City of Philadelphia
Wynne Theatre Senior Residences
Economic Opportunity Plan

I. PROJECT AND PLAN INTRODUCTION

The project consists of **Wynne Theatre Senior Residences** (referred to hereafter as the "Project") for **Wynne Theatre Associates, LLC** (referred to hereafter as the "Owner") to Provide the **new Construction of 54 affordable senior rental units**, (provide location) **2001-11 54th St. Philadelphia, Pa 19131, within the city of Philadelphia**, Pennsylvania. The purpose, standards and procedures of this Economic Opportunity Plan (referred to hereafter as the "Plan") are the expressed wishes of the Owner as set forth herein. Participants shall include consultants, management, prime contractors, sub-contractors and vendors of supplies, equipment and materials. All participants will be obligated to fully comply with the requirements of the Plan.

The Owner is committed to provide meaningful and representative opportunities for minority-owned, women-owned and disabled-owned business enterprises, and economically disadvantaged-owned business enterprises (collectively referred to hereafter as "M/W/DS-BEs" and "DBEs") and individuals that are locally based in all phases of the Project. It is expected all Participants make the same commitment. Each Participant shall not, and furthermore, shall ensure that their associates, partners or representatives shall not, discriminate on the basis of race, color, religion, sex or natural origin in the award and performance of contracts pertaining to the Project or with respect to any and all related employment practices.

For all contracting efforts, each prime consultant and contractor shall use its good faith and nondiscriminatory efforts to provide joint venture partnerships, sub-consulting and subcontracting opportunities for minority, women, disabled, and/or disadvantaged business enterprises (collectively, M/W/DS-BE and/or DBE) registered in the City of Philadelphia's Office of Economic Opportunity ("OEO") and/or any agency that the City of Philadelphia recognizes as having *bona fide* certifying program. All participants in the Project shall observe and be subject to the enforcement of all relevant City of Philadelphia, Commonwealth of Pennsylvania and federal laws, ordinances, orders, rules and/or regulations regarding M/W/DS-BE and/or DBE firms and locally-based business enterprises. Furthermore, affirmative action will be taken, consistent with sound procurement policies and applicable laws to ensure that M/W/DS-BE and/or DBE firms are afforded a meaningful and representative opportunity to participate in contracts relating to the Project.

For the purposes of this Plan, the term "minority" shall refer to the following: black (all persons having origins in any of the Black African racial groups); Hispanic/Latino (all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin); Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent or the Pacific Islands); and American Indians (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

Agencies and representatives of the City of Philadelphia and/or Commonwealth of Pennsylvania may be consulted regarding the appropriate inclusion of M/W/DS-BE and/or DBE firms and socially/economically disadvantaged professionals in this Project as outlined in this Plan and with regard to its implementation.

II. PROCEDURES FOR DETERMINATION

A. Project Scope.

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

C. 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.

D. Goals

1. M/W/DSBE Participation Ranges

As a benchmark for the Bidder's/Respondent's expression of its Best and Good Faith Efforts to provide meaningful and representative opportunities for M/W/DSBEs in the contract, 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 on this contract through the exercise of Bidder/Respondent's Best and Good Faith Efforts. 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 contract and the availability of MBEs, WBEs and DSBEs to perform various elements of the contract:

Contracts	MBE	WBE	DSBE
Professional Services	2%	2%	2%
Construction Contracts	14%	4%	
Services, Supplies And Equipment	2%	1%	

2. Employment Goals

The Bidder's/Respondent's agrees to 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 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

III. BIDDER/RESPONDENT RESPONSIVENESS AND RESPONSIBILITY

A. Bidder/Respondent shall identify all its M/W/DSBE commitments and evidence its agreement to employ minority persons and females at the levels stated herein on the

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

form entitled, "M/W/DSBE Participation and Workforce Commitments." The Bidder's/Respondent identified commitment to use an M/W/DSBE on this form constitutes a representation by Bidder/Respondent, that the M/W/DSBE is capable of completing the subcontract with its own workforce, and that the Bidder/Respondent has made a legally binding commitment with the firm. The listing of the M/W/DSBE firm by Bidder/Respondent further represents that if Bidder/Respondent is awarded the contract, Bidder/Respondent will subcontract with the listed firm(s) 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, Bidder/Respondent shall apply the standard mathematical rules in rounding off numbers. In the event of inconsistency between the dollar and percentage amounts listed on the form, the percentage will govern. Bidder/Respondent is to maintain the M/W/DSBE percentage commitments throughout the term of the contract which shall apply to the total amount of the contract and any additional increases. In the event the Successful Bidder's/Respondent's contract is increased by change order and/or modification, or amendment, it shall be the responsibility of the Successful Bidder/Respondent to apply its Best and Good Faith Efforts to the amended amount in order to maintain any participation ranges committed to on the total dollar amount of the contract at the time of contract completion.

1. Commercially Acceptable Function

A Bidder/Respondent 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.

For example, a Bidder/Respondent 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/RFP 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.

B. Upon award, letters of intent, quotations, and any other accompanying documents regarding commitments with M/W/DSBEs, including the M/W/DSBE Participation and Workforce Commitments Form, become part of the contract. M/W/DSBE commitments are to be memorialized in a written subcontract agreement and are to be maintained throughout the term of the contract and shall apply to the total contract value (including approved change orders and amendments). Throughout the term of the contract, Bidder/Respondent is required to continue its Best and Good Faith Efforts.

C. In the event Bidder/Respondent does not identify on the M/W/DSBE Participation and Workforce Commitments Form that it has made M/W/DSBE commitments within the participation ranges established for this Bid and/or does not agree to the employment goals described herein, Bidder/Respondent must complete and submit a *Documentation of Best and Good Faith Efforts Form* ("BGFE Form"), documenting its solicitations and any commitments with M/W/DSBEs, and detailing any efforts made to include M/W/DSBEs in the contract and to employ a diverse workforce. The submission of the

BGFE Form is an element of bid/RFP responsiveness. The BGFE Form must include at a minimum, certification and documentary evidence that the following actions were taken:

1. Solicitation directed to both qualified M/W/DSBEs registered with OEO and qualified M/W/DSBEs certified by agencies approved by OEO. Bidder/Respondent must provide a list of all certification directories used for soliciting participation for this Bid/RFP. Bidder/Respondent must determine with reasonable certainty if the M/W/DSBEs are interested by taking appropriate steps to follow up on initial solicitations; one time contact, without follow up, is not acceptable; and

2. Bidder/Respondent provided interested M/W/DSBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation; and

3. Bidder/Respondent negotiated in good faith with interested M/W/DSBEs. A Bidder/Respondent 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 the Plan into consideration; and

4. Documentation of the following:

   i. Any commitments to use M/W/DSBEs in its Bid/RFP for subcontracted services and materials supply even when Bidder/Respondent would otherwise prefer to self-perform/supply these items; and

   ii. Correspondence between the Bidder/Respondent and any M/W/DSBE(s) related to this Bid/RFP; and

   iii. Attendance logs and/or records of any scheduled pre-bid/pre-proposal meeting; and

5. Certification and evidence that the following actions were taken or documentation of the following, or an explanation why these actions were not taken or why documentation does not exist:

   i. Any arms length business assistance provided to interested M/W/DSBEs which may include access/introduction to major manufacturer/suppliers, lines of credit and union halls; and

   ii. Solicitation through job fairs, newspapers, periodicals, advertisements and other organizations or media that are owned by M/W/DSBEs and/or focus on M/W/DSBEs; and

   iii. Telephone logs of communications related to this Bid/RFP; and

   iv. Notification of and access to Bid/RFP documents at the Bidder/Respondent's office or other office locations for open and timely review; and

   v. Bidder/Respondent sought assistance from the Urban Affairs Coalition, Careerlink Philadelphia, Opportunity Industrial Center and the Philadelphia Workforce Development Corporation to perform employment outreach; and

vi. Bidder/Respondent published its policy of nondiscrimination in the hiring, retention and promotion of employees; and

vii. Any agreement with an apprenticeship or training program that targets the employment of minority persons, disabled persons and women.

D. Good Faith Efforts.

Participants shall reasonably exhaust the use of best and good faith efforts as defined hereunder to provide appropriate participation and utilization opportunities for M/W/DS-BE and/or DBE firms. All Project contractors and vendors will be required to do likewise, consistent with best and sound procurement practices, and with applicable law. *Best and good faith efforts* will be deemed adhering to when a Participant meets the criteria set forth in this section and demonstrates and documents its efforts throughout the length of the Project. If the established ranges for inclusion of M/W/DS-BE and/or DBE firms are not met, a Participant must submit a Subcontracting/Vendor Plan showing how *best and good faith efforts* were made to achieve said ranges. This plan must include, but not be limited to, the following:

- Written request for assistance to the Owner three (3) business days prior to the Bid/RFP due date.
- Solicitation through newspapers, periodicals advertisements, and job fairs, etc.
- Telephone logs.
- Evidence of solicitation to qualified OEO and/or PAUCP registered/certified M/W/DS-BE and/or DBE firms.
- Bid/RFP results and reasons as to why no awards were made to M/W/DS-BE and/or DBE firms.
- Use of City/OEO-registered business firms via their directory at http://oeo.phila.gov/directory.asp
- Use of PAUCP certified business firms via their directory at www.paucp.com
- Correspondence between contracting firm and any M/W/DS-BE and/or DBE firms.
- Attendance logs and/or records of any scheduled pre-bid or pre-proposal meeting
- Specific, general and technical assistance offered and provided to M/W/DS-BE and/or DBE firms related to their portion of the project.
- Proof there was notification of and access to Bid/RFP documents at company or other office locations for open and timely review.

E. Owner requirements relative to monitoring of *best and good faith efforts* of Participants engaged in the Project shall be established by the Owner in consultation with appropriate city, state and federal agencies and/or private professional entities to include (in addition to further measures as may be required) the following:

1) Participants shall submit copies of signed contracts and purchase orders with M/W/DS-BE and/or DBE subcontractors.

2) Participants shall be ready to provide evidence of payments to their subcontractors, sub-consultants and supply vendors for participation verification. This documentation should be provided monthly or included with every request for payment to Contractors.

3) At the conclusion of work, the Subcontractor shall provide a statement or other evidence of the actual dollar amounts paid to M/W/DS-BE and/or DBE subcontractors.

4) All On-site Contractors shall be prepared to submit "certified" payrolls listing the following items for all on-site employees:

1. Full name
2. Social Security number
3. Full address
4. Trade classification (e.g., laborer, carpenter, apprentice, electrician, plumber, and foreman)
5. Gender
6. Race
7. Hours worked
8. All withholding (e.g., laborer, local, state, FICA, etc.)
9. Name of Contractor and Indication of Prime for Subcontractors
10. Name of Project

5) Certified payroll reports shall be signed by an authorized company officer.

6) The Participant shall comply with all applicable requirements of any federal, state or local law ordinance or regulation relating to contract and payroll compliance.

F. Documentation of *Best and Good Faith Efforts* and Compliance.

Two components have been established to facilitate the inclusion of M/W/DS-BE and/or DBE firms as contractors and vendors, and minority /female/local residents as Project site workforce participants:

1) *M/W/DS-BE and/or DBE contracting and vending participation levels*: the basis for each determination will be the total dollar amount of the bid/contract OR the total dollar amount of the bid/contract for the identified Project task.

2) *Minority/Female/Local Resident Employment Participation Levels*: the basis for each determination will be the projected total on-site field employee hours divided by the number of minority, female and local residents' employee hours anticipated to be performed on the Contractor's payroll, and each of the Contractor's on-site subcontractors payrolls.

G. Oversight Committee

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, including representatives from the Owner, the Developer and/or the General Contractor, The Office of Economic Opportunity, City Council, and community organizations. 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.

H. Reporting

The Owner, will agree to file an annual report with the City of Philadelphia 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 Office of Economic Opportunity and to the members of the Oversight Committee.

IV. CERTIFIED M/W/DS-BE AND/OR DBE FIRMS

A. Only businesses that are owned, managed and controlled, in both form and substance, as M/W/DS-BE and/or DBE firms shall participate in this Project's Economic Opportunity Plan. To ensure this standard, all businesses, including joint ventures, must be registered with the City of Philadelphia's Office of Economic Opportunity (OEO) or members of the Pennsylvania Unified Certification Program (PAUCP).

B. M/W/DS-BE and/or DBE certification should not be the sole determination of a Bidder/Respondent's or Contractor's financial or technical ability to perform specified work. The Owner reserves the right to evaluate the Contractor's or Subcontractor's ability to satisfy financial, technical, or other criteria separate and apart from said certifications before bid opening. Pre-qualification conditions and requirements shall be conveyed in a fair, open and non-discriminatory manner to all.

C. The Owner recognizes that M/W/DS-BE and/or DBE certifications may expire or the firm may experience de-certification by an authorized governmental entity. Certifications that expire during a firm's participation on a particular phase of the Project may be counted toward overall goals for participation ranges. However, said firm MUST become re-certified prior to consideration for future goal credit in the Project's Plan. If a firm has been de-certified, said firm would not be eligible to participate.

V. 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.

VI. GUIDELINES FOR JOINT VENTURING

Joint Venture relationships with certified M/W/DS-BE and/or DBE firms must meet the following criteria in order to receive credit towards participation goals:

1) The M/W/DS-BE and/or DBE partner(s) must be certified by OEO, PAUCP or a qualified governmental agency authorized by law to certify such enterprises prior to proposal/bid submission.

2) The M/W/DS-BE and/or DBE partner(s) must be substantially involved in significant phases of the contract including, but not limited to, the performance (with its own work force) of a portion of the on-site work, and of administrative responsibilities, such as bidding, planning, staffing and daily management.

3) The business arrangements must be customary (i.e., each partner shares in the risk and profits of the joint venture commensurate with their respective ownership interests).

4) If a certified partner is a MBE, WBE, DSBE, and/or DBE the participation will be credited only to the extent of the partner's ownership interest in the joint venture; there will remain a requirement to meet M/W/DS-BE and/or DBE goals.

Owner Representative — Date: 9/16/13

Office of Economic Opportunity — Date