

ORDINANCE NO. 15530

AN ORDINANCE REPEALING ALL PREVIOUS MINORITY AND WOMEN BUSINESS ENTERPRISE ORDINANCES, POLICIES AND DISADVANTAGED BUSINESS ENTERPRISE POLICIES PREVIOUSLY ADOPTED; ADOPTING AN ORDINANCE TO REMEDY THE UNDERUTILIZATION OF MINORITY AND WOMEN BUSINESSES, AND TO ENHANCE THE UTILIZATION OF SAME; DEFINING MINORITY BUSINESS ENTERPRISE, AND WOMEN BUSINESS ENTERPRISE FOR PURPOSE OF CERTIFICATION; REQUIRING MINORITY BUSINESS ENTERPRISE AND WOMEN BUSINESS ENTERPRISE PARTICIPANTS TO BE QUALIFIED AND DOING BUSINESS IN LOCALITY FROM WHICH THE CITY REGULARLY SOLICITS; ESTABLISHING SEPARATE CATEGORIES FOR GOALS FOR MINORITY BUSINESS ENTERPRISES AND WOMEN BUSINESS ENTERPRISES IN THE SPECIFIC AREAS OF CONSTRUCTION, PROFESSIONAL SERVICES AND PURCHASING; ESTABLISHING PROCEDURES FOR PROJECT SPECIFIC GOALS; PROVIDING GENERALLY FOR THE PROCEDURES TO BE FOLLOWED IN THE PROCUREMENT PROCESS; REQUIRING CONTRACTORS TO SUBMIT DOCUMENTATION OF COMPLIANCE IN ORDER TO BE RESPONSIVE TO CITY SPECIFICATIONS; ESTABLISHING WAIVER OF GOALS PROCEDURES; ALLOWING FOR DEBARMENT FOR MISREPRESENTATION OF FACTS AS IT RELATES TO COMPLIANCE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council has commissioned Availability/Disparity Studies (Studies) conducted by Browne, Bortz & Coddington, Inc. (BBC), Carl Anderson, Esq. and MGT, Inc. and has held Public Hearings (Hearings) conducted by Carl Anderson, Esq., and found disparities in the utilization of minority and women business enterprises in contracts awarded by the City of Fort Worth (City); and

WHEREAS, the Studies and Hearings found that discrimination occurred in the major contracting areas (construction, purchasing, and professional services) of the City of Fort Worth and resulted in significant underutilization of minority and women business enterprises; and

WHEREAS, minority and women business enterprises have had and continue to have difficulties in obtaining financing, bonding, credit, insurance, and assistance programs have not been effective in either remedying the effects of underutilization in City contracting or in preventing ongoing underutilization; and

WHEREAS, the Studies and the Hearings determined that race-neutral alternatives for enhancing minority and women business enterprise contracting are not completely sufficient; and

WHEREAS, the City has also been a passive participant in discriminatory behavior practiced by private industry within the relevant Marketplace in the award of contracts to minorities and women businesses,

WHEREAS, the purpose of this ordinance is to overcome the effects of this past underutilization and prevent any ongoing discrimination in the City's contracting processes; and

WHEREAS, the provisions of this ordinance may increase the utilization of minority and women business enterprises in contracts awarded by the City of Fort Worth; and

WHEREAS, the City Council now desires to provide a narrowly tailored remedy for past underutilization of minority and women businesses through the annual setting and defining of percentage goals for different categories of contracts, providing penalties for fraudulent misuse of this ordinance, requiring regular review of the necessity for the provisions of this ordinance, limiting those minority and women's business enterprises that participate under this ordinance to those that qualify and do business in the City's Marketplace, providing for post bid submission of required information about minority and women business enterprises and establishing waiver of goals procedures;

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FORT WORTH, TEXAS, THAT:

SECTION 1.

It is the policy of the City of Fort Worth to attempt to provide a remedy for past underutilization of qualified minority and women businesses and prevent ongoing underutilization of minority and women business enterprises in the City's contracting process by ensuring the full and equitable participation of minority and women business enterprises in the provision of goods and services to the City on a contractual basis in the manner identified in Attachment I of this ordinance, said Attachment I being a part of this ordinance.

SECTION 2.

The ultimate goal of this ordinance is to remedy the effects of past underutilization in the Marketplace by increasing the use of minority and women business enterprises in the Fort Worth Marketplace. The City Manager shall recommend an annual aspirational goal for MBE/WBE participation in City procurement activities, based on utilization and availability analyses of the most current procurement activity data within the Marketplace. An annual goal will provide a mechanism for adjustments as reflected by the relevant conditions in the Marketplace. This will be a measurement goal, not a quota.

SECTION 3.

The provisions of this ordinance shall apply to all contracts awarded by the City, except as may be hereafter specifically exempted. Where contracts involve the expenditure of federal or state funds, the state or federal policy related to MBE/WBE or DBE participation may take precedence over this ordinance. The provisions of this ordinance shall be liberally construed for the accomplishment of its policies and purposes. Specific goals shall be established in the areas of construction, professional services and purchases of other goods and services. A goal may be set on individual projects based on the type of work or services to be performed, or goods to be acquired and the availability of minority and women businesses in the City's Marketplace.

SECTION 4.

The provisions of this ordinance shall be considered in determining the responsiveness to specifications of offerors to the City. The City shall consider the offeror's responsiveness to this ordinance in the evaluation of bids and proposals and shall award contracts in accordance with governing law, inclusive of compliance to this minority and women business enterprise ordinance.

SECTION 5.

Debarment procedures shall be established for firms willfully misrepresenting the facts in compliance with this ordinance to the City.

SECTION 6.

Waiver procedures to the regulations established in this ordinance shall be provided for City procurement activities where a public calamity requires the emergency expenditure of funds; the purchase of goods or services from source(s) where subcontracting or supplier opportunities are nonexistent; where an economic risk or undue delay for the acquisition of goods or services will be imposed on the City, or when the availability of minority and women businesses is negligible.

SECTION 7.

From and after the date this ordinance takes effect, it shall supersede all previous City Council Policies affecting minority and women business enterprise and disadvantage business enterprise.

SECTION 8.

The City Manager, with the advice and counsel of the Minority and Women Business Enterprise Advisory Committee ("MWBEAC") in accord with City of Fort Worth Resolution No. 1148, is hereby authorized to establish, implement and administer regulations necessary to carry out the intent of this ordinance.

SECTION 9.

The City Council shall regularly, at least every five (5) years, determine whether there is a continuing need for a minority and women business enterprise program, make relevant findings, and, if necessary, repeal in whole or in part or enact appropriate amendments to this ordinance.

SECTION 10.

It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this ordinance are severable, and, if any phrase, clause, sentence, paragraph or section of this ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this ordinance, since the same would have been enacted by the City Council without the incorporation in this ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

SECTION 11.

This ordinance shall take effect and be in full force and effect from on and after June 1, 2003; provided, however, that this ordinance shall not affect any procurement activity where formal solicitation began before the effective date of this ordinance, and it is so ordained.

APPROVED AS TO FORM AND LEGALITY:

Assistant City Attorney APRIL 22, 2003
Date

APRIL 22, 2003
Adopted

JUNE 1, 2003
Effective

ATTACHMENT 1

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I. DEFINITIONS:

1. **Applicable Contract** means any contract of \$25,000 or more for construction projects and professional services and \$25,000 or more for purchase agreements, as well as any other contracts that the City Council or City Manager deem appropriate.
2. **Certified** means those firms, located or doing business at the time of bid/proposal opening within the Marketplace, that have been determined to be a bonafide minority or women business enterprise by either the North Central Texas Regional Certification Agency (NCTRCA), or the Texas Department of Transportation (TxDOT), highway division.
3. **City** means the City of Fort Worth, Texas.
4. **City business day** means Monday through Friday, inclusive, excluding legal holidays. Legal holidays shall be observed as prescribed by the City Council for observance as follows:

New Year's Day	January 1
M. L. King, Jr. Birthday	Third Monday in January
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Thanksgiving Day	Fourth Thursday in November
Thanksgiving Friday	Fourth Friday in November
Christmas Day	December 25

When one of the above named holidays falls on a Saturday, the holiday shall be observed on the preceding Friday. When one of the above named holidays falls on a Sunday, the holiday shall be observed on the following Monday.

5. **Combined Projects** means a construction contract, which includes paving and/or drainage elements of construction and water and/or sanitary sewer construction elements, but does not include a standard water and/or sanitary sewer contract where the pavement is temporarily or permanently repaired and that repair is not a separate unit.
6. **Construction** means the erection, rehabilitation, alteration, conversion, extension, demolition, improvement, remodeling or repair to any real property, including streets, storm drains and facilities providing utility service owned by the City.
7. **Contract** means a binding agreement whereby the City either grants a privilege or is committed to expend or does expend its funds or other resources for or in connection with a) construction of any public improvement, and b) purchase of any services (including professional services). The term includes "purchase order".
8. **Contract Officer** means the person employed by the City to oversee the performance of the contract.
9. **Contracting Department** means the department responsible for payment of contract obligations.
10. **Contractor** means the business entity with whom the City has entered into an agreement. Includes the terms "Vendor", "Prime Contractor" and "Prime Consultant".
11. **Goal** means the percentage of minority business enterprise and/or women business enterprise participation on an applicable project as determined by the City, based on the availability of such businesses in the marketplace and the subcontracting/supplier opportunities of the project.

12. **Good Faith Effort** means an honest and conscientious effort by the Offeror to meet the City's goal for M/WBE participation. Compliance with each of the following steps shall satisfy the Good Faith Effort requirement absent proof of fraud, misrepresentation, or intentional discrimination by the Offeror:

12.1. List each and every subcontracting and/or supplier opportunity for the completion of this project. On combined projects list each subcontracting and/or supplying opportunity through the 2nd tier.

12.2. Obtain a current (not more than three (3) months old from the bid open date) list of M/WBE subcontractors and/or suppliers from the City's M/WBE Office.

12.3. Solicit bids from M/WBEs, within the subcontracting and/or supplier areas previously listed, at least ten calendar days prior to bid opening by mail, exclusive of the day the bids are opened.

12.4. Solicit bids from M/WBEs, within the subcontracting and/or supplier areas previously listed, at least ten calendar days prior to bid opening by telephone, exclusive of the day the bids are opened.

Note: A facsimile may be used to comply with either 12.3 or 12.4, but may not be used for both.

Note: If the list of M/WBEs for a particular subcontracting/supplier opportunity is ten or less, the Contractor must contact the entire list within such area of opportunity to be in compliance with 12.3 and 12.4. If the list of M/WBEs for a particular subcontracting/supplier opportunity is ten or more, the Contractor must contact at least two-thirds of the list within such area of opportunity, but not less than ten, to be in compliance with 12.3 and 12.4.

12.5. Provide plans and specifications or information regarding the location of plans and specification to M/WBEs.

12.6. Submit documentation if M/WBE quotes were rejected. The documentation submitted should be in the form of an affidavit, include a detailed explanation of why the M/WBE was rejected and any supporting documentation the Offeror wishes to be considered by the City. In the event of a bona fide dispute concerning quotes, the Offeror will provide for confidential *in-camera* access to a inspection of any relevant documentation by City personnel.

13. **Horizontal Construction** means construction of highways, roads, streets, bridges, utilities, water supply projects, water plans, wastewater plants, water and wastewater distribution or conveyance facilities, wharves, docks, airport runways and taxiways, drainage projects, or related types of projects associated with civil engineering construction as referenced in this ordinance.

14. **Joint Venture** means an association of two or more businesses, one of which must be a certified M/WBE firm. The M/WBE firm must be responsible for a clearly defined portion of the work to be performed, equal to a share in the ownership, control, knowledge, management, responsibility, risks, and profits of the joint venture.

15. **Lease Agreement** means a written agreement to transfer control and use of truck(s) from one business entity to another, which outlines fees and/or commissions.

16. **Lease Trucks** means trucks that are leased from another M/WBE firm, including M/WBE owner-operators. Trucks leased from non-M/WBE firms will only receive credit for the fees and commissions earned by the M/WBE as outlined in the lease agreement.

17. **Manager** means the administrator of the M/WBE Office of the City of Fort Worth.
18. **Managing Department** means the department responsible for overseeing the day-to-day completion of the contract.
19. **Manufacturer** means one that manufactures a product by hand or machinery suitable for uses; the process of making wares.
20. **Marketplace** means the geographic market area as defined in the Availability and Disparity Study represented by the counties of Tarrant, Parker, Johnson, Collin, Dallas, Denton, Ellis, Kaufman and Rockwall.
21. **Minority** means a citizen of the United States or lawfully admitted permanent resident that is Asian American, American Indian, Black or Hispanic.
22. **Minority Business Enterprise** is defined as a qualified business concern located in the Marketplace or providing proof of doing business in the Marketplace at the time of bid opening or the opening of responses to requests for proposals, meeting the following criteria:
 - a. is at least 51 percent owned by one or more minority persons, or, in the case of any publicly owned business, at least 51 percent of the stock is owned by one or more minority persons; and
 - b. management and daily business operations are controlled by one or more minority persons who own it.
23. **MWBEAC** means the Minority and Women Business Enterprise Advisory Committee appointed by the City Council to review the findings of Availability and Disparity Studies conducted for the City and present recommendations, in concurrence with the City Manager, on any amendments to the M/WBE Ordinance.
24. **Mediation** means an alternate dispute resolution method as authorized by the state law
25. **Nepotism** means the state or fact of showing favoritism to a relative on the basis of a relationship.
26. **Non-compliance** means failure of a prime contractor to comply with the Ordinance's requirements during the contract and/or at completion of the contract.
27. **Non-responsive** means failure of an Offeror to respond to the Ordinance's requirements upon submission of a bid or proposal; herein specifically defined by either 1) meet or exceed the stated project goal, or 2) make a good and honest faith effort to meet the project goal or 3) submit the prime contractor waiver or 4) submit the joint venture form.
28. **Offeror** means any person, firm, corporation, or partnership that submits a bid or proposal to provide labor, goods or services to the City where funds are expended. The term includes bidder and proposer.
29. **Payment Dispute** means a bonafide disagreement of payment.
30. **Procurement** means the buying, renting, leasing or otherwise obtaining or acquiring any supplies, materials, equipment or services.

31. **Professional Services** means services, which require predominantly mental or intellectual labor and skills, includes, but is not necessarily limited to, architects, engineers, surveyors, doctors, attorneys, and accountants.
32. **Project Manager** see Contract Officer.
33. **Purchasing** means the buying, renting, leasing or otherwise obtaining or acquiring any supplies, materials, equipment or services excluding construction and professional services previously defined.
34. **Qualified** means an individual or business entity having previously performed or received training in the work, industry or profession required.
35. **Regular Dealer** is defined as a firm that owns, operates, or maintains a store, a warehouse, or other establishments in which the materials or supplies required for the contract are bought, kept in stock, and are regularly sold retail or wholesale.
36. **Subcontract** means an agreement between the contractor and another business entity for the performance of work.
37. **Subcontract/Supplier Opportunity** means an area where there is more than one M/WBE subcontractor/subconsultant/supplier in the market place.
38. **Tier** means the level of subcontracting below the prime contractor/consultant, i.e., a direct payment from the prime contractor to a subcontractor is considered 1st tier, a payment by a subcontractor to its supplier is considered 2nd tier.
39. **Vertical Construction** means construction of a facility. Facility means buildings the design and construction of which are governed by accepted building codes. The term does not include: (A) highways, roads, streets, bridges, utilities, water supply projects, water plans, wastewater plants, water and wastewater distribution or conveyance facilities, wharves, docks, airport runways and taxiways, drainage projects, or related types of projects associated with civil engineering construction or (B) builds or structures that are incidental to projects that are primarily civil engineering construction projects.
40. **Women Business Enterprise** is defined as a qualified business concern located in the Marketplace or provide proof of doing business in the Marketplace at the time of bid opening or the opening of responses to requests for proposals, meeting the following criteria:
 - a. is at least 51 percent owned by one or more women, or, in the case of any publicly owned business, at least 51 percent of the stock is owned by one or more women; and
 - b. management and daily business operations are controlled by one or more women who own it.

II. PURPOSE:

The ultimate goal of this ordinance is to remedy the effects of past underutilization in the Marketplace by increasing the utilization of minority and women business enterprises above the present low level to one more comparable to their availability in the Fort Worth Marketplace.

Specific goals shall be established in the areas of construction, professional services, and purchases of other goods and services. A goal may be set on individual projects based on the type of work or services to be performed, or goods to be acquired and the availability of minority and women businesses in the City's Marketplace.

The City Manager shall recommend an annual goal for M/WBE participation in City procurement activities, based upon the availability within the Marketplace.

The provisions of this ordinance shall apply to all contracts awarded by the City, except as may be hereafter specifically exempted. Where contracts involve the expenditure of federal or state funds, the state or federal policy related to M/WBE or DBE participation may take precedence over this ordinance.

Award of a contract shall be recommended when the Offeror has complied with the requirements of this ordinance via meeting the goal, demonstrating a Good Faith Effort to meet the goal or meeting the requirements for a Prime Contractor Waiver. Failure to comply with the Ordinance by any of the required methods shall result in an Offeror being deemed non-responsive.

III. CERTIFICATION:

The City will recognize M/WBE firms that are certified by the North Central Texas Regional Certification Agency (NCTRCA) or Texas Department of Transportation (TX DOT), highway division. The firms shall be located in or doing business in the Marketplace at the time of bid/proposal opening.

IV. PROGRAM GOAL:

- A. A Citywide goal for the utilization of minority business enterprises (MBE) and women business enterprises (WBE) shall be reviewed and approved annually by the City Council.
1. The City Manager shall conduct an analysis of the availability of M/WBEs and present to the City Council an annual report on M/WBE availability and utilization by the end of the first quarter of the new fiscal year.
 2. Based on the availability of M/WBEs in the Marketplace and the City's most recent goal attainment and with the advice and counsel of the, the City Manager shall recommend to the City Council a reasonable goal for the remainder of the current fiscal year.
 3. The goal shall be expressed in terms of a percentage of the total dollar value of all applicable contracts awarded by the City. Goals shall be established separately for categories of construction, professional services, and purchasing, as well as, any other categories that the City Council or City Manager deems appropriate.
- B. An individual project goal shall be set by the M/WBE Office in collaboration with the Contract Officer and Risk Management (where appropriate) prior to solicitation. The project goal shall be reasonable and shall be based upon:
1. Specific subcontracting and/or materials opportunities required to complete the project, and
 2. The availability of M/WBE in the identified subcontracting and/or materials opportunities in the Marketplace.

V. APPLICABLE CONTRACTS:

A. CONSTRUCTION PROJECTS

1. M/WBE UTILIZATION REQUIREMENTS

- a. In addition to the requirements set forth elsewhere, bid conditions shall include a statement of the M/WBE goal established for the project. The requirements below also apply to circumstances where change orders or extra work, give rise to new trade or vendor opportunities outside the original scope of work.
- b. Bid conditions and all other specifications for applicable contracts to be awarded by the City shall require that Offerors make a good faith effort (GFE) to subcontract with or purchase supplies from M/WBE firms. Such specifications shall require the Offeror to meet or exceed the stated goal or submit documentation of GFE for all applicable contracts to permit a determination of compliance with the specifications.
- c. Construction contracts (estimated cost of \$25,000 or more) shall be awarded and administered in accordance with the following standards and procedures:
 01. Competitive bids for applicable contracts shall include the M/WBE requirements and documentation in the bid specifications. M/WBE documentation consists of the **SPECIAL INSTRUCTIONS TO BIDDERS**, the **SUBCONTRACTOR UTILIZATION FORM**, the **PRIME CONTRACTOR WAIVER FORM**, the **GOOD FAITH EFFORT FORM**, and the **JOINT VENTURE FORM**.
 - a) Competitive bids where the Offeror equals or exceeds the project goal must submit the **SUBCONTRACTOR UTILIZATION FORM** or the **JOINT VENTURE FORM**.
 - b) Competitive bids where the Offeror does not have subcontracting and/or supplier opportunities must submit the **PRIME CONTRACTOR WAIVER FORM**.
 - c) Competitive bids where the Offeror has subcontracting and/or supplier opportunities but does not include M/WBE participation in an amount which equals or exceeds the project goal, must submit the **SUBCONTRACTOR UTILIZATION FORM** and the **GOOD FAITH EFFORT FORM (GFE)** and documentation.
 - d) Competitive bids where the Offeror has subcontracting and/or supplier opportunities but do not include any M/WBE participation must submit the **SUBCONTRACTOR UTILIZATION FORM** and the **GOOD FAITH EFFORT FORM** and documentation.
 02. The Offeror shall submit the **SUBCONTRACTOR UTILIZATION FORM** and/or the **GOOD FAITH EFFORT FORM** or the **PRIME CONTRACTOR WAIVER FORM**, or the **JOINT VENTURE FORM** ("and documentation") as appropriate. The Managing Department must receive the documentation no later than 5:00 p.m., five (5) City business days after the bid opening date, exclusive of the bid opening date. The Offeror shall obtain a receipt from the appropriate employee of the managing department to whom delivery was made. Such receipt shall be evidence that the City received the documentation. The submission of the applicable completed form(s) within the allotted time will be considered when determining the responsiveness of the bid. Failure to comply with the bid specifications, inclusive of the M/WBE requirements and documentation, shall render the Offeror non-responsive.

03. The GFE documentation shall demonstrate the Offeror's commitment and honest efforts to utilize M/WBE(s). The burden of preparing and submitting the GFE information is on the Offeror and will be evaluated as part of the responsiveness to the bid/proposal. An Offeror who intentionally and/or knowingly misrepresents facts on the documentation submitted will constitute a basis for classification as non-responsive and possible debarment.
04. The contracting department may request the M/WBE Office to waive the goal requirements of this subsection, or to reduce the amount of the goal, in accordance with the provisions of the Exceptions and Waivers section.

2. COUNTING M/WBE PARTICIPATION

M/WBE participation shall be counted toward meeting the goal in accordance with the following provisions:

- a. For the purpose of determining compliance with the goal requirements established in this ordinance, businesses will be counted as M/WBE only when they have been certified as such prior to a recommendation for award being made to the City Council.
 01. Any business listed by an Offeror that is not certified at the time of bid opening must file an application for certification to a city authorized certification agency within a reasonable time for the City to consider the business and dollar amount towards meeting the goal.
 02. If a business described in the subparagraph immediately above fails to submit an application for certification within a reasonable time, or if the business is denied certification, the Offeror shall be afforded five (5) City business days to secure additional certified/certifiable M/WBE participation, starting the next City business day following the day the written notification was received from the Managing Department.
 03. Evidence of the additional certified/certifiable M/WBE participation shall be delivered to and received by the Managing Department within five (5) City business days after the notification was received by the Offeror, exclusive of the date that the notification was received.
- b. Except as provided for in paragraph C below, if the Offeror is ruled non-responsive ~~to~~ for failure to comply with the requirements of this ordinance, the Managing Department will provide written notification to the Offeror stating the specific basis for the ruling. The Offeror may then submit documentation that it will either meet or exceed the stated goal and if the documentation satisfies this ordinance, the Offeror may then be considered for an award of contract.
- c. If the Offeror is ruled non-responsive solely for its failure to identify a subcontract/supplier opportunity and that opportunity is less than three (3%) percent of the total bid, the Offeror may submit documentation that an M/WBE will be utilized for that subcontract/supplier opportunity, and may be considered for an award of contract.
- d. Documentation required under either paragraph 2 or 3 above must be received by the Managing Department within five (5) City business days, exclusive of the date that the Offeror was notified that it was non-responsive. If the documentation is not received within the stated time, the Offeror shall be deemed to have withdrawn its bid. The City will not communicate with another Offeror regarding award of the contract until five (5) City business days after the original Offeror has been notified that it is non-responsive.

- e. The Offeror may count toward the goal any tier of M/WBE subcontractors and/or suppliers
- f. The Offeror will be given credit toward the goal only when the M/WBE subcontractor performs a commercially useful function. A M/WBE subcontractor is considered to have performed a commercially useful function when.
 - 01. It is responsible for the execution of a distinct element of the work by actually performing, managing and supervising the work involved in accordance with normal business practice; and
 - 02. When the firm receives due compensation as agreed upon for the work performed.
- g. The Offeror will be given credit toward the M/WBE goal only when the M/WBE supplier performs a commercially useful function. A M/WBE supplier is considered to have performed a commercially useful function when the M/WBE supplier is a manufacturer or a regular dealer.
- h. The Offeror will be given credit for utilizing a M/WBE hauling firm as long as the M/WBE owns and operates at least one fully licensed and operational truck used on the contract. The M/WBE may lease trucks from another M/WBE firm, including M/WBE owner-operators and receive full M/WBE credit. The M/WBE may lease trucks from non-M/WBEs, including owner-operators, but will only receive credit for the fees and commissions earned by the M/WBE as outlined in the lease agreement.
- i. Regardless of whether an arrangement between the contractor and the M/WBE represents standard industry practice, if the arrangement erodes the ownership, control or independence of the M/WBE or does not meet the commercially useful function requirement, the Offeror shall receive no credit toward the goal.
- j. An Offeror may count toward its goal a portion of the total dollar value of a contract with a joint venture equal to the percentage of M/WBE participation in the joint venture.
 - 01. The Managing Department must receive the documentation no later than 5:00 p.m., five (5) City business days after the bid opening date, exclusive of the bid opening date. The Offeror shall obtain a receipt from the appropriate employee of the managing department to whom delivery was made. Such receipt shall be evidence that the City received the documentation. The submission of the applicable completed form(s) within the allotted time will be considered when determining the responsiveness of the bid. Failure to comply with the bid specifications, inclusive of the M/WBE requirements and documentation, shall render the Offeror non-responsive.
 - 02. The M/WBE involved in the joint venture must be responsible for a clearly defined portion of the work to be performed, equal to a share in the ownership, control, knowledge, management, responsibility, risks, and profits of the joint venture.
- k. Except for joint ventures, the prime contractor (regardless of their M/WBE status) and any work performed by the prime contractor is not counted toward meeting the M/WBE contract goal and is not considered when determining compliance with this ordinance.

- l. An Offeror may not count toward its goal any arrangement with an M/WBE that is nepotism or where a M/WBE has been a recent employee (less than one year) of the Offeror.
- m. The Offeror may not count toward the goal any agreement with a M/WBE that does not meet the requirements of this ordinance.

3. PAYMENTS

The City Manager shall implement procedures to comply with the following:

- a. For **vertical** construction contracts, procedures will be established to ensure that the prime shall submit an invoice at least monthly and the City will pay the invoice as required by the Texas Prompt Payment Act (Tex. Gov't. Code, chap. 2251) or any successor statute. The prime shall pay subcontractors as required by the Texas Prompt Payment Act or any successor statute. The prime contractor's failure to make payments as provided by state law shall, in addition to any other remedies provided by law, authorize the City to withhold future payments and/or reject future bids from the contractor until compliance with this ordinance is attained.
- b. For **horizontal** construction contracts, procedures will be established to ensure that all progress payments are made twice a month and that subcontractors are paid in accordance with the provisions of the Texas Prompt Payment Act or any successor statute. A contractor's failure to make payments as required by state law shall, in addition to any other remedies provided by state law, authorize the City to withhold future payments and/or reject future bids from the contractor until compliance with this ordinance is attained.
- c. Whenever there is a dispute over payment due between the prime and subcontractor and/or supplier, the City shall strongly encourage the parties to seek mediation before the City takes any action under this ordinance.

4. RETAINAGE

- a. If the prime withholds additional monies or a fee in excess of the retainage amount required by the City, and if there is no dispute about payment to the subcontractor, the prime shall release the additional monies after the completion of the subcontractor's scope of work, or as otherwise required by law, but may retain the required retainage monies until project completion, acceptance and final payment by the City.
- b. Where contracts involve the expenditure of federal or state funds, the state or federal policy related to M/WBE or DBE retainage may take precedence over this ordinance.

B. PROFESSIONAL SERVICES

1. M/WBE UTILIZATION REQUIREMENTS

- a. In addition to the requirements set forth elsewhere, requests for proposals shall include a statement of the M/WBE goal established for the project. The requirements below shall also apply to circumstances where amendments or extra work gives rise to new subconsulting/supplier opportunities.
- b. Requests for proposals and all other specifications for applicable contracts to be awarded by the City shall require that Offeror make a good faith effort (GFE) to sub-consult with or purchase supplies from M/WBE firms. Such specifications shall

require the Offeror to meet or exceed the stated goal or submit documentation of GFE for all applicable contracts to permit a determination of compliance with the specifications.

- c. Professional Services contracts and such other contracts which may be competed for under sealed proposal procedures (estimated cost of \$25,000 or more) shall be awarded and administered in accordance with the following standards and procedures:
 01. Other than responses to Requests for Proposals for those professional services defined in Chapter 2254 of the Texas Government Code, responses to Request for Proposals shall be submitted by the proposal deadline date and include a section, which identifies the particular M/WBE utilization plan in performing the contract.
 - a) The proposal shall specify the estimated percentage of the M/WBE participation, the type of work to be performed by the M/WBE, and such other information as may reasonably be required to determine the responsiveness to the Request for Proposal.
 - b) Proposals that do not meet or exceed the utilization goal, as required by the Request for Proposal, must submit a GFE explanation. Failure to include such GFE explanation shall render the proposal non-responsive.
 02. Initial responses to requests for proposals for those professional services defined in Chapter 2254 of the Texas Government Code shall not include a response to the requirements of this ordinance. The City shall comply with the requirements of said Chapter and rank the professional on the basis of demonstrated competence and qualifications. During negotiations, the proposer shall respond to this ordinance in the manner specified in paragraph 01(a) above.
 03. The GFE documentation shall demonstrate the Offeror's commitment and honest efforts to utilize M/WBEs. The burden of preparing and submitting the GFE information is on the Offeror and will be evaluated as part of the responsiveness to the proposal. An Offeror who intentionally and/or knowingly misrepresents facts on the documentation submitted may be classified as non-responsive and be subject to possible debarment.
 04. The contracting department may request the M/WBE Office to waive the goal requirements of this subsection, or to reduce the amount of the goal, in accordance with the provisions of the Exceptions and Waivers section.

2. COUNTING M/WBE PARTICIPATION

M/WBE participation shall be counted toward meeting the goal in accordance with the following provisions:

- a. For the purpose of determining compliance with the goal requirements established in this ordinance, businesses will be counted as M/WBEs only when they have been certified as such prior to a recommendation for award being made to the City Council.
 01. Any business listed by an Offeror that is not certified at the time of response opening must file an application for certification to a city authorized certification agency within a reasonable time for the City to consider the business and dollar amount towards meeting the goal.

02. If a business described in the subparagraph immediately above fails to submit an application for certification within a reasonable time, or if the business is denied certification, the Offeror shall be afforded five (5) City business days to secure additional certified/certifiable M/WBE participation, starting the next City business day following the day the written notification was received from the Managing Department.
 03. Evidence of the additional certified/certifiable M/WBE participation shall be delivered to and received by the Managing Department within five (5) City business days after the notification was received by the Offeror, exclusive of the date that the notification was received.
- b. The Offeror may count toward the goal any tier of M/WBE sub-consultants and/or suppliers.
 - c. The Offeror will be given credit toward the goal only when the M/WBE sub-consultant performs a commercially useful function. A M/WBE sub-consultant is considered to have performed a commercially useful function when:
 01. It is responsible for the execution of a distinct element of the work by actually performing, managing and supervising the work involved in accordance with normal business practice; and
 02. When the firm receives due compensation as agreed upon for the work performed.
 - d. The Offeror will be given credit toward the M/WBE contract goal only when the M/WBE supplier performs a commercially useful function. A M/WBE supplier is considered to have performed a commercially useful function when the M/WBE supplier is a manufacturer or a regular dealer.
 - e. Regardless of whether an arrangement between the consultant and the M/WBE represents standard industry practice, if the arrangement erodes the ownership, control or independence of the M/WBE or does not meet the commercially useful function requirement, the Offeror shall receive no credit toward the goal.
 - f. An Offeror may count toward its goal a portion of the total dollar value of a contract with a joint venture equal to the percentage of M/WBE participation in the joint venture.
 01. The Joint Venture Form must be submitted to the Managing Department with the proposal when determining the responsiveness of the proposal by the M/WBE Office. Failure to comply with the proposal scope of services, inclusive of the M/WBE requirements, shall render the Offeror non-responsive.
 02. The M/WBE involved in the joint venture must be responsible for a clearly defined portion of the work to be performed, equal to a share in the ownership, control, knowledge, management, responsibility, risks, and profits of the joint venture.
 - g. Except for joint ventures, the prime consultant (regardless of their M/WBE status) and any work performed by the prime consultant is not counted toward meeting the M/WBE contract goal and is not considered when determining compliance with this ordinance.

- h. An Offeror may not count toward its goal any arrangement with an M/WBE that is nepotism or where an M/WBE has been a recent employee (less than one year) of the Offeror.
- i. The Offeror may not count toward the goal any agreement with a M/WBE that does not meet the requirements of this ordinance.

3. PAYMENTS

The City Manager shall implement procedures to comply with the following:

- a. The prime shall submit an invoice at least monthly or as designated by the contract documents and the City will pay the invoice as required by the Texas Prompt Payment Act or any successor statute. The prime shall pay sub-consultants as required by the Texas Prompt Payment Act or any successor statute. A consultant's failure to make payments in accordance with state law shall, in addition to any other remedies provided by law, authorize the City to withhold future payments and/or reject future proposals from the consultant until compliance with this ordinance is attained.
- b. Whenever there is a dispute over payment due between the prime and sub-consultant and/or supplier, the City shall strongly encourage the parties to seek mediation before the City initiates a stop payment order.

C. PURCHASES

1. M/WBE UTILIZATION REQUIREMENTS

- a. In addition to the requirements set forth elsewhere, bid conditions shall include a statement of the M/WBE goal established for the project. The requirements below also apply to circumstances where purchase orders or extra work cause new subcontracting/supplier opportunities.
- b. Bid conditions and all other specifications for applicable contracts to be awarded by the City shall require that Offeror make a good faith effort (GFE) to subcontract with or purchase supplies from M/WBE firms. Such specifications shall require the Offeror to meet or exceed the stated goal or submit documentation of GFE for all applicable contracts to permit a determination of compliance with the specifications.
- c. Purchase contracts and such other contracts which may be competed for under sealed proposal procedures (estimated cost of \$25,000 or more) shall be awarded and administered in accordance with the following standards and procedures:
 - 01. Competitive bids for applicable contracts shall include the M/WBE requirements and documentation in the bid specifications. M/WBE documentation consists of the **SPECIAL INSTRUCTIONS TO BIDDERS**, the **SUBCONTRACTOR UTILIZATION FORM**, the **PRIME CONTRACTOR WAIVER FORM**, the **GOOD FAITH EFFORT FORM**, and, the **JOINT VENTURE FORM**.
 - a) Competitive bids where the Offeror equals or exceeds the project goal must submit the **SUBCONTRACTOR UTILIZATION FORM**.
 - b) Competitive bids where the Offeror does not have subcontracting and/or supplier opportunities must submit the **PRIME CONTRACTOR WAIVER FORM**.

- c) Competitive bids where the Offeror has subcontracting and/or supplier opportunities but does not include M/WBE participation in an amount which equals or exceeds the project goal, must submit the **SUBCONTRACTOR UTILIZATION FORM** and the **GOOD FAITH EFFORT FORM** and documentation.
 - d) Competitive bids where the Offeror has subcontracting and/or supplier opportunities but do not include any M/WBE participation must submit the **GOOD FAITH EFFORT FORM** and documentation.
02. The Offeror shall submit the **SUBCONTRACTOR UTILIZATION FORM and/or the GOOD FAITH EFFORT FORM or the PRIME CONTRACTOR WAIVER FORM, or the JOINT VENTURE FORM** ("and documentation") as appropriate. The Managing Department must receive the documentation no later than 5:00 p.m., five (5) City business days after the bid opening date, exclusive of the bid opening date. The Offeror shall obtain a receipt from the appropriate employee of the managing department to whom delivery was made. Such receipt shall be evidence that the City received the documentation. The submission of the applicable completed form(s) within the allotted time will be considered when determining the responsiveness of the bid. Failure to comply with the bid specifications, inclusive of the M/WBE requirements and documentation, shall render the Offeror non-responsive.
 03. The GFE documentation shall demonstrate the Offeror's commitment and honest efforts to utilize M/WBE(s). The burden of preparing and submitting the GFE information is on the Offeror and will be evaluated as part of the responsiveness to the bid/proposal. An Offeror who intentionally and/or knowingly misrepresents facts on the documentation submitted will constitute a basis for classification as non-responsive and possible debarment.
 04. The contracting department may request the M/WBE Office to waive the goal requirements of this subsection, or to reduce the amount of the goal, in accordance with the provisions of the Exceptions and Waivers section.

2. COUNTING M/WBE PARTICIPATION

M/WBE participation shall be counted toward meeting Goal in accordance with the following provisions:

- a. For the purpose of determining compliance with the goal requirements established in this ordinance, businesses will be counted as M/WBEs only when they have been certified as such prior to a recommendation for award being made to the City Council.
 01. Any business listed by an Offeror that is not certified at the time of bid/response opening must file an application for certification within a reasonable time for the City to consider the business towards meeting the goal.
 02. If a business described in the subparagraph immediately above fails to submit an application for certification within a reasonable time, or if the business is denied certification, the Offeror shall be afforded five (5) City business days to secure additional certified/certifiable M/WBE participation, starting the next City business day following the day the written notification was received from the Managing Department
 03. Evidence of the additional certified/certifiable M/WBE participation shall be delivered to and received by the Managing Department within five (5) City

business days after the notification was received by the Offeror, exclusive of the date that the notification was received.

- b. Except as provided for in paragraph c below, if the Offeror is ruled non-responsive for failure to comply with the requirements of this ordinance, the Managing Department will provide written notification to the Offeror stating the specific basis for the ruling. The Offeror may submit documentation that it will either meet or exceed the stated goal, and if the documentation satisfies this ordinance, the Offeror may then be considered for an award of contract.
- c. If the Offeror is ruled non-responsive solely for its failure to identify a subcontract/supplier opportunity and that opportunity is less than three (3%) percent of the total bid, the Offeror may submit documentation that an M/WBE will be utilized for that subcontract/supplier opportunity, and may be considered for an award of contract.
- d. Documentation required under either paragraph b or c above must be received by the Managing Department within five (5) City business days, exclusive of the date that the Offeror was notified that it was non-responsive. If the documentation is not received within the stated time, the Offeror shall be deemed to have withdrawn its bid. The City will not communicate with another Offeror regarding award of the contract until five (5) City business days after the original Offeror has been notified that it is non-responsive.
- e. The Offeror may count toward the goal any tier of M/WBE subcontractors and/or suppliers. It is the sole responsibility of the Offeror to report and document all subcontracting and/or supplier participation dollars counted towards the goal, irrespective of tier level. Failure to submit documentation as required in this subparagraph, shall entitle the City to withhold payments and/or reject future purchasing orders until compliance is attained.
- f. The Offeror will be given credit toward the goal only when the M/WBE subcontractor performs a commercially useful function. A M/WBE subcontractor is considered to have performed a commercially useful function when:
 - 01. It is responsible for the execution of a distinct element of the work by actually performing, managing and supervising the work involved in accordance with normal business practice; and
 - 02. When the firm receives due compensation as agreed upon for the work performed.
- g. The Offeror will be given credit toward the M/WBE contract goal only when the M/WBE supplier performs a commercially useful function. A M/WBE supplier is considered to have performed a commercially useful function when the M/WBE supplier is a manufacturer or a regular dealer.
- h. The Offeror will be given credit for utilizing a M/WBE hauling firm as long as the M/WBE own and operate at least one fully licensed, insured and operational truck used on the contract. The M/WBE may lease trucks from another M/WBE firm, including M/WBE owner-operators and receive 100% M/WBE credit. The M/WBE may lease trucks from non-M/WBEs, including owner-operators, but will only receive credit for the fees and commissions earned by the M/WBE as outlined in the lease agreement.
- i. Regardless of whether an arrangement between the contractor and the M/WBE represents standard industry practice, if the arrangement erodes the ownership,

control or independence of the M/WBE or does not meet the commercially useful function requirement, the Offeror shall receive no credit toward the goal.

- j. An Offeror may count toward its goal a portion of the total dollar value of a contract with a joint venture equal to the percentage of M/WBE participation in the joint venture.
 - 01. The Managing Department must receive the Joint Venture form from the Offeror within five (5) City business days after the date of bid opening, exclusive of the day of the bid opening, for certification by the M/WBE Office.
 - 02. The M/WBE involved in the joint venture must be responsible for a clearly defined portion of the work to be performed, equal to a share in the ownership, control, knowledge, management, responsibility, risks, and profits of the joint venture.
- k. Except for joint ventures, the prime contractor (regardless of their M/WBE status) and any work performed by the prime contractor is not counted toward meeting the M/WBE contract goal and is not considered when determining compliance with this ordinance.
- l. An Offeror may not count toward its goal any arrangement with an M/WBE that is nepotism or where an M/WBE has been a recent employee (less than one year) of the Offeror.
- m. The Offeror may not count toward the goal any agreement with an M/WBE that does not meet the requirements of this ordinance.

3. PAYMENTS

The City Manager shall implement procedures to comply with the following:

- a. Establish procedures to ensure that purchase orders for all vendors' invoices be paid as required by the Texas Prompt Payment Act or any successor statute and that subcontractors are also paid as required by state law . A vendor's failure to make payments as required by law shall, in addition to any other remedies provided by law, authorize the City to withhold future payments from the vendor until compliance with this ordinance is attained.
- b. Whenever there is a dispute concerning payment due between the prime and subcontractor and/or supplier, the City shall strongly encourage the parties to seek mediation before the City initiates a stop payment order.

4. BEST VALUE CRITERIA

- a. In order to increase M/WBE primes in direct purchases, the City will apply the best value criteria codified in State law (Tex. Local Gov't Code, sec. 252.043 or any successor statute) to all purchasing activities as outlined in the state legislation.
- b. The City Manager, with the advice and counsel of the MWBEAC in accord with City of Fort Worth Resolution No. 1148, shall implement procedures the purchase of goods and services under the formal bid amount to emphasize the inclusion of M/WBEs.

VI. POST-AWARD COMPLIANCE:

- A. In addition to such other requirements as may be set forth elsewhere, the following shall apply to applicable contracts awarded by the City:

1. Contracts shall incorporate this ordinance by reference, and shall provide that the contractor's violation of this ordinance shall constitute a breach of such contract and may result in debarment in accord with the procedures outlined in this ordinance.
2. Following the date and time of bid/proposal opening, any proposed change or deletion in M/WBE participation identified in the bid, proposal or contract shall be reviewed by the M/WBE Office to determine whether such change or deletion is justified in accord with paragraphs 3 and 4 immediately below. Any unjustified change or deletion shall be a material breach of contract and may result in debarment in accord with the procedures outlined in this ordinance.
3. Following the date and time of bid/proposal opening, the contractor shall:
 - a. Make no unjustified changes or deletions in its M/WBE participation commitments submitted with the bid, proposal or during negotiation, without prior submission of the proper documentation for review and approval by the M/WBE Office.
 - b. Shall submit a detailed explanation of how the requested change or deletion will affect the committed M/WBE goal. If the detail explanation is not submitted, it will affect the final compliance determination.
 - c. If substantial subcontracting and/or supplier opportunities arise during the term of any contract when the contractor represented in its bid to the City that it alone would perform the subcontracting/supplier opportunity work, the contractor shall notify the City before subcontracts for work and/or supplies are awarded and shall be required to comply with subsections 12.3 and 12.4 of this Attachment 1, exclusive of the time requirements stated in such subsections;
 - d. Maintain records reasonably necessary for monitoring their compliance with the provisions of this ordinance;
 - e. After the first payment and beginning with the second application for payment, submit the required M/WBE Periodic Payment Reports, including copies of M/WBE subcontractor's/subconsultant's/supplier applications for payment / invoices (as appropriate) and proof of payment documentation, to the M/WBE Office. Additionally, upon request of the M/WBE Office, the contractor shall submit such other documentation as may be reasonably required to verify proof of payments. Failure to submit these reports and other requested information, if any, as required shall authorize the City to withhold payment and/or reject future bids from the contractor until compliance with this ordinance is attained.
4. The contractor shall submit to the M/WBE Office for approval a **M/WBE REQUEST FOR APPROVAL OF CHANGE FORM** if, during the term of any contract, a contractor wishes to change or delete one or more M/WBE subcontractor(s), subconsultant(s) or supplier(s).
 - a. Within three (3) City business days after receipt by the M/WBE Office, exclusive of the date of receipt, the Request shall be reviewed. The Request shall be approved if the change or deletion is justified. The following shall constitute justification for the requested change or deletion:
 01. A M/WBE's failure to provide workers' compensation insurance evidence as required by state law; or
 02. A M/WBE's failure to provide evidence of general liability or other insurance under the same or similar terms as contained in the contract documents with limits of coverage no greater than the lower of 1) the limits required of the

contractor by the City; or 2) the limits contained in the contractor's standard subcontract or supply agreements used on other projects of similar size and scope and within the contractor's normal business practice with non-M/WBE subcontractor's/subconsultant's or suppliers; or

03. A M/WBE's failure to execute the contractor's standard subcontract form, if entering a subcontract is required by the contractor in its normal course of business, unless such failure is due to:
 - a) A change in the amount of the previously agreed to bid or scope of work; or
 - b) The contract presented provides for payment once a month or longer and the contractor is receiving payment from the City twice a month; or
 - c) Any limitation being placed on the ability of the M/WBE to report violations of this Ordinance or any other ordinance or violations of any state or federal law or other improprieties to the City or to provide notice of any claim to the contractor's surety company or insurance company.
 - d) Mediation shall be a consideration before the request for change is approved.
04. A M/WBE defaults in the performance of the executed subcontract. In this event, the contractor shall:
 - a) Request bids from all M/WBE subcontractors previously submitting bids for the work,
 - b) If reasonably practicable, request bids from previously non-bidding M/WBEs, and
 - c) Provide to the M/WBE office documentation of compliance with (a) and (b) above.
05. Any other reason found to be acceptable by the M/WBE Office in its sole discretion.

NOTE: The contractor shall submit such documentation as may reasonably be requested by the M/WBE Office to support the contractor's request. The time between the request by the M/WBE Office for additional documentation and the delivery of such documentation shall not be included within the time period that the M/WBE Office is required to respond as stated in subparagraph (a) above.

- b. If the M/WBE Office approves the deletion of a M/WBE and replacement by a non-M/WBE, such approval shall constitute a post award waiver to the extent of the value of the deleted subcontract.
 - c. If the M/WBE Office denies the request for change or deletion, the contractor may appeal the denial to the City Manager whose decision will be final.
5. Whenever contract amendments, change orders, purchase orders or extra work orders are made individually or in the aggregate, the contractor shall comply with the provisions of this ordinance with respect to the alternates, amendments, change orders, or extra work orders.

- a. If the amendment, change order, purchase order or extra work affects the subcontract of a M/WBE, such M/WBE shall be given the opportunity to perform such amendment, change order, purchase order or extra work.
 - b. If the amendment, change order, purchase order or extra work is or is not covered by any subcontractor performing like or similar work, and the amount of such amendment, change order, purchase order or extra work is \$50,000.00 or more, of the original contract amount, the contractor shall comply with Article 1, subsections 12.3 and 12.4 of this Attachment 1 (exclusive of the time requirements stated therein) with respect to such amendment, change order purchase order or extra work.
6. If the contractor/consultant in its bid/proposal included any second or lower tier subcontractor/subconsultant/supplier towards meeting the goal, it is the sole responsibility of the Offeror to report and document all subcontracting/subconsulting and/or supplier participation dollars counted towards the goal, irrespective of tier level. Failure to comply with the City's request to provide the required documentation shall entitle the City to withhold payments and/or to reject future bids/proposals from the Offeror until compliance with this ordinance is attained.
 7. Upon completion of the contract and within ten (10) City business days after receipt of final payment from the City, exclusive of the date the contractor receives payment, the contractor shall provide the M/WBE Office with the M/WBE **FINAL SUMMARY PAYMENT REPORT FORM** to reflect the final participation of each subcontractor/subconsultant and/or supplier (including non-M/WBEs) used on the project. Failure to comply with the City's request to provide the required documentation shall entitle the City to reject future bids from the contractor until compliance with this ordinance is attained.
 8. In the event a contractor is in non-compliance and is a subcontractor/subconsultant on a new quote; the contractor will be required to comply with this ordinance prior to a recommendation for award being made to the City Council.

VII. CONTRACT MONITORING, AND REPORTING:

- A. The M/WBE Office shall monitor compliance with these requirements during the term of the contract. If it is determined that there is cause to believe that a contractor or subcontractor has failed to comply with any of the requirements of this ordinance, or the contract provisions pertaining to M/WBE utilization, the M/WBE Office shall notify the contracting department and the contractor. The M/WBE Office shall attempt to resolve the non-compliance through conciliation. If the non-compliance cannot be resolved, the Manager and the contracting department shall submit written recommendations to the City Manager or designee, and if the City Manager concurs with the findings, sanctions shall be imposed as stated in ordinance.
- B. Whenever the M/WBE Office finds, after investigation, that a contracting department has failed to comply with the provisions of this ordinance, a written finding specifying the nature of the non-compliance shall be transmitted to the contracting department, and the M/WBE Office shall attempt to resolve any non-compliance through conference and conciliation. Should such attempt fail to resolve the non-compliance, the Manager shall transmit a copy of the findings of non-compliance, with a statement that conciliation was attempted and failed, to the City Manager who shall take appropriate action to secure compliance.
- C. The M/WBE Office may require such reports, information, and documentation from contractors, Offerors, contracting agencies, and the head of any department, division, or office of the City of Fort Worth, as are reasonably necessary to determine compliance with the requirements of this ordinance.

- D. Contracting departments shall maintain accurate records for each contract awarded, including the names of contractors providing quotes, dollar value, the nature of the goods or services to be provided, the name of the contractor awarded the contract, the efforts it employed to solicit quotes from M/WBEs, identifying for each its dollar value, the nature of the goods or services provided, and the name of the subcontractors/suppliers.
- E. The City Manager, with the advice and counsel of the MWBEAC in accord with City of Fort Worth Resolution No. 1148, shall submit an annual report to the City Council on the progress of the City toward the utilization goal established by this ordinance, together with an identification of problems and specific recommendations for improving the City's performance.

VIII. EXCEPTIONS AND WAIVERS:

- A. If an Offeror is unable to comply with the M/WBE goal requirements established in the Program Goal section of this ordinance, such Offeror shall submit one of the two forms listed below within the allotted time.
 - 1. A Prime Contractor Waiver Form (Attachment 1B) is submitted if the Offeror will perform the entire contract without subcontractors or suppliers.
 - 2. A Good Faith Effort Form (Attachment 1C) is submitted if the Offeror has a subcontracting and/or supplier opportunity but was unable to meet or exceed the project goal. The Offeror will submit requested documentation that demonstrates a good faith effort to comply with the goal requirements as described in the Program Goal section above.
- B. A contracting department may request the M/WBE Office to waive or modify the goal requirements for M/WBEs by submitting a Departmental Waiver Form, in writing, prior to solicitation of bids or proposals. The M/WBE Office may grant such a waiver or reduction upon determination that:
 - 1. The reasonable and necessary requirements of the contract render subcontracting or other participation of business other than the Offeror infeasible; or
 - 2. A public or administrative emergency exists which requires the goods or services to be provided with unusual immediacy; or
 - 3. Lack of sufficient M/WBE subcontracting/subconsulting/suppliers providing the services required by the contract are unavailable in the marketplace of the project, despite attempts to locate them; or
 - 4. The application of the provisions of this ordinance will impose an unwarranted risk on the City or unduly delay acquisition of the goods or services.
- C. Whenever the M/WBE Office denies a request to waive a goal; the contracting department may appeal that denial to the City Manager whose decision on the request shall be final.

IX. PROGRAM ADMINISTRATION:

- A. The City Manager, with the advice and counsel of the MWBEAC in accord with City of Fort Worth Resolution No. 1148, is authorized to establish and implement the regulations set forth in this ordinance. The M/WBE Office shall be responsible for the overall administration of the City's M/WBE Program, and its duties and responsibilities shall include:

1. Recommending rules and regulations to effectuate this ordinance;
 2. Maintaining a current listing of certified M/WBE firms for distribution internally and externally on contracts;
 3. Providing information, outreach (to include workshops, seminars, etc.) and needed assistance to M/WBEs to increase their ability to compete effectively for the award of City contracts;
 4. Investigating alleged violations of this ordinance and making written recommendations to appropriate City authorities for remedial action when appropriate;
 5. Developing and distributing all necessary forms, applications, and documents necessary to comply with this ordinance;
 6. Reviewing, on a regular basis, the progress of departments toward achieving the category goals for the utilization of minority and women business enterprises;
 7. Making recommendations to appropriate City staff regarding methods to further the policies and goals of this ordinance;
 8. Determining M/WBE compliance on bids and proposals before they are submitted to the City Council for award;
 9. Maintaining an accurate contract performance reporting system; and
 10. Compiling a report reflecting the progress in attaining the City's annual goal, quarterly and annually.
- B.** It shall be the responsibility of the contracting department to ensure that bids or proposals for the department's projects adhere to the procedures and provisions set forth in this ordinance.
1. The department director or designee shall assume primary responsibility for achieving the goals of this program and shall review, on a continuing basis, all aspects of the program's operations to assure that the purpose is being attained.
 2. The contracting department shall take the following action to ensure that M/WBEs have the maximum opportunity to participate on City contracts:
 - a. A written notification shall be sent to minority and women trade associations, contractor's associations, and minority and women chambers of commerce about the availability of formally advertised contracting opportunities no less than 28 days before bids are due;
 - b. All applicable contract solicitations shall include the requirements contained in this ordinance;
 - c. All contracting opportunities shall be evaluated in an effort to divide the total requirements of a contract to provide reasonable opportunities for M/WBE;
 - d. Establish procedures to ensure that all contractors' invoices are paid on construction, professional services and purchases as follows:
 01. Vertical and horizontal construction shall be paid twice monthly,
 02. Professional Services shall be paid within ten City business days after receipt of and approved invoice and
 03. Purchases shall be paid within ten City business days after receipt of an approved invoice.

- e. Establish guidelines to ensure that a notice to proceed is not issued until signed letters of intent evidencing receipt by the M/WBE or executed agreements with the M/WBE have been submitted along with the project work schedule, if applicable;
- f. Ensure that all required statistics and documentation are submitted to the M/WBE Office as requested; and
- g. If circumstances prevent the contracting department from meeting the 28-day advertising and notification requirements, the contracting department shall perform extensive outreach to M/WBE associations or other relevant organizations to inform them of the contracting opportunity.

X. SANCTIONS:

- A.** The GFE documentation shall demonstrate the Offeror's commitment and honest efforts to utilize M/WBE. The burden of preparing and submitting the GFE information is on the Offeror and will be evaluated as part of the responsiveness to the bid/proposal. An Offeror who intentionally and/or knowingly misrepresents facts in the documentation submitted will be classified as non-responsive and be subject to possible debarment.
- B.** A contractor's failure to make payments within five (5) City business days shall authorize the City to withhold payment from the contractor until compliance with this ordinance is attained.
- C.** Debarment:
 - 1. An Offeror who intentionally and/or knowingly misrepresents material facts shall be determined to be an irresponsible Offeror and barred from participating in City work for a period of time of not less than three (3) years.
 - 2. The failure of an Offeror to comply with this ordinance where such non-compliance constitutes a material breach of contract as stated herein, may result in the Offeror being determined to be an irresponsible Offeror and barred from participating in City work for a period of time of not less than one (1) year.
 - 3. The M/WBE Office will send a written statement of facts and a recommendation for debarment to the City Manager. The City Manager, after consultation with the Department of Law, will make the decision regarding debarment and send a certified notice to the Offeror.
 - 4. An Offeror that receives notification of debarment may appeal to an Appeal Board, hereinafter created, by giving written notice within ten (10) days from the date of receipt of the debarment notice, to the City Manager of its request for appeal.
 - 5. An Appeal Board, consisting of not less than three members appointed by the City Manager with the approval of the City Council, will meet within thirty (30) days from the date of receipt of the request for appeal of debarment, unless Offeror requests an extension of time. The Offeror will be notified of the meeting time and location.
 - 6. The Offeror will be afforded an opportunity to appear with Counsel if they so desire, submit documentary evidence, and confront any witness that the City presents.
 - 7. The Appeal Board will render its decision not more than thirty (30) days of the hearing and send a certified notice to the Offeror.

8. If the Appeal Board upholds the original debarment, the Offeror may appeal to the City Council within ten (10) days from the date of receipt of the Appeal Board's decision by giving written notice to the City Manager.
9. The appeal will be placed on the City Council agenda within thirty (30) days from receipt of written notice, unless Offeror requests an extension in writing.
10. From the date of notification of debarment and during the pendency of any appeal, the City will not consider offers from, award contracts to, renew or otherwise extend contracts with, or contract directly or indirectly through subcontracts with the Offeror pending the Appeal Board's decision.
11. Any M/WBE subcontractor or supplier who intentionally and/or knowingly misrepresents facts or otherwise violates the provisions of this ordinance may be determined to be irresponsible for a period not to exceed one (1) year, and if deemed irresponsible, such M/WBE shall not be included in calculating an Offeror's responsiveness and barred from bidding on City work.

XI. SEVERABILITY:

If any provision of this attachment or ordinance, the application thereof to any person or circumstance is held invalid for any reason in a court of competent jurisdiction, such invalidity shall not affect the other provisions of any other application of this attachment or ordinance which can be given effect without the invalid provision or application, and to this end, all the provisions of this attachment or ordinance are hereby declared to be severable.