

City of Philadelphia



(Bill No. 060005)

AN ORDINANCE

Amending Section 4.09 of the Restated General Water and Wastewater Revenue Bond Ordinance of 1989 to authorize the Director of Finance to use funds currently held in the Debt Reserve Account established and maintained under the said General Ordinance to purchase appropriate surety bonds or insurance policies for deposit in the said Debt Reserve Account in lieu of current deposits; further, directing the Director of Finance to transfer all excess funds remaining in the said Debt Reserve Account after purchase of the said surety bonds or insurance policies to the Water and Wastewater Revenue Fund; and further, amending Section 4.12 of the said Restated General Water and Wastewater Revenue Bond Ordinance of 1989, entitled “Residual Fund”, to establish a new sub-account into which shall be deposited all residual water and wastewater operating revenues resulting from the transfer of funds from the Debt Reserve Account to the Revenue Fund and thereafter to the Residual Fund, the entire balance of the said new Residual Fund sub-account to be used to finance water related infrastructure projects.

WHEREAS, the First Class City Revenue Bond Act of 1972, 53P.S. Section 15901 et seq. (the “Revenue Bond Act”) authorizes the issuance of revenue bonds by the City of Philadelphia; and

WHEREAS, by Ordinance approved by the Mayor on June 24, 1993, the City adopted the Restated General Water and Wastewater Revenue Bond Ordinance of 1989 (the “General Ordinance”) authorizing the issuance of water and wastewater revenue bonds of the City of Philadelphia under certain term and conditions, including the establishment and maintenance of a “Debt Reserve Account”; and

WHEREAS, funds are currently on deposit in the Debt Reserve Account and are being held therein, pursuant to the General Ordinance, as a reserve for payment of certain obligations in the event of an insufficiency of funds available for that purpose in the Debt Service Account; and

WHEREAS, the General Ordinance, in Section 4.09, entitled “Debt Reserve Account”, states in relevant part that in lieu of required deposits into the Debt Reserve Account, the City may cause to be deposited into the Debt Reserve Account a surety bond or an insurance policy payable to the Fiscal Agent for the account of the Bondholders and any Qualified Swap, but does not explicitly address a substitution of surety bonds or insurance policies for existing deposits; and

City of Philadelphia

BILL NO. 060005 continued

Certified Copy

WHEREAS the General Ordinance, in Section 4.09, states in relevant part that, “Any money in the Debt Reserve Account in excess of the Debt Reserve Requirement shall be transferred to the Revenue Fund at the written direction of the City”; and

WHEREAS, the General Ordinance, in Section 4.06, entitled “Transfer from Revenue Fund to Other Funds and Accounts” provides that water and wastewater revenues are to be applied to various purposes, funds and accounts in an established order of priority ending with a certain “Residual Fund” created by Sections 4.04(e) and 4.12 of the General Ordinance; and

WHEREAS, the General Ordinance, in Section 4.12, states the purposes for which funds in the Residual Fund may be used, including, “(ii) to fund transfers to any fund or account established hereunder or under a Supplemental Ordinance (other than the Revenue Fund and the Rate Stabilization Fund)”; and

WHEREAS, the General Ordinance in Section 4.12(ii) does not in any way identify “fund or account established hereunder” as only those specific funds and accounts established by the originally enacted form of the General Ordinance, or in any other way expressly limit transfers from the Residual Fund to only funds and accounts “established hereunder” at the time of original enactment of the General Ordinance; and

WHEREAS, the General Ordinance in Section 10.01, entitled “Amendments and Modifications”, authorizes the General Ordinance to be supplemented, modified or amended to cure ambiguities or omissions in the General Ordinance by amendments which are not inconsistent with the provisions of the General Ordinance and which do not adversely affect the interests of bondholders; and

WHEREAS, the lack of explicit language to address a substitution of surety bonds or insurance policies for deposits currently held in the Debt Reserve Account, and the lack of explicit language to authorize an appropriate transfer of resulting excess funds in the Residual Fund under circumstances arising from a partial or complete substitution of surety bonds or insurance policies for moneys held in the Debt Reserve Account, constitute ambiguities or omissions in the General Ordinance; and

WHEREAS, the substitution of appropriate surety bonds or insurance policies for cash and other deposits now held in the Debt Reserve Account, and the transfer of resulting excess moneys to the Revenue Fund and then to the Residual Fund to finance water related infrastructure projects will not adversely affect the interests of bondholders; and

WHEREAS, the Council desires to explicitly address and authorize substitutions of surety bonds or insurance policies for cash and other deposits already held in the Debt Reserve Account; and

City of Philadelphia

BILL NO. 060005 continued

Certified Copy

WHEREAS, the Council desires to create and establish a new fund or account pursuant to Sections 4.12 (ii) and Section 10.01 of the General Ordinance and further implement the authorization contained in the Revenue Bond Act, at 53P.S. Section 15909, providing in relevant part that, “Excess moneys in the sinking fund, including moneys for the payment of the interest, principal or premium of bonds unclaimed after the due date for two years, and excess moneys in other funds shall be repaid to the city for its general purposes or applied as may be provided in the bond ordinance”; and

WHEREAS, the Council desires to hereby authorize use of funds in the Residual Fund to finance water related infrastructure projects by the establishment of a new Residual Fund sub-account under Section 4.12 (ii), but to limit the said new additional use of funds to only that amount of residual water and wastewater revenues attributable to transfer of funds from the Debt Reserve Account to the Revenue Fund as a result of purchase of appropriate surety bonds or insurance policies; now therefore,

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. Section 4.09 of the Restated General Water and Wastewater Revenue Bond Ordinance of 1989, as amended, (hereinafter the “General Ordinance”), entitled “Debt Reserve Account” is hereby amended to add the following paragraph:

“The Director of Finance is hereby authorized to use funds already held in the Debt Reserve Account to purchase appropriate surety bonds or insurance policies for deposit in the Debt Reserve Account in lieu of some or all of the current cash or other deposits therein, which surety bonds or insurance policies shall satisfy the requirements of this section 4.09, and to do or cause to be done all acts necessary to accomplish such substitution.”

SECTION 2. Upon exercise of the authority granted by Section 4.09 of the General Ordinance as amended by Section 1 of this Ordinance, the Director of Finance is hereby authorized to do or cause to be done all acts necessary to transfer the resulting excess money in the Debt Reserve Account established under the General Ordinance to the Revenue Fund established under the General Ordinance, as permitted by Section 4.09 of the General Ordinance.

SECTION 3. Section 4.12 of the General Ordinance, entitled “Residual Fund” is hereby amended to add the following subsection:

“4.12.01. Special Water Infrastructure Account

(a) There is established within the Residual Fund, pursuant to Section 4.12(ii), an account to be known as the “Special Water Infrastructure Account”. In the event that there is a substitution of appropriate surety bonds or insurance policies for some or all of the deposits held in the Debt Reserve Account, a transfer of resulting excess money in the Debt Reserve Account to the Revenue Fund and, following compliance with Section 4.06 hereof (entitled “Transfer from Revenue Fund to Other Funds and Accounts”), a transfer

City of Philadelphia

BILL NO. 060005 continued

Certified Copy

of remaining amounts of such excess to the Residual Fund, such remaining amount shall be deposited into the Special Water Infrastructure Account.

(b) Any amounts deposited in the Special Water Infrastructure Account may be used to finance water-related infrastructure projects. Amounts deposited in the Special Water Infrastructure Account may be applied at the written direction of the City to payments for the cost of renewals, replacements and improvements to the System or any acquisitions of the same consistent with the New River City Program Description and proposed budget attached hereto as Exhibit A.”

City of Philadelphia

BILL NO. 060005 continued

Certified Copy

EXHIBIT A

New River City Initiative

Since Mayor Street announced his visionary “New River City” initiative in early 2004, the Administration’s public investment in planning, site assemblage and infrastructure has helped to stimulate widespread private investment along our waterfront.

Project Objective: Enhance the development of Philadelphia’s historic riverfronts and neighborhoods in a way that guarantees the public enjoyment and protection of our City’s water resources.

The New River City Initiative focuses on coordinating the City’s efforts toward the riverfronts in order to redefine and improve the City’s relationship to its rivers, waterfronts, and the surrounding communities. By establishing a set of priorities and goals for development to promote and advance Philadelphia’s riverfronts as desirable locations, the City anticipates the redevelopment of thousands of acres of vacant land. The reuse of vacant land along the rivers will create communities of new urban housing, modern retail, office, and manufacturing space for technology companies, and create waterfront recreational amenities that will attract and retain knowledge industry residents and jobs and improve public access to the waterfront.

The City will utilize \$125 million in funds available in the Special Water Infrastructure Account to accelerate the development of New River City public water and sewer infrastructure. The City’s financial commitment will be augmented by State and Federal resources, creating opportunities for private developers to commit significantly greater levels of capital in anticipation of market rate returns. By overseeing, coordinating and managing the completion of public infrastructure work, the City anticipates stimulating widespread private investment along our waterfront while ensuring public access - both physical and visual - to the waters edge.

The Economic Blueprint establishes a framework to revitalize Philadelphia’s riverfronts and includes the following objectives:

- Cooperate with the stakeholders in the North Delaware region and identify an appropriate City role in implementation of Philadelphia City Planning Commission’s Master Plan.
- Coordinate development of the Central waterfront district as a residential, commercial and entertainment destination, and expand the infrastructure necessary to support industrial activities surrounding the port
- Continue to support the Schuylkill River Development Corporation in the implementation of its mixed-use Master Plan.

City of Philadelphia

BILL NO. 060005 continued

Certified Copy

- Pursue the redevelopment of the Navy Yard in accordance with Philadelphia Industrial Development Corporation's mixed-use Master Plan.
- Coordinate existing City resources and leverage other resources to sustain the advances achieved under the Neighborhood Transformation Initiative.

Water Bond Proceeds

The following program descriptions and chart provides details of the amounts, types of activities, and eligible uses that make up the total program budget for the \$125 million in funds available in the Special Water Infrastructure Account. All projects will be capital eligible as determined by the City with the written approval of Bond Counsel with the specific requirement that:

- Funds are used for public water, wastewater, and/or stormwater infrastructure.
- Improvements are located in public streets or right-of-way and City owns title to the infrastructure/right-of-way.
- Infrastructure meets city, state, federal standards, specifications, rules, regulations, ordinances, and Private Cost Contract Requirements.
- Water mains are able to provide adequate fire protection.
- Design and installation/construction are in accordance to Water Department standards and approved/inspected by the Department.

Program Categories and Funding Allocations:

- **Residential and Commercial Development**
Funding assistance to facilitate the installation of publicly-owned water and sewer infrastructure with a particular focus on the management of stormwater that incorporates its direct drainage into tidal waters for waterfront development, infiltration into the site where feasible, and the establishment, where possible, of public easements along the river corridor for public access and recreation. Funding will be prioritized for riverfront development that leverages private investments, captures and targeted manages stormwater runoff beyond the volume required by the City's Stormwater Regulations (effective January 1, 2006), and preserves and enhance the city prescribed riverfront greenway requirements. Projects will be competitively chosen based on the selection criteria discussed below.
- **Navy Yard Infrastructure Modernization**

City of Philadelphia

BILL NO. 060005 continued

Certified Copy

With the City's release of the 2004 Navy Yard Master Plan last September, the City and the Philadelphia Industrial Development Corporation now have a comprehensive master plan to guide the development of the next 500 acres of mixed-use development at this 1,200-acre site. This dynamic plan calls for a total build-out of more than 10 million square feet supported by \$2 billion in private investment. Funding will replace and/or rehabilitate the existing water and sewer infrastructure to ensure that all water and sewer utilities meet the Water Department's design standards and are equipped to meet the efficient, environmentally friendly and safe water delivery and drainage demands of future development.

- **Riverfront Public Infrastructure**

Funding will be provided for the installation of underground stormwater or sewage detention facilities that significantly reduce the occurrence of overflows of untreated wastewater into the city's rivers. The funding of these projects will result in the protection of public waterfront investments and the assurance that the city's river resources are enhanced as a public and aesthetic amenity that leverage private development opportunities. The funding will also serve to alleviate significant flooding that has occurred in a variety of city neighborhoods as a result of stormwater volumes generated by extreme rain storms that overburden the city's sewer system. Riverfront public infrastructure projects will be selected based on timing of construction and positive impact on communities.

- **Green City Strategy**

Funding assistance to implement stormwater management features in neighborhoods on publicly owned, contiguous vacant lot parcels, publicly subsidized funded housing, city parking lots, recreation and other facilities and public schools to provide the maximum benefit to the city's sewer infrastructure. These projects need not be located along the riverfronts, but must be designed to manage the stormwater runoff from adjacent blocks in addition to the runoff generated by the site itself. Stormwater management components may include a combination of greening and stormwater retention structures that will also serve as a public amenity.

City of Philadelphia

BILL NO. 060005 continued

Certified Copy

New River City Program Budget

New River City Activity	Budget
Projects	
Residential and Commercial Development	40,000,000
Navy Yard Modernization	30,000,000
Riverfront Public Infrastructure	30,000,000
Green City Strategy	25,000,000
Total	125,000,000

Project Selection

The Commerce Department will coordinate the review of all eligible proposals by a selection committee comprised of representatives from the Office of Housing and Neighborhood Preservation, City Planning Commission, the Managing Director's Office, the Water Department, Office of Neighborhood Transformation Initiative, and the Commerce Department. A report with a summary status of all projects funded under the New River City Initiative will be provided to City Council annually by the Commerce Department.

Selection among competing projects within each funding category will be based on conformance with the following criteria:

- Developer has site control and evidence of financing; indicating development is ready to build within the next 24 months.
- Project supports New River City, NTI, or other established Administration priorities, contributing to the economic vitality of the neighborhood and City.
- Proposed development is consistent with the master plan for the surrounding area and conforms to the design criteria provide by the Planning Commission.
- Developer will provide the City with a water utilization study or other projections illustrating how investment will add to the water ratepayer base and tax base.
- Project maximizes private and other public funding to leverage New River City funds.

City of Philadelphia

BILL NO. 060005 continued

Certified Copy

- Development will provide enhanced public access amenities (i.e. create recreation, open space uses), and will plan to mitigate stormwater runoff from the proposed project sites (i.e. stormwater mixing with wastewater).
- The development takes preventive measures beyond existing Water Department requirements to protect the region's water environment by safeguarding the river's edge by increasing the greenery along the riverfront (trees, grass, plants) - absorbs runoff and reducing flow to water treatment facilities.
- Project incorporates energy performance measures and promotes sustainable energy management practices.

Project Administration

The Commerce Department will contract with the Philadelphia Industrial Development Corporation (PIDC) to administer the New River City Program. Services to be provided include: marketing the program to developers and other interested parties; managing the application process; disbursement of funds upon proper authorization, including the Water Department engineering staff as appropriate; cash management services; preparation official reports as requested and assistance to the Selection Committee.

Economic Opportunity Plan New River City

I. New River City Overview

In 2004, Mayor Street announced his visionary “New River City” program, the Administration’s promise of public investment in planning, site assemblage and infrastructure which has helped to stimulate widespread investment in the City. In step with the Economic Development Blueprint, this effort will help to carry out the implementation of planning for the Navy Yard, the North Delaware River, the Schuylkill River, and most recently, the Central Waterfront. It will also leverage the City’s successful Neighborhood Transformation Initiative (NTI).

The City is proposing to substitute bond proceeds, currently held in the Restated General Water and Wastewater Revenue Bond Ordinance of 1989 Debt Reserve Account, with Surety Bonds; and further, transfer the substituted bond proceeds to the Water and Wastewater Revenue Fund to finance water and water-related infrastructure Project(s). We are proposing to access these funds within the guidelines of the original Bond Ordinance to implement the New River City program. In other words, all investments made with these funds will be capital eligible water and sewer infrastructure as determined by Bond Counsel.

With new residential and commercial development appearing along the 38 miles of Philadelphia’s Delaware and Schuylkill Rivers, repopulation on thousands of acres of old industrial sites, and creation of new tax and ratepayer bases in these areas, is evidence that the Mayor’s initiative has sparked enthusiasm in the developer community and restored their commitment to build and grow Philadelphia’s economy. But this initiative is not just about rebuilding our waterfronts; it is about revitalizing our neighborhoods as well. Publicly subsidized affordable housing Project(s); City parking lots; recreation; and other facilities that are located in areas that require improved storm water management or other water infrastructure are also included in this initiative. The funds will be used for design and construction of new water, wastewater, and storm water infrastructure for the public good. All improvements will be located in public streets or right-of-ways where the City will own title to the infrastructure. The benefits that the citizens of Philadelphia will reap from this initiative are invaluable. We will redefine the City’s relationship with its waterfronts and recapture neighborhood areas that are currently underutilized. This plan, in essence, will transform burdensome liabilities into productive, valuable assets while creating economic opportunity to businesses and Philadelphia residents.

II. The Economic Opportunity Plan for New River City

In an effort to facilitate the goals reached as a result of the Neighborhood Transformation Initiative Economic Opportunity Plan of 2002, the City, including its agents and representatives is committed and determined to continue to provide meaningful and substantial opportunities for minority-owned, women-owned and disabled-owned business enterprises (“collectively, M/W/DSBEs”). It is expected that all Program Participants make the same commitment. Through this Economic Opportunity Plan (EOP) the City commits to provide substantial and

meaningful employment opportunities for minority persons and women in connection with the implementation of the Program. As such, we refer to the NTI Economic Opportunity Plan of 2002 which makes training opportunities available to Philadelphia residents to enable them to participate in employment created as a result of these development projects. We will continue this trend for the New River City program.

Each Participant, their associates, partners or representatives shall not discriminate on the basis of race, color, religion, sex or national origin in the award and performance of contracts pertaining to Program Project(s) described herein (the "Project(s)"), or with respect to any and all related employment practices.

The purpose, standards and procedures of this EOP (the "Plan") are requirements of all Participants. Participants shall include consultants, construction management, prime contractors, subcontractors and vendors of supplies, equipment and materials.

All Participants in the Project(s) shall observe and be subject to the enforcement of all relevant City of Philadelphia, Commonwealth of Pennsylvania and federal laws, ordinances, orders, rules and/or regulations regarding M/W/DSBE and DBE firms ("DBE" refers to disadvantaged business enterprises as that term is further defined in U.S. Department of Transportation Regulations) and locally-based business enterprises. Furthermore, affirmative action will be taken, consistent with sound procurement policies and applicable laws to ensure that M/W/DSBE and DBE firms are afforded a meaningful and representative opportunity to participate in contracts relating to the Project(s).

For the purposes of this Plan, the term "minority" shall refer to the following: African American or Black (all persons having origins in any of the Black African racial groups); Hispanic/Latino American (all persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin regardless of race); Asian American (all persons having origins from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, Hong Kong, India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka ; and Native American (which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians).

A. Contracting Requirements and Procedures

1. Participant EOPs - Each Participant shall develop and submit to the City for review and approval an EOP that meets the requirements of this Plan. The form of the EOP is attached as Exhibit A to this EOP.

2. Scope/Duration - This Plan requirement shall apply to contracts awarded and procurements by the City and all Participants throughout the entire length of the Project(s).

3. Statement of Objectives - The Objectives set forth in the Plan shall be incorporated in all requests for proposals, bid packages, solicitations and contracts for the Project(s), and communicated to all Participant levels.

4. Contracting Good Faith Efforts - Each prime consultant and contractor shall use its good faith and nondiscriminatory efforts to provide joint venture partnerships and subconsulting and subcontracting opportunities for M/W/DSBES certified by the City of Philadelphia's Minority Business Enterprise Council (MBEC), including firms granted reciprocal certification by the MBEC because they have been duly certified by approved governmental entities, or other jurisdictions that similarly grant reciprocity to M/W/DSBES certified by the MBEC. In order to maximize opportunities for as many businesses throughout the region as possible, the Plan shall provide the opportunity for each prime consultant and prime contractor to identify certifiable firms in their bid ("certifiable firms" shall mean those firms which are eligible for MBEC certification). These certifiable firms must be certified by MBEC no later than ten calendar days after the date of the bid opening in order for their participation to count towards the prime's good faith efforts. For the overall program, each prime consultant's and prime contractor's good faith and nondiscriminatory efforts shall be presumed if, during each phase of the Project, the following levels of participation are achieved: 35% participation for MBEs, 12% participation for WBEs and 2% participation for DSBES. These percentages for participation relate to the dollar value of subcontracts including add-ons, change orders and scope adjustments or in the instance of a joint venture to the beneficial percentage of ownership in the joint venture. Recognizing the unique nature of each contract, MBEC shall review the specific scope of work and assign an appropriate benchmark for participation. The assigned benchmark may be expressed through the establishment of contract participation ranges and/or an evaluation of good faith efforts. The specific bidding requirements, including responsiveness to MBEC requirements, will be detailed in the bidding instructions which will be included in each bid package. Relevant portions of the NTI Economic Opportunity Plan adopted in 2002, in particular, for acquisition activities, apply to this New River City Program.

5. Employment Good Faith Efforts - Outreach efforts and training opportunities with local entities identified in the NTI Economic Opportunity Plan will continue. Participants will be required to work with local area Community Development Corporations, the monitoring consultant and representatives of the trades unions to create pre-apprenticeship opportunities for residents of the local areas. Respondents to all RFPs or bids issued by the City or any other quasi-public agency or authority associated with the Program shall require its contractors to make a good faith effort to employ minority and female craft persons in the construction workforce equal to goals of 43% and 7%, respectively, of all work hours for each skilled and semi-skilled trade, necessary to carry out the Project. In support of local initiatives that target economic benefits to low-income persons and underemployed craft persons, Respondents shall encourage their contractors to make a good faith effort to maximize employment opportunities for apprentices and pre-apprentice craft persons with a participation goal of 25% minority and 10% female, respectively, of all first-year and other apprentices. Respondents will include these goals in all construction-related prime contracts and shall require its prime contractors to reference these goals in their commercial subcontracts. The City of Philadelphia has set as a goal the utilization of Philadelphia

residents on the workforce equal to 60% of all workforce hours.

6. The *Good Faith Effort* requirements set forth in Paragraphs A.4. and A.5, above, shall be incorporated into any contract funded pursuant to the Program, except in cases where Project(s) have been bid or contractors selected by another method approved by the City *and* those bids or selection processes are subject to other participation requirements that have already been approved by MBEC.
7. Participants shall reasonably exhaust the use of *Best and Good Faith Efforts* as defined hereunder to provide appropriate participation and utilization opportunities for M/W/DSBE firms and/or DBE firms. All Project contractors and vendors will be required to do likewise, consistent with *best and sound* procurement practices, and with applicable law. *Best and good faith efforts* will be deemed adhered to when a Participant meets the criteria set forth in this section and applicable law that demonstrates and documents its efforts throughout the length of the Project(s). If the established ranges for inclusion of M/W/DSBE and/or DBE firms are not met, a Participant must submit a Subcontracting/Vendor Plan showing how *best and good faith efforts* were made to achieve said ranges. This plan must include, but not be limited to, the following:
 - Written request for assistance to the City three (3) business days prior to the bid due date,
 - Solicitation through newspapers, periodicals advertisements, and job fairs, etc. that focus on construction and are minority-owned and/or focused,
 - Telephone logs,
 - Evidence of solicitation to qualified and MBEC certified M/W/DSBE and/or DBE firms,
 - Bid results and reasons as to why no awards were made to M/W/DSBE and/or DBE firms,
 - Use of City/MBEC-certified business firms to identify M/W/DSBE firms and the PA UCP directory to identify DBE firms,
 - Correspondence between contracting firm and any M/W/DSBE and/or DBE firms,
 - Attendance logs and/or records of any scheduled pre-bid or pre-proposal meeting,
 - Specific, general and technical assistance offered and provided to M/W/DSBE and DBE firms related to their portion of the Project, and
 - Proof there was notification of and access to bid documents at company or other office locations for open and timely review.
8. Monitoring *Best and Good Faith Efforts* - City requirements relative to monitoring of *best and good faith efforts* of Participants engaged in the Project(s) shall be established by the City in consultation with appropriate City, state and federal agencies and/or private professional entities to include (in addition to further measures as may be required) the following:

- Participants shall submit copies of signed contracts and purchase orders with M/W/DSBE and/or DBE subcontractors.
- Participants shall be ready to provide evidence of payments to their subcontractors, sub-consultants and supply vendors for participation verification, and agree to fully comply with the City's payment reporting process which may include the use of electronic payment verification systems such as IMPACT (Invoicing Minority Participation and Compliance Tracking). This documentation should be provided monthly or included with every request for payment to Contractors.
- At the conclusion of work, the Subcontractor shall provide a statement or other evidence of the actual dollar amounts paid to M/W/DSBE and/or DBE subcontractors.
- All On-site Contractors shall be prepared to submit "certified" payrolls listing the following items for all on-site employees:
 - a) Full name
 - b) Social Security number
 - c) Full address
 - d) Trade classification (e.g., laborer, carpenter, apprentice, electrician, plumber, and foreman)
 - e) Gender
 - f) Race/Ethnicity
 - g) Hours worked
 - h) All withholding (e.g., laborer, local, state, FICA, etc.)
 - i) Name of Contractor and Indication of Prime for Subcontractors
 - j) Name of Project
- Certified payroll reports shall be signed by an authorized company officer.
- Participants shall comply with all applicable requirements of any federal, state or local law ordinance or regulation relating to contract and payroll compliance.

9. Documentation of *Best and Good Faith Efforts and Compliance* - Two requirements have been established to assure the inclusion of M/W/DSBE firms, (and DBE firms as applicable under federal law) as contractors and vendors, and minority /female/local residents as Project site workforce participants:

- *M/W/DSBE contracting and vending participation levels*: the basis for each determination will be the total dollar amount of the bid/contract OR the total dollar amount of the bid/contract for the identified Project task.
- *Minority/Female/Local Resident Employment Participation Levels*: the basis for each determination will be the Projected total on-site field employee hours divided by the number of minority, female and local residents' employee hours anticipated to be performed on the Contractor's payroll, and each of the Contractor's on-site subcontractors payrolls.

10. Oversight Committee - The City will establish a Program Oversight Committee that may include representatives from the City, the Developer and/or the General Contractor and Construction Manager, Minority Business Enterprise Council, City Council, community organizations and the Building Trades. Participants will engage in monitoring, reporting and problem solving activities which are to include regular meetings to address all matters relevant to further development of the Plan, carrying out its implementation and the successful completion of the Project. A meeting of the Oversight Committee shall be called by the City in its discretion, at an appropriate time upon the initiation of the Project(s) and shall meet on a regular basis during all phases of the Project.

11. Certified M/W/DSBE Firms - Only businesses that are owned managed and controlled, in both form and substance, as M/W/DSBE firms, and DBEs, shall fulfill the participation goals of the Plan for these Project(s). To ensure this standard, all businesses, including joint ventures, must be certified by the Philadelphia Minority Business Enterprise Council (MBEC), or certifying participants of the Pennsylvania Unified Certification Program (UCP) for federal DBE certification. MBEC is a certifying participant of the PA UCP.

- M/W/DSBE and DBE certification is not a determination of a Bidder's or Contractor's financial or technical ability to perform specified work. The City reserves the right to evaluate the Contractor's or Subcontractor's ability to satisfy financial, technical, or other criteria separate and apart from said certifications before bid opening. Pre-qualification conditions and requirements shall be conveyed in a fair, open bidding process.
- The City recognizes that M/W/DSBE certifications may expire. The participation of a firm whose certification expires during the firm's participation on a particular phase of the Project(s) may be counted toward overall goals for participation ranges. However, said firm MUST recertify prior to consideration for future goal credit in the Project's Plan. If a firm is decertified, said firm would not be eligible to participate.
- An M/W/DSBE and/or DBE submitting as the prime contractor is required, like all other Participants, to submit a bid and/or RFP that is responsive to the Reauthorized Executive Order 02-05, and applicable law, and will only receive credit, in its certification category, for the amount of its own work or supply effort on the specified work in the bid and or RFP. In order to maximize opportunities for as many businesses as possible, a firm that is credited in two or more categories (e.g. MBE and WBE, or WBE and DSBE) will only receives credit as either an MBE or WBE or DSBE. The firm will not be credited toward more than one category. Bidders/Respondents will note with their submission which category, MBE or WBE or DSBE, is submitted for credit.

12. Non-Compliance - In cases where the City has cause to believe that a Participant, acting in good faith, has failed to comply with the provisions of the Plan, the City 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.

- In conciliation, the Participant must satisfy the City 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/DBE and DBE firms. *Best and good faith efforts* on the part of the Participant/Contractor include:

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

b) Notifying all parties, including the City, the M/W/DSBE and/or DBE firm, the Oversight Committee and all relevant Participants, of any problems in a timely manner.

c) Requesting assistance from the City and/or the Oversight Committee in resolving any problems with any M/W/DSBE and/or DBE firm.

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

- In cases where the City 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.
- After affording the Participant notice and an opportunity to be heard, the City and/or the Oversight Committee are authorized to take corrective, remedial and/or punitive action. Such actions may include, but are not limited to:

a) 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;

b) Suspending the violating Participant from doing business with the City;

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

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

- A Participant may appeal a determination of non-compliance with this Plan by filling a written grievance with the City and/or its Oversight Committee.
- Within five (5) working days, the City 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.

A. Reporting and Project Performance - Over the term of the program, the City of Philadelphia, through its departments and agencies, will prepare quarterly reports of employment and contracting activities for the Program which provide the following information:

1. Utilization of M/W/DSBEs and commitments made with such businesses;

2. The hiring and employment of minorities and females;
3. The hiring and employment of Philadelphia residents and;
4. The training programs utilized and the placement rates.

Additionally, the City of Philadelphia acknowledges the value of monitoring and therefore will develop and work with an Oversight Committee to monitor overall compliance and achievement of the Project objectives as defined in this Plan.

The City of Philadelphia will continue to keep, and require all prime contractors and consultants to keep such records and to file such reports relating to the provisions of this Economic Opportunity Plan as may be reasonably necessary to document compliance with the Plan. The City of Philadelphia, through the Office of Housing and Community Development has contracted with and will continue to work with the Greater Philadelphia Urban Affairs Coalition (GPUAC) to assist in the monitoring and reporting of employment performance with respect to this Plan.

The City, its departments and agencies, contractors, consultants, and to ensure maximum opportunities not necessarily identified in this Plan. The City of Philadelphia and its agencies and authorities and its grantees agree to work with all contractors to submit to the GPUAC manpower utilization projections for all work associated with this program.

III. New River City Activities: Contracting and Employment Opportunities

The City of Philadelphia has budgeted \$125 million for the New River City program. The funds will be spent for Residential and Commercial Development; Navy Yard Infrastructure Modernization; Public Infrastructure Improvements; and the Green City Strategy.

- *Residential and Commercial* New River City funding will create and preserve public access to the waterfronts by linking assistance with the design and construction of water and sewer infrastructure for private commercial and residential redevelopments with the establishment of a riverfront right of way design and a commitment to manage storm water runoff volume required by the City's Storm Water regulations.
- Funding for the *Navy Yard Infrastructure Modernization* program will be directed by the Philadelphia Industrial Development Corporation's Navy Yard Master Plan. The master plan recognizes the need to replace antiquated water, drainage and sewer systems to prime the Navy Yard for 500 acres of mixed-use redevelopment. The Infrastructure Modernization Program upgrades the water and sewer infrastructure at the Navy Yard to ensure safe and efficient water delivery and drainage in anticipation of a total build-out of more than 10 million square feet supported by \$2 billion in private investment.
- *Riverfront Public Infrastructure Improvement* funding will provide for the installation of underground storm water or sewage detention facilities that significantly reduce the occurrence of overflows of untreated wastewater into the City's rivers. The funding of these Project(s) will result in the protection of public waterfront investments and the assurance that the City's river resources are enhanced as public and aesthetic amenities that leverage private development opportunities. The funding will also serve to alleviate

significant flooding that has occurred in a variety of City neighborhoods as a result of storm water volumes generated by extreme rainstorms that overburden the City's sewer system. Public infrastructure improvements will be selected based on the construction schedule and positive impact on communities. Under this category the City would look to install new storage basins to divert and detain excess storm water in order to alleviate overflow problems that plague areas along the waterfront.

- *The Green City Strategy* funding will implement storm water management features in neighborhoods on publicly owned parcels, publicly subsidized housing, and City-owned facilities to provide the maximum benefit to the City's sewer infrastructure. These Project(s) need not be located along the riverfronts, but must be designed to manage the storm water runoff from adjacent areas, in addition to the runoff generated by the site itself.

The City of Philadelphia anticipates packaging bids in various sizes. The various package sizes will allow for bidding by both large and small contractors. The following have been identified as activities necessary to fulfill the specifications for the demolition and associated reconstruction and redevelopment of storm water and waste water Project(s). It is anticipated that the prime contractor will subcontract for these activities:

- **Construction** which will include general contracting, mechanical, electrical, plumbing, site work, excavation, and demolition
- **Operations and Maintenance**
- **Landscaping**
- **Curbs and Sidewalks**
- **Signage**
- **Public Art**
- **Architectural and Engineering** which will include design, planning, site remediation, and soil/water testing, land surveyors and environmental engineering
- **Land Acquisition** which will include real estate transactional activities

Employment opportunities identified during these aforementioned phases include but are not limited to:

- (a) Operating Engineers
- (b) Laborers
- (c) Plumbers
- (d) Cement Masons
- (e) Plasterers
- (f) Carpenters
- (g) Landscapers

It is proposed that the \$125 million will support redevelopment and reconstruction of New River City infrastructure improvements across the City. MBEC has proposed the following participation range goals and will review the specific scopes of work in bid packages and/or requests for proposals, and will assign the appropriate participation ranges in contracting opportunities for Project(s) of this Program. The City of Philadelphia, through its agents and representatives, will ensure that the following goals are included in all New River City related

prime contracts and require the prime contractors to reference these goals for all sub consultants and subcontractors.

	MBE %	WBE %	DSBE %
Construction	25-30	15-20	best efforts
Operations and Maintenance	20-25	10-20	best efforts
Landscaping	25-30	15-20	best efforts
Curbs and Sidewalks	10-15	5-10	best efforts
Signage	15-20	10-15	best efforts
Public Art	5-10	5-10	best efforts
Architectural and Engineering	20-25	10-15	best efforts
Land Acquisition	15-20	10-15	best efforts

Additional economic opportunity associated with the New River City program will be defined on a Project specific basis. It is contemplated that this Plan will be amended as other contracting opportunities are identified.

Exhibit A

Economic Opportunity Plan

I. Project and Plan Introduction

The Project consists of _____ (referred to hereafter as the “Project”) for _____ (referred to hereafter as the “Owner”) on parcels of ground located at _____ in the City of Philadelphia, Pennsylvania. The purpose, standards and procedures of this Economic Opportunity Plan (referred to hereafter as the “Plan”) are the expressed wishes of the Owner as set forth herein. Participants shall include consultants, construction management, prime contractors, sub-contractors and vendors of supplies, equipment and materials. All participants will be obligated to fully comply with the requirements of the Plan.

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

All participants in the Project shall observe and be subject to the enforcement of all relevant City of Philadelphia, Commonwealth of Pennsylvania and federal laws, ordinances, orders, rules and/or regulations regarding M/W/DSBE firms and locally-based business enterprises. Furthermore, affirmative action will be taken, consistent with sound procurement policies and applicable laws to ensure that M/W/DSBE firms are afforded a meaningful and representative opportunity to participate in contracts relating to the Project.

For the purposes of this Plan, the term “minority” shall refer to the following: African American or Black (all persons having origins in any of the Black African racial groups); Hispanic/Latino-American (all persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin regardless of race); Asian American (all persons having origins from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, Hong Kong, India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka ; and Native American (which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians).

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

II. Procedures for Determination

A. **Scope/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 Project(s) and communicated to all Participant levels.

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

- Written request for assistance to the Owner three (3) business days prior to the bid due date.
- Solicitation through newspapers, periodicals advertisements, job fairs, etc. that focus on construction and are minority-owned and/or focused.
- Telephone logs.
- Evidence of solicitation to qualified and MBEC certified M/W/DSBE firms.
- Bid results and reasons as to why no awards were made to M/W/DSBE firms.
- Use of City/MBEC-certified business firms via their directory.
- Correspondence between contracting firm and any M/W/DSBE firms.
- Attendance logs and/or records of any scheduled pre-bid or pre-proposal meeting
- Specific, general and technical assistance offered and provided to M/W/DSBE firms related to their portion of the Project.
- Proof there was notification of and access to bid documents at company or other office locations for open and timely review.

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

1) Participants shall submit copies of signed contracts and purchase orders with M/W/DSBE subcontractors.

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

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

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

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

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

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

E. Documentation of *Best and Good Faith Efforts and Compliance*. Two components have been established to facilitate the inclusion of M/W/DSBE firms as contractors and vendors, and minority /female/local residents as Project site workforce participants:

1. M/W/DSBE contracting and vending participation levels: the basis for each determination will be the total dollar amount of the bid/contract OR the total dollar amount of the bid/contract for the identified Project task.

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

F. **Oversight Committee** - The Owner, in consultation with the appropriate agencies and entities, will establish and identify the members of a Project Oversight Committee, including representatives from the Owner, the Developer and/or the General Contractor and Construction Manager, Minority Business Enterprise Council, City Council, community organizations and the Building Trades. Participants will engage in monitoring, reporting and problem solving activities which are to include regular meetings to address all matters relevant to further development of the Plan, carrying out its implementation and the successful completion of the Project.

A meeting of the Oversight Committee shall be called by the Owner 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.

III. Certified M/W/DSBE Firms

A. Only businesses that are owned, managed and controlled, in both form and substance, as M/W/DSBE firms shall participate in this Project's Economic Opportunity Plan. To ensure this standard, all businesses, including joint ventures, must be certified by the Philadelphia Minority Business Enterprise Council (MBEC) or members of the Pennsylvania Unified Certification Program (UCP). Both agencies are authorized to certify such enterprises.

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

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

IV. 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/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/DBE firm in a timely, responsive and responsible manner, and fulfilling all contractual requirements, including payments, in said manner.
- 2) Notifying all parties, including the Owner, the M/W/DSBE firm, the Oversight Committee and all relevant Participants, of any problems in a timely manner.
- 3) Requesting assistance from the Owner and/or the Oversight Committee in resolving any problems with any M/W/DSBE firm.
- 4) Making every reasonable effort to appropriately facilitate successful performance of contractual duties by a M/W/DSBE firm through timely, clear and direct communications.

C. In cases where the Owner and/or the Oversight Committee has 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.

V. Participation Goals and Ranges

The following employment goals have been set for the Project:

Employment	Minorities	Females	Disabled
Construction Workforce	30%	5%	0%
Permanent Workforce			
- Hourly	40%	30%	2%
- Management	25%	35%	2%

The following contract ranges have been set for the Project:

	Minority	Female	Disabled
Contracts	Owned	Owned	Owned
Professional Services	25-30%	15-20%	2-5%
Construction Contractors	25-30%	15-20%	2-5%
Operational Service Providers	25-30%	15-20%	2-5%

VI. Guidelines for Joint Venturing

Joint Venture relationships with certified M/W/DSBE firms must meet the following criteria in order to receive credit towards participation goals:

A. The M/W/DSBE partner(s) must be certified or certifiable by MBEC, UCP or a qualified governmental agency authorized by law to certify such enterprises prior to proposal/bid submission.

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

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

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

City of Philadelphia

BILL NO. 060005 continued

Certified Copy

CERTIFICATION: This is a true and correct copy of the original Bill, Passed by the City Council on December 14, 2006. The Bill was Signed by the Mayor on January 23, 2007.

A handwritten signature in black ink that reads "Patricia Rafferty". The signature is written in a cursive, flowing style.

Patricia Rafferty
Chief Clerk of the City Council