signed by the parties against whom enforcement of any waiver, change, modification or discharge is sought.

8. **Entire Agreement.** This Agreement, including the Exhibits, contains the entire agreement between the parties pertaining to the subject matter hereof and fully supersedes all prior written or oral agreements and understandings between the parties pertaining to such subject matter.

9. **Counterparts.** This Agreement may be executed in counterparts, and all such executed counterparts shall constitute the same agreement. It shall be necessary to account for only one such counterpart in proving this Agreement.

10. **Severability.** If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall nonetheless remain in full force and effect.

11. **Captions.** The section headings appearing in this Agreement are for convenience of reference only and are not intended, to any extent and for any purpose, to limit or define the text of any section or any subsection hereof.

12. **Construction.** The parties acknowledge that the parties and their counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any exhibits or amendments hereto.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed on the date first above written.

**NORTHWEST 15TH STREET  
ASSOCIATES,**  
a Pennsylvania limited partnership

By: **NORTHWEST 15TH OLIVER  
ASSOCIATES,**  
a Pennsylvania limited partnership,  
its general partner

By: **NORTHWEST 15TH OLIVER  
CORPORATION,**  
a Pennsylvania corporation,  
its general partner

By: \_\_\_\_\_  
Name: Donald W. Pulver  
Title: President

**FIRST JUDICIAL DISTRICT  
OF PENNSYLVANIA**

By: \_\_\_\_\_

**EXHIBIT "A"**

**Legal Description of Air Rights Property**

**EXHIBIT "B"**

**Monthly Advance Rent Schedule**

# EXHIBIT J

**First Judicial District of Pennsylvania**

OFFICE OF THE COURT ADMINISTRATOR

336 CITY HALL

PHILADELPHIA, PA 19107

(215) 686-2547 Fax: (215) 686-7485

<http://courts.phila.gov>DAVID C. LAWRENCE  
COURT ADMINISTRATOR

August 26, 2008

Northwest 15<sup>th</sup> Street Associates  
c/o Oliver Tyrone Pulver Corporation  
300 Barr Harbor Drive  
Suite 750  
West Conshohocken, PA 18420

Dear Mr. Pulver:

The First Judicial District of the Commonwealth of Pennsylvania ("FJD") would like to explore the possibility of leasing or subleasing a court building (the "Project") to be built for FJD at the northwest corner of 15th and Arch Streets, Philadelphia, Pennsylvania (the "Project Site"). FJD understands that Northwest 15th Street Associates ("Northwest") is the fee owner of air rights and the holder of easement rights necessary to build the Project, which is expected to occupy the maximum area that may be built as of right, currently estimated to be approximately 440,000 square feet. FJD further understands that Northwest is subject to certain deadlines established by the Philadelphia Parking Authority ("PPA"), which require, among other things, that construction of the Project commence no later than July 1, 2010. This letter sets forth certain actions the parties will take in order to enable Northwest to meet this deadline should the parties subsequently execute a definitive written agreement with respect to the construction and leasing of the Project.

FJD has not undertaken an analysis of the Project Site to determine its suitability for FJD's needs, nor has it commenced any programming activities. FJD's present intention is to engage as soon as practicable an owner's representative to provide expertise on construction and design issues. Northwest has informed FJD that in order to meet PPA's deadline, Northwest must authorize its design professional, Ewing Cole (the "Building Architect"), to commence design services. FJD hereby agrees to reimburse Northwest for costs reasonably incurred by the Building Architect in connection with such initial design activities. This reimbursement shall be subject to the following conditions:

1. Each month Northwest shall cause the Building Architect to submit a detailed invoice to FJD, along with appropriate backup documentation, including but not limited to a description of the services performed by the Building Architect during the month in question. Notwithstanding anything to the contrary contained in this letter, in no case shall the Building Architect be reimbursed under this letter for services performed before the date this letter has been fully executed by the parties.
2. FJD shall pay each approved invoice within 30 days after receipt of the invoice and backup documentation.
3. FJD's reimbursement obligations under this letter shall not exceed \$250,000.00.
4. Either party may terminate its reimbursement obligations or negotiations under this letter upon three days' prior notice to the other, whereupon FJD shall have no further obligations under this letter (except for reimbursement for services performed by the Building Architect pursuant to this letter before the date of termination, subject to the cap described above).

Received Time Aug.26. 2:37PM

5. Northwest shall cooperate, and shall cause the Building Architect to cooperate, in good faith with FJD and its agents and consultants, in connection with FJD's analysis of the Project Site and its programming activities. While the activities described in this letter are being undertaken, the parties may also agree to negotiate the terms of a lease or sublease, or another interim agreement that provides for further development activities to be undertaken by the parties. If a lease or sublease is executed by the parties, it is expected such execution would occur before January 1, 2009.

6. Northwest shall not execute a lease, sale, development or similar agreement with any other party (other than with FJD for the Project) with respect to all or any part of the Project Site before January 1, 2009 unless either party terminates its obligations under this letter or fails to make any payment properly due within 30 days after written notice.

7. On or before October 1, 2008, FJD shall advise Northwest of FJD's decision, as to whether, if FJD executes a lease, FJD is willing to accept 440,000 square feet or less. FJD also understands that Northwest may exercise its right to terminate under paragraph 4 above if the parties have not entered into a Development Consulting Agreement, identifying compensation to Northwest or its affiliates, including, without limitation, development fee and other developmental expenses.

Notwithstanding anything to the contrary contained herein, this letter does not constitute a lease, agreement to lease or any other agreement for the sale, lease, occupancy or development of real estate. Any such lease or agreement can only be created, if at all, by a mutually acceptable document or documents executed by FJD and Northwest. Except for the payment obligations set forth herein, and Northwest's agreements under paragraph 4 above and to cooperate and to cause the Building Architect to cooperate in good faith, this letter is not legally binding upon either party. In addition, neither party will be bound by any written or oral representations or negotiations between them, either directly or through any intermediaries, and this letter will not give rise to any claim based upon promissory estoppel, partial performance or otherwise.

If you agree with the terms of this letter and intend to be legally bound by it to the extent provided herein, please sign this letter in the place provided below and return a signed copy to me at your earliest convenience.

FIRST JUDICIAL DISTRICT OF THE  
COMMONWEALTH OF PENNSYLVANIA

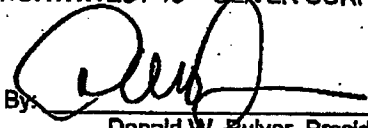
By:   
David C. Lawrence, Court Administrator

Agreed and Accepted:

NORTHWEST 15<sup>TH</sup> STREET ASSOCIATES

By: NORTHWEST 15<sup>TH</sup> OLIVER ASSOCIATES

By: NORTHWEST 15<sup>TH</sup> OLIVER CORPORATION

By:   
Donald W. Pulver, President

DCL/mh

Received Time Aug. 26. 2:37PM



cc: Honorable Ronald D. Castille, Chief Justice, Supreme Court of Pennsylvania  
Zygmunt A. Pines, Esquire, State Court Administrator - AOPC  
President Judge C. Darnell Jones, II  
Administrative Judge Kevin M. Dougherty  
Supervising Judge Margaret T. Murphy  
John H. Estey, Esquire, Ballard Spahr Andrews & Ingersoll, LLP

# EXHIBIT K

NORTHWEST 15TH STREET ASSOCIATES  
c/o Oliver Tyrone Pulver Corporation  
300 Barr Harbor Drive, Suite 750  
West Conshohocken, PA 18428

RECEIVED

OCT 07 2008

OFFICE OF THE COURT ADMINISTRATOR  
Room 336 City Hall

October 6, 2008

First Judicial District of the Commonwealth of Pennsylvania  
Office of the Court Administrator  
336 City Hall  
Philadelphia, PA 19107

Re: Proposal for Interim Funding of Pre-Development Phase of Philadelphia Court  
at 15th and Arch Streets, Philadelphia, Pennsylvania

Ladies and Gentlemen:

The First Judicial District of the Commonwealth of Pennsylvania ("FJD") has expressed interest in becoming a tenant or subtenant at a building to be built at the northwest corner of 15th and Arch Streets, Philadelphia, Pennsylvania (the "Project Site"). Northwest 15th Street Associates ("Northwest") is the fee owner of air rights and the easement holder of easement rights necessary to build the prospective court building for the family and juvenile courts (the "Project"). Northwest is subject to certain deadlines established by the Philadelphia Parking Authority ("PPA") which require, among other things, that the Project commence no later than July 1, 2010. In order to commence construction on or before such date, substantial work on the designing, planning, preparation for construction and permitting for the Project must occur. The parties previously entered into a letter agreement dated as of August 26, 2008 (the "Letter Agreement") in order to commence space planning activities.

Accordingly, this letter sets forth a proposal regarding the tasks that shall be undertaken prior to July 1, 2009, as well as the financing of such activities through such date.

Northwest has engaged in substantial pre-development activities prior to the date hereof in anticipation of constructing a building at the Project Site. Over the past three years, Obermayer Rebmann Maxwell & Hippel LLP as your Tenant Representative retained EwingCole and the two organizations worked with the FJD to evaluate multiple sites throughout the City of Philadelphia, including the Project Site, and EwingCole has prepared certain renderings and preliminary "concept" drawings for the Project. Ewing Cole has more recently and in accordance with the Letter Agreement continued in this role and also assist the FJD in its programming and space planning activities. These activities include the following:

1. Programming. The programming phase shall consist of meetings with key personnel, including judges, administrators and their judicial officers from the FJD and the Supreme Court of the Commonwealth of Pennsylvania in order to arrive at the following as part of the Project:

- size of each individual courtroom, judicial chambers, staff and other office space;
- flow of personnel from entrance to the building through arrival work places (as it applies to judges and employees, as well as holding areas for prisoners);
- necessary adjacencies and workflows;

- type of work space for judicial and non-judicial employees;
- ancillary uses;
- storage requirements; and
- overall size, including projected growth.

2. Test Fit Planning. Based upon the programming results, one or more test fit plans will be prepared showing potential layouts of the Project.

3. Schematic Planning. Based on the provided approved test fit plan, schematic designs will be generated. These include the following:

- detailed layout;
- plan and elevations;
- schematic MEP plans.

4. Permitting. Certain ordinances will need to be adopted in order for the City to participate in the lease process, to widen 15th Street, and for other matters related to the particular site. In addition, discussions will occur with Licenses & Inspections staff to insure that the building continues to be on track.

5. Compensation. The transaction contemplates that the Commonwealth of Pennsylvania ("DGS") shall provide funding in the amount of \$200 million when the Governor releases the funds that were approved for the Project in the Commonwealth's Capital Budget in June of 2008. It is contemplated that the City of Philadelphia will convey to DGS the fee simple ownership of 1801 Vine Street upon the FJD's vacation of 1801 Vine Street (or otherwise make available existing equity therein to DGS).. Funds from DGS will not be available until the Governor releases the funds.

Project sources and uses of funds line items include, without limitation, the following uses:

Land Cost to Northwest: 1,775,388.43. This amount will commence to be paid by the First Judicial District as of October 1, 2008 and proceed at a rate of \$50,000 per month between now and July 1, 2009. Upon the date that is the earliest to occur of (a) execution of an agreement, such as a development services agreement or lease, effecting a transaction; (b) commencement of the funding from the Commonwealth, or (c) July 1, 2009, the unpaid balance will be accelerated. Under at least one of the attached scenarios, title would also pass to DGS as of that date.

Developer Fee: \$2,615,000. This amount will be paid ratably at a rate of \$55,000 per month over the period beginning on October 1, 2008 through the completion of construction. If the Project is substantially completed prior to payment of the full amount, the balance will be paid upon substantial completion.

General and Administrative: \$2,615,000. One-half of this amount will be paid ratably at a rate of \$27,500 per month over the period beginning on October 1, 2008 through the completion of construction. The other half will be paid upon the earliest to occur of (a) execution of an agreement, such as a development services agreement or lease, effecting a transaction; (b) commencement of the funding from the Commonwealth, or (c) July 1, 2009.

Tenant Representative Fee: \$3,976,000. One-half of this amount will be paid ratably at a rate of \$55,000 per month over the period beginning on October 1, 2008 through the completion of construction. The other half will be paid upon the earliest to occur of (a) execution of an agreement, such as a development services agreement or lease, effecting a transaction; (b) commencement of the funding from the Commonwealth, or (c) July 1, 2009.

The costs of each of the items to be advanced by FJD in the next few months as incorporated in the chart below. Note that given that there is no developer profit on this Project, all expenses must be paid on an ongoing basis by the First Judicial District for the Commonwealth of Pennsylvania. These include contractor pre-construction, design, legal- transaction and permitting, real estate taxes, insurance, general and administrative fees, developer fee, and tenant representative fees.

#### FAMILY/JUVENILE COURT BUDGET

	Oct.	Nov.	Dec.	Jan.	Feb.	Mar.	Apr.	May	June
Contractor Pre-Construction Costs	\$ 10,000	\$10,000	\$ 10,000	\$ 10,000	\$ 10,000	\$ 10,000	\$ 10,000	\$ 10,000	\$ 10,000
Design	\$ 30,000	\$30,000	\$198,208	\$198,208	\$281,208	\$281,208	\$365,201	\$198,208	\$198,208
Land Costs	\$ 50,000	\$50,000	\$ 50,000	\$ 50,000	\$ 50,000	\$ 50,000	\$ 50,000	\$ 50,000	\$ 50,000
Legal - including title, transaction and permitting (for all parties)	\$ 25,000	\$43,500	\$ 43,500	\$ 25,000	\$ 25,000	\$ 25,000	\$ 25,000	\$ 43,500	\$ 43,500
Real Estate Taxes	\$163,439	\$ 0	\$ 0	\$ 0	\$ 0	\$ 65,000	\$ 0	\$ 0	\$ 0
General and Admin.	\$ 27,500	\$27,500	\$ 27,500	\$ 27,500	\$ 27,500	\$ 27,500	\$ 27,500	\$ 27,500	\$ 27,500
Developer Fee	\$ 55,000	\$55,000	\$ 55,000	\$ 55,000	\$ 55,000	\$ 55,000	\$ 55,000	\$ 55,000	\$ 55,000
Tenant Rep. Fee	\$ 55,000	\$55,000	\$ 55,000	\$ 55,000	\$ 55,000	\$ 55,000	\$ 55,000	\$ 55,000	\$ 55,000

6. No Lease. Notwithstanding anything to the contrary contained herein, this letter does not constitute a lease, agreement to lease or any other agreement for the sale, lease, occupancy or development of real estate, which can only be created, if at all, by a mutually acceptable document or documents between the parties thereto. Any such lease or agreement can only be created, if at all, by a mutually acceptable document or documents executed and delivered by the parties thereto. Except for the payment obligations set forth herein, this letter will not be binding upon either party and neither party shall have any liability hereunder. In addition, neither party will be bound by any written or oral representations or negotiations between them, either directly or through any intermediaries; this letter will not give rise to any claim based upon promissory estoppel, partial performance or otherwise. This Agreement may be terminated by either party on three (3) days' prior written notice. The only obligations that shall survive such terminations shall be the payment obligations for costs incurred prior to the effective date of termination.

If you agree with this letter and intend to be legally bound by it to the extent provided herein, please sign this letter in the place provided below.

Very truly yours,

NORTHWEST 15TH STREET ASSOCIATES

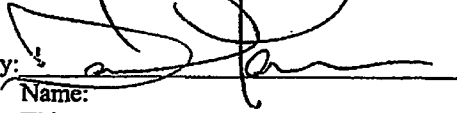
By: NORTHWEST 15TH OLIVER ASSOCIATES

By: NORTHWEST 15TH OLIVER  
CORPORATION

By:   
Donald W. Pulver, President

Agreed and accepted:

FIRST JUDICIAL DISTRICT OF THE  
COMMONWEALTH OF PENNSYLVANIA

By:   
Name:  
Title:

Date: 11/12/08

Rachel D Cantilly  
Chief Justice, Pa Supreme Court

# EXHIBIT L

NORTHWEST 15TH STREET ASSOCIATES

FIVE TOWER RIDGE  
300 BARR HARBOR DR STE 750  
CONSHOHOCKEN, PA 19428

1114

DATE May 14, 2010 3-5/310  
148

PAY TO THE ORDER OF Delwydd Property Group SC LLC \$ 41,250.00 DOLLARS ☐

Security  
Features  
Guaranteed  
Date

 PNCBANK

PNC Bank, N.A.  
Philadelphia, PA 020

FOR May 10 Garl davel fee

Anty D. / M

⑈001114⑈ ⑆031000053⑆ 861177819⑈

RF



# EXHIBIT M

# **AIA® Document B141™ – 1997 Part 1**

## **Standard Form of Agreement Between Owner and Architect with Standard Form of Architect's Services**

### **TABLE OF ARTICLES**

- 1.1 INITIAL INFORMATION**
- 1.2 RESPONSIBILITIES OF THE PARTIES**
- 1.3 TERMS AND CONDITIONS**
- 1.4 SCOPE OF SERVICES AND OTHER SPECIAL TERMS AND CONDITIONS**
- 1.5 COMPENSATION**

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AGREEMENT made as of the 7<sup>th</sup> day of April in the year 2009  
(In words, indicate day, month and year)

**BETWEEN** the Architect's client identified as the Owner:  
(Name, address and other information)

Northwest 15th Street Associates

and the Architect:  
(Name, address and other information)

EwingCole  
Federal Reserve Bank Building  
100 N. 6th Street  
Philadelphia, PA 19106-1590

For the following Project:  
(Include detailed description of Project)

New Family Court Building  
15th & Arch Streets  
Philadelphia, PA 19103

The Owner and Architect agree as follows:

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## ARTICLE 1.1 INITIAL INFORMATION

§ 1.1.1 This Agreement is based on the following information and assumptions.

(Note the disposition for the following items by inserting the requested information or a statement such as "not applicable," "unknown at time of execution" or "to be determined later by mutual agreement.")

### § 1.1.2 PROJECT PARAMETERS

§ 1.1.2.1 The objective or use is:

(Identify or describe, if appropriate, proposed use or goals.)

A purpose-built court facility to house the Philadelphia Family Court at 15th & Arch Streets.

§ 1.1.2.2 The physical parameters are:

(Identify or describe, if appropriate, size, location, dimensions, or other pertinent information, such as geotechnical reports about the site.)

A building of approximately 590,000 gross square feet, including 16 occupied floors above ground, four subterranean levels for parking and holding cells, and one mechanical penthouse level.

§ 1.1.2.3 The Owner's Program is:

(Identify documentation or state the manner in which the program will be developed.)

The program for the building is described in the attached proposal for Architecture and Engineering Services, dated February 27, 2008, (as developed by EwingCole (Exhibit B))

§ 1.1.2.4 The legal parameters are:

(Identify pertinent legal information, including, if appropriate, land surveys and legal descriptions and restrictions of the site.)

A site at the northwest corner of 15th Street and Arch Street, Philadelphia PA, which is currently a surface parking lot.

§ 1.1.2.5 The financial parameters are as follows.

1. Amount Estimated amount of the Owner's overall budget for the Project, including the Architect's compensation, is: compensation and other project costs, is: \$200,000,000
2. Amount Estimated amount of the Owner's budget for the Cost of the Work, excluding the Architect's compensation, is: compensation and other project costs, is: \$130,000,000

§ 1.1.2.6 The time parameters are:

(Identify, if appropriate, milestone dates, durations or fast track scheduling.)

See Exhibit B

§ 1.1.2.7 The proposed procurement or delivery method for the Project is:

(Identify method such as competitive bid, negotiated contract, or construction management.)

Construction Management

§ 1.1.2.8 Other parameters are:

(Identify special characteristics or needs of the Project such as energy, environmental or historic preservation requirements.)

N/A

### § 1.1.3 PROJECT TEAM

§ 1.1.3.1 The Owner's Designated Representative is:

(List name, address and other information.)

Init.

Jeffrey B. Rotwitt, Esquire  
Obermayer Rebmann Maxwell & Hippel LLP  
One Penn Center, 19th Floor  
1617 JFK Boulevard  
Philadelphia, PA 19103-1895

§ 1.1.3.2 The persons or entities, in addition to the Owner's Designated Representative, who are required to review the Architect's submittals to the Owner are:  
(List name, address and other information.)

To be determined by Owner and notify Architect.

§ 1.1.3.3 The Owner's other consultants and contractors are:  
(List discipline and, if known, identify them by name and address.)

To be determined by Owner and notify Architect.

§ 1.1.3.4 The Architect's Designated Representative is:  
(List name, address and other information.)

The following individuals employed by the architectural firm are to remain an active part of the design team for the duration of the design and construction of the project.

John Gerbner, Principal  
Lynda Todd, Planner  
Charles Rudalavage, Project Architect  
John Chase, Project Designer  
Richard Esslinger, Project Manager

§ 1.1.3.5 The consultants retained at the Architect's expense are:  
(List discipline and, if known, identify them by name and address.)

Architect may use subconsultants (each, a "Subconsultant") for the services provided hereunder, subject to the following conditions: (a) Each Subconsultant shall be subject to the reasonable approval of the Owner; (b) each Subconsultant shall enter into a "Subconsultant Agreement with the Architect, in form and substance satisfactory to Owner; and (c) to the extent that the Owner requests that Architect engages a certain firm as a Subconsultant, Architect will do so, provided that if the subconsultant fee to the Architect exceeds the amount budgeted by the Architect for that Subconsultant work as shown on Exhibit B, the Architect's fee will be renegotiated.

Specifically, Architect shall use the following Subconsultants for the service set forth below:

Structural Engineering - The Harman Group, Inc.  
Landscaping - Synterra Partners - (MBE)  
Interior Design Assistance - Camile Peluso (WBE)

§ 1.1.4 Other important initial information is:

N/A

§ 1.1.5 When the services under this Agreement include contract administration services, the General Conditions of the Contract for Construction shall be the edition of AIA Document A201 ~~current as of the date of this Agreement, or~~  
as follows: A201: used by Owner, as modified by Owner;

N/A

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§ 1.1.6 The information contained in this Article 1.1 may be reasonably relied upon by the Owner and Architect in determining the Architect's compensation. Both parties, however, recognize that such information may change and, in that event, the Owner and the Architect shall negotiate appropriate adjustments in schedule, compensation and Change in Services in accordance with Section 1.3.3.

## ARTICLE 1.2 RESPONSIBILITIES OF THE PARTIES

§ 1.2.1 The Owner and the Architect shall cooperate with one another to fulfill their respective obligations under this Agreement. Both parties shall endeavor to maintain good working relationships among all members of the Project team.

### § 1.2.2 OWNER

§ 1.2.2.1 Unless otherwise provided ~~under by~~ this Agreement, the Owner shall provide full information in a timely manner regarding requirements for and limitations on the Project. The Owner shall furnish to the Architect, within ~~15 days a reasonable time~~ after receipt of a written request, information in Owner's possession which is necessary and relevant for the Architect to evaluate, give notice of or enforce lien rights.

§ 1.2.2.2 The Owner shall periodically update the budget for the Project, including that portion allocated for the Cost of the Work. The Owner shall not significantly increase or decrease the overall budget, the portion of the budget allocated for the Cost of the Work, or contingencies included in the overall budget or a portion of the budget, without the agreement of the Architect to a corresponding change in prior consultation with the Architect regarding the Project scope and quality.

§ 1.2.2.3 The Owner's Designated Representative identified in Section 1.1.3 shall be authorized to act on the Owner's behalf with respect to the Project. The Owner or the Owner's Designated Representative shall render decisions in a timely manner pertaining to documents submitted by the Architect in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

§ 1.2.2.4 The Owner shall furnish the services of consultants other than those designated in Section 1.1.3 or authorize the Architect to furnish them as a Change in Services when such services are requested by the Architect and are reasonably required by the scope of the Project.

§ 1.2.2.5 Unless otherwise provided in this Agreement, the Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 1.2.2.6 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 1.2.2.7 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including any errors, omissions or inconsistencies in the Architect's Instruments of Service.

### § 1.2.3 ARCHITECT

§ 1.2.3.1 The services performed by the Architect, Architect's employees and Architect's consultants shall be as enumerated in ~~Article 1.4~~ Article 1.4., and in accordance with the Owner's request for proposal and architects response.

§ 1.2.3.2 The Architect's services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Project. The Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services which initially shall be consistent with the time periods established in Section 1.1.2.6 and which shall be adjusted, if necessary, as the Project proceeds. This schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Time limits established by this schedule approved by the Owner shall not, except for reasonable cause, be exceeded by the Architect or Owner. In no event shall any delays or extensions of time under 6 months, including but not limited to delays or extensions not contemplated by the parties on the commencement date of this Agreement or due to unforeseen conditions, be construed as cause or

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justification for payment of extra compensation to Architect, unless such delay was due to active interference by Owner or unless by mutual agreement of Owner and Architect.

§ 1.2.3.3 The Architect's Designated Representative identified in Section 1.1.3 shall be authorized to act on the Architect's behalf with respect to the Project.

§ 1.2.3.4 The Architect shall maintain the confidentiality of Owner's business information including project related information specifically designated as confidential by the Owner, unless disclosure is necessary to carry out architect's obligations hereunder; or withholding such information would violate the law, create the risk of significant harm to the public or prevent the Architect from establishing a claim or defense in an adjudicatory proceeding. The Architect shall require of the Architect's consultants similar agreements to maintain the confidentiality of Owner's information specifically designated as confidential by the Owner.

§ 1.2.3.5.

~~§ 1.2.3.5 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.~~

§ 1.2.3.6 The Architect shall review laws, codes, and regulations applicable to the Architect's ~~services~~ services and become familiar with them. The Architect shall respond in the design of the Project to requirements imposed by governmental authorities having jurisdiction over the Project.

§ 1.2.3.7 The Architect shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any errors, omissions or inconsistencies in such services or information.

1.2.3.8 Architect shall cooperate with Owner with respect to any services provided by professionals pursuant to paragraph 1.2.2.6 hereunder.

1.2.3.9 Architect represents that it is experienced and fully qualified to perform the services contemplated by this Agreement, and that it is properly licensed pursuant to applicable law to perform such services.

1.2.3.10 All staff used by Architect in the performance of the services contemplated under this Agreement shall be qualified by training and experience to perform their assigned tasks. Architect shall submit, for Owner's approval, a team or staffing proposal for the Project, complete with job description, names and previous experience of all key design personnel.

1.2.3.11 Architect acknowledges that time is of the essence in the performance of its obligations under this Agreement, and that Architect will perform the services required by this Agreement in accordance with the schedule agreed upon from time to time between Architect and Owner.

**ARTICLE 1.3 TERMS AND CONDITIONS**

**§ 1.3.1 COST OF THE WORK**

§ 1.3.1.1 The Cost of the Work shall be the total cost or, to the extent the Project is not completed, the estimated cost to the Owner of all elements of the Project designed or specified by the Architect. In no event shall any delays or extensions of time under 6 months, including but not limited to extensions not contemplated by the parties on the commencement date of this Agreement or due to unforeseen conditions, be construed as cause or justification for payments of additional compensation to Architect, unless such delay was due solely to Owner's fault.

§ 1.3.1.2 The Cost of the Work shall include the cost at current market rates of labor and materials furnished by the Owner and equipment designed, specified, selected or specially provided for by the Architect, including the costs of management or supervision of construction or installation provided by a ~~separate construction manager or contractor,~~ plus a reasonable allowance for their overhead and profit. In addition, a reasonable allowance for contingencies shall be included for market conditions at the time of bidding and for changes in the Work.

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§ 1.3.1.3 The Cost of the Work does not include the compensation of the Architect and the Architect's consultants, the costs of the land, rights-of-way and financing or other costs that are the responsibility of the Owner.

### § 1.3.2 INSTRUMENTS OF SERVICE

§ 1.3.2.1 Drawings, specifications and other documents, including those in electronic form, prepared by the Architect and the Architect's consultants are Instruments of Service for use ~~solely with respect to~~ of this Project. The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service and shall retain all common law, statutory and other reserved rights, including ~~copyrights, copyrights, until transfer of ownership of the Instruments of Service to Owner.~~ Upon payment to Architect of sums due hereunder, those drawings, specifications, models, renderings and work product prepared in connection with the Project (sometimes referred to as the "Instruments of Service") for which Architect has been paid shall become the property of Owner. Upon payment of all sums due hereunder, all Instruments of Service shall become the property of Owner. Architect shall deliver any and all such drawings and specifications to Owner, and Architect agrees to make no further use thereof.

§ 1.3.2.2 Upon execution of this Agreement, and during the period that Ownership of the Instruments of Service remain with the Architect, the Architect grants to the Owner a nonexclusive license to reproduce the Architect's Instruments of Service solely for purposes of constructing, using and maintaining the Project, provided that the Owner shall comply with all obligations, including prompt payment of all sums when due, under this Agreement. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. Any termination of this Agreement prior to completion of the Project shall terminate this license. Upon such termination, the Owner shall refrain from making further reproductions of Instruments of Service and shall return to the Architect within seven days of termination all originals and reproductions in the Owner's possession or control. If and upon the date the Architect is adjudged in default of this Agreement, the foregoing license shall be deemed terminated and replaced by a second, nonexclusive license permitting the Owner to authorize other similarly credentialed design professionals to reproduce and, where permitted by law, to make changes, corrections or additions to the Instruments of Service solely for purposes of completing, using and maintaining the Project. To the fullest extent permitted by law, the Owner shall indemnify and save harmless the Architect from and against any and all claims, demands, suits, judgments, liability, damages, costs of expenses (including attorney's fees and other defense costs) arising in connection with any use by the Owner or others authorized by the Owner of the Instruments of Service subsequent to the termination of the Architect for default.

§ 1.3.2.3 ~~Except for the licenses granted in Section 1.3.2.2, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not~~ The Owner may assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. However, ~~the Owner shall be permitted to authorize the Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers to reproduce applicable portions of the Instruments of Service appropriate to and for use in their execution of the Work by license granted in Section 1.3.2.2. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants. The Owner shall not use the Instruments of Service for future additions or alterations to this Project or for other projects, unless the Owner obtains the prior written agreement of the Architect and the Architect's consultants. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.~~

§ 1.3.2.4 Prior to the Architect providing to the Owner any Instruments of Service in electronic form or the Owner providing to the Architect any electronic data for incorporation into the Instruments of Service, the Owner and the Architect shall by separate written agreement set forth the specific conditions governing the format of such Instruments of Service or electronic data, including any special limitations or licenses not otherwise provided in this Agreement. A copy of such agreement is attached to this Agreement as Exhibit "A".

### § 1.3.3 CHANGE IN SERVICES

§ 1.3.3.1 Change in Services of the Architect, including services required of the Architect's consultants, may be accomplished after execution of this Agreement, without invalidating the Agreement, ~~if mutually agreed in writing, if required by circumstances beyond the Architect's control, or if the Architect's services are affected as described in Section 1.3.3.2, either by Owner's Directive (as defined below, or by written amendment to this Agreement signed by both Architect and Owner.~~ In the absence of mutual agreement in writing, the Architect shall notify the Owner prior

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to providing such services. If the Owner deems that all or a part of such Change in Services is not required, the Owner shall give prompt written notice to the ~~Architect~~, Architect of the services to be deleted from the Scope of this Agreement ("Owner's Directive"), and the Architect shall have no obligation to provide those services. Except for a change due to the fault of the Architect, Change in Services of the Architect shall entitle the Architect to an adjustment in compensation pursuant to Section 1.5.2, and to any Reimbursable Expenses described in Section 1.3.9.2 and Section 1.5.5.

§ 1.3.3.2 If any of the following circumstances affect the Architect's services for the Project, the Architect shall be entitled to an appropriate adjustment in the Architect's schedule and compensation:

- .1 change in the instructions or approvals given by the Owner that necessitate revisions in Instruments of Service;
- .2 enactment or revision of codes, laws or regulations or official interpretations which necessitate changes to previously prepared Instruments of Service;
- .3 decisions of the Owner not rendered in a timely manner;
- .4 significant change in the Project including, but not limited to, size, quality, complexity, the Owner's schedule or budget, or procurement method;
- .5 failure of performance on the part of the Owner or the Owner's consultants or contractors;
- .6 preparation for and attendance at a public hearing, (other than meetings relating to approval of this Project), a dispute resolution proceeding or a legal proceeding except where the Architect is party thereto;
- .7 change in the information contained in Article 1.1.

#### § 1.3.4 MEDIATION

§ 1.3.4.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to ~~arbitration or~~ the institution of legal or equitable proceedings by either party. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by arbitration/litigation.

§ 1.3.4.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Mediation Rules of the U.S. Arbitration & Mediation currently in effect, or the Rules for Mediation of the mediation service selected by the parties. Request for mediation shall be filed in writing with the other party to this Agreement and with the ~~American Arbitration Association. The request may be made concurrently with the filing of a demand for arbitration but, in such event, U.S. Arbitration & Mediation, or such other mediation service as the parties may mutually agree upon. The~~ mediation shall proceed in advance of arbitration or legal or equitable proceedings, which shall be stayed any legal or equitable proceedings. The applicable statute of limitations shall be tolled as of the date of the filing of the demand of mediation with the mediation service pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If the matter has not been resolved by mediation within twenty (20) days of the filing of the demand for mediation, a party may proceed with the filing of an action in litigation.

§ 1.3.4.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

#### § 1.3.5 ARBITRATION/LITIGATION

§ 1.3.5.1 Any ~~claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to arbitration. Prior to arbitration, the parties shall endeavor to resolve disputes by mediation in accordance with Section 1.3.4-claims arising hereunder shall be resolved by litigation. Any action will be filed in the courts located in the jurisdiction where the Site is located.~~

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§ 1.3.5.2. This Agreement shall be governed in all respects by the laws of the Commonwealth of Pennsylvania (without regard to the principles of conflicts of law) and for all purposes shall be construed in accordance with such laws.

§ 1.3.5.2 Claims, disputes and other matters in question between the parties that are not resolved by mediation shall be decided by arbitration which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect. The demand for arbitration shall be filed in writing with the other party to this Agreement and with the American Arbitration Association.

§ 1.3.5.3 A demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.**WAIVER OF JURY TRIAL**

**The parties waive any right to a trial by jury in any action or proceeding to enforce or defend any rights under the contract documents, or any proceeding in any way arising out of or related to any of the foregoing, and the parties agree that any such action or proceeding shall be tried before a court and not before a jury.**

§ 1.3.5.4 No arbitration arising out of or relating to this Agreement shall include, by consolidation or joinder or in any other manner, an additional person or entity not a party to this Agreement, except by written consent containing a specific reference to this Agreement and signed by the Owner, Architect, and any other person or entity sought to be joined. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent or with a person or entity not named or described therein. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.**CONSENT TO JURISDICTION AND VENUE**

Architect submits to the jurisdiction of the court of common pleas of Philadelphia County, Commonwealth of Pennsylvania for the determination of any controversy arising under or in connection with the Contract Documents, and waives personal service of any summons, complaint, or other process in an action in the court of common pleas of Philadelphia County, Commonwealth of Pennsylvania and agrees that all service thereof may be made by certified or registered mail, return receipt requested.

§ 1.3.5.5 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

### **§ 1.3.6 CLAIMS FOR CONSEQUENTIAL DAMAGES**

The Architect and the Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Section 1.3.8.

### **§ 1.3.7 MISCELLANEOUS PROVISIONS**

§ 1.3.7.1 This Agreement shall be governed by the law of the principal place of business of the Architect, unless otherwise provided in Section 1.4.2.Commonwealth of Pennsylvania

§ 1.3.7.2 Terms in this Agreement shall have the same meaning as those in the edition of AIA Document A201, General Conditions of the Contract for Construction, current as of the date of this Agreement.

§ 1.3.7.3 Causes of action between the parties to this Agreement pertaining to acts or failures to act shall be deemed to have accrued and the applicable statutes of limitations shall commence to run not later than either the date of Substantial Completion for acts or failures to act occurring prior to Substantial Completion or the date of issuance of the final Certificate for Payment for acts or failures to act occurring after Substantial Completion. In no event shall such statutes of limitations commence to run any later than eight (8) years later than the date when the Architect's services are substantially completed.

§ 1.3.7.4 To the extent damages are covered by property insurance during construction, the Owner and the Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in the edition of AIA

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Document A201, General Conditions of the Contract for Construction, current as of the date of this Agreement. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein. The Owner agrees to obtain the necessary property insurance as set forth in the General Conditions.

§ 1.3.7.5 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Architect.

§ 1.3.7.6 Unless otherwise provided in this Agreement, the Architect and Architect's consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials or toxic substances in any form at the Project site.

§ 1.3.7.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project.

§ 1.3.7.8 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. The Architect shall not be required to execute certificates that would require knowledge, services or responsibilities beyond the scope of this Agreement.

§ 1.3.7.9 The Owner and Architect, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to an institutional lender providing financing for the Project. In such event, the lender shall assume the Owner's rights and obligations under this Agreement. The Architect shall execute all consents reasonably required to facilitate such assignment. Agreement subject to the terms and conditions of lender's assignment document, if agreed upon by the Architect. Owner agrees that it will not, without the express consent of the Architect, assign to the contractor or to any other individual or entity any claims which arise out of, or in connection with, this Agreement or any services rendered by the Architect in connection with the Project.

### § 1.3.8 TERMINATION OR SUSPENSION

§ 1.3.8.1 If the Owner fails to make payments to the Architect (unless payments are withheld for disputed items) in accordance with this Agreement, and fails to cure such nonpayment's within seven (7) days from notice from the Architect, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. Agreement, unless such non-performance is due to Architect's failure to perform hereunder. If the Architect elects to suspend services, prior to suspension of services, the Architect shall give seven days' written notice to the Owner. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. services provided such suspension is not due to Architect's failure to perform. Before resuming services, the Architect shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 1.3.8.2 If the Project The Owner may suspend the Agreement at any time. If the Agreement is suspended by the Owner for more than 30-14 consecutive days, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. services performed after resumption of the Architect's services. The Architect shall receive no compensation during the period of the suspension. The Architect shall be entitled to receive the expenses associated with the suspension notwithstanding the Owner's decision to abandon the Project or otherwise terminate this Agreement. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 1.3.8.3 If the Project is suspended or the Architect's services are suspended for more than 90 consecutive days, the Architect may terminate this Agreement by giving not less than seven days' written notice.

§ 1.3.8.4 This Agreement may be terminated by either party upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 1.3.8.5 This Agreement may be terminated by the Owner upon not less than ~~seven~~ three days' written notice to the Architect for the Owner's convenience and without cause.

§ 1.3.8.6 The Owner may terminate the Agreement at any time for any reason or no reason upon three days' prior written notice to Architect. In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, ~~together with Reimbursable Expenses then due and all Termination Expenses as defined in Section 1.3.8.7 and shall receive no further compensation.~~

§ 1.3.8.7 ~~Termination Expenses are in addition to compensation for the services of the Agreement and include expenses directly attributable to termination for which the Architect is not otherwise compensated, plus an amount for the Architect's anticipated profit on the value of the services not performed by the Architect.~~

### § 1.3.9 PAYMENTS TO THE ARCHITECT

§ 1.3.9.1 Payments on account of services rendered and for Reimbursable Expenses incurred shall be made monthly upon presentation by the Architect and approved by the Owner of the Architect's statement of services. No deductions shall be made from the Architect's compensation on account of penalty, liquidated damages or other sums withheld from payments to contractors, or on account of the cost of changes in the Work other than those for which the Architect has been adjudged to be liable.

§ 1.3.9.2 Reimbursable Expenses are in addition to compensation for the Architect's services and include expenses incurred by the Architect and Architect's employees and consultants directly related to the Project, as identified in the following Clauses: Notwithstanding the foregoing, any expenses in excess of \$2,000 must be approved by the Owner prior to incurring the expense.

- .1 transportation in connection with the Project, authorized out-of-town travel and subsistence, and electronic communications;
- .2 fees paid for securing approval of authorities having jurisdiction over the Project;
- .3 reproductions, creating disk, cd-roms or copies of other storage media for electronic documents, plots, standard form documents, postage, handling and delivery of Instruments of Service;
- .4 expense of overtime work requiring higher than regular rates if authorized in advance by the Owner;
- .5 renderings, models and mock-ups requested by the Owner;
- .6 expense of professional liability insurance dedicated exclusively to this Project or the expense of additional insurance coverage or limits requested by the Owner in excess of that normally carried by the Architect and the Architect's consultants;
- .7 reimbursable expenses as designated in Section 1.5.5;
- .8 other similar direct Project-related expenditures.

§ 1.3.9.3 Records of Reimbursable Expenses, of expenses pertaining to a Change in Services, and of services performed on the basis of hourly rates or a multiple of Direct Personnel Expense shall be available to the Owner or the Owner's authorized representative at mutually convenient times.

### § 1.3.9.4

~~§ 1.3.9.4 Direct Personnel Expense is defined as the direct salaries of the Architect's personnel engaged on the Project and the portion of the cost of their mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans and similar contributions.~~

#### ARTICLE 1.4 SCOPE OF SERVICES AND OTHER SPECIAL TERMS AND CONDITIONS

§ 1.4.1 Enumeration of Parts of the Agreement. This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Architect. This Agreement comprises the documents listed below.

§ 1.4.1.1 Standard Form of Agreement Between Owner and Architect, AIA Document B141-1997.

§ 1.4.1.2 Standard Form of Architect's Services: Design and Contract Administration, AIA Document B141-1997, or as follows:

*(List other documents, if any, delineating Architect's scope of services.)*

N/A

§ 1.4.1.3 Other documents as follows:

*(List other documents, if any, forming part of the Agreement.)*

Exhibit A - Agreement for Delivery of Documents in Electronic Form

Exhibit B - Proposal for Architecture and Engineering Services

Exhibit C - Fee Schedule

§ 1.4.2 Special Terms and Conditions. Special terms and conditions that modify this Agreement are as follows:

#### ARTICLE 1.5 COMPENSATION

§ 1.5.1 For the Architect's services as described under Article 1.4, compensation shall be computed as follows:

Total Architectural Fixed Fee of \$6,370,000.

The Breakdown of fees is as per the Exhibit B Fee Proposal Matrix attachment

Programming and Concept Design

Schematic Design

Design Development

Construction Documents

Construction Administration

§ 1.5.2 If the services of the Architect are changed as described in Section 1.3.3.1, the Architect's compensation shall be adjusted. Such adjustment shall be calculated as described below or, if no method of adjustment is indicated in this Section 1.5.2, in an equitable manner.

*(Insert basis of compensation, including rates and multiples of Direct Personnel Expense for Principals and employees, and identify Principals and classify employees, if required. Identify specific services to which particular methods of compensation apply.)*

Actual staff hours spent on behalf of the Project at the standard EwingCole billing rates in effect at the time the work is performed.

§ 1.5.3 For a Change in Services of the Architect's consultants, compensation shall be computed as a multiple of ( 1.15 ) times the amounts billed to the Architect for such services.

§ 1.5.4 For Reimbursable Expenses as described in Section 1.3.9.2, and any other items included in Section 1.5.5 as Reimbursable Expenses, the compensation shall be computed as a multiple of ( 1.1 ) times the expenses incurred by the Architect, and the Architect's employees and consultants.

§ 1.5.5 Other Reimbursable Expenses, if any, are as follows:

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| N/A

§ 1.5.6 The rates and multiples for services of the Architect and the Architect's consultants as set forth in this Agreement shall be adjusted in accordance with their normal salary review practices.

§ 1.5.7 An initial payment of (\$ 0 ) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account at final payment. Subsequent payments for services shall be made monthly, and where applicable, shall be in proportion to services performed on the basis set forth in this Agreement.

§ 1.5.8 Payments are due and payable thirty ( 30 ) days from the date of the Architect's invoice. Amounts unpaid sixty ( 60 ) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.  
(Insert rate of interest agreed upon.)

| Prime rate plus 1%.

*(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Architect's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Specific legal advice should be obtained with respect to deletions or modifications, and also regarding requirements such as written disclosures or waivers.)*

§ 1.5.9 If the services covered by this Agreement have not been completed within ~~( )~~ months of the date hereof, by September 20, 2011 ( ), through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as provided in Section 1.5.2.

## **1.6 INDEMNIFICATION**

**1.6.1 Architect shall defend, indemnify and hold harmless Owner and the Indemnified Parties (as hereinafter defined) from and against all liability, actions, damages, claims, demands, judgments, losses, costs and expenses (including but not limited to attorneys' fees) arising out of or resulting from the sickness, bodily injury or death of any person or persons, or loss or damage to any property, arising out of the negligent or intentional acts on the part of Architect or personnel or subconsultants of the Architect. "Indemnified Parties" or "Indemnities" shall be defined as follows: Owner, Owner's partners, the Commonwealth of Pennsylvania, the First Judicial District of the Commonwealth of Pennsylvania, the City of Philadelphia, and the respective officers, directors, partners, agents, servants, employees and affiliates of all of the aforementioned parties.**

## **1.7 INSURANCE**

### **1.7.1 Insurance Policies**

Architect shall maintain such insurance as will protect it from claims which may arise out of or result from the services under this Agreement, whether such service contemplated under this Agreement are performed by Architect or by anyone for whose acts Architect may be liable. Architect shall maintain the insurance set forth below in accordance with the terms and conditions set forth herein, and should Architect fail to comply with such terms and conditions at any time, Owner shall have the right to stop work until Architect cures such failure.

### **1.7.2 Worker's Compensation Insurance**

Architect shall maintain Workers' Compensation Insurance covering employees and agents of Architect in not less than the amount required by law.

### **1.7.3 Comprehensive General Liability Insurance**

Architect shall maintain comprehensive General Liability Insurance providing a combined single limit of not less than \$2,000,000.00 per occurrence for bodily injury and property damage. Such policy shall include a broad form endorsement or endorsements providing the following coverage: independent contractors and products/completed operations, broad form contractual, broad form property damage, owner's protective, and such other coverage as Owner may require. Such policy shall name the Indemnified Parties as additional insureds and shall contain a waiver of subrogation against the Indemnified Parties, their officers, employees and agents.

### **1.7.4 Professional Liability Insurance**

Architect shall maintain during the term of this Agreement and for three (3) years thereafter Professional Liability Insurance for errors and omissions by Architect in connection with Architect's the services under this Agreement, with limits of not less than \$5,000,000.00, and Architect shall provide Owner with notice of any claim against Architect which may affect this professional liability coverage, during the term of this Agreement and for three (3) years thereafter.

### **1.7.5 Business Automobile Insurance**

Architect shall maintain business automobile insurance covering all vehicles used in connection with the Architect's services contemplated under this Agreement, whether owned, non-owned, hired or leased, with no less than \$1,000,000.00 combined single limit coverage for bodily injury and property damage. Such policy shall name the Indemnified Parties as additional insureds, and contain a waiver of subrogation against them, their employees and agents.

### **1.7.6 Claims-Made Policies**

Insurance policies shall be written on an occurrence basis; provided, however, that a claims-made policy can be used upon compliance with the following conditions:

(a) The policies shall be maintained in full force and effect by Architect and any Subconsultants during the term of this Agreement for a least three (3) consecutive years following the later of (a) completion of all of the Architect's services contemplated under this Agreement, or (b) termination of this Agreement.

(b) The policies shall provide that the retroactive date shall coincide with or precede the date on which Architect first commenced the Project.

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(c) Architect shall deliver to Owner proof of purchase satisfactory to Owner of extended reporting provisions to report claims arising from the Architect's or any Subconsultant's services contemplated under this Agreement for a period of at least three (3) years after termination of the policies.

#### **1.7.7 Insurance Certificates**

Architect shall furnish Insurance Certificates to Owner (standard accord certificate or comparable form) and will submit such certificates to Owner, with five (5) days of execution of this Agreement. The Insurance Certificates shall specifically state that the insurer will not cancel or fail to renew any policy issued to Architect without first endeavoring to provide thirty (30) days' written notice to Owner and additional insured. Additionally, Owner shall be entitled to demand that Architect, from time to time, furnish evidence that the insurance required by this Agreement is in effect, and such evidence shall be provided within ten (10) calendar days of the request. Architect shall notify Owner in writing immediately if any of its insurance coverage is terminated for any reason.

#### **1.7.8 Subconsultants**

Architect shall also require that its-Subconsultants maintain insurance in accordance with the same terms and conditions of this Section, except for the amounts which may be changed with Owner's approval.

#### **1.8 Mechanic's Liens**

**1.8.1** Should any lien, claim or notice of lien be filed or maintained against Owner or any party having any interest in the Project Site or any improvements thereon (the "Property"), or any part thereof or interest therein, by or in the name of Architect or any separate Architect, subconsultant, or sub-subconsultant, for work done or service rendered in connection with the Project Site, the Architect shall cause the immediate removal thereof, and the Architect shall remove such lien by obtaining and filing a bond satisfactory in form and amount acceptable to the Owner and in accordance with all applicable legal requirements. Said bond shall be obtained and filed within ten (10) days after the date on which such lien attaches to the Project. The cost of such bond shall not be a reimbursable item hereunder.

This Agreement entered into as of the day and year first written above.

#### **OWNER**

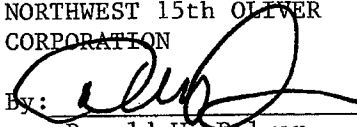
NORTHWEST 15th STREET ASSOCIATES

(Signature)

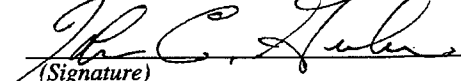
By: NORTHWEST 15th OLIVER ASSOCIATES

(Printed name and title)

By: NORTHWEST 15th OLIVER  
CORPORATION

By:   
Donald W. Pulver  
President

#### **ARCHITECT**

  
(Signature)

John Gerbner, President

(Printed name and title)

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# **AIA® Document B141™ – 1997 Part 2**

## ***Standard Form of Architect's Services: Design and Contract Administration***

### **TABLE OF ARTICLES**

- 2.1 PROJECT ADMINISTRATION SERVICES**
- 2.2 SUPPORTING SERVICES**
- 2.3 EVALUATION AND PLANNING SERVICES**
- 2.4 DESIGN SERVICES**
- 2.5 CONSTRUCTION PROCUREMENT SERVICES**
- 2.6 CONTRACT ADMINISTRATION SERVICES**
- 2.7 FACILITY OPERATION SERVICES**
- 2.8 SCHEDULE OF SERVICES**
- 2.9 MODIFICATIONS**

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

### **ARTICLE 2.1 PROJECT ADMINISTRATION SERVICES**

§ 2.1.1 The Architect shall manage the Architect's services and administer the Project. The Architect shall consult with the Owner, research applicable design criteria, attend Project meetings, communicate with members of the Project team and issue progress reports. The Architect shall coordinate the services provided by the Architect and the Architect's consultants with those services provided by the Owner and the Owner's consultants.

§ 2.1.2 When Project requirements have been sufficiently identified, the Architect shall prepare, and periodically update, a Project schedule that shall identify milestone dates for decisions required of the Owner, design services furnished by the Architect, completion of documentation provided by the Architect, commencement of construction and Substantial Completion of the Work.

§ 2.1.3 The Architect shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program, budget and aesthetics in developing the design for the Project.

§ 2.1.4 Upon request of the Owner, the Architect shall make a presentation to explain the design of the Project to representatives of the Owner.

§ 2.1.5 The Architect shall submit design documents to the Owner at intervals appropriate to the design process for purposes of evaluation and approval by the Owner. The Architect shall be entitled to rely on approvals received from the Owner in the further development of the design.

§ 2.1.6 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

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## **§ 2.1.7 EVALUATION OF BUDGET AND COST OF THE WORK**

**§ 2.1.7.1** When the Project requirements have been sufficiently identified, the Architect shall prepare a preliminary estimate of the Cost of the Work. This estimate may be based on current area, volume or similar conceptual estimating techniques. As the design process progresses through the end of the preparation of the Construction Documents, the Architect shall update and refine the preliminary estimate of the Cost of the Work. The Architect shall advise the Owner of any adjustments to previous estimates of the Cost of the Work indicated by changes in Project requirements or general market conditions. If at any time the Architect's estimate of the Cost of the Work exceeds the Owner's budget, the Architect shall make appropriate recommendations to the Owner to adjust the Project's size, quality or budget, and the Owner shall cooperate with the Architect in making such adjustments.

**§ 2.1.7.2** Evaluations of the Owner's budget for the Project, the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work prepared by the Architect represent the Architect's judgment as a design professional familiar with the construction industry. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials or equipment, over the Contractor's methods of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Project or from any estimate of the Cost of the Work or evaluation prepared or agreed to by the Architect.

**§ 2.1.7.3** In preparing estimates of the Cost of the Work, the Architect shall be permitted to include contingencies for design, bidding and price escalation; to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents; to make reasonable adjustments in the scope of the Project and to include in the Contract Documents alternate bids as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget for the Cost of the Work. If an increase in the Contract Sum occurring after execution of the Contract between the Owner and the Contractor causes the budget for the Cost of the Work to be exceeded, that budget shall be increased accordingly.

**§ 2.1.7.4** If bidding or negotiation has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, the budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the construction industry.

**§ 2.1.7.5** If the budget for the Cost of the Work is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall:

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;
- .3 terminate in accordance with Section 1.3.8.5; or
- .4 cooperate in revising the Project scope and quality as required to reduce the Cost of the Work.

**§ 2.1.7.6** If the Owner chooses to proceed under Section 2.1.7.5.4, the Architect, without additional compensation, shall modify the documents for which the Architect is responsible under this Agreement as necessary to comply with the budget for the Cost of the Work. The modification of such documents shall be the limit of the Architect's responsibility under this Section 2.1.7. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not construction is commenced.

## **ARTICLE 2.2 SUPPORTING SERVICES**

**§ 2.2.1** Unless specifically designated in Section 2.8.3, the services in this Article 2.2 shall be provided by the Owner or the Owner's consultants and contractors.

**§ 2.2.1.1** The Owner shall ~~furnish a program setting forth work with the Architect to develop~~ the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, special equipment, systems and site requirements.

**§ 2.2.1.2** The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and

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information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 2.2.1.3 The Owner shall furnish services of geotechnical engineers which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with reports and appropriate recommendations.

## **ARTICLE 2.3 EVALUATION AND PLANNING SERVICES**

§ 2.3.1 The Architect shall provide a preliminary evaluation of the information furnished by the Owner under this Agreement, including the Owner's program and schedule requirements and budget for the Cost of the Work, each in terms of the other. The Architect shall review such information to ascertain that it is consistent with the requirements of the Project and shall notify the Owner of any other information or consultant services that may be reasonably needed for the Project.

§ 2.3.2 The Architect shall provide a preliminary evaluation of the Owner's site for the Project based on the information provided by the Owner of site conditions, and the Owner's program, schedule and budget for the Cost of the Work.

§ 2.3.3 The Architect shall review the Owner's proposed method of contracting for construction services and shall notify the Owner of anticipated impacts that such method may have on the Owner's program, financial and time requirements, and the scope of the Project.

## **ARTICLE 2.4 DESIGN SERVICES**

§ 2.4.1 The Architect's design services shall include normal structural, mechanical and electrical engineering services.

### **§ 2.4.2 SCHEMATIC DESIGN DOCUMENTS**

§ 2.4.2.1 The Architect shall provide Schematic Design Documents based on the mutually agreed-upon program, schedule, and budget for the Cost of the Work. The documents shall establish the conceptual design of the Project illustrating the scale and relationship of the Project components. The Schematic Design Documents shall include a conceptual site plan, if appropriate, and preliminary building plans, sections and elevations. At the Architect's option, the Schematic Design Documents may include study models, perspective sketches, electronic modeling or combinations of these media. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

### **§ 2.4.3 DESIGN DEVELOPMENT DOCUMENTS**

§ 2.4.3.1 The Architect shall provide Design Development Documents based on the approved Schematic Design Documents and updated budget for the Cost of the Work. The Design Development Documents shall illustrate and describe the refinement of the design of the Project, establishing the scope, relationships, forms, size and appearance of the Project by means of plans, sections and elevations, typical construction details, and equipment layouts. The Design Development Documents shall include specifications that identify major materials and systems and establish in general their quality levels.

### **§ 2.4.4 CONSTRUCTION DOCUMENTS**

§ 2.4.4.1 The Architect shall provide Construction Documents based on the approved Design Development Documents and updated budget for the Cost of the Work. The Construction Documents shall set forth in detail the requirements for construction of the Project. The Construction Documents shall include Drawings and Specifications that establish in detail the quality levels of materials and systems required for the Project.

§ 2.4.4.2 During the development of the Construction Documents, the Architect shall assist the Owner in the development and preparation of: (1) bidding and procurement information which describes the time, place and conditions of bidding; bidding or proposal forms; and the form of agreement between the Owner and the Contractor; and (2) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The Architect also shall compile the Project Manual that includes the Conditions of the Contract for Construction and Specifications and may include bidding requirements and sample forms.

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## ARTICLE 2.5 CONSTRUCTION PROCUREMENT SERVICES

§ 2.5.1 The Architect shall assist the Owner in obtaining either competitive bids or negotiated proposals and shall assist the Owner in awarding and preparing contracts for construction.

§ 2.5.2 The Architect shall assist the Owner in establishing a list of prospective bidders or contractors.

§ 2.5.3 The Architect shall assist the Owner in bid validation or proposal evaluation and determination of the successful bid or proposal, if any. If requested by the Owner, the Architect shall notify all prospective bidders or contractors of the bid or proposal results.

### § 2.5.4 COMPETITIVE BIDDING

§ 2.5.4.1 Bidding Documents shall consist of bidding requirements, proposed contract forms, General Conditions and Supplementary Conditions, Specifications and ~~Drawings~~. Drawings, or such other documents requested by Owner.

§ 2.5.4.2 If requested by the Owner, the Architect shall arrange for procuring the reproduction of Bidding Documents for distribution to prospective bidders. The Owner shall pay directly for the cost of reproduction or shall reimburse the Architect for such expenses.

§ 2.5.4.3 If requested by the Owner, the Architect shall distribute the Bidding Documents to prospective bidders and request their return upon completion of the bidding process. The Architect shall maintain a log of distribution and retrieval, and the amounts of deposits, if any, received from and returned to prospective bidders.

§ 2.5.4.4 The Architect shall consider requests for substitutions, if permitted by the Bidding Documents, and shall prepare and distribute in cooperation with the Owner, addenda identifying approved substitutions to all prospective bidders.

§ 2.5.4.5 The Architect shall participate in or, at the Owner's direction, shall organize and conduct a pre-bid conference for prospective bidders.

§ 2.5.4.6 The Architect shall prepare responses to questions from prospective bidders and provide clarifications and interpretations of the Bidding Documents to all prospective bidders in the form of addenda.

§ 2.5.4.7 The Architect shall participate in or, at the Owner's direction, shall organize and conduct the opening of the bids. The Architect shall subsequently document and distribute the bidding results, as directed by the Owner.

### § 2.5.5 NEGOTIATED PROPOSALS

§ 2.5.5.1 Proposal Documents shall consist of proposal requirements, proposed contract forms, General Conditions and Supplementary Conditions, Specifications and ~~Drawings~~. Drawings, or such other documents as requested by Owner.

§ 2.5.5.2 If requested by the Owner, the Architect shall arrange for procuring the reproduction of Proposal Documents for distribution to prospective contractors. The Owner shall pay directly for the cost of reproduction or shall reimburse the Architect for such expenses.

§ 2.5.5.3 If requested by the Owner, the Architect shall organize and participate in selection interviews with prospective contractors.

§ 2.5.5.4 The Architect shall consider requests for substitutions, if permitted by the Proposal Documents, and shall prepare and distribute in cooperation with the Owner, addenda identifying approved substitutions to all prospective contractors.

§ 2.5.5.5 If requested by the Owner, the Architect shall assist the Owner during negotiations with prospective contractors. The Architect shall subsequently prepare a summary report of the negotiation results, as directed by the Owner.

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## ARTICLE 2.6 CONTRACT ADMINISTRATION SERVICES

### § 2.6.1 GENERAL ADMINISTRATION

§ 2.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in the edition of AIA Document A201, General Conditions of the Contract for Construction, current as of the date of this Agreement. ~~Modifications made to the General Conditions, when adopted as part of the Contract Documents, shall be enforceable under this Agreement only to the extent that they are consistent with this Agreement or approved in writing by the Architect.~~ Agreement as revised by the Owner.

§ 2.6.1.2 The Architect's responsibility to provide the Contract Administration Services under this Agreement commences with the award of the initial Contract for Construction and terminates at the issuance to the Owner of the final Certificate for Payment. However, the Architect shall be entitled to a Change in Services in accordance with Section 2.8.2 when Contract Administration Services extend 60 days after the date of Substantial Completion of the Work.

§ 2.6.1.3 The Architect shall be a representative of and shall advise and consult with the Owner during the provision of the Contract Administration Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement unless otherwise modified by written amendment.

§ 2.6.1.4 Duties, responsibilities and limitations of authority of the Architect under this Article 2.6 shall not be restricted, modified or extended without written agreement of the Owner and Architect with consent of the Contractor, which consent will not be unreasonably withheld.

§ 2.6.1.5 The Architect shall review properly prepared, timely requests by the Contractor or the Owner for additional information about the Contract Documents. A properly prepared request for additional information about the Contract Documents shall be in a form prepared or approved by the Architect and shall include a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect shall respond to all requests for information by the Contractor or the Owner within ten (10) business days of receipt.

§ 2.6.1.6 If deemed appropriate by the Architect, the Architect shall on the Owner's behalf prepare, reproduce and distribute supplemental Drawings and Specifications in response to requests for information by the Contractor.

§ 2.6.1.7 ~~The~~ To the extent required by the Contract Documents, the Architect shall interpret and decide matters concerning performance of the Owner and Contractor under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 2.6.1.8 Interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and initial decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for the results of interpretations or decisions so rendered in good faith.

§ 2.6.1.9 The Architect shall render initial decisions on claims, disputes or other matters in question between the Owner and Contractor as provided in the Contract Documents. However, the Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

### § 2.6.2 EVALUATIONS OF THE WORK

§ 2.6.2.1 The Architect, as a representative of the Owner, shall visit the site at intervals appropriate to the stage of the Contractor's operations, or as otherwise agreed by the Owner and the Architect in Article 2.8, (1) to become generally familiar with and to keep the Owner informed about the progress and quality of the portion of the Work completed, (2) to endeavor to guard the Owner against defects and deficiencies in the Work, and (3) to determine in general if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site ~~inspections to check the quality or quantity of the Work.~~ inspections. The Architect shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for safety

Init.

precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

§ 2.6.2.2 The Architect shall report to the Owner known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor. However, the Architect shall not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of and shall not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or of any other persons or entities performing portions of the Work.

§ 2.6.2.3 The Architect shall at all times have access to the Work wherever it is in preparation or progress.

§ 2.6.2.4 Except as otherwise provided in this Agreement or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Contractor through the Architect about matters arising out of or relating to the Contract Documents. Communications by and with the Architect's consultants shall be through the Architect.

§ 2.6.2.5 The Architect shall have authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work.

#### § 2.6.3 CERTIFICATION OF PAYMENTS TO CONTRACTOR

§ 2.6.3.1 The Architect shall review and certify the amounts due the Contractor and shall issue Certificates for Payment in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 2.6.2 and on the data comprising the Contractor's Application for Payment, that the Work has progressed to the point indicated and that, to the best of the Architect's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the Architect.

§ 2.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 2.6.3.3 The Architect shall maintain a record of the Contractor's Applications for Payment.

#### § 2.6.4 SUBMITTALS

§ 2.6.4.1 The Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action shall be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor or separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review, but in any case the Architect will return submittals in ten (10) business days unless Architect notifies Owner upon receipt of submittal that a longer period will be needed for review and commits to a specific time period for review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by

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the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 2.6.4.2 The Architect shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.

§ 2.6.4.3 If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Architect shall specify appropriate performance and design criteria that such services must satisfy. Shop Drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor shall bear such professional's written approval when submitted to the Architect. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

#### § 2.6.5 CHANGES IN THE WORK

§ 2.6.5.1 The Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents. The Architect may authorize minor changes in the Work not involving an adjustment in Contract Sum or an extension of the Contract Time which are consistent with the intent of the Contract Documents. If necessary, the Architect shall prepare, reproduce and distribute Drawings and Specifications to describe Work to be added, deleted or modified, as provided in Section 2.8.2.

§ 2.6.5.2 The Architect shall review properly prepared, timely requests by the Owner or Contractor for changes in the Work, including adjustments to the Contract Sum or Contract Time. A properly prepared request for a change in the Work shall be accompanied by sufficient supporting data and information to permit the Architect to make a reasonable determination without extensive investigation or preparation of additional drawings or specifications. If the Architect determines that requested changes in the Work are not materially different from the requirements of the Contract Documents, the Architect may issue an order for a minor change in the Work or recommend to the Owner that the requested change be denied.

§ 2.6.5.3 If the Architect determines that implementation of the requested changes would result in a material change to the Contract that may cause an adjustment in the Contract Time or Contract Sum, the Architect shall make a recommendation to the Owner, who may authorize further investigation of such change. Upon such authorization, and based upon information furnished by the Contractor, if any, the Architect shall estimate the additional cost and time that might result from such change, including any additional costs attributable to a Change in Services of the Architect. With the Owner's approval, the Architect shall incorporate those estimates into a Change Order or other appropriate documentation for the Owner's execution or negotiation with the Contractor.

§ 2.6.5.4 The Architect shall maintain records relative to changes in the Work.

#### § 2.6.6 PROJECT COMPLETION

§ 2.6.6.1 The Architect shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion, shall receive from the Contractor and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor, and shall issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

§ 2.6.6.2 The Architect's inspection shall be conducted with the Owner's Designated Representative to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.

§ 2.6.6.3 When the Work is found to be substantially complete, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including any amounts needed to pay for final completion or correction of the Work.

§ 2.6.6.4 The Architect shall receive from the Contractor and forward to the Owner: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment and (2) affidavits, receipts, releases and waivers of liens or bonds indemnifying the Owner against liens.

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## ARTICLE 2.7 FACILITY OPERATION SERVICES

§ 2.7.1 The Architect shall meet with the Owner or the Owner's Designated Representative promptly after Substantial Completion to review the need for facility operation services.

§ 2.7.2 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall conduct a meeting with the Owner and the Owner's Designated Representative to review the facility operations and performance and to make appropriate recommendations to the Owner.

## ARTICLE 2.8 SCHEDULE OF SERVICES

§ 2.8.1 Design and Contract Administration Services beyond the following limits shall be provided by the Architect as a Change in Services in accordance with Section 1.3.3:

- .1 up to ( 3 ) reviews of each Shop Drawing, Product Data item, sample and similar submittal of the Contractor.
- .2 up to ( ) visits to the site by the Architect over the duration of the Project during construction.
- .3 up to ( the number of site visits required to complete the Project, currently estimated at 100. Prior to commencement of work, the parties will agree to exact number..3 ) up to ( 2 ) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents.
- .4 up to ( 2 ) inspections for any portion of the Work to determine final completion.

§ 2.8.2 The following Design and Contract Administration Services shall be provided by the Architect as a Change in Services in accordance with Section 1.3.3:

- .1 review of a Contractor's submittal out of sequence from the submittal schedule agreed to by the Architect;
- .2 responses to the Contractor's requests for information where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;
- .3 Change Orders and Construction Change Directives requiring evaluation of proposals, including the preparation or revision of Instruments of Service;
- .4 providing consultation concerning replacement of Work resulting from fire or other cause during construction;
- .5 evaluation of an extensive number of claims submitted by the Owner's consultants, the Contractor or others in connection with the Work;
- .6 evaluation of substitutions proposed by the Owner's consultants or contractors and making subsequent revisions to Instruments of Service resulting therefrom;
- .7 preparation of design and documentation for alternate bid or proposal requests proposed by the Owner; or
- .8 Contract Administration Services provided 60-120 days after the date of Substantial Completion of the Work.

§ 2.8.3 The Architect shall furnish or provide the following services only if specifically designated:

Services	Responsibility (Architect, Owner or Not Provided)	Location of Service Description
.1 Programming	Architect	
.2 Land Survey Services	Owner	
.3 Geotechnical Services	Owner	
.4 Space Schematics/Flow Diagrams	Not Provided	
.5 Existing Facilities Surveys	Owner	
.6 Economic Feasibility Studies	Not Provided	
.7 Site Analysis and Selection	Not Provided	
.8 Environmental Studies and Reports	Owner	

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Services	Responsibility (Architect, Owner or Not Provided)	Location of Service Description
.9 Owner-Supplied Data Coordination	Owner	
.10 Schedule Development and Monitoring	Owner	
.11 Civil Design	Architect	
.12 Landscape Design	Architect	
.13 Interior Design	Architect	
.14 Special Bidding or Negotiation	Owner	
.15 Value Analysis	Owner	
.16 Detailed Cost Estimating	Owner	
.17 On-Site Project Representation	Not Provided	
.18 Construction Management	Owner	
.19 Start-up Assistance	Not Provided	
.20 Record Drawings	Architect	
.21 Post-Contract Evaluation	Not Provided	
.22 Tenant-Related Services	Not Provided	
.23 Wind Analysis	Architect	
.24 Av & IT	Owner	
.25 Artwork Consulting	Owner	
.26 Signage	Owner	

Description of Services.  
(Insert descriptions of the services designated.)

## ARTICLE 2.9 MODIFICATIONS

§ 2.9.1 Modifications to this Standard Form of Architect's Services: Design and Contract Administration, if any, are as follows:

By its execution, this Standard Form of Architect's Services: Design and Contract Administration and modifications hereto are incorporated into the Standard Form of Agreement Between the Owner and Architect, AIA Document B141-1997, that was entered into by the parties as of the date:

### OWNER

NORTHWEST 15th STREET ASSOCIATES

(Signature)

By: NORTHWEST 15th OLIVER ASSOCIATES

(Printed name and title)

By: NORTHWEST 15th OLIVER  
CORPORATION

By:

Donald W. Pulver  
President

### ARCHITECT

(Signature)

John Gerbner, President

(Printed name and title)

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## **EXHIBIT A**

### **AGREEMENT FOR DELIVERY OF DOCUMENTS IN ELECTRONIC FORM**

**Project:** Family Court 15<sup>th</sup> and Arch Streets

**Project No.** 20070419

**Architect:** EwingCole

**Owner:** Northwest 15<sup>th</sup> Street Associates

In connection with the Agreement between the Owner and Architect dated (Date of Agreement 4-7-09), Architect will provide the Owner with certain Instruments of Services in electronic machine-readable format. These documents shall hereinafter be referred to as the "Electronic Documents". It is understood and agreed that it may become desirable for the Owner to make certain Electronic Documents received from the Architect available to other parties related to the Project, or to request the Architect to transmit Electronic Documents directly to such other parties on the Owner's behalf. It is the intent of this Agreement to govern all circumstances under which such Electronic Documents are delivered or used. This Agreement shall become binding on all parties who wish to use Electronic Documents. Any individual or entity who receives any Electronic Documents, shall be referred to in this agreement as the "Recipient." Each Recipient shall execute this Agreement prior to receiving any Electronic Documents.

In consideration of the receipt of the Electronic Documents, the Recipient agrees as follows:

1. It is understood and agreed that all drawings, specifications or other documents of any kind prepared by Architect or its subconsultants, whether in hard copy or in any electronic or machine readable format, including Electronic Documents, (collectively the "Architect's Documents"), are instruments of their services prepared solely for use in connection with the single project for which they were prepared and that Architect and its subconsultants retain all common law, statutory and other reserved rights, including the copyright. This agreement is not intended to in any way alter the respective interests of the parties in the Instruments of Service or the conditions governing their release or use as set forth in Article 1.3.2 of the Agreement.
2. The Electronic Documents are provided as a convenience to the Recipient for informational purposes only in connection with the Recipient's performance of its responsibilities and obligations relating to the Project. The Electronic Documents do not replace or supplement the paper copies of the Drawings and Specifications that are, and remain, the Contract Documents for the Project.
3. The parties agree that the Electronic Documents are not, nor shall they be construed to be, a product. It is expressly agreed by the Recipient that there are no warranties of any kind in such Electronic Documents or in the media, in which they are contained, either express or implied.
4. It is further understood and agreed that only printed copies of the Instruments of Services shall be signed and sealed by Architect or its subconsultants in accordance with the laws of the state in which the project is built.

5. If any differences exist between printed Instruments of Service and Electronic Documents, the information contained in the printed documents shall be presumed to be correct and take precedence over the Electronic Documents. Nonetheless, should a discrepancy be found, it should be brought to the attention of the Architect for interpretation
6. Except to the limited extent permitted in Paragraph 8 of this Agreement, Recipient agrees not to add to, modify, or alter in any way, or to allow others to add to, modify, or alter in any way, the Electronic Documents or any printed copies thereof.
7. The Electronic Documents are supplied in the following format: Word 2000, Excel 2000 and Autodesk Architectural Desktop 3.3.

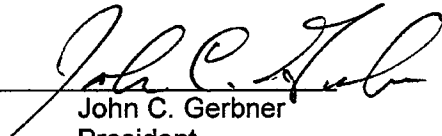
Any conversion of the format is solely the responsibility of the Recipient. Recipient understands and agrees that the conversion of hard copies of Instruments of Service into electronic or machine readable format or the conversion of Electronic Documents from the machine readable formats used by Architect to some other format may introduce errors or other inaccuracies. Recipient therefore agrees to confirm the accuracy of the Electronic Documents before using them. Recipient agrees to accept all responsibility for any errors or inaccuracies and to release Architect and its subconsultants from any liability or claims for recovery of damages or expenses arising as the result of such errors or inaccuracies.

8. Where the Recipient has received specific permission to use the Electronic Documents in connection with Recipient's obligation to prepare certain documents for the Project, Recipient shall, in addition to the other obligations set forth herein, be obligated to remove Architect's or Architect's Consultant's title block from the copy of the Electronic Documents used by Recipient. It is understood and agreed that the Electronic Documents are not to be used by any contractor or any of its subcontractors of any tier or any material supplier or vendor as a shop drawing or any other type of submittal or as the basis for preparing such shop drawing or submittal. The sole exception to this prohibition shall be that the Recipient may use the Electronic Documents as backgrounds upon which to prepare its shop drawing or other submittal when it is specifically permitted in technical section of project specification. When these electronic documents are used as backgrounds in the preparation of shop drawings or other submittals, the Recipient agrees to confirm the accuracy of the electronic documents before using them, Recipient agrees to accept all responsibility for any errors or inaccuracies and to release the Architect and its subconsultants from any liability or claims for recovery of damages or expenses arising as the result of such errors or inaccuracies.
9. All transmittals of Electronic Documents whether by disk, cd-rom, e-mail, Internet or any other methods shall require that the file name, size, date and time be recorded by the Sender along with the date and time of the transmission (if by electronic means) and the identify of the sender and recipient.
10. Recipient further agrees that the Architect's Documents were prepared for use in connection with this project only and that the Electronic Documents are supplied to Recipient for the limited purpose stated above only. Recipient agrees not to use the Electronic Documents, in whole or in part, for any purpose or project other than as stated above or to allow others to use the Electronic Documents, if they have not executed this Agreement with the knowledge and approval of the Architect.
11. Recipient agrees to waive any and all claims and liability against Architect and its subconsultants resulting in any way from any failure by Recipient to comply with the requirements of this Agreement for the Delivery of Documents in Electronic Format.
12. Recipient further agrees to indemnify and save harmless the Owner, Architect and its subconsultants and each of their partners, officers, shareholders, directors and employees from any and all claims, judgments, suits, liabilities, damages, costs or expenses (including

reasonable defense and attorneys fees) arising as the result of either: 1) Recipient's failure to comply with any of the requirements of this Agreement for the Delivery of Documents in Electronic Format; or 2) a defect, error or omission in the Electronic Documents or the information contained therein, which defect, error or omission was not contained in the Contract Documents as defined in Paragraph 2 or where the use of such Contract Documents would have prevented the claim, judgment, suit, liability, damage, cost or expense.

13. Ownership in the Electronic Documents shall be transferred to the Owner in accordance with the provisions of Section 1.3.2 of the Agreement. Upon transfer of ownership of the Electronic Documents to the Owner, this Agreement will no longer govern the use of the Electronic Documents from the date of such transfer.

**EwingCole:**

  
Name: John C. Gerbner  
Title: President

Date: 4/6/09


**Recipient:**

NORTHWEST 15th STREET ASSOCIATES

Date: 4/7/09

By: NORTHWEST 15th OLIVER ASSOCIATES

By: NORTHWEST 15th OLIVER  
CORPORATION

  
By: Donald W. Pulver  
President

# EwingCole

Architects  
Engineers  
Interior Designers  
Planners

Federal Reserve Bank Building  
100 North 6th Street  
Philadelphia, PA 19106-1590

February 27, 2008

## **Exhibit "B"**

Main: 215.923.2020  
Fax: 215.574.9163  
[www.ewingcole.com](http://www.ewingcole.com)

Cleveland  
Irvine  
Las Vegas  
Philadelphia  
Washington

Mr. Donald W. Pulver, President  
Oliver Tyrone Pulver Corporation  
Five Tower Bridge, Suite 750  
West Conshohocken, PA 19428

Jeffrey B. Rotwitt, Esquire  
Obermayer Rebmann Maxwell & Hippel LLP  
One Penn Center, 19<sup>th</sup> Floor  
1617 JFK Boulevard  
Philadelphia, PA 19103-1895

**RE: Family Court 15<sup>th</sup> and Arch Street  
Proposal for Architecture and Engineering Services**

Dear Don and Jeff:

We are pleased to submit our proposal to provide architectural and engineering services for the proposed Family Court Building at 15<sup>th</sup> and Arch Streets.

### **Project Understanding**

The Developer, a joint venture of the Oliver Tyrone Pulver Corporation and an entity controlled by Jeffrey B. Rotwitt, is proposing to develop a purpose-built court facility to house the Philadelphia Family Court at 15<sup>th</sup> and Arch Streets.

The edifice will include 16 occupied floors above ground, four subterranean levels for parking and holding cells, and one mechanical penthouse level. The Courtrooms will occupy the four floors immediately above the entry level, with the sixth floor shelled for future court space. The next eight floors will house various office functions and the top two levels are reserved for the Judges' Chambers. The total area of the facility is over 590,000 Gross Square Feet, including the parking levels. It will have the following elements:

- Twenty-nine (29) Courtrooms serving both the Domestic and Juvenile divisions for the First Judicial District
- Daytime Holding Cells located in the lowest subterranean level to accommodate defendants awaiting legal proceedings
- Security functions related to defendant, judicial, staff and public circulation
- Lobby and Waiting Area to accommodate 5,000 daily court visitors

# EwingCole

Family Court 15<sup>th</sup> and Arch Street  
Proposal for Architecture and Engineering Services  
Page 2

- Support Office Space for 1,245 employees in fifty (50) departments
- Twenty-nine (29) Judicial Chambers for judges and their staff
- Subterranean Parking Facility for 250 – 270 vehicles

The current construction budget is \$126,100,000 broken down as follows:

1. Site Work:	\$ 1,500,000
2. Below Grade:	18,000,000
3. Above Grade:	67,000,000
4. Interiors:	<u>39,600,000</u>
	\$126,100,000

## Scope of Services

Services involved will include:

- Planning and Programming;
- Architectural, Structural, Mechanical, and Electrical Design;
- Interior Design;
- Construction Administration;
- Civil Engineering and landscaping.

## Work Plan

### Programming and Concept Design

In this phase EwingCole will work together with the Developer and Court Administration to further define the program. The information gathering will be as follows:

- A questionnaire will be developed by EwingCole to determine the specific requirements for the offices and support spaces of each department. This is to be completed by each of the departments.
- The Court will appoint one individual as the Court's Representative who in turn will determine representatives for individual departments. In a series of consecutive meetings, EwingCole will interview the representatives to review the responses to the questionnaires. Operations and projections will also be discussed.
- At this time, EwingCole will walk through the current operational areas to verify and record existing furniture and equipment, and will discuss projected requirements with the point of contact.
- The information gathered at these interviews will be assembled

# EwingCole

Family Court 15<sup>th</sup> and Arch Street  
Proposal for Architecture and Engineering Services  
Page 3

- A second set of consecutive meetings will be held to confirm and finalize the programmatic requirements of the fit-out for Sign-off by the Court Representative and the Developer.
- EwingCole will meet with Court's Representative for a preliminary discussion of work space standards. Preliminary discussions of furniture systems and finishes will begin.

Deliverables at the end of this phase will be:

- Detailed program, listing departmental net and gross square feet for each department, and building gross square feet for each floor and the building.
- Building plans and sections, color coded to show departments.
- Elevation and three-dimensional concept representations of the basic massing of the building and its relationship to the surrounding buildings and site.
- A written project description. Along with the program, this will include descriptions of the basic architectural, structural, mechanical, and electrical systems of the building and parking garage

## Schematic Design

- Bi-weekly meetings with the planning groups established in the programming and concept phase. Minutes to document these meetings.
- After development of space plans for each floor, EwingCole will meet with the departmental representatives to review the spaces provided and their adjacencies, and to obtain comments.
- Civil documentation to 80% completion. At the end of this phase, zoning, environmental, and other site governmental approvals will be applied for.
- Assistance to Developer to define the scope of work for the geotechnical engineering and to determine if existing completed geotechnical studies are sufficient.
- L&I initial review.
- This phase includes preliminary coordination with security, IT and other consultants.

Deliverables will include:

- Building floor plans at sufficient detail to show departmental areas and adjacencies, and all rooms including courtrooms.
- Building sections, elevations, schematic wall sections, and details, and three-dimensional depictions of the building sufficient to define the design, function, construction, and appearance of the building.
- A fundamental design report, which will define the architectural, structural, mechanical, and electrical systems of the building, along with a description of the level of finishes.

# EwingCole

Family Court 15<sup>th</sup> and Arch Street  
Proposal for Architecture and Engineering Services  
Page 4

## Design Development

- Bi-weekly meetings with the planning groups established in the programming and master plan confirmation phase. Minutes to document these meetings.
- Civil documentation to 100% completion. Assistance with the approvals process.
- L&I interim review.
- Complete finish selections will be made and a presentation meeting held with the client. Comments will be obtained and revisions made accordingly. Revised finishes and locations will be presented to the client for final approval.
- Product research and development of FF & E specifications will continue.
- Finish locations will be finalized.
- Millwork and special feature details will be developed
- Reflected ceiling plans and V/D/P will be finalized
- Preliminary furniture specifications will be developed.

Deliverables will include:

- Building floor plans at sufficient detail to show all rooms, doors, millwork, ceilings, and interior design intent.
- Building sections, elevations, schematic wall sections, and details, and three-dimensional depictions of the building sufficient to define the design, function, construction, and appearance of the building. Basic mechanical and electrical systems, main duct layouts, single line electrical diagrams, and lighting will be shown.
- Updated fundamental design report, which will define the architectural, structural, mechanical, and electrical systems of the building, along with a description of the level of finishes.
- Outline specifications.
- Room Finish schedules.

## Construction Documents

- Bi-weekly meetings with the construction team. Meetings as needed with other groups. Anticipate at least a total of 10 meetings with other groups in this phase, mostly to finalize interior finishes and address detailed engineering, millwork and equipment coordination issues.

Deliverables will include:

- Complete construction documents, including drawings and specifications.
- Final furniture drawings and specifications.

# EwingCole

Family Court 15<sup>th</sup> and Arch Street  
Proposal for Architecture and Engineering Services  
Page 5

## Construction Administration

- Construction administration services will include:
  - Submittal review.
  - Clarifications.
  - Site visits, when requested.
  - Project close out, substantial and final completion punch lists.
  - As built drawings.

## **Schedule (Assuming Design/Bid/Build)**

Programming (Commencing on or about March 1, 2008)	3 months
Schematics	3 months
Design Development	4 months
Contract Documents	6 months
Bidding/ Construction	<u>24 months</u> 40 months

## **Compensation**

- We propose a fixed fee of \$6,370,000, broken down as per the enclosed Fee Proposal Matrix attachment.

Services beyond the fixed fee itemized in this proposal include:

- Site Survey.
- Environmental studies and reports, including hazardous material.
- Governmental, public hearings and community presentations will be hourly beyond twenty-five (25) hours.
- Geotechnical engineering and testing. (These services would be contracted directly by the Developer)
- Cost estimating.
- Move coordination.
- LEED Certification.
- Study models and perspectives are included within the scope of this proposal. Formal presentation quality models and animations are an additional service.
- Benchmarking visits to other court facilities.
- Audiovisual, voice data communications; wind analysis, artwork and signage.
- We would be pleased to provide full time field representation in the construction phase.
- If required to subcontract engineering, other than the engineers included in the fixed fee, EwingCole's management and coordination mark-up on their fee would be 10%.



# **EwingCole**

Family Court 15<sup>th</sup> and Arch Street  
Proposal for Architecture and Engineering Services  
Page 6

## **Closing**

In addition to our fees, reimbursement for travel, lodging, and other related expenses, overnight express mail, telephone/fax, plotting and reproduction cost at 0 times our direct cost. We suggest that you budget \$250,000 for reimbursables. The Developer will be invoiced monthly as the work progresses.

Upon completion of the Programming and Concept Design phase of the project, an edited copy of the AIA Architect/Owner Contract will become the formal contract for this project in form to be mutually approved.

Very truly yours,

EWINGCOLE, INC.

Approved:

John C. Gerbner, AIA  
President and COO  
Direct Dial 215.625.4199  
Direct Fax 215.351.5346

JCG/vs  
Attachment

EwingCole							
FEE PROPOSAL MATRIX ATTACHMENT							
FAMILY COURT - 15TH AND ARCH STREET							
	Firm*	Programming and Concept Design	Schematic Design	Design Development	Contract Documents	Construction Administration	Total
Architectural	EC	\$120,000	\$375,000	\$515,000	\$641,000	\$665,000	\$2,316,000
Interiors	EC	\$180,000	\$220,000	\$310,000	\$420,000	\$290,000	\$1,420,000
Structural Engineering	EC / Harman	\$8,000	\$45,000	\$80,000	\$317,000	\$80,000	\$530,000
MEP Engineering	EC	\$23,000	\$80,000	\$350,000	\$807,000	\$420,000	\$1,680,000
Civil Engineering	Pennoni	\$5,000	\$80,000	\$20,000	\$35,000	\$30,000	\$170,000
Parking	Harman	\$5,000	\$16,000	\$15,000	\$18,000	\$6,000	\$60,000
Landscape	Synterra	\$0	\$2,000	\$8,000	\$12,000	\$3,500	\$25,500
Acoustical	TBD	\$0	\$0	\$30,000	\$55,000	\$5,000	\$90,000
Elevator	TBD	\$2,000	\$4,000	\$8,000	\$9,500	\$5,000	\$28,500
Courts Specialist	Ricci Green	\$12,000	\$14,000	\$9,000	\$10,000	\$5,000	\$50,000
Total Fee		\$355,000	\$836,000	\$1,345,000	\$2,324,500	\$1,509,500	\$6,370,000
% Per Phase		6%	13%	21%	36%	24%	100%
Other Potential Consultants (estimates not included in fee)	Firm*	Programming and Concept Design	Schematic Design	Design Development	Contract Documents	Construction Administration	Total
Site Survey	Pennoni	\$15,400	\$0	\$0	\$0	\$0	\$15,400
Environmental**	TBD	\$3,000	**	**	**	**	\$3,000
Geotechnical	TBD	\$70,000	\$0	\$0	\$5,000	\$0	\$75,000
Wind Analysis	TBD	\$0	\$0	\$35,000	\$5,000	\$0	\$40,000
AV and IT	TBD	\$0	\$10,000	\$50,000	\$120,000	\$15,000	\$195,000
Artwork Consultant	TBD	\$0	\$0	\$0	\$20,000	\$20,000	\$40,000
Signage	TBD	\$0	\$2,000	\$5,000	\$45,000	\$20,000	\$72,000
Estimated Reimbursible Expenses		\$15,000	\$35,000	\$50,000	\$90,000	\$60,000	\$250,000
*All consultants shown are tentative, subject to final fee and scope determination							
**An environmental phase 1 report may need to be performed to verify that there are no environmental issues at the site (if this has not been done already). We have estimated the cost of that report. Additional environmental design costs would depend on the findings of the initial investigation.							

## EXHIBIT C

EwingCole				
Fee Schedule				1/22/2009
Family Court - 15th and Arch Street				
Phase	Month	Yr	Monthly A/E Fee	A/E Fee By Phase
Programming	Oct.-Dec	2008	\$145,000	\$355,000
	January	2009	\$210,000	
Schematic Design	February	2009	\$278,666	\$836,000
	March	2009	\$278,666	
	April	2009	\$278,668	
Design Development	May	2009	\$336,000	\$1,345,000
	June	2009	\$336,000	
	July	2009	\$336,000	
	August	2009	\$337,000	
Construction Documents	September	2009	\$387,416	\$2,324,500
	October	2009	\$387,416	
	November	2009	\$387,416	
	December	2009	\$387,416	
	January	2010	\$387,416	
	February	2010	\$387,420	
Bidding / Construction	March	2010		\$1,509,500
	thru		\$42,000/mo.	
	January	2013		
	February	2013	\$39,500	
Total				\$6,370,000

# EXHIBIT N

**To:** Rotwitt, Jeffrey[Jeffrey.Rotwitt@obermayer.com]; dpulver@otpcorp.com[dpulver@otpcorp.com]  
**From:** Scolnic, David M.  
**Sent:** Thur 4/30/2009 5:42:42 PM  
**Importance:** Normal  
**Sensitivity:** None  
**Subject:** Amendment to Courts Proposal/Fee Sharing Agreement  
**Categories:** urn:content-classes:message

Amendment to Pulver Philadelphia Courts Proposal.DOC  
Fee Sharing Agreement - New working copy (3).DOC

See attached Amendment to the courts proposal, which no one has seen but me.  
Please let me know if you need to change it.

I agree with Jeff that an amendment is better than a whole new agreement. I have also taken pains to explain how nice we're being that we could have asked for the whole loaf now but are happy to take it in slices. I can beef that up or change it 'round as much as you'd like.

Also, in the interest of full disclosure. I think it's pretty important for you guys to have an official Fee Sharing agreement, and for that agreement to be blessed by the Chief. Probably could be done simultaneously with the amendment. Again, my draft out of my head.

I'm happy to talk about this tomorrow afternoon or Monday afternoon.

NORTHWEST 15TH STREET ASSOCIATES  
c/o Oliver Tyrone Pulver Corporation  
300 Barr Harbor Drive, Suite 750  
West Conshohocken, PA 18428

April 28, 2009

First Judicial District of the Commonwealth of Pennsylvania  
Office of the Court Administrator  
336 City Hall  
Philadelphia, PA 19107

Re: Proposal for Interim Funding of Pre-Development Phase of Philadelphia Court  
at 15th and Arch Streets, Philadelphia, Pennsylvania

Ladies and Gentlemen:

You ("FJD") and we ("Northwest") are parties to a letter agreement dated as of October 6, 2009 (the "Letter Agreement"), pursuant to which performance of certain activities and obligations were required and for which certain payments were made to Northwest and others. The Letter Agreement contemplates payments and performance through July 1, 2009, when payments would be accelerated.

FJD desires that Northwest refrain from accelerating the applicable payments and, in return, the parties desire to extend the term of the Letter Agreement. As part of the extension, the amounts which would have been accelerated will be spread over a period of seven to twelve months as set forth below. Accordingly, the parties agree that the Letter Agreement is modified as follows:

1. Term. The term of the Letter Agreement is extended through June 30, 2010. The date "July 1, 2009" that appears in the second paragraph of the first page and in each clause (c) in the subsections of Sections 5 under "Land Cost to Northwest," "General and Administrative" and "Tenant Representative Fee" is hereby modified to be "June 30, 2010."

2. Section 5 (Compensation) is modified as follows:

- a. The number "1,775,388.43" is amended to be the dollar amount "\$1,775,388.43"
- b. The costs of each of the items to be advanced by FJD in the months beginning July, 2009 through June, 2010 are incorporated in the chart on Exhibit A attached hereto and made a part hereof, which is intended to amend the "Family/Juvenile Court Budget" on Page 3 of the Letter Agreement.
- c. The rate at which the Land Costs will be paid will be \$100,725 per month through January, 2010, after which the rate will resume at \$50,000 per month through June, 2010.
- d. The rate at which the General and Administrative Charges will be paid will be \$102,214 per month through January, 2010, after which the rate will resume at \$27,500 per month through June, 2010.
- e. The rate at which Tenant Representation Fee will be paid will be \$168,600 per month through January, 2010, after which the rate will resume at \$55,000 per month.

3. No Lease. Notwithstanding anything to the contrary contained herein, this letter does not constitute a lease, agreement to lease or any other agreement for the sale, lease, occupancy or development of real estate, which can only be created, if at all, by a mutually acceptable document or documents between the parties thereto. Any such lease or agreement can only be created, if at all, by a mutually acceptable document or documents executed and delivered by the parties thereto. Except for the payment obligations set forth herein, this letter will not be binding upon either party and neither party shall have any liability hereunder. In addition, neither party will be bound by any written or oral representations or negotiations between them, either directly or through any intermediaries; this letter will not give rise to any claim based upon promissory estoppel, partial performance or otherwise. This Agreement may be terminated by either party on no less than ninety (90) days' prior written notice; provided, however that if this Agreement is terminated effective prior to January 1, 2010, then all Land Payments, General and Administrative Charges, Developer Fee and Tenant Representation Fee due through January 1 shall be paid to the parties entitled thereto. The only obligations that shall survive such terminations shall be the payment obligations for costs incurred prior to the effective date of termination.

First Judicial District of the Commonwealth of Pennsylvania  
April 28, 2009  
Page 3

If you agree with this letter amendment, intend that it amend the Letter Agreement, and intend to be legally bound by it to the extent provided herein, please sign this letter in the place provided below.

Very truly yours,

NORTHWEST 15TH STREET ASSOCIATES

By: NORTHWEST 15TH OLIVER ASSOCIATES

By: NORTHWEST 15TH OLIVER  
CORPORATION

By: \_\_\_\_\_  
Donald W. Pulver, President

Agreed and accepted:

FIRST JUDICIAL DISTRICT OF THE  
COMMONWEALTH OF PENNSYLVANIA

By: \_\_\_\_\_  
Name:  
Title:

Date: \_\_\_\_\_  
\_\_\_\_\_



# EXHIBIT A

## FAMILY/JUVENILE COURT BUDGET

	July 2009	Aug 2009	Sept 2009	Oct 2009.	Nov. 2009	Dec. 2009	Jan. 2010	Feb. 2010	Mar. 2010	Apr. 2010	May 2010	June 2010
Contractor Pre- Construction Costs	\$23,000	\$23,000	\$23,000	\$23,000	\$23,000	\$23,000	\$23,000	\$23,000	\$23,000	\$23,000	\$23,000	\$23,000
Design	\$346,000	\$351,000	\$357,000	\$397,416	\$397,416	\$397,416	\$397,416	\$397,416	\$402,416	\$62,000	\$52,000	\$47,000
Land Costs	\$100,725	\$100,725	\$100,725	\$100,725	\$100,725	\$100,725	\$100,725	\$50,000	\$50,000	\$50,000	\$50,000	\$50,000
Legal – including title, transaction and permitting (for all parties)	\$25,000	\$25,000	\$25,000	\$25,000	\$25,000	\$25,000	\$25,000	\$25,000	\$25,000	\$25,000	\$25,000	\$25,000
Real Estate Taxes									\$70,000			
General and Admin.	\$102,214	\$102,214	\$102,214	\$102,214	\$102,214	\$102,214	\$102,214	\$27,500	\$27,500	\$27,500	\$27,500	\$27,500
Developer Fee	\$55,000	\$55,000	\$55,000	\$55,000	\$55,000	\$55,000	\$55,000	\$55,000	\$55,000	\$55,000	\$55,000	\$55,000
Tenant Rep. Fee	\$168,600	\$168,600	\$168,600	\$168,600	\$168,600	\$168,600	\$168,600	\$55,000	\$55,000	\$55,000	\$55,000	\$55,000

## FEES SHARING AGREEMENT

**THIS FEES SHARING AGREEMENT** is made as of this \_\_\_\_ day of \_\_\_\_\_, 2009, by and between NORTHWEST 15TH OLIVER CORPORATION, a Pennsylvania corporation ("Developer"), and DEILWYDD PROPERTY GROUP FC LLC ("Co-Developer").

### **BACKGROUND:**

Developer is a corporation that has provided and anticipates continuing to provide development services to the First Judicial District with respect to the Family Court/Juvenile Court Project to be located at 15th and Arch Streets, Philadelphia, Pennsylvania.

Co-developer desires to assist Developer in providing such development services.

Developer and Co-Developer desire to enter into this Agreement for the purpose of agreeing to share all fees earned by either of them from the development and construction of the Project.

**NOW, THEREFORE**, in consideration of the mutual promises and covenants herein contained and for Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, Developer and Co-Developer agree as follows:

1. **Incorporation of Recitals.** The recitals set forth above are hereby incorporated herein by reference.

2. **Sharing of Fees.** Developer hereby agrees that fifty percent (50%) of the difference of (a) all Developer Fees, as hereinafter defined, less (b) Allowable Costs, as hereinafter defined, shall be delivered to Co-Developer when and as received by Developer.

The term "**Developer Fees**," as used herein, means any and all sums paid, released or otherwise made available for payment to Developer which are specifically designated as, or otherwise intended to be, fees for services rendered or fees for work performed by Developer for the Family Court/Juvenile Court Project. Examples of Fees include "Developer Fees" and "General and Administrative Charges" due to Developer under that certain letter dated October 6, 2008 from the First Judicial District to Northwest 15th Street Associates. In no event shall any portion of any real property sale proceeds or land payments made to Northwest 15<sup>th</sup> Street Associates be payable to Co-Developer.

3. **Allowable Costs.** To the extent Developer incurs an out-of-pocket cost directly related to performance of its obligation with regard to the Project, which out-of-pocket costs are not reimbursed from any source, such sums shall be "Allowable Costs" under this Agreement which shall be taken into account upon reconciliation of Developer Fees as set forth in Section 4 hereof. The parties acknowledge and agree that it is their intent that such out-of-pocket costs be reimbursed from total Developer Fees provided for herein, the effect of which shall be to reduce the amount of Developer Fees available for sharing by the amount equal to the total of Allowable

Costs. Examples of Allowable Costs shall include, but shall not be limited to, cost of insurance; costs of audit of Developer, unreimbursed legal fees and all costs of collection of Developer Fees.

**4. Default; Remedies.**

(a) If either party shall fail to pay any sum due under this Agreement to the other within ten (10) days after the time for payment set forth in this Agreement, or if either party shall otherwise fail to perform any of its obligations under this Agreement, then a Default shall have occurred under this Agreement.

(b) If either party institutes any action or proceeding in court to enforce or interpret any arbitration award, then such party shall be entitled to receive from the other party such amount as the court may judge to be reasonable attorneys' fees for the services rendered to the party entering such arbitration, together with the such party's other reasonable litigation costs and expenses.

**5. Cost and Loss Sharing.** If a claim shall be asserted against either Developer or Co-Developer in connection with the development services provided (other than by reason of willful misconduct), Developer and Co-Developer agree to equally share in the cost of the defense of such claim, and the parties shall reimburse one another from time to time so that they will have equally borne the costs and losses, if any, associated with such claim.

**6. Assignment; Amendment and Development.** Neither party hereto shall assign this Agreement or any of its rights hereunder to any person, firm, corporation or other entity, without the prior written consent of the other party; provided, however, that Developer shall have the right to delegate its duties to an affiliate of Oliver Tyrone Pulver Corporation.

**7. Governing Law.** This Agreement and the obligations of Developer and owner hereunder shall be interpreted, construed, and enforced in accordance with the laws of the Commonwealth of Pennsylvania.

**8. Entire Agreement.** This Agreement contains the entire agreement between the parties hereto relative to the Project. No variations, modifications, or changes herein or hereof shall be binding upon any party hereto unless set forth in a document duly executed by or on behalf of such party.

**9. Waiver.** No consent or waiver, express or implied, by any party hereto of any breach or default by the other in the performance by the other of its obligations hereunder shall be deemed or construed to be a consent to or waiver of any other breach or default in the performance by such other party of any other obligations of such party hereunder. Failure on the part of either party hereto to complain of any act of the other party or to declare any other party in default, irrespective of how long such failure continues, shall not constitute a waiver by such party of its rights hereunder.

**10. Severability.** If any provision of this Agreement or the application thereof to any person, entity or circumstance shall be invalid or unenforceable to any extent, the remainder of

[Page]

this Agreement and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

11. **No Partnership.** This Agreement does not create and will not be deemed to create a partnership or joint venture or similar relationship between Developer and Co-Developer, and, accordingly, neither party will have the right, power or authority to make any commitment on behalf of or bind the other.

12. **Terminology.** All personal pronouns used in this Agreement, whether used in the masculine, feminine, or neuter gender, shall include all other genders; the singular shall include the plural, and vice versa. Titles of Sections are for convenience only, and neither limit nor amplify the provisions of the Agreement, and all references herein to Sections or subsections thereof shall refer to the corresponding Section or subsection thereof of this Agreement unless specific reference is made to Sections or subsections of another document or instrument.

13. **Notices.** When either party desires or is required to give notice to the other in connection with this Agreement, such notice shall be in writing and sent by registered or certified mail, return receipt requested, postage prepaid or by overnight or hand delivery, addressed as follows:

If to Developer:

Northwest 15th Oliver Corporation  
Five Tower Bridge, Suite 750  
West Conshohocken, PA 19428

If to Co-Developer:

Deilwydd Property Group FC LLC  
[address]

or to such other person or address as may be specified from time to time by written notice sent in accordance with this Agreement.

14. **Consent of First Judicial District; Binding Effect.** This Agreement shall not be binding until the First Judicial District shall have executed the Consent of First Judicial District in the form attached hereto and made a part hereof. Subject to the preceding sentence and

[Page]

limitations on assignment contained herein, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

NORTHWEST 15TH OLIVER CORPORATION

By: \_\_\_\_\_  
Name:  
Title:

DEILWYDD PROPERTY GROUP, LLC

By: \_\_\_\_\_  
Name:  
Title:

[Page]

## CONSENT AND WAIVER

FIRST JUDICIAL DISTRICT hereby consents to the foregoing Fee and Savings Sharing Agreement. First Judicial District acknowledges that it has no objection to Co-Developer's performing the services described in the Fee and Savings Sharing Agreement or being paid in accordance with this Agreement, notwithstanding that Jeffrey Rotwitt is a principal of Co-Developer and has provided other services to the First Judicial District related to this same general matter, either directly or through his law firm, Obermayer Rebmann Maxwell & Hippel.

FIRST JUDICIAL DISTRICT

By: \_\_\_\_\_

Name:

Title:

# EXHIBIT O



**First Judicial District of Pennsylvania**

OFFICE OF THE COURT ADMINISTRATOR  
336 CITY HALL  
PHILADELPHIA, PA 19107  
(215) 686-2547 Fax: (215) 686-7485  
<http://courts.phila.gov>

DAVID C. LAWRENCE  
COURT ADMINISTRATOR

June 18, 2009

Via Certified Mail – Return Receipt Requested

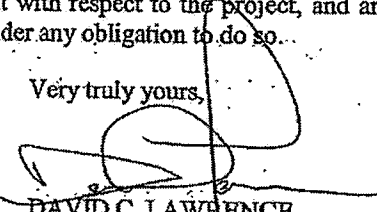
Northwest 15th Street Associates  
c/o Oliver Tyrone Pulver Corporation  
300 Barr Harbor Drive  
Suite 750  
West Conshohocken, PA 18420

Re: Pre-Development Phase of Philadelphia Court at 15th and Arch Streets,  
Philadelphia, Pennsylvania

Ladies and Gentlemen:

The First Judicial District of the Commonwealth of Pennsylvania ("FJD") previously entered into a letter agreement dated October 6, 2008 (the "Letter Agreement") for interim funding for the proposed new Philadelphia court. Because the Letter Agreement did not anticipate the substantial delays in the progress of this project that have occurred for reasons beyond the parties' control, a new agreement that takes into account these changed circumstances must be negotiated if the project is to move forward. Accordingly, FJD hereby terminates the Letter Agreement pursuant to paragraph 6 thereof, which termination will be effective on the date provided in paragraph 6. The parties are negotiating the terms of a new agreement with respect to the project, and are optimistic that they will enter into the same, but neither party is under any obligation to do so.

Very truly yours,

  
DAVID C. LAWRENCE  
COURT ADMINISTRATOR

DCL/mh

cc: Hon. Ronald D. Castille, Chief Justice, Supreme Court of Pennsylvania  
Hon. Kevin M. Dougherty, Administrative Judge, Family Division  
Hon. Margaret T. Murphy, Supervising Judge, Domestic Relations  
John H. Estey, Esquire  
Alan S. Ritterband, Esquire  
Jeffrey B. Rotwitt, Esquire



# EXHIBIT P

**To:** 'Honorable Ronald D. Castille (susan.meyer@pacourts.us)'[susan.meyer@pacourts.us]  
**From:** Rotwitt, Jeffrey  
**Sent:** Fri 6/12/2009 5:00:26 PM  
**Importance:** Normal  
**Sensitivity:** None  
**Subject:** Family Court - extension of development agreement letter  
**Categories:** False

**PH1-#4388883-v1-NORTHWEST 15TH STREET ASSOC PDF.PDF**  
**PH1-#4388898-v1-Proposal PDF Fam Ct 6 15 09.PDF**

6/12/09

Dear Chief Justice,

The first attachment was Ballard's response to Pulver's first draft, a copy of which was sent to you on May 8th.

The second attachment is my attempt at a compromise between the Pulver/Ballard tug-of-war. It extends the Letter Agreement on all of the exact same terms and conditions (including the 3-day notice to terminate) at the same compensation levels with two small exceptions. We inadvertently "shorted" the contractor who is doing all of the complicated pricing exercises. We are about to embark on the formal City land development and permitting efforts which call for a slight increase in the legal budget. We also added a new category of Telecom, Security and Audio/Visual Consulting and David Lawrence just selected these vendors.

Otherwise, it is identical to the Agreement that has governed us these last 9 months.

I will see you at 11:00 a.m. on Monday. Hit 'em straight this weekend!

Jeff

**Jeffrey B. Rotwitt, Esquire**  
**Obermayer Rebmann Maxwell & Hippel LLP**  
One Penn Center, 19th Floor  
1617 John F. Kennedy Boulevard  
Philadelphia, PA 19103-1895  
Tel.: (215) 665-3052 Fax: (215) 665-3139  
E-Mail: [jbr@obermayer.com](mailto:jbr@obermayer.com)  
Visit us @: [www.obermayer.com](http://www.obermayer.com)

NORTHWEST 15TH STREET ASSOCIATES  
c/o Oliver Tyrone Pulver Corporation  
300 Barr Harbor Drive, Suite 750  
West Conshohocken, PA 18428

June 15, 2009

First Judicial District of the Commonwealth of Pennsylvania  
Office of the Court Administrator  
336 City Hall  
Philadelphia, PA 19107

Re: Proposal for Interim Funding of Pre-Development Phase of Philadelphia Court  
at 15th and Arch Streets, Philadelphia, Pennsylvania

Ladies and Gentlemen:

You ("FJD") and we ("Northwest") are parties to a letter agreement dated as of October 6, 2009 (the "Letter Agreement"), pursuant to which performance of certain development and design activities and obligations were required and for which certain payments were made to Northwest, its co-developer Deilwydd Property Group FC LLC and an array of design and construction professionals. The Letter Agreement contemplates payments and performance through July 1, 2009, when certain payments would be accelerated per Section 5 of the Letter Agreement.

FJD desires that Northwest refrain from accelerating the applicable payments and, in return, the parties desire to extend the term of the Letter Agreement. Accordingly, the parties agree that the Letter Agreement is extending the same terms and conditions except as modified as follows:

1. Term. The term of the Letter Agreement is extended through June 30, 2010. The date "July 1, 2009" that appears in the second paragraph of the first page and in each clause (c) in the subsections of Sections 5 under "Land Cost to Northwest," "General and Administrative" and "Tenant Representative Fee" is hereby modified to be "June 30, 2010."

2. Section 5 (Compensation) is modified as follows:

a. The number "1,775,388.43" is amended to be the dollar amount "\$1,775,388.43"

b. The rate of payment of the costs to be advanced by FJD in the months beginning July, 2009 through June, 2010 is changed as follows:

(i) A new category will be added for "Telecom and Security Consulting and Audio/Visual Consulting" of \$40,000 per month.

(ii) The category "Contractor Pre-Construction Costs" is increased from \$10,000 to \$23,000 per month.

(iii) The category "Legal" did not use all of the monies allocated to it through June 30, 2009. Whatever unused portion will carryover through June 30, 2010 and the monthly allowance commencing July 1, 2009 will increase to \$45,000, although invoices

in any given month maybe higher or lower depending upon activity levels. Invoices shall accompany each monthly draw.

The aforesaid is intended to amend the "Family/Juvenile Court Budget" on Page 3 of the Letter Agreement.

3. No Lease. Notwithstanding anything to the contrary contained herein, this letter does not constitute a lease, agreement to lease or any other agreement for the sale, lease, occupancy or development of real estate, which can only be created, if at all, by a mutually acceptable document or documents between the parties thereto. Any such lease or agreement can only be created, if at all, by a mutually acceptable document or documents executed and delivered by the parties thereto. Except for the payment obligations set forth herein, this letter will not be binding upon either party and neither party shall have any liability hereunder. In addition, neither party will be bound by any written or oral representations or negotiations between them, either directly or through any intermediaries; this letter will not give rise to any claim based upon promissory estoppel, partial performance or otherwise. This Agreement may be terminated by either party on no less than three (3) days' prior written notice. The only obligations that shall survive such terminations shall be the payment obligations for costs incurred prior to the effective date of termination.

If you agree with this letter amendment, intend that it amend the Letter Agreement, and intend to be legally bound by it to the extent provided herein, please sign this letter in the place provided below.

Very truly yours,

NORTHWEST 15TH STREET ASSOCIATES

By: NORTHWEST 15TH OLIVER ASSOCIATES

By: NORTHWEST 15TH OLIVER  
CORPORATION

By: \_\_\_\_\_  
Donald W. Pulver, President

Agreed and accepted:

FIRST JUDICIAL DISTRICT OF THE  
COMMONWEALTH OF PENNSYLVANIA

By: \_\_\_\_\_  
Name:  
Title:

Date: June 15, 2009

NORTHWEST 15<sup>TH</sup> STREET ASSOCIATES  
c/o Oliver Tyrone Pulver Corporation  
300 Barr Harbor Drive, Suite 750  
West Conshohocken, PA 18428

June \_\_, 2009

First Judicial District of the Commonwealth of Pennsylvania  
Office of the Court Administrator  
336 City Hall  
Philadelphia, PA 19107

RE: Proposal for Continuation of Interim Funding of Pre-Development Phase of  
Philadelphia Court Building at 15<sup>th</sup> and Arch Streets, Philadelphia, Pennsylvania

Ladies and Gentlemen:

The First Judicial District of the Commonwealth of Pennsylvania ("FJD") has expressed interest in becoming a long-term tenant or subtenant at a building (the "Project") to be built at the northwest corner of 15<sup>th</sup> and Arch Streets, Philadelphia, Pennsylvania (the "Project Site"). Northwest 15<sup>th</sup> Street Associates ("Northwest") is the fee owner of air rights and the holder of easement rights necessary to build the prospective court building for the family and juvenile courts. Northwest is subject to certain deadlines established by the Philadelphia Parking Authority ("PPA") which require, among other things, that construction of the Project commence no later than July 1, 2010. In order to permit commencement of construction on or before that date, substantial work on the designing, planning, preparation for construction and permitting for the Project must occur. The parties previously entered into letter agreements dated as of August 26, 2008 and October 6, 2008 (the "Letter Agreements") in order to permit commencement of space planning, design and certain other preconstruction activities. This letter supersedes the Letter Agreements, which are hereby terminated. Neither party has any further obligations under the Letter Agreements.

The development transaction contemplates that the Commonwealth of Pennsylvania shall provide up to \$200 million of funding for the Project (the "Commonwealth Funds") when the Governor releases the funds that have been authorized for the Project in the Commonwealth's Capital Budget. The Governor's release is a precondition to obtaining the Commonwealth Funds for the Project. It is contemplated that as a precondition to the release of the Commonwealth Funds, the City of Philadelphia will convey to the Commonwealth the fee simple ownership of 1801 Vine Street upon FJD's vacating of 1801 Vine Street (or otherwise make available existing equity therein to the Commonwealth).

In order to permit the Project to proceed before the Commonwealth Funds become available, FJD has agreed to provide further interim funding for the Project in the amounts set forth below, subject to the conditions enumerated below:

1. FJD shall pay up to \$\_\_\_\_\_ per month (based on the time spent at reasonable hourly rates by those performing the services) to Ewing Cole for design services performed by Ewing Cole for the Project. FJD's payment obligations under paragraphs 1 and 2 hereof are contingent upon delivery by EwingCole to FJD of a letter substantially in the form attached hereto as Exhibit A on or before \_\_\_\_\_, [and a complete set of schematic design documents for the Project reasonably satisfactory to FJD on or before \_\_\_\_\_.] Payments shall be made within \_\_\_ days after receipt of a bill for services rendered during the previous month, in the format that has been used by Ewing Cole for prior bills, together with such back up documentation as may reasonably be requested by FJD.

2. FJD shall pay up to \$\_\_\_\_\_ per month (based on the time spent at reasonable hourly rates of those performing the services) to counsel for Northwest for legal services incurred in the negotiation of agreements for the Project with PPA, and for obtaining any Project permits or approvals. Such payments shall be due and payable within \_\_\_ days after receipt of a bill for services rendered during the previous month, in format reasonably satisfactory to FJD, together with such back up documentation as may reasonably be requested by FJD.

Notwithstanding anything to the contrary contained herein, this letter does not constitute a lease, agreement to lease or any other agreement for the sale, lease, occupancy or development of real estate, which can only be created, if at all, by a mutually acceptable document or documents between the parties thereto. Any such lease or agreement can only be created, if at all, by a mutually acceptable document or documents executed and delivered by the parties thereto. Except for the payment obligations set forth herein, and Northwest's obligation to work with FJD diligently and in good faith to move the Project forward, this letter will not be binding upon either party and neither party shall have any liability hereunder. In addition, neither party will be bound by any written or oral representations or negotiations between them, either directly or through any intermediaries, and this letter will not give rise to any claim based upon promissory estoppel, partial performance or otherwise. The agreement set forth in this letter may be terminated by either party on three (3) days' prior written notice, in which case neither party shall have any further liability, except for amounts earned or accrued pursuant to this letter before termination.

If this letter is terminated on a day other than the last day of a calendar month, amounts payable pursuant to this letter shall be appropriately prorated.

If you agree with this letter and intend to be legally bound by it to the extent provided herein, please sign this letter in the place provided below.

Very truly yours,

NORTHWEST 15<sup>TH</sup> STREET ASSOCIATES

By: NORTHWEST 15<sup>TH</sup> OLIVER ASSOCIATES

By: NORTHWEST 15<sup>TH</sup> OLIVER CORPORATION

By: \_\_\_\_\_  
Donald W. Pulver, President

Agreed and accepted:

FIRST JUDICIAL DISTRICT OF THE  
COMMONWEALTH OF PENNSYLVANIA

By: \_\_\_\_\_  
Name:  
Title:

Date: \_\_\_\_\_

# EXHIBIT Q



NORTHWEST 15TH STREET ASSOCIATES

c/o Oliver Tyrone Pulver Corporation  
300 Barr Harbor Drive, Suite 750  
West Conshohocken, PA 18428

July 1, 2009

First Judicial District of the Commonwealth of Pennsylvania  
Office of the Court Administrator  
336 City Hall  
Philadelphia, PA 19107

Re: Proposal for Interim Funding of Pre-Development Phase of Philadelphia Court  
at 15th and Arch Streets, Philadelphia, Pennsylvania

Ladies and Gentlemen:

You ("FJD") and we ("Northwest") are parties to a letter agreement dated as of October 6, 2009 (the "Letter Agreement"), pursuant to which performance of certain activities and obligations were required and for which certain payments were made to Northwest, the co-developer, Deilwydd Property Group FC LLC and an array of design and construction professionals. The Letter Agreement contemplated payments and performance through July 1, 2009, when payments would be accelerated per Section 5 of the Letter Agreement.

In order to avoid the acceleration of the payments, FJD terminated the Letter Agreement effective as of July 1, 2009. The parties now desire to reinstate the Letter Agreement, subject to certain modifications. Accordingly, the parties agree that the Letter Agreement is reinstated in full as if it had never been terminated, subject to the following modifications:

1. Term. The term of the Letter Agreement is extended through June 30, 2010. The date "July 1, 2009" that appears in the second paragraph of the first page and in each clause (c) in the subsections of Sections 5 under "Land Cost to Northwest," "General and Administrative" and "Tenant Representative Fee" is hereby modified to be "June 30, 2010."

2. Section 5 (Compensation) is modified as follows:

a. The number "1,775,388.43" is amended to be the dollar amount "\$1,775,388.43."

b. As an amendment of the "Family/Juvenile Court Budget" on Page 3 of the Letter Agreement, the rate of payment of the costs to be advanced by FJD in the months beginning July, 2009 through June, 2010 shall be as set forth on Exhibit "A" hereto.

3. No Lease. Notwithstanding anything to the contrary contained herein, this letter does not constitute a lease, agreement to lease or any other agreement for the sale, lease,

First Judicial District of the Commonwealth of Pennsylvania  
July 1, 2009  
Page Two

occupancy or development of real estate, which can only be created, if at all, by a mutually acceptable document or documents between the parties thereto. Any such lease or agreement can only be created, if at all, by a mutually acceptable document or documents executed and delivered by the parties thereto. Except for the payment obligations set forth herein, this letter will not be binding upon either party and neither party shall have any liability hereunder. In addition, neither party will be bound by any written or oral representations or negotiations between them, either directly or through any intermediaries; this letter will not give rise to any claim based upon promissory estoppel, partial performance or otherwise. This Agreement may be terminated by either party on no less than three (3) days' prior written notice. The only obligations that shall survive such terminations shall be the payment obligations for costs incurred prior to the effective date of termination.

If you agree with this letter amendment, intend that it amend the Letter Agreement, and intend to be legally bound by it to the extent provided herein, please sign this letter in the place provided below.

Very truly yours,

NORTHWEST 15TH STREET ASSOCIATES

By: NORTHWEST 15TH OLIVER ASSOCIATES

By: NORTHWEST 15TH OLIVER  
CORPORATION.

By:   
Donald W. Pulver, President

Agreed and accepted:

FIRST JUDICIAL DISTRICT OF THE  
COMMONWEALTH OF PENNSYLVANIA

By: 

Name:

Title:

Date: 7/15/09

**FAMILY COURT BUDGET**  
June 28, 2009

	JULY 2008	AUG 2008	SEPT 2008	OCT 2008	NOV 2008	DEC 2008	JAN 2009	FEB 2009	MAR 2009	APRIL 2009	MAY 2009	JUNE 2009
Contractor	23,000	23,000	23,000	23,000	23,000	23,000	23,000	23,000	23,000	23,000	23,000	23,000
Design	346,000	351,000	357,000	397,416	397,416	397,416	397,416	397,416	402,420	62,000	52,000	47,000
Outside Design Consultants, etc.	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000
Telecom & Security Consulting & Audio/Visual Consulting	40,000	40,000	40,000	40,000	40,000	40,000	40,000	40,000	40,000	40,000	40,000	40,000
Land Costs	50,000	50,000	50,000	50,000	50,000	50,000	50,000	50,000	50,000	50,000	50,000	50,000
Legal	45,000	45,000	45,000	45,000	45,000	45,000	45,000	45,000	45,000	45,000	45,000	45,000
RE Taxes									70,000			
G & A	27,500	27,500	27,500	27,500	27,500	27,500	27,500	27,500	27,500	27,500	27,500	27,500
Developer Fee	55,000	55,000	55,000	55,000	55,000	55,000	55,000	55,000	55,000	55,000	55,000	55,000
Tenant Rep Fee	55,000	55,000	55,000	55,000	55,000	55,000	55,000	55,000	55,000	55,000	55,000	55,000
	686,500	671,500	677,500	717,916	717,916	717,916	717,916	717,916	792,920	382,500	372,500	387,500

**EXHIBIT "A"**

# EXHIBIT R

Northwest 15th Street Associates  
c/o Oliver Tyrone Pulver Corporation  
300 Barr Harbor Drive, Suite 750  
West Conshohocken, PA 19428

March 5, 2010

David C. Lawrence, Court Administrator  
Office of the Court Administrator  
First Judicial District of Pennsylvania  
City Hall, Room 336  
Philadelphia, PA 19107

Re: Northwest 15th Street Associates – New Court Building at 15<sup>th</sup> and Arch Streets

Dear Dave:

As you are aware, Northwest 15th Street Associates ("Northwest") is working with Jeff Rotwitt on the referenced project. To avoid any potential misunderstanding or possible uncertainty, please note that Mr. Rotwitt does not have an ownership interest in or control over Northwest. He is not an agent for Northwest and has no power to bind or to speak on behalf of the entity.


Should you require further clarification or wish to discuss, please contact me at your convenience.

Very truly yours,

NORTHWEST 15TH STREET ASSOCIATES

By: Northwest 15th Oliver Associates, its  
general partner

By: Northwest 15th Oliver Corporation,  
its general partner

By:   
Donald W. Pulver, President

cc: John H. Bstey, Esquire  
Alan Ritterband, Esquire  
Jeffrey B. Rotwitt, Esquire

Northwest 15th Street Associates  
c/o Oliver Tyrone Pulver Corporation  
300 Barr Harbor Drive, Suite 750  
West Conshohocken, PA 19428

March 5, 2010

Vincent J. Fenerty  
Executive Director  
Philadelphia Parking Authority  
3101 Market Street  
Philadelphia, PA 19104

Re: Northwest 15th Street Associates ~ New Court Building at 15<sup>th</sup> and Arch Streets

Dear Vince:

As you are aware, Northwest 15th Street Associates ("Northwest") is working with Jeff Rotwitt on the referenced project. To avoid any potential misunderstanding or possible uncertainty, please note that Mr. Rotwitt does not have an ownership interest in or control over Northwest. He is not an agent for Northwest and has no power to bind or to speak on behalf of the entity.


Should you require further clarification or wish to discuss, please contact me at your convenience.

Very truly yours,

NORTHWEST 15TH STREET ASSOCIATES

By: Northwest 15th Oliver Associates, its  
general partner

By: Northwest 15th Oliver Corporation,  
its general partner

By:   
Donald W. Pulver, President

cc: Dennis Weldon, Esquire  
Jay Ruder, Esquire  
Jeffrey B. Rotwitt, Esquire

# EXHIBIT S



Posted on Fri, Apr. 9, 2010

#### CHANGING SKYLINE

### Family Court verdict: Second-rate



By Inga Saffron  
Inquirer Architecture Critic

Mayor Nutter came into office promising to be the city's designer-in-chief. But this week's approval of a stunningly second-rate design for the new Family Court building on JFK Plaza suggests that, when it comes to public architecture, the forces of mediocrity still rule Philadelphia.

It's true that those forces had to sweat more this time than they might have during the Street and Rendell years. Thanks to push-back from the Philadelphia Art Commission (Nutter appointees, all) and the city's architectural community, the courthouse design finalized on Wednesday is better than the version that architects from EwingCole first submitted to that panel in February.

Still, the improvements, which include a new entrance on the main Arch Street facade (duh!), are literally window dressing. EwingCole exchanged the facade's original concrete bands for a lighter, glassier curtain wall that will be texturized with vertical metal strips. The new window patterns do nothing to disguise the true nature of the \$200 million courthouse: It still resembles a bland corporate office.

While the architecture is poor, the process that produced the Family Court design was dismal. It should come as no surprise that it was micromanaged by Gov. Rendell, whose approach to Philadelphia is like one of those helicopter parents who must decide everything for their children. With his tenure in Harrisburg winding down, the governor was determined to speed the courthouse through the approval process, much as he fast-tracked the Convention Center addition in 2008 by sacrificing a group of historic Broad Street buildings.

There's an upside, admittedly, to having Daddy Rendell hovering nearby. He persuaded the General Assembly to agree to an unprecedented \$200 million appropriation for the new courthouse, an expense that Pennsylvania counties such as Philadelphia normally must shoulder themselves.

You have to admire Rendell's deal-making skills. Yet, once the deal is done, his only concern seems to be scheduling the ribbon-cutting. How a building impacts the city is a minor detail.

After the appropriation was made, Philadelphia's grateful officials responded in kind. Then-Mayor John F. Street approved the location near 15th and Arch Streets in 2008. City Councilman Darrell L. Clarke quickly secured a site-specific zoning change to accommodate Family Court's bulky massing, making it a near clone of the '50s-era slabs at Penn Center.



Nutter's planning department moved the design along without complaint.

The project was on such a fast track, Wednesday's testimony revealed, that no one bothered to tell neighbors on historic Mole Street, the Logan Square Neighborhood Association, or officials at the nearby Friends Center and Pennsylvania Academy of the Fine Arts. They said they didn't realize a new Family Court was coming to their doorstep until they saw renderings in *The Inquirer* in February. By then, the costly construction drawings were 95 percent complete.

That work was undertaken, it should be noted, before the project was put on the Art Commission's agenda - its sole public hearing. How could a major civic design progress so far without any public input?

One reason is that Rendell and the state court system allowed the Family Court project to be outsourced to a private developer.

The 14-story courthouse is being overseen by the Oliver Tyrone Pulver Corp., a firm best known locally for an inscrutable black tower near 16th and Market Streets, nicknamed "Darth Vader" by architects. Pulver is partnering with attorney Jeffrey Rottwitt in a 50-50 deal.

Rottwitt also happens to be the real estate consultant hired by the state to find a site for the new Family Court. When the building is finished, the state will hand the developers a \$200 million check and take ownership.

The developers have approached this project the way they might any speculative office, by designing an all-purpose shell for a standard box of cubicles. The design has none of the symbolism or majesty we expect in buildings devoted to the rule of law. It's not easy to find the right architecture for a courthouse in our modern, cynical age, but the developers never even tried.

Family Court is purely functional architecture, without a single setback. Although the addition of vertical metal strips will somewhat minimize the building's stretched-out proportions, the strips will have to be detailed carefully to avoid looking like jail bars.

The unfortunate court project also saddles Philadelphia with an impossible white elephant: the original Family Court building on Logan Square. That handsome neoclassical palazzo by John T. Windrim, completed only in 1941, will become vacant in 2013 when the courts move to 15th and Arch Streets - just in time for the opening of the new Barnes Foundation a block away.

Such formal buildings are notoriously difficult to reuse. The city has spent decades trying to find the right tenant for another glorious pile, the Provident Mutual at 4601 Market St. Some officials suggest the city-owned Family Court would make a good hotel. Who knows? No space study has been undertaken to determine whether its size and floor plan suit that use, or whether a market for a hotel there exists.

There is no denying that something needs to be done about Family Court's cramped, poorly ventilated courtrooms, which host about 800,000 people a year. The court's functions are now awkwardly divided between two locations: the Logan Square building and a converted department store on 11th Street.

But since when does urgent need justify the utter lack of design ambition? Family Court isn't just another development scheme, like the riverfront casinos that are also part of the Rendell legacy. A courthouse is democracy rendered in 3-D, and this one will sit at the epicenter of Philadelphia's revitalized downtown.

Nutter has told Philadelphia that developers should be held to high design standards. But if a courthouse doesn't qualify for a rigorous design review, what building will?

---

Contact architecture critic Inga Saffron at 215-854-2213 or [isaffron@phillynews.com](mailto:isaffron@phillynews.com).

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# EXHIBIT T

After years of unsuccessful efforts by the First Judicial District to locate a viable site to unite its two separate branches of the Family Court, the Supreme Court of Pennsylvania's liaison to the First Judicial District, Madame Justice Sandra Schultz Newman, determined that outside assistance was needed. During the last quarter of 2005, Justice Newman interviewed Obermayer Rebmann Maxwell & Hippel LLP due to its considerable expertise in real estate. That interview culminated with the Obermayer firm being retained in February of 2006 by the FJD to assist in finding a site for a unified Family Court. Because the First Judicial District had no funds in its budget to pay for such services, it was agreed that such services would be compensated on a contingent basis much like a broker solely out of the project finances funding any new facility, if in fact one ever materialized.

Over the course of 2006 and 2007 a number of sites were investigated as to their potential viability. By the end of 2007, the First Judicial District selected 15<sup>th</sup> and Arch as the optimal location based on access to public transportation, proximity to social service organizations and other constituent users and other relevant factors. With the selection of this site, the search services of Obermayer had been concluded.

2008 and thereafter brought the advent of the development phase of the project. These development efforts were conducted by Northwest 15<sup>th</sup> Street Associates and Deilwydd Property Group FC LLC pursuant to a contract with the First Judicial District terminable on 3 days notice by either party. The First Judicial District retained Ballard Spahr Andrews & Ingersoll, LLP and outside construction and design consultants to advise it during the development process.

*Other*

# EXHIBIT U

After years of unsuccessful efforts by the First Judicial District to locate a viable site to unite its two separate branches of the Family Court, the Supreme Court of Pennsylvania's liaison to the First Judicial District, Madame Justice Sandra Schultz Newman, determined that outside assistance was needed. During the last quarter of 2005, Justice Newman interviewed Obermayer Rebmann Maxwell & Hippel LLP due to its considerable expertise in real estate. That interview culminated with the Obermayer firm being retained in February of 2006 by the FJD to assist in finding a site for a unified Family Court. Because the First Judicial District had no funds in its budget to pay for such services, it was agreed that such services would be compensated on a contingent basis much like a broker solely out of the project finances funding any new facility, if in fact one ever materialized.

Over the course of 2006 and 2007 many sites were investigated as to their potential viability. By the end of 2007, the First Judicial District selected 15<sup>th</sup> and Arch as the optimal location based on access to public transportation, proximity to social service organizations and other constituent users and other relevant factors. With the First Judicial District's selection of this site, the search services of Obermayer had been concluded.

2008 and thereafter brought the advent of the development phase of the project. These development efforts were and are being conducted by both Northwest 15<sup>th</sup> Street Associates (controlled by Donald Pulver) and Deilwydd Property Group FC LLC (controlled by Jeffrey Rotwitt) pursuant to a contract with the First Judicial District terminable on 3 days notice by either party. The First Judicial District retained Ballard Spahr Andrews & Ingersoll, LLP, Atla Management and other outside construction and design consultants to advise it during the development phase.

# EXHIBIT V

**Meyer, Susan**

---

**From:** Ditzen, Stuart  
**Sent:** Wednesday, April 21, 2010 4:29 PM  
**To:** Rotwitt, Jeffrey; Meyer, Susan; Lawrence, David C.  
**Subject:** RE: Family Court

After speaking with the chief, I have just forwarded the statement to Inga. I attributed the statement to him.

Stu

---

**From:** Rotwitt, Jeffrey [mailto:Jeffrey.Rotwitt@obermayer.com]  
**Sent:** Wednesday, April 21, 2010 4:01 PM  
**To:** Meyer, Susan; Lawrence, David C.; Ditzen, Stuart  
**Subject:** Family Court

4/21/10

Chief, Dave and Stu,

Attached is a factual statement that the Chief and I just prepared that we believe Stu should send to Inga now on behalf of the FJD so that she has a clear statement of the facts. I also would recommend that Stu be the single point of contact with Inga henceforth since she obviously is motivated by some malice towards the project and seems to be trying to play "whisper down the lane" and claiming different things are being said by different parties.

Jeff

**Jeffrey B. Rotwitt, Esquire**  
**Obermayer Rebmann Maxwell & Hippel LLP**  
One Penn Center, 19th Floor  
1617 John F. Kennedy Boulevard  
Philadelphia, PA 19103-1895  
Tel.: (215) 665-3052 Fax: (215) 665-3139  
E-Mail: [jbr@obermayer.com](mailto:jbr@obermayer.com)  
Visit us @: [www.obermayer.com](http://www.obermayer.com)

4/21/2010



After years of unsuccessful efforts by the First Judicial District to locate a viable site to unite its two separate branches of the Family Court, the Supreme Court of Pennsylvania's liaison to the First Judicial District, Madame Justice Sandra Schultz Newman, determined that outside assistance was needed. During the last quarter of 2005, Justice Newman interviewed Obermayer Rebmann Maxwell & Hippel LLP due to its considerable expertise in real estate. That interview culminated with the Obermayer firm being retained in February of 2006 by the FJD to assist in finding a site for a unified Family Court. Because the First Judicial District had no funds in its budget to pay for such services, it was agreed that such services would be compensated on a contingent basis much like a broker solely out of the project finances funding any new facility, if in fact one ever materialized.

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# EXHIBIT W



**First Judicial District of Pennsylvania**

OFFICE OF THE COURT ADMINISTRATOR

336 CITY HALL  
PHILADELPHIA, PA 19107  
(215) 686-2547 FAX: (215) 686-7485  
<http://courts.phila.gov>

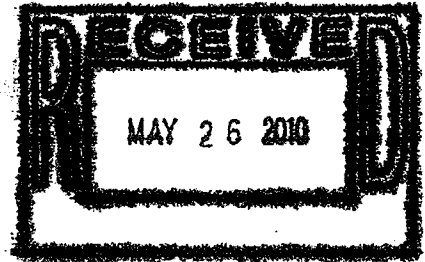
MAILED COPY  
FJD  
FAMILY CT  
TERM. LTR.  
D.L. TO N.W

DAVID C. LAWRENCE  
COURT ADMINISTRATOR

May 25, 2010

*By Certified Mail – Return Receipt Requested*

Northwest 15<sup>th</sup> Street Associates  
c/o Oliver Tyrone Pulver Corporation  
Five Tower Bridge  
300 Barr Harbor Drive, Suite 750  
West Conshohocken, PA 18428

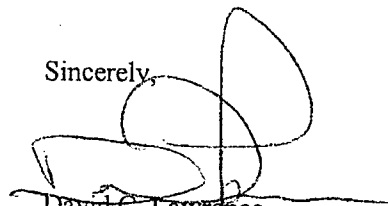


Re: Development of a New Family Court at 15<sup>th</sup> & Arch Streets, Philadelphia, Pennsylvania

Ladies and Gentlemen:

The First Judicial District of the Commonwealth of Pennsylvania ("FJD") previously entered into a letter agreement dated October 6, 2008 (the "Initial Letter Agreement") as amended July 15, 2009 (the "Amended Letter Agreement" and collectively, the "Letter Agreement") for interim funding for the proposed new Philadelphia Family Court. FJD hereby terminates the Letter Agreement pursuant to Paragraph 6 of the Initial Letter Agreement and Paragraph 3 of the Amended Letter Agreement. The termination will be effective three days from the date hereof, as provided in the Letter Agreement.

Sincerely,

  
David C. Lawrence  
Court Administrator

DCL/mh

cc: Hon. Ronald D. Castille, Chief Justice, Supreme Court of Pennsylvania ✓  
Hon. Kevin M. Dougherty, Administrative Judge, Family Division  
Hon. Margaret T. Murphy, Supervising Judge, Domestic Relations

# EXHIBIT X

# Ballard Spahr LLP

1735 Market Street, 51st Floor  
Philadelphia, PA 19103-7599  
TEL 215.665.8500  
FAX 215.864.8999  
www.ballardspahr.com

Adrian R. King, Jr.  
Direct: 215.864.8622  
Fax: 215.864.8999  
kinga@ballardspahr.com

June 1, 2010

*Via E-mail and Hand Delivery*

Mr. William G. Schwartz, Esquire  
Obermayer Rebmann Maxwell & Hippel, LLP  
One Penn Center, 19th Floor  
1617 John F. Kennedy Boulevard  
Philadelphia, PA 19103-1895

Re: Development of a New Family Court at 15th & Arch Streets, Philadelphia, Pennsylvania

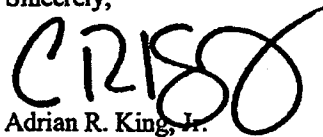
Dear Mr. Schwartz:

At the direction of our client, the First Judicial District of Pennsylvania ("FJD"), I am writing to advise you that the FJD hereby terminates your firm's representation of the FJD in the above-referenced matter. Pursuant to Pennsylvania Rule of Professional Conduct 1.16, please transfer your firm's complete original file materials to my attention at the address listed above on or before Friday, June 4, 2010.

Please note that the FJD expects that such original file materials will include those concerning any and all services provided and/or invoiced by your firm in connection with the above-referenced matter, including, but not limited to, services performed by Jeffrey B. Rotwitt.

If you have any questions, please contact me.

Sincerely,

  
Adrian R. King, Jr.

ARK/

cc: Hon. Ronald D. Castille, Chief Justice, Supreme Court of Pennsylvania  
Hon. Kevin M. Dougherty, Administrative Judge, Family Division  
Hon. Margaret T. Murphy, Supervising Judge, Domestic Relations  
Mr. David C. Lawrence, Court Administrator

DMEAST #12490140 v1