



Philadelphia
PWD
Water Department

PIDC

Stormwater Management Incentives Program Grant Manual

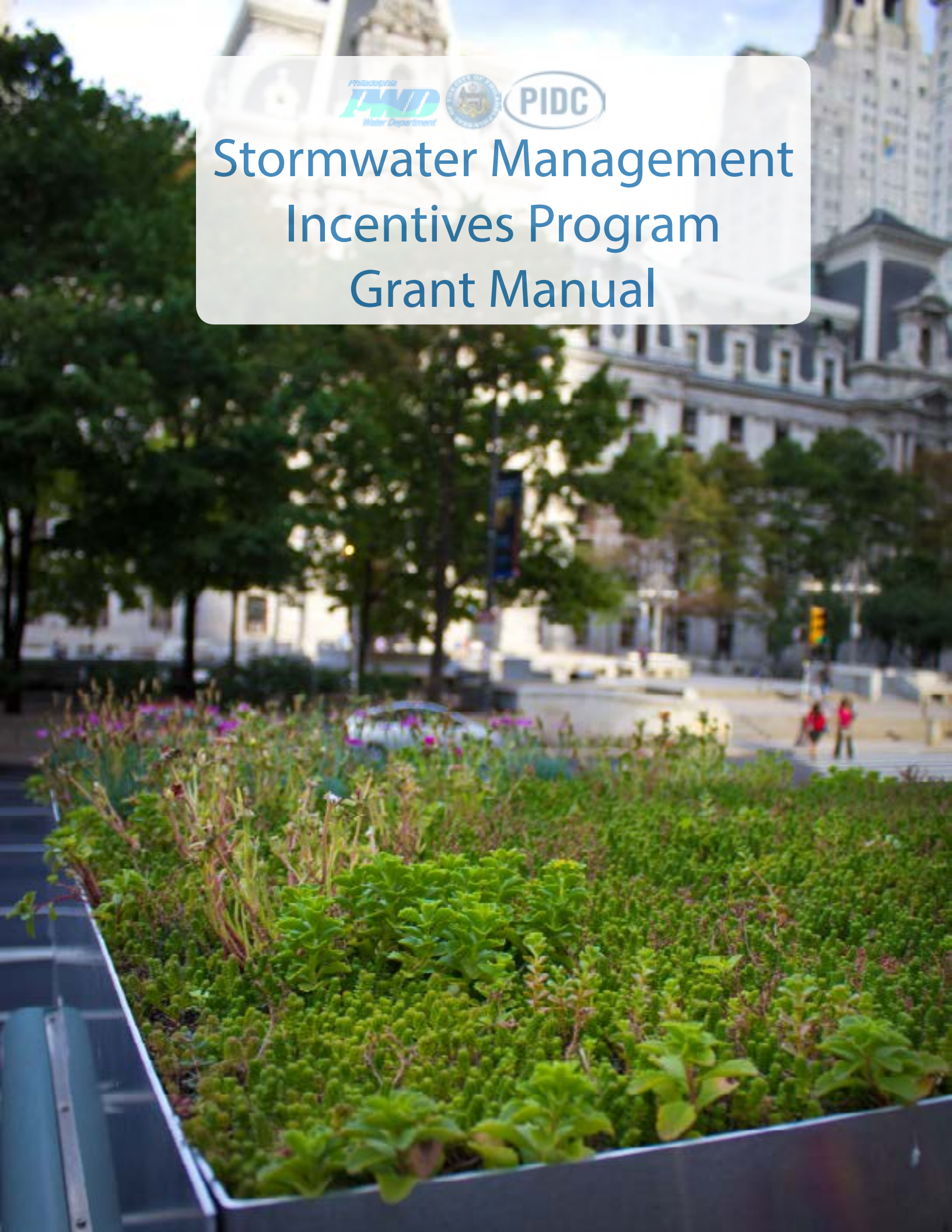


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General Information



BACKGROUND INFORMATION

The City of Philadelphia, through the Philadelphia Water Department (PWD or Department) and the Philadelphia Industrial Development Corporation (PIDC), created the Stormwater Management Incentives Program (SMIP) Grant 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. The grant will allow businesses, institutions and other non-residential customers to reduce their stormwater charges by providing funding for the design and construction of green infrastructure projects. Applications are due by **12pm January 31, 2014**. Applicants will be notified no later than **July 1, 2014** if they will be awarded grant funding.

Projects will be evaluated based on a variety of criteria detailed in the Project Evaluation Criteria Section (page 6). Competitive projects will limit funding requests to \$100,000 per impervious acre or less. All funded projects will be required to file a deed restriction in the form of an Access, Operations and Maintenance Agreement with 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 9. 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 17). A Selection Committee comprised of PWD staff will evaluate applications. Grantees will be eligible to receive credits on their stormwater charges upon successful construction of the green stormwater infrastructure.

For more information about the SMIP Grant Program please go to www.phillywatersheds.org/what_were_doing/SMIP_Grant. For questions about the SMIP Grant Program please contact Erin Williams at PWD at Erin.Williams@phila.gov.

Applicants should deliver a CD-ROM or flash drive of the complete SMIP Grant Application by **12pm January 31, 2014** 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 Grant Application must consist of the following:

- 1. Application Form:** Download form at www.pidc-pa.org/development-and-contract-opportunities/rfp-rfq-opportunities and complete Sections #1-7. There is no page limit related to the Application Form.
- 2. Narrative:** The Narrative may not exceed 10 pages. Directions for completing the narrative section are included within this document as well as Section #8 of the Application Form.
- 3. Exhibits:** Directions for completing the Exhibit Section are included within this document as well as Section #9 of the Application Form. There is no page limit related to the Exhibits Section.

All applications must be submitted no later than **12pm January 31, 2014**. Applicants will be notified by **July 1, 2014** if their applications have been accepted. Up to five applications per organization will be accepted for review.

Grant Requirements

Photo by Paul Rider



RESTRICTIONS AND INELIGIBLE ACTIVITIES

The following activities are not eligible for support under the SMIP Grant:

- Designs, plans, or research that is not part of a green 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.

ELIGIBILITY CRITERIA

In order to be eligible for the SMIP 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;
- The applicant must own the parcel where the stormwater infrastructure will be built or have written permission from the owner of the parcel;
- The applicant cannot be an agency of the City of Philadelphia, the Commonwealth of Pennsylvania or any United States Department or Federal Agency;
- The property's PWD bill must be current and in good standing with all water, sewer and stormwater fees, 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;
- 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, unless the project is located in the Darby Cobbs or Wissahickon Watersheds. If the project is located in the Darby Cobbs Watershed, a project is subject to the Stormwater Regulations if it disturbs 5,000 square feet of earth or more. If the project is located in the Wissahickon Watershed, on-site stormwater management controls may be required per the City of Philadelphia Zoning Code. More information about the Stormwater Regulations can be found at www.phila.gov/water/pdfs/pwd_regulations.pdf.

Grant Requirements



STORMWATER MANAGEMENT CREDITS

Selected grantees will receive credits towards their stormwater charge once construction is complete and the stormwater infrastructure has been approved by PWD. Grantees will be required to renew their credit applications every four (4) years. Failure to comply with Grant Conditions 1-2 (listed below) shall result in the stormwater credit associated with the grant project being revoked.

For more information about stormwater credits please visit www.phila.gov/water/Stormwater_Where.html.

GRANT CONDITIONS

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

1. Grantees must enter into a grant agreement and comply with its terms.
2. Grantees must file a deed restriction in the form of an Access, 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 9.
3. Grantees must provide the Department 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 the Department 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 17). An independent agency will be retained by the Department to monitor compliance with the EOP commitments.
4. 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.



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 projects will limit grant funding requests to **\$100,000 per impervious acre or less**. If total project costs exceed \$100,000 per acre, 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 the \$100,000 per impervious acre limit 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. The Department encourages applicants to submit projects that infiltrate stormwater, as this provides both pollution and volume reduction benefits. The Department 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 on their ability to manage stormwater from the public right of way. Please note: the cost of stormwater management infrastructure in the right of way cannot be included in the SMIP budget. 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 infrastructure project.

For Applicants in Separate Sewer Areas

Projects will be evaluated based upon the expected environmental benefit to the stream(s) to which the project 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 Accessibility 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

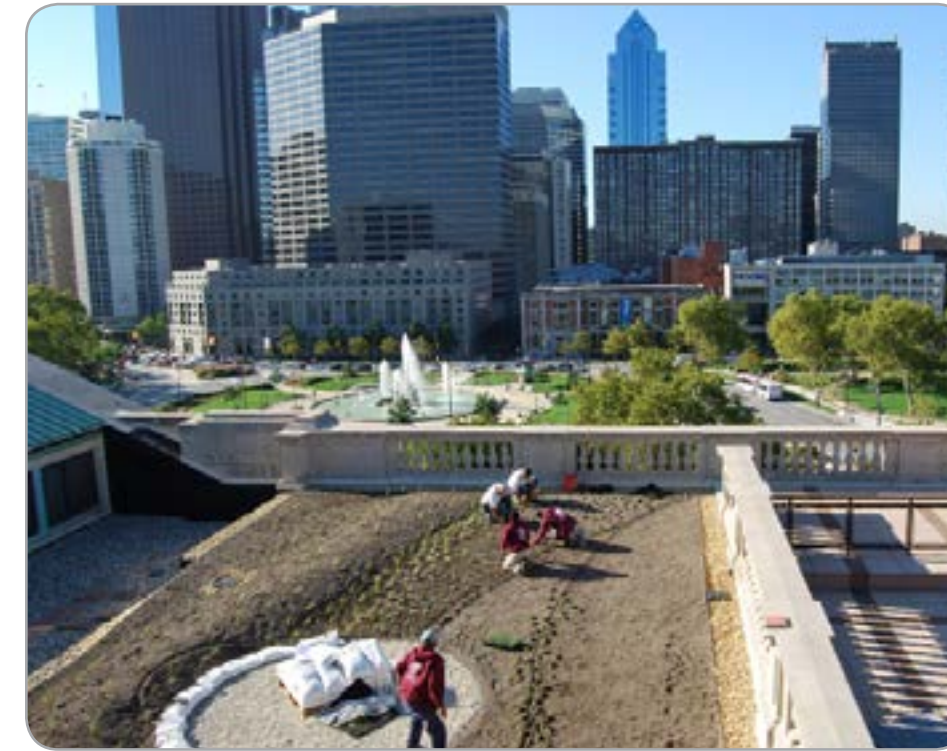
Projects will be evaluated based upon their ability to offer additional benefits that advance the goals of the Green City, Clean Waters Plan, such as greenhouse gas reductions, habitat creation, recreation and reduction of heat island effect.

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

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. SMIP seeks 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 SMIP. Some examples of eligible projects are listed below. For more information please refer to www.phila.gov/water/Stormwater/pdfs/BMP_Summary.pdf and 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:

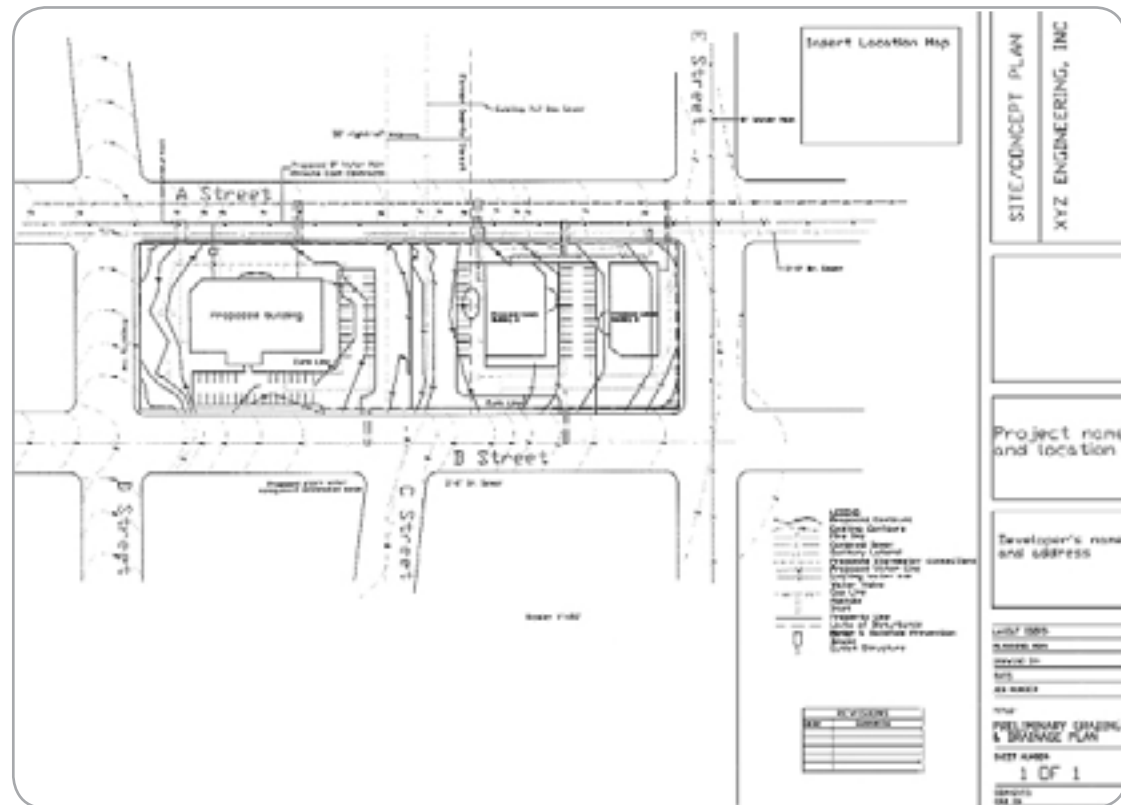
Engineered basins that provide temporary storage of stormwater runoff with a controlled release back into the sewer system at a prescribed rate. Compared to rain gardens, vegetated extended detention basins typically manage larger areas of impervious surface.

Concept Plan Guidelines

The grant application requires that each applicant submit a Concept Plan for the green stormwater infrastructure project. Concept Plans must contain the following information:

- Engineer name, date and project title
- Name of owner
- North arrow, legend (clearly identify all line types, hatch types and symbols used) and graphical scale (1"=10', 20', 30', 40', 50', 60' or 100')
- Site address
- Property lines, all meters, bounds, boundaries, dimensions, building lines and set-backs
- Street lines, street names, lot names, easements, other land divisions, and their purposes and confirmed locations
- Location/outline of all existing structures to remain within 25' of property line
- Proposed site contours (distinguish between existing and proposed)
- All building lines or street set-back lines and distances to other buildings on the same lot
- Proposed lot-lines and lot identification numbers, dimensions and areas
- Existing and proposed rights-of-way, easements, cartway widths for all streets and private roads, and drainage rights-of-way
- Location and dimensions of all driveways, curb cuts, and off-street parking lots, with distances from lot lines
- Vicinity Map including watershed(s) and sub watershed(s)
- Clear identification all existing and proposed site improvements
- Location of all existing utilities (water, sewer, and stormwater), sewer connections made directly into manholes are not permitted
- All proposed stormwater connections
- An indication of the area where stormwater will be managed and show safe overflow connections
- All infiltration areas must be located at least 10' from all property lines
- All roof and yard drains and their connections to infiltration/detention basins or sewers
- Approximate loading ratio of 10:1 for directly connected impervious area (DCIA) to infiltration area footprint
- Extent of floodplain in relation to the project
- Any vegetation identified for preservation and planned landscape areas

EXAMPLE CONCEPT PLAN



Template Access, Operations & Maintenance Agreement

NOTE: This is a template for the Operations and Maintenance agreement that grant recipients 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 AGREEMENT (“Agreement”) made and entered into this ____ day of _____, 20____, (“Agreement Date”) by and between _____ (“Property Owner”), and the City of Philadelphia (“City”) 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 (“SMP”) 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 SMP on a certain portion of the Property (“SMP Area”), as described in Exhibit C2;

WHEREAS, the SMP is to be constructed and installed in accordance with the approved SMIP Grant designs and to be operated and maintained in accordance with the SMP Operations and Maintenance Schedule, attached as Exhibit C3;

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, the City requires that as a condition of receiving the SMIP Grant, Property Owner must 1) operate and maintain the SMP for its useful life or 45 years, whichever is longer, 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;

NOW, THEREFORE, in consideration of the foregoing premises, 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. Ownership.

Property Owner covenants and agrees that it is the owner in fee of the SMP Area free and clear of liens, encumbrances, restrictions and other matters of record or, if it is not, that the Property Owner has obtained and recorded in the City of Philadelphia Department of Records (“Department of Records”) the legally binding subordination of any liens affecting the SMP Area as of the Agreement Date, in form and substance acceptable to City. Property Owner further warrants that it has the power and is duly authorized to execute this Agreement, and the City may peacefully and quietly exercise its rights under this Agreement free and clear of rights or consent of third parties.

2. Functionality.

Full functionality of the SMP shall be maintained for the term of this Agreement, commencing from the date of the final distribution of SMIP Grant funding to the Property Owner, or the completion of SMP construction, whichever is later.

3. Changes and Alterations; Destruction.

(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 the SMP Area or abutting 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 the intervention of force majeure, 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.

4. Operation & Maintenance Responsibility.

(a) This Agreement shall serve as the signed statement by the Property Owner accepting responsibility for operation and maintenance of the SMP as set forth in this Agreement until the responsibility is legally transferred to another entity.

(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 as defined in this Agreement.

5. Maintenance of SMP by Property Owner.

(a) Maintenance Standards.

The Property Owner, his agent, or assign shall, at Property Owner’s sole expense and for the term of this

Agreement, perform the work reasonably necessary to keep the SMP adequately maintained.

(b) Performance of Maintenance Work.

The Property Owner, his agent, or assign shall keep the SMP Area free from waste, nuisance and any other condition that would impair or have a material impact on the use and operation of the SMP. This includes, but is not limited to, all pipes and channels built to convey stormwater to any SMP, as well as all structures, improvements, and vegetation provided to control the quantity and/or quality of the stormwater.

6. Inspection by Property Owner.

Property Owner shall conduct regular inspections of the SMP. The purpose of the inspections is to ensure safe and proper functioning of the SMP. The inspection shall cover the entire SMP Area, including, but not limited to, berms, outlet structure, pond areas, and access roads.

7. Recordkeeping.

Property Owner shall retain a record of maintenance activities and inspections related to SMP for a period of at least three (3) years. Such records shall verify that inspection and maintenance have been conducted pursuant to this Agreement. The City may request Property Owner to provide copies of any or all maintenance and inspection documentation prepared during the prior three years. Property Owner shall comply with any such requests within ten (10) business days after receipt of such request.

8. Inspection by City.

The Property Owner hereby grants permission to the City, its authorized agents and employees, to enter upon the Property upon providing forty-eight (48) hours written notice and, in any case, at reasonable times and without unreasonable disruption, to inspect the SMP in order to ensure the SMP is being adequately maintained and are continuing to perform the designed function. Any deficiencies identified by the City shall be reported to the Property Owner in writing.

9. 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, if the Property Owner fails to adequately maintain the SMP as determined by the City, the City shall notify the Property Owner in writing of any and all deficiencies. If Property Owner fails to take action to correct deficiencies within thirty (30) business days of receipt of such notice, the City may enter upon the Property and take whatever steps reasonably necessary to correct deficiencies identified and charge the reasonable costs of such repairs to the Property Owner, its successors and assigns. Where deficiencies are such that cause imminent threat to public health or the environment, the City may take immediate steps necessary to protect public health and/or the environment.

(c) Reimbursement by Property Owner of City Expenditures. In the event the City, pursuant to this Agreement, performs work pursuant to Section 9(b), or expends any funds in performance of such work for labor, use of equip-

ment, supplies, materials, and the like, the Property Owner shall reimburse the City upon written demand, within thirty (30) days of receipt thereof, for all actual costs reasonably incurred by the City hereunder. These costs and expenses include the allocated costs of employees, agents or contractors of the City.

(d) Stormwater Fees. Eligibility for stormwater credit(s) is contingent upon Property Owner adequately operating and maintaining the SMP. In the event the Property Owner fails to fulfill his/her obligations in this Agreement, Property Owner may lose any and all stormwater fee reductions or credits associated with the SMP.

(e) Right to Lien. In the event the Property Owner fails to reimburse the City within thirty (30) days after demand under Section 9(c), the City may place a lien on the Property for the entire amount due.

10. No Obligation to Maintain by City.

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.

11. Assignment and Transfer.

Neither the Owner nor the City may assign or otherwise transfer any of their respective rights or duties under this Agreement voluntarily or involuntarily, whether by merger, consolidation, dissolution, operation of law or any other manner except as permitted below. Any purported assignment or transfer in violation of this section is void.

(a) By City. The City may assign its rights and duties under this Agreement to another public or private entity, either in whole or in part, in accordance with Governing Law as defined in Section 20. The assigning City will deliver all documentation related to the SMP to its assignee as of the date of the assignment.

(b) By Property Owner. The Property Owner understands and agrees that the restrictions, covenants, obligations and agreements contained in this Agreement shall be real covenants running with the land and shall inure to the benefit of the City and its successors and assigns, and bind the Property Owner and its successors, heirs, assigns, legal representatives, lessees and transferees, including, without limitation, any owners and/or users of the SMP Area, whether or not the Property Owner had actual notice of this Agreement and whether or not the deed of transfer specifically referred to the transfer being under and subject to this Agreement.

12. Release of Agreement.

In the event that the City determines that the SMP located on the Property is no longer required, the City, at the request of Property Owner, may execute a release of this Access and Operations & Maintenance Agreement, which the Property Owner, or the City by mutual agreement, shall record in the Department of Records at the Property Owner's expense. As a condition of release, the City is entitled to recover from the person seeking the modification or termination (i) restitution of a prorated portion of the SMIP Grant as well as any other sums invested by the City in the SMP and/or SMP Area, and (ii) reimbursement of any litigation expenses as if a violation had occurred. The SMP shall not be removed from the Property unless such a release is so executed and recorded.

13. 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 or any of its successors, heirs, assigns, legal representatives, lessees and transferees including, without limitation, any owners and/or users of the SMP Area 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. Subject to the restrictions on assignment in Section 11, this Agreement binds and benefits the Property Owner and the City, and their respective successors and assignees. 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 SMP Area 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 does not preclude the City from exercising any other right or remedy that at any time be available to the City under this Section or Governing Law as defined in Section 20. 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.

14. No Waiver.

Any delay or failure on the part of the City to exercise any rights, powers, or remedies herein provided shall not be construed as a waiver thereof or acquiescence of such breach or of any future breach.

15. No Additional Rights.

It is the intent of this Agreement to ensure the proper maintenance of the SMP by the Property Owner. This Agreement shall not create any new rights not otherwise provided by law for damage alleged to result from or caused by the SMP or stormwater runoff.

16. Agreement to be Recorded.

This Agreement shall be filed of record by the City at Property Owner's expense, in the office of the Department of Records immediately after execution hereof. Failure to record this Agreement shall not diminish the effect of this Agreement.

17. Indemnity.

The Property Owner and its successors shall, at all times, indemnify, hold harmless and defend the City, its successors and assigns, and the agents, employees, elected officials or other representatives of the City and its successors and assigns against any claims which may 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.

18. Amendments.

This Agreement may only be amended, revised or modified by a written document signed by the then current owner(s) of the Property and the City and its assigns.

19. Severability.

In the event that one or more provisions of this Agreement shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such provision shall be severed and shall be inoperative, and, provided that the fundamental rights, duties and obligations of City and Property Owner remain legal and enforceable, the remainder of this Agreement shall remain operative and binding.

20. Governing Law.

The laws of the Commonwealth of Pennsylvania and the City of Philadelphia govern this Agreement. The parties to this Agreement agree to submit to the jurisdiction of courts, whether federal or state, located in Philadelphia, Pennsylvania.

21. 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 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.

22. Notices.

All notices given 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.

23. Background Incorporated.

The Background recited above is hereby incorporated into and made a part of this Agreement.

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 Law Dept.

CITY OF PHILADELPHIA

By: _____

ACKNOWLEDGEMENT

COMMONWEALTH OF PENNSYLVANIA:

: ss.

COUNTY OF PHILADELPHIA:

On this ____ day of _____ 2012, 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

EXHIBIT C3 SMP LOCATION & OPERATIONS AND MAINTENANCE SCHEDULE

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 journeyman 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 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 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 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 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 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 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.

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

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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:

	Minority	Female	Disabled
Contracts	Owned	Owned	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.

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

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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 journeymen; 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.

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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 filing 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

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.

