

THE CITY OF PROVIDENCE
STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

RESOLUTION OF THE CITY COUNCIL

No. 145

Approved March 22, 2012

WHEREAS, City Ordinance 2011 - 1 authorized the City Tax Assessor to accept ten historic rehabilitation tax stabilization program applications; and

WHEREAS, The permanent Master for the Providence Biltmore filed an Application for Tax Stabilization under Ordinance 2011-1 for property located at 11 Dorrance Street, Providence, Rhode Island; and

WHEREAS, There are currently eleven applications pending for tax stabilization under said Ordinance; and

WHEREAS, The Providence Biltmore is a hotel, and Ordinance 2011-1 expressly excludes hotel properties from consideration for historic rehabilitation tax stabilization; and

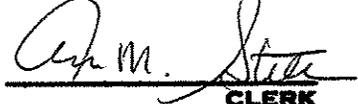
WHEREAS, The City Council desires to authorize the City Tax Assessor and other appropriate Department Directors to review and make their own independent determinations as to the suitability of the Providence Biltmore's application for tax stabilization in accordance with the requirements of said City Ordinance.

NOW, THEREFORE, BE IT RESOLVED, That without taking a position as to whether the application filed by the Providence Biltmore qualifies for tax stabilization pursuant to the requirements of said City Ordinance, the City Council by this resolution acknowledges that said application includes a hotel and authorizes the City Tax Assessor to accept and act upon said application and the City Tax Assessor and other appropriate Department Directors are authorized to review and make their own independent determinations as to the suitability of the property described in said application for such stabilization in accordance with the provisions of said City Ordinance, as amended hereby.

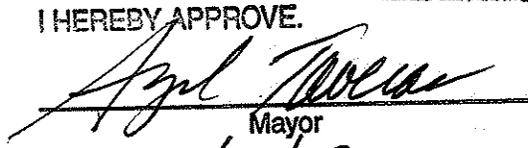
IN CITY COUNCIL

MAR 15 2012

READ AND PASSED


PRES.

CLERK

I HEREBY APPROVE.


Mayor
Date: 3/22/12

TAX STABILIZATION AGREEMENT
11 DORRANCE STREET, PROVIDENCE, RI

This Agreement ("Agreement") is made as of the 15th day of March, 2012 (the "Effective Date") by and among the CITY OF PROVIDENCE, a Rhode Island municipal corporation ("City") and RICHARD L. GEMMA, in his capacity as permanent master of both Historic Hotel Partners Providence, Limited Partnership, a Rhode Island Limited Partnership, and THE PROVIDENCE BILTMORE HOTEL ("Developer").

WITNESSETH:

WHEREAS, the Providence City Council, pursuant to (a) Section 44-3-9 of the General Laws of the State of Rhode Island, as amended, and (b) Chapter 2011-1 of the Code of Ordinances of the City ("Ch 2011-1") has the authority to exempt property in the City used for the commercial purposes from the payment of property tax if the granting of the exemption meets certain conditions set forth in said Section 44-3-9 of the General Laws of the State of Rhode Island and Ch 2011-1; and

WHEREAS, Developer owns real property in Providence identified as Assessor's Plat 020, Lot 42, also known as 11 Dorrance Street; and

WHEREAS, Developer and/or his assigns intends to make a substantial investment in said property causing the structure to be rehabilitated as a hotel and related facilities ("Project"); and

WHEREAS, the Providence City Council authorized the Tax Assessor and other city officials to accept and process Developer's application on March 15, 2012; and

WHEREAS, it is in the public interest to provide property tax incentives for owners of properties described in Ch 2011-1 in order that there may be substantial rehabilitation of the properties yielding new residential, commercial, and/or institutional uses. It is also in the public interest to offer these incentives for a limited duration; and

WHEREAS, the Developer is currently marketing the Project for sale and it is contemplated that the purchaser of the Project (said purchaser being sometimes hereinafter referred to as the "Project Owner") will be assigned the Developer's rights and assume the Developer's obligations under this Agreement and it is further contemplated that the Project Owner will complete such rehabilitation by the fourth quarter of 2015, as stated in Developer's Application Requesting Tax Stabilization; and

WHEREAS, City and Developer desire to fix and stabilize the level of taxes to be paid with respect to the Project; and

WHEREAS, Developer has made application under and has satisfied each condition of the laws of the State of Rhode Island and the Code of Ordinances of the City of Providence with respect to stabilization of taxes; and

WHEREAS, the City and Developer have agreed that Developer or any other Project Owner will make or cause to be made certain stabilized tax payments to the City with respect to the Project; and

WHEREAS, this Agreement is in the public interest as it requires Developer and/or any subsequent Project Owner, a commercial concern, to rehabilitate or cause to be rehabilitated a structure in the City, significantly increasing the tax base of the City and providing significant tax revenues, creating substantial employment opportunities in the City and enhancing property values in the City, as well as the overall economic climate of the City; and

WHEREAS, Ch 2011-1 provides that the City and Developer may make an agreement with respect to the stabilization of all property taxes and assessments with respect to the Project; and

WHEREAS, the payments made pursuant to this Agreement are fair and equitable and acceptable to the City and Developer.

NOW, THEREFORE, in consideration of the mutual agreements, understandings and obligations set forth herein, the City and Developer agree as follows:

1. Confirmation of Findings. The findings set forth in the preceding WHEREAS clauses are hereby confirmed and adopted herein.
2. Definitions. The following terms shall have the meanings set herein:
 - (a) "Commencement Date" shall mean the date that Developer substantially completes the Real Property Improvements, notice of which date Developer or the Project Owner shall deliver to the Tax Assessor of the City as soon as practical after said date is ascertained.
 - (b) "Project Owner" means Developer or any successor owner.
 - (c) "Project Site" means 11 Dorrance Street, Providence, RI (Assessor's Plat 020, Lot 42).
 - (d) "Project Taxable Properties" means, collectively, the Project Site and the Real Property Improvements.
 - (e) "Real Property Improvements" means all renovations and improvements to be located at Project Site and made between the Effective Date and the Commencement Date, which renovations and improvements will include upgrades of base building systems and redesign and/or refurbishment of interior space.
 - (f) "Stabilization Period" means that period commencing on the Commencement Date and continuing through the Termination Date.

- (g) "Stabilized Tax Payment" or "Stabilized Taxes" means, with respect to the Project Taxable Properties, the amount listed on the attached Schedule 1.
 - (h) "Termination Date" means that date which is immediately prior to the twelfth (12th) anniversary of the Commencement Date. By way of example, if the Commencement Date is March 14, 2014, the Termination Date will be March 13, 2026.
3. Term. The term ("Term") of this Agreement shall be for a period commencing on the Effective Date and terminating on the Termination Date.
4. Payment of Taxes.
- (a) Developer or any other Project Owner shall make or cause to be made Stabilized Tax Payments to the City as prescribed in the attached Schedule 1 in lieu of all other real property taxes and assessments with respect to the Project Taxable Properties during the Stabilization Period and the City agrees to accept the Stabilized Tax Payments in lieu of all such other real property taxes and assessments on the Project Taxable Property during the Stabilization Period.
 - (b) Stabilized Tax Payments due to the City during the Stabilization Period may be made at the option of Developer or any other Project Owner in either a lump sum during the first quarter of the applicable tax year or in equal quarterly installments. If quarterly payments are to be made, such payments shall be due on the same dates that quarterly tax payments are due for all other taxpayers in the City.
 - (c) It is understood by the parties that Stabilized Tax Payments made hereunder are deemed by the City to be real property tax payments, and the Project Owner shall be entitled to all the rights and privileges of a real property taxpayer in the City.
 - (d) The liability for Stabilized Tax Payments due and owing under this Agreement shall constitute an obligation of Developer or, if this agreement is assigned by Developer, of the then Project Owner, and the City shall be granted by the Project Owner a lien on the Project Taxable Properties, which lien shall be of the same priority and entitle the City to the same foreclosure remedy as a lien and foreclosure remedy provided under applicable laws and ordinances with respect to real property taxes.
5. Satisfaction of Obligations. Notwithstanding anything in this Agreement to the contrary, the City agrees that so long as the Stabilized Tax Payments are made by or on behalf of the Project Owner in accordance with the terms of this Agreement, the City shall, during the Stabilization Period, accept said payments in full satisfaction of the obligations of the Project Owner as to the payment of any and all real property taxes and assessments to the City which would otherwise be

levied upon or with respect to the Project Taxable Properties during the Stabilization Period.

6. Transfers. During the Stabilization Period, as long as Developer owns or operates the Project Taxable Properties, it will continue to pay the Stabilized Taxes on the Project Taxable Properties. Developer, its successors and assigns, agree that the Project Taxable Properties will be subject to full taxation (i) until the Commencement Date and (ii) commencing after the Termination Date in the same manner as the assessed value of other real and personal property is from time to time determined by the City. Except as set forth below, Developer also agrees not to transfer any fee interest in the Project Taxable Properties to a tax-exempt entity during the Term of this Agreement and to require any subsequent transferee to covenant not to transfer any fee interest in the Project Taxable Properties to a tax-exempt entity during the Term of this Agreement. Developer is also required as a condition precedent to this Agreement to record notice in the Land Evidence Records of the City of Providence of the requirement that the fee interest in the Project Taxable Properties be transferred only to a tax-paying entity, except as provided herein, during the Term. Furthermore, in the event that any fee interest in the Project Taxable Properties is transferred to a tax-exempt entity during the Term of this Agreement, whether by Developer or any subsequent Project Owner, the then Project Owner shall be responsible to pay the full taxable value of the Project Taxable Properties to the City for the balance of the Term of this Agreement. To be clear, other than the restriction set forth herein with regard to the transfer to tax-exempt entities, this Agreement and its benefits may be transferred by Developer.

7. Employment.

(a) During the Term of this Agreement, it shall be the goal and Developer or the then current Project Owner shall (and/or shall cause each of the tenants of the Project to) utilize its good faith efforts to:

(i) award to Minority Business Enterprises, as defined in Rhode Island General Laws Sections 37-14.1 as enacted and in effect as of the Effective Date ("MBE Act"), no less than ten percent (10%) of the dollar value of all trade contractor construction costs incurred with respect to construction of the Real Property Improvements, excluding soft costs and consulting fees (collectively, the "Construction Cost") (all as determined in accordance with Ch. 21, Article II, Section 21-52 of the Code of Ordinances of the City of Providence as enacted and in effect as of the Effective Date, a copy of which ordinance is attached hereto as Exhibit A) (the "MBE/WBE Ordinance"); and

(ii) award to women business enterprises ("WBE") no less than ten percent (10%) of the dollar value of the Construction

Cost of the Real Property Improvements (all as determined in accordance with the MBE/WBE Ordinance); and

- (iii) achieve a minimum level of employment at the Project during construction of the Real Property Improvements of ten percent (10%) minorities and ten percent (10%) females, it being understood and agreed that the requirements in this Section 7(a)(iii) apply only to individuals who are newly hired by their respective employers solely for the purpose of performing work relating to construction of the Real Property Improvements; and
 - (iv) following completion of construction of the Real Property Improvements, achieve a minimum level of employment for newly hired employees at the Project of ten percent (10%) minorities and ten percent (10%) females. For the avoidance of doubt, this requirement shall not apply to employees of the Developer or the then current Project Owner (or to employees of tenants of the Project) who, as of the Effective Date, are employees of the Developer or the then current Project Owner (or employees of tenants of the Project) and who are relocated to the Project Site.
- (b) In addition to the requirements of Section 7(a) above, in making employment decisions for new non-supervisory positions to be located at the Project during the Term of this Agreement, Developer or the then current Project Owner(s) shall use good faith efforts to comply with the First Source Program ("First Source") (in accordance with Ch. 21, Article III1/2, Sections 21-91 through 21-96 of the Code of Ordinances of the City of Providence as enacted and in effect as of the Effective Date, a copy of which ordinance is attached hereto as Exhibit B) for so long as such program exists. For purposes of this Section 7(b), a "non-supervisory position" shall mean a non-exempt employee under the Fair Labor Standards Act.
- (c) During the Term of this Agreement, Developer or the then current Project Owner(s) shall submit a quarterly report to the Department of Planning and Development of the City (or such other department as the City may specify from time to time) addressing the Developer's or the then current Project Owner(s)' good faith efforts to comply with the requirements of Section 7(a) and (b) above, each such report to contain the information set forth on Exhibit C attached hereto. The City shall notify Developer or the then current Property Owner(s) if and in what respect any such report is deficient, and Developer or the then current Project Owner shall thereafter take all reasonable steps to provide the information not previously provided or an explanation therefor as soon as practicable. Developer or

the then current Project Owner agrees to deliver a copy of the Agreement to each tenant of the Project.

- (d) Failure to demonstrate good faith efforts to comply with First Source within one year of commencement of rehabilitation or renovation for the Project and the continuance of such failure for sixty (60) days after written notice to Developer or the then current Project Owner(s) shall render this Agreement null and void, unless such failure is waived by the Providence City Council. If this Agreement is rendered null and void under this paragraph, the then current Project Owner(s) must pay or cause to be paid all taxes and fees that would otherwise have been assessed and due and owing with respect to the Project Taxable Properties if this Agreement had not been made.
- (e) The parties hereby acknowledge and agree that the requirements set forth in this Section 7 shall be subject to the applicable laws and ordinances in effect as of the Effective Date and attached hereto as Exhibits A and B, and only for so long as such applicable laws and ordinances remain in effect. If, after the Effective Date and during the Term, any such law or ordinance is modified, altered or amended, neither Developer nor the then current Project Owner(s) shall be subject to any such modifications, alterations or amendments without agreeing to such an amendment to this Agreement in writing, which agreement may be withheld in their sole discretion. Absent agreement to such an amendment in writing, Developer or then current Project Owner(s) will continue to obtain all of the benefits of this Agreement as long as Developer or then current Project Owner(s) complies with the provisions of Section 7 as such provisions are in effect on the Effective Date. The parties further acknowledge and agree that the requirements set forth in this Section 7 do not require the Developer or then current Project Owner(s) (and shall not require any of the tenants of the Project) to require any third-party vendor providing services to the Project (e.g., security services) to comply with the requirements of this Section 7.

8. Audit Rights. Within sixty (60) days of a written request by the City, Developer or the then current Project Owner(s) shall make available to the City at Developer's or the then current Project Owner(s)' facilities during normal business hours such personnel and/or payroll information as may be reasonably required to corroborate compliance with Section 7 of this Agreement. Developer or the then current Project Owner(s) shall be required to maintain business records sufficient to establish compliance with Section 7 of this Agreement for a period of three (3) years from the date that any business enterprise or individual is hired by Developer or the then current Project Owner(s) to work at the Project Site during the Term of this Agreement. The City shall have the right to audit the applicable books and records of Developer or the then current Project Owner(s) during the Term of this Agreement and for a period of three (3) years after the expiration or termination of this Agreement but only for, and specifically limited to, compliance

with the requirements of Section 7 herein. No more than one (1) audit may be conducted in any one (1) year period and such audit will be limited to the preceding three (3) year period. Such audit shall be conducted upon reasonable advance written notice to Developer or the then current Project Owner(s), at a time which will not interrupt the normal business hours and at the City's sole cost and expense. The City represents, warrants and covenants that it will not, during the term of this Agreement or any time thereafter, disclose any confidential or proprietary information obtained in connection with an audit.

9. Payment of Taxes. This Agreement is conditioned upon Developer being current on all taxes assessed by the City with respect to the Project Taxable Properties as of the Effective Date and Developer or any subsequent Project Owner(s) remaining current in the payment of Stabilized Taxes due under the term of this Agreement. Failure to make said timely payments of Stabilized Taxes within thirty (30) days following written notice to the then current Owner by the City of any delinquency in payment under this Agreement (unless a payment plan is under good-faith negotiation or has been approved by the Tax Collector of the City) may render this Agreement null and void at the sole discretion of the City. This Agreement being rendered null and void would thereafter require the then current Project Owner(s) to pay all real property taxes and assessments which would have been payable with respect to the Project Taxable Properties if this Agreement had not been made.
10. Estoppel Certificate. Upon request by Developer or any other Project Owner, City will execute and deliver an estoppel certificate confirming that Developer and all subsequent Project Owner(s) are in compliance with the terms of this Agreement, if not in compliance, specifying the particulars of such non-compliance.
11. Entire Agreement. This Agreement constitutes the entire agreement of the parties hereto with respect to the subject matter hereof. This Agreement may only be modified or amended in writing as provided in Section 7(e) of this Agreement. No oral modification shall be enforceable or effective.
12. Notices. All notices, certificates, requests, demands, consents, approvals, and other communications which may or are required to be served or given hereunder (for the purposes of this section, collectively called "Notices") shall be in writing and shall be sent by registered or certified mail, postage prepaid, return receipt requested and received or overnight delivery by a recognized public or private carrier, or by facsimile, in either case as evidenced by a receipt or other evidence of delivery showing the date, time, and, for a facsimile, telephone number and receipt, and addressed to the party to receive such Notice as set forth below:

If to the City of Providence: City of Providence
City Hall
25 Dorrance Street
Providence, RI 02930
Attn: Mayor, City of Providence

Copies to: President, City Council
25 Dorrance Street
Providence, RI 02903

City Solicitor, and
Director, Department of Planning and Development
444 Westminster Street
Providence, RI 02903

If to Developer or Project Owner:

Richard L. Gemma, Esq.
Permanent Master
Wieck DeLuca & Gemma Incorporated
56 Pine Street, Suite 700
Providence, RI 02903

Copies to: Partridge Snow & Hahn LLP
180 South Main Street
Providence, RI 02903
Attn: Michael A. Gamboli, Esq.

Any party entitled to notice may, by notice to the other parties, specify a different address for notice purposes.

13. Employment.

- a. Construction. The Developer or Project Owner shall ensure that all trade construction subcontractors for the construction of this project shall have or be affiliated with an apprenticeship program as defined in 29 C.F.R. § 29 et seq. for any and all crafts or trades that will or may be working on the project. This shall not apply to any trade or profession which does not have an apprenticeship program for such trade or profession in the State of Rhode Island.
- (a) The Developer or Project Owner shall make a requirement in the contracts between its Construction Manager and General Contractor and their subcontractors who have apprenticeship programs as defined in 29 C.F.R. § 29 that not less than ten percent (10%) of the total hours worked by the subcontractors' employees on the project are completed by apprentices registered in the aforementioned apprenticeship programs.

- (b) The Developer or Project Owner shall as part of its contracts between its Construction Manager and General Contractor and their subcontractors require that the subcontractors submit to the Department of Planning and Development quarterly verification reports to ensure compliance with this section.
- (c) The Developer or Project Owner, its Construction Manager or General Contractor or other authorized person/entity may petition the City of Providence Department of Planning and Development to adjust the apprenticeship work hour requirements to a lower percentage upon a showing that:
 - i. compliance is not feasible because a trade or field does not have an apprenticeship program or cannot produce members from its program capable of performing the scope of work within the contract; or
 - ii. compliance is not feasible because it would involve a risk or danger to human health and safety or the public at large; or
 - iii. compliance is not feasible because it would create a significant economic hardship; or
 - iv. compliance is not feasible for any other reason which is justifiable and demonstrates good cause.

In the event that there shall be a failure to comply with this Section 13 (a) a. through c., the Department of Planning and Development shall have standing to seek enforcement of this provision of the ordinance in the Rhode Island Superior Court.

- b. Permanent Employment. In conjunction with its efforts pursuant to this Section and its ongoing efforts to provide equal employment opportunity without regard to race, color, religion, natural origin, sex, age or handicap, the Project Site Owner shall liaise with the City to assist in the recruitment of qualified minority, women, and handicap applicants for all of its employment positions in the Biltmore development.
14. Assignment. This Agreement may not be assigned by Developer or Project Owner prior to completion of the Real Property Improvements without the consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed, except to an entity: (i) controlling, controlled by, or under common control with Developer; (ii) acquiring all or substantially all of the assets of Developer; (iii) with or into which Developer merges or consolidates; or (iv) approved by a court of competent jurisdiction. Notwithstanding anything in this Agreement to the contrary, the parties agree that at any time and without the consent of the City, either Developer or Project Owner may assign this Agreement or the rights and obligations hereunder as collateral to any institutional lender to the Project.
15. Applicable Law. This Agreement shall be construed under the laws of the State of Rhode Island.

15. City Council Approval. The parties hereto anticipate the receipt of City Council approval, as evidenced by affirmative vote of the City Council following its March 15, 2012 meeting. This Agreement shall only take effect upon City Council approval.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first set forth above.

CITY OF PROVIDENCE

By: 

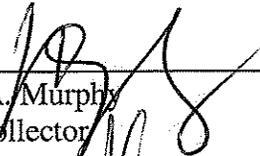
David Quinn
Tax Assessor

By: 

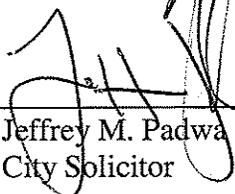
Thomas E. Deller, AICP
Director, Department of Planning and
Development

By: 

Jeffrey L. Lykins, RA
Director, Department of Inspections and
Standards

By: 

John A. Murphy
Tax Collector

By:  3/12/12

Jeffrey M. Padwa
City Solicitor

RICHARD L. GEMMA, PERMANENT MASTER

By: _____
Richard L. Gemma in his capacity as Permanent
Master of both Historic Hotel Partners Providence,
Limited Partnership, a Rhode Island Limited
Partnership and The Providence Biltmore Hotel,
and not individually

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CITY OF PROVIDENCE

By: _____
David Quinn
Tax Assessor

By: _____
Thomas E. Deller, AICP
Director, Department of Planning and
Development

By: _____
Jeffrey L. Lykins, RA
Director, Department of Inspections and
Standards

By: _____
John A. Murphy
Tax Collector

By: _____
Jeffrey M. Padwa
City Solicitor

RICHARD L. GEMMA, PERMANENT MASTER

By: Richard L. Gemma, Permanent Master
Richard L. Gemma in his capacity as Permanent
Master of both Historic Hotel Partners Providence,
Limited Partnership, a Rhode Island Limited
Partnership and The Providence Biltmore Hotel,
and not individually

Schedule 1

Stabilized Tax Payment

11 Dorrance Street contains 355,732 square feet of space.

Annual Stabilized Tax Payment during the Term of this Agreement will be, and shall not be raised above, the lesser of:

- (a) taxes assessed on or at December 31, 2010, or
- (b) $355,732 \times \$0.35/\text{square foot} = \$124,506.20$

During the Stabilization Period, subject to Developer's or the subsequent Project Owner(s)' and/or its tenants' compliance with this Agreement, the total of all taxes and property assessments on the Project Taxable Properties will not be raised above \$.35/square foot per annum.

Exhibit A

Ch. 21, Article II, section 21-52 of the Code of Ordinances of the City of Providence
(MBE/WBE)

Sec. 21-52. - Minority and women business enterprises.

- (a) *Purpose.* The purpose of this section is to carry out the city's policy of supporting the fullest possible participation of firms owned and controlled by minorities (MBEs) or women (WBEs) in city funded and directed public construction programs and projects in municipal purchases of goods and services. This includes assisting MBEs and WBEs throughout the life of contracts in which they participate.
- (b) *Summary of factual findings.* Upon full consideration of all relevant facts, the city council finds that:
Based upon the records supplied by the purchasing director/controller that the City of Providence has purchased, in the two (2) previous fiscal years (87-88, 88-89) and the current fiscal year (89-90) less than one per cent of its goods and services from firms owned or controlled by minorities or women; that based upon the testimony and evidence provided during the public hearings, individuals, minorities and women as well as businesses owned by minorities and women have been discriminated against by other businesses not owned or controlled by minorities or women in the City of Providence and the State of Rhode Island; that there was no evidence that there is not discrimination against women and minorities in acquiring business within the City of Providence from other sources despite the public hearings and the opportunity to introduce any evidence; it is in the best interest of the city to promote the equitable utilization of MBEs and WBEs in city contracting; that the requirements of this chapter are necessary to overcome the present effects of discrimination and are designed to achieve the goal of equitable utilization of MBEs and WBEs while at the same time maintaining a high quality of goods and services provided to the city through competitive bidding as required by City Charter.
- (c) *Policy.* It is the policy of the City of Providence that minority business enterprises (MBEs) and women business enterprises (WBEs) shall have the maximum opportunity to participate in the performance of procurements and projects as prime contractors and vendors as outlined in subsection (d), below. In addition, prime contractors shall utilize MBEs and WBEs so as to enable the city, its purchasing department, and all its contracting departments to meet or exceed the goals set forth in this section. The utilization of MBEs and WBEs as subcontractors and/or suppliers to the prime contractor, and/or the use of minority and women laborers, will be considered in determining the lowest possible bidder.
- (d) *Applicability.* This section shall apply to any and all city purchasing, including, but not limited to, the procurement of goods and services and construction projects or contracts funded in whole or in part by city funds, or funds which, in accordance with federal grant or otherwise, the city expends or administers or in which the city is a signatory to the construction contract.
- (e) *Definitions.*

Affirmative action means taking specific steps to eliminate discrimination and its effects, to ensure nondiscriminatory results and practices in the future, and to involve minority business enterprises and women business enterprises fully in contracts and programs funded by the city.

Compliance means the condition existing when a contractor or vendor has met and implemented the requirements of this section.

Contract means a mutually binding legal relationship or any modification thereof obligating the seller to furnish supplies or services, including construction, and the buyer to pay for them. For the purpose of this section, a lease is a contract.

Contractor or vendor means one who participates, through a contract or subcontract, in any procurement or program covered by this section, and includes lessees and material supplies.

Minority means a person who is a citizen or lawful permanent resident of the United States and who is:

- (1) Black (a person having origins in any of the black racial groups of Africa);
- (2) Hispanic (a person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race);
- (3) American Indian (a person having origins in any of the original peoples of North America);
- (4) Members of other groups, or other individuals, found to be economically and socially disadvantaged by the Small Business Administration under Section 8(a) of the Small Business Act, as amended (15 USC Section 637(2)).

Minority business enterprise or MBE means a small business concern, as defined pursuant to Section 3 of the Federal Small Business Act (15 USC Section 632) and implementing regulations, which is owned and controlled by one or more minorities.

Women business enterprise or WBE means a small business concern, as defined pursuant to Section 3 of the Federal Small Business Act (15 USC Section 632) and implementing regulations, which is owned and controlled by one or more women.

For the purpose of this section, "owned or controlled" means a business:

- (1) Which is at least fifty-one (51) per cent owned by one or more minorities or women in the case of a publicly owned business, at least fifty-one (51) per cent of the stock of which is owned by one or more minorities or women, and;
- (2) Whose management and daily business operations are controlled by one or more such individuals.

Noncompliance means the condition existing when a recipient or contractor has failed to implement the requirements of this section.

- (f) *Discrimination prohibited.* No person shall be excluded from participation in, denied the benefits of, or otherwise discriminated against in connection with the award and performance of any project or contract covered by this chapter, on the grounds of race, color, national origin or sex.
- (g) *Minority business enterprises.* MBEs shall be included in all requests for procurements under this chapter and the city shall strive to achieve each of the goals hereinafter established. Upon passage of this section, the city shall utilize the goal of ten (10) per cent which is presently being used by the State of Rhode Island as found in P.L. 1986, Ch. 493, Section 1, as amended R.I.G.L. Section 37-14.1, et seq. and the "Regulations Governing Participation by Minority Business Enterprises in State Funded and Directed Public Construction Projects, Construction Contracts and Procurement Contracts for Goods and Services" promulgated by the State of Rhode Island Department of Administration, where not inconsistent with this section. Upon completion of the so-called "predicate study" which will be undertaken, the goals for MBEs will be readjusted based upon the findings contained in said "predicate study" for the first year immediately following submission and acceptance of the said "predicate study" by the city council, increasing annually in each successive year by the recommended percentage contained in the said "predicate study" until either the final goal of participation of MBEs in all procurements for goods and services has been achieved or that the program created by this section terminates.
- (h) *Women business enterprises.* WBEs shall be included in all requests for procurements under this chapter and the city shall strive to achieve each of the goals hereinafter established. Upon passage of this section, the city shall utilize the goal of ten (10) per cent which is presently being used by the State of Rhode Island as found in P.L. 1986, Ch. 493, Section 1, as amended R.I.G.L. Section 37-14.1, et seq. and the "Regulations Governing Participation by Minority Business Enterprises in State Funded and Directed Public Construction Projects, Construction Contracts and Procurement Contracts for Goods and Services" promulgated by the State of Rhode Island Department of Administration, where not inconsistent with this section. Upon completion of the so-called "predicate study" which will be undertaken, the goals for WBEs will be readjusted based upon the findings contained in said "predicate study" for the first year immediately following submission and acceptance of the said "predicate study" by the city council, increasing annually in each successive year by the recommended percentage contained in the said "predicate study" until either the final goal of participation of WBEs in all procurements for goods and services has been achieved or that the program created by this section terminates.
- (i) *Review.* This section shall be reviewed by the city council during the calendar year 1995 and again during the calendar year 2000 to ascertain the need for adjustments and/or termination of the program if its goals are being consistently met. The provisions of this section may only be waived upon certification to the board of contract and supply by the purchasing agent that no MBEs or WBEs provide the required goods and/or services or that they are so expensive as to be prohibitive to utilizing an MBE or WBE.
- (j) *Sanctions.* The board of contract and supply shall have the power to impose sanctions upon contractors or vendors not in compliance with this section and shall include but not be limited to (1) suspension of payment; (2) termination of the contract; (3) recovery by the city of ten (10) per cent of the contract award price as liquidated damages; and (4) denial of right to participate in future projects for up to three (3) years.
- (k) *Rules and regulations.* It shall be the duty of the board of contract and supply to adopt reasonable rules, regulations and procedures to ensure compliance with this section.
- (l) *Advisory commission.* Within ninety (90) days of enactment, the mayor and city council will convene a special nine-person advisory group whose name shall be "The Providence Commission on Minority and Women Business Development". The mayor shall appoint five (5) persons to the advisory group and four (4) persons shall be elected by the city council.

Said commission shall be concerned with the programs development (i.e., procedures, standards, general requirements, special contract language, supportive services, etc.) and monthly monitoring, the identification of MBE/WBE publications for the dissemination of bid notices and program announcements, coordination with other MBE/WBE small business advisory groups, the submission of annual reports to the mayor and city council on the progress of the program, and the examination of national, regional, and local demographic/economic trends and their effects on the local MBE/WBE community.

The city council shall provide by ordinance sufficient funds to carry out these and other relevant responsibilities, and shall provide for a program administrator within the classification ordinance to administer this program.

(Ord. 1990, ch. 90-7, § 1, 5-9-90)

Exhibit B

Ch. 21, Article III½, Section 21-91 through 21-96 of the Code of Ordinances of the City of Providence.

Providence, Rhode Island, Code of Ordinances >> PART II - CODE OF ORDINANCES >> Chapter 21 - REVENUE AND FINANCE >> ARTICLE III½. - FIRST-SOURCE AGREEMENTS >>

ARTICLE III½. - FIRST-SOURCE AGREEMENTS 1261

Sec. 21-91. - Applicability.

Sec. 21-92. - Jobs covered.

Sec. 21-93. - Nature of agreements.

Sec. 21-94. - Department of planning and development's responsibilities.

Sec. 21-95. - Funding.

Sec. 21-96. - Enforcement.

Sec. 21-91. - Applicability.

The provisions of this article shall apply to any and all businesses in the City of Providence who shall receive aid in cash or in-kind from the City of Providence above and beyond the normal services provided to all businesses and residents in the city. This shall include tax concessions, and/or abatements, other than adjustments made by the tax assessor or the board of tax assessment review; grants-in-aid, grants from the office of community development, office of economic development, or other federal aid programs administered by the City of Providence, U.D.A.G.'s, H.O.D.A.G.'s or any program requiring authorization by resolution of the city council unless specifically exempted by ordinance. In addition, this shall include any project funded in whole or in part by city funds, or funds which, in accordance with a federal grant or otherwise the city expends or administers, or which the city is a signatory to the construction contract. This requirement shall not apply, however, to businesses of four (4) employees or less.

(Ord. 1985, ch. 85-62, § 1, 6-14-85)

Sec. 21-92. - Jobs covered.

Jobs covered by this article and requiring adherence to the provisions of a first source agreement shall include all nonsupervisory positions created as a result of internal promotions, terminations, and expansion of the employers workforce, except those filled by internal promotion from within the employer's local workforce.

(Ord. 1985, ch. 85-62, § 2, 6-14-85)

Sec. 21-93. - Nature of agreements.

- (a) Any business either existing in the City of Providence or establishing itself in the City of Providence receiving any aid from the city as outlined above shall as a condition of the receipt of such aid enter into a first-source agreement covering the hiring of any and all employees as outlined in section 21-92 for the terms of such aid but no case for less than three (3) nor more than ten (10) years. Any contractor or developer entering into a contract for a city funded project shall enter into a first-source agreement covering the hiring of employees necessary to complete the project.
- (b) Under a first-source agreement employers shall agree to recruit and hire all covered employees from the first-source list provided by the department of planning and development and associated agencies.
- (c) At least ten (10) days before hiring, the employer shall notify D.O.P.D. who shall refer appropriately trained and qualified employees to said employer until the employer has filled such jobs. In the event that the employer is unable to find acceptable employees after exhausting the entire first-source list, the employer shall notify the D.O.P.D. that it wishes to seek outside employees. If after conference the employer and D.O.P.D. agree that the first-source list is unable to provide suitable employees for said positions, the employer shall be free to seek employees from other sources. If the employer and D.O.P.D. do not agree that the D.O.P.D. is able to find suitable employees, the D.O.P.D. shall be given an additional thirty (30) days to recruit employees for such positions. If at the end of thirty (30) days the D.O.P.D. is unable to provide suitable employees the employer shall be free to hire from other sources.

(Ord. 1985, ch. 85-62, § 3, 6-14-85)

Sec. 21-94. - Department of planning and development's responsibilities.

- (a) The department of planning and development shall maintain a first-source list.
- (b) The list shall consist of any bona fide Providence resident seeking employment who wishes to register with said agency.
- (c) This list shall include with the names and addresses of such job seekers any special skills, training or education which the job seeker may have.
- (d) D.O.P.D. in conjunction with other appropriate government agencies shall be responsible for recruiting, training, and advertising no less frequently than once every three (3) months the existence of said list and the method by which a person may be included on such list. Advertising shall be in a newspaper of general circulation as well as any other method deemed appropriate by such agency and shall also include notification of any and all public job placement and referral agencies in the City of Providence.
- (e) The agency shall also establish training and referral programs for such persons and notify all persons on the first-source list of such programs. Selection for such training programs shall be in accordance with the following guidelines. The D.O.P.D. shall strive to place a proportionate share of women, minorities and handicapped persons in all training and job opportunities. The goals will be fifty (50) per cent women, twenty-five (25) per cent minorities, and five (5) per cent handicapped persons.
- (f) Training and referral programs shall be established at regular intervals and shall be in the following areas:
 - (1) Any area in which a covered employer who expects to be hiring has expressed a need or it can be anticipated by the agency that such need exists.
 - (2) Any area in which in the determination of the agency a need exists in the general work force but there are not sufficient training opportunities specifically for Providence residents.
 - (3) Basic training in the skills and work habits necessary for successful and continued employment for any person on the first-source list whom the agency identifies as lacking such skills.

(Ord. 1985, ch. 85-62, § 4, 6-14-85)

Sec. 21-95. - Funding.

For purposes of maintaining an adequate first-source list to meet the needs of covered employers and for adequately training individuals on such list the city shall commit annually no less than two hundred fifty thousand dollars (\$250,000.00) for the recruitment, training, referral and maintenance of such list. This fund shall be under the general administration of D.O.P.D. but may include funds from J.P.T.A., community development, or any other source. The city shall be authorized when the appropriate state and local provisions are fulfilled to issue the necessary bonds for such funding. If the city is unable to fulfill the funding provision of this article from any other source, the funds shall be provided from the city's general fund.

(Ord. 1985, ch. 85-62, § 5, 6-14-85)

Sec. 21-96. - Enforcement.

The agency shall have the power, by the terms of the first-source agreement, to impose sanctions on any business found to be in violation of the agreement. Such sanctions shall include, but not be limited to:

- (1) Termination of aid or funding.
- (2) Termination of contract.
- (3) Recovery of any benefits which accrued to the business during the period of violation.

(Ord. 1985, ch. 85-62, § 6, 6-14-85)

FOOTNOTE(S):

⁽¹²⁶⁾ *Editor's note*— Inclusion of nonamendatory ch. 85-62, approved June 14, 1985, as Art. III½ hereof has been at the editor's discretion. ([Back](#))