City of Philadelphia

(Bill No. 070462)

AN ORDINANCE

Authorizing the President of the Fairmount Park Commission, the Executive Director of Fairmount Park, and the Commissioner of Public Property, on behalf of the City of Philadelphia, to enter into a Master Ground Lease with the Philadelphia Authority for Industrial Development ("PAID") providing for the leasing by the City to PAID of certain land and the improvements owned by the City, and under which PAID will be required to enter into a Ground Sublease between PAID and The Barnes Foundation, pursuant to which PAID will sublease the land and improvements to the Foundation for the development, construction and operation of an art education facility; authorizing City officials to take all actions necessary to accomplish the intent and purpose of this Ordinance; all under certain terms and conditions.

THE COUNCIL OF THE CITY OF PHILADELPHIA ORDAINS:

SECTION 1. The Council of the City of Philadelphia finds the following:

A. The educational mission of The Barnes Foundation ("Foundation") and its art galleries and collection of art works assembled by Dr. Albert C. Barnes are internationally famous for their promotion of art appreciation and arboriculture, and for their unique qualities;

B. The City of Philadelphia ("City") and citizens of the City will enjoy exceptional cultural and economical benefits by providing a site on which the Foundation can develop, construct and operate an art education facility, including art galleries to display those works of art assembled by Dr. Albert C. Barnes that are currently on display in the public galleries of the Lower Merion art education facility of the Foundation ("Barnes Collection"); and

C. Location of the Foundation's art education facility, including art galleries, and the Barnes Collection, in the City will greatly enhance the City's cultural resources, promote the City's international renown for its art education opportunities, and attract visitors to the City from around the nation and the world.

SECTION 2. The President of the Fairmount Park Commission, the Executive Director of Fairmount Park, and the Commissioner of Public Property, on behalf of the City, are authorized to enter into a Master Ground Lease ("Master Lease") with the Philadelphia Authority for Industrial Development ("PAID"), which provides for the leasing by the City to PAID of land and improvements owned by the City ("Premises"), and under which PAID is authorized and directed to enter into a ground sublease

("Sublease") with the Foundation. The Premises are more particularly described in the Sublease.

SECTION 3. The Master Lease must be substantially in the form set forth in Exhibit A to this Ordinance. The Sublease must be substantially in the form set forth in Attachment 1 to the Master Lease. The City Solicitor is authorized to include in the Master Lease, and to cause PAID to include in the Sublease, other provisions the City Solicitor deems necessary or appropriate to protect the interests of the City and to make any other changes consistent with this Ordinance.

SECTION 4. The Chief Clerk of City Council shall keep on file and make available to the public for inspection during regular office hours the exhibit referred to in this Ordinance.

SECTION 5. The President of the Fairmount Park Commission, the Executive Director of Fairmount Park, the Commissioner of Public Property, the City Solicitor, and all other officials of the City, are authorized to execute all documents, including the Lease Recognition Agreement which is Exhibit H to the Sublease, and to take all actions in order to accomplish the intent and purpose of this Ordinance.

City of Philadelphia

BILL NO. 070462 continued

Certified Copy

CERTIFICATION: This is a true and correct copy of the original Bill, Passed by the City Council on June 14, 2007. The Bill was Signed by the Mayor on September 5, 2007.

Patricia Rafferty

Patricia Rafferty
Chief Clerk of the City Council

The Barnes Foundation Project
Economic Opportunity Plan

I. Project and Plan Introduction

The project consists of the construction and operation of a new facility (the "Project") by The Barnes Foundation (the "Foundation") to house the art collection of the late Dr. Albert Barnes that is currently displayed in the public galleries of the Foundation's facility in Lower Merion, Pennsylvania. The Project will be constructed by the Foundation in the City of Philadelphia in the block bounded by the Benjamin Franklin Parkway on the south, 20th Street on the east, 21st Street on the West and Pennsylvania Avenue on the North (the "Site"). The Foundation has leased the Site through a lease with the Philadelphia Authority for Industrial Development dated _____. The purpose, standards and procedures of this Economic Opportunity Plan (the "Plan") are the expressed wishes of the Foundation as set forth herein. Participants shall include the architect retained by the Foundation (the "Architect") and any other design or other professional services providers and their respective consultants, the general contractor or construction manager retained by the Foundation to construct the Project (hereinafter referred to as, the "General Contractor") and the General Contractor's subcontractors, and all vendors of supplies, services, equipment and materials for the Project (collectively, the "Participants" and each a "Participant"). All Participants shall be obligated to fully comply with the requirements of the Plan.

The Foundation is committed to provide meaningful and representative opportunities for minority-owned, women-owned and disabled-owned business enterprises (referred to hereafter individually, as "MBEs", "WBEs", "DSBEs", respectively and collectively, as "M/W/DSBEs"),socially and economically disadvantaged owned business enterprises (referred to hereafter as "DBEs") and individuals that are Philadelphia residents (referred to hereafter as "local residents"), in all phases of the Project. Foundation will require that all Participants commit to the foregoing commitment. Neither Foundation nor any Participant shall (and furthermore shall ensure that their associates, partners or representatives shall not) discriminate on the basis of race, color, religion, sex ,national origin, sexual orientation, gender identity, ancestry, age, or handicap in the award and performance of contracts pertaining to the Project or with respect to any and all related employment practices.

All Participants in the Project shall observe and be subject to the enforcement of all relevant City of Philadelphia, Commonwealth of Pennsylvania and federal laws, ordinances, orders, rules and/or regulations regarding M/W/DSBEs and locally-based business enterprises. Furthermore, affirmative action will be taken, consistent with sound procurement policies and applicable laws, to ensure that M/W/DSBEs are afforded a meaningful and representative opportunity to participate in contracts relating to the Project.

For the purposes of this Plan, the term "minority person" shall refer to the following: African American or Black (persons having origins in any of the Black racial groups of

Africa); Hispanic American (persons of Mexican, Puerto Rican, Cuban, Dominican,Central or South American, or other Spanish or Portuguese culture or origin regardless of race); Asian American (persons having origins from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, Hong Kong, India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;; and Native Americans (which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians).

Agencies and representatives of the City of Philadelphia and/or Commonwealth of Pennsylvania may be consulted regarding the appropriate inclusion of M/W/DSBEs and DBEs in this Project as outlined in this Plan and with regard to its implementation.

II. Procedures for Determination

A. Scope/Duration. - This Plan shall apply to contracts awarded and procurements sourced by the Foundation and all Participants throughout the construction of the Project. Applicable provisions of the Plan will be implemented by the Foundation during the operation of the new facility.

B. Statement of Objectives. - The objectives set forth in the Plan shall be incorporated in all requests for proposals, bid packages and solicitations for the Project and communicated to all Participants.

C. Good Faith Efforts. - Participants shall use best and good faith efforts (as defined hereunder) to provide appropriate participation and utilization opportunities for M/W/DSBEs, minority workers, female workers and local resident workers. All Project contractors and vendors will be required to do likewise, consistent with best and sound procurement practices, and with applicable law. *Best and good faith efforts* are those efforts, the scope, intensity and appropriateness of which are designed and performed to achieve the objectives of this Plan including ranges and goals expressed herein. Best and good faith efforts will be deemed adhered to when a Participant meets the criteria set forth in this Plan and demonstrates and documents its efforts throughout the duration of the Project. Each Participant must submit a Subcontracting/Vendor Plan showing how *best and good faith efforts* were made to achieve said ranges, even if the ranges were not met. This plan must include, but not be limited to, the following:

1. Written request for assistance to the Foundation three (3) business days prior to the bid due date.
2. Solicitation through job fairs, newspapers, periodicals, advertisements and other organizations or media that focus on construction and are owned by M/W/DSBE and/or that focus on M/W/DSBEs

3. Telephone logs.
4. Evidence of solicitation to qualified M/W/DSBEs and DBEs certified by the Philadelphia Minority Business Enterprise Council ("MBEC") or any successor agency, or members of the Pennsylvania Unified Certification Program ("PaUCP").
5. Bid results and reasons as to why no awards were made to M/W/DSBEs.
6. Use of City/MBEC-certified business firms via the MBEC directory.
7. Correspondence between the contracting firm and any M/W/DS-BE firms.
8. Attendance logs and/or records of any scheduled pre-bid or pre-proposal meeting.
9. Specific, general and technical assistance offered and provided to M/W/DSBEs related to their portion of the Project.
10. Proof there was notification of and access to bid documents at the contracting firm's office or other office locations for open and timely review.

D. Monitoring of *Best and Good Faith Efforts*. – The monitoring and reporting of *best and good faith efforts* of the Participants shall be established by the Foundation in consultation with appropriate city, state and federal agencies and/or private professional entities, and shall include (in addition to any further measures that may be required) the following:

1. Participants shall submit copies of signed contracts and purchase orders with M/W/DSBE contractors and subcontractors.
2. Participants shall be ready to provide evidence of timely payments to M/W/DSBE subcontractors, sub-consultants and supply vendors for participation verification. This documentation should be provided monthly or included with every request for payment.
3. At the conclusion of the Project, Participants shall provide evidence of the actual dollar amounts paid to M/W/DSBE contractors or subcontractors.
4. All Participants that are on-site contractors involved in the construction of the Project shall be prepared to submit "certified" payrolls listing the following items for all on-site employees:

   a. Full name
   b. Social security number
   c. Full address
   d. Trade classification (e.g., laborer, carpenter, apprentice, electrician, plumber, and foreman)
   e. Gender
   f. Race
   g. Hours worked
   h. All withholding (e.g., laborer, local, state, FICA, etc.)
   i. Name of the contractor and name of the prime for subcontractors
   j. Name of Project

5. Certified payroll reports shall be signed by an authorized officer of the applicable Participant.

6. Participants shall comply with all applicable requirements of any federal, state or local law ordinance or regulation relating to contract and payroll compliance.

E. Documentation of *Best and Good Faith Efforts* and Compliance. Two components have been established to facilitate the inclusion of M/W/DSBEs as contractors and vendors, and minority /female/local residents as Project site workforce participants:

1. *M/W/DSBE Contracting and Vending Participation Levels* - the basis for each determination will be the percentage of the total dollar amount of Participant's bid/contract OR the total dollar amount of the bid/contract for the identified Project task.

2. *Minority/Female/Local Resident Employment Participation Levels* - the basis for each determination will be the projected total on-site field employee hours divided by the number of minority, female and local resident employee hours anticipated to be performed on the contractor's payroll, and each of the contractor's on-site subcontractors payrolls.

F. Oversight Committee. The Foundation, in consultation with the appropriate agencies and entities, will establish and identify the members of a "Project Oversight Committee." The Project Oversight Committee shall include representatives of the Foundation, the Philadelphia Fairmont Park Commission and the General Contractor and shall meet during all phases of the Project. The Foundation and the Project Oversight Committee will engage in monitoring, reporting and problem solving activities including regular meetings to address all matters relevant to further development of this Plan, carrying out its implementation and the successful completion of the Project. In addition, the Foundation will contract with the Greater Philadelphia Urban Affairs Coalition ("GPUAC") to assist the Foundation and the Project Oversight Committee in the monitoring and reporting for the Project.

III. Certified M/W/DSBEs

A. Only businesses that are owned and controlled, in both form and substance as M/W/DSBEs shall be counted towards participation under this Plan. To ensure

this standard, all businesses, including joint ventures, must be certified by MBEC, or any successor agency or the PaUCP. Both agencies are authorized to certify such enterprises.

B. M/W/DSBE certification shall not be the sole determination of a bidder's or contractor's financial or technical ability to perform specified work. The Foundation reserves the right to evaluate the contractor's or subcontractor's ability to satisfy financial, technical, or other criteria separate and apart from said certifications before bid opening. Pre-qualification conditions and requirements shall be conveyed in a fair, open and non-discriminatory manner to all.

C. The Foundation recognizes that M/W/DSBE certifications may expire or the firm may experience decertification by an authorized governmental entity. Certifications that expire during a M/W/DSBE's participation on a particular phase of the Project may be counted toward overall goals for participation ranges. However, said firm MUST become recertified prior to consideration for future range/goal credit in this Plan. If a firm has been decertified, said firm will not be eligible to participate.

IV. Non-Compliance

A. In cases where the Foundation has cause to believe that a Participant, acting in good faith, has failed to comply with the provisions of this Plan, the Foundation in consultation with the Project Oversight Committee and/or appropriate agencies and professional entities, will attempt to resolve the noncompliance through conciliation and mediation.

B. In conciliation, a Participant must satisfy the Foundation and the Project Oversight Committee that said Participant has made *best and good faith efforts* to achieve the agreed upon participation ranges and/or goals. Demonstration of *Best and good faith efforts* on the part of a Participant includes:

1. Entering into a contractual relationship with the designated M/W/DSBE firm in a timely, responsive and responsible manner, and fulfilling all contractual requirements, including payments, in said manner.
2. Notifying all parties - including the Foundation, the M/W/DSBE, the Project Oversight Committee and all relevant Participants of any problems in a timely manner.
3. Requesting assistance from the Foundation and/or the Project Oversight Committee in resolving any problems with any M/W/DSBE.
4. Making every reasonable effort to appropriately facilitate successful performance of contractual duties by a M/W/DSBE through timely, clear and direct communications and reasonable business assistance.

C. In cases where the Foundation, in consultation with the Project Oversight Committee, has cause to believe that any Participant has failed to comply with the provisions of this Plan, the Foundation will conduct an investigation.

D. After affording the Participant notice and an opportunity to be heard, the Foundation in consultation with the Project Oversight Committee, will take corrective, remedial and/or punitive action. Such actions may include, but are not limited to:

1. Declaring the Participant as non-responsible and/or non-responsive, with a determination being made that the Participant is ineligible to receive the award of a contract, ineligible to continue a contract and/or ineligible for any other future contracts affiliated with the Project;
2. Suspending the violating Participant from doing business with the Foundation;
3. Withholding payments to the violating Participant; and/or
4. Pursuing and securing any relief which the Foundation, in consultation with the Project Oversight Committee, may deem to be necessary, proper, and in the best interest of the Foundation and the Project and consistent with applicable policy and law.

V. Guidelines for Joint Venturing

Joint Venture relationships with certified M/W/DSBEs must meet the following criteria in order to receive credit towards the participation goals:

A. The M/W/DSBE partner(s) must be certified by MBEC, PaUCP or an agency authorized by law to certify such enterprises prior to proposal/bid submission.

B. The M/W/DSBE partner(s) must be substantially involved in significant phases of the contract including, but not limited to, the performance (with its own work force) of a portion of the on-site work, and of administrative responsibilities, such as bidding, planning, staffing and daily management.

C. The business arrangements must be customary (i.e., each partner shares in the risk and profits of the joint venture commensurate with their respective ownership interest).

D. If a certified partner is a M/W/DSBE, the participation will be credited only to the extent of the partner's ownership interest in the joint venture. M/W/DSBE participation ranges or goals will apply to the joint venture.

VI. Participation Ranges and Goals

A. Construction Employment Opportunities:

In support of federal and local policies that target economic benefits to low-income residents, the Foundation shall require its contractors involved in construction of the Project to make best and good faith efforts to employ local Philadelphia residents. The Foundation will also require that its General Contractor to use nondiscriminatory employment practices and make best and good faith efforts to employ minority and female persons in the construction workforce consistent with work-hour goals of 25% and 5%, respectively. The Foundation will include these goals in all construction related contracts and will require its General Contractor to reference these work-hour goals in all of its subcontracts.

B. Permanent Employment Opportunities:

1. The Foundation shall make best and good faith efforts to assure the creation of new jobs as part of this Plan with a strong emphasis on staffing diversity in full-time and part-time positions. Of the 52 new full-time jobs expected to be created in connection with the operation of the new facility (the "Facility"), the Foundation shall make best and good faith efforts to meet the following minimum goals for the employment of minority persons, females and disabled persons in the operation of the Facility: 30% for minority persons, 45% for females and 2% for disabled persons.

2. The Foundation will use its best and good faith efforts to reach out to sources of employment like the Philadelphia Workforce Development Corporation, the Urban League of Philadelphia and the Jewish Employment and Vocational Services that can refer minority, female and disabled workers. The definition of "minority" set forth in Part I shall apply to the Foundation's employment efforts.

3. In addition, the Foundation has collaborated with Lincoln University, a historically black institution of higher education, on a new Bachelor of Arts Degree program to help students prepare for careers in museum and collection studies, museum education and museum communications. Students enrolled will earn a degree from Lincoln University and they will obtain firsthand experience at the Facility.

C. Contract Opportunities:

1. Construction Management: The Foundation will make best and good faith efforts to engage a construction management team with at least 30% participation, with 20% participation by MBEs and 10% participation by WBEs. The Foundation shall include a provision in the contract with the

General Contractor requiring that the General Contractor use best and good faith efforts to provide opportunities for MBEs and WBEs through joint venture and subcontract opportunities and shall include this Plan in the contract with the General Contractor.

2. Architecture and Engineering and Other Professional Services: The Foundation will make best and good faith efforts to engage a design team, including architects, engineers, and other design and professional service providers, with the stated goals of not less than 20% participation by MBEs, not less than 8% participation by WBEs and not less than 2% participation by DSBEs. These percentages for participation will be applied to the total dollar value of the architectural, engineering and other design and professional service contracts let by the Foundation, including change orders and scope adjustments.

3. Construction: The Foundation shall require that the General Contractor and its subcontractors make best and good faith efforts to provide contract opportunities for certified M/W/DSBEs with the stated goals of 20% participation by MBEs, 8% participation by WBEs and 2% participation of DSBEs. These percentages for participation will be applied to the total dollar value of all contracts let by the Foundation or the General Contractor, including all change orders and scope adjustments.

4. Building Operations: The Foundation may contract with third parties for security services, food services and/ or other building operations services. In consultation with GPUAC and the Oversight Committee, the Foundation will establish participation ranges for all such contracts and will apply all applicable provisions of this Plan to said contracts.