

SUBGRANT AGREEMENT

This Subgrant Agreement (“**Subgrant Agreement**”) between the PIDC-Local Development Corporation (“PIDC-LDC”) and _____ (“**Subgrantee**”) is effective _____, 20_____.

BACKGROUND

A. The City of Philadelphia (“**City**”) is a corporation and body politic existing under the laws of the Commonwealth of Pennsylvania (“**Commonwealth**”), having adopted the Philadelphia Home Rule Charter (“**Home Rule Charter**”) under the provisions of the First Class City Home Rule Act of April 21, 1949, P.L. 665.

B. A majority of the City is served by a combined sewer system, meaning sanitary waste and stormwater travel in the same pipes to a wastewater treatment plant. During certain wet weather events, the combined sewage and stormwater exceeds the system’s capacity, forcing untreated discharges into our rivers and creeks (“**Combined Sewer Overflow**” or “**CSO**”).

C. The City, through its Water Department (“**PWD**” or “**Department**”), is required by the state and federal governments to reduce CSOs and improve receiving water quality as described in a Consent Order & Agreement with the Pennsylvania Department of Environmental Protection, dated June 1, 2011 (“**2011 CO&A**”). To comply with the 2011 CO&A, the City must reduce the amount of stormwater entering its combined sewer system during rain events.

D. The City, through PWD, is on the forefront of an emerging national trend to use “green” infrastructure, as opposed to traditional “gray” infrastructure, to reduce stormwater runoff by re-creating natural, green landscapes as described in the City’s CSO Long Term Control Plan Update (“**LTCPU**” or “**Green City, Clean Waters Plan**”). While many of the greening projects will occur on public property, the Department acknowledges that there may be opportunities to manage stormwater on private lands at a cost which would be far less than managing the same volume of stormwater through infrastructure in the public right of way.

E. Further, in separate sewered areas, where stormwater is discharged directly to streams and creeks, runoff can damage these water bodies and their riparian buffers. Such damage can include the following: stream bank erosion which can harm both private property and infrastructure owned by the Department; water quality degradation; aquatic habitat impairment; and the exacerbation of flooding. The Department is investing in stream restoration projects, stormwater treatment wetlands, and flood control projects to address these concerns. Therefore, it is in the Department’s interest to control runoff in these separate sewered areas as well.

F. The Philadelphia Authority for Industrial Development (“**PAID**”) is a public instrumentality of the Commonwealth and is a body corporate and politic organized and established by the City under the Pennsylvania Economic Development

Financing Law, approved August 23, 1976, P.L. § 251 et seq., 73 P.S. § 371 et seq., as amended (“**Economic Development Financing Law**”).

G. Section 372.1 of the Economic Development Financing Law declares it to be in the public interest and policy of the Commonwealth to promote public and private infrastructure, commercial and economic development, the acquisition, construction, and improvement of public facilities, and to encourage economic development within the Commonwealth by providing basic services and facilities as more fully and particularly set forth in the Economic Development Financing Law.

H. PAID has and may exercise all powers necessary and convenient for carrying out the aforesaid purposes, including but not limited to (1) constructing, improving and maintaining projects, (2) making contracts of every name and nature necessary or convenient for carrying out projects, and (3) doing all acts and things necessary or convenient for carrying out and exercising the purposes of and the powers granted under the Economic Development Financing Law.

I. The City has the authority to grant funds to PAID pursuant to § 381 of the Economic Development Financing Law, and PAID has the authority to receive grants from the City pursuant to §§ 372.1 and 376(b)(12) of the Economic Development Financing Law.

J. The City and PAID have established a Greened Acre Retrofit Program (“**GARP**”) to provide financial assistance to certain qualified applicants who desire to install green stormwater management practices (“**SMP**” or “**SMPs**”). GARP provides grants to qualified applicants for design and construction of SMPs across multiple properties in Philadelphia (the “**Project**”) where the City determines that the Project offers the maximum cost savings to the City, achieves the largest reduction of stormwater runoff, and provides the greatest environmental benefit. Applicants must provide agreements or contracts with each participating property owner. The City has concluded that public benefits outweigh any private benefits enjoyed by a property owner or an applicant who undertakes a Project.

K. PIDC-LDC has contracted with PAID to administer this grant program on PAID’s behalf.

L. The City has granted PAID funding (“**City Funding**”) which PAID, through PIDC-LDC, will subgrant to qualified applicants in accordance with this Subgrant Agreement (“**Project Funding**”).

M. _____ (“**Subgrantee**”), [*insert description of the Subgrantee*] applied for and has been awarded \$ _____ in Project Funding to undertake the design and/or construction of SMPs described in Exhibit B (the “**Project**” or “**Project SMPs**”) on properties described in Exhibit A (“**Properties**”) and owned by the Property Owners identified in Exhibit A (“**Property Owners**”). Subgrantee has demonstrated it is committed to the City’s environmental goals and has satisfactorily proven to the City that Subgrantee’s Project, as described in **Exhibit B**, will significantly aid the City in reducing stormwater runoff at a cost savings to the City.

NOW, THEREFORE, the parties hereto, intending to be legally bound hereby, covenant and agree as follows:

1. Incorporation of Background.

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

2. Subgrant.

A. PIDC-LDC shall disburse the Project Funding to Subgrantee in accordance with this Subgrant Agreement and with the procedures described in **Exhibit G**.

B. Subgrantee shall use the Project Funding solely to pay for the design and construction costs associated with the Project, unless and except as otherwise provided in **Exhibit G**.

C. PIDC-LDC's obligation to provide Project Funding is contingent upon:

1) Availability of City funding,

2) Subgrantee's adherence to the terms of this Subgrant Agreement, and

3) Property Owner(s) and Subgrantee's correction of any condition resulting in a notice of violation or defect issued by PWD, the Water Revenue Bureau or the Department of Licenses and Inspections.

3. Term.

A. The term of this Subgrant Agreement ("**Term**") shall terminate upon the earlier to occur:

1) one (1) year from the Effective Date, or

2) disbursement of the Project Funding according to the procedures listed in Section 2 of this Subgrant Agreement.

B. Property Owners' obligation to maintain the Project shall survive the termination or expiration of this Subgrant Agreement and shall be in accordance with Section 6 and the Operations and Maintenance Agreement for Stormwater Management Practices, the form of which is attached as **Exhibit C** of this Subgrant Agreement.

4. Project.

Subgrantee shall design and install the SMPs according to **Exhibit B** of this Subgrant Agreement.

5. Ownership.

Property Owner shall own the Project SMPs constructed under this Subgrant Agreement including all appurtenant piping constructed with Project Funding and connecting the Project SMPs to the City sewer or other approved point of disposal.

6. Deed Restriction, Access and Operations & Maintenance Agreement.

A. Property Owner, at its expense, shall record against the Property a deed restriction or easement agreement in the form of the Operations & Maintenance Agreement for Stormwater Management Practices attached as **Exhibit C**, which shall run with the land and ensure maintenance and care of the Project for its useful life or 45 years, whichever is longer.

B. Property Owner and Subgrantee shall cooperate with the City with respect to any legislative and/or administrative actions necessary to effectuate this Section.

C. Eligibility for stormwater credit(s) is contingent upon Property Owner or Subgrantee adequately operating and maintaining the Project SMPs, complying with the applicable requirements for stormwater credits as set forth in the Department's Rates and Charges, and any other applicable requirements set forth in Exhibit G.

D. The City shall have the right, but not the obligation, to operate, maintain, inspect and repair the SMP should Property Owner fail to do so. Further, should the Property Owner fail to operate, maintain, inspect or repair the SMP, Property Owner shall reimburse the City for all costs related to the City assuming these obligations.

E. Monitoring Reports. Property Owner shall provide water quality or other monitoring reports to PIDC-LDC in a format PIDC-LDC or the City prescribes.

7. Prohibitions.

The following activities are not eligible for financial support from SMIP grants:

(A) design, plans, or research that is not part of a stormwater infrastructure support project;

(B) use of funds for political advocacy, boycotts, advertising, litigation or legal expenses; and

(C) 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.

8. Termination.

PIDC-LDC reserves the right to terminate this Subgrant Agreement in its sole discretion at any time and for any reason or no reason, by giving Subgrantee thirty (30) days written notice of termination; provided, however, that this right to terminate does not diminish the obligation of PIDC-LDC to transfer to Subgrantee all necessary Project Funding for repayment of contract obligations assumed by Subgrantee prior to receiving notice of the termination.

9. Records; Reports; Record Drawings.

A. Maintenance of Records. Subgrantee shall keep full, complete, and accurate books of account and other records related to the Project in accordance with generally accepted accounting principles, consistently applied, and promptly make them available for inspection by PIDC-LDC within the City of Philadelphia upon PIDC-LDC's request. Without limiting this Paragraph, Subgrantee shall cause the third parties it contracts with to keep full, complete, and accurate books of account of expenditures related to this Project.

B. Inspection. PIDC-LDC or its duly authorized representative will have the right at all reasonable times and places to inspect and audit Subgrantee's books of account and other records maintained as required by this Subgrant Agreement.

C. Annual Account; Reports; Record Drawings. Subgrantee shall submit to PIDC-LDC, by the end of the Term or within sixty (60) days after completion of the Project, whichever is earlier, a report which includes a description of the activities undertaken by Subgrantee on or with respect to the Project, record drawings of all SMPs and their components, and an income statement for the most recently completed fiscal year of Subgrantee.

D. Public Records. Subgrantee and Property Owner acknowledge that documents it submits to PIDC-LDC or the City related to the Project and/or this Subgrant Agreement may be subject to public disclosure under Pennsylvania's Right to Know Act, 65 P.S. § 67.101-67.3104.

10. City Approvals.

A. Review, approval or inspection by the City or PAID or PIDC-LDC of any plans, work, or other materials submitted or performed by Subgrantee in connection with this Subgrant Agreement shall not constitute any representation, warranty or guaranty by the City or PAID or PIDC-LDC as to the substance or quality of the matter reviewed, approved, or tested. No person or firm shall rely in any way on such review, approval, or test, and at all times Subgrantee shall use its own independent judgment as to the accuracy and quality of all such matters. Review or approval by any City or PAID or PIDC-LDC official of any work performed by third parties shall not constitute or be construed to constitute approval otherwise required by the City's boards and commissions in connection with any and all aspects of such work.

B. This Subgrant Agreement shall not be construed to constitute an approval or permit required to be given by a City department or agency under Applicable Law (defined below). Subgrantee or its contractor shall be responsible for obtaining all permits, required by any governmental entity, to complete the Project.

11. Compliance with Applicable Law.

Property Owner and Subgrantee and their contractors, subcontractors, and agents shall observe and comply with all present and future laws, ordinances, orders, rules, regulation and requirements of all federal, state and municipal governments, courts, departments, commissions, boards or any other body exercising functions similar to those of any of the foregoing, including but not limited to those listed in **Exhibit E** which may be applicable under this Subgrant Agreement or the Project (“**Applicable Law(s)**”), and shall comply with the Economic Opportunity Plan (the “**EOP**”), if applicable, as contained in **Exhibit H** of this Subgrant Agreement, throughout the Term.

12. Indemnification.

A. Property Owner and Subgrantee shall, and shall cause their contractors to, indemnify, defend, and hold harmless PAID, PIDC-LDC, the City, and their respective officers, directors, employees, and agents from and against any and all losses, claims, actions, damages, costs, expenses (including but not limited to court costs and attorney’s fees), liabilities, and judgments, including but not limited to those in connection with loss of life, bodily injury (including death), personal injury, or damage to property, contamination or adverse effects on the environment, failure to pay contractors and suppliers, and any breach of this Subgrant Agreement, directly or indirectly related to this Subgrant Agreement, including without limitation, the violation of any Applicable Laws, and/or arising from Property Owner’s or Subgrantee’s act or omission or negligence or fault or the act or omission or negligence or fault of Property Owner’s or Subgrantee’s agents, contractors, subcontractors, employees, invitees, or consultants, relating to the Project or Subgrantee’s obligations under this Subgrant Agreement.

B. If any action or proceeding is brought against PAID or PIDC-LDC or the City by reason of any claim above, Property Owner and Subgrantee must, upon written notice from the City or PAID or PIDC-LDC, at Property Owner’s or Subgrantee’s sole cost and expense, including without limitation attorneys’, architects’, and experts’ fees and court costs, resist or defend such action or proceeding by counsel approved by the City or PAID or PIDC-LDC in writing. No approval of counsel will be required where the claim is resisted or defended by counsel of an insurance carrier obligated to resist or defend such claim.

13. Release.

Subgrantee acknowledge that PIDC-LDC’s obligation to grant Project Funding to support payment of costs related to the Project is limited to the grant and transfer of

Project Funding as provided in Section 2 of this Subgrant Agreement. Neither PAID, PIDC-LDC nor the City shall have any obligation beyond those expressly set forth herein to pay for or fund the Project. Property Owner and Subgrantee shall release for itself, and for its officers, employees, officials, members, partners, shareholders, representatives, successors, assigns, heirs and agents, the City and PAID and PIDC-LDC from any overruns, other costs, damages, losses, or claims which may result from the use or receipt of Project Funding. Property Owner and Subgrantee shall include, in all contracts issued in connection with the Project, a provision stating that the contractor is not in privity with, and will have no claim against, PIDC-LDC or PAID or the City for any costs it incurs or claims to have incurred in connection with completing work on the Project, and must look solely to Subgrantee for payment of such costs. Notwithstanding the foregoing, the City, PAID, or PIDC-LDC may submit payments directly to Subgrantee's contractor or subcontractors in accordance with the procedures described in this Subgrant Agreement.

14. Insurance.

A. Subgrantee shall cause its contractors and subcontractors to procure and maintain, at their sole cost, throughout the Term, insurance of the types and minimum limits of coverage set forth on **Exhibit D** attached hereto and made a part hereof. All insurance shall be procured from reputable insurers who are acceptable to City and authorized to do business in the Commonwealth of Pennsylvania. All insurance required herein shall be written on an "occurrence" basis and not a "claims-made" basis.

B. Such coverage shall also include insurance against such other hazards, risks or perils, and in such amounts as reasonably may be requested by the City and as at the time are customarily insured against with respect to improvements similar to the Project in character, size, general location, use and occupancy.

C. The City of Philadelphia, its officers, employees and agents, and PAID and PIDC-LDC, and their respective officers, members, employees and agents, shall be named as additional insureds on all policies required hereunder except the Workers Compensation and Employers Liability policies. All such policies shall include an endorsement stating that the coverage afforded to the additional insureds will be primary to any other coverage available to them, and shall be without restriction in comparison to the primary named insured.

D. Certificates of insurance evidencing the required coverage shall be submitted to the City's Office of Risk Management (1515 Arch Street, 14th Floor, Philadelphia, PA 19102, Attention: Deputy Finance Director for Risk Management), the Philadelphia Water Department (1101 Market Street, 5th Floor, City of Philadelphia, PA 19107, Attention: Stormwater Billing and Incentives Manager), and PAID/PIDC-LDC (1500 Market Street, Suite 2600, Philadelphia, PA 19102, Attention: Director of Conduit Financing) on or before the execution date of this Agreement and in any event prior to commencement of the Project. Subgrantee shall furnish certified copies of the original

policies of all insurance required under this Agreement at any time within ten (10) days after written request by City.

E. All insurance policies shall provide for at least thirty (30) days prior written notice to be given to City in the event coverage is materially changed, canceled or not renewed. At least ten (10) days prior to the expiration of each policy, Subgrantee shall deliver to City an original certificate evidencing a replacement policy to become effective immediately upon the termination of the previous policy.

F. Subgrantee shall furnish the City with proof that the premiums for all insurance required hereunder have been paid in full. Such proof shall be provided in writing at the time of the delivery of the certificate of insurance.

G. If Subgrantee fails to cause such insurance to be maintained, City shall not be limited in the proof of any damages which City may claim against Subgrantee or any other person or entity to the amount of the insurance premium or premiums not paid or incurred and which would have been payable upon such insurance, but the City shall also be entitled to recover as damages for such breach the uninsured amount of any loss and damages, expenses of suit and costs, including without limitation, reasonable cancellation fees, suffered or incurred during any period when Subgrantee shall have failed or neglected to provide insurance as required herein.

H. The insurance requirements set forth herein are not intended and shall in no way modify, limit or reduce the indemnifications made in this Agreement by Subgrantee to City or limit Subgrantee's liability under this Agreement to the limits of the policies of insurance required to be maintained by Subgrantee hereunder.

I. From time to time, and in any event not more frequently than once every year, the City may, upon thirty (30) days notice to Subgrantee, reasonably adjust the amounts, types and deductibles of the insurance coverage required hereunder.

15. Default; Remedies.

A. Subgrantee shall be in default of this Subgrant Agreement if it or any Property Owner fails to comply within sixty (60) days written notice from PIDC-LDC with any of the terms and conditions of this Subgrant Agreement, including but not limited to failure to apply the Project Funding only for the purposes explicitly permitted under this Subgrant Agreement.

B. Upon default of Subgrantee under this Subgrant Agreement, PIDC-LDC may, at its sole discretion:

1) Immediately terminate this Subgrant Agreement by giving notice of termination to Subgrantee;

2) Immediately suspend all grants and payments of the Project Funding by PIDC-LDC to Subgrantee; provided, however, PIDC-LDC may, subject to the City's approval, consent to additional grants which PIDC-LDC agrees are necessary to enable Subgrantee to make payments for obligations incurred prior to termination of this Subgrant Agreement and/or general suspension of grant payments; and/or

3) Exercise any and all other remedies available at law, equity, and under this Subgrant Agreement or any other agreement between PIDC-LDC and Subgrantee.

C. Within ten (10) days of PIDC-LDC's termination or cancellation of this Subgrant Agreement for any reason, Subgrantee must remit to PIDC-LDC a complete accounting of all the Project Funding that Subgrantee received pursuant to this Subgrant Agreement. Final statements for payment must be submitted within sixty (60) days of termination.

D. No failure by the City or PIDC-LDC to insist upon the strict performance of any term, covenant, agreement, provision, condition or limitation of this Subgrant Agreement or to exercise any right or remedy consequent upon a breach of this Subgrant Agreement, and no acceptance by the City or PIDC-LDC of full or partial performance during the continuance of any such breach, will constitute a waiver of any such breach or of such term, covenant, agreement, provision, condition or limitation. No breach may be waived except by a written instrument that the City or PIDC-LDC signed. This Subgrant Agreement will continue in full force and effect with respect to any other then existing or subsequent breach of this Subgrant Agreement notwithstanding any waiver or a breach by the City or PIDC-LDC.

E. Should Subgrantee fail to use the Project Funding as permitted under this Subgrant Agreement, Subgrantee shall reimburse all Project Funding received from PIDC-LDC under this Subgrant Agreement within 30 days notice from PIDC-LDC.

16. No Agency Relationship.

This Subgrant Agreement shall not be deemed or construed to establish any agency relationship between the City, PAID and/or PIDC-LDC and Subgrantee and/or Property Owner.

17. Entire Agreement.

This Subgrant Agreement sets forth all agreements and understandings between PIDC-LDC and the Subgrantee relating to the Project and there are no agreements or understandings, either oral or written, between them other than as are set forth in this Subgrant Agreement. Any agreement hereafter made shall be ineffective to change, modify or amend this Subgrant Agreement in whole or part unless such agreement has been executed by both PIDC-LDC and Subgrantee. No oral representations, whenever made, by any City or PIDC-LDC official, employee or agent, or by any employee, agent

or contractor of Subgrantee shall be effective to modify the terms of this Subgrant Agreement.

18. Notices.

Unless otherwise specified in this Subgrant Agreement, all notices, requests, and other communications under this Subgrant Agreement shall be in writing and shall be sent by United States registered or certified mail, return receipt requested, postage prepaid, or by overnight or hand delivery service with receipt requested, or by facsimile followed by hard copy forwarded as aforesaid and addressed to PIDC-LDC or to Subgrantee as follows:

If addressed to PIDC-LDC: PIDC-LDC c/o PIDC
2600 Centre Square West
15th and Market Streets
Philadelphia, PA 19102
Attention: Director of Conduit Financing

With a copy to: PIDC-LDC c/o PIDC
2600 Centre Square West
15th and Market Streets
Philadelphia, PA 19102
Attention: Senior Vice President, General Counsel

If addressed to Subgrantee: _____

With copies to
Property Owners: _____

and to: Divisional Deputy City Solicitor
Water Law Division
1101 Market Street, 5th Floor
Philadelphia, PA 19107

and to: Philadelphia Water Department
1101 Market Street, 4th Floor
Philadelphia, PA 19107
Attention: Stormwater Billing and Incentives Manager

or to such other individual and/or address as the party to receive notice may from time to time designate by written notice to the other party in the manner above described.

19. Execution in Counterparts.

This Subgrant Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Any signature page of any such counterpart may be attached to any other counterpart to complete a fully executed counterpart of this Subgrant Agreement.

20. Miscellaneous.

A. Headings. The headings in this Subgrant Agreement are for convenience only and are not a part of this Subgrant Agreement. The headings do not in any way define, limit, describe or amplify the provisions of this Subgrant Agreement or the scope or intent thereof.

B. Governing Law. This Subgrant Agreement shall be governed in accordance with the laws of the Commonwealth of Pennsylvania without regard to the conflicts of law doctrines thereof. The parties to this Subgrant Agreement agree to submit to the jurisdiction of courts, whether federal or state, located in Philadelphia, Pennsylvania.

C. No Joint Venture. Nothing in this Subgrant Agreement shall be construed as creating a joint venture or partnership between the City or PIDC-LDC and Subgrantee.

D. No Third Party Beneficiaries. Nothing in this Subgrant Agreement is intended to confer a third-party beneficiary right upon any person or entity other than the City.

E. Invalidity of Certain Provisions. If any term or covenant of this Subgrant Agreement, or the application thereof, shall to any extent be held invalid or unenforceable, the remaining terms and covenants of this Subgrant Agreement, or the application of such terms or covenants, shall not be affected thereby and each term and covenant of this Subgrant Agreement shall be valid and enforceable to the fullest extent permitted by law.

F. Assignment. This Subgrant Agreement and the monies to come due shall not be assigned, assignable, or otherwise transferred or transferable by action of Subgrantee except as explicitly permitted by this Subgrant Agreement.

G. Waiver of Jury Trial. IT IS MUTUALLY AGREED BY AND BETWEEN THE PARTIES THAT THEY HEREBY WAIVE TRIAL BY JURY IN ANY ACTION PROCEEDING OR COUNTER-CLAIM BROUGHT BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER ON ANY MATTER WHATSOEVER ARISING OUT OF OR RELATING TO THIS AGREEMENT.

21. Enforcement.

The City is authorized to enforce any provision in this Subgrant Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Subgrant Agreement to be properly executed as of the date first written above.

GRANTEE

APPROVED AS TO FORM

PIDC – Local Development Corporation

By: _____
Senior Vice President, General
Counsel – PIDC, o/b/o
PIDC-LDC

By: _____
Name:
Title:

SUBGRANTEE

COMPANY

By: _____
Name:
Title:

JOINDER: The undersigned joins in this Subgrant Agreement for purpose of consenting to its obligations as applicable and agrees that it will cooperate promptly and in good faith in scheduling and attending any meetings and inspections necessary to effectuate the Project.

PROPERTY OWNER(s):
[Insert name of Property Owner(s)]

By: _____

Name:

Title:

Property Address:

Exhibit "A"
To
Subgrant Agreement

Properties and Property Owners

Exhibit “B”
Project Description

Exhibit “C”

**Form of
Operations & Maintenance Agreement
for Stormwater Management Practices**

Exhibit “D”

Insurance

1. Workers’ Compensation and Employers’ Liability.
 - a. Workers’ Compensation: Statutory Limits.
 - b. Employer’s Liability: \$100,000 Each Accident – Bodily Injury by Accident; \$100,000 Each Employee – Bodily Injury by Disease; and \$500,000 Policy Limit – Bodily Injury by Disease.
 - c. Other states’ insurance including Pennsylvania.

2. General Liability Insurance.
 - a. Limit of Liability: \$1,000,000 per occurrence combined single limit for bodily injury (including death) and property damage liability; \$1,000,000 advertising injury; \$2,000,000 general aggregate and \$1,000,000 aggregate for products and completed operations. The City may require higher limits of liability if, in the City’s sole discretion, the potential risk warrants.
 - b. Coverage: Premises operation; blanket contractual liability; personal injury liability; products and completed operations; independent contractors, employees and volunteers as additional insureds; cross liability and broad form property damage (including completed operations), explosion, collapse and underground damage (XCU).

3. Automobile Liability Insurance.
 - a. Limit of Liability: \$1,000,000 per occurrence combined single limit for bodily injury (including death) and property damage liability.
 - b. Coverage: Owned, non-owned, and hired vehicles.

4. Umbrella Liability Insurance at limits totaling \$5,000,000 per occurrence when combined with the Employers’ Liability, General Liability and Auto Liability insurance required above.

Exhibit “E”

STANDARD CITY PROVISIONS

Defined Terms

Capitalized terms used in this Exhibit and not defined in this Exhibit shall have the meanings ascribed to them in this Subgrant Agreement.

Fair Practices

Subgrantee agrees, in performing this Subgrant Agreement, to comply with the provisions of the Fair Practices Ordinance of The Philadelphia Code (Chapter 9-1100) and the Mayor’s Executive Order No. 4-86, as they may be amended from time to time, both of which prohibit, inter alia, discrimination against persons with AIDS in employment and services.

Nondiscrimination

A. This Subgrant Agreement is entered into under the terms of the Philadelphia Home Rule Charter and in its performance, Subgrantee shall not discriminate nor permit discrimination against any person because of race, color, sex, sexual orientation, religion, national origin or ancestry. In the event of such discrimination, PAID may terminate this Subgrant Agreement forthwith or exercise any other remedy provided to PAID in this Subgrant Agreement or at law or in equity. The foregoing shall not be construed to limit or restrict PAID’s right to terminate this Subgrant Agreement as set forth in other sections of this Subgrant Agreement.

B. In accordance with Chapter 17-400 of The Philadelphia Code, Subgrantee agrees that its payment or reimbursement of membership fees or other expenses associated with participation by its employees in an exclusionary private organization, insofar as such participation confers an employment advantage or constitutes or results in discrimination with regard to hiring, tenure of employment, promotions, terms, or privileges or conditions of employment on the basis of race, color, sex, sexual orientation, religion, national origin or ancestry, constitutes a substantial breach of this Subgrant Agreement entitling PAID and/or the City to all rights and remedies provided in this Subgrant Agreement or otherwise available at law or in equity.

C. Subgrantee agrees to include subparagraphs (a) and (b) of this Section, with appropriate adjustments for the identity of the parties, in all subcontracts which are entered into for work to be performed pursuant to this Subgrant Agreement.

D. Subgrantee further agrees to cooperate with the Commission on Human Relations in any manner which the said Commission deems reasonable and necessary for the Commission to carry out its responsibilities under Chapter 17-400 of The Philadelphia Code.

Prohibited Gifts

A. Pursuant to Executive Order 03-11, no official or employee in the Executive and Administrative Branch of the City shall solicit or accept, directly or indirectly, anything of value, including any gift, gratuity, favor, entertainment, invitation, food, drink or loan, unless consideration of equal or greater value is conveyed in return, from any of the following sources:

(1) A person seeking to obtain business from, or who has financial relations with the City,

(2) A person whose operations or activities are regulated by any City agency,

(3) A person engaged, either as principal or attorney, in proceedings before any City agency or in court proceedings in which the City is an adverse party;

(4) A person seeking legislative or administrative action by the City; or

(5) A person whose interests may be substantially affected by the performance or nonperformance of the official's or employee's official duties.

B. Subgrantee understands and agrees that if it offers anything of value to a City official or employee under circumstances where the receipt of such item would violate the provisions of this Executive Order, Subgrantee shall be subject to sanctions with respect to future City contracts. Such sanctions may range from disqualification from participation in a particular contract to debarment, depending on the nature of the violation.

Certification of Non-Indebtedness

A. Subgrantee and Property Owners hereby certify and represent to the City that Subgrantee and Property Owners' and Subgrantee's and Property Owners' parent company(ies) and subsidiary(ies), affiliate(s), if any, are not currently indebted to the City, and will not during the Term be indebted to the City, for or on account of any delinquent taxes (including, but not limited, to taxes collected by the City on behalf of the School District of Philadelphia), liens, judgments, fees, water or sewer rents, or other debts for which no written agreement or payment plan satisfactory to the City has been established.

B. Subgrantee shall require all contractors and subcontractors performing work on the Project or in connection with this Subgrant Agreement to be bound by the following provision and Subgrantee shall cooperate with the City in exercising the rights and remedies described below or otherwise available at law or in equity:

“Contractor (‘Contractor’) or Subcontractor (‘Subcontractor’) hereby certifies and represents that Contractor or Subcontractor, and Contractor or Subcontractor’s parent company(ies) and their subsidiary(ies), are not currently indebted to The City of Philadelphia (the ‘City’), and will not at any time during the Term of Subgrantee’s Subgrant Agreement, dated _____, 20__

with PIDC-LDC (the “Agreement”) be indebted to the City, for or on account of any delinquent taxes (including, but not limited to, taxes collected by the City on behalf of the School District of Philadelphia), liens, judgments, fees or other debts for which no written agreement or payment plan satisfactory to the City has been established.”

C. Any breach or failure to conform to the aforesaid certifications shall constitute a default by Subgrantee and entitle the City, PAID, and/or PIDC-LDC to exercise any rights or remedies available to it under this Subgrant Agreement, and at law and in equity.

Campaign Finance and Other Disclosures; Contract Reform

A. For a period of five years after the Effective Date, Subgrantee covenants that contributions will not be made that would render the Subgrantee ineligible to apply for Financial Assistance under the provisions of §17-1404(1) of the Philadelphia Code. In addition to the remedies PIDC-LDC may have for breach of such covenant, the City also has remedies for violation of this provision.

B. The Subgrantee shall, for a period of five years after the Effective Date, disclose any contribution of money or in-kind assistance made by Subgrantee during such time period to a candidate for nomination or election to any public office in the State or to an individual who holds such office, or to any political committee or state party in the State, or to any group, committee or association organized in support of any such candidate, office holder, political committee or state party, and the date and amount of such contribution. The attribution rules of §17-1405 of the Philadelphia Code shall apply to determine what contributions must be disclosed by the Subgrantee.

C. The Subgrantee shall, for a period of five years after the Effective Date, disclose the name and title of each City or PIDC-LDC officer or employee who during the Term asked the Subgrantee, any officer, director or management employee of the Subgrantee, or any Person, as defined in §17-1401 of the Philadelphia Code, representing the Subgrantee, to give money, services, or any other thing of value (other than a Contribution as defined in §17-1401 of the Philadelphia Code) to any Person, and any payment of money, provision of services, or any other thing of value (other than a Contribution as defined in §17-1401 of the Philadelphia Code) given to any Person in response to any such request. The Subgrantee shall disclose the date of any such request, the amount requested, and the date and amount of any payment made in response to such request. Such disclosure shall be made on a form provided by PIDC-LDC, and the form shall be signed and filed with PIDC-LDC within five Business Days after a request was made or a payment in response to a request was made, as the case may be.

D. The Subgrantee shall, for a period of five years after the Effective Date, disclose the name and title of each City or PIDC-LDC officer or employee who directly or indirectly advised the Subgrantee, any officer, director or management employee of the Subgrantee, or any Person representing the Subgrantee that a particular Person could be used by the Subgrantee to satisfy any goals established in the Subgrant Agreement for participation of minority, women,

disabled or disadvantaged business enterprises. The Subgrantee shall also disclose the date the advice was provided, and the name of such particular Person. Such disclosure shall be made on a form provided by PIDC-LDC, and the form shall be signed and filed with PIDC-LDC within five Business Days after the Subgrantee was so advised.

E. Unless approved by the City to the contrary, any approvals required by the Philadelphia Code Chapter 17-1400 to be performed by the City Solicitor must be performed by PIDC-LDC's General Counsel (or the General Counsel of PIDC-LDC's agent); any approvals required to be performed by the Director of Finance must be performed by PIDC-LDC's Chief Financial Officer (or the Chief Financial Officer of PIDC-LDC's agent); and any approvals required to be performed by the Mayor must be performed by PIDC-LDC's Chairman.

Economic Opportunity Plan

If applicable, Subgrantee and its contractors, subcontractors, and agents shall observe and comply with the Economic Opportunity Plan (the "EOP"), contained in **Exhibit "H"** of this Subgrant Agreement, throughout the Term.

Philadelphia 21st Century Minimum Wage Standard

If applicable, Subgrantee shall comply with the requirements of Section 17-1300 of the Philadelphia Code as they exist on the date when the Subgrantee entered into the Subgrant Agreement with PAID or PIDC-LDC or as they exist on the date when any amendment is executed to the Subgrant Agreement. Subgrantee shall promptly provide to the City documents and information verifying its compliance with the requirements of Section 17-1300. Subgrantee shall notify its affected employees with regard to the wages that are required to be paid pursuant to Section 17-1300.

First Source Jobs Policy

If applicable, Subgrantee shall comply with and be subject to the First Source Jobs Policy, Philadelphia Code Chapter 17-2000.

Prevailing Wage

Subgrantee shall comply with and be subject to Philadelphia Code Section 17-107, concerning the payment of prevailing wages.

Exhibit “F”

[RESERVED]

Exhibit “G”

Disbursement Requirements for SMIP Grant

Design Phase

[LANGUAGE CONTAINED HEREIN IS FOR REFERENCE PURPOSES ONLY. UPON EXECUTION OF FINAL SUBGRANT AGREEMENT, TEMPLATE LANGUAGE WILL BE REPLACED WITH ACTUAL PROJECT MILESTONES AS SET FORTH BY SUBGRANTEE AND APPROVED BY PWD AND PIDC.]

To obtain up to 90% of Project Funding

1. Subgrantee must hire design firm to produce approved and permitted plans as required by all applicable agencies. Subgrantee must provide PIDC with a signed copy of the contract between the design firm and Subgrantee.
2. Subgrantee must submit invoices for any grant related work and include a summary of tasks completed per invoice. Invoicing can be submitted throughout the design process.
3. An independent third party hired by PWD will verify that all submitted invoices comply with the aforementioned EOP. Upon successful verification of ongoing compliance with the EOP, PIDC will release up to 90% of the grant funding to the Subgrantee.
4. Subgrantee must submit final design plans to PWD to obtain full 90% of grant funding.

To obtain final 10% of Project Funding

1. PWD must provide written approval of final designs.
2. Upon PWD approval, PIDC will release remaining 10% of grant funding.

To obtain up to 90% of Project Funding

1. Subgrantee must hire construction firm. Subgrantee must provide PIDC with a signed copy of the contract between the construction firm and Subgrantee.
2. Subgrantee must attend a pre-construction meeting with PWD representatives. This meeting will lay out key construction milestones. PWD must approve milestones and the release of funds will be conditional upon achievement of milestones throughout the project.
3. Subgrantee must submit finalized construction schedule for review and approval by PWD.
4. Per the agreed upon milestones, Subgrantee must submit invoices for any grant related work and include a summary of tasks completed per invoice. This will be cross referenced with the construction schedule and any construction documents.
5. An independent third party hired by PWD will verify that all submitted invoices comply with the aforementioned EOP. Upon successful verification of ongoing compliance with the EOP, and approval of construction invoices from PWD, PIDC will release up to 90% of the grant funding to the Subgrantee through dual party checks.

To obtain final 10% of Project Funding

1. The Subgrantee's project must pass a final inspection by PWD and receive written confirmation that the project is functioning as designed.
2. Subgrantee must provide PWD with as built plans or record drawings of the project.
3. PIDC will release remaining 10% of grant funding following confirmation of approval of the as built plans or records drawings by PWD.

Stormwater Disconnection Projects – If applicable, PIDC will release the incentives payment to the Subgrantee upon successful completion of the project per all items mentioned above.

Exhibit “H”

Economic Opportunity Plan

City of Philadelphia Economic Opportunity Plan {For loans/grants}

I. Introduction and Definitions

A. In support of the City’s Antidiscrimination Policy, Chapter 17-1600 of The Philadelphia Code requires the development and implementation of “Economic Opportunity Plan(s)” for certain classes of contracts and covered projects as defined in Section 17-1601. The Economic Opportunity Plan (“Plan”) memorializes the Owner’s best and good faith efforts to provide meaningful and representative opportunities for M/W/DSBEs in contracts and covered projects and identifies the Owner’s outreach and hiring activities for employing an appropriately diverse building trade(s) workforce in connection with the contract or covered project.

The Owner hereby verifies that all information submitted to the Office of Economic Opportunity (“OEO”) in response to this Plan, is true and correct and is notified that the submission of false information is subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn falsification to authorities and 18 Pa.C.S. Section 4107.2 (a)(4) relating to fraud in connection with minority business enterprises or women's business enterprises.

B. For the purposes of this Plan, MBE, WBE and DSBE shall refer to businesses so recognized by the City of Philadelphia through its Office of Economic Opportunity (“OEO”). Only the work or supply effort of firms that are certified as M/W/DSBEs by an OEO approved certifying agency¹ will be eligible to receive credit as a Best and Good Faith Effort. In order to be counted, certified firms must successfully complete and submit to the OEO an application to be included in the OEO Registry which is a list of registered M/W/DSBEs maintained by the OEO and available online at www.phila.gov/oeo/directory.

For this Plan, the term “Best and Good Faith Efforts,” the sufficiency of which shall be in the sole determination of the City, means: a Owner’s efforts, as evaluated by the City, the scope, intensity and appropriateness of which are designed and performed to achieve meaningful business opportunities for M/W/DSBEs and building trades employment opportunities for journey person and apprentice minorities and females.

The following are examples of Best and Good Faith Efforts:

- Owner seeks assistance from the Philadelphia area building trades and the Diversity Apprenticeship Program to conduct employment outreach and identify minority and female apprentices and journeypersons for work on the project.
- Owner adheres to a published policy of nondiscrimination in the hiring, retention and promotion of employees which includes communication of that policy to Owner’s project forepersons.

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

- 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.
- Owner makes commitments to use MBEs, WBEs and DSBEs in its bidding process for commercially acceptable subcontracted services and materials supply even when the Owner might otherwise prefer to perform/supply these items without subcontracting.
- Owner timely solicits through all reasonable and available means the interest of OEO certified businesses that have the capability to perform the work of the Bid. Such efforts include use of the OEO Directory of Certified Firms, attendance at pre-bid meetings, advertising in minority focused publications, written mailings to M/W/DSBEs. The Owner must determine with certainty if the M/W/DSBEs are interested by taking appropriate steps to follow up on initial solicitations; one time contact, without any follow up, is not acceptable.
- Owner provides interested MBEs, WBEs and DSBEs, prior to the date of loan/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 provides arms length business assistance to interested M/W/DSBEs which may include access or introduction to major manufacturer/suppliers, lines of credit and union halls.
- Owner negotiates in good faith with interested M/W/DSBEs. An Owner using good business judgment would consider a number of factors in negotiating with subcontractors, including M/W/DSBE subcontractors, and would take a firm's price and capabilities as well as the objectives of Chapter 17-1600 into consideration.

II. Project Scope

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

- A. Duration. This Plan shall apply to contracts awarded and procurements by the Owner and all Participants throughout the entire length of the Project.**
- B. Statement of Objectives. The Objectives set forth in the Plan shall be incorporated in all requests for proposals, bid packages and solicitations for the Projects and communicated to all Participant levels.**

III. Economic Opportunity Plan Commitments

A. M/W/DSBE Participation

As a benchmark for the expression of "Best and Good Faith Efforts" to provide meaningful and representative opportunities for M/W/DSBEs in the [Property's development OR Project Name], the following participation ranges have been established. These participation

ranges represent, in the absence of discrimination in the solicitation and selection of M/W/DSBEs, the percentage of MBE, WBE and DSBE participation that is reasonably attainable through the exercise of Best and Good Faith Efforts. These percentages relate to the good faith estimated cost of the entire [Project Name OR Development]. In order to maximize opportunities for as many businesses as possible, a firm that is certified in two or more categories (e.g. MBE and WBE and DSBE or WBE and DSBE) will only be credited toward one participation range as either an MBE or WBE or DSBE. The firm will not be credited toward more than one category. These ranges are based upon an analysis of factors such as the size and scope of the development and the availability of MBEs, WBEs, DSBEs and DBEs to participate in this development:

| | 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
- Female Journeypersons - 7% of all hours worked across all trades

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

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

commitments or other legally binding agreements with the listed M/W/DSBEs for the work or supply effort described and the dollar/percentage amount(s) set forth on the form. In calculating the percentage of M/W/DSBE participation, the standard mathematical rules apply in rounding off numbers. In the event of inconsistency between the dollar and percentage amounts listed on the form, the percentage will govern.

B. M/W/DSBE commitments are to be memorialized in a written subcontract agreement. Letters of intent, quotations, contracts, subcontracts and any other documents evidencing commitments with M/W/DSBEs, including the M/W/DSBE Participation and Workforce Commitments Form, become part of and an exhibit to the Agreement resulting from the RFP.

C. OEO will review [Owner Representative]'s commitments for the purpose of determining whether Best and Good Faith Efforts have been made. OEO reserves the right to request further documentation and/or clarifying information at any time during the construction and development of the Project.

1. Best and Good Faith Efforts will be evaluated on the basis of Owner's BGFE Form and any other information requested from Owner by the City.

2. Commercially Acceptable Function

A Contractor that enters into a subcontract with an M/W/DSBE shall be considered to have made a Best and Good Faith Effort in that regard only if its M/W/DSBE subcontractor performs a commercially acceptable function ("CAF"). An M/W/DSBE is considered to perform a CAF when it engages in meaningful work or supply effort that provides for a distinct element of the subcontract (as required by the work to be performed in accordance with Bid specifications), where the distinct element is worthy of the dollar amount of the subcontract and where the M/W/DSBE carries out its responsibilities by actually performing, managing and supervising the work involved; M/W/DSBE subcontractors must perform at least twenty percent (20%) of the cost of the subcontract (not including the cost of materials, equipment or supplies incident to the performance of the subcontract) with their own employees.

The City may evaluate the amount of work subcontracted, industry practices and any other relevant factors in determining whether the M/W/DSBE is performing a CAF and in determining the amount of credit the contractor receives towards the participation ranges. For example, a contractor using an M/W/DSBE non-stocking supplier (i.e., a firm that does not manufacture or warehouse the materials or equipment of the general character described by the Bid specifications and required under the contract) to furnish equipment or materials will only receive credit towards the participation ranges for the fees or commissions charged, not the entire value of the equipment or materials furnished.

V. Compliance and Monitoring of Best and Good Faith Efforts

A. The Owner agrees to cooperate with OEO in its compliance monitoring efforts, and to submit, within the time limits prescribed by OEO, all documentation which may be requested by OEO relative to the awarded contract, including the items described below. The Owner must provide as required and maintain the

following contract documentation for a period of three (3) years following acceptance of final payment under the contract:

- Copies of signed contracts and purchase orders with M/W/DSBE subcontractors;
- Evidence of payments (cancelled checks, invoices, etc.) to subcontractors and suppliers to verify participation;
- Telephone logs and correspondence relating to M/W/DSBE commitments.
- To the extent required by law, the [Owner Representative] shall ensure that all its on-site contractors maintain certified payrolls which include a breakout of hours worked by minority and female apprentices and journeypersons; these documents are subject to inspection by OEO.

B. Prompt Payment of M/W/DSBEs

1. The [Purchaser OR Developer] agrees and shall cause all its contractors to ensure that all M/W/DSBEs participating in the Project receive payment for their work or supply effort within five (5) business days after receipt of a proper invoice following satisfactory performance.
2. The Owner shall within a timely manner after receipt of an invoice for payment for work performed under the contract, deliver to its M/W/DSBE subcontractors their proportionate share of such payment for work performed (including the supply of materials). In connection with payment of its M/W/DSBE subcontractors, the Owner agrees to fully comply with the City's payment reporting process which may include the use of electronic payment verification systems.
3. Each month of the contract term and at the conclusion of the contract, the Owner shall provide to the OEO documentation reconciling actual dollar amounts paid to M/W/DSBE subcontractors to M/W/DSBE commitments presented in the BGFE Form.

C. Oversight Committee

1. The Owner and/or at the discretion of the City of Philadelphia, in consultation with the appropriate agencies and entities, will establish and identify the members of a Project Oversight Committee, to include representatives from the Owner, the Developer and/or the General Contractor and Construction Manager, the Building Trades, and the City which may include the Project site's District Councilperson, OEO, and appropriate community organizations ("Committee"). Participants will engage in monitoring, reporting and problem solving activities which are to include regular meetings to address all matters relevant to further development of the Plan, carrying out its implementation and the successful completion of the Project.

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.

2. If a Project Oversight Committee is established, the City will convene meetings of the Committee no later than one (1) month after issuance of the Notice To Proceed and/or project has started.

D. Reporting

The Owner, will agree to file an annual report with the City of Philadelphia's Mayor and City Council concerning the performance of the Economic Opportunity Plan within the Project. In addition, during construction, the Owner will provide higher-level "snapshot" reports to the Oversight Committee containing updates for certain categories of information contained in its annual report on a monthly basis during construction, and on a quarterly basis during the first year of operations. Snapshot reporting will include: (i) utilization of M/W/DSBEs and/or DBEs; (ii) the hiring and employment of minorities and females, (iii) the hiring and employment of Philadelphia residents and; (iv) training programs utilized and the placement rates. All reports (quarterly & annually) to the City under this section will be provided to the Executive Director of the Office of Economic Opportunity and to the members of the Oversight Committee.

VI. Remedies and Penalties for Non-Compliance

- A. In cases where the Owner has cause to believe that a Participant, acting in good faith, has failed to comply with the provisions of the Plan, the Owner and/or the Oversight Committee, with the assistance and consultation of the appropriate agencies and professional entities, shall attempt to resolve the noncompliance through conciliation and persuasion.
- B. In conciliation, the Participant must satisfy the Owner and the Oversight Committee that they have made their *best and good faith efforts* to achieve the agreed upon participation goals by certified M/W/DS-BE and/or DBE firms. *Best and good faith efforts* on the part of the Participant/Contractor include:
 - 1) Entering into a contractual relationship with the designated M/W/DS-BE and/or DBE firm in a timely, responsive and responsible manner, and fulfilling all contractual requirements, including payments, in said manner.
 - 2) 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.
 - 3) Requesting assistance from the Owner and/or the Oversight Committee in resolving any problems with any M/W/DS-BE and/or DBE firm.

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

C. In cases where the Owner and/or the Oversight Committee have cause to believe that any Participant has failed to comply with the provisions of the Plan, they shall conduct an investigation.

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

- 1) Declaring the Participant as non-responsible and/or non-responsive, with a determination as ineligible to receive the award of a contract, continue a contract and/or ineligible for any other future contracts affiliated with this Plan;
- 2) Suspending the violating Participant from doing business with the Owner;
- 3) Withholding payments to the violating Participant; and/or
- 4) Pursuing and securing any relief which the Owner and/or the Oversight Committee may deem to be necessary, proper, and in the best interest of the Owner and the Project, consistent with applicable policy and law.

E. A Participant may appeal a determination of non-compliance with this Plan by filling a written grievance with the Owner and/or its Oversight Committee.

F. Within five (5) working days the Owner and/or the Oversight Committee shall issue and serve a written notice/determination, together with a copy of the grievance as filed, to all persons named in the grievance.

SIGNATURE OF Owner Representative³

DATE

ANGELA DOWD-BURTON, Executive Director, Office of Economic Opportunity⁴ DATE

³The 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.

Project Tracking Number: _____



**PHILADELPHIA
WATER
— DEPARTMENT —**

**OPERATIONS AND MAINTENANCE AGREEMENT
FOR STORMWATER MANAGEMENT PRACTICES**

BACKGROUND

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

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

WHEREAS, The City and the Philadelphia Authority for Industrial Development (“**PAID**”) have established a Greened Acre Retrofit Program (“**GARP**” or “**Program**”) to provide financial assistance to certain qualified applicants who desire to install stormwater management practices (“**SMP**” or “**SMPs**”);

WHEREAS, the Program provides grants to qualified applicants for the design and construction of SMPs across multiple properties in Philadelphia’s combined sewer area (“**Project**”) 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, _____ (“**Subgrantee**”) is a [insert description of subgrantee]

WHEREAS, Subgrantee applied for and was awarded a GARP Grant to design, construct, and install the SMP(s) listed in **Exhibit C2** on a certain portion of the Property (“**SMP Area**”), as described in **Exhibit C2**,

WHEREAS, Subgrantee has a written contract with the Property Owner to

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construct and install the SMP(s) on the Property;

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

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

WHEREAS, pursuant to a Grant Agreement between the City and PAID dated February 23, 2012 and subsequently amended, the City has granted PAID funding which PAID, or its assignee, will subgrant (“**Project Funding**”) to qualified applicants in accordance with subgrant agreements;

WHEREAS, PIDC-Local Development Corporation (“**PIDC-LDC**”) has contracted with PAID to administer the grant program on PAID’s behalf;

WHEREAS, PIDC-LDC and Subgrantee entered into a subgrant agreement dated _____, 201_ (“**Subgrant Agreement**”) that awarded \$_____ in Project Funding to Subgrantee and \$_____ of that Project Funding was used to install and construct SMPs on the Property;

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

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

AGREEMENT

Project Tracking Number: _____



1. Ownership.

Property Owner agrees to assume ownership of the SMP(s) constructed in accordance with the Subgrant Agreement as of the date Subgrantee, its agents, or its contractors have completed construction and installation of the SMP(s) substantially in accordance with the PWD-approved plans and specifications for the Project.

2. Operation and Maintenance Responsibility.

(a) This Agreement shall serve as the signed statement by the Property Owner accepting responsibility for operation and maintenance of the Property's SMP(s) as set forth in this Agreement until the responsibility is legally transferred to another entity, as provided in 2(b) below.

(b) This Agreement shall serve as notice to all successors and assigns of the title to the Property of the obligations herein set forth. At such time as the Property is transferred, the new owner of the Property shall have the rights and responsibilities of the Property Owner under this Agreement.

(c) Property Owner, at Property Owner's sole expense, shall perform, or shall cause to be performed, the work reasonably necessary to keep the SMP(s) in good working order and condition so that the SMP(s) are performing their intended design functions within expected tolerances. This includes, but is not limited to, all pipes and channels built to convey stormwater to the SMP(s), as well as all structures, improvements, and vegetation provided to control the quantity and quality of the stormwater.

3. Destruction and Removal; Changes and Alterations.

(a) Property Owner covenants and agrees that for the Term of this Agreement, no change in grades or other alterations within the lines of the SMP Area shall be made and that no buildings and/or other structures either overhead, underground or upon the surface, shall be constructed within the lines of or abutting the SMP Area unless the plans for such changes of grades, alterations or structures shall be first be submitted to and approved in writing by the City.

(b) Property Owner shall not destroy or remove or allow to be destroyed or removed the SMP(s) from the Property or modify the SMP(s) in a manner that materially lessens its effectiveness. It is understood and agreed that none of the following shall constitute a breach of this covenant: (i) destruction, removal or alteration of any such property or improvement as a result of a Force Majeure Event, as defined below, or (ii) the removal and disposal of any SMP, provided that simultaneously with or prior to such

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removal, any such SMP shall be replaced with another SMP comparable (or better than) in all material respects to the removed SMP and with equal or better effectiveness.

(c) Property Owner shall not be liable for any delay in the performance of its obligations pursuant to this Agreement, to the extent that such delay is caused, directly or indirectly, by an occurrence of fire, flood, earthquake, elements of nature or acts of God, acts of war, terrorism, riots, civil disorders, rebellions or revolutions, power outages, or any other causes beyond the reasonable control of Property Owner (a “**Force Majeure Event**”). Upon the occurrence of a Force Majeure Event, Property Owner shall be excused from any further performance of those of its obligations pursuant to this Agreement affected by the Force Majeure Event for as long as such Force Majeure Event continues and up to 72 hours thereafter, provided, however, that Property Owner uses commercially reasonable efforts to promptly recommence performance to the extent possible.

4. Inspection by Property Owner.

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

5. Recordkeeping.

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

6. Inspection by City.

(a) Following construction of the SMP(s) by the Property Owner, PWD shall inspect the SMP(s) for compliance with the PWD approved-plans and specifications for the Project.

(b) The Property Owner hereby grants permission to the City and the City’s authorized agents and employees to enter upon the Property during normal daylight working hours or at any other reasonable time to inspect the SMP(s) in order to ensure the SMP(s) are being adequately maintained and are continuing to perform the designed function. Inspection includes monitoring, sampling, testing and examination to

Project Tracking Number: _____



determine proper operation of the SMP(s). The City shall have the right to temporarily install and/or place on or near any SMP such devices as are necessary to conduct monitoring, sampling and/or testing of the discharges from the SMP(s) or the SMP's effects.

7. Failure of Property Owner to Maintain SMP(s).

(a) **Nuisance.** Property Owner agrees that failure to adequately maintain the SMP(s) may constitute a public nuisance that is a threat to public health and safety and to the environment.

(b) **City may Perform Maintenance.** In addition to any rights the City may have under law or this Agreement, if the City determines that the Property Owner has failed to adequately maintain the SMP(s) as determined by the City, the City may notify the Property Owner in writing of any deficiencies. If Property Owner fails to take action to correct those deficiencies within thirty (30) business days of receipt of such notice, the City and its authorized agents and employees may enter upon the Property and take whatever steps reasonably necessary to correct deficiencies identified and charge the reasonable costs (including administrative costs) thereof to the Property Owner. Where deficiencies cause imminent threat to public health, safety or the environment, the City may take immediate steps necessary to protect public health, safety and/or the environment and charge the costs (including administrative costs) thereof to the Property Owner. When the City charges its costs to the Property Owner pursuant to this Section, such charges shall be due within thirty (30) days of the date the bill is received.

(c) **Right to Lien.** In the event the Property Owner fails to reimburse the City within thirty (30) days after receipt of demand under Section 7(b), the City may place a lien on the Property for the entire amount due.

(d) Nothing in this Agreement shall limit the City's rights under the Municipal Claims and Tax Liens Act, 53 P.S. § 7101, *et seq.*

8. No Waiver.

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

9. No Obligation to Maintain by City.

Despite any other provisions of this Agreement, this Agreement does not obligate the City to appropriate or spend money at any time or for any reason. It is expressly understood and agreed that the City is under no obligation to routinely inspect, maintain

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or repair the SMP(s), and in no event shall this Agreement be construed to impose any such obligation on the City.

10. Federal Tax Items.

The Property Owner and City confirm that this Agreement is not intended to be a Qualified Conservation Contribution as defined under the Internal Revenue Code and regulations promulgated thereunder.

11. Covenant Running with Land.

The Property Owner agrees whenever the Property is held, sold, conveyed or otherwise transferred during the Term of this Agreement, the Property shall be subject to this Agreement which shall apply to, bind and be obligatory to all then current owner(s) of Property. This Agreement shall constitute a real covenant running with the land for the Term of this Agreement, and shall be binding on the Property Owner, its administrators, executors, heirs, assigns, and any other successors in interest during the Term of this Agreement, including, without limitation, any successors in title to the Property or any part thereof, whether or not they have actual notice of this Agreement and whether or not the deed of transfer specifically states that the transfer is under and subject to this Agreement. It is further understood and agreed that subject to the terms of this Agreement, the City shall have peaceful and quiet enjoyment of its rights under this Agreement free and clear of rights or consent of third parties, other than those that exist as of the Effective Date of this Agreement, as identified in Exhibit C3.

12. Reproduction and Release of the Plans and Records.

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

13. Agreement to be Recorded.

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

14. Condominium Owners Association or Homeowners Association Declaration.

This Agreement and its Exhibits shall be attached and/or incorporated into any Declaration of a condominium owners' association or homeowners' association that is

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responsible for maintenance of the SMP(s). Failure to attach and/or incorporate this Agreement shall not diminish the effect of this Agreement.

15. Modifications or Termination.

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

16. Amendments.

This Agreement may only be amended or modified by a written document signed by the City and Property Owner. The City will only enter into an amendment if it determines, at its sole discretion, that the amendment is consistent with and in furtherance of the Conservation Objective and will not result in any private benefit prohibited under the Internal Revenue Code.

17. Remedies; Enforcement.

The Property Owner understands, acknowledges and agrees as follows:

(a) **Enforcement.** The City is an interested party to this Agreement and the Property Owner consents to enforcement by the City, administratively or at law or equity, of the restrictions, covenants, obligations and agreements contained herein.

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

(c) **Exclusivity.** No right or remedy conferred upon the City in this Agreement is intended to be exclusive of any other right or remedy contained in this

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Agreement or at law or equity. Every such right or remedy shall be cumulative and shall be in addition to each other right and remedy contained in this Agreement or now or hereafter available to the City at law, in equity, by statute or otherwise.

(d) **Right of Enforcement.** This Agreement binds and benefits the Property Owner and the City, and their respective successors and assigns. Only the City has the right to enforce the terms of this Agreement and exercise rights of release, transfer, assignment or other discretionary rights of the City. Owners of lots within the Property do not have the right to enforce the terms of this Agreement against owners of other lots within the Property. This Agreement is valid and enforceable even though or if: it is not appurtenant to an interest in real property; it can be or has been assigned; it is not of a character recognized traditionally in common law; it imposes a negative burden or affirmative obligations upon the owner of the Property; the benefit does not touch nor concern real property; there is no privity of estate or contract; or the City becomes the owner in fee of the Property.

(e) **Remedies Cumulative.** The description of City's remedies in this Section 17 does not preclude the City from exercising any other right or remedy that at any time be available to the City under federal, state or local laws or regulations . If the City chooses to exercise one remedy, the City may nevertheless choose to exercise one or more of the other rights or remedies available to the City at the same time or at any other time.

18. Representations and Warranties by Property Owner.

(a) Property Owner is the sole owner in fee simple of the SMP Area free and clear of liens, encumbrances, restrictions and other matters of record, other than those that exist as of the Effective Date of this Agreement, as identified in Exhibit C3.

(b) Property Owner has the power and is duly authorized to execute this Agreement.

19. Indemnity.

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

20. Entire Agreement.

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**PHILADELPHIA
WATER
— DEPARTMENT —**

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

21. Notices.

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

Property Owner: _____

City: City of Philadelphia Water Department
Attn: Stormwater Grants Manager
1101 Market Street, 5th Floor
Philadelphia, PA19107

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

22. Miscellaneous.

(a) **Certain Interpretational Rules.** The headings in this Agreement are for convenience only and are not a part of this Agreement. The headings do not in any way define, limit, describe or amplify the provisions of this Agreement or the scope or intent thereof.

(b) **Governing Law.** This Agreement shall be governed in accordance with the laws of the Commonwealth of Pennsylvania without regard to the conflicts of law

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doctrines thereof. The parties to this Agreement agree to submit to the jurisdiction of courts, whether federal or state, located in Philadelphia, Pennsylvania.

(c) **No Joint Venture.** Nothing in this Agreement shall be construed as creating a joint venture or partnership between the City and the Property Owner.

(d) **No Third-Party Beneficiaries.** Nothing in this Agreement is intended to confer a third-party beneficiary right upon any person or entity other than the City.

(e) **Waiver of Jury Trial.** IT IS MUTUALLY AGREED BY AND BETWEEN THE CITY AND THE PROPERTY OWNER THAT THEY HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTER-CLAIM BROUGHT BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER ON ANY MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT.

(f) **Severability and Partial Invalidity.** The provisions of this Agreement shall be severable. In the event that one or more provisions of this Agreement or the application thereof for any reason or in any circumstance shall to any extent be held to be invalid, illegal or unenforceable in any respect, such provision shall be severed and shall be inoperative, and the remainder of this Agreement shall remain in force to the fullest extent permitted by law.

(g) **Exhibits Incorporated.** All exhibits attached to this Agreement are hereby incorporated into and made a material part of this Agreement.

(h) **Approval by City.** No review, approval and/or inspection by the City of any plans, designs, specifications, drawings, work or other materials submitted or performed by the Property Owner in connection with the Project shall constitute a representation, warranty or guaranty by the City as to the substance or quality of the matter reviewed or approved. No person or party shall rely in any way on such review or approval, and at all times the Property Owner shall use its own independent judgment as to the accuracy and quality of all such matters. The City's review or approval of any plans, designs, specifications, drawings, work or other materials submitted or performed by the Property Owner in connection with this Agreement shall not constitute or be construed to constitute approval otherwise required by any City departments, boards or commissions in connection with any aspect of the same. Furthermore, no review or approval of any plans, designs, specifications, drawings, work or other materials submitted or performed by Property Owner in connection with this Agreement by any City departments, boards or commissions shall constitute or be construed to constitute approval otherwise required by the City under this Agreement.

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PHILADELPHIA
WATER
— DEPARTMENT —

[signatures appear on following page]

Project Tracking Number: _____



**PHILADELPHIA
WATER
— DEPARTMENT —**

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.

Approved As to Form

**CITY OF PHILADELPHIA
Water Department**

City of Philadelphia
Law Department

Debra McCarty
Commissioner

**PROPERTY OWNER
Name of Owner - Entity**

Name: _____
Title: _____

OR, if individual owner

PROPERTY OWNER

Barry S. Slosberg

And, if two individual owners...

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PHILADELPHIA
WATER
— DEPARTMENT —

Joann C. Slosberg

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ACKNOWLEDGEMENT

COMMONWEALTH OF PENNSYLVANIA :
 : ss.
COUNTY OF PHILADELPHIA :

On this ____ day of _____ 2018, before me, a Notary Public for the Commonwealth of Pennsylvania, the undersigned Officer, personally appeared [Property Owner Name], who acknowledged himself/herself to be the Property Owner of the Property, and that s/he, as such Property Owner, being authorized so to do, executed the foregoing instrument for the purposes therein contained by executing the same by her/himself as such Property Owner.

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

Notary Public

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ACKNOWLEDGEMENT

COMMONWEALTH OF PENNSYLVANIA :
: ss.
COUNTY OF PHILADELPHIA :

On this _____ day of _____, 2018, before me, a Notary Public for the Commonwealth of Pennsylvania, the undersigned Officer, personally appeared Debra McCarty, who acknowledged herself to be the Commissioner of the City of Philadelphia Water Department, and that she, as such Commissioner, being authorized so to do, executed the foregoing instrument for the purposes therein contained by executing the same by herself as such Commissioner.

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

Notary Public

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EXHIBIT C1

PROPERTY DESCRIPTION

Project Tracking Number: _____



EXHIBIT C2

SMP AREA DESCRIPTION AND LIST OF SMP(s)

[Metes and Bounds Description and list]

Project Tracking Number: _____



EXHIBIT C2

SMP AREA DESCRIPTION AND LIST OF SMP(s)

[SMP List]

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EXHIBIT C3

EXISTING MORTGAGES

| Mortgagee (name and address) | Outstanding Amount | Maturity Date |
|------------------------------|--------------------|---------------|
|------------------------------|--------------------|---------------|