

City of Philadelphia



(Bill No. 100842)

AN ORDINANCE

Authorizing the Commissioner of Public Property to enter into a license or long term lease agreement and other related agreements between the City of Philadelphia as licensor or landlord, and the Center City District as licensee or tenant, for a certain parcel of land bounded approximately by John F. Kennedy Boulevard, 15th Street, South Penn Square and the west side of City Hall, commonly referred to as Dilworth Plaza, under certain terms and conditions.

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. The Commissioner of Public Property is hereby authorized to enter into a license or long term lease agreement, consistent with the Term Sheet attached as Exhibit "A" hereto, and such other agreements as are necessary to effectuate such terms, between the City of Philadelphia and the Center City District, for a certain parcel of land bounded by John F. Kennedy Boulevard, 15th Street, South Penn Square, and a line 60 feet east of, and parallel to, the easternmost west-facing plane of the west face of City Hall (as extended), which area is commonly referred to as Dilworth Plaza, except that the authorization provided by this Ordinance shall not extend to any part of the building known as City Hall, nor to any land underlying such building.

SECTION 2. The City Solicitor is hereby authorized to review and to approve the lease or license and other documents necessary to effectuate the agreement referred to in Section 1, which agreement and other documents shall contain such terms and conditions as the City Solicitor shall deem necessary and proper to protect the interests of the City of Philadelphia and to carry out the purpose of this Ordinance.

SECTION 3. Provided that the agreement authorized by this Ordinance will include a provision that ensures the operating departments of the City that currently control and license events on Dilworth Plaza will continue to control and license events on Dilworth Plaza.

City of Philadelphia

BILL NO. 100842 continued

Certified Copy

EXHIBIT A DILWORTH PLAZA TERM SHEET

1. **Landlord/Licensor:** The City of Philadelphia, through its Department of Public Property ("City").
2. **Tenant/Licensee:** Center City District ("CCD").
3. **Premises:** The premises is located between City Hall, JFK Boulevard, 15th Street and South Penn Square, and is commonly known as Dilworth Plaza.
4. **Reserved from Premises:** The subterranean SEPTA concourses and transportation infrastructure will not be part of this Lease or License.
5. **Commencement Date:** On or about June 1, 2011.
6. **Term:** Thirty (30) years.
7. **Base Rent or Fee:** Base Rent or Fee shall nominally be \$1.00 per year.
8. **Improvements:** Tenant/Licensee shall make substantial improvements to the property including but not limited to substructure, landscaping, a water feature, a café, elevators, etc. The details of the improvements shall be contained in a development plan and attached to the Lease or License.
9. **Use:** The Premises shall be used as open space and park purposes with other activities commonly occurring in parks in Center City.
10. **Utilities:** Utilities shall be paid by the City of Philadelphia, except for the café, which shall be separately metered.
11. **Maintenance/Repair:** CCD shall maintain the majority of the premises. However, SEPTA has agreed to maintain the elevators once constructed and the City will provide routine maintenance and police services consistent with those services provided by the City at other parks in Center City. A maintenance plan describing the maintenance to be performed by CCD shall be attached to the Lease or License.
12. **Equal Economic Opportunity:** Tenant/Licensee Improvements to the premises will be completed in accordance with the goals established by an Equal Economic Opportunity Plan developed

City of Philadelphia

BILL NO. 100842 continued

Certified Copy

by the City's Office of Equal Opportunity, which goals will be attached to the Lease or License and will be provided in advance to all contractors bidding on the Tenant/Licensee Improvements.

City of Philadelphia

BILL NO. 100842 continued

Certified Copy

CERTIFICATION: This is a true and correct copy of the original Bill, Passed by the City Council on December 16, 2010. The Bill was Signed by the Mayor on December 21, 2010.



Michael A. Decker
Chief Clerk of the City Council

EXHIBIT A
DILWORTH PLAZA TERM SHEET

- 1. Landlord/Licensors:** The City of Philadelphia, through its Department of Public Property ("City").
- 2. Tenant/Licensee:** Center City District ("CCD").
- 3. Premises:** The premises is located between City Hall, JFK Boulevard, 15th Street and South Penn Square, and is commonly known as Dilworth Plaza.
- 4. Reserved from Premises:** The subterranean SEPTA concourses and transportation infrastructure will not be part of this Lease or License.
- 5. Commencement Date:** On or about June 1, 2011.
- 6. Term:** Thirty (30) years.
- 7. Base Rent or Fee:** Base Rent or Fee shall nominally be \$1.00 per year.
- 8. Improvements:** Tenant/Licensee shall make substantial improvements to the property including but not limited to substructure, landscaping, a water feature, a café, elevators, etc. The details of the improvements shall be contained in a development plan and attached to the Lease or License.
- 9. Use:** The Premises shall be used as open space and park purposes with other activities commonly occurring in parks in Center City.
- 10. Utilities:** Utilities shall be paid by the City of Philadelphia, except for the café, which shall be separately metered.
- 11. Maintenance/Repair:** CCD shall maintain the majority of the premises. However, SEPTA has agreed to maintain the elevators once constructed and the City will provide routine maintenance and police services consistent with those services provided by the City at other parks in Center City. A maintenance plan describing the maintenance to be performed by CCD shall be attached to the Lease or License.
- 12. Equal Economic Opportunity:** Tenant/Licensee Improvements to the premises will be completed in accordance with the goals established by an Equal Economic Opportunity Plan developed by the City's Office of Equal Opportunity, which goals will be attached to the Lease or License and will be provided in advance to all contractors bidding on the Tenant/Licensee Improvements.

**City of Philadelphia
Economic Opportunity Plan
Development of Dilworth Plaza**

I. Introduction, Definitions and Goals

The City of Philadelphia ("City") and the Center City District ("CCD") strongly encourage the use of certified Minority ("MBE"), Women ("WBE"), Disabled ("DSBE") and Disadvantaged¹ ("DBEs") Business Enterprises (collectively, "M/W/DSBEs") and minority and female workers in all aspects of the Dilworth Plaza Development Site located at the west side of City Hall ("Project"). In support of this objective, CCD will require that all its contractors engaged in all tiers of this Project ("Contractor") to commit to this Economic Opportunity Plan ("Plan").

This Plan contains ranges of projected M/W/DSBE utilization and goals for the employment of minority and female workers in connection with the Project. This Plan shall be a part of and incorporated into the resulting agreement(s) between CCD and its contractors ("Participants").

Participants hereby verify that all information submitted to the Office of Economic Opportunity ("OEO") in response to this Plan, is true and correct and is notified that the submission of false information is subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn falsification to authorities and 18 Pa.C.S. Section 4107.2 (a)(4) relating to fraud in connection with minority business enterprises or women's business enterprises.

For the purposes of this Plan, MBE, WBE, DBE and DSBE shall refer to certified businesses so recognized by OEO. Only the work or supply effort of firms that are certified as M/W/DSBEs by an OEO approved certifying agency² will be eligible to receive credit as a Best and Good Faith Effort. In order to be counted, certified firms must successfully complete and submit to the OEO an application to be included in the OEO Registry which is a list of registered M/W/DSBEs maintained by the OEO and available online at www.phila.gov/oEO/directory.

For this Plan, the term "Best and Good Faith Efforts," the sufficiency of which shall be in the sole determination of the City, means: efforts, the scope, intensity and appropriateness of which are designed and performed to foster meaningful and representative opportunities for participation by M/W/DSBEs and an appropriately diverse workforce and to achieve the objectives herein stated. Best and Good Faith Efforts are rebuttably presumed met, when commitments are made within the M/W/DSBE Participation Ranges established for this development and a commitment is made to employ a diverse workforce as enumerated herein.

¹Disadvantaged Business Enterprises ("DBEs") are those socially or economically disadvantaged minority and woman owned businesses certified under 49 C.F.R. Part 26.

²A list of "OEO approved certifying agencies" can be found at www.phila.gov/oEO

II. Goals

1. M/W/DSBE Participation Ranges

As a benchmark for the expression of "Best and Good Faith Efforts" to provide meaningful and representative opportunities for M/W/DSBEs in the Project, the following participation ranges have been established. These participation ranges represent, in the absence of discrimination in the solicitation and selection of M/W/DSBEs, the percentage of M/W/DSBE participation that is reasonably attainable through the exercise of Best and Good Faith Efforts. These percentages relate to the estimated annual cost of the Operations Phase of this Project; the Construction Phase of this Project is funded through U.S. Department of Transportation's Federal Transit Administration ("FTA") and an appropriate goal for Disadvantaged Business Enterprises will be established by CCD.³

In order to maximize opportunities for as many businesses as possible, a firm that is certified in two or more categories (e.g. MBE and WBE) will only be credited toward one participation range as either an MBE or WBE. The firm will not be credited toward more than one category. These ranges are based upon an analysis of factors such as the nature, size and scope of the anticipated contracts and the availability of MBEs and WBEs to participate in these contract opportunities:

MBE	WBE
18% - 25% Operations	12% - 15% Operations

2. Workforce Goals

CCD agrees to cause its contractors employed in the Construction Phase of the Project to exhaust their Best and Good Faith Efforts to employ minority persons and females in its workforce of apprentices and journeymen at the following levels⁴:

Minority Apprentices – 50% of all hours worked by all apprentices

Minority Journeymen – 32% of all journey hours worked across all trades

Female Apprentices – 7% of all hours worked by all apprentices

Female Journeypersons - 7% of all hours worked across all trades

³ As a benchmark for CCD's consideration, SEPTA's overall FTA Disadvantaged Business Enterprise Goal is 13.5%.

⁴ These goals, which have been adopted by the Economic Opportunity Cabinet, are the recommendations of the Mayor's Commission on Construction Industry Diversity.

IV. Responsiveness

A. CCD shall identify all M/W/DSBE commitments and other agreements evidencing its and CCD's contractors' Best and Good Faith efforts to contract with M/W/DSBEs and employ minority persons and females at the levels stated herein on the form entitled, "M/W/DSBE Participation and Workforce Commitments." The identified commitments constitutes a representation that the M/W/DSBE is capable of providing commercially useful goods or services relevant to the Project and that CCD or its contractors has entered into legally binding commitments with the listed M/W/DSBEs for the work or supply effort described and the dollar/percentage amount(s) set forth on the form. In calculating the percentage of M/W/DSBE participation, the standard mathematical rules apply in rounding off numbers. In the event of inconsistency between the dollar and percentage amounts listed on the form, the percentage will govern.

B. M/W/DSBE commitments are to be memorialized in a written subcontract agreement. Letters of intent, quotations, contracts, subcontracts and any other documents evidencing commitments with M/W/DSBEs, including the M/W/DSBE Participation and Workforce Commitments Form become part of this Plan.

C. OEO will review the M/W/DSBE commitments for the purpose of determining whether Best and Good Faith Efforts have been made. OEO reserves the right to request further documentation and/or clarifying information at any time during the Project term.

V. Compliance and Monitoring of Best and Good Faith Efforts

A. CCD agrees to cooperate with OEO in its compliance monitoring efforts, and to submit, upon the request of OEO, documentation relative to CCD's implementation of this Plan, including the items described below:

- Copies of signed contracts and purchase orders with M/W/DSBE subcontractors;
- Evidence of payments (cancelled checks, invoices, etc.) to subcontractors and suppliers to verify participation; and
- Telephone logs and correspondence relating to M/W/DSBE commitments.
- To the extent required by law, CCD shall ensure that all its on-site contractors maintain certified payrolls which include a breakout of hours worked by minority and female apprentices and journeypersons; these documents are subject to review by OEO.

B. Prompt Payment of M/W/DSBEs

CCD agrees and shall cause all its contractors to ensure that all M/W/DSBEs participating in the Project receive payment for their work or supply effort within thirty (30) business days after receipt of a proper invoice following satisfactory performance.

C. Oversight Committee

CCD, in consultation with the OEO, will establish and identify the members of a Project Oversight Committee, including CCD's General Contractor and Construction Manager, Office of Economic Opportunity and the District Councilperson, or her designee.

The first meeting of the Project Oversight Committee shall be called by CCD within one (1) month of the initiation of this Project and shall meet on a regular basis during all phases of the Project. Participants will engage in monitoring, reporting and problem solving activities which are to include regular meetings to address all matters relevant to further development of the Plan, carrying out implementation and the successful completion of the Project.

VI. Remedies and Penalties for Non-Compliance

A. CCD agrees that its compliance with the requirements of this Plan is a material inducement for City Council's approval of Ordinance No.100842. Failure to comply with the Plan may subject CCD to any applicable remedies and penalties contained in Sections 17-1605 and 17-1606 of the Philadelphia Code or remedies and penalties otherwise available at law or in equity. Notwithstanding the foregoing, no privity of contract exists between the City and any M/W/DSBE identified in any contract resulting from implementation of the Plan. Neither CCD nor the City intends to give or confer upon any such M/W/DSBE any legal rights or remedies in connection with subcontracted services under any law or policy or by any reason of any contract resulting from implementation of this Plan except such rights or remedies that the M/W/DSBE may seek as a private cause of action under any legally binding contract to which it may be a party.

Center City District

Date

[See Best and Good Faith Efforts Forms Attached]