City of Philadelphia
Economic Opportunity Plan
[Philabundance]
(Philadelphia Stormwater Management Improvements Grant, 3600-46 S. Galloway St.)

I. INTRODUCTION AND DEFINITIONS

A. 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 Philabunance, hereafter, the Owner 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 Philabundance Hunger Action Center is located at 3600-46 S. Galloway Street. Philabundance has received a Stormwater Management Incentive Program (SMIP) grant to create bioretention basins on existing impervious areas to decrease stormwater runoff to the City's sewers. The actual current impervious area is approximately 96% of the site, 108,000 SF or 2.48 Acres.

The proposed improvements will collect the first one (1) inch of runoff from the Directly Connected Impervious Areas (DCIA) and convey this runoff to planted bioretention basins. The proposed bioretention basins will be sized to hold the first one (1) inch of runoff and route the overflow runoff to City's combined sewer system via outlet structures.

The proposed improvements will add approximately 4,200 SF (0.1 Acre) of green space to an area of the City severely lacking in green space. Philabundance is dependent on volunteers to support the collection and distribution of food to needy people. The majority of these volunteers come to the facility. The proposed

improvements will be highlighted by Philabundance to educate these people on the benefits of green infrastructure.

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 Philabundance Stormwater Management Improvements Grant, 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 Philabundance Stormwater Management Improvements Grant. 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	15% - 20%	and/or	15% - 20%	and/or	15% - 20%
Construction Contractors	15% - 20%	and/or	15% - 20%	and/or	15% - 20%

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]:

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

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. The Owner 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. The identified commitments constitutes a representation that the M/W/DSBE is capable of providing commercially useful goods or services relevant to the commitments and that the Owner has entered into a legally binding commitments or other legally binding agreements with M/W/DSBEs for the work or supply effort described. 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, 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 Verification Forms, become part of and an exhibit to the Agreement.

C. OEO will review the Owner 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 and any other information requested from Owner by the City.

2. Commercially Useful 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 useful function ("CUF"). An M/W/DSBE is considered to perform a CUF 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 CUF 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, the Owner 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 Owner 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 fifteen (15) business days after receipt of payment from Philabundance.
2. The Owner shall within a timely manner after receipt of an invoice for payment for work performed under the contract, deliver to its M/W/DSBE subcontractors their proportionate share of such payment for work performed (including the supply of materials). In connection with payment of its M/W/DSBE subcontractors, the Owner agrees to fully comply with the City's payment reporting process which may include the use of electronic payment verification systems.
3. Each month of the contract term and at the conclusion of the contract, the Owner shall 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 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. In addition, during construction, the Owner will provide higher-level "snapshot" reports to the Oversight Committee containing updates for certain categories of information contained in its annual report on a monthly basis during construction, and on a quarterly basis during the first year of operations. Snapshot reporting will include: (i) utilization of M/W/DSBEs; (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.

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.

4/15/14

SIGNATURE OF Owner Representative[3] DATE

Angela Dowd-Burton 4/15/2014

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.