APPENDIX __

CITY OF PHILADELPHIA
OFFICE OF ECONOMIC OPPORTUNITY
ANTIDISCRIMINATION POLICY
FORMS, INSTRUCTIONS AND SPECIAL CONTRACT PROVISIONS

OVERVIEW, M/WBE PARTICIPATION RANGES AND WORKFORCE GOALS

Under the authority of Executive Order No. 03-12, the City of Philadelphia has established an antidiscrimination policy ("Policy") relating to the participation of Minority (MBE), Woman (WBE) and Disabled (DSBE) Owned Business Enterprises in City contracts and City Related Special Projects. Executive Order 03-12 is administered by the City's Office of Economic Opportunity ("OEO").

The purpose of this Policy is to provide equal opportunity for all businesses and to assure that City funds are not used, directly or indirectly, to promote, reinforce or perpetuate discriminatory practices. The City is committed to fostering an environment in which all businesses are free to participate in business opportunities without the impediments of discrimination and participate in all City contracts and Special Projects on an equitable basis. In addition, the City, as informed by the Mayor's Advisory Commission on Construction Industry Diversity, is committed to increasing Philadelphia's existing building trades workforce to include 32% minority representation and 7% female representation.

The City, acting through its Philadelphia Water Department ("PWD") has entered into a grant agreement with the Philadelphia Authority for Industrial Development ("PAID") for the purpose of supporting ISS Management, LLC ("Subgrantee") development of **Greened Acre Retrofit Program ("GARP")** , multiple bio-retention basins and underground basins. The existing inlets will be tied to the underground basins and Bio-retention Basins and will redirect all the storm water from the building and impervious surfaces. The bio-retention basins will be top-soiled at completion to add to the existing green space and the underground basins will be paved and/or restored to their original condition (the "improvements"). The City has appropriated Eight Million Thirteen Thousand and Six Hundred Dollars ($8,013,600) in capital funding through PAID to support Subgrantee's Storm Water Management Improvement Project, SMIP ("grant agreement"). Accordingly, PAID has agreed to cooperate with OEO to establish participation ranges for this City Related Special Project and to require Subgrantee, through its contracts for the improvements, to implement and ensure that the M/WBE participation ranges and workforce goals established herein are met to the maximum extent feasible by Subgrantee's contractors ("contractors").

The OEO has approved the following projected ranges of participation for this City Related Special Project which serve as a guide in determining each contractor's responsibility:

MBE 20% - 25%

and/or

WBE 20% - 25%

These ranges represent the percentage of MBE and WBE (collectively, "M/WBE") participation that should be attained by M/WBEs from business opportunities existing in the available market absent discrimination in the solicitation and selection of these businesses and through contractor's exercise of Best and Good Faith Efforts. Best and Good Faith Efforts are those efforts, the scope, intensity and appropriateness of which are taken to achieve meaningful and representative opportunities for participation by M/WBEs. Subgrantee agrees to include these M/WBE participation ranges in all bids related to the improvements. Subgrantee's contractors' commitments with M/WBEs will be included on a

Solicitation For Participation and Commitment Form along with any supporting documentation (more fully discussed below) as an element of responsiveness to each bid. OEO will evaluate Subgrantee's contractors' responsiveness.

Subgrantee also agrees to include the following Workforce Goals in all bids related to the improvements and require that its contractors exhaust Best and Good Faith Efforts to employ minority persons and females in its workforce of apprentices and journeymen at the following levels[1]:

Minority Journeypersons – 32% of all journey hours worked across all trades
Minority Apprentices – 50% of all hours worked by all apprentices
Female Journeypersons - 7% of all hours worked across all trades
Female Apprentices – 7% of all hours worked by all apprentices

The submission of false information in connection with the Antidiscrimination Policy is subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities and 18 Pa.C.S. §4107.2 (a)(4) relating to fraudulently obtaining public moneys reserved for or allocated or available to minority business enterprises or women's business enterprises.

A. M/WBE PARTICIPATION

1.Only firms that are certified by an approved certifying agency[2] and identified in the OEO Registry by the time of contract award will be credited toward the participation ranges. An OEO Registry is maintained by the OEO and is available online at www.phila.gov/OEO/directory. Firms owned and controlled by minority persons, women or disabled persons, which are certified as MBE, WBE, DSBE or DBE by an approved certifying agency may apply to the OEO for listing in its OEO Registry.

2. No contractor that seeks to meet the participation range(s) by entering into a subcontract with any M/WBE shall be considered to meet the range(s) if the M/WBE does not perform a commercially useful function ("CUF"). An M/WBE performs a Commercially Useful Function when it performs a distinct element of a contract (as required by the services to be performed as established by the bid) which is worthy of the dollar amount of the M/WBE Subcontract and the M/WBE carries out its responsibilities by managing and supervising the services involved and actually self-performing at least twenty percent (20%) of the services of the Subcontract with its own employees. For a supply effort, an M/WBE supplier performs a Commercially Useful Function when it is responsible for sourcing the material, negotiating price, determining quality and quantity, ordering the material and paying for it from its own funds. Commercial usefulness will be evaluated and determined by the OEO as informed by prevailing industry standards and the M/WBE's NAIC codes (which are found in the OEO Registry). Participation that is not commercially useful will not receive credit from OEO.

3. In order to maximize opportunities for as many businesses as possible, a firm that is certified in two or more categories (i.e., 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. Contractors will note with their submission which category, MBE or WBE is submitted for credit.

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

[2] Approved certifying agencies are identified on the OEO webpage found at www.phila.gov/OEO. Applicant is strongly encouraged to search the Pennsylvania Unified Certification Program ("PaUCP") Directory which offers a robust listing of DBEs; the PaUCP Directory is found at www.paucp.com.

4. An MBE or WBE submitting as the prime contractor is required, like all other contractors, to submit a bid that is responsive to the Policy. The MBE or WBE prime will receive credit towards the participation range for its certification category (e.g., MBE range or WBE range). In addition, the participation of an M/WBE partner, as part of a joint venture created for a contract, may be credited towards the participation ranges only to the extent of the M/WBE partner's ownership interest in the joint venture in accordance with the following criteria:

- The MBE or WBE partner(s) must be identified in the OEO Registry prior to contract award;
- The M/WBE partner(s) must derive substantial benefit from the arrangement;
- The M/WBE partner(s) must be substantially involved in all phases of the contract including planning, staffing and daily management;
- The business arrangement must be customary (i.e., each partner shares in the risk and profits of the joint venture commensurate with their ownership interest, contributes working capital and other resources, etc).

5. M/WBE Subcontractors must perform at least twenty percent (20%) of the total amount of work to be performed under the Subcontract with their own employees.

6. In listing participation commitments on the Solicitation for Participation and Commitment Form, contractors are required to list a detailed description of the services or supply effort, the dollar amount of the quotation, and percentage of the contract the participation represents. In calculating the percentage amount, contractors may apply the standard mathematical rules in rounding off numbers. The OEO reserves the right to request clarifying information from contractors in the event of an inconsistency or ambiguity in the Solicitation For Participation and Commitment Form.

B. RESPONSIVENESS

1. A bid responsive to the Policy is one which contains documentary evidence of the M/WBEs that have been solicited and that will be used by the contractor on the contract, if awarded; where the bid satisfies the M/WBE participation ranges, contractor is rebuttably presumed not to have discriminated in its selection of contract participants.

2. Contractors must submit documentary evidence of MBEs and WBEs who have been solicited and with whom commitments have been made in response to each of the participation ranges enumerated above. Subgrantee agrees that its contractor's failure to submit the Solicitation For Participation and Commitment Form will result in rejection of the bid as nonresponsive. The Solicitation For Participation and Commitment Form must contain the following information:

- Documentation of all solicitations (regardless of whether commitments resulted therefrom) as well as all commitments made on the enclosed document entitled "Solicitation For Participation and Commitment Form." Contractors should only make actual solicitations of M/WBEs whose services or materials are within the scope of the bid. Mass mailing of a general nature to M/WBEs or similar methods will not be deemed solicitation, but rather will be treated as informational notification only. A reasonable period of time should be given to all solicited firms to ensure that they have sufficient time to adequately prepare their quotes/subproposals. The contractor's listing of a commitment with an M/W/DSBE constitutes a representation that the contractor has made a legally binding commitment to contract with such firm, upon receipt of a contract award from Subgrantee.

- If the contractor has entered into a joint venture with an MBE or WBE

partner, the contractor is also required to submit along with the Solicitation For Participation and Commitment Form, a document entitled "Joint Venture Eligibility Information Form," available at OEO, for the OEO's review and approval of the joint venture arrangement.

3. If contractor does not fully meet each of the range(s) for participation established for the bid, contractor must demonstrate that it exercised Best and Good Faith Efforts to achieve the M/WBE participation ranges along with a written request, on its letterhead, for the reduction of part or all of the M/WBE participation ranges ("Request For Reduction/Waiver"). Contractor, through the submission of documentary evidence must show that contractor took all necessary steps and made reasonable efforts to achieve the M/WBE participation ranges, even if these efforts were not fully successful. OEO will evaluate the scope, intensity and appropriateness of these efforts to ascertain whether they could reasonably be expected to achieve M/WBE participation commensurate with the ranges. Failure to submit the documentary evidence will result in rejection of the proposal as nonresponsive; OEO, at its sole discretion, working in cooperation with PAID and the Subgrantee, may allow contractors to submit or amend their submission at any time prior to bid award which may result in revision to contractor's participation commitments. The Request For Reduction/Waiver shall contain and discuss, at a minimum, the following:

•Reasons for not committing with any MBE/WBEs that submitted a quote/subproposal, regardless of whether the quote/subproposal was solicited by contractor.

• Any additional evidence pertinent to contractor's conduct relating to the bid including sufficient evidence which demonstrates to the OEO that contractor has not engaged in discriminatory practices in the solicitation of and commitment with contract participants. In describing contractor's efforts to achieve participation within the ranges, contractor may submit any corroborating documentation (e.g., copies of advertisements for participation).

The contractor's documentary evidence will be reviewed by the OEO to determine whether contractor exercised Best and Good Faith Efforts in response to the participation ranges. Contractor's expressed desire to self-perform services with its own employees will not excuse contractor from exercising Best and Good Faith Efforts to include M/WBEs in its proposal and cannot be used as a basis for requesting a reduction or waiver of the participation ranges. OEO's review will include consideration of the following:

• Contractor's contracting activities and business practices on similar public and private sector contracts. For example, if contractor rejects any M/WBE based on price, contractor must fully document its reasons for the rejection and also demonstrate that contractor subjects non-M/WBEs to the same pricing standards. OEO will investigate whether there was any attempt at good faith negotiation of price.

• Whether M/WBEs were treated as equally as other businesses in the solicitation and commitment process. For example, the OEO will investigate whether M/WBEs are given the same information, access to the plans and requirements of the contract and given adequate amount of time to prepare a quote/subproposal as others who were solicited by applicant. The OEO will also investigate whether M/WBEs were accorded the same level of outreach as non-M/WBEs, for example whether contractor short listed M/WBEs for participation or solicited M/WBEs at any pre-bid meetings.

• Whether the contractor's contracting decisions were based upon policies which disparately affect M/WBEs. OEO will ascertain whether contractor selected portions of work or material needs consistent with the capacity of available M/WBE subcontractors and suppliers. OEO will consider whether contractor employed policies which facilitate

the participation of M/WBEs such as segmentation of the contract or prompt payment practices.

4. After review of the contractor's submission and other information the OEO deems relevant to its evaluation, the OEO will make a written determination that will be forwarded to PAID and Subgrantee.

C. RESPONSIBILITY

1. Upon award of a contract by Subgrantee, the completed Solicitation For Participation and Commitment Form and any accompanying documents regarding solicitation and commitments with MBEs and WBEs become part of the contract and the successful contractor is required to enter into legally binding agreement(s) ("M/WBE Subcontract(s)") with its M/WBE participants for the services and in the dollar amount(s) and percentage(s) as so committed (the "Contract Commitment(s)"). M/WBE percentage commitments are to be maintained throughout the term of the contract and shall apply to the total contract value (including amendments). Any change in commitment, including but not limited to, substitutions for the listed firm(s), changes or reductions in the work and/or listed dollar/percentage amounts, must be pre-approved in writing by the OEO.

2. Unless otherwise specified in the M/WBE Subcontract, the successful contractor shall, within five (5) business days after receipt of a payment from Subgrantee for services performed under the contract, deliver to its M/WBE participants, their proportionate share of such payment for services performed (including the supply of materials). In connection with the payment of its M/WBE participants, the successful contractor agrees to fully comply with the OEO's payment reporting process which may include the use of City electronic payment verification systems.

3. No privity of contract exists between the City and any M/WBE participant identified in any contract resulting under this Policy. The City does not intend to give or confer upon any such M/WBE participant(s) any legal rights or remedies in connection with the subcontracted services pursuant to Executive Order 03-12 or by reason of any contract resulting under this Policy except such rights or remedies that the M/WBE subcontractor may seek as a private cause of action under any legally binding contract to which it may be a party.

4. If the OEO determines that the contractor has discriminated against a M/WBE at any time during the term of the contract, the OEO may recommend to Subgrantee, PAID and the City's Director of Finance the imposition of sanctions on the contractor including debarment of the contractor from submitting and/or participating in future City of Philadelphia contracts for a period of up to three (3) years.

D. ACCESS TO INFORMATION

1. The OEO shall have the right to make site visits to the contractor's place of business and/or job site and obtain documents and information from any applicant, subcontractor, supplier, manufacturer or contract participant that may be required in order to ascertain contractor's responsiveness and responsibility.

2. Failure to cooperate with the OEO in its review may result in a recommendation to Subgrantee to terminate the contract.

E. RECORDS AND REPORTS

1. The successful contractor shall maintain all books and records relating to its M/WBE commitments (e.g. copies of quotations, subcontracts, joint venture agreement, correspondence, cancelled checks, invoices, telephone logs) and workforce utilization (e.g., certified payroll records) for a period of at least three (3) years following acceptance of final payment from Subgrantee. These records shall be made available for

inspection by the OEO and/or other appropriate City officials. The successful contractor agrees to submit reports and other documentation to the OEO as deemed necessary by the OEO to ascertain the successful contractor's fulfillment of its M/WBE commitments.

F. OVERSIGHT COMMITTEE

1. An oversight committee may be established consisting of representatives from PAID, Subgrantee, representatives of the building trades, the construction manager, and the City which may include the Project site's District Councilperson, OEO, and appropriate community organizations ("Committee"). The Committee will meet regularly to provide advice for the purpose of facilitating compliance with the Plan.

G. REMEDIES

1. The successful contractor's compliance with the requirements of Executive Order 03-12 is material to the contract awarded by Subgrantee. In the event OEO determines that the successful contractor has failed to comply with any of the requirements of this Policy, including substantial compliance with any Contract Commitment, OEO may, in addition to any other rights and remedies reserved by the City under the grant agreement, exercise one or more of the following remedies which shall be deemed cumulative and concurrent:

- Recommend to the Director of Finance debarment of the contractor from bidding on and/or participating in City contracts for a maximum period of three (3) years.
- Recommend to Subgrantee that Subgrantee withhold from the contract payment(s) or any part thereof until corrective action is taken by contractor.
- If corrective action is not taken to the satisfaction of OEO, OEO may recommend that the City, without institution of a lawsuit, recover grant funds in an amount equal to the M/WBE shortfall which amount shall be returned to the City and considered not as a penalty but as liquidated damages for contractor's failure to comply with the Policy.

The remedies enumerated above are for the sole benefit of the City and City's failure to enforce any provision or the City's indulgence of any non-compliance with any provision hereunder, shall not operate as a waiver of any of the City's rights in connection with the grant agreement nor shall it give rise to actions by any third parties including identified M/WBE participants.

Ken Curry CEO — 11-5-14

PRINT NAME OF BIDDER AND TITLE — **DATE**

CEO — 11-5-14

SIGNATURE OF BIDDER AND TITLE — **DATE**

Angela Dowd-Burton — 11-5-2014

ANGELA DOWD-BURTON, Executive Director, Office of Economic Opportunity — **DATE**