

**City of Philadelphia
Economic Opportunity Plan**

HERITAGE PARK PLAYGROUND IMPROVEMENTS

I. Introduction, Definitions, Goals and Diversity Practices

The City of Philadelphia, acting through its offices of the Division of Housing and Community Development ("DHCD") and Office of Economic Opportunity ("OEO") (collectively, "City") and the Philadelphia Redevelopment Authority ("PRA") strongly encourage the use of certified Minority ("MBE"), Women ("WBE"), Disabled ("DSBE") and Disadvantaged¹ ("DBEs") Business Enterprises (collectively, "M/W/DSBEs") and minority and female workers in all aspects of the development and use of a parcel(s) of land located at **HERITAGE PARK PLAYGROUND, 1511 W. CLEARFIELD STREET** which may include financial investment, design, construction and operations (Project). In support of this objective, City and PRA will require that the Gessler Construction Co Inc ("Contractor") of this parcel commit to this Economic Opportunity Plan ("EOP" or "Plan") as required by Section 17-1602 of The Philadelphia Code, as amended.

This Plan contains ranges of projected M/W/DSBE utilization and goals for the employment of minority and female workers in connection with the Project. Contractor shall cause this Plan to be made part of and incorporated into all bids, proposals and solicitations and any resulting agreement(s) entered into between Contractor and any participant in connection with the development and use of the parcel. By submission of this Plan, Contractor makes a legally binding commitment to the City and PRA to abide by the provisions of this Plan which include its commitment to exercise its Best and Good Faith Efforts throughout the project and its commitment to cause its participants to use their Best and Good Faith Efforts to provide subcontracting opportunities for M/W/DSBEs in all phases of the project and to employ a diverse workforce. This Plan expressly applies to all contracts awarded in connection with the Project.

Neither Contractor nor any participant shall discriminate on the basis of race, color, religion, sex, national origin, sexual orientation, gender identity, ancestry, age, or handicap in the award and performance of contracts pertaining to this Plan. Contractor has summarized its current and past practices relating to Contractor's diversity practices ("Diversity Practices Statement"). This statement, included as Attachment "A" to this Plan, identifies and describes Contractor's processes used to develop diversity at all levels of Contractor's organization including, but not limited to, board and managerial positions. This Diversity Practices Statement summarizes Contractor's strategic business plans specific to its current or past practices of M/W/DSBE utilization on its government and non-government projects and procurement activities. Contractor further agrees to identify any "Equity Ownership" held in connection with this Project which shall mean the percentage of beneficial ownership in the Contractor's organization or development team that is held by minority persons, women and disabled persons. In the event Equity Ownership is identified, Contractor agrees to abide by the reporting requirements enumerated in Section 17-1603 (1)(g)(.3).

Contractor hereby verifies that all information submitted to the City 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

¹Disadvantaged Business Enterprises ("DBEs") are those socially or economically disadvantaged minority and woman owned businesses certified under 49 C.F.R. Part 26.

Pa.C.S. Section 4107.2 (a)(4) (relating to fraud in connection with minority business enterprises or women's business enterprises).

For the purposes of this Plan, MBE, WBE, DBE and DSBE shall refer to certified businesses so recognized by OEO. Only the work or supply effort of firms that are certified as M/W/DSBEs by an OEO approved certifying agency² 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/oao/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: efforts, the scope, intensity and appropriateness of which are designed and performed to foster meaningful and representative opportunities for participation by M/W/DSBEs and an appropriately diverse workforce and to achieve the objectives herein stated. Best and Good Faith Efforts are rebuttably presumed met, when commitments are made within the M/W/DSBE Participation Ranges established for this development and a commitment is made to employ a diverse workforce as enumerated herein.

II. Goals

A. M/W/DSBE Participation Ranges

The City of Philadelphia has established a citywide goal of 35% M/W/DSBE utilization as informed by its Annual Disparity Study.³ This citywide goal should be used as a benchmark for the Contractor's expression of Best and Good Faith Efforts which are efforts taken by Contractor to provide meaningful and representative opportunities for M/W/DSBEs in the Project. For this project, 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 is stated below as participation ranges. These percentages relate to the good faith estimated cost of the entire Project. 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 Project:

MBE	WBE
18%	7%

MBE: TEM Construction \$290,000 18%

WBE: Gessler Construction \$1,115,000 7%

²A list of "OEO approved certifying agencies" can be found at www.phila.gov/oao

³The City of Philadelphia FY'16 Annual Disparity Study recommends an overall goal of 35% based upon an analysis of FY'16 utilization and availability.

B. Workforce Goals for a Diverse Workforce

As a benchmark for the expression of "Best and Good Faith Efforts" to provide meaningful and representative opportunities for diverse workers in the Project, the following goals have been established for the employment of minority persons and females in the Project workforce of apprentices and journeymen at the following levels⁴:

African American Journeypersons – 22% of all journey hours worked across all trades

Asian Journeypersons –3% of all journey hours worked across all trades

Hispanic Journeypersons – 15% of all journey hours worked across all trades

Female Journeypersons – 5% of all journey hours worked across all trades

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

Female Apprentices – 5% of all hours worked by all apprentices

III. Responsiveness

A. Contractor shall, and shall cause its participants to identify all M/W/DSBE commitments and agree to employ a diverse workforce on the form entitled, "M/W/DSBE Participation and Workforce Commitments." The commitments on this form constitute a representation that the identified M/W/DSBE is capable of providing commercially useful goods or services relevant to the commitments and that the Contractor and its participants have entered into 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 this Plan.

C. DHCD will review the M/W/DSBE Participation and Workforce Commitments Form for the purpose of determining whether Best and Good Faith Efforts have been made. DHCD reserves the right to request further documentation and/or clarifying information at any time during the construction and development of the Project.

D. If Contractor, its participants or any subsequent developer makes any changes in contracts that have been reviewed by DHCD under the Plan, or if Contractor at the time of Closing has not yet identified contracts entered into for the development of the Project, then Contractor, its participants or any subsequent developer shall have the obligation to inform DHCD of any changes to the approved Plan and shall use Best and Good Faith efforts to use M/W/DSBEs for any new contracts.

⁴ These goals are informed by the City of Philadelphia's annual disparity assessment of workforce diversity, the "Economic Opportunity Plan Employment Composition Analysis Fiscal Year 2016."

IV. Compliance and Monitoring of Best and Good Faith Efforts

A. A hard copy of this Plan, as certified below by OEO, shall be filed with the Chief Clerk of City Council within fifteen (15) days of Closing. The Plan shall be filed with:

**Michael Decker, Chief Clerk of City Council
Room 402 City Hall
Philadelphia, Pennsylvania 19107**

B. Contractor and its participants agree to cooperate with DHCD in its compliance monitoring efforts, and to submit, upon the request of DHCD, documentation relative to their implementation of the Plan, including the items described below:

- 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; and**
- Telephone logs and correspondence relating to M/W/DSBE commitments.**
- To the extent required by law, the Contractor and its participants shall ensure that all its on-site contractors maintain certified payrolls which include a breakout of hours worked by minority and female apprentices and journeypersons; these documents are subject to inspection by the City.**

C. Prompt Payment of M/W/DSBEs

- 1. The Contractor and its participants agree 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.**

D. Oversight Process

- 1. Where the dollar value of development is in excess of Five Million Dollars (\$5,000,000), the Plan shall establish a Project Oversight Committee, consisting of, as appropriate, the contractor, developer or recipient of financial assistance and representatives of the Contractor, PRA, OEO, DCHD, City Council, and appropriate community organizations. Such Committee shall meet regularly, beginning no later than the initiation of the design phase of the project, and shall be responsible for facilitating compliance with the Plan. OEO will implement the Oversight Process, as required by Section 17-1603(b) of The Philadelphia Code. The Oversight Committee, through the Oversight Process, shall have within its purview the reconciliation of all compliance related issues or grievances. The Oversight Committee Process, as needed, will involve convening individual consultation or periodic small group meetings to include any or all of the constituent parties.**

V. Remedies and Penalties for Non-Compliance

A. The Contractor acknowledges and agrees that its compliance with the requirements of this Plan is a material inducement for the Ordinance of City Council and Contractor's failure to substantially comply with the Plan may result in enforcement actions and the imposition of penalties as authorized by Sections 17-1605 and 17-1606 of The Philadelphia Code. Notwithstanding the foregoing, no privity of contract exists between PRA, the City and any M/W/DSBE identified in any contract resulting from implementation of the Plan. Neither PRA nor the City intends to give or confer upon any such M/W/DSBE any legal rights or remedies in connection with subcontracted services under any law or policy or by any reason of any contract resulting from Implementation of the Plan except such rights or remedies that the M/W/DSBE may seek as a private cause of action under any legally binding contract to which it may be a party.

Frances Gessler, Gessler Construction 6/25/23
PRINT NAME OF CONTRACTOR DATE

[Signature] 6/25/23
SIGNATURE OF CONTRACTOR DATE

Mathew Tharakan 02-21-2024
DEPUTY DIRECTOR COMPLIANCE DHCD DATE
MATTHEW THARAKAN

Lynn T. Newsome 02/21/2024
OFFICE OF ECONOMIC OPPORTUNITY DATE
LYNN NEWSOME, DEPUTY DIRECTOR, COMMERCE