

Stormwater Incentives Grant Manual

Stormwater Management Incentives Program and
Greened Acre Retrofit Program



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General Information

01



Background Information

The City of Philadelphia, through the Philadelphia Water Department (PWD) and the Philadelphia Industrial Development Corporation (PIDC), has created two stormwater incentives grant programs, the Stormwater Management Incentives Program (SMIP) and the Greened Acre Retrofit Program (GARP), to offer assistance to non-residential PWD customers. On behalf of PWD, PIDC offers grant funding to stimulate investment in and utilization of stormwater best management practices to mitigate the impacts of stormwater runoff. These grants will allow businesses, institutions and other non-residential customers to reduce their stormwater charges by providing funding for the design and construction of stormwater projects. More information about the differences between SMIP and GARP can be found in a fact sheet accompanying this manual.

Projects will be evaluated based on a variety of criteria detailed in the Project Evaluation Criteria Section (page 15). Competitive SMIP projects will limit funding requests to \$100,000 per impervious acre or less, GARP projects to \$90,000 or less. GARP is a grant program designed to facilitate project aggregation in Philadelphia's combined sewer area, hopefully offering participants lower overall project costs, while SMIP provides direct assistance to any impacted property owner.

All funded projects will be required to file a deed restriction in the form of an Operations and Maintenance Agreement on the property. This compels the property owner to maintain the improvement for 45 years and to grant the City access to the improved area throughout that time. A template of the Agreement can be found on page 22. Additionally, receipt of any grant proceeds will be conditioned on the completion of an Economic Opportunity Plan (EOP) with the City of Philadelphia's Office of Economic Opportunity (OEO) to document the grant recipient's best and good faith efforts to provide meaningful and representative opportunities for Minority, Woman and Disabled owned businesses (a sample EOP template is attached starting on page 32). A selection committee comprised of PWD staff will evaluate applications and issue decisions at the close of each fiscal quarter. Grantees will be eligible to receive credits on their stormwater charges upon successful construction of the stormwater retrofit project.

For more information about SMIP and GARP please go to www.phila.gov/swgrants. For questions about program specifics, please contact Erin Williams at PWD at Erin.Williams@phila.gov or 215-685-6070.

Applicants should deliver a CD-ROM or flash drive of completed SMIP or GARP Grant Applications to David Langlieb at:

**David Langlieb
Philadelphia Industrial Development Corporation
2600 Centre Square West
1500 Market Street
Philadelphia, PA 19102-2126**

APPLICATION SUBMISSION

A completed SMIP or GARP Grant Application must contain the following:

- 1. Application Form: Download the forms at www.pidc-pa.org/development-and-contract-opportunities and complete Sections #1-6. There is no page limit related to the application form.**
- 2. Narratives: The Narratives may not exceed 10 pages total. Directions for completing the Narrative Section are included in Section #7 of of each application.**
- 3. Exhibits: Directions for completing the Exhibit Section are included in Section #8 of each application. There is no page limit related to the Exhibits Section.**

Applicants can submit completed applications at any time. PIDC and PWD will issue decisions before the close of each fiscal quarter. Applicants not selected in a particular round have the option to roll over their applications to the next round without resubmitting.

Grant Requirements

02



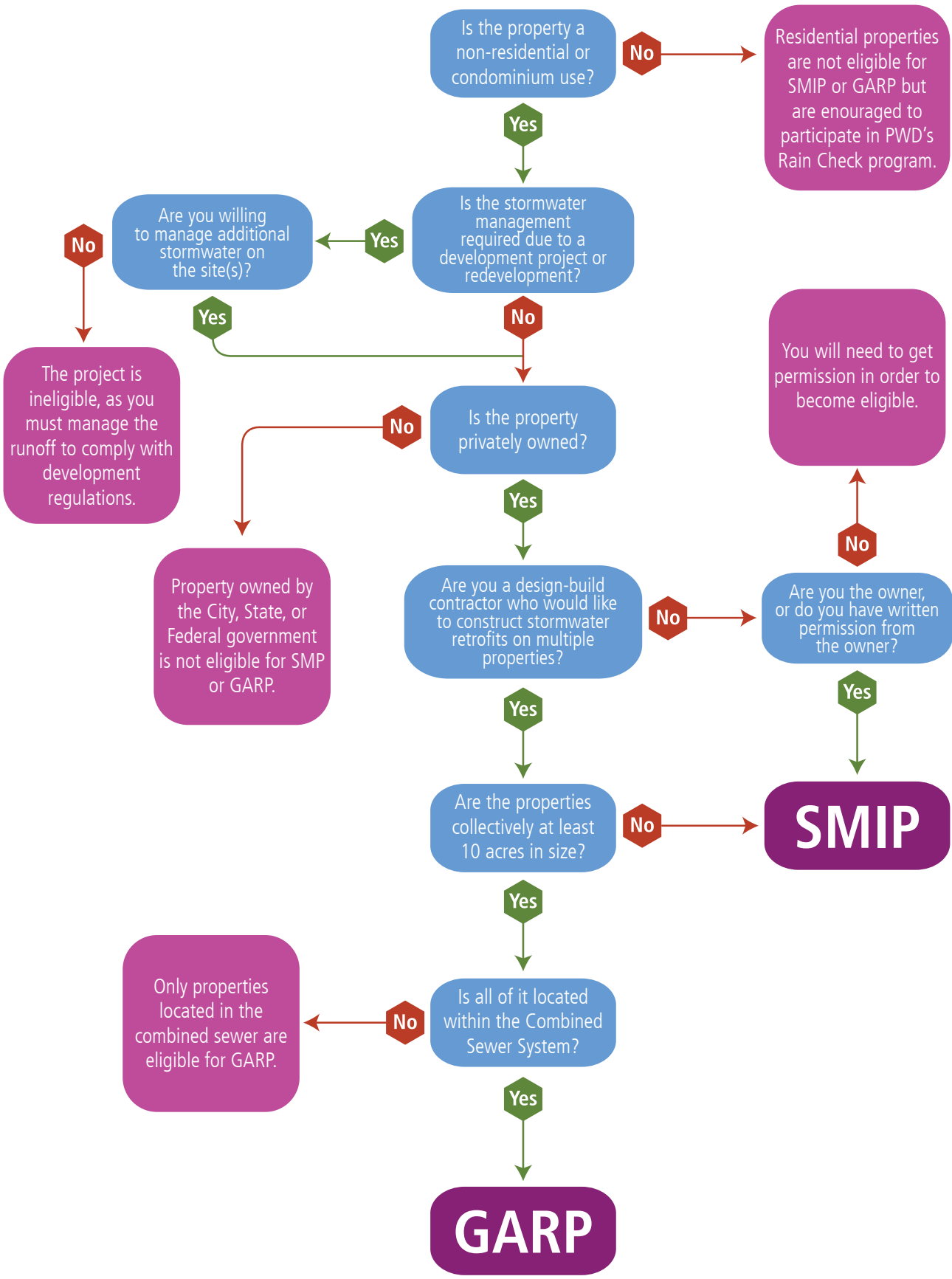


Eligibility Criteria

In order to be eligible for the SMIP or GARP Grant, applicants must satisfy the following criteria:

- The proposed stormwater management infrastructure must, at a minimum, manage runoff from non-residential or condominium properties located within the City of Philadelphia;
- SMIP applicants must own the parcel where the stormwater infrastructure will be built or have written permission from the owner of the parcel; GARP applicants must provide agreements or contracts with each participating property owner.
- The applicant cannot be an agency of the City of Philadelphia, the Commonwealth of Pennsylvania or any United States Department or Federal Agency;
- Any water bills associated with the properties where the proposed project will be constructed must be current, and both the applicant and property owner must be current and in good standing with all City of Philadelphia taxes and fees. An applicant or owner who is on a PWD payment plan will be considered in good standing as long as it is current on the payment plan;
- The applicant must complete and submit: (1) Grant Application Form, (2) a Narrative, and (3) an Exhibit Section which includes, but is not limited to, a Philadelphia Tax Status Certification Request and a Financial Disclosure Form. The applicant must provide in a timely basis any additional information requested by PWD and PIDC;
- The project must reduce the amount of runoff generated by impervious surfaces on the property. Infrastructure must be designed to capture at least the first inch of runoff from the impervious areas;
- Applicants who are required to perform stormwater management due to a Development project are only eligible to apply for a grant if they are proposing stormwater infrastructure that manages runoff in addition to that required by the regulations. PWD would consider a grant only for those incremental costs incurred in order to provide stormwater management for the additional runoff. Chapter 6 of PWD's Regulations require on-site management of the first inch of stormwater runoff for all Development projects that disturb 15,000 square feet of earth or more. More information about the Stormwater Regulations can be found at [http:// www.phila.gov/water/wu/ratesregulationsresp/ Pages/ Regulations.aspx](http://www.phila.gov/water/wu/ratesregulationsresp/Pages/Regulations.aspx).

Is my project eligible for SMIP or GARP?



Restrictions And Ineligible Activities

The following activities are not eligible for support under the SMIP or GARP Grants:

- Designs, plans, or research that is not part of a stormwater infrastructure construction project;
- Use of funds for political advocacy, boycotts, advertising, litigation or legal expenses; and
- Use of funds for legally mandated actions under local, state, or federal law, and/or associated with administrative permit conditions or terms of settlement agreements.

Stormwater Management Credits

Owner of property(s) will receive credits towards their stormwater charge once construction is complete and the stormwater infrastructure has been approved by PWD. Property owners will be required to renew their credit applications every four (4) years. Failure to comply with PWD's credits renewal procedures or the terms of the Operations and Maintenance Agreement will result in the stormwater credit associated with the grant project being revoked.

For more information about stormwater credits please visit <http://www.phila.gov/water/wu/stormwater/Pages/default.aspx>

Grant Conditions

As a condition of receiving a SMIP or GARP Grant, the grantee is required to agree to the following:

1. Grantees must enter into a subgrant agreement and comply with its terms.
2. Property Owners must file a deed restriction in the form of an Operations and Maintenance Agreement to ensure that the stormwater infrastructure funded from the grant shall remain in place and be properly maintained for a period of at least 45 years. A template of the agreement can be found on page 22.
3. Property Owners must provide PWD access to the stormwater infrastructure so that it may enter upon the property with the rights of testing, inspecting, maintaining, operating, repairing and replacing the stormwater infrastructure should it ever become necessary for PWD to do so.
4. Grantees will be required to meet with representatives of the Office of Economic Opportunity to prepare an Economic Opportunity Plan (EOP). EOPs will establish overall contract goals for Minority, Woman and Disabled owned business participation in the design and construction of the grant-funded green stormwater infrastructure projects. Grantees will be expected to show best and good faith efforts in complying with the terms and conditions of their EOP (A copy of a sample EOP template is attached starting on page 32). An independent agency will be retained by the Department to monitor compliance with the EOP commitments
5. All information submitted to PWD and PIDC is considered public information and may be posted online in fact sheets, presentations or other education and outreach materials. Please consult a professional tax advisor about any potential tax implications as a result of receiving these funds.

	SMIP	GARP
Sewershed	Both combined and separate	Combined only
Who receives grant?	Property Owner or Authorized Representative	Company/contractor on behalf of property owners
Who records Operations & Management Agreement?	Property Owner	Property Owner(s)
Who executes Economic Opportunity Plan?	Property Owner	Company/contractor
Items needed for application	Concept plan, project budget, O&M summary	Concept plan, project budget, agreements between property owners and company, including design-build contracts and O&M contracts
Maximum request amount	\$100,000 per impervious acre	\$90,000 per impervious acre
Minimum project size	None	10 acres



Project Evaluation Information

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Project Evaluation Information

Eligible projects will be evaluated based on the below criteria. PWD retains the sole discretion to evaluate proposals, make recommendations and provide grants.

EVALUATION CRITERIA

Economic Advantage

Projects will be evaluated based upon the total grant dollars requested per impervious acre managed. Competitive SMIP projects will limit grant funding requests to \$100,000 per impervious acre or less, GARP to \$90,000 or less. If total project costs exceeds the respective funding ratio, applicants should leverage PWD grant monies through matching funding or significant in-kind contributions. Projects should be as cost-effective as possible. Although there is no grant request minimum or maximum, projects must adhere to each programs' respective funding ratio to be eligible for grant funding.

Total Acres Managed and Volume Managed

Projects will be evaluated based upon the total number of impervious acres managed by the proposed stormwater management practice. Projects will be evaluated based on their ability to manage site stormwater runoff to the maximum extent possible. Additional consideration will be given to projects that propose to manage more than 1" of runoff.

Management Practice

Projects will be evaluated based upon the type of proposed stormwater management practice. PWD encourages applicants to submit projects that infiltrate stormwater, as this provides both pollution and volume reduction benefits. PWD does recognize this may not be feasible on all properties and will consider alternative systems for projects that provide sound reasoning as to why infiltration is not a viable option.

Public Right of Way

Projects will be evaluated based upon their ability to manage stormwater from the public right-of-way. Please note: the cost of constructing stormwater management infrastructure in the right of way cannot be included in the grant request. For more questions concerning this, please contact PWD at 215-685-6070.

Partnership with PWD

Projects will be evaluated based on their ability to be integrated with other projects, both public and private. As part of PWD's review of the applications, projects will be vetted by multiple PWD green infrastructure teams to determine opportunity to collaborate with other PWD initiatives and projects. These ideas will be relayed back to the applicant for possible scope and budget modification.

Expected Benefits

For Applicants in Combined Sewer Areas

Projects will be evaluated based upon the amount of expected combined sewer overflow reduction related to the retrofit project.

For Applicants in Separate Sewer Areas

Projects will be evaluated based upon the expected environmental benefit to the stream(s) to which the property ultimately drains.

Feasibility

Projects will be evaluated based upon the feasibility of construction and/or implementation demonstrated by the concept design, maps, stormwater calculations and any included feasibility analyses, along with their technical merit. Monitoring and maintenance plan feasibility will also be taken into account along with the anticipated completion date.

Visibility and Accessibly to the Public

Projects will be evaluated based upon their visibility and accessibility to the public, as well as potential educational benefits.

Advances Goals of Green City, Clean Waters Plan

Projects will be evaluated based upon their ability to offer additional benefits that advance the goals of the *Green City, Clean Waters* Plan, such as greenhouse gas reductions, habitat creation, recreation and reduction of the urban heat island effect.

Application Quality

Projects that provide detailed and accurate information about project scope, concept design, maps and plans will be rated higher than those with inadequate or less detailed information. All verification of property ownership and funding must be included for the application to be complete. The package should also be clear, legible and timely.

Green Stormwater Infrastructure Information

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Green Stormwater Infrastructure Information

Increased land development leads to replacement of pervious areas with impervious surfaces, causing an increase in stormwater runoff volume and combined sewer overflow episodes. In turn, this affects Philadelphia's watersheds by impairing water quality and degrading stream habitats. PWD's Stormwater Incentive Programs seek to protect and enhance Philadelphia's watersheds by managing stormwater runoff with innovative green stormwater infrastructure and maximizing economic, social and environmental benefits for Philadelphia. Green stormwater infrastructure includes a range of soil-water-plant systems that intercept stormwater, infiltrate a portion of it into the ground, evaporate a portion of it into the air and in some cases release a portion of it slowly back into the sewer system.

SUGGESTED PROJECTS

A variety of green infrastructure projects are eligible for funding under PWD's Stormwater Incentive Programs. Some examples of eligible projects are listed below. For more information please refer to the Philadelphia Stormwater Management Guidance Manual at www.pwdplanreview.org.

Underground Infiltration/Storage Basins: Subsurface basins, typically constructed of stone and pipes, used to store and infiltrate stormwater runoff from surrounding impervious surfaces.

Infiltration Trenches: Linear, subsurface stone beds (or other materials) used to capture, store and infiltrate stormwater runoff from adjacent impervious surfaces.

Rain Gardens: Shallow surface depression garden areas with amended soils and vegetation designed to collect and infiltrate stormwater runoff from adjacent impervious surfaces.

Porous Paving: Specially designed pavement system that allows water to infiltrate through rather than running off. This system can provide the structural support of conventional pavement but is made up of a porous surface (e.g. porous asphalt, porous concrete, permeable pavers, etc.) and an underground stone infiltration bed.

Green Roofs: Engineered, vegetated systems installed on roofs to control stormwater through retention and evapotranspiration.

Vegetated Extended Detention Basins: Engineered basins that provide temporary storage of stormwater runoff with a controlled release back into the sewer system at a prescribed rate. Compared to rain gardens, vegetated extended detention basins typically manage larger areas of impervious surface.



Greenfield Elementary School



William Dick Elementary School

Concept Plan Guidelines

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Template Operations & Maintenance Agreement

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Template Operations & Maintenance Agreement

NOTE: This is a template for the Operations and Maintenance Agreement that property owners will eventually need to execute. Please review for your reference prior to submitting an application and be aware of the requirements of the agreement. Do not execute the agreement at this time and do not submit the agreement with your application.

BACKGROUND

THIS OPERATIONS AND MAINTENANCE AGREEMENT ("**Agreement**") is made and entered into this ____ day of _____, 201_, ("**Agreement Date**") and effective as of _____, 201_ ("**Effective Date**") by and between _____ (together with its successors and assigns in title to the Property "**Property Owner**"), and the City of Philadelphia (together with its successors and assigns "**City**"), acting through the Water Department ("**Department**" or "**PWD**").

WHEREAS, the Property Owner is the owner in fee of certain real property located at _____, Philadelphia, Pennsylvania, as described more particularly in **Exhibit C1** attached hereto and made a part hereof ("**Property**");

WHEREAS, The City and the Philadelphia Authority for Industrial Development ("**PAID**") have established a Stormwater Management Incentives Program ("**SMIP**") Grant ("**Program**") to provide financial assistance to certain qualified property owners who desire to install green stormwater management practices ("**SMPs**" or "**Project**") on their properties. The Program provides grants to qualified property owners to build infrastructure to manage private property stormwater runoff where the City determines that the SMP offers the maximum cost savings to the City, achieves the largest reduction of stormwater runoff, and provides the greatest environmental benefit;

WHEREAS, the objective of the Program is to reduce stormwater runoff that would otherwise have been discharged to the City's wastewater and stormwater system ("**System**") in order to improve and enhance water quality resources downstream ("**Conservation Objective**");

WHEREAS, Property Owner applied for and was awarded a SMIP Grant to design, construct, and install the SMPs on a certain portion of the Property ("**SMP Area**"), as described in **Exhibit C2**;

WHEREAS, the SMP is to be constructed in accordance with the Subgrant Agreement, as defined below, and to be operated and maintained by the Property Owner in order to protect public health, safety and welfare and maintain and enhance water quality;

WHEREAS, the Conservation Objective of the Program and this Agreement are consistent with the purposes of, and intended to conform with, the requirements of the Pennsylvania Conservation and Preservation Easements Act, Act 29 of 2001, and as amended thereafter;

WHEREAS, pursuant to a Grant Agreement between the City and PAID dated February 23, 2012, and subsequently amended by Amendment Agreement I dated November 30, 2012, Amendment Agreement II dated June 26, 2013, and Amendment Agreement III dated _____, 2014, the City has granted PAID funding which PAID, or its assignee, will subgrant ("**Project Funding**") to qualified applicants in accordance with subgrant agreements;

WHEREAS, PIDC-Local Development Corporation ("**PIDC-LDC**") is affiliated with PAID and authorized to administer grant programs on PAID's behalf;

WHEREAS, PIDC-LDC and Property Owner entered into a subgrant agreement dated _____, 201_ ("**Subgrant Agreement**"), pursuant to which Property Owner was awarded \$_____ in Project Funding to undertake a Project on the Property;

WHEREAS, the City requires that as a condition of receiving the Project Funding, Property Owner must 1) operate and maintain the SMP for 45 years or its useful life, whichever is longer, (the "**Term of this Agreement**"), unless released from this Agreement pursuant to the provisions within; and 2) grant to the City access over, under, along and in the SMP Area and the SMP for a period of not less than the Term of this Agreement, for the purposes and upon the terms and conditions set forth in this Agreement;

NOW, THEREFORE, in consideration of the foregoing premises and recitals, which are incorporated herein as if set forth below in full, the mutual covenants contained herein, and the following terms and conditions, the parties hereto, intending to be legally bound hereby, covenant and agree as follows:

AGREEMENT

1. Design and Construction.

- (a) Property Owner covenants and agrees that it shall design and construct the Project in accordance with the Subgrant Agreement.
- (b) Property Owner shall submit to the City record drawings of all SMPs and their components once the construction of the SMPs is complete.

2. Operation and Maintenance Responsibility.

- (a) This Agreement shall serve as the signed statement by the Property Owner accepting responsibility for operation and maintenance of the Property's SMPs as set forth in this Agreement until the responsibility is legally transferred to another entity, as provided in 2(b) below.
- (b) This Agreement shall serve as notice to all successors and assigns of the title to the Property of the obligations herein set forth. At such time as the Property is transferred, the new owner of the Property shall have the rights and responsibilities of the Property Owner under this Agreement.
- (c) Property Owner, at Property Owner's sole expense, shall perform, or shall cause to be performed, the work reasonably necessary to keep the SMPs in good working order and condition so that the SMPs are performing their intended design functions within expected tolerances. This includes, but is not limited to, all pipes and channels built to convey stormwater to the SMPs, as well as all structures, improvements, and vegetation provided to control the quantity and quality of the stormwater.

3. Destruction and Removal; Changes and Alterations.

- (a) Property Owner covenants and agrees that for the Term of this Agreement, no change in grades or other alterations within the lines of the SMP Area shall be made and that no buildings and/or other structures either overhead, underground or upon the surface, shall be constructed within the lines of or abutting the SMP Area unless the plans for such changes of grades, alterations or structures shall be first be submitted to and approved in writing by the City.
- (b) Property Owner shall not destroy or remove or allow to be destroyed or removed the SMP from the Property or modify the SMP in a manner that materially lessens its effectiveness. It is understood and agreed that none of the following shall constitute a breach of this covenant: (i) destruction, removal or alteration of any such property or improvement as a result of a Force Majeure Event, as defined below, or (ii) the removal and disposal of any SMP, provided that simultaneously with or prior to such removal, any such SMP shall be replaced with another SMP comparable (or better than) in all material respects to the removed SMP and with equal or better effectiveness.
- (c) Property Owner shall not be liable for any delay in the performance of its obligations pursuant to this Agreement, to the extent that such delay is caused, directly or indirectly, by an occurrence of fire, flood, earthquake, elements of nature or acts of God, acts of war, terrorism, riots, civil disorders, rebellions or revolutions, power outages, or any other causes beyond the reasonable control of Property Owner (a "Force Majeure Event"). Upon the occurrence of a Force Majeure Event, Property Owner shall be excused from any further performance of those of its obligations pursuant to this Agreement affected by the Force Majeure Event for as long as such Force Majeure Event continues and up to 72 hours thereafter, provided, however, that Property Owner uses commercially reasonable efforts to promptly recommence performance to the extent possible.

4. Inspection by Property Owner.

Property Owner shall conduct inspections of the SMPs, as needed, but not less than once per year. The purpose of the inspections is to ensure safe and proper functioning of the SMP. The inspection shall cover all SMPs and all SMP-associated structures and areas, including, but not limited to, all berms, outlet structure, ponds, and access roads.

5. Recordkeeping.

Property Owner shall retain a record of maintenance activities and inspections related to SMP for a period of at least four (4) years. Such records shall verify that inspection and maintenance have been conducted pursuant to this Agreement. The City may request at any time that the Property Owner provide copies of any or all maintenance and inspection documentation prepared during the prior four years. Property Owner shall comply with any such requests within ten (10) business days after receipt of such request.

6. Inspection by City.

The Property Owner hereby grants permission to the City and the City's authorized agents and employees to enter upon the Property during normal daylight working hours or at any other reasonable time to inspect the SMPs in order to ensure the SMPs are being adequately maintained and are continuing to perform the designed function. Inspection includes monitoring, sampling, testing and examination to determine proper operation of the SMPs. The City shall have the right to temporarily install and/or place on or near any SMP such devices as are necessary to conduct monitoring, sampling and/or testing of the discharges from the SMPs or the SMP's effects.

7. Failure of Property Owner to Maintain SMP.

- (a) Nuisance. Property Owner agrees that failure to adequately maintain the SMP may constitute a public nuisance that is a threat to public health and safety and to the environment.
- (b) City may Perform Maintenance. In addition to any rights the City may have under law or this Agreement, if the City determines that the Property Owner has failed to adequately maintain the SMP as determined by the City, the City may notify the Property Owner in writing of any deficiencies. If Property Owner fails to take action to correct those deficiencies within thirty (30) business days of receipt of such notice, the City and its authorized agents and employees may enter upon the Property and take whatever steps reasonably necessary to correct deficiencies identified and charge the reasonable costs (including administrative costs) thereof to the Property Owner. Where deficiencies cause imminent threat to public health, safety or the environment, the City may take immediate steps necessary to protect public health, safety and/or the environment and charge the costs (including administrative costs) thereof to the Property Owner. When the City charges its costs to the Property Owner pursuant to this Section, such charges shall be due within thirty (30) days of the date the bill is received.
- (c) Right to Lien. In the event the Property Owner fails to reimburse the City within thirty (30) days after receipt of demand under Section 7(b), the City may place a lien on the Property for the entire amount due.
- (d) Nothing in this Agreement shall limit the City's rights under the Municipal Claims and Tax Liens Act, 53 P.S. § 7101, et seq.

8. No Waiver.

No delay or failure on the part of the City to exercise any rights, powers, or remedies herein provided shall be construed as a waiver thereof or acquiescence of such breach or of any future breach.

9. No Obligation to Maintain by City.

Despite any other provisions of this Agreement, this Agreement does not obligate the City to appropriate or spend money at any time or for any reason. It is expressly understood and agreed that the City is under no obligation to routinely inspect, maintain or repair the SMP, and in no event shall this Agreement be construed to impose any such obligation on the City.

10. [Reserved.]**11. Covenant Running with Land.**

The Property Owner agrees whenever the Property is held, sold, conveyed or otherwise transferred during the Term of this Agreement, the Property shall be subject to this Agreement which shall apply to, bind and be obligatory to all then current owner(s) of Property. This Agreement shall constitute a real covenant running with the land for the Term of this Agreement, and shall be binding on the Property Owner, its administrators, executors, heirs, assigns, and any other successors in interest during the Term of this Agreement, including, without limitation, any successors in title to the Property or any part thereof, whether or not they have actual notice of this Agreement and whether or not the deed of transfer specifically states that the transfer is under and subject to this Agreement.

12. Reproduction and Release of the Plans and Records.

Property Owner authorizes the City to reproduce and release copies of plans and other records that it previously submitted or in the future submits to PIDC-LDC or the City in connection with the Project or the Project Funding as needed.

13. Agreement to be Recorded.

Property Owner shall record this Agreement with the Philadelphia Department of Records at the Property Owner's expense. The City shall be the sole beneficiary of the agreements, covenants and restrictions set forth herein and such agreements, covenants and restrictions shall run with the land in favor of the City. Failure to record this Agreement shall not diminish the effect of this Agreement.

14. Condominium Owners Association or Homeowners Association Declaration.

This Agreement and its Exhibits shall be attached and/or incorporated into any Declaration of a condominium owners' association or homeowners' association that is responsible for maintenance of the SMPs. Failure to attach and/or incorporate this Agreement shall not diminish the effect of this Agreement.

15. Modifications or Termination.

If the City's rights or privileges under this Agreement are or are about to be modified or terminated by exercise of the power of eminent domain (condemnation) or adjudication of a court of competent jurisdiction sought by a person or entity other than the City, then the City is entitled to recover from the person or entity seeking the modification or termination (i) restitution of amounts paid by the City for Project Funding and any other sums invested by the City in the SMP and/or SMP Area; and (ii) reimbursement of any litigation expenses incurred by the City, including without limitation reasonable attorney and expert witness fees and disbursements. The description of the City's remedies in this Section 15 does not preclude the City from exercising any other right or remedy that at any time be available to the City under this Agreement or federal, state or local laws and regulations.

16. Amendments.

This Agreement may only be amended or modified by a written document signed by the City and Property Owner. The City will only enter into an amendment if it determines, at its sole discretion, that the amendment is consistent with and in furtherance of the Conservation Objective.

17. Remedies; Enforcement.

The Property Owner understands, acknowledges and agrees as follows:

- (a) Enforcement. The City is an interested party to this Agreement and the Property Owner consents to enforcement by the City, administratively or at law or equity, of the restrictions, covenants, obligations and agreements contained herein.
- (b) Injunctions. Monetary damages would not be adequate or sufficient to compensate the City for a breach of any of the restrictions, covenants, obligations and/or agreements of this Agreement. Accordingly, in addition to any other remedies available to the City administratively, at law or equity, under this Agreement or otherwise, the City may obtain a mandatory and/or prohibitory injunction compelling the Property Owner to specifically perform and observe the restrictions, covenants, obligations and agreements contained in this Agreement or to remedy any failure on the part of the Property Owner to perform or observe any such restriction, covenant, obligation or agreement.

- (c) Exclusivity. No right or remedy conferred upon the City in this Agreement is intended to be exclusive of any other right or remedy contained in this Agreement or at law or equity. Every such right or remedy shall be cumulative and shall be in addition to each other right and remedy contained in this Agreement or now or hereafter available to the City at law, in equity, by statute or otherwise.
- (d) Right of Enforcement. This Agreement binds and benefits the Property Owner and the City, and their respective successors and assigns. Only the City has the right to enforce the terms of this Agreement and exercise rights of release, transfer, assignment or other discretionary rights of the City. Owners of lots within the Property do not have the right to enforce the terms of this Agreement against owners of other lots within the Property.
- (e) Remedies Cumulative. The description of City’s remedies in this Section 17 does not preclude the City from exercising any other right or remedy that at any time be available to the City under federal, state or local laws or regulations . If the City chooses to exercise one remedy, the City may nevertheless choose to exercise one or more of the other rights or remedies available to the City at the same time or at any other time.

18. Representations and Warranties by Property Owner.

- (a) Property Owner is the sole owner in fee simple of the SMP Area free and clear of liens, encumbrances, restrictions and other matters of record.
- (b) Property Owner has the power and is duly authorized to execute this Agreement.
- (c) The City may peacefully and quietly exercise its rights under this Agreement free and clear of rights or consent of third parties.

19. Indemnity.

The Property Owner shall, at all times, indemnify, hold harmless and defend the City, its agencies, boards, commissions, offices and departments, agents, employees, elected officials or other representatives and their respective successors and assigns against any claims which may result or are claimed to result from the construction, operation, maintenance, inspection, malfunction, repair or replacement of the aforementioned SMP and SMP Area, as well as any and all costs and expenses incurred by indemnified parties to enforce the rights of the City as granted herein.

20. Entire Agreement.

This Agreement sets forth all agreements and understandings between the City and the Property Owner relating to the SMP and there are no agreements or understandings, either oral or written, between them other than as are set forth in this Agreement. Any agreement hereafter made shall be ineffective to change, modify or amend this Agreement in whole or part unless such agreement is in writing and has been executed by both the City and Property Owner. No oral representations, whenever made, by any City or Department official, employee or agent, or by any employee, agent or contractor of Property Owner shall be effective to modify the terms of this Agreement.

21. Notices.

All notices, requests, demands and other communications required or permitted under this Agreement shall be in writing and sent to the party to be notified, at the following addresses:

Property Owner: _____

City: City of Philadelphia Water Department
Attn: _____

1101 Market Street, 5th Floor
Philadelphia, PA 19107

or to such other address as either party may give by notice to the other party. All such communications shall be sent by United States registered or certified mail, return receipt requested, or a nationally-recognized delivery service guarantying next business day delivery, in each case with all delivery and postage charges prepaid, and shall be deemed to have been received three (3) business days after deposit in the United States mail, as aforesaid, or one (1) business day after deposit in a nationally-recognized delivery service guaranteeing next business day delivery, as aforesaid.

22. Miscellaneous.

- (a) **Certain Interpretational Rules.** This Agreement is intended to be interpreted so as to convey to the City all rights and privileges of a holder of a conservation easement under the Conservation Easement Act, 32 P.S. §§5051-5059. The headings in this Agreement are for convenience only and are not a part of this Agreement. The headings do not in any way define, limit, describe or amplify the provisions of this Agreement or the scope or intent thereof.
- (b) **Governing Law.** This Agreement shall be governed in accordance with the laws of the Commonwealth of Pennsylvania without regard to the conflicts of law doctrines thereof. The parties to this Agreement agree to submit to the jurisdiction of courts, whether federal or state, located in Philadelphia, Pennsylvania.
- (c) **No Joint Venture.** Nothing in this Agreement shall be construed as creating a joint venture or partnership between the City and the Property Owner.
- (d) **No Third-Party Beneficiaries.** Nothing in this Agreement is intended to confer a third-party beneficiary right upon any person or entity other than the City.
- (e) **Waiver of Jury Trial.** IT IS MUTUALLY AGREED BY AND BETWEEN THE CITY AND THE PROPERTY OWNER THAT THEY HEREBY WAIVE TRIAL BY JURY IN ANY ACTION PROCEEDING OR COUNTER-CLAIM BROUGHT BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER ON ANY MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT.
- (f) **Severability and Partial Invalidity.** The provisions of this Agreement shall be severable. In the event that one or more provisions of this Agreement or the application thereof for any reason or in any circumstance shall to any extent be held to be invalid, illegal or unenforceable in any respect, such provision shall be severed and shall be inoperative, and the remainder of this Agreement shall remain in force to the fullest extent permitted by law.
- (g) **Exhibits Incorporated.** All exhibits attached to this Agreement are hereby incorporated into and made a material part of this Agreement.
- (h) **Approval by City.** No review, approval and/or inspection by the City of any plans, designs, specifications, drawings, work or other materials submitted or performed by the Property Owner in connection with the Project shall constitute a representation, warranty or guaranty by the City as to the substance or quality of the matter reviewed or approved. No person or party shall rely in any way on such review or approval, and at all times the Property Owner shall use its own independent judgment as to the accuracy and quality of all such matters. The City's review or approval of any plans, designs, specifications, drawings, work or other materials submitted or performed by the Property Owner in connection with this Agreement shall not constitute or be construed to constitute approval otherwise required by any City departments, boards or commissions in connection with any aspect of the same. Furthermore, no review or approval of any plans, designs, specifications, drawings, work or other materials submitted or performed by Property Owner in connection with this Agreement by any City departments, boards or commissions shall constitute or be construed to constitute approval otherwise required by the City under this Agreement.

[signatures appear on following page]

IN WITNESS WHEREOF, and intending to be legally bound hereby, the parties hereto have caused the Agreement to be duly executed the day and year first above written.

PROPERTY OWNER

By: _____

By: _____

Approved as to Form:

CITY OF PHILADELPHIA

City of Philadelphia Law Dept.

By: _____

ACKNOWLEDGEMENT

COMMONWEALTH OF PENNSYLVANIA :
: ss.
COUNTY OF PHILADELPHIA :

On this ____ day of _____ 201_, before me, a Notary Public for the Commonwealth of Pennsylvania, the undersigned Officer, personally appeared _____, who acknowledged himself/herself to be the _____, and that he, as such officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained by executing the same by himself/herself as such officer.

IN WITNESS WHEREOF, I hereunto set my hand and Notarial Seal.

Notary Public

EXHIBIT C1

PROPERTY DESCRIPTION

EXHIBIT C2

SMP AREA DESCRIPTION AND LIST OF SMPs

[Metes and Bounds Description and list]

Template Economic Opportunity Plan

07



Template Economic Opportunity Plan

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 agency¹ 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 journey person 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.
- 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.

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

- Owner provides interested MBEs, WBEs and DSBEs, prior to the date of 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 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 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.
- 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.
-

II. PROJECT SCOPE

(THIS PROJECT SCOPE SECTION IS TO BE FILLED OUT BY A REPRESENTATIVE OF THE ENTITY FOR WHICH THIS EOP IS BEING WRITTEN SHOULD INCLUDE PROJECT DESCRIPTION AND LOCATION.)

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 [Property's development OR Project Name], 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 [Project Name OR Development]. 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:

Contracts	Minority Owned	Female Owned	Disabled Owned
Professional Services			
Construction Contractors			
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 employ²:

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

Minority Apprentices – 50% of all hours worked by all apprentices

IV. EVALUATION OF RESPONSIVENESS AND RESPONSIBILITY

A. Owner Representative] 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 [Owner Representative] 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 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 [Owner Representative]’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, the [Owner Representative] 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 [Purchaser OR Developer] 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 five (5) business days after receipt of a proper invoice following satisfactory performance.
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 successful completion of the Project.
2. 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.
3. 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 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.

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.

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.

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

SIGNATURE OF Owner Representative

DATE

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

