

City of Philadelphia



(Bill No. 110056)

AN ORDINANCE

Authorizing the Commissioner of Public Property and the Commissioner of Parks and Recreation, on behalf of the City of Philadelphia, to lease the land and improvements known as the Mann Center for Performing Arts, located on Parkside Avenue in West Fairmount Park, to the Philadelphia Authority for Industrial Development for sublease to the Mann Center for the Performing Arts and to enter into related agreements.

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. The Commissioner of Public Property and the Commissioner of Parks and Recreation, on behalf of the City of Philadelphia, are hereby authorized to lease the land and improvements known as the Mann Center for Performing Arts and appurtenant buildings, grounds and facilities (collectively, the "Premises") to the Philadelphia Authority for Industrial Development ("PAID"), for sublease to the Mann Center for the Performing Arts, a Pennsylvania nonprofit corporation ("Mann"). The approximate location of the Premises is shown on the sketch attached to this Ordinance as Exhibit "A". The sublease shall be substantially in the form set forth in Exhibit "B" to this Ordinance.

SECTION 2. The Commissioner of Public Property and the Commissioner of Parks and Recreation, on behalf of the City of Philadelphia, are hereby authorized to enter into agreements contemplated by the sublease and other agreements necessary to effectuate the purposes of this Ordinance.

SECTION 3. Subject to Section 17-1602 of The Philadelphia Code, PAID is not authorized to transfer the Premises to the Mann unless the Mann commits to an Economic Opportunity Plan in compliance with Section 17-1603 of The Philadelphia Code and to

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require any subsequent developer of the Premises to make comparable commitments for a period not to expire prior to five (5) years after the transfer by PAID.

SECTION 4. The City Solicitor is authorized to review and approve all agreements necessary to effectuate the purpose of this Ordinance and include in those agreements such terms and provisions as the City Solicitor deems necessary or appropriate to protect the interests of the City.

SECTION 5. The Chief Clerk of City Council is directed to keep on file and make available to the public for inspection during regular office hours the exhibits referred to in this Ordinance.

[Note: Exhibits to this Bill are on file in the Office of the Chief Clerk.]

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CERTIFICATION: This is a true and correct copy of the original Bill, Passed by the City Council on June 16, 2011. The Bill was Signed by the Mayor on July 5, 2011.



Michael A. Decker
Chief Clerk of the City Council

EXHIBIT E
City of Philadelphia
Economic Opportunity Plan
THE MANN CENTER FOR THE PERFORMING ARTS

I. Introduction, Definitions and Goals

A. The City of Philadelphia ("City"), Philadelphia Authority for Industrial Development (hereinafter "Landlord") and the Mann Center for the Performing Arts, Inc. (hereinafter "Tenant") strongly encourage the meaningful participation of certified Minority ("MBE"), Women ("WBE"), Disabled ("DSBE") and Disadvantaged¹ ("DBEs") Business Enterprises (collectively, "MW/DSBEs") and minority and female workers in the business opportunities represented by the "Master Plan," a plan for the rehabilitation and upgrade of the Mann Music Center, as more fully described in the Sublease Agreement between Landlord and Tenant ("Master Master Plan. This EOP shall be a part of and incorporated into all solicitations, bids and agreements issued by and entered into by Tenant and its contractors ("Participants"). Plan"). In support of this objective, Landlord requires that Tenant commit to this Economic Opportunity Plan ("EOP" or "Plan") and cause its contractors to commit to implementation of this EOP through their exercise of Best and Good Faith Efforts as such term is defined below .

This Plan contains ranges of projected MW/DSBE utilization and goals for the employment of minority and female workers in connection with the Master Plan. All Participants shall be obligated to fully comply with the requirements of the EOP. Participants verify that all information submitted to the City and Landlord, including without limitation, the EOP and all forms and attachments thereto, are true and correct and are notified that the submission of false information by the Participants is subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn falsification to authorities. The Participants also acknowledge that it is a felony in the third degree under 18 Pa.C.S. Section 4107.2 (a)(4) to fraudulently obtain public moneys reserved for or allocated or available to minority business enterprises or women's business enterprises.

B. For the purposes of this EOP, MBE, WBE, DBE and DSBE shall refer to certified businesses so recognized by the City through its Office of Economic Opportunity ("OEO"). Only the work or supply effort of firms that are certified as MW/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 MW/DSBEs maintained by the OEO and available online at www.phila.gov/oEO/directory.

C. For this EOP, the term "Best and Good Faith Efforts means efforts, the scope, intensity and appropriateness of which are designed and performed to foster meaningful and representative opportunities for participation by MW/DSBEs and an appropriately diverse workforce. Best and Good Faith Efforts are rebuttably presumed met, when commitments are made within the MW/DSBE Participation Ranges established herein 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

D. 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 Master Plan, the following participation ranges have been developed. These participation ranges represent, in the absence of discrimination in the solicitation and selection of M/W/DSBEs, the percentage of MBE, WBE and DSBE participation that is reasonably attainable in the Master Plan through the exercise of Best and Good Faith Efforts by Participants. 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 and DSBE or WBE and DSBE) will only be credited toward one participation range as either an MBE or WBE or DSBE. The firm will not be credited toward more than one category. These ranges are based upon an analysis of factors such as the size and scope of the opportunity(ies) and the availability of MBEs, WBEs and DSBEs to perform various elements of the opportunity(ies):

OPPORTUNITY	MBE	WBE	DSBE
PROFESSIONAL SERVICES	5%-10%	2%-7%	BEST EFFORTS%
CONCESSIONS	5%-10%	2%-7%	BEST EFFORTS
FACILITY OPERATIONS	15%-20%	10%-15%	BEST EFFORTS
CONSTRUCTION	20%-25%	10%-15%	BEST EFFORTS

2. Employment Goals

Participants agree to exhaust their Best and Good Faith Efforts to employ minority persons and females in its workforce at the following levels³:

- 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

II Responsiveness

A. M/W/DSBE commitments shall be evidenced by Participants on the form entitled, "M/W/DSBE Participation and Workforce Commitments." The identified commitment to use an M/W/DSBE on this form constitutes a representation by Participant that the M/W/DSBE is capable of completing the subcontract with its own workforce, and that the Participant has made a legally binding commitment with the firm for the work or supply effort described and the dollar/percentage amount(s) set forth on

³ These goals, which have been adopted by the Economic Opportunity Cabinet, are the recommendations of the Mayor's Commission on Construction Industry Diversity.

the form. In calculating the percentage of M/W/DSBE participation, the standard mathematical rules in rounding off numbers apply. In the event of inconsistency between the dollar and percentage amounts listed on the form, the percentage will govern. M/W/DSBE commitments are to be memorialized in a written subcontract and Participants agree to maintain the M/W/DSBE percentage commitments throughout the term of the subcontract. 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 and an exhibit to this EOP. OEO will review Participants' 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 implementation of the Master Plan.

IV. Compliance and Monitoring of Best and Good Faith Efforts

A. Participants agree to cooperate with OEO in its compliance monitoring efforts, and to submit, upon the request of OEO, documentation relative to implementation of the EOP, 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, the Tenant 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 inspection by OEO.

B. Prompt Payment of M/W/DSBEs

1. The Tenant agrees and shall cause all its contractors to ensure that all M/W/DSBEs participating in the Master Plan receive payment for their work or supply effort within five (5) business days after receipt of a proper invoice following satisfactory performance.

C. Oversight Committee

1. For this EOP, in the sole discretion of City, an oversight committee may be established consisting of representatives from PAID, Tenant, representatives of the building trades, the construction manager, 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 EOP.

V. Remedies and Penalties for Non-Compliance

A. Participants agree that their compliance with the requirements of this EOP is material to the Sublease. Failure to comply with the EOP may constitute a substantial breach of the Sublease and is subject to the remedies and penalties contained therein or otherwise available at law or in equity. Notwithstanding the foregoing, no privity of contract exists between PAID, Tenant, the City and any M/W/DSBE identified in any contract resulting from implementation of the EOP. Neither PAID, Tenant 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 the EOP 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.

Mann Center For The Performing Arts, Inc.

M/W/DSBE Participation and Workforce Commitments
 EOPs FOR BIDS ESTIMATED AT MORE THAN \$250,000

DEPARTMENT OF COMMERCE OFFICE OF ECONOMIC OPPORTUNITY (OEO)						
Minority (MBE), Woman (WBE), Disabled (DSBE) and Disadvantaged (M-DBE and W-DBE) Business Enterprises ¹						
BID NUMBER -		NAME OF BIDDER -		BID OPENING DATE -		
<i>List below all MBE/WBE/DSBE/DBEs² that you have a commitment to use for a Commercially Acceptable Function On this Bid - Photocopy this form as necessary.</i>						
<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> DSBE <input type="checkbox"/> M-DBE ² <input type="checkbox"/> W-DBE ² <input type="checkbox"/> Subcontractor <input type="checkbox"/> Supplier		Quote Received		Amount Committed To		
Company Name		Work or Supply Effort to be Performed	YES ³	NO	Dollar Amount \$	
Address						
Contact Person						
Telephone Number	Fax #					
E-mail Address						
OEO Registry #	Certifying Agency			Percent of Total Proposal %		
<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> DSBE <input type="checkbox"/> M-DBE ² <input type="checkbox"/> W-DBE ² <input type="checkbox"/> Subcontractor <input type="checkbox"/> Supplier		Quote Received		Amount Committed To		
Company Name		Work or Supply Effort to be Performed	YES ³	NO	Dollar Amount \$	
Address						
Contact Person						
Telephone Number	Fax #					
E-mail Address						
OEO Registry #	Certifying Agency			Percent of Total Proposal %		
<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> DSBE <input type="checkbox"/> M-DBE ² <input type="checkbox"/> W-DBE ² <input type="checkbox"/> Subcontractor <input type="checkbox"/> Supplier		Quote Received		Amount Committed To		
Company Name		Work or Supply Effort to be Performed	YES ³	NO	Dollar Amount \$	
Address						
Contact Person						
Telephone Number	Fax #					
E-mail Address						
OEO Registry #	Certifying Agency			Percent of Total Proposal %		

¹MBE/WBE/DSBEs Listed above must be certified prior to bid submission date.
²If Bidder makes commitments with DBEs, Bidder shall indicate which class type M-DBE or W-DBE is submitted for credit.
³Bidder should attach quotation with this form, but the City reserves the right to request this information which shall be submitted by bidder within 48 hours of the City's Request.
 Please make additional copies when necessary.

REV 09/2010

