City of Philadelphia
Economic Opportunity Plan
Pennsylvania Ballet Phase I

I. Introduction and Definitions

A. In support of the City's Antidiscrimination Policy, Chapter 17-1600 of The Philadelphia Code requires the development and implementation of "Economic Opportunity Plan(s)" for certain classes of contracts and covered projects as defined in Section 17-1601. The Economic Opportunity Plan ("Plan") memorializes the Owner's best and good faith efforts to provide meaningful and representative opportunities for M/W/DSBEs in contracts and covered projects and identifies the Owner's outreach and hiring activities for employing an appropriately diverse building trade(s) workforce in connection with the contract or covered project.

The Owner hereby verifies 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.

B For the purposes of this Plan, MBE, WBE and DSBE shall refer to businesses so recognized by the City of Philadelphia through its Office of Economic Opportunity ("OEO"). Only the work or supply effort of firms that are certified as M/W/DSBEs by an OEO approved certifying agency[1] 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: a Owner's efforts, as evaluated by the City, the scope, intensity and appropriateness of which are designed and performed to achieve meaningful business opportunities for M/W/DSBEs and building trades employment opportunities for journeyperson and apprentice minorities and females.

The following are examples of Best and Good Faith Efforts:

- Owner seeks assistance from the Philadelphia area building trades and the Diversity Apprenticeship Program to conduct employment outreach and identify minority and female apprentices and journeypersons for work on the project.

[1]A list of "OEO approved certifying agencies" can be found at www.phila.gov/oeo

- Owner adheres to a published policy of nondiscrimination in the hiring, retention and promotion of employees which includes communication of that policy to Owner's project forepersons.
- Owner sponsors minority or female apprentices or otherwise demonstrates support of pre-apprentice, apprenticeship or training program(s) that target the employment of minority persons and women.
- Owner makes commitments to use MBEs, WBEs and DSBEs in its bidding process for commercially acceptable subcontracted services and materials supply even when the Owner might otherwise prefer to perform/supply these items without subcontracting.
- Owner timely solicits through all reasonable and available means the interest of OEO certified businesses that have the capability to perform the work of the Bid. Such efforts include use of the OEO Directory of Certified Firms, attendance at pre-bid meetings, advertising in minority focused publications, written mailings to M/W/DSBEs. The Owner must determine with certainty if the M/W/DSBEs are interested by taking appropriate steps to follow up on initial solicitations; one time contact, without any follow up, is not acceptable.
- Owner provides interested MBEs, WBEs and DSBEs, prior to the date of loan/grant application submission, with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation. Assistance may include estimating support.
- Owner provides arms length business assistance to interested M/W/DSBEs which may include access or introduction to major manufacturer/suppliers, lines of credit and union halls.
- Owner negotiates in good faith with interested M/W/DSBEs. An Owner using good business judgment would consider a number of factors in negotiating with subcontractors, including M/W/DSBE subcontractors, and would take a firm's price and capabilities as well as the objectives of Chapter 17-1600 into consideration.

II. Project Scope

The Pennsylvania Ballet Association ("Owner") purchased a parcel of land and five buildings in the 300 block of North Broad Street for $5,500,000 that will become the Pennsylvania Ballet's Louise Reed Center for Dance. Located at 323-31 North Broad Street and 1315-47 Wood Street, the property measures approximately one-half acre and will provide the Owner with a highly visible location on which to build its new rehearsal and administrative facility. The property is one-half block north of the Broad and Vine Streets intersection, easily accessible from all suburban locations due to its proximity to the Vine Street Expressway (I-676). It is also close to the Broad Street subway and SEPTA bus routes.

The Owner will retain and renovate the four-story structure on the northwest corner of the property, measuring 16,000+ square feet, to house administrative

services, staff, and executive offices. Two existing one-story structures on the east end of the property, measuring 13,000 square feet in totality, which meet clear span and dimensional requirements, will be renovated to house four dance studios, wardrobe department and storage, pilates studio, employee lounges, and offices for the artistic staff.

Due to the clear span and dimensional requirements for studio space two existing three-story structures will be demolished to allow for construction of two new one-story structures totaling 8,000 square feet. The new structures will house a large dance studio, highly visible and spacious lobby suitable for events and outreach activities, locker rooms, restrooms, and lobby for the new dance school.

The remaining land west of the aforementioned buildings will be landscaped with plantings and hardscape material creating an inviting courtyard.

The anticipated total budget for developing this site is $16,200,000. This includes acquisition costs of $5,708,000 and demolition, renovation, financing, and construction costs of $10,492,000. Included in the latter figure are also hard and soft costs required to execute the project.

The ballet has retained the services of Erdy McHenry Architecture, LLC for design services, Bittenbender Construction, LP as the Owners Representative, and L.F. Driscoll, Company, LLC ("Driscoll") as the Construction Manager.

The project will be completed in three phases. Phase One consisting of renovation of the one-story structures and construction of one single story structure will commence Winter 20111 with completion expected Fall 2012. The total cost of Phase I is expected to be $5,375,000. Subsequent phases are anticipated to be completed by 2014.

A. Duration. This Plan shall apply to contracts awarded and procurements by the Owner and all Participants throughout the entire length of the Project.

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 Projects and communicated to all Participant levels.

III. Economic Opportunity Plan Commitments

A. M/W/DSBE Participation

As a benchmark for the expression of "Best and Good Faith Efforts" to provide meaningful and representative opportunities for M/W/DSBEs in the Pennsylvania Ballet Phase I, 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 MBE, WBE and DSBE participation that is reasonably attainable through the exercise of Best and Good Faith Efforts. These percentages relate to the good faith estimated cost of the entire Pennsylvania Ballet Phase I. 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 development and the availability of MBEs, WBEs, DSBEs and DBEs to participate in this development:

	Minority	Female	Disabled
Contracts	Owned	Owned	Owned
Professional Services		1%	
Construction Contractors	15%	8%	
Services, Supplies, & Equipment			

B. Employment of a Diverse Workforce

Owner agrees to exhaust its Best and Good Faith Efforts to employ minority persons and females in its workforce of apprentices and journeymen. Owner is obligated to exhaust its Best and Good Faith Efforts to employ[2]:

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

IV. Evaluation of Responsiveness and Responsibility

A. Driscoll shall identify all M/W/DSBE commitments and other agreements evidencing its intent to use Best and Good Faith efforts to employ minority persons and females at the levels stated herein on the form entitled, "M/W/DSBE Participation and Workforce Commitments." The identified commitments on this form constitutes a representation that the M/W/DSBE is capable of providing commercially useful goods or services relevant to the commitments and that the Driscoll has entered into a legally binding commitments or other legally binding agreements 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

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

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 and an exhibit to the Agreement resulting from the RFP.

C. OEO will review Driscoll's 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 construction and development of the Project.

1. Best and Good Faith Efforts will be evaluated on the basis of Owner's BGFE Form and any other information requested from Owner by the City.

2. Commercially Acceptable Function

A Contractor that enters into a subcontract with an M/W/DSBE shall be considered to have made a Best and Good Faith Effort in that regard only if its M/W/DSBE subcontractor performs a commercially acceptable function ("CAF"). An M/W/DSBE is considered to perform a CAF when it engages in meaningful work or supply effort that provides for a distinct element of the subcontract (as required by the work to be performed in accordance with Bid specifications), where the distinct element is worthy of the dollar amount of the subcontract and where the M/W/DSBE carries out its responsibilities by actually performing, managing and supervising the work involved; M/W/DSBE subcontractors must perform at least twenty percent (20%) of the cost of the subcontract (not including the cost of materials, equipment or supplies incident to the performance of the subcontract) with their own employees.

The City may evaluate the amount of work subcontracted, industry practices and any other relevant factors in determining whether the M/W/DSBE is performing a CAF and in determining the amount of credit the contractor receives towards the participation ranges. For example, a contractor using an M/W/DSBE non-stocking supplier (i.e., a firm that does not manufacture or warehouse the materials or equipment of the general character described by the Bid specifications and required under the contract) to furnish equipment or materials will only receive credit towards the participation ranges for the fees or commissions charged, not the entire value of the equipment or materials furnished.

V. Compliance and Monitoring of Best and Good Faith Efforts

A. The Owner agrees to cooperate with OEO in its compliance monitoring efforts, and to submit, within the time limits prescribed by OEO, all documentation which may be requested by OEO relative to the awarded contract, including the items described below. The Owner must provide as required and maintain the following contract documentation for a period of three (3) years following acceptance of final payment under the contract:

- 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;

- Telephone logs and correspondence relating to M/W/DSBE commitments.

- To the extent required by law, Driscoll 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

The Owner shall include in its contract with Driscoll provisions requiring that, no later than ten (10) days after receiving any payment from the Owner that includes amounts attributable to Work performed, or materials or equipment supplied by, a subcontractor or supplier, Driscoll shall pay the subcontractor or supplier the amount paid to Driscoll on account of the subcontractor's or supplier's work, materials or equipment. To the extent required by the Laws all monies paid to Driscoll on account of subcontractor or supplier work, materials or equipment shall be regarded as held in trust for the relevant subcontractors and/or suppliers and shall not be used for any other purpose.

1. The Owner shall include in its contract with Driscoll provisions for the Owner to make payment to Driscoll as follows: Within thirty (30) days of the Owner's receipt of a properly submitted and correct application for payment, the Owner will pay Driscoll. If the Owner determines that the request for progress payment is filled out incorrectly or incompletely or is not properly documented, the Owner shall so notify Driscoll, in writing, within ten (10) business days of receiving the request, stating the reason for its objection. The Owner may also withhold amounts due to defective Work and other identified non-compliance with the for the Contract, provided that it has given written notice of the deficiency giving rise to the withholding within seven (7)

days of the date after the Owner received notice of the deficiency. The Owner shall proceed to pay all undisputed sums invoiced within the allowed thirty (30) days. Provided, however, that Owner's obligation to make payment to Driscoll is subject to the express condition precedent of receipt of payment by Owner from its construction lender for Driscoll's Work. The Owner shall also include in its contract with L. F. Driscoll Company, LLC requirements that Driscoll provide information that fully complies with the City's payment reporting process which may include the use of electronic payment verification systems.

2. Each month of the contract term and at the conclusion of the contract, the Owner shall require that L. F. Driscoll Company, LLC provide to the OEO documentation reconciling actual dollar amounts paid to M/W/DSBE subcontractors to M/W/DSBE commitments presented in the BGFE Form.

C. Oversight Committee

1. The Owner and/or at the discretion of the City of Philadelphia, in consultation with the appropriate agencies and entities, will establish and identify the members of a Project Oversight Committee, to include representatives from the Owner, the Developer and/or the General Contractor and Construction Manager, the Building Trades, and the City which may include the Project site's District Councilperson, OEO, and appropriate community organizations ("Committee"). 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 its implementation and the successful completion of the Project.

   A meeting of the Oversight Committee shall be called by the Owner or the City of Philadelphia 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 its implementation and the successful completion of the Project.

2. If a Project Oversight Committee is established, the City will convene meetings of the Committee no later than one (1) month after issuance of the Notice To Proceed and/or project has started.

D. Reporting

The Owner will provide a report along with the requisition for payment of the loan detailing its best faith effort in MWDSBE subcontractor participation. Additionally, the Owner, will agree to file an annual report with the City of Philadelphia's Mayor and City Council concerning the performance of the

Economic Opportunity Plan within the Project. Snapshot reporting will include: (i) utilization of M/W/DSBEs and/or DBEs; (ii) the hiring and employment of minorities and females, (iii) the hiring and employment of Philadelphia residents and; (iv) training programs utilized and the placement rates. All reports (quarterly & annually) to the City under this section will be provided to the Executive Director of the Office of Economic Opportunity and to the members of the Oversight Committee where applicable.

VI. Remedies and Penalties for Non-Compliance

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

B. In conciliation, the Participant must satisfy the Owner and the Oversight Committee that they have made their *best and good faith efforts* to achieve the agreed upon participation goals by certified M/W/DS-BE and/or DBE firms. *Best and good faith efforts* on the part of the Participant/Contractor include:

1) Entering into a contractual relationship with the designated M/W/DS-BE and/or DBE firm in a timely, responsive and responsible manner, and fulfilling all contractual requirements, including payments, in said manner.

2) Notifying all parties, including the Owner, the M/W/DS-BE and/or DBE firm, the Oversight Committee and all relevant Participants, of any problems in a timely manner.

3) Requesting assistance from the Owner and/or the Oversight Committee in resolving any problems with any M/W/DS-BE and/or DBE firm.

4) Making every reasonable effort to appropriately facilitate successful performance of contractual duties by an M/W/DS-BE and/or DBE firm through timely, clear and direct communications.

C. In cases where the Owner and/or the Oversight Committee have cause to believe that any Participant has failed to comply with the provisions of the Plan, they shall conduct an investigation.

D. After affording the Participant notice and an opportunity to be heard, the Owner and/or the Oversight Committee are authorized to 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 as ineligible to receive the award of a contract, continue a contract and/or ineligible for any other future contracts affiliated with this Plan;

2) Suspending the violating Participant from doing business with the Owner;

3) Withholding payments to the violating Participant; and/or

4) Pursuing and securing any relief which the Owner and/or the Oversight Committee may deem to be necessary, proper, and in the best interest of the Owner and the Project, consistent with applicable policy and law.

E. A Participant may appeal a determination of non-compliance with this Plan by filling a written grievance with the Owner and/or its Oversight Committee.

F. Within five (5) working days the Owner and/or the Oversight Committee shall issue and serve a written notice/determination, together with a copy of the grievance as filed, to all persons named in the grievance.

Michael Nolan 1/6/2012

SIGNATURE OF Owner Representative[3] DATE

Angela Dowd-Burton 1/6/2012

ANGELA DOWD-BURTON, Executive Director, Office of Economic Opportunity[4] DATE

[3]The Owner's Representative is required to sign and date, but the City reserves the right to obtain the Owner's Representative signature thereon at any time prior to Plan certification. The Owner Representative will receive from the City a certified copy of its Plan which should be filed with the Chief Clerk of City Council within fifteen (15) days of the issuance and published by OEO, in a downloadable format, on the OEO website.

[4] Pursuant to Section 17-1603 (2) of The Philadelphia Code, the representative of the City of Philadelphia's Office of Economic Opportunity, the "certifying agency", certifies that the contents of this Plan are in compliance with Chapter 17-1600.