City of Philadelphia

City Council
Chief Clerk's Office
402 City Hall
Philadelphia, PA 19107

BILL NO. 120723
(As Amended, 10/10/12)

Introduced September 20, 2012

Councilmember Johnson

Referred to the
Committee on Streets and Services

AN ORDINANCE

Authorizing the striking from City Plan No. 357 of a certain right-of-way reserved for drainage purposes in the area lying northeast of Island Avenue and northwest of Bartram Avenue and the plotting upon the said City Plan of a new right-of-way for drainage purposes in an alternate location within the same area and authorizing acceptance of the grant to the City of the said right-of-way being plotted, under certain terms and conditions.

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. Pursuant to Section 11-405 of The Philadelphia Code, the Board of Surveyors of the Department of Streets is hereby authorized to make certain changes affecting the lines of City utility rights-of-way on a portion of City Plan No. 357, within the area lying northeast of Island Avenue and northwest of Bartram Avenue, by:

a) Striking from the City Plan and abandoning a certain right-of-way reserved for drainage purposes which extends from a point on the northeasterly side of Island Avenue, approximately eighty-six feet northwest of Bartram Avenue, northeastwardly to a second certain right-of-way reserved for drainage purposes, which extends from a point on the said northeasterly side of Island Avenue, approximately eight-hundred thirteen feet northwest of said Bartram Avenue, southeastwardly to a point on the northwesterly side of said Bartram Avenue, approximately five-hundred thirty-one feet northeast of said Island Avenue.

b) Plotting on the City Plan a right-of-way for drainage purposes extending from a point on the said northeasterly side of Island Avenue, approximately one-hundred thirty-five feet northwest of Bartram Avenue, northeastwardly to the said second

certain right-of-way reserved for drainage purposes, which extends from said Island Avenue to said Bartram Avenue.

SECTION 2. This authorization is conditional upon compliance with the following requirements within two (2) years from the date this Ordinance becomes law:

a) The filing of an agreement, satisfactory to the City Solicitor, by the owner(s) of property affected thereby, to release the City from all damages or claims for damages which may arise by reason of the City Plan changes authorized herein; in lieu thereof, only after the party in interest has demonstrated best efforts to obtain such agreements and such efforts are unsuccessful, the party in interest shall file an agreement and a bond, with corporate surety, satisfactory to the City Solicitor or an irrevocable letter of credit satisfactory to the City Solicitor, to release the City as aforesaid.

b) The filing of an agreement, satisfactory to the City Solicitor, by the party in interest, to release, indemnify, and defend the City from all damages or claims for damages that may arise by reason of the City Plan changes authorized herein.

c) The filing of an agreement, satisfactory to the City Solicitor, by the party in interest, to make any and all changes and adjustments to water pipe, fire hydrants, sewers, inlets and manholes, and to other City structures either overhead, underground, or upon the surface, including the relocation, abandonment, repairing, reconstruction, cutting, and sealing of such structures and facilities which may be necessary in the judgment of the Water Department by reason of the City Plan changes authorized herein. The agreement shall provide for the removal of salvageable hydrants, valves, manhole covers, frames, and connections, as determined by the Water Department, and for their delivery to the storage yard of the Water Department located at Twenty-ninth Street and Cambria Street at no cost to the City. The agreement shall also provide for the removal of salvageable cast iron manholes and covers, street inlet grates, frames and hoods, and inlet castings, as determined by the Water Department, and for their delivery to the storage yard of the Water Department located at 3201 Fox Street at no cost to the City. The agreement shall provide that this work be completed within one year from the date of approval by the Board of Surveyors of the City Plan changes authorized by this Ordinance.

d) The party in interest shall file a bond, with corporate surety, satisfactory to the City Solicitor or an irrevocable letter of credit satisfactory to the City Solicitor, in an amount satisfactory to the Water Department, to cover the cost of the work required under Section 2(c) herein.

e) The filing of an agreement, satisfactory to the City Solicitor, by the owner(s) of property affected thereby, granting to the City the aforesaid right-of-way for drainage purposes authorized in Section 1(b) of this Ordinance. The agreement shall provide that no changes in grades shall be made and that no fences, buildings,

or other structures, either overhead, underground, or upon the surface, shall be constructed within the lines of the right-of-way or abutting thereon, unless the plans for such structures shall first be submitted to and approved by the Water Department. The agreement shall also grant the right-of-access and occupation at any and all times to the officers, agents, employees, and contractors of City for the purpose of construction, reconstruction, maintenance, alterations, repairs, and inspection of present and future facilities and structures.

SECTION 3. The Streets Commissioner, on behalf of the City of Philadelphia, is hereby authorized to accept the grant to the City of the aforesaid right-of-way for drainage purposes authorized in Section 1(b) herein.

SECTION 4. This Ordinance shall not become effective unless the sum of two hundred dollars ($200.00), toward costs thereof, is paid into the City Treasury within one hundred and twenty (120) days after this Ordinance becomes law.

City of Philadelphia
Economic Opportunity Plan

MARRIOTT HOTEL
3701-3751 Island Avenue and 7831 Island Avenue, Philadelphia, Pennsylvania

I. Introduction, Definitions and Goals

The City *of Philadelphia* strongly encourage the use of certified Minority ("MBE"), Women ("WBE"), Disabled ("DSBE") and Disadvantaged[1] ("DBEs") Business Enterprises (collectively, "M/W/DSBEs") and minority and female workers in all aspects of a new Marriott Hotel (referred to hereafter as the "Project") at 3701-3751 Island Avenue and 7831 Island Avenue within the city of Philadelphia, Pennsylvania which may include financial investment, design, construction and operations. In support of this objective, City of Philadelphia will require that Solow RI LP ("OWNER") commit to this Economic Opportunity Plan ("EOP" or "Plan").

This Plan contains ranges of projected M/W/DSBE utilization and goals for the employment of minority and female workers in connection with development of the PROJECT. This Plan shall be a part of and incorporated into the resulting agreement(s) with the OWNER.

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.

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 agency[2] 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: 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.

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

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

II. Project Scope

OWNER intends to build a one hundred thirty (130) room Marriott Hotel in the Southwest section of Philadelphia, at 3701-3751 Island Avenue and 7831 Island Avenue.

III. Goals

1. M/W/DSBE Participation Ranges

As a benchmark for the expression of "Best and Good Faith Efforts" to provide meaningful and representative opportunities for M/W/DSBEs in the PROJECT 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. 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:

The following *Construction* contract goals have been set for the Project:

Contracts	Minority Owned	Female Owned	
Construction	17%-20%	7%-10%	

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.

2. Employment Goals

OWNER agrees to exhaust Best and Good Faith Efforts to employ minority persons and females in its workforce of apprentices and journeymen at the following levels[3]:

Minority Apprentices – 50% of all hours worked by all apprentices
Minority Journeymen – 32% of all journey hours worked across all trades
Female Apprentices – 7% of all hours worked by all apprentices
Female Journeypersons - 7% of all hours worked across all trades

OWNER encourages the use of locally-based workers, employment opportunities. The City of Philadelphia has set as a goal the utilization of Philadelphia residents on the workforce equal to 50% of all workforce hours.

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

IV. Responsiveness

A. OWNER 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 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 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.

V. Compliance and Monitoring of Best and Good Faith Efforts

A. OWNER agrees to cooperate with OEO in its compliance monitoring efforts, and to submit, upon the request of OEO, documentation relative to its 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 OWNER shall ensure that all its on-site contractors maintain certified payrolls which include a breakout of hours worked by minority and female apprentices and journeypersons; these documents are subject to inspection by OEO.

B. Prompt Payment of M/W/DSBEs

1. The OWNER 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 fifteen (15) business days after receipt of a proper invoice following satisfactory performance.

C. Oversight Committee

For this Project, in the sole discretion of City, an oversight committee may be established consisting of representatives from OWNER, representatives of the building trades, the construction manager, the City which may include the Project site's District Councilperson, OEO, and appropriate community organizations ("Committee"). The Committee will meet regularly to provide advice for the purpose of facilitating compliance with the Plan.

D. Reporting

The Owner, will agree to file a quarterly report with OEO concerning the performance of the Economic Opportunity Plan within the Project. In addition, during construction, the Owner will provide higher-level "snapshot" reports containing updates for certain categories of information contained in its annual report on a monthly basis during construction. Snapshot reporting will include: (i) utilization of M/W/DSBEs and/or DBEs; (ii) the hiring and employment of minorities and females, and (iii) the hiring and employment of Philadelphia residents. All reports (quarterly) to the City under this section will be provided to the Office of Economic Opportunity.

VI. Remedies and Penalties for Non-Compliance

A. The OWNER agrees that its compliance with the requirements of this Plan is material to the Agreement. Failure to comply with the Plan may constitute a substantial breach of the Agreement and is subject to the remedies and penalties contained therein or otherwise available at law or in equity. Notwithstanding the foregoing, no privity of contract exists between the City and any M/W/DSBE identified in any contract resulting from implementation of the Plan. Neither 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.

02 10/3/12

SIGNATURE OF Owner Representative[4] DATE

10/3/2012

ANGELA DOWD-BURTON, Executive Director, Office of Economic Opportunity[5] DATE

[4]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.

[5] 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.