

**IN THE SUPREME COURT OF PENNSYLVANIA**

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Dockets Nos. 2 EAP 2018 and 3 EAP 2018

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LORA JEAN WILLIAMS; GREGORY J. SMITH; CVP MANAGEMENT, INC. d/b/a or t/a CITY VIEW PIZZA; JOHN'S ROAST PORK, INC. f/k/a JOHN'S ROAST PORK; METRO BEVERAGE OF PHILADELPHIA, INC. d/b/a or t/a METRO BEVERAGE; DAY'S BEVERAGES, INC. d/b/a or t/a DAY'S BEVERAGES; AMERICAN BEVERAGE ASSOCIATION; PENNSYLVANIA BEVERAGE ASSOCIATION; PHILADELPHIA BEVERAGE ASSOCIATION; and PENNSYLVANIA FOOD MERCHANTS ASSOCIATION,  
*Appellants,*

v.

CITY OF PHILADELPHIA and FRANK BRESLIN, IN HIS OFFICIAL CAPACITY AS COMMISSIONER OF THE PHILADELPHIA DEPARTMENT OF REVENUE,

*Appellees.*

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**BRIEF OF AMICI CURIAE AFRICAN-AMERICAN CHAMBER OF COMMERCE FOR PENNSYLVANIA, NEW JERSEY, & DELAWARE**

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On allowance of appeal from an Order of the Commonwealth Court of Pennsylvania, in Nos. 2077, 2078 C.D. 2016, entered June 14, 2017, affirming Orders of the Court of Common Pleas of Philadelphia County in September Term 2016, No. 01452, entered December 19, 2016.

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**I. STATEMENT OF INTEREST OF *AMICUS CURIAE***

*Amicus* African-American Chamber of Commerce of Pennsylvania, New Jersey and Delaware (the “Chamber”) is the representative of a diverse group of African-American-owned businesses across Pennsylvania, New Jersey and Delaware. *Amicus* is concerned that, if the City of Philadelphia’s Beverage Tax (“PBT”) is not upheld on appeal, it will result in the deprivation of economic and other opportunities for many of their members - - and all other citizens of the City -- that would otherwise be provided through the implementation of the programs that revenue generated from the PBT funds.

The Chamber was incorporated in 1993 in response to the legal challenges confronted and discrimination experienced by African-Americans in connection with contracting opportunities with the City of Philadelphia (the “City”). The Chamber was formed as a non-profit entity for the purpose of promoting the sound economic well-being and empowerment of African-American owned businesses, the African-American business community, and the economic status of the African-American community in general through educational and other charitable means.

The Chamber is the leading advocate for minority owned businesses in the Delaware Valley and Southeastern Pennsylvania. Its purpose is to enhance the growth and effectiveness of African-American owned businesses in the Delaware Valley, and thereby, improve the economic conditions within the regional African-American community. Its primary goal is to further the interests of businesses by responding to the needs of the business community and serving as an advocate for the purpose of increasing economic opportunities for the African-American community. The Chamber's membership spans a wide spectrum of business operations, ranging from sole proprietor enterprises to firms with hundreds of employees that become part of an extensive network that is able to engage with policymakers and business leaders across the region and participate in programming that helps their businesses grow.

The Chamber has a strong interest in the viability of the PBT because tax revenues derived from it will be appropriated to fund the City's seven year, \$500 million Rebuilding Community Infrastructure Program ("Rebuild"), which will enhance the quality and vitality of life for many of the Chamber's members and all other citizens of the City by improving its parks, recreation centers and libraries. Equally, if not more important, is the fact that Rebuild is expected to generate 150 to 200 construction projects

throughout the City and produce myriad potential employment (*e.g.*, professional service and contractor) opportunities for current and potentially future members of the Chamber. Indeed, the City is making an unprecedented, concerted effort to ensure that local minority-, women- and disability-owned businesses (similar to those owned and/or operated by the Chamber's members) will benefit from the economic opportunities associated with the Rebuild initiative and has even created a Rebuild business supports program that will ensure faster payment, facilitate access to capital and address loan and bonding challenges. In other words, Rebuild has been designed to provide members of the Chamber with an excellent opportunity to engage with Rebuild projects, and in addition, build up capacity that will enable them to work on larger, non-Rebuild City and private projects inside and outside of the City.

The Chamber also supports the City's commitment for revenue from the PBT to be invested in universal pre-kindergarten ("pre-K") and Community Schools. The Chamber has a strong interest in the continued viability of universal pre-K and Community Schools, all of which support the Chamber's vision for a just and vibrant local economy that serves community needs, shares wealth, and increases business opportunities for its members.

Pursuant to Pa.R.A.P. No. 531, no one other than the *amicus* or its counsel paid for the preparation of this *amicus curiae* brief or authored this brief, in whole or in part.

## **II. SUMMARY OF THE ARGUMENT**

Recognizing the critical importance of programs funded by the PBT, and the strength and validity of Appellee’s legal arguments, *Amicus* urges this Court to affirm the Commonwealth Court’s opinion upholding the PBT. Philadelphia City Council enacted the PBT in June 2016 as a revenue-building measure that could fund the critical social programs described below.<sup>1</sup> The PBT, which taxes non-retail distribution transactions of sweetened beverages at a rate of \$0.015 per ounce distributed, has enabled the City of Philadelphia to enhance the quality of life of all Philadelphians, and in particular, underserved minority communities. Most importantly to the Chamber, the PBT has provided significant economic opportunity for the African-American business community which comprises the membership of the Chamber. For these reasons, *Amicus* urges the Court to uphold the Commonwealth Court’s decision.

## **III. ARGUMENT**

The programs funded by the PBT provide special benefits to the citizens of Philadelphia, especially those in the African-American

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<sup>1</sup> Phila. Code §§ 19-4101-4108.

community, some of whom are members of the Chamber. Absent from Appellants' arguments are matters of particular concern to the Chamber's members, as well as to the African-American community and other minority communities. Most notably, revenue generated from the PBT is allocated to fund, among other things, the City's pre-K, Community Schools, and Rebuild programs.

**A. The PBT Funds Pre-K Programs that Expand Access to Early Childhood Education and Spur Economic Growth in Minority Communities**

For every one dollar spent on high-quality early childhood programs, eight to sixteen dollars are returned to society.<sup>2</sup> The City's PBT-funded pre-K program increases the availability of affordable, quality early education for citizens, which affords more Philadelphians, and especially African-Americans and other minorities, with the opportunity to work or seek employment free from worry about the health, safety and welfare of their children. This in turn increases the pool of potential employees available for full- and part-time employment in the Philadelphia metropolitan business community in general and the Chamber's members in specific. Naturally, the education and employment of more Philadelphians results in more

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<sup>2</sup> Timothy Bartik. *Early Childhood Programs as an Economic Development Tool: Investing Early to Prepare the Future Workforce*. W.E. UPJOHN INSTITUTE FOR EMPLOYMENT RESEARCH. (July 2017) [https://www.purdue.edu/hhs/hdfs/fii/wp-content/uploads/2015/07/s\\_wifis31c03.pdf](https://www.purdue.edu/hhs/hdfs/fii/wp-content/uploads/2015/07/s_wifis31c03.pdf)



money being spent with Philadelphia businesses and more improvement to Philadelphia's already burgeoning economy.<sup>3</sup>

Most important for the Chamber, the pre-K program has the effect of creating more entrepreneurial opportunities, especially in African-American communities where parents cannot afford to pay for private care. Funds from the PBT have already enabled the creation of over 2,700 seats for three and four year olds in pre-K programs.<sup>4</sup> With this support, caring adults can establish businesses in their own communities where they perform a vital service that they love and are motivated to perform and where they are trusted and can be held accountable by their neighbors.

**B. The PBT Funds Community Schools that Provide Essential Services to Minority Communities**

The City plans to invest nearly \$40 million to transform 25 existing public schools into community schools, which serve as neighborhood centers to improve access to programs and services for students, families and neighbors.<sup>5</sup> In Community Schools, a full-time coordinator works with the entire school community (*i.e.*, students, parents, teachers, administrator,

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<sup>3</sup> *Id.* at 2.

<sup>4</sup> Sam Newhouse. *Kenney pitches tax hikes to fund schools in budget*. METRO: PHILADELPHIA. (March 1, 2018). Available online at: <https://www.metro.us/news/local-news/philadelphia/kenney-pitches-tax-hikes-to-fund-schools-budget-address>

<sup>5</sup> Kristen A. Graham. *Is Kenney's community schools initiative making a difference in Philly?* PHILADELPHIA INQUIRER. (March 30, 2017) Available online at: <http://www.philly.com/philly/education/community-schools-south-philadelphia-mayor.html>

service providers and neighbors) to identify the community's most pressing needs. These needs may include without limitation expanded medical services, after-school programming and job training. Service providers and the City work hand in hand to bring these targeted resources directly to the school. The additional resources that are being and will be provided at Community Schools will also create new commercial opportunities for the Chamber's members to start up new or expand current business operations.<sup>6</sup>

Projections estimate that nine percent of the PBT tax revenue will be dedicated to Community Schools and millions of dollars have already been spent.<sup>7</sup> Most of these Community Schools are located in predominately minority communities.<sup>8</sup> Six out of nine of the first cohort of Community Schools serve student populations that are between 59% and 98% African-American.<sup>9</sup> As these schools become hubs for the surrounding community, they provide valuable networks that can connect the Chamber's employers with potential employees and businesses with customers. Community

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<sup>6</sup> Hayden Mitman. *Building Philly's community schools from the bottom up*. PHILLY VOICE. (April 19, 2016). Available online at: <http://www.phillyvoice.com/building-community-schools-from-the-bottom-up/>.

<sup>7</sup> See *supra* note 5.

<sup>8</sup> Jared Brey. *Here's Where Philly's First Nine Community Schools Will Be Located*. PHILADELPHIA MAGAZINE. (July 18, 2016). Available online at: <https://www.phillymag.com/citifed/2016/07/18/philadelphia-community-schools/>

<sup>9</sup> City of Philadelphia. *All Community Schools Profile: Fall 2016 Cohort*. (February 7, 2017). Available online at: <https://beta.phila.gov/media/20170207085024/All-Schools.pdf>

Schools have already begun to provide significant positive benefits to African-American communities.<sup>10</sup>

**C. The PBT Funds the City's Rebuild Program which Creates Economic Opportunity for Minority-owned Business.**

The Rebuild program is a \$500 million mission developed to improve 61 sites consisting of Philadelphia's parks, libraries and recreation centers. Much like the Community Schools program, the Rebuild program is carefully designed to significantly improve the quality of life of Philadelphia citizens.<sup>11</sup> This is especially true in communities where African-Americans and other minorities are in the majority because these sites play an inextricable role in the cultural and heritage fabric that binds neighbors – some who have resided in the same homes over for several generations. This program produces numerous business opportunities for the Chamber's members, which in turn creates more employment and improves the lives for and of African-Americans.<sup>12</sup>

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<sup>10</sup> See *supra* note 5.

<sup>11</sup> The Rebuild Philadelphia Program estimates 30-35% of \$54 million in 2018-2019 construction projects alone would be allocated to African-American and minority-owned businesses.

See City of Philadelphia. *Rebuild Philadelphia Project Statement FY 2018-2019*. (November 30, 2017). Available online at <http://rebuild.phila.gov/uploads/attachments/cjampiff00c9fla2u1ktcuqfa-rebuild-project-statement-fy2018-2019.pdf>

<sup>12</sup> *Id.* For the Court's convenience, a copy of the City's Rebuild Project Statement for Fiscal Year 2018-2019 is attached as Appendix A.1

#### IV. CONCLUSION

While this Court must uphold the PBT after considering all of the arguments, it should also take into consideration the considerable harm that would be inflicted upon Philadelphians, and especially African-American and minority communities as a whole and the Chamber's members as well, should it consider striking down the PBT. All of the positive impacts of increased employment, improved education and enhanced quality of life to date, and all that would manifest in the future, would end, or at best be greatly diminished. Surely, this Court cannot permit such an unjust ending for a law that produces so much good for so many people.

For all of the foregoing reasons, the Order of the Commonwealth Court should be affirmed and the PBT declared lawful.

Respectfully submitted,

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DATE: April 13, 2018

**CERTIFICATE OF WORD COUNT**

I certify that this brief complies with PA. R.A.P. 2135(a)(1) in that it includes 1,618 words according to the word count feature of Microsoft Word 2010, excluding the parts exempted by PA. R.A.P. 2135(b).

/s/ Sarah R. Schalman-Bergen

Dated: April 13, 2018

**CERTIFICATE OF COMPLIANCE**

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non -confidential information and documents.

/s/ Sarah R. Schalman-Bergen

Dated: April 13, 2018

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this day, a true and correct copy of the foregoing served on the following to the fullest extent possible via electronic service and additionally, via first class mail, which satisfies the requirements of PA. R.A.P. 121:

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# APPENDIX A.1



# Project Statement

FY2018 - FY2019



Building stronger communities – **one park, recreation center & library at a time.**

**REBUILD**  
**Project Statement**  
**FY2018 - FY2019**

In accordance with Bill No. 170206, this Rebuild Project Statement sets forth a proposed plan for disposition of Rebuild bond proceeds pursuant to that ordinance, as follows:

- I. Site Selections FY2018-FY2019;
- II. Plan for disposition of proceeds of bonds to be issued by the Philadelphia Authority for Industrial Development (“PAID”);
- III. Projected Rebuild Revenues and Expenditures, FY2018-FY2019;
- IV. Master EOP for the participation of minority and female workers and M/W/DBE/DSBEs in all Rebuild work.

Rebuild bond proceeds will be used exclusively for capital improvements at City of Philadelphia libraries, parks and recreation centers. Grant funds and City Capital funds will also be used for capital improvements. Community engagement work, workforce development programming, and supports for small, local businesses will be funded by grant funds.

This initial document covers the time period December 2017 to June 2019 (FY2018 and FY2019). In spring 2019, an updated Rebuild project statement will be proposed for FY2020, after which Rebuild project statements will be proposed to Council on an annual cycle.

**Background**

Rebuilding Community Infrastructure (Rebuild) is a seven-year, \$500 million investment in Philadelphia’s parks, recreation centers, playgrounds and libraries. Rebuild seeks to revitalize shared public spaces, empower and engage communities, and promote economic opportunity through diversity and inclusion.

- Physical Improvements. After decades of under-investment and deferred maintenance due to competing budget priorities, only 10% of about 400 total Free Library of Philadelphia (FLP) and Philadelphia Parks and Recreation (PPR) facilities are considered to be in excellent condition. The remaining 90% of facilities need improvements, ranging from small scale renovations to complete overhauls. Preliminary construction cost estimates for individual sites range from \$50,000 to \$13 million, with an average of \$1.4 million across all sites. Over the anticipated seven-year duration of Rebuild, improvements will be completed at sites selected jointly by City Council and the Administration based on existing data and other information on physical conditions and community factors, as well as data and information gathered through Rebuild’s planning process.
- Community Engagement and Empowerment. Rebuild will engage individuals who use and live near selected sites in the planning process so they will be able to shape design and programming. Rebuild seeks to empower existing community groups that are committed to creating change at their local recreation center, library, park, or playground by working with them to grow their capacity as stewards and bring high quality programs to their community.
- Diversity and Economic Inclusion. Rebuild aims to serve as a model for diversity and economic inclusion in the skilled labor sector by helping people become apprentices and journeypersons or find family-sustaining employment in the construction industry. Efforts will focus on low-income,

unemployed, and under-employed individuals, particularly minorities and women who have faced barriers to working in the building trades, as well as experienced workers who have not previously gained membership in the trades. Additionally, Rebuild will increase contracting opportunities for minority-, women-, and disabled-owned businesses and increase their stability and capacity by providing technical and financial supports.

**Rebuild Funding**

Rebuild will be funded by both public and private sources, and is made possible by the Philadelphia Beverage Tax. Dedicated funding for Rebuild will include \$300 million in bonds, \$48 million in City of Philadelphia (City) capital funding, and \$152 million of grants and contributions from other sources, more than \$100 million of which has already been raised. These sources are summarized in Table 1 below. Section III of this document indicates the portion of revenues expected to be received during the FY2018-FY2019 time period covered by this Project Statement.

**Table 1  
Total Projected Rebuild Funding Sources**

<b>Source</b>	<b>Amt (\$M)</b>
Rebuild Bonds (Issued by PAID)	\$300.0
City GO Capital Funds	\$48.0
Grants – (Philanthropic, State/Federal)	\$152.0
<b>TOTAL</b>	<b>\$500.0</b>



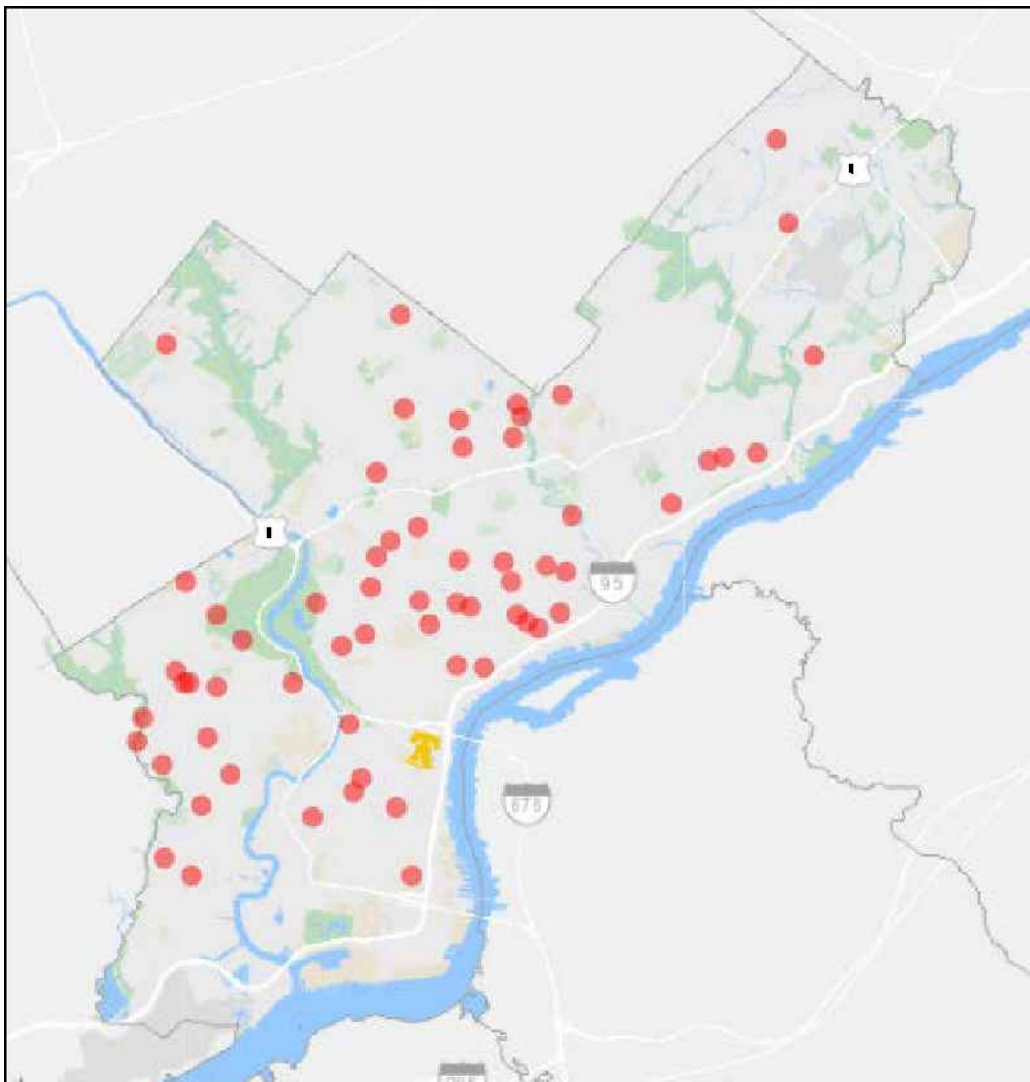
# Site Selections FY2018 - FY2019

## I. Site Selections – FY2018-FY2019

The Rebuild sites presented in this section have been selected based on the following:

- Information about Philadelphia neighborhoods, indicating where investments can further the Administration’s primary goal of working in areas with great needs, like poverty, drug offenses, and health challenges, and the secondary goal of stabilizing or lifting neighborhoods in transition;
- Information about the physical conditions of sites;
- Information provided by staff of PPR and FLP; and
- Information provided by members of City Council.

### Locations of Rebuild Sites, FY2018-FY2019



**FY2018-FY2019 Rebuild Projects**

Table 2 below lists the Philadelphia Parks and Recreation and Free Library of Philadelphia sites that will be eligible for Rebuild funding in FY2018 and FY2019.

The sites presented on the following pages are proposed for Rebuild improvements in FY2018-FY2019 and may be leased to PAID for implementation by Project Users. It is anticipated that not all projects below will be undertaken within the time frame of this project statement; however, this more expansive list will allow other Rebuild projects to proceed in case of delays such as environmental issues.

**Table 2  
1.a. Rebuild Sites – Recreation Centers & Libraries (Co-Located)**

<b>CD</b>	<b>Site Name</b>	<b>Address</b>
1	Powers Park, Richmond Library	2987 Almond Street
3	Kingsessing Recreation Center, Kingsessing Library	4901 Kingsessing Avenue
4	John C. Anderson Cultural Center, Wynnefield Library	5325 Overbrook Avenue
5	Martin Luther King Recreation Center, Cecil B Moore Library	2101-35 Cecil B. Moore Avenue
5	Fishtown Recreation Center, Fishtown Library	1202-32 E Montgomery Avenue
7	McPherson Square	601 E Indiana Avenue
9	Lawncrest Recreation Center, Lawncrest Library	6000 Rising Sun Avenue

**1.b. Rebuild Sites – Libraries (Not Co-Located)**

<b>CD</b>	<b>Site Name</b>	<b>Address</b>
2	Library Branch – Paschalville	6942 Woodland Avenue
3	Library Branch – Blanche A. Nixon	5800 Cobbs Creek Parkway
4	Library Branch – Haverford Avenue	5543 Haverford Avenue
8	Library Branch – Nicetown-Tioga	3720 N Broad Street
9	Library Branch – West Oak Lane	2000 Washington Lane

**1.c. Rebuild Sites –Playgrounds**

<b>CD</b>	<b>Site Name</b>	<b>Address</b>
1	Trenton & Auburn Playground	2200 E Auburn Street
1	Capitolo Playground	900 Federal Street
2	Chew Playground	1800 Washington Avenue



<b>CD</b>	<b>Site Name</b>	<b>Address</b>
2	James Finnegan Playground	6801 Grovers Avenue
3	Miles Mack Playground	732-66 N 36th Street
3	West Mill Creek Playground	5100 Westminster Avenue
4	Mander Playground	33 <sup>rd</sup> and Diamond Streets
5	Hancock Playground	147 Master Street
5	8th & Diamond Playground	2032-62 N 8 <sup>th</sup> Street
5	Coxe Park Playground	2132-34 Cherry Street
6	Moss Playground	5700 Torresdale Avenue
6	Frank Glavin Playground	3267-81 Almond Street
6	Holme School Playground	9152 Academy Road
6	Russo Park Playground	7301 Torresdale Avenue
7	Piccoli Playground	1501 E Bristol Street
7	Waterloo Playground	2502-12 N Howard Street
7	Nelson Playground	2500-34 N 03rd Street
8	Jerome Brown Playground	1919-41 W Ontario Street
8	Barrett Playground	641 Lindley Avenue
9	Zeihler Playground	200-64 E Olney Avenue
9	Cherashore Playground	851 W Olney Avenue
10	Hayes Playground	9850 Roosevelt Boulevard
10	Gifford Playground	575 Tomlinson Road

**1.d. Rebuild Sites –Parks and Other**

<b>CD</b>	<b>Site Name</b>	<b>Address</b>
1	Harrowgate Park	3455 Kensington Avenue
3	Malcolm X Memorial Park	5100 Pine Street
3	Cobbs Creek Environmental Center	700 Cobbs Creek Parkway
4	Carroll Park	5801 W Girard Avenue
4	Al Pearlman Sports Complex	600 Port Royal Avenue

<b>CD</b>	<b>Site Name</b>	<b>Address</b>
4	Parkside Fields	West Fairmount Park
5	Fotteral Square	2400 N 11th Street

**1.e. Rebuild Sites –Recreation Centers**

<b>CD</b>	<b>Site Name</b>	<b>Address</b>
1	Cohocksink Recreation Center	2901 Cedar Street
1	Heitzman Recreation Center	2136 Castor Avenue
1	Murphy Recreation Center	300 Shunk Street
2	Vare Recreation Center	2600 Morris Street
2	Francis J Meyers Recreation Center	5800 Chester Avenue
2	Marian Anderson Recreation Center	740 S 17 <sup>th</sup> Street
3	Cobbs Creek Park & Rec Center	280 Cobbs Creek Parkway
4	Carousel House	1701 Belmont Avenue
4	Shepard Recreation Center	5700 Haverford Avenue
5	Cecil B Moore Recreation Center	2020-50 W Lehigh Avenue
5	Athletic Recreation Center	1450 N 26th Street
6	Vogt Recreation Center	4131 Unruh Avenue
6	Disston Recreation Center	4423 Longshore Avenue
7	Rivera Recreation Center	3201 North 5th Street
7	McVeigh Recreation Center	400-64 E Ontario Street
8	Happy Hollow Recreation Center	4740 Wayne Avenue
8	Belfield Recreation Center	2109 W Chew Avenue
8	Panati Recreation Center	3101-27 N 22 <sup>nd</sup> Street
9	Olney Recreation Center / Hammond and Nedro	100 E Godfrey Avenue

# Intended Uses of Rebuild Bond Proceeds



## II. Intended Uses of Rebuild Bond Proceeds

Bonds for Rebuild will be issued by PAID, as authorized by Bill no. 170206. The bonds are expected to be issued in three tranches of \$100 million. The first tranche would be issued shortly after favorable resolution of the Philadelphia Beverage Tax litigation. The other two tranches are expected to be issued at two-year intervals, although timing will be subject to adjustment based on the rate of spending of proceeds.

Rebuild bonds may be used for purposes that are eligible under applicable bond covenants – generally, for construction and related design services. Proposed expenditures are subject to a review by the Office of the Director of Finance and the Office of the City Controller to verify capital eligibility under current guidelines<sup>1</sup>. Table 3 below shows projected uses of Rebuild bond proceeds as well as other funding sources for the period December 2017 to June 2019. Each of the categories are described below.

**Table 3**  
**Projected Use of Rebuild Bond Proceeds, FY2018-FY2019**

Budget Category	Rebuild Bond Proceeds (M) <sup>2</sup>	Combined Other Sources (see Table 7)	Total
Design and Pre-Construction	\$3.7	\$1.2	\$4.9
Construction	\$36.8	\$12.5	\$49.3
Project Management & Project Review Team	\$1.1	\$0.4	\$1.5
Diversity & Inclusion <sup>3</sup>	\$0.0	\$1.7	\$1.7
Community Engagement <sup>4</sup>	\$0.0	\$1.0	\$1.0
Administrative Costs	\$0.0	\$3.0	\$3.0
Contingency	\$3.7	\$1.2	\$4.9
<b>TOTAL</b>	<b>\$45.3</b>	<b>\$21.0</b>	<b>\$66.3</b>

Design and Pre-Construction. This budget line will accommodate design services, including “on call” design services or services not related to a specific project (e.g., prototypes or standard details). This budget line also includes funding for environmental testing, inspection and management services.

Construction. Construction expenditures will be spent on the following kinds of projects:

- *Site specific projects.* The majority of bond funds will be used for projects at specific sites identified in annual Rebuild budgets and project statements. Projects will be managed by Project Users, the

<sup>1</sup> Please refer to City of Philadelphia Capital Eligibility Guidelines Effective March 21, 2014.

<sup>2</sup> Uses of Rebuild bond proceeds are subject to Philadelphia City Council approval, pursuant to Bill no. 170206, Section 2.

<sup>3</sup> Rebuild diversity and inclusion expenditures (workforce development and small business supports) are not expected to be capital eligible.

<sup>4</sup> Rebuild community engagement work is generally not expected to be capital eligible.

Philadelphia Redevelopment Authority (PRA), by Philadelphia Parks and Recreation (PPR) skilled trades staff, or by the City's capital project management staff.

- *Multi-site projects.* Projects at some sites may be grouped and managed together to achieve economies of scale. Examples include sidewalk improvements, exterior lighting improvements, and playground projects. Projects also might be grouped and managed together to allow for a more predictable and continuous stream of work for small, local businesses.
- *PPR skilled trades projects.* PPR skilled trades staff are well qualified for projects of limited size, scope and complexity, for example plumbing, HVAC and roofing projects. PPR receives an additional \$2 million in operating funds per year for skilled trades staff for Rebuild projects; this budget line would fund the materials.

Project Management & Project Review Team Services. Professional services may be required to fulfill the functions of the Project Review Team defined in the Rebuild Ordinance. This line also includes such project management services as project status tracking and reporting; review of grant amendment requests; review of construction documents for consistency with PPR or FLP requirements; and construction inspection.

Diversity & Inclusion. This category includes costs related to providing pathways for more minorities and women into the building trades; specifically, costs associated with paid, on-the-job training for participants, and training, education, and comprehensive supports provided while participants prepare to take an apprentice test. This category also includes the costs of consultant support in connecting M/W/DBE/DSBEs to Rebuild contract opportunities and providing them with supports to help build their capacity and sustainability.

Community Engagement. This category includes costs incurred by Project Users in developing and implementing a broad-based, high-quality community engagement in concert with project scope development and design. It also includes the costs of developing the capacity of friends groups and advisory councils, as well as developing the capacity of PPR and FLP employees to support the work of friends groups, recreation advisory councils, and other community groups.

Administrative Costs. Administrative costs will include overall program coordination; development of reports for City Council, the Oversight Board, and the public; and financial management.

Contingency. Contingency will be used to fund unanticipated costs. The contingency amount is set at 10% of projected construction expenditures.

# Projected Rebuild Revenues and Expenditures FY2018 – FY2019



### III. Projected Rebuild Revenues and Expenditures, FY2018-FY2019

This section describes projected amounts and sources of funding and anticipated spending for the period of this project statement. Table 4 below shows the portion of Rebuild funding sources anticipated to be received in the period from December 2017 to June 2019.

**Table 4**  
**Rebuild –Projected Program Funding Sources, FY2018-FY2019**

	<b>Actual FY2017</b>	<b>Projected FY2018</b>	<b>Projected FY2019</b>	<b>Subtotal 12/17-6/19</b>
Rebuild Bonds	\$0.0	\$100.0	\$0.0	\$100.0
City GO Capital Funds	\$3.4	\$8.0	\$8.0	\$19.4
Grants	\$0.7	\$16.0	\$11.7	\$28.3
<b>TOTAL</b>	<b>\$4.1</b>	<b>\$124.0</b>	<b>\$19.7</b>	<b>\$147.7</b>

Rebuild Bonds. As described above, the single largest source of funding for Rebuild will be bonds to be issued by PAID, authorized by Bill no. 170206. The bonds are expected to be issued in three tranches of \$100 million. The first tranche would be issued shortly after favorable resolution of the Philadelphia Beverage Tax litigation. The other two tranches are expected to be issued at two-year intervals, although timing will be subject to adjustment based on the rate of spending of proceeds.

City GO Capital Funds. Planned Rebuild funding sources include \$48.0 million in City of Philadelphia capital funds. FY17 and FY18 amounts were in the approved Capital Budgets for those years; amounts for future years were included in the Six Year Capital Program for Fiscal Years 2018-2023. These funds are designated for Rebuild in annual capital appropriations of Philadelphia Parks and Recreation and the Free Library of Philadelphia. FY2017-FY2019 capital budget amounts for Rebuild are itemized in Table 5 below.

**Table 5**  
**City GO Capital for Rebuild, FY2018-FY2019**

<b>FY</b>	<b>Dept. Budget</b>	<b>Amt (M)</b>
FY17	PPR	\$2.4
FY17	FLP	\$1.0
FY18	PPR	\$7.0
FY18	FLP	\$1.0
FY19	PPR	\$7.0
FY19	FLP	\$1.0
	<b>Total</b>	<b>\$19.4</b>

Grant Funds. To date, Rebuild has the following conditional grant commitments:

- \$4.8 million to launch the program;
- \$95.2 million contingent on the issuance of \$300 million in bonds, to be used for any of the three

- Rebuild pillars (capital improvements, diversity and inclusion, and community engagement; and
- \$450,000 for community engagement.

Table 6 below shows grant funds expected to be received during the period of this project statement. The \$28.3 million of grant funds for December 2017 to June 2019 shown in Table 4 above is the amount anticipated to be received out of current grant commitments.

**Table 6**  
**Rebuild Grant Funds, FY2018-FY2019**

	Actual	Projected		Projected
	FY 2017	FY 2018	FY 2019	FY17-FY19 Total
Start-up Grant	\$0.5	\$4.3	\$0.0	\$4.8
Contingent on Bonds	\$0.0	\$10.0	\$10.0	\$20.0
Contingent on Bonds, 1:2 Match	\$0.0	\$0.5	\$0.5	\$1.0
Other Grants	\$0.2	\$1.2	\$1.2	\$2.5
<b>Total</b>	<b>\$0.7</b>	<b>\$16.0</b>	<b>\$11.7</b>	<b>\$28.3</b>

Efforts are underway to obtain additional grant commitments for Rebuild. A \$20.2 million portion of the \$95.2 million referenced above will be matching funds – \$1 of match for every \$2 commitment – as an incentive for donors and foundations.

**Table 7**  
**Rebuild Projected Expenditures by Source, FY2018-FY2019 (\$M)**

Budget Category	Rebuild Bonds (M) <sup>5</sup>	GO Capital	Grants	Total
Design and Pre-Construction	\$3.7	\$0.6	\$0.6	\$5.5
Construction	\$36.8	\$6.5	\$6.0	\$54.5
Project Management & Project Review Team	\$1.1	\$0.2	\$0.2	\$1.6
Diversity & Inclusion <sup>6</sup>	\$0.0	\$0.0	\$1.7	\$1.7
Community Engagement <sup>7</sup>	\$0.0	\$0.0	\$1.0	\$1.0
Administrative Costs	\$0.0	\$0.0	\$3.0	\$3.0
Contingency	\$3.7	\$0.6	\$0.6	\$5.5
<b>TOTAL</b>	<b>\$45.3</b>	<b>\$7.9</b>	<b>\$13.1</b>	<b>\$66.3</b>

<sup>5</sup> Uses of Bond Proceeds are subject to Philadelphia City Council approval, pursuant to Bill no. 170206, Section 2.

<sup>6</sup> Rebuild diversity and inclusion expenditures (workforce development and small business supports) are not expected to be capital eligible.

<sup>7</sup> Rebuild community engagement work is generally not expected to be capital eligible.



Table 7 above shows projected expenditures by funding source. It is similar to Table 3 in the previous section, except that it identifies projected expenditures for each source of Rebuild funding. As shown in the table, the costs of Rebuild's diversity & inclusion work and community engagement are not expected to be eligible uses for Rebuild bond proceeds or GO capital. These efforts will be funded from grant sources, as will Rebuild's administrative costs.

Each of the categories in Table 7 are as defined in the previous section.



# Rebuild Master Economic Opportunity Plan

## IV. Rebuild Master Economic Opportunity Plan

### I. Introduction and Definitions

A. Chapter 17-1600 of The Philadelphia Code requires the development and implementation of “Economic Opportunity Plan(s)” (“EOPs”) for certain classes of contracts and covered projects as defined in Section 17-1601. Rebuilding Community Infrastructure, generally referred to as “Rebuild,” is a City program for the construction, demolition, renovation and equipping of the City’s parks, libraries, playgrounds, recreation centers and other related facilities for the purpose of creating first-class, modern, safe, and clean parks, recreation centers, and libraries. Diversity and inclusion is a pillar of the Rebuild program and this Master Economic Opportunity Plan (“MEOP”) will establish overall goals for achieving the objectives of diverse business inclusion and workforce diversity and outline and delineate roles and responsibilities between the City, Philadelphia Authority for Industrial Development (“PAID”), the Rebuild/ Building Trades Community Initiative, and Project Users, as these parties are defined in Exhibit “B” to City of Philadelphia Ordinance Number 170206.

For purposes of this MEOP, the following definitions will apply:

**Diverse Business Inclusion** shall mean each Project Users’ best and good faith efforts to provide meaningful and representative opportunities for Minority Business Enterprises (“MBEs”), Woman Business Enterprises (“WBEs”) and Disabled Business Enterprises (“DSBEs”) (collectively, “M/W/DSBEs” which also includes firms designated as Disadvantaged Business Enterprises or “DBEs”). In furtherance of Section 17-1502 of The Philadelphia Code and as informed by the City’s most current Annual Disparity Study, contract opportunities for MBEs may be separated into categories of firms owned by African Americans, Hispanic Americans, Asian Americans and Native Americans.

**Best and Good Faith Efforts** shall mean those efforts, the scope, intensity and appropriateness of which are designed and performed to foster meaningful and representative opportunities for participation by M/W/DSBEs and achieve an appropriately diverse workforce. Best and Good Faith Efforts are considered met (subject to audit and verification), when a Project User makes binding contractual commitments within the M/W/DSBE Participation Ranges established for the contract and commits to employ a diverse workforce within the goals and timetable established for the contract.

**Diverse Workforce** shall refer to the recruitment, hiring, training, employment and trades union referral, as both journeypersons and apprentices, of workers who are African American, Hispanic American, Asian American, and/or Female.

**Philadelphia Resident** as used herein shall mean, to the extent permitted by law, a positive factor for consideration given to those workers residing in Philadelphia and shall also include those businesses certified as Local Business Enterprises under Section 17-109 of The Philadelphia Code or meeting the criteria described in Executive Order 04-12.

It is understood that each contract between PAID and Project User arising under Rebuild is subject to the requirements of this MEOP which will be fully incorporated into an EOP for that specific grant agreement and related contracts. The EOP will be specifically designed according to the scope and dollar amount of the project and will contain detailed instructions, forms and legal obligations regarding compliance with the Rebuild Diversity and Inclusion Goals.

## **II. Rebuild Diversity and Inclusion Goals**

### **A. Participation Goals for Diverse Business Inclusion**

In order to achieve Diverse Business Inclusion in Rebuild, each contract between PAID and Project User will require an EOP containing participation ranges for M/W/DSBEs. Goals for Rebuild are informed by the City's most current Annual Disparity Study as follows:

Professional services contracts: 25-30% minority and 15-20% women

Construction contracts: 30-35% minority and 15-20% women

EOPs will contain individualized participation ranges for both MBEs and WBEs according to project scope and dollar value.

### **B. Employment Goals for Diverse Workforce**

Project User agrees to exhaust its Best and Good Faith Efforts to employ an appropriately diverse workforce which will include minority persons and females at all tiers of employment and management. Project User shall also cause its Participants to employ an appropriately diverse workforce. For this Plan, an appropriately diverse workforce is one which reflects the local availability and historic utilization of Philadelphia residents, and also recognizes underutilization of diverse workers across all trades. The following are expressed as hourly project goals:

Total minority journeyman hours 45% (African American journeymen 27%, Hispanic journeymen 15%, and Asian journeymen 3%); and of the foregoing total minority workforce hours, 60% laborer hours and 40% skilled hours.

Total women journeyman hours 5%, skilled and laborer.

Total minority apprentice workforce hours 50%, skilled and laborer and total women apprentice workforce hours 5%, skilled and laborer.

Local construction workforce: 50-60%.

## **III. Project User Responsiveness and Responsibility Relative to Rebuild Goals**

A. Project User shall identify all its M/W/DSBE commitments and evidence its agreement to employ a diverse workforce on the forms entitled, "M/W/DSBE Participation and Commitment Form" and "Documentation of Best and Good Faith Efforts, Workforce Diversity Goals."

(i) In support of achieving the Employment Goals, Project Users are expected to obtain worker referrals resulting from the Rebuild/ Building Trades Community Initiative which will support training to develop apprentice-ready workers. The Project User shall identify its plan to solicit and maintain a diverse workforce on a weekly, monthly or quarterly basis depending on project scope and as set forth in the grant agreement with the estimated hourly breakout for African American, Hispanic, Asian and Women

workers. The plan shall be contained in the Documentation of Best and Good Faith Efforts, Workforce Diversity Goals Form. The plan must demonstrate that efforts have been made and are ongoing to meet or exceed the aforementioned Employment Goals.

(ii) In support of achieving diverse business inclusion, the Project User will identify its commitments to use M/W/DSBEs on the M/W/DSBE Participation and Commitment Form; the identification of these commitments constitutes a representation by Project User that the M/W/DSBE is capable of completing the subcontract with its own workforce, and that the Project User has made a legally binding commitment with the firm. Project User is to maintain the M/W/DSBE percentage commitments throughout the term of the contract which shall apply to the total amount of the contract and any additional increases.

(iii) In support of Rebuild's overall goal of a local construction workforce of 50%-60% Philadelphia residents, Project Users are strongly encouraged to cause their contractors to hire workers residing in Philadelphia and make commitments with businesses certified as Local Business Enterprises (LBE) under Section 17-109 of The Philadelphia Code or meeting the criteria described in Executive Order 04-12.

#### **IV. Administration of EOPs**

A. The City's Office of Economic Opportunity (OEO) has delegated to the Rebuild Office the responsibility of establishing project participation ranges and evaluating the responsiveness of the Project User's EOP for compliance with the Rebuild Diversity Goals. The OEO will furnish to the Rebuild Office a model EOP which will be in substantially the same form as EOPs used on City of Philadelphia awarded projects.

#### **V. Compliance and Monitoring of Best and Good Faith Efforts**

A. Rebuild EOP Oversight Committee and Rebuild Monitor.

(i) Members of the Rebuild EOP Oversight Committee will include Councilmembers, City department representatives including the Rebuild Office and the Office of Economic Opportunity, and non-governmental experts in workforce development and development of M/W/DSBEs. The Rebuild EOP Oversight Committee will oversee the performance of the Rebuild Diversity and Inclusion Goals, including reviewing EOPs, reviewing supports provided to M/W/DSBEs and activities pursuant to the Rebuild Memorandum of Understanding with the Building Trades. The Rebuild EOP Oversight Committee shall meet no less frequently than quarterly.

(ii) A third party contract monitor ("Rebuild Monitor") will be given full access to contracts, job sites and all data needed to verify Project User performance as compared to the Project User's commitments in its EOP. The Rebuild Monitor will be empowered to assist consultants and contractors with achieving workforce and contract participation goals as necessary. The Rebuild Monitor will report findings to the Rebuild EOP Oversight Committee.

(iii) On each contract for Rebuild improvements, when twenty-five percent (25%) of total projected employment hours are complete, and when twenty-five percent (25%) of the total contract value has been expended, the Rebuild Monitor will determine whether the contractor or sub-contractor is on track to meet workforce and contract participation goals. The results of that determination will be shared with

the Rebuild office, the district Councilmember, and, if requested, by any member of the Project Review Team.

**B. Prompt Payment of M/W/DSBEs**

(i) In accordance with practices to be established in the Rebuild Project User rulebook, M/W/DSBE(s) will be paid promptly for work performed satisfactorily under the contract/ subcontract (including the supply of materials). The goal is payment within thirty (30) business days of grantor's receipt of a proper invoice. In connection with payment of M/W/DSBE subcontractors, Project User agrees to fully comply with any established payment reporting process which may include the use of electronic payment verification systems.

(ii) Each month of the contract term and at the conclusion of the contract, the Project User shall provide to the Rebuild Office documentation reconciling actual dollar amounts paid to M/W/DSBE subcontractors to M/W/DSBE commitments presented in the EOP.

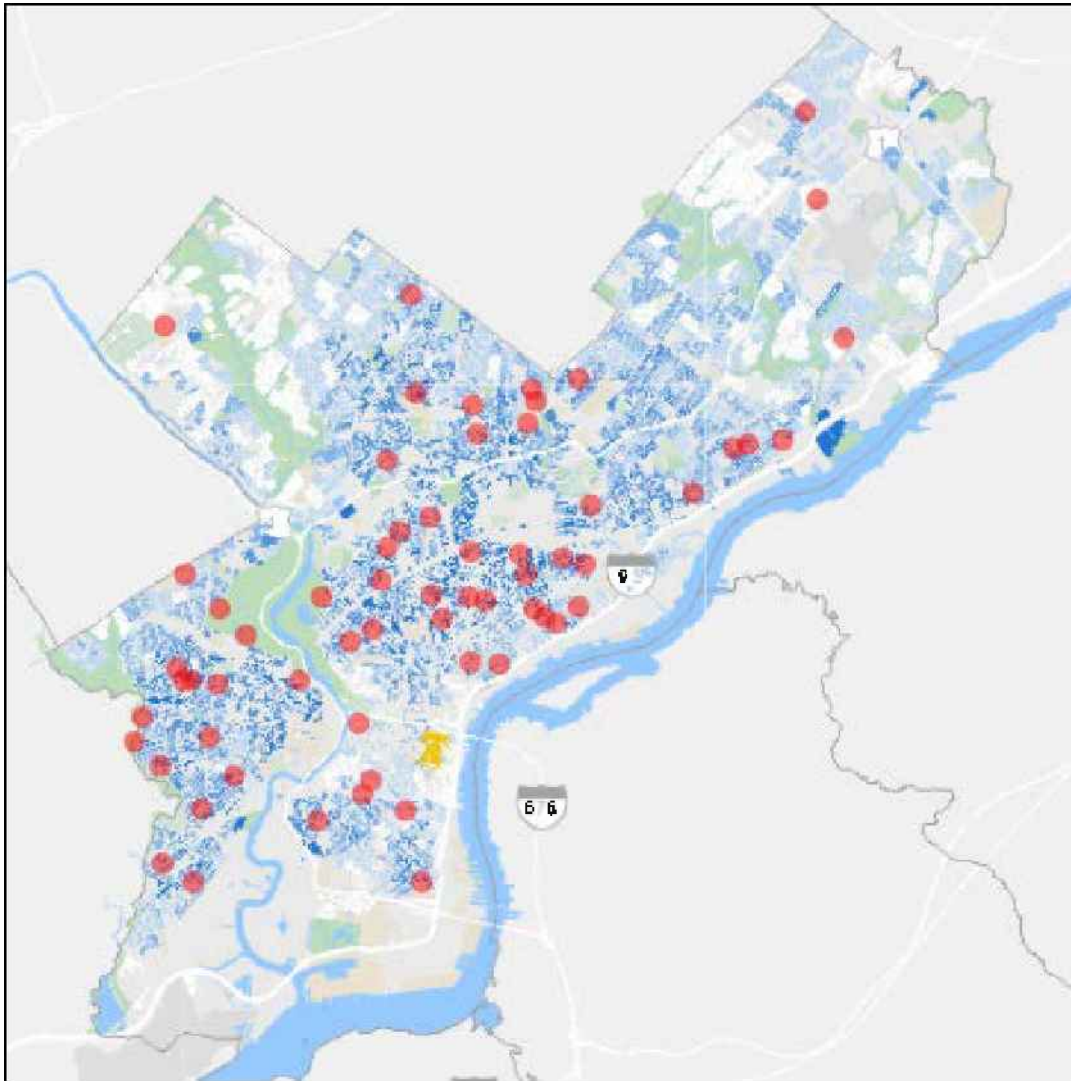
**VI. Remedies and Incentives**

(i) Project User grant agreements will include provisions related to failure to achieve M/W/DSBE commitments and Workforce Diversity, and will require that the agreements between Project Users and contractors allow the Project Users to terminate agreements if their contractors are not meeting the M/W/DSBE commitments and Workforce Diversity goals. In addition, the agreements will refer to criminal penalties relating to falsification and minority business fraud and may include other contract terms such as liquidated damages, withholding payments, and debarment from Rebuild projects.

# Appendix 1: Rebuild Maps

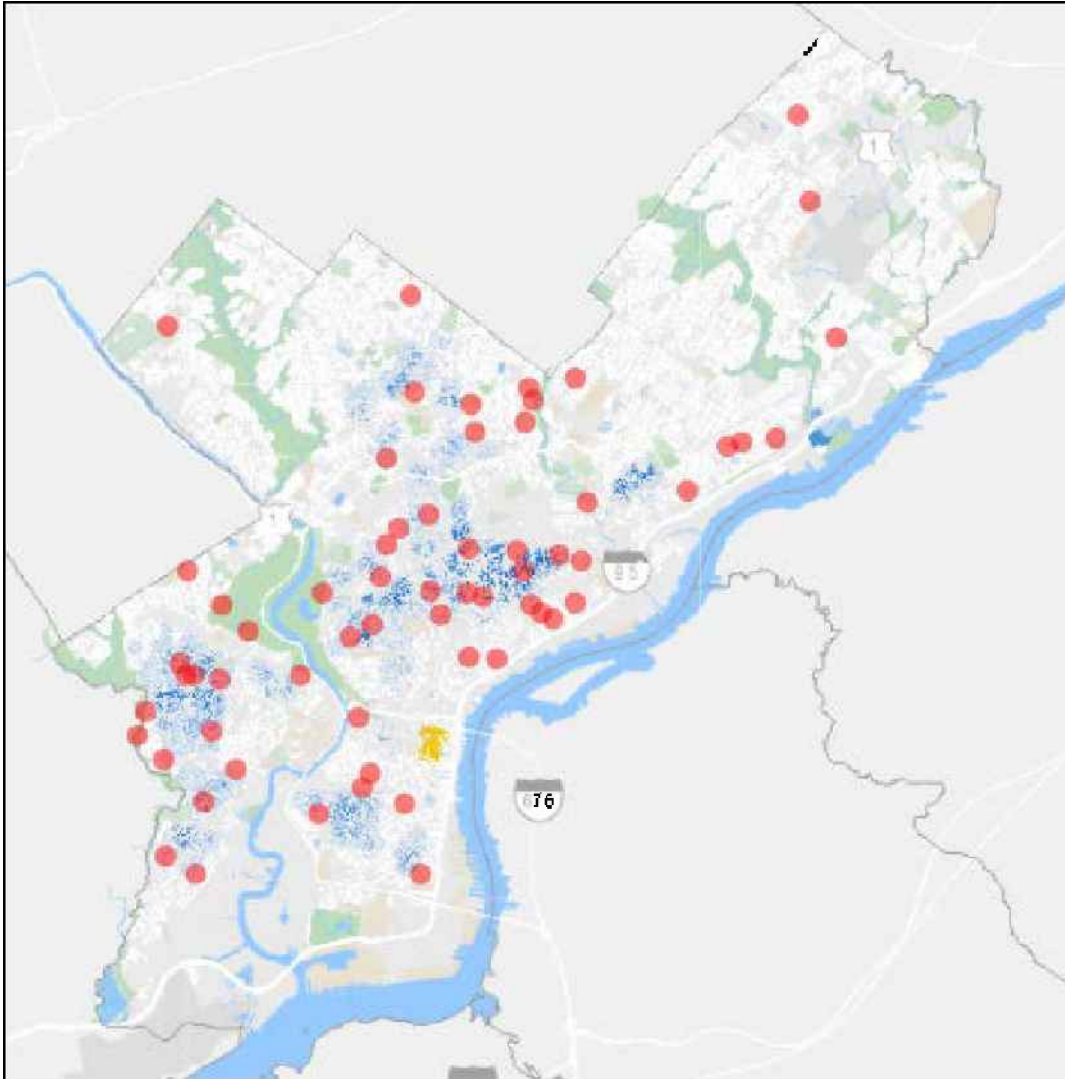


**Figure 1.**  
**Proposed Sites**  
**Poverty**

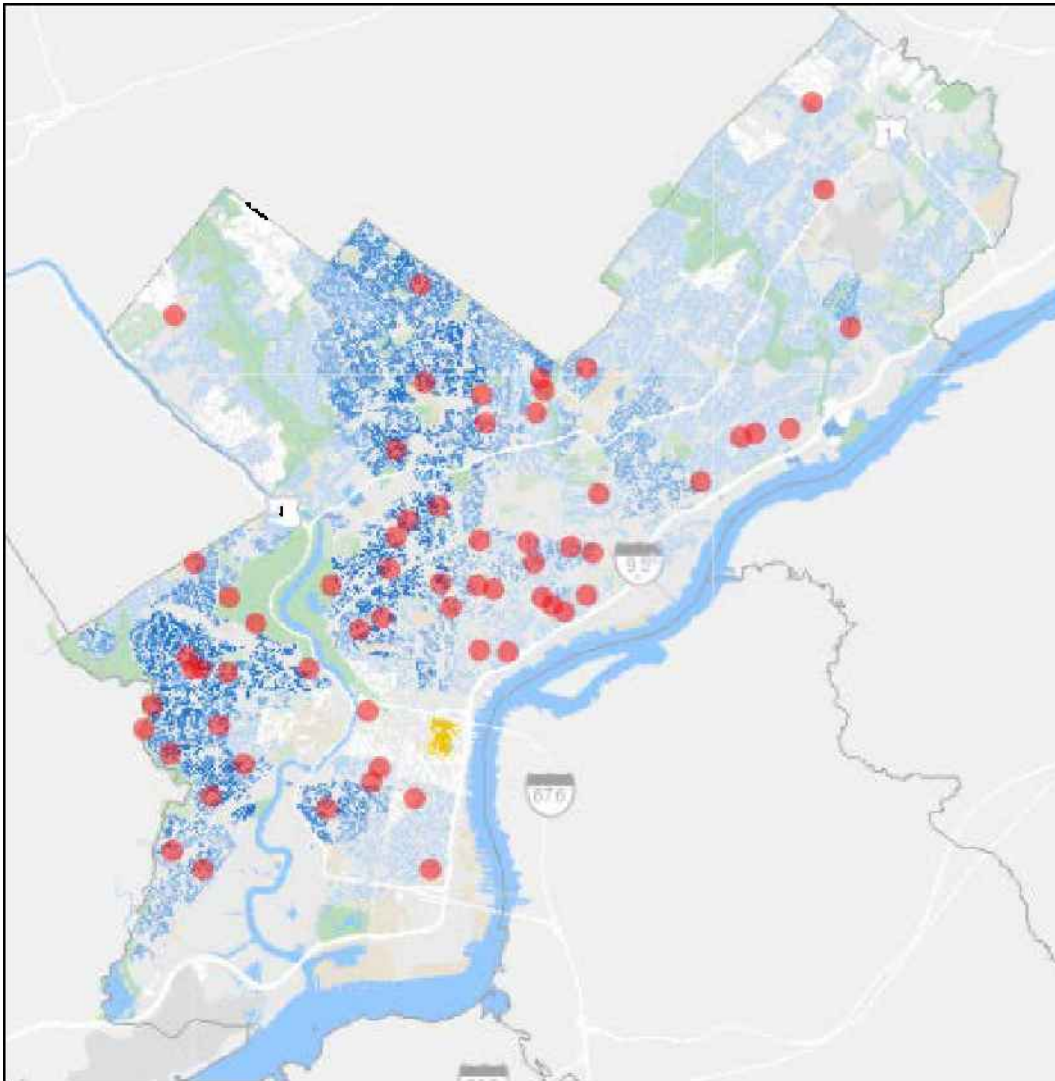




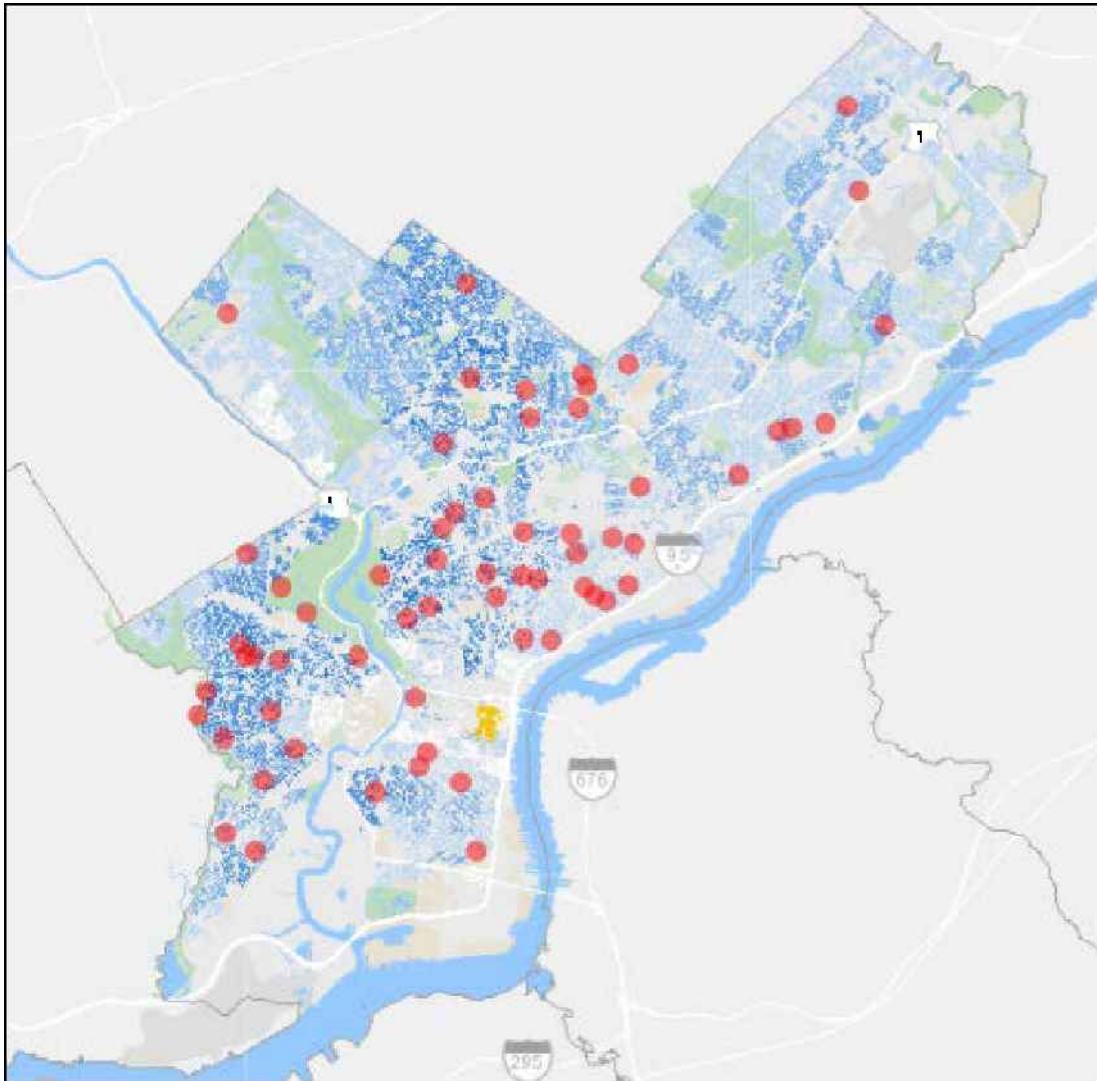
**Figure 2.**  
**Proposed Sites**  
**Drug Crimes**



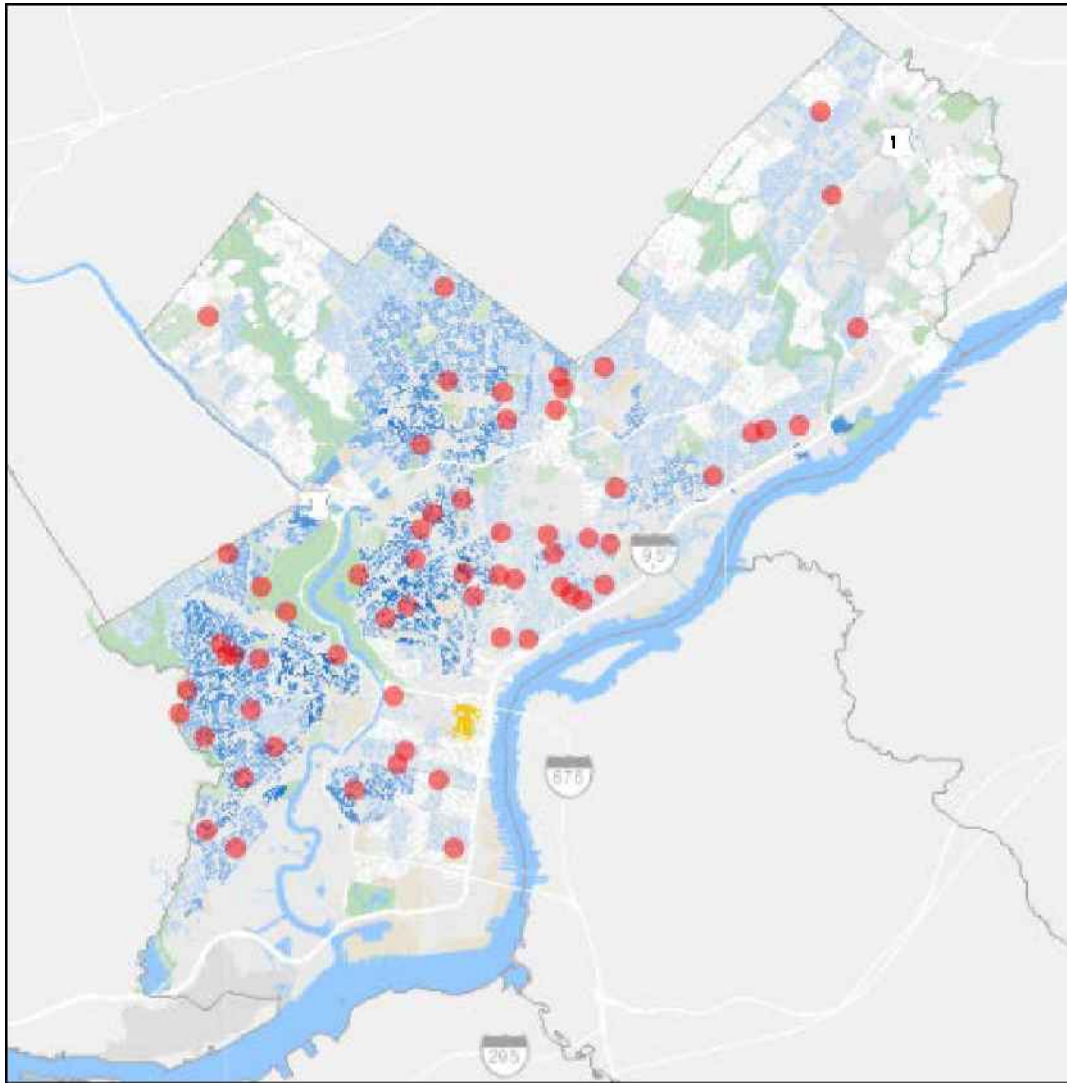
**Figure 3.**  
**Proposed Sites**  
**Obesity**



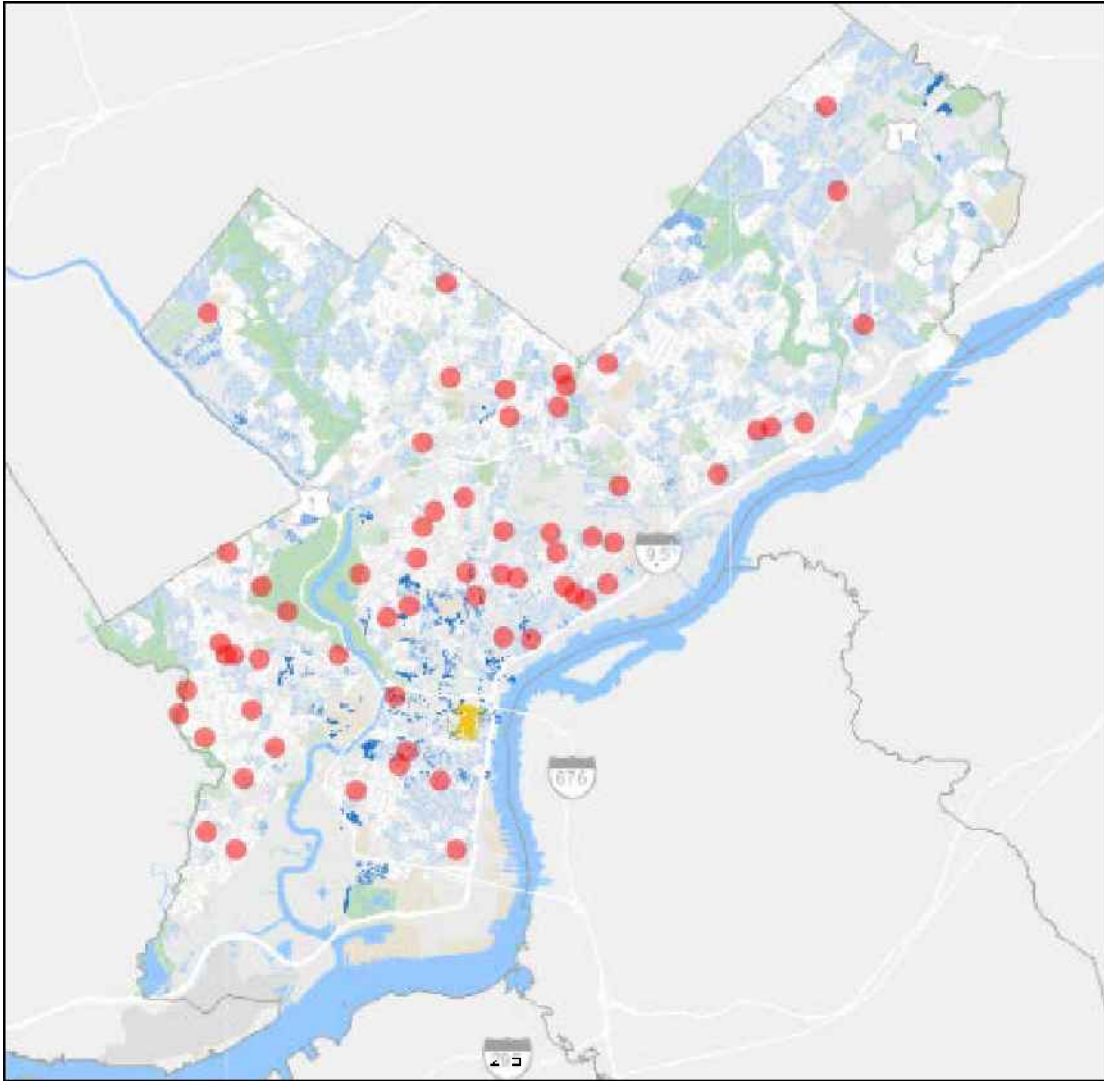
**Figure 4.**  
**Proposed Sites**  
**Diabetes**



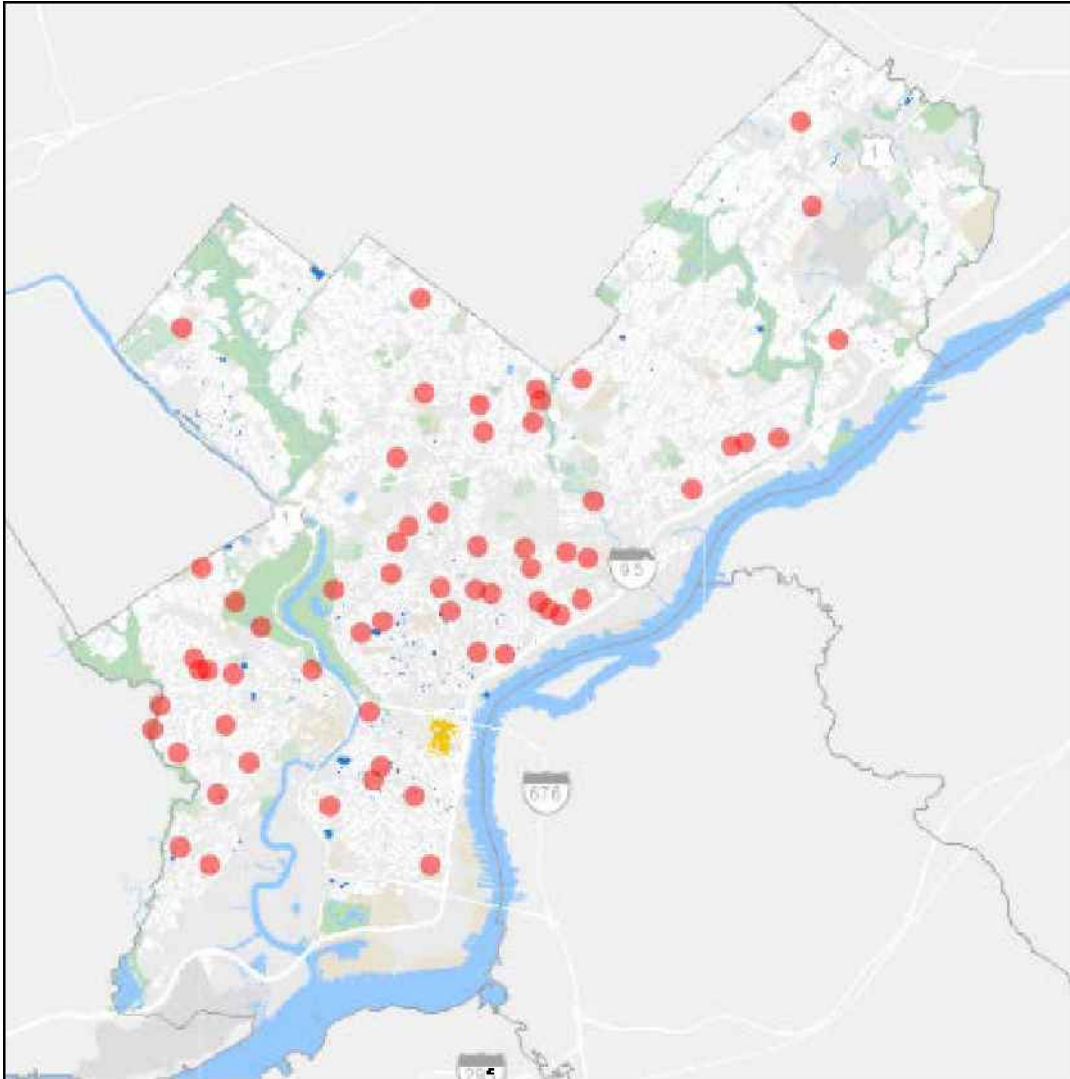
**Figure 5.  
Proposed Sites  
Asthma**



**Figure 6.**  
**Proposed Sites**  
**Household Growth**



**Figure 7.**  
**Proposed Sites**  
**Building Permits**



**Figure 8.**  
**Proposed Sites**  
**Market Value Analysis**

