

# A Resolution

NO. 4042-10-2011

## ADOPTING A PLAN FOR COMPLIANCE WITH TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 FOR USE WITH TEXAS DEPARTMENT OF TRANSPORTATION PROJECTS

**WHEREAS**, the City of Fort Worth is required, under Title VI of the Civil Rights Act of 1964 and subsequent federal legislation, to ensure that individuals, groups and organizations are protected from discrimination based on race, color or national origin in federally assisted transportation programs and activities; and

**WHEREAS**, the Texas Department of Transportation (TxDOT) is required under Title 23 Code of Federal Regulations 200.9(b)(7) to ensure that sub-recipients of federal financial assistance, including transportation funding provided to the City Fort Worth, comply with Title VI regulations; and

**WHEREAS**, TxDOT's Office of Civil Rights notified the City's Transportation and Public Works Department of a compliance review and provided assistance toward completion of the Title VI Plan;

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FORT WORTH, TEXAS:**

That the Title VI Plan attached hereto as Attachment "A" is adopted and hereby incorporated into official City records for use when the City is a sub-recipient of appropriate federal financial assistance.

Adopted this 25th day of October 2011.

APPROVED  
CITY COUNCIL

OCT 25 2011

*Marty Hendrix*  
City Secretary of the  
City of Fort Worth, Texas

ATTEST:

By: *Marty Hendrix*  
Marty Hendrix, City Secretary



FORT WORTH

*City of Fort Worth, Texas*  
**Mayor and Council Communication**

---

**COUNCIL ACTION: Approved on 10/25/2011 - Resolution No. 4042**

---

**DATE:** Tuesday, October 25, 2011

**REFERENCE NO.:** G-17426

**LOG NAME:** 20TITLE VI PLAN

**SUBJECT:**

Resolution Adopting a Plan for Compliance with Title VI of the Civil Rights Act of 1964 for Use with Texas Department of Transportation Projects (ALL COUNCIL DISTRICTS)

---

**RECOMMENDATION:**

It is recommended that the City Council adopt the attached Resolution adopting a plan for the City of Fort Worth which documents City compliance with Title VI of the Federal Civil Rights Act of 1964 and subsequent Acts that protect individuals, groups and organizations from discrimination on the basis of race, color or national origin to apply when the City participates in federally assisted transportation related programs and activities generally administered by the Texas Department of Transportation.

**DISCUSSION:**

On January 18, 2011, the Texas Department of Transportation (TxDOT) Office of Civil Rights notified the City of Fort Worth of its intention to conduct a Title VI compliance review of the City's Transportation and Public Works Department. The City is required, under Title VI of the Civil Rights Act of 1964 and other subsequent federal legislation, to ensure that individuals, groups and organizations are protected from discrimination based on race, color or national origin in federally assisted programs and activities. TxDOT is required under Title 23 Code of Federal Regulations 200.9(b)(7) to conduct Title VI compliance reviews of cities, counties, planning agencies and other sub-recipients of federal financial assistance.

The review process includes a desk audit and issuance of a report of findings. Documents required for the desk audit include such items as Title VI Assurances and policy statement, procedures for addressing external discrimination, accommodation for persons with limited English proficiency, the City's nondiscrimination self monitoring process and identification of Title VI Liaison. These elements are typically compiled in a Title VI Plan that is adopted by the agency receiving the federal funds. These topics are currently addressed in numerous separate areas of City policy. City Code specifically prohibits discrimination in City services and the City has a well established M/WBE program as well as established fair housing standards. However, the City has no formal documented Title VI Plan that contains all the elements in one document.

With guidance from TxDOT Division of Civil Rights, Staff from the City's Transportation and Public Works, Legal, Human Resource and the M/WBE Office developed this proposed Title VI Plan for the City. The document is attached and is being presented to the Council for adoption.

**FISCAL INFORMATION / CERTIFICATION:**

The Financial Management Services Director certifies that this action will have no material effect on City funds.

**FUND CENTERS:**

**TO Fund/Account/Centers**

**FROM Fund/Account/Centers**

---

**CERTIFICATIONS:**

**Submitted for City Manager's Office by:**

Fernando Costa (6122)

**Originating Department Head:**

Douglas W. Wiersig (7801)

**Additional Information Contact:**

---

Mike Robinson (2448)

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

## TABLE OF CONTENTS

Subject	Page No.
I. DEFINITIONS .....	1
II. PURPOSE .....	4
III. CERTIFICATION .....	4
IV. PROGRAM GOAL SETTING .....	4
V. APPLICABLE CONTRACTS	
1. CONSTRUCTION .....	5
MWBE UTILIZATION REQUIREMENTS	
COUNTING PARTICIPATION	
PAYMENTS	
RETAINAGE	
2. PROFESSIONAL SERVICES .....	8
MWBE UTILIZATION REQUIREMENTS	
COUNTING PARTICIPATION	
PAYMENTS	
3. PURCHASES .....	10
MWBE UTILIZATION REQUIREMENTS	
COUNTING PARTICIPATION	
PAYMENTS	
BEST VALUE CRITERIA	
VI. POST AWARD COMPLIANCE .....	13
VII. CONTRACT MONITORING AND REPORTING .....	15
VIII. EXCEPTIONS AND WAIVERS .....	16
IX. PROGRAM ADMINISTRATION .....	16
X. SANCTIONS .....	18
XI. SEVERABILITY .....	19

**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 1<sup>st</sup> tier, a payment by a subcontractor to its supplier is considered 2<sup>nd</sup> 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 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.

**SPECIAL INSTRUCTION TO BIDDERS  
(TRANSPORTATION AND PUBLIC WORKS)**

- 1) **BID SECURITY:** Cashier's check or an acceptable bidder's bond payable to the City of Fort Worth, in an amount of not less than five percent (5%) of the total of the bid submitted must accompany the bid, and is subject to forfeit in the event the successful bidder fails to execute the contract documents within ten (10) days after the contract has been awarded.

To be an acceptable surety on the bid bond, the surety must be authorized to do business in the state of Texas. In addition, the surety must

- a) hold a certificate of authority from the United States secretary of the treasury to qualify as a surety on obligations permitted or required under federal law; or
  - b) have obtained reinsurance for any liability in excess of \$100,000 from a reinsurer that is authorized and admitted as a reinsurer in the state of Texas and is the holder of a certificate of authority from the United States secretary of the treasury to qualify as a surety on obligations permitted or required under federal law. Satisfactory proof of any such reinsurance shall be provided to the City upon request. The City, in its sole discretion, will determine the adequacy of the proof required herein.
- 2) **PAYMENT, PERFORMANCE AND MAINTENANCE BONDS:** The successful bidder entering into a contract for the work will be required to give the City surety in a sum equal to the amount of the contract awarded. In this connection, the successful bidder shall be required to furnish a performance bond and a payment bond, both in a sum equal to the amount of the contract awarded. The form of the bond shall be as herein provided and the surety shall be acceptable to the City. All bonds furnished hereunder shall meet the requirements of Chapter 2253, Texas Government Code.

In order for a surety to be acceptable to the City, the surety must

- a) hold a certificate of authority from the United States secretary of the treasury to qualify as a surety on obligations permitted or required under federal law; or
- b) have obtained reinsurance for any liability in excess of \$100,000 from a reinsurer that is authorized and admitted as a reinsurer in the state of Texas and is the holder of a certificate of authority from the United States secretary of the treasury to qualify as a surety on obligations permitted or required under federal law. Satisfactory proof of any such reinsurance shall be provided to the City upon request. The City, in its sole discretion, will determine the adequacy of the proof required herein.

The City will accept no sureties who are in default or delinquent on any bonds or who have an interest in any litigation against the City. Should any surety on the contract be determined unsatisfactory at any time by the City, notice will be given to the contractor to that effect and the contractor shall immediately provide a new surety satisfactory to the City.

If the contract amount is in excess of \$25,000, a Payment Bond shall be executed, in the amount of the contract, solely for the protection of all claimants supplying labor and materials in the prosecution of the work.

If the contract amount is in excess of \$100,000, a Performance Bond shall be executed, in the amount of the contract conditioned on the faithful performance of the work in accordance with the plans, specifications, and contract documents. Said bond shall solely be for the protection of the City of Fort Worth.

All contracts shall require a maintenance bond in the amount of one hundred percent (100%) of the original contract amount to guarantee the work for a period of two (2) years after the date of acceptance of the project from defects in workmanship and/or material.

- 3) **LIQUIDATED DAMAGES:** The Contractor's attention is called to Part 1, Item 8, paragraph 8.6, of the "General Provisions" of the *Standard Specifications for Street and Storm Drain Construction* of the City of Fort Worth, Texas, concerning liquidated damages for late completion of projects.
- 4) **AMBIGUITY:** In case of ambiguity or lack of clearness in stating prices in the proposal, the City reserves the right to adopt the most advantageous construction thereof to the City or to reject the proposal.
- 5) **EMPLOYMENT:** All bidders will be required to comply with City Ordinance No. 7278 as amended by City Ordinance No. 7400 (Fort Worth City Code Section 13-A-21 through 13-A-29) prohibiting discrimination in employment practices.
- 6) **WAGE RATES:** Section 8.8 of the Standard Specifications for Street and Storm Drain Construction is deleted and replaced with the following:
  - a) The contractor shall comply with all requirements of Chapter 2258, Texas Government Code, including the payment of not less than the rates determined by the City Council of the City of Fort Worth to be the prevailing wage rates in accordance with Chapter 2258, Texas Government Code. Such prevailing wage rates are included in these contract documents.
  - b) The contractor shall, for a period of three (3) years following the date of acceptance of the work, maintain records that show
    - 1) the name and occupation of each worker employed by the contractor in the construction of the work provided for in this contract; and
    - 2) the actual per diem wages paid to each worker. These records shall be open at all reasonable hours for inspection by the City. The provisions of the special provision titled "Right to Audit" pertain to this inspection.
  - c) The contractor shall include in its subcontracts and/or shall otherwise require all of its subcontractors to comply with paragraphs a) and b) above.
  - d) With each partial payment estimate or payroll period, whichever is less, an affidavit stating that the contractor has complied with the requirements of Chapter 2258, Texas Government Code.
  - e) The contractor shall post the prevailing wage rates in a conspicuous place at the site of the project at all times.
- 7) **FINANCIAL STATEMENT:** A current certified financial statement may be required by the Department of Transportation and Public Works if required for use by the CITY OF FORT WORTH in determining the successful bidder. This statement, if required, is to be prepared by an independent Public Accountant holding a valid permit issued by an appropriate State Licensing Agency.

- 8) **INSURANCE:** Within ten (10) days of receipt of notice of award of contract, the Contractor must provide, along with executed contract documents and appropriate bonds, proof of insurance for Worker's Compensation and Comprehensive General Liability (Bodily Injury-\$500,000 each person, \$1,000,000 each occurrence (\$2,000,000 aggregate limit); Property Damage - \$250,000 each occurrence). The City reserves the right to request any other insurance coverage as may be required by each individual project.
- 9) **ADDITIONAL INSURANCE REQUIREMENTS:**
- a) The City, its officers, employees and servants shall be endorsed as an additional insured on Contractor's insurance policies excepting employer's liability insurance coverage under Contractor's workers' compensation insurance policy.
  - b) Certificates of insurance shall be delivered to the City of Fort Worth, contract administrator in the respective department as specified in the bid documents, 1000 Throckmorton Street, Fort Worth, TX 76102, prior to commencement of work on the contracted project.
  - c) Any failure on part of the City to request required insurance documentation shall not constitute a waiver of the insurance requirements specified herein.
  - d) Each insurance policy shall be endorsed to provide the City a minimum thirty days notice of cancellation, non-renewal, and/or material change in policy terms or coverage. A ten days notice shall be acceptable in the event of non-payment of premium.
  - e) Insurers must be authorized to do business in the State of Texas and have a current A.M. Best rating of A: VII or equivalent measure of financial strength and solvency.
  - f) Deductible limits, or self-funded retention limits, on each policy must not exceed \$10,000.00 per occurrence unless otherwise approved by the City.
  - g) Other than worker's compensation insurance, in lieu of traditional insurance, City may consider alternative coverage or risk treatment measures through insurance pools or risk retention groups. The City must approve in writing any alternative coverage.
  - h) Workers' compensation insurance policy(s) covering employees employed on the project shall be endorsed with a waiver of subrogation providing rights of recovery in favor of the City.
  - i) City shall not be responsible for the direct payment of insurance premium costs for contractor's insurance.
  - j) Contractor's insurance policies shall each be endorsed to provide that such insurance is primary protection and any self-funded or commercial coverage maintained by City shall not be called upon to contribute to loss recovery.
  - k) In the course of the project, Contractor shall report, in a timely manner, to City's officially designated contract administrator any known loss occurrence which could give rise to a liability claim or lawsuit or which could result in a property loss.
  - l) Contractor's liability shall not be limited to the specified amounts of insurance required herein.
  - m) Upon the request of City, Contractor shall provide complete copies of all insurance policies required by these contract documents.

- 10) **NONRESIDENT BIDDERS:** Pursuant to Article 601g, Texas Revised Civil Statutes, the City of Fort Worth will not award this contract to a non resident bidder unless the nonresident's bid is lower than the lowest bid submitted by a responsible Texas resident bidder by the same amount that a Texas resident bidder would be required to underbid a nonresident bidder to obtain a comparable contract in the state in which the nonresident's principal place of business is located.

"Nonresident bidder" means a bidder whose principal place of business is not in this state, but excludes a contractor whose ultimate parent company or majority owner has its principal place of business in this state.

"Texas resident bidder" means a bidder whose principal place of business is in this state, and includes a contractor whose ultimate parent company or majority owner has its principal place of business in this state.

This provision does not apply if this contract involves federal funds.

The appropriate blanks of the Proposal must be filled out by all nonresident bidders in order for its bid to meet specifications. The failure of a nonresident contractor to do so will automatically disqualify that bidder.

- 11) **MINORITY AND WOMEN BUSINESS ENTERPRISES:** In accordance with City of Fort Worth Ordinance No. 15530, the City of Fort Worth has goals for the participation of minority business enterprises and women business enterprises in City contracts. A copy of the Ordinance can be obtained from the Office of the City Secretary. The bidder shall submit the MBE/WBE UTILIZATION FORM SUBCONTRACTOR/SUPPLIER UTILIZATION FORM, PRIME CONTRACTOR WAIVER FORM, and/or the GOOD FAITH EFFORT FORM ("with Documentation") and/or the JOINT VENTURE FORM as appropriate. The Documentation must be received by the managing department no later than 5:00 p.m., five (5) City business days after the bid opening date. The bidder shall obtain a receipt from the appropriate employee of the managing department to whom delivery was made. Such receipt shall be evidence that the documentation was received by the City. Failure to comply shall render the bid non-responsive.

Upon request, Contractor agrees to provide the Owner complete and accurate information regarding actual work performed by a minority business enterprise (MBE) and/or women business enterprise (WBE) on the contract and payment thereof. Contractor further agrees to permit any audit and/or examination of any books, records or files in its possession that will substantiate the actual work performed by an MBE and/or WBE. The misrepresentation of facts (other than a negligent misrepresentation) and/or commission of fraud by the Contractor will be grounds for termination of the contract and/or initiating action under appropriate Federal, State or local laws or ordinances relating to false statements. Further, any such misrepresentation facts (other than a negligent misrepresentation) and/or commission of fraud will result in the Contractor being determined to be irresponsible and barred from participating in City work for a period of time of not less than three (3) years.

- 12) **AWARD OF CONTRACT:** Contract will be awarded to the lowest responsive bidder. The City reserves the right to reject any and/or all bids and waive any and/or all irregularities. No bid may be withdrawn until the expiration of ninety (90) days from the date the M/WBE UTILIZATION FORM, PRIME CONTRACTOR WAIVER FORM, GOOD FAITH EFFORT FORM, and/or the JOINT VENTURE FORM ("Documentation") as appropriate is received by the City. The award of contract, if made, will be within ninety (90) days after this documentation is received, but in no case will the award be made until all the responsibility of the bidder to whom it is proposed to award the contract has been verified.
- 13) **PAYMENT:** The Contractor will receive full payment (minus retainage) from the City for all work for each pay period. Payment of the remaining amount shall be made with the final payment, and upon acceptance of the project.
- 14) **ADDENDA:** Bidders are responsible for obtaining all addenda to the contract documents prior to the bid receipt time and acknowledging them at the time of bid receipt. Information regarding the status of addenda may be obtained on-line on City's Buzzsaw site or by contacting the City Project Manager. Bids that do not acknowledge all applicable addenda may be rejected as non-responsive.
- 15) **CONTRACTOR COMPLIANCE WITH WORKER'S COMPENSATION LAW:**

a) Workers Compensation Insurance Coverage

1) Definitions:

Certain of coverage ("certificate"). A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory worker's compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.

Duration of the project-includes the time from the beginning of the work on the project until the contractor's/person's work on the project has been completed and accepted by the governmental entity.

Persons providing services on the project ("subcontractor" in §406.096)-includes all persons or entities performing all or part of the services the contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or toner services related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

- 2) The contractor shall provided coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011 (44) or all employees of the contractor providing services on the project, for the duration of the project.

- 3) The Contractor must provide a certificate of coverage to the governmental entity prior to being awarded the contract.
- 4) If the coverage period shown on the contractor's current certificate of coverage ends during the duration of the project, the contractor must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.
- 5) The contractor shall obtain from each person providing services on a project, and provide to the governmental entity:
  - a) a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and
  - b) no later than seven days after receipt by the contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.
- 6) The contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter
- 7) The contractor shall notify the governmental entity in writing by certified mail or personal delivery, within ten (10) days after the contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.
- 8) The contractor shall post on each project site a notice, in the text, form and manner prescribed by the Texas Worker's Compensation Commission, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.
- 9) The contractor shall contractually require each person with whom it contracts to provide services on a project, to:
  - a) provide coverage, based on proper reporting on classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas labor Code, Section 401.011 (44) for all of its employees providing services on the project, for the duration of the project;
  - b) provide to the contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;
  - c) provide the contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
  - d) obtain from each other person with whom it contracts, and provide to the contractor:

- 1) a certificate of coverage, prior to the other person beginning work on the project; and
  - 2) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
- e) retain all required certificates of coverage on file for the duration of the project and for one year thereafter.
  - f) notify the governmental entity in writing by certified mail or personal delivery, within ten (10) days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and
  - g) contractually require each person with whom it contracts, to perform as required by paragraphs (1) - (7), with the certificates of coverage to be provided to the person for whom they are providing services.
- 10) By signing this contract or providing or causing to be provided a certificate of coverage, the contractor is representing to the governmental entity that all employees of the contractor who will provide services on the project will be covered by worker's compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the contractor to administrative, criminal, civil penalties or other civil actions.
- 11) The contractor's failure to comply with any of these provisions is a breach of contract by the contractor does not remedy the breach within ten days after receipt of notice of breach from the governmental entity
- b) The contractor shall post a notice on each project site informing all persons providing services on the project that they are required to be covered, and stating how a person may verify current coverage and report failure to provide coverage. This notice does not satisfy other posting requirements imposed by the Texas Worker's Compensation Act or other Texas Worker's Compensation Commission rules. This notice must be printed with a title in at least 30 point bold type and text in at least 19 point normal type, and shall be in both English and Spanish and any other language common to the worker population. The text for the notices shall be the following text, without any additional words or changes:

**"REQUIRED WORKER'S COMPENSATION COVERAGE"**

The law requires that each person working on this site or providing services related to this construction project must be covered by worker" compensation insurance. This includes persons providing, hauling or delivering equipment or materials, or providing labor or transportation or other service related to the project, regardless of the identity of their employer or status as an employee".

Contact the Texas Workers' Compensation Commission to receive information on the legal requirement for coverage, to verify whether your employer has provided the required coverage, or to report an employer's failure to provide coverage".

16) **NON DISCRIMINATION:** The contractor shall not discriminate against any person or persons because of sex, race, religion, color, or national origin and shall comply with the provisions of City Ordinance 7278, as amended by City Ordinance 7400 (Fort Worth City Code Sections 13A-21 through 13A-29), prohibiting discrimination in employment practices.

17) **AGE DISCRIMINATION:** In accordance with the policy ("Policy") of the Executive Branch of the federal government, contractor covenants that neither it nor any of its officers, members, agents, or employees, will engage in performing this contract, shall, in connection with the employment, advancement or discharge of employees or in connection with the terms, conditions or privileges of their employment, discriminate against person because of their age except on the basis of a bona fide occupational qualification, retirement plan or statutory requirement.

Contractor further covenants that neither it nor its officers, members, agents, or employees, or person acting on their behalf, shall specify, in solicitations or advertisements for employees to work on this Contract, a maximum age limit for such employment unless the specified maximum age limit is based upon a bona fide occupational qualification, retirement plan or statutory requirement.

Contractor warrants it will fully comply with the Policy and will defend, indemnify and hold City harmless against any and all claims or allegations asserted by third parties against City arising out of

Contractor's alleged failure to comply with the above referenced Policy concerning age discrimination in the performance of this Contract.

18) **DISCRIMINATION DUE TO DISABILITY:** In accordance with the provisions of the Americans with Disabilities Act of 1990 ("ADA"), Contractor warrants that it will not unlawfully discriminate on the basis of disability in the provision of services to the general public, nor in the availability, terms and/or conditions of employment for applicants for employment with, or current employees of Contractor. Contractor warrants it will fully comply with ADA's provisions and any other applicable federal state and local laws concerning disability and will defend indemnify and hold City harmless against any claims or allegations asserted by third parties against City arising out of Contractor's alleged failure to comply with the above-referenced laws concerning disability discrimination in the performance of this Contract.

19) **PROGRESS PAYMENTS, FINAL PAYMENT, PROJECT ACCEPTANCE AND WARRANTY:**

- a) The contractor will receive full payment (less retainage) from the city for each pay period.
- b) Payment of the retainage will be included with the final payment after acceptance of the project as being complete.
- c) The project shall be deemed complete and accepted by the City as of the date the final punch list has been completed, as evidenced by a written statement signed by the contractor and the City.
- d) The warranty period shall begin as of the date that the final punch list has been completed.
- e) Bills Paid Affidavit and Consent of Surety shall be required prior to final payment becoming due and payable.

- f) In the event that the Bills Paid Affidavit and Consent of Surety have been delivered to the city and there is a dispute regarding
    - 1) final quantities, or
    - 2) liquidated damages, city shall make a progress payment in the amount that city deems due and payable.
  - g) In the event of a dispute regarding either final quantities or liquidated damages, the parties shall attempt to resolve the differences within 30 calendar days.
- 20) **PREQUALIFICATION REQUIREMENTS:** All contractors submitting bids are required to be prequalified by the Fort Worth Transportation and Public Works Department prior to submitting bids for pavement contracts. This prequalification process will establish a bid limit based on a technical evaluation and financial analysis of the contractor. It is the bidder's responsibility to submit the following documentation: a current financial statement, an acceptable experience record, an acceptable equipment schedule as outlined in the PREQUALIFICATION REQUIREMENTS FOR PAVING CONTRACTORS most recent version, and any other documents the Department may deem necessary, to the Director of Transportation and Public Works at least fourteen (14) calendar days prior to the date of the opening of bids.
- a) The financial statement required shall have been compiled by an independent certified public accountant or an independent public accountant holding a valid permit issued by an appropriate State licensing agency and shall have been so prepared as to reflect the financial status to the submitting company. This statement must be current and not more than one (1) year old. In the case that a bidding date falls within the time a new statement is being prepared, the previous statement shall be updated with proper verification.
  - b) For an experience record to be considered to be acceptable for a given project, it must reflect the experience of the firm seeking qualification in work of both the same nature and technical level as that of the project for which bids are to be received.
  - c) The Director of the Transportation and Public Works Department shall be the sole judge as to the level of project a Contractor is qualified to bid based upon a review of the information submitted.
  - d) The City, at its sole discretion, may reject any bid for failure by the Contractor to demonstrate acceptable experience, expertise or financial wherewithal to perform the work included in the project.
  - e) Any proposals submitted by a non-prequalified bidder shall be returned unopened, and if inadvertently opened, shall not be considered
  - f) The City will attempt to notify prospective bidders whose qualifications (financial or experience) are not deemed to be suitable for the nature and/or magnitude of the project on which bids are to be received. Failure to notify shall not be a waiver of any necessary prequalification.
  - g) Any contractor who becomes qualified and remains in good standing with the City will not be required to submit for re-qualification for 2 years from the date of having last being qualified. Re-qualification procedures are included in the PREQUALIFICATION REQUIREMENTS FOR PAVING CONTRACTORS document.

**City of Fort Worth, Texas**  
**Mayor and Council Communication**

**COUNCIL ACTION: Approved on 8/16/2011**

**DATE:** Tuesday, August 16, 2011

**REFERENCE NO.:** \*\*C-25102

**LOG NAME:** 17FY11TXDOTDBEMOU

**SUBJECT:**

Authorize Execution of a Memorandum of Understanding with the Texas Department of Transportation to Adopt and Adhere to Its Disadvantaged Business Enterprise Program on City Projects that Receive Funds from the Federal Highway Administration Through the Texas Department of Transportation for the Purpose of Assisting with Construction and Design Costs (ALL COUNCIL DISTRICTS)

**RECOMMENDATION:**

It is recommended that the City Council authorize execution of a Memorandum of Understanding adopting the Texas Department of Transportation's Disadvantaged Business Enterprise Program, inclusive of all attachments, which has been approved by the Federal Highway Administration.

**DISCUSSION:**

The City designs and constructs certain projects that are funded in part or wholly through monies received from the Federal Highway Administration (FHWA) through the Texas Department of Transportation (TxDOT). Since TxDOT is the recipient of and administers these monies, it must ensure that all associated federal requirements are adhered to by all of its subrecipients, including the requirements of TxDOT's FHWA approved Disadvantaged Business Enterprise (DBE) Program. This Memorandum of Understanding (MOU), with its associated attachments, provides TxDOT with the necessary assurance that the City will solicit, contract, expend project funds and administer projects in compliance with TxDOT's DBE Program. TxDOT has approximately 70 similar MOUs in place with other public agencies and cities throughout Texas including the cities of Arlington, Austin, El Paso, Houston and San Antonio.

Since the processes governed by the City's M/WBE Ordinance and DBE Program are consistent with TxDOT's DBE Program, it will not require the City to make any substantive changes to its existing processes or incur any material costs. Also, this MOU does not obligate any City funds to projects beyond those funds that are approved as part of the City's normal project funding and approval process.

**FISCAL INFORMATION / CERTIFICATION:**

The Financial Management Services Director certifies that this action will have no material effect on City funds.

**FUND CENTERS:**

**TO Fund/Account/Centers**

**FROM Fund/Account/Centers**

**CERTIFICATIONS:**

**Submitted for City Manager's Office by:**

Susan Alanis (8180)

**Originating Department Head:**

Jay Chapa (5804)

**Additional Information Contact:**

William Johnson (212-2674)

**ATTACHMENTS**

1. TX DOT List of Cities with an MOU.pdf (CFW Internal)
2. TX DOT MOU Attachments.pdf (CFW Internal)
3. TX DOT MOU Form.pdf (CFW Internal)
4. TX DOT MOU Instructions.pdf (CFW Internal)

City of Fort Worth

# **Title VI Plan**

Adopted September 20, 2011 by Fort Worth City Council

## **Introduction and Purpose I**

The purpose of this document is to outline the City of Fort Worth's (City's) plan for addressing Federal and state non-discrimination requirements (Environmental Justice) outlined under Title VI, Federal Executive Order 12898 and other related regulations and statutes. It also outlines the City's Public Participation Plan for addressing the requirements of Title VI. Although they are separate topics, Environmental Justice and Public Participation are closely intertwined issues and complement one another in ensuring fair and equitable distribution of transportation services and facilities.

Public participation is essential for the successful implementation of major transportation projects. The involvement of local citizens is important when designing a program in order to ensure that it meets the needs of the public. It also forms a good barometer for effectively measuring the program's success after implementation. Effective public participation provides transportation officials with new ideas and alerts them to potential environmental justice concerns during the planning stage of a project. Participation also helps impart a sense of ownership among the people, particularly among those most directly impacted by a project.

### **The City of Fort Worth**

The City of Fort Worth is a municipality of 741,000 residents of which approximately 288,000 (39%) of are categorized as minority. The City has applied for and received federal grants for transportation related projects primarily through the Texas Department of Transportation. Using a professional staff of engineers, planners, mappers, economic development specialists and others, the City provides a range of transportation development related services such as:

- Transportation and land use planning and programming
- Economic and community development programs
- Transportation infrastructure design and construction
- Mapping and others

It is essential that services provided using federal funds comply with the legal guidelines and requirements stipulated in the grant of these funds.

**City of Fort Worth  
Title VI Policy**

**D) Title VI Assurances**

**Assurances**

The City of Fort Worth assures that no person shall, on the grounds of race, color, national origin, income, gender, age, disability or sexual orientation, as provided by Title VI of the Civil Rights Act of 1964 and the Civil Rights Restoration Act of 1987 (PL 100.259), be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity. The City further assures that every effort will be made to prevent negative impacts on minority and low-income populations due to discrimination in its programs, policies, and activities. Every effort will be made to ensure nondiscrimination in all of its programs and activities, whether or not those programs and activities are federally funded. Additionally, the City will take reasonable steps to provide adequate access to services for persons with Limited English Proficiency.

The City's Title VI Coordinator is responsible for initiating and monitoring Title VI activities, preparing required reports, and performing other Title VI responsibilities as required by Title 23 Code of Federal Regulations (CFR) Part 200, and Title 49 CFR Part 21.



\_\_\_\_\_  
Tom Higgins  
City Manager  
City of Fort Worth

11/10/11

\_\_\_\_\_  
Date

## II) Title VI policy Statement

### Policy Statement, Authorities and Citations

The City of Fort Worth assures that no person shall, on the grounds of race, color, national origin, income, gender, age, disability or sexual orientation, as provided by Title VI of the Civil Rights Act of 1964 and the Civil Rights Restoration Act of 1987 (PL 100.259), be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity. The City's laws prohibiting discrimination in employment practices and other activities within the City are codified in Fort Worth City Code Chapter 17, Sections 17-66 – 17-71. The City of Fort Worth Code is a public document available on the City's website and from the City Secretary's Office. A copy of the City of Fort Worth Municipal Code is also available via hyperlink. <http://www.municode.com/library/clientCodePage.aspx?clientID=2265>

In the event that the City of Fort Worth distributes Federal aid funds to another entity, the City of Fort Worth will include Title IV language in all written agreements and will monitor for compliance.

### Legal Authority

**Title VI of the Civil Rights Act of 1964** created a foundation for future environmental justice regulations. Since the establishment of Title VI, environmental justice has been considered in all City transportation related projects. Section 42.104 of Title VI and related statutes require Federal agencies to ensure that no person is excluded from participation in, denied the benefit of, or subjected to discrimination on the basis of race, color, national origin, income, gender, age, and disability, under any program or activity receiving Federal financial assistance.

**The National Environmental Policy Act of 1969 (NEPA)** addresses both social and economic impacts of environmental justice. NEPA stresses the importance of providing safety, good health, and aesthetically pleasing surroundings for all Americans. It also provides a requirement for taking a "systematic, interdisciplinary approach" to aid while considering environmental and community factors in decision making.

**The Civil Rights Restoration Act of 1987** broadened the scope of Title VI coverage by expanding the definition of terms "programs and activities" to include all programs or activities of Federal Aid recipients, sub-recipients, and contractors, whether such programs and activities are federally assisted or not (Public Law 100-209 [S. 557] March 22, 1988).

**On February 11, 1994, President Clinton signed Executive Order 12898:** Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations. This legislation directed every Federal agency to make Environmental Justice part of its mission by indentifying and addressing all programs, policies and activities that affect human health, or the environment, so as to identify and avoid disproportionately high and adverse effects on minority and low-income populations.

Rather than being reactive, Federal, State, local and tribal agencies must be proactive when it comes to determining better methods to serve the public, who rely on transportation systems and services to improve their quality of life.

In April 1997, as a reinforcement to Executive Order 12898, The United States Department of Transportation (DOT) issued an Order on Environmental Justice (DOT Order 5610.2), which summarized and expanded upon the requirements of Executive Order 12898 to include all policies, programs and other activities that are undertaken, funded or approved by the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA) or other U.S. DOT components.

In December 1997, the FHWA issued the FHWA Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (DOT Order 6640.23), which mandated the FHWA and all its subsidiaries implement the principles of Executive Order 12898 and U.S. DOT Order 5610.2 into all of its programs, policies and activities.

On October 7, 1999, the FHWA and the FTA issued a memorandum Implementing Title VI Requirements in Metropolitan and Statewide Planning. This memorandum provides clarification for field offices on how to ensure that environmental justice is considered during current and future planning certification reviews. The intent of this memorandum was for planning officials to understand that environmental justice is equally important during the planning stages as it is during the projects development stages.

## **Organization and Staffing**

### **III) Title VI Coordinator**

The City of Fort Worth (CFW) Title VI Administrator is Mike Robinson, Business Manager, Transportation and Public Works Department. The City's Transportation and Public Works Department is responsible for initiating and monitoring Title VI compliance activities. The Title VI Coordinator reports to the Director of Transportation and Public Works. The Title VI Coordinator will be responsible for ongoing administration of the program including preparing reports and performing other responsibilities as required by 23 Code of Federal Regulations (CFR) 200 and 49 Code of Federal Regulation 21.

**Program Administration.** Ensure compliance with Title VI assurances, policies, and program objectives, perform Title VI program reviews to assess administrative procedures, staffing, and resources and provide recommendations as required to the City Manager.

**Complaint Resolution.** Review written Title VI complaints received by the City or TxDOT and work with the City's Human Relations Unit to ensure every effort is made to resolve complaints.

**Data Collection** Ensure statistical data related to race, age, color, national origin, income level, language spoken, and sex of the City's population is collected and appropriately analyzed.

**Environmental Impact Statements Preparation.** Ensure that available census data are included as a part of all Environmental Impact Statements/Assessments (EIS/EIA) for receiving Federal Highway Administration or other Federal assistance.

**Training Program Development.** Facilitate training programs on Title VI issues and regulations for City employees, contractors and sub- recipients.

**Title VI Plan Update.** Annually review and update the City's Title VI Plan for compliance, and submit to the TXDOT Compliance Programs Director. Ensure the following areas are adequately addressed during the annual update:

- Title VI complaint procedures
- Record of Title VI investigations, complaints or lawsuits
- Plan to involve persons with Limited English Proficiency (LEP)
- Title VI notices to the public
- Summary of public outreach and involvement activities and a description of steps taken to ensure that minority and disadvantaged persons had meaningful access to these activities

- Annual report of Title VI accomplishments and changes to the program in the preceding Federal fiscal year

**Public Dissemination of Information.** Work with City staff to develop and disseminate Title VI program information to City employees, and sub-recipients, including contractors, subcontractors, consultants and the general public. These public dissemination programs could include actions such as posting official statements of Title VI language in contracts or other agreements and on the City's website. It could also include annual publication of the City's Title VI Policy Statement in general circulation newspaper(s) and in specially prepared informational brochures. Other forms of dissemination will include public announcements or notices of proposed projects, hearings, meetings, or formation of public advisory boards, in newspapers or other media reaching the affected community. Ensure the full utilization of available minority publications or media; and, where appropriate, provide written or verbal information in languages other than English.

**Elimination of Discrimination.** Work with the City's Community Relations Division to establish procedures for promptly resolving deficiencies and implementing procedures to eliminate discriminatory practices that may exist in any City processes.

**Maintaining Legislative and Procedural Information.** Maintain, update and make available to the public all pertinent Federal laws, rules and regulations and TxDOT guidelines.

#### **IV) Discrimination Complaint Processing Procedures**

The City of Fort Worth Human Relations Unit (HRU) provides information and services related to basic human rights, including enforcement of the City's anti-discrimination ordinance, federal housing, and employment and accommodation laws. The Fort Worth Human Relations Commission is a certified Fair Housing Assistance Program (FHAP) and a certified Fair Employment Practice Agency (FEPA). All procedures followed by the HRU are concurrent with HUD and EEOC requirements as a FHAP and FEPA.

The Human Relations Unit (HRU) has the authority to enforce City ordinances and federal laws that prohibit discrimination in the areas housing, employment and public accommodations. The Unit includes a staff of investigators and support personnel who can receive complaints if the City has jurisdiction, work toward conciliation with the parties involved, conduct investigations and issue a charge or determination if conciliation is not reached.

#### **V) Has the City been named in any external discrimination complaints or lawsuits during the past three years—dates, basis, issues and disposition of complaints.**

- The City has not been named in any external discrimination complaints or lawsuits during the past three years.

## **VI) Access for Limited English Proficient Persons**

Based on the 2010 Census, 34% of the City's population is of Hispanic origin. The City ensures that all communication with the general public about transportation related projects are communicated officially in English and Spanish. During the process of identifying the streets and other capital projects to be included in the City's capital development construction program, the City encourages significant community interaction. There is ongoing dialogue with citizens and all communication material including brochures, and information news letters are always published in English and Spanish. During the design and project construction phases of each individual project, information cards and letters are mailed to all households that could potentially be impacted by the project. These information items are always printed in English and Spanish.

The City of Fort Worth also maintains a list of staff members who speak languages other than English. These individuals receive special Bi-lingual pay for performing as-needed translation services for the City. They are available to assist the City with verbal and written translation into languages other than English, and to work with individuals and community organizations with limited English proficiency. When necessary, the City also uses professional translation services. When there are issues or actions that impact concentrated populations of non-English speaking people, the appropriate community media, in applicable language(s), is used as a medium for delivering live notices and announcements. The City will publish this Title VI Program on its website in the most common language used in Fort Worth. For published materials targeted to non-English speaking communities, the City will utilize professional translation services to insure accuracy.

## **VII) Public Participation Plan**

The City of Fort Worth promotes an environment that encourages citizen involvement in city government. The City has developed extensive public outreach mechanisms for addressing the City's diverse communities. The City maintains a website, [www.fortworthgov.org](http://www.fortworthgov.org), which is updated frequently. The site contains information on the City's responsibilities, programs, publications, releases and other contact information for staff. There is also a search function that allows navigation to the activities associated with the various sectors of city government. In the future, the website will contain a link to the Title VI Plan, complaint procedures (via links to TxDOT), and a comment form so visitors may comment directly to the City on relevant subject matter. There is also a "Follow Fort Worth" link that encourages people to obtain the latest information on City programs by signing up for regular email or social media updates.

The City of Fort Worth maintains a comprehensive library of local and regional transportation documents in the City's public libraries. These documents are all available to the public. Additionally, City staff can be reached by phone or e-mail, and staff contact information is included on all publications produced by the City. As part of routine daily business, City staff responds regularly to requests for information from citizens, businesses, staff from other public agencies, and other organizations throughout the region. Each year, the City issues a multitude of publications, reports, and maps as part of the City's annual work program, and responds to and processes a large number of data requests.

**Council meetings open to the public** – The Fort Worth City Council establishes all City Policy. The Council meets weekly and all City Council and council committee meetings are open to the public. Meeting times and locations are posted on the City's Public Notices Board located at City Hall, 1000 Throckmorton Street, Fort Worth, TX and on the City's website in advance of the meeting, providing citizens time for preparing to attend the meetings and for preparing comments and input for the meeting. All transportation program contracts are discussed and approved at these public meetings. At each council meeting, time is allocated for citizen comments and input. The meeting venue is wheelchair accessible and all meeting agendas contain the following statement:

***ADA Notice:** For special accommodations for this meeting, contact The City's ADA Coordinator via phone (817-392-8552) at least one week in advance.*

**Opportunities for public comment** – The City routinely provides opportunities for public comment, and continues to work to find new and innovative ways to improve involvement of all segments of the population during the project planning process. Comments are accepted by phone, fax, email, US mail, Internet and in person. City representatives regularly attend neighborhood association meetings to receive input and ensure citizens' concerns are adequately addressed when transportation improvement programs are being developed. The City uses direct mail, newspaper advertisement, and the City's local public broadcast channel to inform the public of the City's programs, public comment periods, meetings and publications.

The City also makes the necessary arrangements to accommodate persons of limited English proficiency (LEP). For example, during the development of the 2004 Bond Program, which included \$122M in street and other transportation related projects, the City conducted 40 public meetings. Translators were available at all meetings for translating information into Spanish, Vietnamese, Arabic and other languages.

**Comments are accepted at any time** – Comments are accepted via an online comment form, by phone, fax, email, U.S. mail, and in person at any council or committee meeting. Contact information for the City is included on all publications produced by the City and the City responds to all comments received.

**Citizen comments are requested at agency meetings** – All City board and committee meetings are open to the public. The City generally conducts 15-20 of these meetings each year. Meeting dates are posted well in advance on the City’s Website. Each meeting includes time for citizen comments, and at least once, at each meeting, the chair makes a request for citizen comments. No advance notice is required to speak during the citizen comment period, and official meeting summaries are kept of all public comments.

**Formal public comment periods for major activities** – The City provides periods for formal public comment and review when soliciting input from citizens on major transportation planning and programming projects. Generally, information is reviewed and released by one of the policy boards at a monthly meeting for a formal public comment period. The comment period is included in the City’s emails containing the proposed meeting agenda and on the website. Comments can be made in person at any City Council meeting, on the City’s website, by email, by US mail, fax, or telephone. The City responds to all comments received, and as appropriate forwards comments to other agencies for a response. Comments continue to be accepted until the close of the comment period.

## **VIII) Data Collection**

In analyzing City demographics, the City of Fort Worth uses statistical data on protected groups available through The US Census Bureau and the North Central Texas Council of Governments. Information is accessed as needed to determine impacts and benefits of potential projects on minority and low-income neighborhoods, and in developing outreach strategies targeting these neighborhoods. The City also conducts an annual Citizen’s Survey to assist in identify and prioritizing the needs of the various population segments within the City.

The geographic basis for Title VI analysis is the latest U.S. Census data. Census data is available at different levels, including political jurisdictions, urban area, place, census tract, block group and block. The Census Bureau does not calculate all of its data on each of these areas. The block group level is the smallest geographic area used by the Census Bureau to calculate the appropriate information on each relevant group. Therefore, the block group will be used as the basis for analyzing Title VI issues. Additionally, for planning purposes, the City will further display U.S. Census data by Traffic Analysis Zone (TAZ). The following seven groups have been identified as relevant for future Title VI analysis.

- Low-income
- Federal Assistance Recipients
- Minority
- Elderly
- Limited English Proficiency (LEP) or English spoken as a second language
- Disabled populations
- Zero car households

## **Target Groups**

**Low Income** – a person whose household income (or in the case of a community or group, whose median household income) “is at or below the U.S. Department of Health and Human Services poverty guidelines.” The City uses the national poverty guidelines as defined by the Department of Health and Human Services. <http://aspe.hhs.gov/poverty/poverty.shtml>.

**Federal Assistance Recipients** – People who receive grants or federal funds. The assistance might be in the form of public housing, food stamps, support services or persons receiving Temporary Assistance for Needy Families (TANF) funds.

**Minority Populations** – Persons considered being minorities are identified in the census as people of African, Hispanic, Asian, American Indian or Alaskan Native origin (U.S. Census, STF301/Tb1008 and Tb1011; 1990). Executive Order 12898 and the DOT and FHWA Orders on Environmental Justice consider minority persons as persons to any of the following groups:

**Black** - a person having origins in any of the black racial groups of Africa.

**Hispanic** - a person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.

**Asian American** - a person having origins in the Far East, Southeast Asia or the Indian subcontinent.

**American Indian and Alaskan Native** – a person having origins in North America and who maintains cultural identification through tribal affiliation or community recognition.

**Elderly** – persons over the age of 65.

**Limited English Proficiency (LEP)** – Any readily identifiable group of persons whose ability to read, write and speak English and compute and solve problems, is not sufficiently proficient to where they can function on the job and in society at a level necessary to achieve their goals and develop their knowledge and potential.

**People with Disabilities** – Persons who have mobility and/or self-care limitations as defined by the Census. A disability may be physical or mental.

**Zero car households** – Households without cars or access to cars.

## **Monitoring**

In addition to the benefits of added capacity and improved safety and mobility, a roadway along new rights-of-ways can often increase noise and air pollution and reduce safety.

thereby negatively impacting certain sectors of the populations. New road projects also have a potential to split or isolate neighborhoods in whole or in part.

To minimize the potential adverse effects on affected populations the City will identify and then create demographic profile maps of low-income and minority populations of the City. These maps will aid planners in understanding which communities are prone to environmental justice infractions. Once the planners have an understanding of where such communities are located, future transportation plans and projects can include these communities in the planning process.

Planning studies outlined in the City's Unified Planning Work Program (UPWP) may utilize these maps to ensure an equitable distribution of both transportation benefits and potentially adverse impacts caused by future projects. The City also plans to use these same demographic profile maps to verify past compliance with Title VI. The City will map prior projects against demographic profile maps to determine whether there was fair and equitable distribution of services, facilities and resources within the impacted areas.

## **IX) Contract Provisions**

Section 17 and 18 of the Special Provisions Section of all City of Fort Worth transportation related construction contracts contains language that specifically addresses the City's policies on equal employment and minority and women owned businesses.

Section 17, Equal Employment Provisions, specifically states. "Contractor shall comply with City Ordinance Number 7278 as amended by City Ordinance Number 7400 (Fort Worth City Code Sections 13-A-21 through 12-A-29) prohibiting discrimination in employments practices.

"The Contractor shall post the required notice to that effect on the project site, and at his request, will be provided assistance by the City of Fort Worth's Equal Employment Officer who will refer any qualified applicant he may have on file in his office to the Contractor. Appropriate notices may be acquired from the Equal Employment Officer."

Section 18, Minority and Women Business Enterprise (M/WBE) Compliance: In accordance with City of Fort Worth Ordinance No. 15530 (Attachment A), as amended, the City has goals for the participation of minority business enterprises and women business enterprises in City contracts. The Ordinance is incorporated in these specifications by reference. A copy of the Ordinance may be obtained from the Office of the City Secretary. Failure to comply with the ordinance shall be a material breach of contract.

M/WBE UTILIZATION FORM, M/WBE GOALS WAIVER FORM AND GOOD FAITH EFFORT FORM, as applicable, must be submitted within five (5) City business days after bid opening. Failure to comply shall render the bid non-responsive.

Upon request, Contractor agrees to provide the City complete and accurate information regarding actual work performed by a Minority or Women Business Enterprise (M/WBE) on the contract and payment thereof. Contractor further agrees to permit an audit and/or examination of any books, records or files in its possession that will substantiate the actual work performed by an MBE and/or WBE. The misrepresentation of acts (other than a negligent misrepresentation) and/or the commission of fraud by the Contractor will be grounds for termination of the contract and/or initiating action under appropriate federal, state, or local laws or ordinances relating to false statements. Further, any such misrepresentation (other than a negligent misrepresentation) and/or commission of fraud will result in the Contractor being determined to be irresponsible and barred from participating in City work for a period of time not less than three years.

#### **X) Affirmative Action Program**

It is the policy of the City of Fort Worth to ensure the full and equitable participation by Minority and Women Owned Businesses (MWBE) in the procurement of all goods and services to the City on a contractual basis. The objective of the Policy is to increase the use of MWBE firms to a level comparable to the availability of M/WBEs that provide goods and services directly or indirectly to the City. All requirements and regulations stated in the City's current Minority and Women Business Enterprise Program are codified by City of Fort Worth Ordinance No. 15530 and all subsequent revisions to the ordinance. This City ordinance sets goals for the participation of minority and women business enterprises in City contracts. A copy of the Ordinance is included in Appendix A for reference.

On August 16, 2011, the Fort Worth City Council approved a Memorandum of Understanding, with the Texas Department of Transportation, to adopt and adhere to its Disadvantaged Business Enterprise Program on City projects that receive funds from the Federal Highway Administration through the Texas Department of Transportation for the purpose of assisting with construction and design costs (Attachment C).

## **XI) Self Monitoring and Corrective Action**

Through several different avenues including the HRU the City strives to create awareness about its City's anti-discrimination efforts and its commitment to diversity by promoting Fort Worth as a welcoming community for all people. The HRU promotes diversity and inclusion through its community outreach efforts, workshops, training and other Resources

### **APPENDIX A: Link to Worth City Code**

<http://www.municode.com/library/clientCodePage.aspx?clientID=2265>

### **ATTACHMENT A: City of Fort Worth Ordinance 15330 (MWBE Ordinance)**

### **ATTACHMENT B: Special Provisions in construction contracts that addresses MWBE requirements**

### **ATTACHMENT C: Memorandum of Understanding with the Texas Department of Transportation to adopt and adhere to its Disadvantage Business Enterprise Program**