

City of Greensboro

**MINORITY/WOMEN BUSINESS ENTERPRISE
PROGRAM PLAN**

for

**Construction, Professional Services, Goods,
and Other Services**

Adopted Effective: January 1, 2014

Amended Effective: _____

**Greensboro City Council
Melvin Municipal Office Building
Greensboro, North Carolina**

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I. PREAMBLE

ESTABLISHING AN MINORITY/WOMEN BUSINESS ENTERPRISE PROGRAM TO PROMOTE THE ECONOMIC INCLUSION AND FULL AND EQUITABLE UTILIZATION AND DEVELOPMENT OF FIRMS THAT ENGAGE IN BUSINESS WITH THE CITY IN THE GREENSBORO MARKETPLACE

* * * * *

WHEREAS, on October 15, 2013, the City Council of Greensboro adopted an Minority/Women Business Enterprise Ordinance by amending Chapter 2, Article IV, Division 2, Section 2-117, of the Greensboro Code of Ordinances that authorized the City Manager to adopt and administer a M/WBE Program (“Plan”) for firms that engage in business with the City of Greensboro; and

WHEREAS, the purposes of this Ordinance and M/WBE Program Plan were: (a) to establish a clear policy against discrimination in business transactions and dealings on the basis of race, gender, religion, national origin, ethnicity, age, or disability; (b) to authorize and direct the establishment and administration of narrowly tailored policy and contracting procedures by the City Manager to remedy the ongoing effects of identified marketplace discrimination that is adversely affecting the award of prime contracts and subcontracts to minority- and women-owned businesses in City contracts; and (c) to authorize and direct the establishment and administration of narrowly tailored policy and contracting procedures by the City Manager to prevent the City from becoming a passive participant in private sector marketplace discrimination that is adversely affecting the formation, growth, and competitiveness of small, minority, and women-owned business enterprises in the City’s relevant geographic market from which it routinely purchases goods and services; and

WHEREAS, City Council found that in order to avoid becoming a passive participant in private sector commercial discrimination, it was necessary to establish and firmly enforce a clear policy against discrimination in business on the basis of race, gender, religion, national origin, ethnicity, age, or disability, and further, that pursuant to such policy, the City shall not *contract* with *business firms* that discriminate in the solicitation, selection, hiring, or treatment of vendors, suppliers, subcontractors, or *commercial customers*; and

WHEREAS, Such a commercial non-discrimination policy approach has been favorably commented upon by the United States Supreme Court in **City of Richmond v. J. A. Croson**, 488 U.S. 469, 509-510 (1989), and by other federal courts; and

WHEREAS, after careful and lengthy consideration of a strong basis in evidence, including, most recently by the Griffin & Strong P.C. Disparity Study in March 2018 (“Disparity Study”), (the findings and recommendations of the latter having been formally adopted by City Council on August 21, 2018), the City Council further determined that it continues to have a compelling interest in assuring that the public funds that are collected from all of its citizens and then spent in City contracting do not serve to finance private prejudice on the basis of race, gender, religion, national origin, ethnicity, age, disability, or any other form of unlawful discrimination; and

WHEREAS, the City Council further considered a full range of narrowly tailored race- and gender-neutral and race- and gender-conscious remedial policy options that were presented to City Council on _____ and that are legally defensible and effective for addressing identified barriers to the full and equal participation of small and minority-owned businesses in City contracting; and

WHEREAS, pursuant to such a strong basis in evidence and such careful policy deliberations, the City Council has authorized and directed the City Manager to adopt and administer an M/WBE Program Plan that is based upon this factual predicate and consistent with these identified remedial policy options; and

WHEREAS, the City Council further determined that it is in the best interests of the City of Greensboro to enhance competition on City projects by promoting equal opportunity and the full participation of all segments of its business community in a robust and inclusive marketplace environment that is free from the effects of discrimination, and, moreover, that the City is likely to benefit from a discrimination – free marketplace through lower prices for the goods and services it purchases, higher revenues through increased employment opportunities for its citizens, increased business-to-business sales, and a more vibrant local economy; and

WHEREAS, as part of this effort to promote equal opportunity on the part of all segments of its business community, the City Council also authorized the City Manager to seek immediate approval of legislation by the North Carolina state legislature to authorize the City of Greensboro to adopt race-neutral procurement and contracting policies to provide enhanced contracting opportunities for firms that were Small Business Enterprises (“SBEs”); and

WHEREAS, the North Carolina state legislature has thus far failed to enact this requested enabling legislation to authorize the City of Greensboro to adopt such race-neutral procurement and contracting policies to provide enhanced contracting opportunities for firms that are Small Business Enterprises (and as has previously been enacted by the State of North Carolina legislature on behalf of the City of Charlotte, NC);

WHEREAS, the City Manager has determined that under these circumstances, the City’s best interests are served by amending the “Minority and Women Business Enterprise Program Plan for Construction, Procurement and Professional Services” established July 1, 1986 and last amended October 15, 2013, with the following amended “M/WBE Program Plan as the most narrowly-tailored plan that is presently lawfully authorized to effectively remedy the effects of marketplace discrimination;”

NOW THEREFORE, pursuant to the above-referenced factual predicate and the legal authority granted by the City Council, the City Manager hereby promulgates and adopts the following **M/WBE Program Plan** and related forms and procedures for application to eligible City bid solicitations and contracts for construction, professional services, goods and other services contracts.

ADOPTED BY THE GREENSBORO CITY COUNCIL THE _____ Day Of _____, 2019.

II. Policy Statement

The following M/WBE Program Plan is adopted to:

- A. Implement the City's M/WBE Policy to remedy the ongoing effects of marketplace discrimination that the City of Greensboro has found continue to adversely affect the participation of M/WBE firms in City of Greensboro contracts.
- B. To exercise the spending powers of the City of Greensboro in a manner that promotes economic inclusion of all segments of the business population, regardless of race or gender, so as to maximize the economic vitality and development of the Greensboro region.
- C. To provide for the identification of necessary resources for the effective phased-in implementation of all Policy elements contained within the M/WBE Program as provided for within this Plan.
- D. To clearly communicate the City's M/WBE Program Plan and related responsibilities to internal stakeholders within the City and to the external stakeholders within the broader community served by the City.
- E. To establish that the City shall resort to the use of race- and gender-conscious means for addressing disparities within its contract participation only when it is apparent that the use of neutral means alone (as provided in this Program Plan) are likely insufficient to fully remedy the effects of identified discrimination.
- F. It is the Policy of the City to take all necessary, reasonable and legal action to prevent discrimination and to ensure that all businesses, including M/WBEs, are afforded the maximum practicable opportunity to participate in the City's purchasing and contracting processes.
- G. It is the Policy of the City to ensure that the firms it engages in business with do not discriminate in their solicitation, selection or treatment of Subcontractors, suppliers, vendors or commercial customers on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation or on the basis of disability or any otherwise unlawful use of characteristics regarding the vendor's, supplier's, or commercial customer's employees or owners.
- H. **The M/WBE Coordinator** shall have primary oversight responsibility with the full support and cooperation of all other City of Greensboro offices and departments in the establishment and administration of the Policy and procedures established herein.

III. Scope of M/WBE Program

This M/WBE Program Plan shall apply to all contracts for the purchase of construction-related services, professional services, goods, real estate development, renovation, maintenance, or other services awarded by, or on behalf of, the City; including, but not limited to, every contract or other agreement between the City of Greensboro and any governmental agency, quasi-governmental agency, corporation, developer or contractor, under which the agency, corporation, developer or contractor receives any fiscal assistance from or through the City for the purpose of contracting with businesses to perform construction-related services, professional services, goods, real estate development, renovation, maintenance or other services and as such, the City shall require the agency, corporation, developer or contractor to comply with this Program Plan in awarding and administering that contract or agreement; provided, however, that the following categories of contracts shall be excluded from the scope and application of this Program Plan:

- (a) Contracts that are subject to the U.S. Department of Transportation Disadvantaged Business Enterprise Program and Airport Concessions Disadvantaged Business Enterprise Program as set forth in 49 CFR Parts 23 and 26 or any successor regulations or legislation;
- (b) Contracts for the purchase of goods or supplies of a unique nature for which the City Originating Department determines there is only a sole source of supply;
- (c) Contracts for electricity or water and sewage services from a municipal utility district or governmental agency;
- (d) Emergency contracts for goods or supplies that the City Manager or designee determines are necessary for the preservation of public health or safety and whose immediacy of need is so great that it is impractical for the City to apply the terms of this Program Plan to the contract;
- (e) Contracts for the City's lease or purchase of real property where City is lessee or purchaser; and
- (f) Personal Services grants or contracts involving the unique abilities or style of a particular individual.

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IV. Definitions

Affiliate – Two entities are affiliates of one another when: (a) one controls or has the power to control the other, (b) a third party controls or has the power to control both, or (c) there is a significant relationship between the two entities based on common ownership, management or employees, shared equipment, assets, or facilities, physical proximity, percentage of revenue derived from the other entity, or loans, leases, contributions, and contracts.

Annual Aspirational Goal – a non-mandatory aspirational percentage goal applied annually for overall M/WBE Prime and subcontract participation in City of Greensboro contracts is established each year for Construction, Professional Services, Goods and Other Services contract Industry Categories. This Annual Aspirational Goal is based upon the availability in the Relevant Market as determined by the disparity study which is conducted every five (5) years by the City. Annual Aspirational Goals are not to be routinely applied to individual contracts, but are intended to serve as a benchmark against which to measure the overall effectiveness of the M/WBE Program on an annual basis, and to gauge the need for future adjustments to the mix and to the aggressiveness of remedies being applied under the Program. Percentage Goals for M/WBE participation are established by the GSC on a contract-by-contract basis based upon the percentage of availability for the particular goods and services being purchased in a given contract.

Award – the final selection of a Respondent for a specified Prime Contract or subcontract dollar amount. Contract awards are made by the City to Prime Contractors or vendors and by Prime Contractors or vendors to Subcontractor or sub-vendors, usually pursuant to a solicitation process. (Contract awards are to be distinguished from contract payments in that they only reflect the anticipated dollar amounts instead of actual dollar amounts that are paid to a contractor under an awarded contract).

Best Value Contracting – a purchasing solicitation process which may evaluate factors other than price. Evaluation criteria for selection may include a Respondent's previous experience and quality of product or services procured, and other factors identified in the applicable solicitation.

Bidder / Participant – Any person, firm, company, partnership, corporation, association, or joint venture seeking to be awarded a contract or subcontract on a project that is at least partially funded or supported in a pecuniary fashion by the City.

Business Days – Days on which the administrative days of the City of Greensboro are open to the public for business.

Certification – the process by which M/WBE Office determines a firm to be a bona-fide minority or women-owned business enterprise. A firm may apply for multiple Certifications that cover each status category (e.g., MBE or WBE) for which it is able to satisfy eligibility standards. The M/WBE staff may contract these certification services to a State, regional Certification agency or other entity that agrees to abide by the City's standards and criteria for certification. For purposes of Certification, the City accepts any firm that is certified by the State of North Carolina Secretary of Administration, local government entities, and other organizations identified herein that have been determined by the City Manager or his designee to have adopted Certification standards and procedures similar to those

followed by the M/WBE Program, provided the prospective firm satisfies the eligibility requirements set forth in this Program Plan in **Sections IV and VII. J.**

Certification Application - this form shall be completed by vendors when verifying Certification and/or re-Certification status for participation in the City of Greensboro's M/WBE Program. This form shall be submitted, to the City's M/WBE Coordinator every four years by each certified vendor by the anniversary date of its original Certification.

City – refers to the City of Greensboro, NC.

Commercially Useful Function – an M/WBE firm performs a Commercially Useful Function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, staffing, managing and supervising the work involved. To perform a Commercially Useful Function, the M/WBE firm must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quantity and quality, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether an M/WBE firm is performing a Commercially Useful Function, an evaluation must be performed of the amount of work subcontracted, normal industry practices, whether the amount the M/WBE firm is to be paid under the contract is commensurate with the work it is actually performing and the M/WBE credit claimed for its performance of the work, and other relevant factors. Specifically, an M/WBE firm does not perform a Commercially Useful Function if its role is limited to that of an extra participant in a transaction, contract or project through which funds are passed in order to obtain the appearance of meaningful and useful M/WBE participation, when in similar transactions in which M/WBE firms do not participate, there is no such role performed.

Control – the authority of a person or business owner to sign responses to solicitations and contracts, make price negotiation decisions, sell or liquidate the business and have the primary authority to direct the day-to-day management and operation of a business enterprise without interference from others.

Days – Any reference to “days” in this Program shall mean calendar days, unless it is specifically indicated to be Business Days.

Diversity Management System (DMS) – a mandatory electronic system wherein the City requires **all Prime and Subcontractors that are awarded contracts by the City** to register online on the City website. The DMS system assigns a unique identifier to each registrant that is then required for the purpose of receiving payments from the City. The **DMS**-assigned identifiers may be used by the Goal Setting Committee for measuring relative availability and tracking utilization of M/WBE firms by Industry or commodity codes, and for establishing Annual Aspirational Goals and Contract-by-Contract Subcontracting Goals.

Economic Inclusion – efforts to promote and maximize commercial transactions within, between and among all segments of the business population, regardless of race or gender, within the Relevant Market.

Evaluation Preference – A Program Element that may be applied by the Goal Setting Committee to Construction, Professional Services, Goods and Other Services contracts that are to be awarded on a

basis that includes factors other than lowest price (i.e., Best Value Contracting), and wherein responses that are submitted to the City by M/WBE firms may be awarded additional Points in the evaluation process in the scoring and ranking of their proposals against those submitted by other prime Respondents or Bidder / Participants.

Formal Solicitation – an invitation for bids, request for proposals, request for qualifications or other solicitation document issued by a City department for a contract that is valued at \$30,000 or greater, and that requires formal advertisement in accordance with the procurement rules adopted by the City Manager or designee through a memorandum issued by the City Manager or designee, an Administrative Directive, or a procurement manual issued under the authority of the City Manager or designee, and/or pursuant to statutory requirements.

Good Faith Efforts Envelope - An envelope that contains documents demonstrating the Good Faith Efforts that a Bidder/Participant has undertaken to meet the M/WBE Construction Subcontracting Goals. The documents that are required to be submitted in the Good Faith Efforts Envelope will depend upon whether the Bidder/Participant met the M/WBE Subcontracting goal(s).

Goal Setting Committee (GSC) – a committee, or series of committees, appointed by the City Manager or designee and chaired by the **M/WBE Coordinator or designee** that includes, at a minimum, the M/WBE Coordinator or designee, and /or the Director of Financial and Administrative Services, and / or the Director of Engineering and Inspections or their designees, and the Director or designee of the Originating Department (assuming the Originating Department is neither the Financial and Administrative Services Department nor the Engineering and Inspections Department) all without duplication of designees. The City Manager or designee may also appoint two ex-officio members of the M/WBE Coordinating Committee to serve on any GSC purely in an advisory and non-voting capacity. The GSC establishes M/WBE Program Goals for the City of Greensboro (e.g., Annual Aspirational Goals and Contract-by-Contract Subcontracting Goals) based upon Industry Categories, vendor availability and project-specific characteristics. The GSC also makes determinations about which Program Elements are to be applied to specific contracts based upon various criteria.

Good Faith Efforts – documentation of the Respondent’s intent to comply with M/WBE Program Goals and procedures including, but not limited to, the following: (1) documentation within a solicitation response reflecting the Respondent’s commitment to comply with M/WBE Program Goals as established by the GSC for a particular contract; or (2) documentation of efforts made toward achieving the M/WBE Program Goals (e.g., timely advertisements in appropriate trade publications and publications of wide general circulation; timely posting of M/WBE subcontract opportunities on the City of Greensboro website; solicitations of bids/proposals/qualification statements from all qualified M/WBE firms listed in the M/WBE directory of certified M/WBE firms; correspondence from qualified M/WBE firms documenting their unavailability to perform M/WBE contracts; documentation of efforts to subdivide work into smaller quantities for subcontracting purposes to enhance opportunities for smaller M/WBE firms; documentation of a Prime Contractor’s posting of a bond covering the work of M/WBE Subcontractors; documentation of efforts to assist M/WBE firms with obtaining financing, bonding or insurance required by the Respondent; and documentation of consultations with trade associations and consultants that represent the interests of M/WBEs in order to identify qualified and available M/WBE Subcontractors.)

Graduation –An M/WBE firm permanently graduates from the M/WBE program when it meets the criteria for graduation as set forth in this Program Plan in **Section VII. H.** An M/WBE firm that graduates from the M/WBE program is no longer eligible to participate in the Race-Conscious Program Elements. However, a graduated M/WBE firm may continue to participate in, and benefit from, other Race-Neutral non-industry-specific policies and procurement reforms of the M/WBE Program as described in Section V. of this Program Plan.

Independently Owned and Operated –Ownership of an M/WBE firm may be by Individuals and/or by other businesses provided the ownership interests in the M/WBE firm can satisfy the M/WBE eligibility requirements for ownership and Control as specified herein in **Section VII.G.** The M/WBE firm must also be Independently Owned and Operated in the sense that it cannot be the subsidiary or captive affiliate of another firm that does not itself (and in combination with the certified M/WBE firm) satisfy the eligibility requirements for M/WBE Certification.

Individual – an adult person that is of legal majority age.

Industry Categories – procurement groupings for the City of Greensboro inclusive of Construction, Professional Services, and Goods and Other Services (i.e., manufacturing, wholesale and retail distribution of commodities and non-professional services). This term may sometimes be referred to as “business categories.”

Informal Solicitations – solicitations for contracts that are less than \$30,000 in value, and do not require Formal Solicitations.

Joint Venture Incentives – a Program Element that provides inducements for non-M/WBE firms to collaborate with M/WBE partners in response to solicitations and in performing a Prime Contract to supply construction services on behalf of the City. Joint ventures are manifested by written agreements between two or more Independently Owned and Controlled business firms to form a third business entity solely for purposes of undertaking distinct roles and responsibilities in the completion of a given contract. Under this business arrangement, each joint venture partner shares in the management of the joint venture and also shares in the profits or losses of the joint venture enterprise commensurately with its contribution to the venture. Incentives under this Program Element may include Evaluation Preferences that are tied to the percentage of M/WBE participation in the joint venture, expedited issuance of building permits, and extra contract option years in certain construction maintenance contracts.

Leases and Concessions - the renting of City-owned space on a contractual basis for the purpose of making a profit by selling a commodity/service.

Manufacturer - a manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.

Minority/Women Business Enterprise (M/WBE) – any firm that is certified as either a **Minority Business Enterprise** or as a **Women Business Enterprise**, and which is at least fifty-one percent (51%) owned, managed and Controlled by one or more of the identified Minority Group Members

and/or women as indicated herein by Industry Category, and that is ready, willing and able to sell goods or services that are purchased by the City of Greensboro:

The categories of Minority Group Members and/or women that are eligible for certification as owning, managing, and controlling M/WBEs by Industry Categories are narrowly tailored based upon Disparity Study results as follows:

Construction: African-Americans, Hispanic-Americans, Asian-Americans, Native Americans, and non-Minority females

Professional Services: African-Americans, Hispanic Americans, Native Americans, Asian-Americans and non-Minority females

Goods: African-Americans, Hispanic-Americans, Native Americans, Asian-Americans and non-Minority females

Other Services: African-Americans, Hispanic-Americans, Native Americans, Asian-Americans and non-Minority females

Minority/Women Business Enterprise Coordinator – the staff member that is primarily responsible for the management of the M/WBE Program and ultimately responsible for oversight, tracking, monitoring, administration, implementation and reporting of the M/WBE Program. The M/WBE Coordinator is also responsible for enforcement of contractor and vendor compliance with contract participation requirements and ensuring that overall Program goals and objectives are met.

M/WBE Program – the combination of race- and gender-neutral and race- and gender-conscious remedies, policies, procurement reforms, and Program Elements that are provided herein for the purpose of enhancing the ability of M/WBE firms to fairly compete for City contract opportunities, and for the purpose of establishing a broader marketplace environment that is less susceptible to the ongoing effects of discrimination.

M/WBE Directory – a listing of minority- and women-owned businesses that have been certified as eligible to participate in, and benefit from, the application of the City’s race- or gender-conscious M/WBE Program Elements.

M/WBE Questionnaire– this form shall be completed by M/WBE vendors when verifying information for participation in the City of Greensboro’s M/WBE Program. This form shall be submitted to the City’s M/WBE Coordinator every two years by each certified vendor by the anniversary date of its original Certification.

M/WBE Subcontracting Program – a Program Element in which Prime Contractors or vendors are required to make Good Faith Efforts to subcontract a specified percentage of the value of prime contract dollars to certified M/WBE firms. Such subcontracting goals may be set and applied by the GSC on a contract-by-contract basis to those types of contracts that provide subcontract opportunities for performing Commercially Useful Functions.

When specified by the GSC that contract by contract goals are not feasible to be set at the time of the solicitation, GSC shall establish goals as the project progresses.

M/WBE Evaluation Preference – a Program Element that the City may apply to requests for proposals or qualifications (RFPs or RFQs) on City Construction Manager, Construction Manager at Risk, and Professional Services contracts that are issued pursuant to a Best Value Contracting method or other methods of procurement wherein criteria other than lowest price are factored into the selection process. M/WBEs that submit responses for these kinds of solicitations are awarded additional Points in the scoring of their responses when evaluating and ranking their responses against those submitted by non-minority firms.

Minority Business Enterprise (MBE) – any legal entity, except a joint venture, that is organized to engage in for-profit transactions, which is certified as being at least fifty-one percent (51%) owned, managed and Controlled by one or more Minority Group Members, and that is ready, willing and able to sell goods or services that are purchased by the City. To qualify as an MBE, the enterprise shall meet the **Significant Business Presence** requirement as defined herein. Unless otherwise stated, the term “MBE” as used in this Program Plan is not inclusive of women-owned business enterprises (WBEs).

Minority Group Members – African-Americans, Hispanic Americans, Asian Americans and Native Americans legally residing in, or that are citizens of, the United States or its territories, as defined below:

African-Americans: Persons having origins in any of the black racial groups of Africa as well as those identified as Jamaican, Trinidadian, or West Indian.

Hispanic-Americans: Persons of Spanish or Portuguese culture with origins in Mexico, South or Central America, or the Caribbean Islands regardless of race.

Asian-Americans: Persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands.

Native Americans: Persons having no less than 1/16th percentage origin in any of the Native American Tribes of North America as recognized by the U.S. Department of the Interior, Bureau of Indian Affairs and as demonstrated by possession of personal tribal role documents.

Minority / Women Business Enterprise Coordinating Committee (M/WBE Coordinating Committee) – a voluntary eleven-member citizens committee made up of business trade organization representatives and minority and women business owners, and appointed by the City Manager as an advisory group to: (a) assist the M/WBE Coordinator or designee, and the City Manager or designee, in reviewing and monitoring the ongoing administration of the Program Plan and assessing its effectiveness in enhancing M/WBE participation in City contracts; (b) facilitate activities and outreach efforts by the M/WBE Coordinator, the Economic Development and Business Support Division, or Originating Departments; and (c) make recommendations to the M/WBE Coordinator or designee, and the City Manager or designee, concerning modifications of such Program Elements and various

policies and procedures established pursuant to this Program Plan. /M/WBE Coordinating Committee members may participate as advisory non-voting members of Goal Setting Committees.

Originating Department – the City department or authorized representative of the City which issues a solicitation, or for which a solicitation is issued on behalf of, for its purchase of goods or services.

Payment – dollars actually paid to Prime Contractors and/or Subcontractors and vendors for City contracted goods and/or services.

Points – the quantitative assignment of value for specific evaluation criteria in the vendor selection process used in some Construction, Professional Services, and Other Services contracts (e.g., up to 10 points out of a total of 100 points assigned for the degree of M/WBE participation of a Respondent team as stated in response to a Request for Proposals).

Prime Contractor – the vendor or contractor to whom a purchase order or contract is issued by the City of Greensboro for purposes of providing goods or services for the City.

Program Elements – Refers to various race- and gender-neutral and race- and gender-conscious M/WBE Program tools and incentives that are used to encourage greater Prime and subcontract participation by M/WBE firms, including, but not limited to, bonding assistance, evaluation preferences, subcontracting goals and joint venture incentives. (For full descriptions of these and other M/WBE Program tools, see Section VI. of this Program Plan).

Program Waiver – when a particular procurement does not require any goals set on it and is therefore waived from participating in the Program. This is different from a Waiver, as defined below, which is given after satisfaction of Good Faith Efforts.

Race-Conscious – any business classification or Program Element wherein the race or gender of business owners is taken into consideration (e.g., references to M/WBE programs and Program Elements that are listed herein under the heading of “Race-Conscious”).

Race-Neutral – any business classification or Program Element wherein the race or gender of business owners is not taken into consideration (e.g., references to Non-industry specific race-neutral remedies, policies, and procurement reforms, and Program Elements that are listed herein under the heading of “Race-Neutral”).

Regular Dealer - a regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.

Relevant Market –for purposes of the Disparity Study, the Relevant Market encompasses the geographical area where the City awards at least 75% of its dollars. The Disparity Study finding of the Relevant Market, which is also used by the City to determine eligibility for participation under various Program Elements established by this Program Plan is defined as the North Central North Carolina Counties, currently including the counties of Alamance, Caswell, Chatham, Davie, Davidson, Durham,

Forsyth, Franklin, Granville, Guilford, Hoke, Lee, Montgomery, Moore, Orange, Person, Randolph, Richmond, Rockingham, Rowan, Scotland, Stokes, Surry, Vance, Wake, Warren, Yadkin.

Respondent – a vendor or Bidder / Participant submitting a bid, statement of qualifications, or proposal in response to a solicitation issued by the City.

Responsible – a firm which is capable in all respects to fully perform the contract requirements and has the integrity and reliability which will assure good faith performance of contract specifications.

Responsive – a firm's submittal (bid, response or proposal) conforms in all material respects to the solicitation (Invitation for Bid, Request for Qualifications, or Request for Proposal) and shall include compliance with M/WBE Program requirements.

Significant Business Presence – to qualify for this Program, –an M/WBE firm must be headquartered or have a *significant business presence* for at least one year within the Relevant Market, defined as: an established place of business in one or more of the counties that make up the Greensboro Relevant Market, and from which at least 25% of its total full-time, part-time and contract employees are regularly based, and from which a substantial role in the M/WBE's performance of a Commercially Useful Function is conducted. A location utilized solely as a post office box, mail drop or telephone message center or any combination thereof, with no other substantial work function, shall not be construed to constitute a significant business presence.

Segmented M/WBE Goals – MBE and WBE goals shall be separately applied and, the M/WBE Program Office may, at its discretion apply MBE goals as a segmented goal, by ethnicities. The application of Segmented M/WBE Goals is intended to ensure that those segments (MBE, WBE, or individual ethnicities/gender) of M/WBEs that have been most significantly underutilized receive a measure of remedial assistance.

Subcontractor – any vendor or contractor that is providing goods or services to a Prime Contractor in furtherance of the Prime Contractor's performance under a contract or purchase order with the City. A subcontractor may be either a first, second, or third-tier subcontractor. A first-tier subcontractor provides good or services directly to the Prime Contractor. A second-tier contractor is hired by a first-tier subcontractor within the same contract or purchase order to provide a portion of the good and/or services the first-tier subcontractor is obligated to provide under its subcontract to the Prime contractor. A third-tier subcontractor is hired by the second-tier subcontractor within the same contract or purchase order to provide a portion of the goods and/or services it is obligated to provide under its subcontract with the first-tier subcontractor. A copy of the binding agreement between the Prime Contractor and all of the Subcontractors shall be submitted prior to contract execution by the City and issuance of a Notice to Proceed.

Suspension – the temporary stoppage of an M/WBE firm's beneficial participation in the City's M/WBE Program for a finite period of time due to cumulative contract payments the M/WBE firm received during a fiscal year that exceed a certain dollar threshold as set forth in Section VII. L., or pursuant to the Penalties and Sanctions for Non-Compliance set forth in Section VII. I of this Program Plan.

Technical Bid Envelope – Cost Proposal Envelope – shall contain the documents that contain the bid price or the total cost to perform the work in the bid specifications.

Utilization Documentation – a binding part of the contract which includes the name of all Subcontractors to be utilized in the contract, specifying the M/WBE Certification category for each, as approved by the M/WBE Coordinator. Additions, deletions or modifications of the utilization amounts or substitutions or deletions of M/WBE Subcontractors require an amendment to be approved by the M/WBE Coordinator or designee.

Waiver – A bidder has satisfied the Good Faith Efforts requirements and does not have to satisfy the contract goal. To clarify, the bidder may still have goal requirements on any change orders.

Women Business Enterprises (WBEs) - any legal entity, except a joint venture, that is organized to engage in for-profit transactions, that is certified for purposes of this Program Plan as being at least fifty-one percent (51%) owned, managed and Controlled by one or more non-minority female Individuals that are lawfully residing in, or are citizens of, the United States or its territories, that is ready, willing, and able to sell goods or services that are purchased by the City and that meets the Significant Business Presence requirements as defined herein. Unless otherwise stated, the term “WBE” as used in this Program Plan is not inclusive of MBEs.

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V. Non-Industry Specific Race – Gender Neutral Remedies, Policies and Procurement Reforms

In furtherance of the policies and objectives of this Program Plan, the **M/WBE Coordinator** or designee shall be responsible for implementing the following non-industry-specific program elements that will further facilitate the efficient implementation and successful enforcement of the M/WBE Program:

A. Commercial Nondiscrimination Policy

1. Statement of Policy

It is the policy of the City not to enter into a contract or to be engaged in a business relationship with any business entity that has discriminated in the solicitation, selection, hiring or commercial treatment of vendors, suppliers, Subcontractors or commercial customers on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation or on the basis of disability or any otherwise unlawful use of characteristics regarding the vendor's, supplier's or commercial customer's employees or owners; provided that nothing in this policy shall be construed to prohibit or limit otherwise lawful efforts to remedy the effects of discrimination that have occurred or are occurring in the Relevant Market.

2. Policy Implementation

The M/WBE Coordinator shall implement this policy by periodically conducting outreach and distributing educational materials to the City's contracting and vendor community and related trade associations to advise such contractors, vendors and prospective Respondents of this policy and the procedures to be followed in submitting complaints alleging violations of this policy. **In addition, the M/WBE Office may conduct an investigation into possible violations where the M/WBE participation is substantially below the M/WBE participation goal(s) established for the contract.** The City Manager or designee, the Director of Financial and Administrative Services, the Director of Engineering and Inspections, Directors of other City Originating Departments, and the City Attorney's Office shall insure that the following commercial nondiscrimination clause language is set forth in and incorporated into all the City contracts that result from Formal Solicitations:

Every contract and subcontract shall contain a nondiscrimination clause that reads as follows:

"As a condition of entering into this agreement, the company represents and warrants that it will comply with the City's Commercial Nondiscrimination Policy, as described under Section V. A. 1. of the M/WBE Program Plan. As part of such compliance, the company shall not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring or commercial treatment of Subcontractors, vendors, suppliers, or commercial customers, nor shall the company retaliate against any person for reporting instances of such discrimination. The company shall provide equal opportunity for Subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the City's Relevant Market. The company understands and agrees that a material violation of this clause shall be considered a material breach of

this agreement and may result in termination of this agreement, disqualification of the company from participating in City contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.”

All Formal Solicitations issued for City contracts shall include the following certification to be completed by the Respondent:

"The undersigned Respondent hereby certifies and agrees that the following information is correct: In preparing its response on this project, the Respondent has considered all proposals submitted from qualified, potential Subcontractors and suppliers, and has not engaged in "discrimination" as defined in the City's M/WBE Program Plan, Section V. A. 1.; to wit: discrimination in the solicitation, selection or commercial treatment of any Subcontractor, vendor, supplier or commercial customer on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation or on the basis of disability or other unlawful forms of discrimination. Without limiting the foregoing, "discrimination" also includes retaliating against any person or other entity for reporting any incident of "discrimination". Without limiting any other provision of the solicitation for responses on this project, it is understood and agreed that, if this certification is false, such false certification will constitute grounds for the City to reject the response submitted by the Respondent on this project, and terminate any contract awarded based on the response. As part of its response, the Respondent shall provide such information as may be requested by the City related to the issue of possible discrimination by the Respondent in subcontracting. The information may include, but is not limited to, an explanation for the rejection of an M/WBE bid or quote and the Respondent's records with respect to M/WBE participation on other contracts awarded to the Respondent in the past 4 years; and a list of all instances within the immediate past 4 years where there has been a final adjudicated determination in a legal or administrative proceeding in the State of North Carolina that the Respondent discriminated against its Subcontractors, vendors, suppliers or commercial customers, and a description of the status or resolution of that complaint, including any remedial action taken. As a condition of submitting a response to the City, the Respondent agrees to comply with the City's Commercial Nondiscrimination Policy as described under its M/WBE Program Plan, Section V. A. 1.

B. Bid De-briefing

For any contract in which the City has undertaken a Solicitation and subsequent evaluation of responses, the Director of the department issuing the solicitation, or their designees, shall provide a de-briefing to any non-recommended Respondent, upon request. At a minimum, debriefings shall include disclosures of scoring criteria and scores from the evaluation panel responsible for making the selection for each response that was evaluated. To the extent possible, the de-briefing should also identify for each non-recommended Respondent those areas where its submittal was as not as competitive as others, with an explanation as to why.

C. Financial Assistance

The City Manager's designee shall establish criteria for financial institutions to compete for City deposits and banking services on the basis of their commercial lending practices and performance in the issuance of loans and lines of credit to M/WBE loan and credit applicants. The Economic Development Business Support Manager and the City Manager's designee shall also solicit

contributions from financial institutions for a revolving working capital fund for M/WBE firms performing on City contracts to be administered by a local credit union or community bank. In addition, the M/WBE Coordinator shall provide referrals to City firms for technical assistance resources to assist them in preparing loan and credit applications.

D. Technical Assistance

The M/WBE Coordinator shall enhance business development assistance efforts on behalf of M/WBE firms through a referral network and training collaborations with community agencies. The M/WBE Coordinator should also undertake assessments of M/WBE firms regarding their growth and measure the effectiveness of various forms of technical assistance (e.g., number of bids submitted, number of bids won, earnings growth, number of program graduates, etc.).

E. De-bundling of Contracts

Goal Setting Committee is assigned to review each solicitation in advance of advertisement and shall consider the applicable Program Element(s) to apply to the solicitation; shall also determine whether the proposed contract is unnecessarily large and whether it might better be de-bundled into several smaller component contracts that would enhance the ability of ready, willing, and able M/WBE firms to bid and compete.

In making such determinations regarding the proposed de-bundling of a contract, the Goal Setting Committee shall balance the Originating Department's arguments regarding the likely impact of de-bundling upon contract cost, performance, and administration against the M/WBE Coordinator arguments regarding the likely impact upon supplier diversity and economic inclusion of smaller firms.

In the event no consensus can be reached by the Goal Setting Committee, the final determination regarding de-bundling of the contract shall be made by the City Manager or his designee.

F. Counting Participation and Commercially Useful Function

a. Once a firm is determined to be an eligible M/WBE in accordance with the M/WBE plan, the total value of the contract awarded to the M/WBE is counted as participation. The firm must be certified as of the proposal due date. The total dollar value of participation by a certified M/WBE will be based upon the value of work actually performed by the M/WBE and the actual payments to M/WBE firms by the Contractor. The work must be in an area for which the firm has documented experience. A firm must provide documentation satisfactory to the City to show that the M/WBE has performed similar work in the past. Documentation to satisfy this requirement may include invoices and payments for work previously performed.

b. The City will not count the dollar value of work performed under a contract with a firm after it has ceased to be certified toward the M/WBE goals.

c. Consistent with normal industry practices, an M/WBE may enter into subcontracts. If an M/WBE contractor subcontracts a significantly greater portion of the work of the contract than would be expected on the basis of normal industry practices, the M/WBE will be presumed not to be performing

a Commercially Useful function. The M/WBE may present evidence to rebut this presumption to the City.

d. When an M/WBE performs as a participant in a joint venture, the City will count a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the M/WBE performs with its own forces toward M/WBE goals.

e. The City shall count as its MBE/WBE participation only expenditures to M/WBE firms that perform a Commercially Useful function in the work of a contract.

f. If an M/WBE does not perform or exercise responsibility for at least 49 percent of the total cost of its contract with its own work force, or the M/WBE firm subcontracts a greater portion of the work of a contract that would be expected on the basis of normal industry practices for the type of work involved, it is presumed that it is not performing a commercially useful function.

g. The City will use the following factors in determining whether an M/WBE trucking company is performing a commercially useful function:

i) The M/WBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting the goals.

ii) The M/WBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.

iii) The M/WBE may lease trucks from another M/WBE firm, including an owner-operator who is certified as an M/WBE. The M/WBE who leases trucks from another M/WBE receives credit for the total value of the transportation services the lessee M/WBE provides on the contract.

iv) Participation by non-M/WBE owned trucks equipped with drivers receives credit only for the fee or commission it receives as a result of the lease arrangement. Leased trucks must display the name and identification number of the M/WBE firm.

h. Use the following factors in determining whether an M/WBE for materials or supplies is performing a commercially useful function:

i) If the materials or supplies are obtained from an M/WBE manufacturer, count 100 percent of the cost of the materials or supplies toward M/WBE goals.

ii) If the materials or supplies are purchased from an M/WBE regular dealer, count 60 percent of the cost of the materials or supplies toward M/WBE goals.

j. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis.

G. M/WBE Program Waivers

Prior to submission of a prospective solicitation to the GSC, and prior to the public release of solicitations, a City Originating Department may request the City Manager or designee to waive or modify the application of Program Element requirements for M/WBE participation by submitting its reasons in writing.

The Department must fully and accurately document the necessity for the waiver. The M/WBE Office shall evaluate the request to determine that the requirements for a waiver have been satisfied and make a recommendation to the City Manager. The City Manager or designee may grant such a waiver or modification upon determination that:

- i) The extraordinary and necessary requirements of the contract render application of the Program Elements infeasible or impractical;
- ii) The nature of the goods or services being procured are excluded from the scope of this Program Plan; or
- iii) Sufficient qualified M/WBEs providing the goods or services required by the contract are unavailable in the Relevant Market area of the project despite every reasonable attempt to locate them.

Otherwise, such solicitations shall be forwarded to the GSC for review and possible application of Program Elements. Any further requests from a City Originating Department for modification of Goal amounts or other Program Elements as established by the GSC shall be presented to the City Manager or designee, whose decisions on such requests shall be final.

The GSC may waive the application of Program Elements to enhance M/WBE utilization for a specific contract under the following circumstances:

- i) Whenever the needed goods or services are available only from a sole source and the prospective contractor is not currently disqualified from doing business with the City, or the procurement is necessary to preserve or protect the health and safety of the City's residents; and
- ii) The Originating Department certifies to the GSC and City Manager or designee:
 - a) That an emergency exists which requires goods or supplies to be provided with such immediacy that it is unable to comply with the requirements of this Program Plan; and
 - b) That the prospective contractor is an M/WBE or, if not, that the prospective contractor will make a Good Faith Effort to utilize M/WBEs.

Final approval of all such waivers shall be made by the City Manager or designee in writing stating the criteria that were met.

H. Prompt Payment

Upon award of the prime contract to a Respondent, the Prime Contractor shall be required to submit accurate progress payment information with each invoice regarding each of its Subcontractors, including M/WBE Subcontractors. The M/WBE Coordinator shall audit 100% of the reported payments to M/WBE and non-M/WBE Subcontractors to ensure that the Prime Contractors' reported subcontract participation is accurate. Absent a waiver from the M/WBE Coordinator, a Prime Contractor's failure to reach the required level of M/WBE subcontracting shall be considered a material breach of contract.

City contracts with Prime Contractors shall include clauses requiring Prime Contractors to pay Subcontractors in compliance with N.C. G. S. § 143 - 134.1 (the "Prompt Payment Act"), unless there is an agreement that the Prime Contractor will pay the subcontractor earlier than required by the statute. Any Bidders that offers a Quick Pay commitment to any M/WBE subcontractor in its solicitation efforts, shall not rescind the Quick Pay Commitment. A Bidder's failure to comply with its Quick Pay commitment after the contract has been awarded shall be considered a material breach. Such clauses shall mandate that in the event of Prime Contractor non-compliance regarding such payments, no final retainage on the Prime Contract shall be released to the Prime Contractor, and no new City contracts should be issued to the Prime Contractor until the audit of previous subcontract payments is complete and payments are verified to be in accordance with the specifications of the contract.

The successful bidder will be required to fully comply with the City's payment reporting process which includes a payment verification system.

I. Post-Award Contract Change Orders and Terminations

1. Post Award Change Orders

After an award, if the change order involves items of work already included in a M/WBE's subcontract or the work is materially the same as the work included in the M/WBE's subcontract, the M/WBE is to have the opportunity to perform the work unless it is documented that the M/WBE is unable or unwilling to perform the work.

If a change order involves work that is not already included in a M/WBE's subcontract or the work is not materially the same as the work included in the M/WBE's subcontract, the Prime contractor shall make Good Faith Efforts to obtain M/WBE participation equal to the existing percentage contract goal.

If, after reasonable Good Faith Efforts, the contractor is unable to find an M/WBE, a post-award waiver may be requested. The request shall document the reasons for the contractor's inability to meet the goal requirement. In the event the contractor is found not to have performed Good Faith Efforts in its attempt to find a suitable M/WBE for the new scope of work, in the City's sole discretion, the City may terminate the contract for material breach. If the City terminates the contract, the City may then award the contract to the next lowest Responsible and Responsive Respondent or, in the alternative, re-solicit the contract with the terminated vendor being disqualified from participation in the re-solicitation.

2. Post Award Terminations

After an award, a Prime contractor is required to notify the City of any changes in their M/WBE utilization and /or MWBE subcontracting plan. All such changes must be approved in writing by the M/WBE Office in advance of making any such changes, regardless of whether the City department or the contractor initiates the change.

No M/WBE subcontractor who is identified and listed on the subcontractor utilization Plan may be replaced with a different subcontractor except:

If the subcontractor's bid is later determined by the contractor or construction manager at risk to be non-responsible or nonresponsive, or the listed subcontractor refuses to enter into a contract for the complete performance of the bid work, or with the approval of the public entity for good cause. Good cause does not exist if the Prime seeks to terminate an M/WBE represented in the Prime's M/WBE commitment so the Prime can self-perform or transfer to another subcontractor work originally committed to the M/WBE.

Good cause includes, but is not limited to the following circumstances:

(i) The M/WBE subcontractor fails or refuses to execute a written contract;

(ii) The M/WBE subcontractor fails or refuses to perform the work of its subcontract in a manner consistent with normal industry standards. Provided, however, that good cause does not exist if the failure or refusal of the M/WBE subcontractor to perform its work in the subcontract results from the bad faith or discriminatory action of the prime contractor;

(iii) The M/WBE subcontractor voluntarily withdraws from the project and provides to the prime written notice of its withdrawal;

(iv) The M/WBE is ineligible to receive M/WBE credit for the type of work required;

(v) An M/WBE owner dies or becomes disabled with the result that the M/WBE subcontractor is unable to complete its work on the contract; or

(vi) Other documented good cause that the City determines compels the termination of the M/WBE subcontractor.

Any requests for substitutions or terminations of M/WBE firms shall be submitted in writing to the M/WBE Office. The submission shall include the following information:

i. The date the contractor determined the M/WBE to be unwilling, unable or ineligible to perform.

ii. A brief statement of facts describing the situation and citing specific actions or inaction by the M/WBE firm giving rise to contractor's assertion that the M/WBE firm is unwilling, unable, or ineligible to perform.

iii. A brief statement of the good faith efforts undertaken by the contractor to enable the M/WBE firm to perform.

iv. The total dollar amount currently paid for work performed by the M/WBE firm.

v. The total dollar amount remaining to be paid to the M/WBE firm for work completed, but for which the M/WBE firm has not received payment, and over which the contractor and the M/WBE firm have no dispute.

vi. The projected date that the contractor requires a substitution or replacement M/WBE to commence work, if consent is granted to the request.

vii. The M/WBE's response to the notice of intent to terminate. If there is no response from the M/WBE within the time allowed in the notice of intent to terminate, the contractor shall state that no response was received.

The M/WBE Office will consider both the contractor's request and the M/WBE firm's response and explanation before approving the contractor's request.

J. Contract Specification Review

Goal Setting Committees assigned to review each solicitation in advance of advertisement shall consider the applicable Program Element(s) to apply to the solicitation and shall also review proposed specifications for purposes of determining whether they are unnecessarily restrictive and whether they will likely adversely affect the ability of M/WBEs to compete.

In making such determinations, the Goal Setting Committees shall especially focus upon unreasonably burdensome experience requirements, proprietary name brand specifications that preclude like grade and quality substitutions, and authorized dealership and distributorship requirements that effectively preclude participation of M/WBE firms.

If the Goal Setting Committee determines one or more bid specifications are unnecessarily restrictive or have the effect of giving unfair advantage to incumbent firms, it shall direct the Originating Department to modify the solicitation accordingly to make it more inclusive. In the event no consensus can be reached by the Goal Setting Committee regarding amendment of the specifications to make them more inclusive, the final determination shall be made by the City Manager or his designee.

K. Evaluation Panel Diversity

For each Solicitation that uses Best Value Contracting as the method of procurement, the Originating Department shall form an evaluation panel consisting of no fewer than five persons for purposes of reviewing and scoring proposals and making the selection of the vendor or contractor for contract award purposes.

At least one of the representatives on the evaluation panel shall be the M/WBE Coordinator or designee. At least one of the other evaluation panel members shall be from a City department other than the Originating Department. Each evaluation panel member is responsible for thoroughly reviewing and fairly scoring each responsive proposal to the best of his or her ability consistent with the selection criteria posted in the solicitation.

Panel members shall not, (i) bring in unsubstantiated outside information; (ii) discuss among themselves the scores or ratings of individual respondents; advocate for or against a particular firm; or, (iii) identify a firm that is the least or most desired by the department in advance of the evaluation process.

In the event an evaluation panel is unable to reach consensus on the recommended selection, each evaluation panel member shall be required to disclose their scoring and provide to the full evaluation panel a written explanation of their reasoning. The Respondent or Bidder / Participant receiving the highest cumulative total of points shall be recommended by the evaluation panel for contract award.

L. Electronic Vendor Registration and Contract Monitoring Systems

The City shall establish an electronic system (Lawson and other electronic systems) to provide the elements and functionalities necessary to advance and facilitate the Program Objectives of the M/WBE Program stated herein. The system shall, at a minimum, include the following:

a. The **systems** shall allow a prospective vendor to electronically enter, maintain, and update its vendor registration and profile data. The **system**s shall capture relevant vendor contact information, nationally-recognized industry/commodity identification codes, ownership status (e.g., race and gender of ownership, certifications held), length of time in business, number of employees, and the unique identifiers deemed necessary by the City. Vendors shall be required to update critical fields, as defined by the M/WBE Coordinator, within 72 hours of any changes. Vendors shall be required to update any changes to their entire registration and profile and confirm their interest in performing work for the City annually.

b. Every vendor that receives a City prime contract or subcontract, or receives payment for work performed, and/or receive payment for goods or services delivered on behalf of the City, shall be required to register in the DMS System. The City shall designate the acceptable methods for the unique identification of vendors. Each vendor must complete registration on the DMS system to be eligible to receive a contract award, or to receive a payment from the City.

c. **The City may use the system for electronic outreach purposes and send alerts to registrants of upcoming solicitation opportunities based upon the identified industry/commodity codes of registrants or vendor-identified areas of interest, unless such notification is declined.**

d. The **DMS system** shall track all payments, by industry/commodity classification code that is assigned to each registrant.

e. **Upon payment by the City to a vendor for goods or services provided,** vendors shall be required to provide and verify at such times and in the format required by the City:

1. Their City vendor identifiers;
2. The City vendor identifiers for all Subcontractors and suppliers;
3. The claimed value of the respective goods or services provided by the vendor and any Subcontractor or supplier; and
4. **The City required** industry/commodity identification codes for all goods or services provided by the vendor and any Subcontractors or suppliers.

The City shall electronically notify such identified Subcontractors and suppliers and require that they confirm and verify payment from Prime Contractors for goods and services for which the City has paid the prime contractor.

f. **The system shall provide users the ability to identify prospective Respondents, Subcontractors, and vendors that are ready, willing and able to sell specific types of goods or services.** Consistent with applicable law regarding privacy and public records, the City may establish policies regarding the access and use of the system by vendors and by the general public.

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VI. Industry Specific Program Elements by Business Category

The GSC shall be established by the City Manager or designee in accordance with this Program Plan and shall have the responsibility of evaluating categories of Informal Solicitations and each prospective Formal solicitation document in advance of posting an advertisement to the public to determine which of the follow Program Elements it should apply to a given contract within a particular industry.

A.Race and Gender Neutral Construction Program Elements

The GSC shall consider the application of one or more of the following Race-Gender Neutral Program Elements for each Informal or Formal Solicitation for a City **Construction** contract:

1. Bonding Assistance Program

The City Manager or designee is authorized to establish a workgroup to research “best practices” in bonding assistance programs. The workgroup will recommend to the City Manager the establishment of a Bonding Assistance Program.

The workgroup shall include members of the following organizations:

- Economic Development Business Support Manager
- M/WBE Coordinating Committee
- Representatives of the surety industry
- Representatives of local construction trade associations

At a minimum this workgroup will consider the following for Bonding Assistant Program:

- i. Partnerships with local financial institutions to jointly participate with the City in establishing a pool of funds that can be used for providing bonding assistance to M/WBE construction firms;
- ii. Technical and financial assistance to M/WBE prime Respondents to minimize risk of loss and ensure proper management of funds during projects;
- iii. Provide partial bond guarantees supplied by the established pool of funds to assist M/WBE Respondents in obtaining surety bonds at a competitive rate; and
- iv. Establishment of procedures to segment City Construction projects, where feasible, in a manner that reduces required bonding limits for Respondents.

2. Low Cost Wrap-Up Insurance

The City Manager or designee is authorized and directed to establish a workgroup to research “best practices” in establishing wrap-up insurance programs for public owners that obtain one low uniform rate for all City contractors working on City contracts for various forms of required insurance. The workgroup will recommend to the City Manager the establishment of a Low Cost Wrap-Up Insurance Program for City contractors.

At a minimum, the workgroup shall include members of the following organizations:

- i.M/WBE Coordinator
- ii.Economic Development Support Manager
- iii.M/WBE Coordinating Committee
- iv.Representative of the insurance industry
- v.Persons with knowledge about the experience with Owner Controlled Insurance Programs (OICP)

At a minimum this workgroup will consider the following for the Low Cost Wrap-Up Insurance:

- i.Approaches for obtaining reimbursement from contractors for the premium costs associated with wrap-up insurance;
- ii.Forms of program administration that are consistent with State and local law;
- iii.Maximization of cost savings to the City without increases to liability exposure; and
- iv.Maximization of cost savings to City Prime and subcontractor firms without increases to liability exposure.

3. Construction Direct Purchasing

For fairly simple and routine, but labor intensive, construction projects that require the purchase of only a relative few construction supply materials, the GSC may direct the Originating Department to directly purchase in bulk and to warehouse or store some, or all, of the required construction supply materials for all such projects, and to issue bid solicitations that require Bidder / Participants to submit bids based upon labor costs only, with the selected contractor having the responsibility to transport required quantities of construction supplies from the City warehouse to the job site, and for providing construction services associated with the use or installation of the City's construction supplies.

In determining whether to apply this Program Element to a particular series of contracts, the GSC shall consult with the Originating Department to determine the feasibility and cost effectiveness of bulk purchases and warehousing of required construction supplies by the City, and for managing the release of appropriate quantities of warehoused supplies to selected contractors.

This Program Element is intended to assist smaller prime contractors that may have difficulty obtaining preferred pricing and credit from construction suppliers where the cost of construction supplies is largely determinative of the lowest responsible bid.

4. Vendor Rotation

For Construction (prime), contracts that are valued below \$30,000 and that are of a fairly routine nature, the GSC may reserve such contracts for award to an on call list or pre-qualified panel of firms on a rotating basis. In determining whether the Vendor Rotation Program Element should be applied to a particular contract, the GSC shall consider: a) whether there are at least three firms that are available and capable to perform as Prime on such contracts; b) whether the anticipated frequency of such contract opportunities will warrant multiple awards on a rotating basis;

B. Race and Gender Conscious Construction Program Elements

The GSC shall apply to each applicable contract the provisions of the Race-Gender Conscious Program Elements set forth below.

1. Annual Aspirational Goals

The Annual Aspirational Goal for M/WBE participation in City Construction contracts (prime and subcontract dollars combined) has initially been established at **MBE 18% AND WBE 20%** based upon the combined M/WBE availability by industry in accordance with the Disparity Study findings.

Annual Aspirational Goals are not to be routinely applied to individual solicitations, but are intended to serve as a benchmark against which to measure the overall effectiveness of the M/WBE Program on an annual basis, and to gauge the need for future adjustments to the mix and aggressiveness of remedies and Program Elements being applied pursuant to this Policy.

Annual Aspirational Goals may be stated only in those City solicitations that do not contain contract-specific M/WBE goals and when provided, shall be advisory only, and must also be accompanied by the full definition of the term as stated in this Program Plan.

2. M/WBE Joint Venture Incentives

Under this Program Element, on low-bid City construction prime contracts that are valued in excess of \$1 million, the GSC shall encourage, where economically feasible, the establishment of joint ventures to ensure prime contracting opportunities for all businesses, including certified M/WBEs on eligible projects.

Based upon the scope of work and the market availability, the GSC shall determine on a contract by contract basis, whether Good Faith Efforts to enter into a joint venture relationship shall be required, no bid in excess of \$1 million shall be accepted unless submitted by a joint venture, unless the M/WBE Office has determined that Good faith efforts to enter into a joint venture have been demonstrated.

Additionally, the GSC may apply this Program Element in a manner wherein larger M/WBE firms that have graduated, or that are otherwise ineligible to qualify for certification as M/WBEs, are encouraged to Joint Venture with certified local M/WBE construction firms to bid on reserved Joint Venture projects. In either case, the GSC shall set a minimum threshold for the percentage of the Joint Venture entity that shall be owned and managed by the certified local M/WBE Joint Venture Partner.

For City construction prime contracts valued in excess of \$1 million that utilize Construction Manager or Construction Manager at Risk delivery methods or other forms of Best Value Contracting, under this Program Element, the City may allocate up to 10% of weighted selection criteria Points in favor of the selection of a Respondent that is Joint Venture between a non-M/WBE firm and a certified M/WBE firm. The percentage of those Joint Venture Incentive Points awarded to the Respondent shall be allocated based upon the relative participation of the certified M/WBE in the Joint Venture as compared to other Respondent Joint Venture firms. Any qualifying Joint Venture Prime Contractor

that is awarded a prime contract under this Program Element may not subcontract more than 49% of the contract value to non-M/WBE firms. In determining whether the M/WBE Joint Venture Incentives Program Element should be applied to a particular contract, the GSC shall consider: a) whether there are at least three M/WBEs that are available and capable to perform as Prime Contractors for the contract; and b) the degree of underutilization of the M/WBE Prime Contractors in the specific Industry Categories.

As to each joint venture under this section, a written joint venture agreement must be completed by all parties to the joint venture and executed before a notary public which clearly delineates the rights and responsibilities of each member or partner, complies with any requirements of the City as set forth in bid documents or otherwise, and provides that the joint venture shall continue for, at a minimum, the duration of the contract.

3. Minority Inclusion Language in Best Value Construction RFPs

For City construction prime contracts valued at or above \$30,000, and that utilize Construction Manager or Construction Manager at Risk delivery methods or other forms of Best Value Contracting, under this Program Element, the City shall include language in the Formal Bid Solicitation that requires each Respondent to document past outreach efforts to M/WBE firms and past achievements in obtaining subcontractor diversity on both public and private similar projects. Up to 10 percent of available Points allocated to various selection criteria for awarding these contracts shall be reserved for scoring the documentation that Respondents submit in response to this Minority Inclusion Language. Alternatively, a Respondent may be awarded a percentage of these Points on a sliding scale based upon the level of M/WBE participation it has on its team that is performing a Commercially Useful Function.

4. M/WBE Evaluation Preference

For “Best Value” Construction projects using Construction Manager or Construction Manager At Risk delivery methods of contracting, and that are estimated by the City to be at least \$30,000 in value, but not greater than \$500,000 in value, the GSC may allocate up to 10 percent of the total available selection criteria Points for award to a Respondent that is a certified M/WBE firm, and may allocate lesser percentages of total available selection criteria Points for award to Respondent firms based upon the relative value of certified M/WBE firm participation that they have included on their teams to perform a Commercially Useful Function. In addition, the City may waive bonding requirements for these contracts. An M/WBE Prime Contractor that is awarded a prime contract under this Program Element may not subcontract more than 49% of the contract value to non-M/WBE firms. In determining whether the M/WBE Evaluation Preference Program Element should be applied to a particular contract, the GSC shall consider whether there are at least three M/WBEs that are available and capable to perform as Prime Contractors for the contract.

5. M/WBE Inclusion Language in Best Value Construction RFP

For City construction contracts valued at or above \$30,000, and that utilize Construction Manager or Construction Manager at Risk delivery methods or other forms of Best Value Contracting, under this

Program Element, a Proposer to the City solicitation shall submit, at the time of the Proposal, such documentation as required by the City to affirm the Proposer's Good Faith Efforts to meet M/WBE subcontracting requirements indicated in the solicitation. Failure of a Bidder/Participant to submit sufficient evidence in its Proposal to demonstrate its Good Faith Efforts to satisfy the M/WBE subcontracting goal(s) shall render its Proposal Non-Responsive.

6. Mentor-Protégé Program

The City of Greensboro (COG) M/WBE Mentor- Protégé Program was established to grow capacity and to foster sustainable business development for M/WBE firms. The Program connects more-established and successful Prime firms and managers with less-established M/WBE firms to provide management guidance and training.

i. Mentors shall provide guidance and training in such areas as office procedures, estimating and bidding, bookkeeping and accounting, management of funds, project management, supplier relationships, bonding and insurance, etc; ii. Written mentor-protégé team plans outlining the expectations and responsibilities of each team member must be submitted to the M/WBE Office for approval prior to execution of a contract with the City; iii. The City may consider incentives for approved mentor-protégé teams including such incentives as eligibility for participation in the M/WBE evaluation preferences for mentor-protégé team members on "Best Value Contracting" projects, extended option years for maintenance and repair job order or task order contracts, accelerated permitting and/or expedited payment of invoices; and v. Mentors and protégés shall submit periodic reports regarding progress in achieving objectives and elements of their mentor-protégé plans.

7. M/WBE Weighted Contract- Specific Subcontracting Goals

The GSC may, on a contract-by-contract basis, at its discretion, require that a predetermined percentage of a specific Construction contract, up to 40%, be subcontracted to eligible M/WBEs. Factors to be considered by the GSC in making this determination shall include the relative availability of M/WBE firms to perform Commercially Useful Functions on the specific contract.

On a City solicitation, for which price and scope are defined, a prospective respondent shall submit at the time of response such documentation as required by the City that provides the items listed below. In the absence of a waiver granted by the M/WBE Coordinator, failure of a Prime Contractor to achieve the established M/WBE subcontractor percentage goal(s) shall render its response non-Responsive.

- i. The name(s) of the M/WBE Subcontractor(s) it intends to use on the project;
- ii. The percentage of prime contract dollars and the projected absolute dollar value of subcontracting services to be provided by each M/WBE;
- iii. Description of the work that each M/WBE Subcontractor shall perform; and

City bid solicitations that require Good Faith Efforts by Bidder/Participants to satisfy M/WBE subcontracting goals shall also require that any request for a reduction or waiver of the M/WBE subcontracting goal must be submitted by the Bidder/Participant to the M/WBE Coordinator no later than the bid due date, and that such waiver requests must also be accompanied by the submission of documentation of Good Faith Efforts no later than the bid due date. Any bid that fails to satisfy the

M/WBE subcontracting goals and that also fails to satisfy the requirements for a formal request for reduction or waiver of the M/WBE subcontracting goals that is accompanied by adequate Good Faith Efforts documentation shall be rejected by the City as non-responsive.

As part of the response, a Bidder / Participant shall submit a formal waiver request form that shall be placed in a separate sealed envelope plainly marked (“Good Faith Efforts - Waiver Request”) and labeled on the outside to include the bidder’s name, return address, and telephone number.

The good faith efforts - waiver request envelope shall include specified documentation which demonstrates a Good Faith Effort to comply with the requirements as described under the selected Program Elements. Alternatively, if the Bidder/Participant is able to comply with the Program Element requirements imposed by the GSC under the terms of the Program Plan, it shall submit in this first sealed envelope executed forms/ documents required by the M/WBE Coordinator to demonstrate compliance with these M/WBE Program Element requirements.

The technical and price portion of the Bidder / Participants bid shall be placed in a second sealed envelope that is plainly marked (Technical Bid and Cost Proposal), with the outside of the envelope labeled with the bid solicitation number, the name of the bidder, the bidder’s return address, and phone number.

At bid opening, all good faith effort - waiver request envelopes shall be opened first. On projects using the bifurcated bid process, no technical bid -cost proposal envelopes shall be opened until the M/WBE Coordinator or designee has first reviewed all waiver requests and made a final determination either granting or denying the waiver requests. If any waiver request is granted, then the M/WBE Coordinator or designee shall instruct the Originating Department to amend the bid solicitation by modifying or waiving the Program Element M/WBE participation requirements accordingly for all prospective Bidder/Participants, and to return all sealed technical bid – cost proposal envelopes unopened to the respective Bidder / Participants. In the event no requested waivers are granted by the M/WBE Coordinator or designee, the technical bids and cost proposals submitted by any Bidder / Participants who’s Good Faith Effort – Waiver Request envelopes fail to demonstrate compliance with the M/WBE participation requirements shall be rejected as non-responsive. All sealed technical bid – cost proposals from Bidder / Participants that have been found to be in compliance with Program Element M/WBE participation requirements shall then be opened and evaluated for purposes of award. A Bidder/Participant may appeal a decision of the M/WBE Coordinator that the Bidder/Participant did not demonstrate compliance with the M/WBE participation requirements to the City Manager or designee.

A. Review of M/WBE Good Faith Efforts Documentation

The M/WBE Coordinator shall have responsibility for evaluating the Good Faith Efforts documentation for compliance with the guidelines below.

B. Minimum Acts of Good Faith Efforts

1. M/WBE Solicitation

Using the directory of certified M/WBE firms maintained by the M/WBE Coordinator, Bidder / Participants shall be required to solicit subcontractor bids and material quotes from individual certified M/WBEs having their principal place of business or a Significant Business Presence in the Relevant Market. The Bidder / Participant shall solicit bids and quotes from M/WBEs to perform subcontracts for a Commercially Useful Function on behalf of the Bidder / Participant. Such Subcontractor solicitations shall occur no less than ten business days in advance of the City's bid due date, and shall, at a minimum, furnish the following information:

- Bidder's name, address, telephone number, and email address;
- Project location name, bid solicitation number, and description;
- Description of areas of work to be subcontracted or materials to be supplied;
- Location and availability of project plans, specifications, or blueprints;
- The identity and contact information of the Bidder / Participant's contracting representative;
- Location, date, and time when subcontractor bids or quotes must be received by Bidder / Participant; and
- The proposed Notice to Proceed date.

2. Good Faith Negotiation

The Bidder/Participant must comply with the Good Faith Negotiation. All Bidder/Participants that fail to meet a Subcontracting Goal must negotiate in good faith with each certified MWBE that responds to the Bidder/Participant's solicitation or contacts the Bidder/Participant on its own accord with respect to the unmet Goal(s). If the Bidder/Participant does not receive a response from the solicited subcontractors, the Bidder/Participant must notify the M/WBE Coordinator that no response was received.

A Bidder / Participant shall consider all subcontractor bids or quotes received from M/WBEs and will not reject such bids without sound and documented reasons based upon a thorough understanding of the prospective subcontractor's capabilities. If a subcontract is not awarded to a certified M/WBE subcontractor that has provided a bid or quote to the Bidder / Participant, the Bidder / Participant must state in writing the reasons for the denial of subcontract award. This requirement applies to the Bidder / Participant regardless of the tier of subcontracting involved.

C. Other Good Faith Efforts Considerations

The M/WBE Coordinator will evaluate all efforts made by the Bidder/Participant to determine compliance with these good faith efforts categories. The M/WBE Coordinator will assess whether the efforts employed by the Bidder are those that a Prime Contractor would reasonably be expected to take if they were actively and aggressively trying to meet each Subcontracting Goal established for the Contract. The assessment will be made on a case by case basis taking all available facts into account. The M/WBE Coordinator may take into account the performance of other Bidder/Participants in meeting the established Subcontracting Goals. Mere pro forma efforts will not be sufficient. The focus will be on the likely effectiveness of steps taken.

All actions necessary to earn the GFE points must be undertaken prior to the Bid opening. For each unmet Subcontracting Goal, the Bidder/Participant must earn at least 50 GFE points (the “Minimum GFE Points”) from the GFE categories described below to be considered responsive. The M/WBE coordinator may change the Minimum GFE Points from time to time or with respect to certain Contracts, and may add, exclude or modify certain GFE categories based on the nature and amount of the Contract. The M/WBE Coordinator will take into account the following:

- 1. Contacts.** The Bidder/Participant must contact MWBEs in a manner reasonably calculated to meet each Subcontracting Goal. Factors considered may include, but are not limited to:
 - (a) Whether the Bidder/Participant provided written notice at least 10 business days in advance of the bid due date to all certified M/WBE subcontractors that are reasonably qualified in the areas of specialty or the industry segments that are being subcontracted;
 - (b) Whether the Bidder/Participant solicited qualified M/WBEs for scopes of work sufficient to meet each Subcontracting Goal;
 - (c) How the contacts were made and whether they were documented in a verifiable way (and in compliance with any forms provided by the City);
 - (d) Whether the substance of the Bidder/Participant’s solicitation was reasonably sufficient to generate a response from MWBEs; and
 - (e) Whether the Bidder/Participant promptly and adequately responded to inquiries received from M/WBEs;
 - (f) Whether the Bidder/Participant made follow up contacts to M/WBEs that did not respond to the Bidder’s initial contact.

2. Making Plans Available. The Bidder /Participant must provide M/WBE subcontractors with adequate information about the availability of plans, blueprints, specifications, and other requirements that are necessary for M/WBEs to bid on the project. To receive credit for this GFE, the Bidder/Participant must notify M/WBEs of the way in which Project Documents will be made available for inspection at least ten days in advance of the bid due date.

The ways a Bidder/Participant may make Project Documents available include:

- (a) Providing the identity and contact information of the Bidder / Participant’s contracting representative for the project;
- (b) Providing a telephone number or email address for requesting copies of the Project Documents via email, fax, regular mail or other means of document transfer; or

(c) Providing an address within the Relevant Market where MWBEs can have physical access to the Project Documents at no cost; or

(d) Posting the Project Documents on a website that MWBEs can access at no cost.

A Bidder / Participant may receive credit for the GFE only if it receives credit for the Contacts GFE and it responds promptly to any requests made for access to the Project Documents.

3. Breaking Down Work. The Bidder / Participant must demonstrate to the City's satisfaction that it sub-divided or combined scopes of work into economically feasible units in order to facilitate M/WBE participation. In awarding points, the City will consider the number and dollar value of the scopes of work the Bidder/Participant listed in its written invitation to bid for MWBE participation, whether those scopes would be sufficient to meet the Subcontracting Goals and how the Bidder/Participant notified M/WBEs of its willingness to break down the work into such units. Simply restating the City's subcontracting scopes as listed in the City's RFP is not sufficient to earn this GFE, but rather Primes must provide written documentation to demonstrate negotiations with MWBEs to breakdown or combine elements of work. **A Bidder/Participant may receive credit for this GFE only if it receives credit for Contacts.**

4. Working with M/WBE Assistance Organizations. The Bidder/Participant must document that it worked with the M/WBE Assistance Organization to provide assistance in recruiting MWBEs for the Contract for which bids are sought. In deciding whether to award points for this GFE, the City will consider the timing and nature of how the Bidder/Participant worked with the City and whether such effort was reasonably likely to result in significant M/WBE participation for the contract at issue. Request must be in writing and must be submitted a minimum of 3 days prior to the bid opening. The Bidder/Participant must include a copy of the request and all relevant correspondence in its GFE envelope. Points will not be awarded for 1) requesting an M/WBE listing and 2) requesting assistance prior to the follow up phone calls being made. **A Bidder/Participant may receive credit for this GFE only if it receives credit for Contacts.**

5. Attendance at the Pre-Bid. The Bidder/Participant must attend the pre-bid meeting scheduled by the City. To receive the credit, the Bidder/Participants must sign the M/WBE attendance log and acknowledge that they have been informed and understand the M/WBE Participation requirements for the Contract in question. **A Bidder/Participant may receive credit for this GFE only if it receives credit for Contacts.**

6. Bonding or Insurance Assistance on Construction Contracts. The Bidder/Participant must assist an MWBE in getting required bonding or insurance coverage for the Contract at issue or provide alternatives to bonding or insurance for MWBEs. To document satisfaction of this GFE, the Bidder must submit: (a) the name of MWBE; (b) a description of the assistance the Bidder/Participant provided; (c) the date the Bidder/Participant provided the assistance; (d) the name of a contact person with the MWBE who can verify that the Bidder/Participant provided the assistance; and (e) any additional information requested by the City. No credit will be given for assistance provided to an Affiliate of the Bidder/Participant. No credit will be given for assistance provided to an M/WBE firms where bonding is not required by N.C.G.S. 143-129. In deciding whether to award points for this GFE, the City will consider how significant and meaningful the assistance was, how many MWBEs it

was offered to, and what impact it likely had on the Bidder/Participant's efforts to recruit MWBEs for the project.

7. Negotiating in Good Faith with M/WBEs The Bidder/Participant must: (a) demonstrate that it negotiated in good faith with interested MWBEs (which means showing at least some back and forth negotiation between the Bidder and MWBEs); (b) demonstrate that it did not reject any MWBEs as unqualified without sound reasons based on their capabilities; (c) Bidder/Participant must present the same specifications as all other subcontractors; and d) document in writing the reasons for rejecting any MWBEs.

8. Financial Assistance. The Bidder/Participant must provide one of the following types of assistance to an MWBE in connection with the Contract: (a) assistance in obtaining equipment, a loan, capital, lines of credit, (b) joint pay agreements or guaranties to secure loans, the purchase of supplies, or letters of credit, including waiving credit that is ordinarily required; or (c) assistance in obtaining the same unit pricing with the Bidder/Participant's suppliers as the Bidder/Participant. To receive credit for this GFE, Bidder/Participants must document: (a) the name of the M/WBE; (b) the description of the assistance the Bidder/Participant provided; (c) the date Bidder/Participant provided the assistance; and (d) the name of a contact person with the MWBE who can verify that the Bidder/Participant provided the assistance. No credit will be given for assistance provided to an Affiliate of the Bidder/Participant. In deciding whether to award points for this GFE, the City will consider how significant and meaningful the assistance was, how many MWBEs it was offered to, and what impact it likely had on the Bidder/Participant efforts to recruit MWBEs for the project.

9. Entering into a Joint Venture. To receive credit for this GFE, the Bidder/Participant must demonstrate that it negotiated a Joint Venture or partnership arrangement with one or more MWBEs as applicable, on the Contract. To receive credit for this GFE, Bidder /Participants must document; (a) the name of the MWBE; (b) a description of the Joint Venture or partnership; (c) evidence of the date the MWBE entered into the agreement; and (d) the name of a contact person with the MWBE who can verify the terms of the agreement. No credit will be given for a joint venture with an Affiliate of the Bidder/Participant.

10. Quick Payment Commitment To receive credit for this GFE, Bidder /Participants must provide the City with: (i) a copy of the Bidder /Participant's Quick Pay Commitment related to the specific project; (ii) documentation indicating that all M/WBEs notified under the Contacts GFE have received a written copy of the Bidder /Participant's Quick Pay Commitment prior to the Bid opening. Bidder /Participant will not receive credit for this GFE if: (i) the Quick Pay Commitment has a statement indicating that the Bidder/Participant *will consider* entering into a Quick Pay Commitment; or (ii) the Bidder/Participant only verbally communicated the Quick Pay Commitment to the Subcontractor. **A Bidder/Participant may receive credit for this GFE only if it receives credit for the Contacts GFE.**

Moreover, the Bidder / Participant shall ensure that flow-down provisions reflecting such mandatory Good Faith Efforts requirements (and also all other requirements of this Program Plan) shall be inserted in, and be enforceable at, each tier of subcontracting that it may use to fulfill its contractual obligations to the City.

A Bidder / Participant may not reject the proposal or price quote of an M/WBE subcontractor on the basis that the M/WBE subcontractor is unable to secure the necessary bonding. Rather, the Bidder / Participant must either waive the bonding requirement or provide the necessary bonding on behalf of the M/WBE.

Within 3 Business Days after receiving a request from the City, Bidder/Participants must submit a separate Letter of Intent form for each MWBE listed in the Subcontractor Utilization Affidavit. The City shall not count proposed MWBE utilization for which it has not received a Letter of Intent.

7. Economic Development Project M/WBE Subcontracting Goals

For private sector economic development projects wherein the City is providing some land, tax incentives, infrastructure improvements, or other pecuniary value to the overall project, under this Program Element the GSC shall require the developer to apply mandatory M/WBE subcontract participation goals to the construction portion of the project. Such Economic Development Project M/WBE Subcontracting Goals shall be subject to the same policies and procedures as have been set forth above. **The Economic Development Manager shall be responsible for monitoring for compliance throughout the duration of the contract and shall communicate at the earliest possible point in time the City's M/WBE program requirements.** In the event of violation of the contract requirements, City contract clauses with the developer shall provide for liquidated damages to be paid by the developer in the amount equal to the monetary value of M/WBE subcontracting goals established by the GSC.

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Professional Services Program

The GSC shall consider the application of one or more of the following Race Neutral or Race Gender Conscious Program Elements for each Informal or Formal Solicitation for a City Professional Services contract:

A. Race and Gender Neutral Professional Services Program Elements

1. Vendor Rotation

For Professional Services contracts that are valued below \$50,000 and that are of a fairly routine nature, the GSC may reserve such contracts for award to a list of firms on a rotating basis. In determining whether the Vendor Rotation Program Element should be applied to a particular contract, the GSC shall consider: a) whether there are at least three M/WBEs that are available and capable to perform as Prime on such contracts; and b) whether the anticipated frequency of such contract opportunities will warrant multiple awards on a rotating basis.

B. Race and Gender Conscious Professional Services Program Elements

The GSC shall apply to each applicable contract the provisions of the Race-Gender Conscious Program Elements set forth below.

1. Annual Aspirational Goals

This Annual Aspirational Goal for M/WBE participation in City Professional Services contracts (prime and subcontract dollars combined) has initially been established at MBE 24% AND WBE 22% based upon the combined M/WBE availability by industry in accordance with the Disparity Study findings.

Annual Aspirational Goals are not to be routinely applied to individual solicitations, but are intended to serve as a benchmark against which to measure the overall effectiveness of the M/WBE Program on an annual basis, and to gauge the need for future adjustments to the mix and aggressiveness of remedies and Program Elements being applied pursuant to this Policy.

Annual Aspirational Goals may be stated only in those City solicitations that do not contain contract-specific M/WBE goals and when provided, shall be advisory only, and must also be accompanied by the full definition of the term as stated in this Program Plan.

2. Evaluation Preference

For “Best Value Contracting” professional services contracts that are valued at \$50,000 or greater the City may establish an M/WBE Prime Contractor capacity-building initiative to enhance long-term competition. Under this Program Element, the GSC may allocate up to 10% of the total available selection criteria Points for award to any Respondent that is a certified M/WBE firm, and may allocate lesser percentages of the total available selection criteria Points for award to Respondent firms based upon the relative value of certified M/WBE firm participation that they have included on their teams for purposes of performing a Commercially Useful Function. Alternatively, the GSC may reserve such M/WBE Evaluation Preferences for those M/WBE firms that have not previously successfully obtained a prime contract from the City. Any M/WBE Prime Contractor that is awarded a prime contract under this Program Element may not subcontract more than 49% of the contract value to non-M/WBE firms. In determining whether the M/WBE Evaluation Preference Program Element should be applied to a particular contract, the GSC shall consider: a) whether there are at least three M/WBEs that are available and capable to perform as Prime Contractors for the contract; and b) the degree of underutilization of M/WBE Prime Contractors in the specific Industry Categories.

3. Mentor-Protégé Program

The City of Greensboro (COG) M/WBE Mentor- Protégé Program was established to grow capacity and to foster sustainable business development for M/WBE firms. The Program connects more-established and successful Prime firms and managers with less-established M/WBE firms to provide management guidance and training.

i. Mentors shall provide guidance and training in such areas as office procedures, estimating and bidding, bookkeeping and accounting, management of funds, project management, supplier relationships, bonding and insurance, etc.;

ii. Written mentor-protégé team plans outlining the expectations and responsibilities of each team member must be submitted to the M/WBE Office for approval prior to execution of a contract with the City;

iii. The City may consider incentives for approved mentor-protégé teams including such incentives as eligibility for participation in the M/WBE evaluation preferences for mentor-protégé team members on “Best Value Contracting” projects, extended option years for maintenance and repair job order or task order contracts, accelerated permitting and/or expedited payment of invoices; and

iv. Mentors and protégés shall submit periodic reports regarding progress in achieving objectives and elements of their mentor-protégé plans.

4. Subcontracting Goals

The GSC may, on a contract by contract basis, at its discretion establish M/WBE Subcontracting Goals on Professional Services contracts in excess of \$50,000. The GSC shall not establish Subcontracting Goals on contracts where (a) there are no subcontracting opportunities identified for the contract; or (b) there are not at least three M/WBE firms that are available and capable to perform Commercially Useful subcontracting opportunities on the contract.

When Subcontracting Goals are established for a contract, the Respondent must negotiate in good faith with each M/WBE that responds to the Respondent's solicitation or contacts the Respondent on its own accord. The City also may require that the Respondent comply with this section in the absence of Subcontracting Goals.

The M/WBE Office may require the Respondent to submit a statement of Good Faith Efforts that it undertook to secure the M/WBE participation in the contract. The Respondent must submit its GFE documentation with the proposal. The City will assess the reasonableness of the GFE undertaken by the Respondent on a case by case basis taking all available facts into account. The focus will be on the likely effectiveness of steps taken. Mere pro forma efforts will not be sufficient. Factors that may be considered include but are not limited to:

1. Contacts. The Respondent must contact MWBEs in a manner reasonably calculated to meet each Subcontracting Goal. Factors considered may include, but are not limited to:

- (a) Whether the Bidder/Participant provided written notice at least 10 business days in advance of the bid due date to all certified M/WBE subcontractors that are reasonably qualified in the areas of specialty or the industry segments that are being subcontracted;
- (b) Whether the Bidder/Participant solicited qualified M/WBEs for scopes of work sufficient to meet each Subcontracting Goal;
- (c) How the contacts were made and whether they were documented in a verifiable way (and in compliance with any forms provided by the City);
- (d) Whether the substance of the Bidder/Participant's solicitation was reasonably sufficient to generate a response from MWBEs;
- (e) Whether the Bidder/Participant promptly and adequately responded to inquiries received from M/WBEs;
- (f) Whether the Bidder/Participant made follow up contacts to M/WBEs that did not respond to the Bidder's initial contact.

2. Making Plans Available. Did the Respondent make all relevant information and documents necessary to propose available for inspection by M/WBEs at least 10 days before the proposal due date?

3. Breaking Down Work. Did the Respondent demonstrate to the City's satisfaction that it subdivided or combined scopes of work into economically feasible units in order to facilitate M/WBE participation?

4. Working with M/WBE Assistance Organization. Did the Respondent document that it worked with an M/WBE Assistance Organization to provide assistance in recruiting MWBEs for the Contract for which bids are sought?

5. Attendance at the Pre-Proposal Conference. Did the Respondent attend any pre-proposal meetings scheduled by the City for the Contract in question?

6. Negotiating in Good Faith with M/WBEs. Did the Respondent document having engaged in at least some back and forth negotiation between the Bidder and interested MWBEs?

7. Entering into a Joint Venture. To receive credit for this GFE, the Respondent must demonstrate that it negotiated a Joint Venture or partnership arrangement with one or more MWBEs as applicable, on the Contract. To receive credit for this GFE, the Respondent must document; (a) the name of the MWBE; (b) a description of the Joint Venture or partnership; (c) evidence of the date the M/WBE entered into the agreement the MWBE entered into the agreement; and (d) the name of a contact person with the MWBE who can verify the terms of the agreement. No credit will be given for a joint venture with an Affiliate of the Respondent.

8. Quick Payment Commitment. To receive credit for this GFE, Respondent must provide the City with: (i) a copy of the Respondent's Quick Pay Commitment related to the specific project; (ii) documentation indicating that all M/WBEs notified under the Contacts GFE have received a written copy of the Respondent's Quick Pay Commitment prior to the proposal due date. The Respondent will not receive credit for this GFE if: (i) the Quick Pay Commitment has a statement indicating that the Respondent *will consider* entering into a Quick Pay Commitment; or (ii) the Respondent only verbally communicated the Quick Pay Commitment to the Subcontractor.

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Other Services Program

The GSC shall consider the application of one or more of the following Race Neutral or Race Gender Conscious Program Elements for each Informal or Formal Solicitation for a City Other Services contract:

A.Race and Gender Neutral Other Services Program Elements

1. Vendor Rotation

For Other Services contracts that are valued below \$30,000 and that are of a fairly routine nature, the GSC may reserve such contracts for award to a **list of on call** or pre-qualified panel of firms on a rotating basis. In determining whether the Vendor Rotation Program Element should be applied to a particular contract, the GSC shall consider: a) whether there are at least three M/WBEs that are available and capable to perform as Prime on such contracts; and b) whether the anticipated frequency of such contract opportunities will warrant multiple awards on a rotating basis.

B.Race and Gender Conscious Other Services Program Elements

The GSC shall apply to each applicable contract the provisions of the Race-Gender Conscious Program Elements set forth below.

1. Annual Aspirational Goals

This Annual Aspirational Goal for M/WBE participation in **City** Other Services contracts has initially been established at **MBE 18% AND WBE 11%** based upon the combined M/WBE availability by industry in accordance with the Disparity Study findings.

Annual Aspirational Goals are not to be routinely applied to individual solicitations, but are intended to serve as a benchmark against which to measure the overall effectiveness of the M/WBE Program on an annual basis, and to gauge the need for future adjustments to the mix and aggressiveness of remedies and Program Elements being applied pursuant to this Policy.

Annual Aspirational Goals may be stated only in those City solicitations that do not contain contract-specific M/WBE goals and when provided, shall be advisory only, and must also be accompanied by the full definition of the term as stated in this Program Plan.

2. Evaluation Preference

For “Best Value Contracting” professional services contracts that are valued at **\$30,000 or greater, but less than \$500,000**, the City may establish an M/WBE Prime Contractor capacity-building initiative to enhance long-term competition. Under this Program Element, the GSC may allocate up to 10% of the total available selection criteria Points for award to any Respondent that is a certified M/WBE firm, and may allocate lesser percentages of the total available selection criteria Points for award to

Respondent firms based upon the relative value of certified M/WBE firm participation that they have included on their teams for purposes of performing a Commercially Useful Function. Alternatively, the GSC may reserve such M/WBE Evaluation Preferences for those M/WBE firms that have not previously successfully obtained a prime contract from the City. Any M/WBE Prime Contractor that is awarded a prime contract under this Program Element may not subcontract more than 49% of the contract value to non-M/WBE firms. In determining whether the M/WBE Evaluation Preference Program Element should be applied to a particular contract, the GSC shall consider: a) whether there are at least three M/WBEs that are available and capable to perform as Prime Contractors for the contract; and b) the degree of underutilization of M/WBE Prime Contractors in the specific Industry Categories.

3. Mentor-Protégé Program

The City of Greensboro (COG) M/WBE Mentor- Protégé Program was established to grow capacity and to foster sustainable business development for M/WBE firms. The Program connects more-established and successful Prime firms and managers with less-established M/WBE firms to provide management guidance and training.

- i. Mentors shall provide guidance and training in such areas as office procedures, estimating and bidding, bookkeeping and accounting, management of funds, project management, supplier relationships, bonding and insurance, etc.;
- ii. Written mentor-protégé team plans outlining the expectations and responsibilities of each team member must be submitted to the M/WBE Office for approval prior to execution of a contract with the City;
- iii. The City may consider incentives for approved mentor-protégé teams including such incentives as eligibility for participation in the M/WBE evaluation preferences for mentor-protégé team members on “Best Value Contracting” projects, extended option years for maintenance and repair job order or task order contracts, accelerated permitting and/or expedited payment of invoices; and
- iv. Mentors and protégés shall submit periodic reports regarding progress in achieving objectives and elements of their mentor-protégé plans.

4. Subcontracting Goals

The GSC may, on a contract by contract basis, at its discretion establish M/WBE Subcontracting Goals on Other Services contracts. The GSC shall not establish Subcontracting Goals on contracts where (a) there are no subcontracting opportunities identified for the contract; or (b) there are not at least three M/WBE firms that are available and capable to perform Commercially Useful subcontracting opportunities on the contract.

When Subcontracting Goals are established for a contract, the Bidder/Participant must negotiate in good faith with each M/WBE that responds to the Bidder/Participant's solicitation or contacts the Respondent on its own accord. The City also may require that the Respondent comply with this section in the absence of Subcontracting Goals.

The M/WBE Office may require the Bidder/Participant to submit documentation of Good Faith Efforts that it undertook to secure the M/WBE participation in the contract. The Bidder/Participant must submit its GFE documentation with the proposal. The City will assess the reasonableness of the GFE undertaken by the Respondent on a case by case basis taking all available facts into account. The focus will be on the likely effectiveness of steps taken. Mere pro forma efforts will not be sufficient. Factors that may be considered include but are not limited to:

1. Contacts. The Respondent must contact MWBEs in a manner reasonably calculated to meet each Subcontracting Goal. Factors considered may include, but are not limited to:

- (a) Whether the Bidder/Participant provided written notice at least 10 business days in advance of the bid due date to all certified M/WBE subcontractors that are reasonably qualified in the areas of specialty or the industry segments that are being subcontracted;
- (b) Whether the Bidder/Participant solicited qualified M/WBEs for scopes of work sufficient to meet each Subcontracting Goal;
- (c) How the contacts were made and whether they were documented in a verifiable way (and in compliance with any forms provided by the City);
- (d) Whether the substance of the Bidder/Participant's solicitation was reasonably sufficient to generate a response from M/WBEs;
- (e) Whether the Bidder/Participant promptly and adequately responded to inquiries received from M/WBEs;
- (f) Whether the Bidder/Participant made follow up contacts to M/WBEs that did not respond to the Bidder's initial contact.

2. Making Plans Available. Did the Bidder/Participant make all relevant information and documents (blueprints, Plans, specifications) necessary to propose available for inspection by M/WBEs at least 10 days before the proposal due date?

3. Breaking Down Work. Did the Bidder/Participant demonstrate to the City's satisfaction that it subdivided or combined scopes of work into economically feasible units in order to facilitate M/WBE participation?

4. Working with M/WBE Assistance Organization. Did the Bidder/Participant document that it worked with an M/WBE Assistance Organization to provide assistance in recruiting MWBEs for the Contract for which bids are sought?

5. Attendance at the Pre-Bid Conference. Did the Bidder/Participant attend any pre-bid meetings scheduled by the City for the Contract in question?

6. Negotiating in Good Faith with M/WBEs. Did the Bidder/Participant document having engaged in at least some back and forth negotiation between the Bidder and interested MWBEs?

7. Entering into a Joint Venture. To receive credit for this GFE, the Bidder/Participant must demonstrate that it negotiated a Joint Venture or partnership arrangement with one or more MWBEs as applicable, on the Contract. To receive credit for this GFE, the Respondent must document; (a) the name of the MWBE; (b) a description of the Joint Venture or partnership; (c) evidence of the date the MWBE entered into the agreement; and (d) the name of a contact person with the MWBE who can verify the terms of the agreement. No credit will be given for a joint venture with an Affiliate of the Bidder/Participant.

8. Quick Payment Commitment. To receive credit for this GFE, Bidder/Participant must provide the City with: (i) a copy of the Bidder/Participant's Quick Pay Commitment related to the specific project; (ii) documentation indicating that all M/WBEs notified under the Contract's GFE have received a written copy of the Bidder/Participant's Quick Pay Commitment prior to the proposal due date. The Bidder/Participant will not receive credit for this GFE if: (i) the Quick Pay Commitment has a statement indicating that the Respondent *will consider* entering into a Quick Pay Commitment; or (ii) the Bidder/Participant only verbally communicated the Quick Pay Commitment to the Subcontractor.

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Goods Program

The GSC shall consider the application of one or more of the following Race Gender Conscious Program Elements for each Informal or Formal Solicitation for a City Goods and Services contract.

A. Race and Gender Conscious Goods Program Elements

The GSC shall apply Race- Gender Conscious Program Elements ('2' through '4' below) to Goods and Other Services solicitation documents based upon the following criteria:

1. Annual Aspirational Goals

This Annual Aspirational Goal for M/WBE participation in City Goods Program contracts (prime and subcontract dollars combined) has initially been established at **MBE 21% and WBE 27%** based upon the combined M/WBE availability by industry in accordance with the Disparity Study findings.

Annual Aspirational Goals are not to be routinely applied to individual solicitations, but are intended to serve as a benchmark against which to measure the overall effectiveness of the M/WBE Program on an annual basis, and to gauge the need for future adjustments to the mix and aggressiveness of remedies and Program Elements being applied pursuant to this Policy.

Annual Aspirational Goals may be stated only in those City solicitations that do not contain contract-specific M/WBE goals and when provided, shall be advisory only, and must also be accompanied by the full definition of the term as stated in this Program Plan.

In addition to non-business category specific and Professional Services race neutral program elements, the GSC shall consider the application of one or more of the following Race-Conscious Program Elements.

2. Voluntary M/WBE Distributorship Program

For those industry segments of City Goods purchases that have demonstrated very low availability of M/WBE suppliers, M/WBE authorized dealers, or M/WBE distributorships, the GSC may direct Originating Departments to offer certain incentives to those manufacturers and wholesale distributors of those goods and products that voluntarily agree to participate under this Program Element.

The application form, compliance procedures, and reporting requirements for the Voluntary M/WBE Distributorship Development Program shall be established by the Financial & Administrative Services Department.

The incentives to be provided to Program Participants may include the addition of up to two additional option years for performance of supply contracts to be exercised at the City's discretion without further competition, and / or accelerated payments from the City. These incentives are to be extended to the participating manufacturer or wholesale distributor on the condition that it demonstrates continued compliance with the provisions of Program.

The Voluntary M/WBE Distributorship Development Program shall require manufacturers and wholesale distributors to apply to the Financial & Administrative Services Department for entry to the program by completing forms and submitting documentation required by the Financial & Administrative Services Department. Each applicant must also execute an agreement with the City that identifies at least one M/WBE supplier that the manufacturer or wholesale distributor has agreed to let serve as its authorized dealer or distributorship for the sale of its products to the City on a non-discriminatory basis. The term “non-discriminatory” means that the manufacturer or wholesale distributor applicant has demonstrated to Financial & Administrative Services Department that the business terms it has extended to the M/WBE authorized dealer or M/WBE distributorship (e.g., geographic scope of territory, volume discounts, credit terms, technical and marketing support, customer type, etc.) are no less advantageous than those given to other non-M/WBE authorized dealers and distributors that sell its products to public and private sector customers.

On an annual basis, the Financial & Administrative Services Department shall evaluate each M/WBE authorized dealership or distributorship initiated under this Program Element to determine whether the manufacturer or wholesale distributor remains in compliance with the non-discriminatory terms of the Program, and therefore remains eligible to receive incentives.

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VII. Administration of M/WBE Program

A. M/WBE Program Duties and Responsibilities

The M/WBE Program will be administered and managed by the M/WBE Coordinator, who shall report to the City Manager or designee. The M/WBE Program shall be responsible for coordinating with and managing Originating Departments in their performance of duties related to implementation of this Program Plan, and also for the overall administration of the City's M/WBE Program Plan. M/WBE Program Plan. At a minimum, the M/WBE coordinator **shall**:

1. Report to the City and the public, based on available data, on at least an annual basis as to the City's progress toward satisfying the M/WBE Program purposes and policy objectives. During the first two years following Program Plan effective date, this reporting will be conducted semi-annually.
2. Formulate, establish, distribute and implement additional forms, rules and procedures for M/WBE Program waivers, improvements and adjustments to the goal-setting methodologies and Program Elements;
3. Have advance substantive input in a contract specification review process consistent with this Program Plan to ensure that contract solicitation specifications are not unnecessarily restrictive and unduly burdensome to M/WBE firms;
4. Receive and analyze external and internal information, including statistical data and anecdotal testimony regarding the barriers encountered by M/WBE firms in attempting to obtain contract opportunities at the City, and the relative effectiveness of various Program Elements in addressing those barriers;
5. Monitor and support the implementation of the M/WBE Program Plan and propose modifications to appropriate City officials as necessary to fully achieve the purpose and objectives of the Equal Business Opportunity Policy;
6. Provide public education and advocacy internally and externally regarding the purposes and objectives of the M/WBE Program Plan;
7. Conduct periodic audits of Good Faith Efforts documentation submitted by Respondents to ensure veracity, and impose sanctions in cases of fraud;
8. Provide screening of HUB firm certifications by the State of North Carolina Department of Administrative Services, oversight, and management of certification processes and procedures to ensure consistency with the eligibility criteria, standards, and definitions of Minority / Women Business Enterprise (M/WBE) as stated in this Program Plan. Also maintain and distribute accurate and up-to-date directories of firms that are certified, decertified, or graduated as M/WBE firms;
9. Collaborate with partners such as financing institutions, educational institutions, local chambers, government agencies, and trade organizations in Mentor-Protégé programs, Voluntary Joint Venture Projects, one-on-one business assessment and coaching services, and any innovative and creative

program or project(s) to increase M/WBE capacity in areas where there are limited numbers of M/WBE firms available to do the work in both Prime and Subcontracting categories;

10. Convene Matchmaker Conferences to enhance business networking opportunities between M/WBE firms and prospective clients, customers, and business associates, and provide seminars and technical assistance to M/WBE firms to enhance their ability to effectively compete for City contracts;

11. Investigate alleged violations of this Program Plan and provide written recommendations to appropriate authorities for remedial action and imposition of sanctions and penalties when necessary;

12. Determine Prime Contractor compliance with M/WBE Program requirements prior to contract award recommendations to City Manager or designee, and also prior to Originating Department's close-out of contracts and release of final retainage;

13. Oversee the maintenance of an accurate contract performance reporting system, and collaborate with the Information Technology Department and the Financial and Administrative Services Department to establish and maintain the Centralized Bidder Registration system as specified in this Program Plan; and

14. Provide staff support for the /M/WBE Coordinating Committee, the GSC, and established work groups that are convened subject to this Program Plan.

15. Annual City Contract Forecasting Plan- As part of the City's Annual Fiscal Year Budget Approval Process, the City Manager or his designee shall submit to the M/WBE Coordinator the anticipated expenditures of each City Department, and the M/WBE Coordinator shall develop M/WBE spending targets based upon M/WBE availability in the Relevant Market to perform the work on anticipated projects. This Anticipated Expenditure Report shall be a public record. The City Manager may publicize this report to any and all contractors, consultants, and vendors who are interested in doing business with the City. The M/WBE Office, however, shall email a copy of this Anticipated Expenditure Report to all M/WBE firms who are registered with the City as of the close of the previous fiscal year so that they will be aware of upcoming opportunities to contract with the City.

B. Goal Setting Committee

Each Goal Setting Committee (GSC) is to be appointed by the City Manager and chaired by the M/WBE Coordinator or its designee. The GSC shall include, at a minimum, the M/WBE Coordinator or designee, and /or the Director of Financial and Administrative Services, and / or the Director of Engineering and Inspections or their designees, and the Director or designee of the Originating Department (assuming the Originating Department is neither the Financial and Administrative Services Department nor the Engineering and Inspections Department) all without duplication of designees.

The City Manager or designee may also appoint two ex-officio members of the M/WBE Coordinating Committee to serve on any GSC purely in an advisory and non-voting capacity. On a quarterly basis for the first year following the effective date of this Program Plan, GSC ex-officio members shall report on the goal-setting process to the M/WBE Coordinating Committee; in turn, the M/WBE Coordinating Committee shall report to City Council. Said ex-officio members shall be required to

adhere to all confidentiality and conflict of interest disclosure requirements imposed on voting members.

At the City Manager's discretion, one or more GSCs may be appointed to serve in this capacity (e.g., by industry, by Originating Department, or by any other rational structure that serves the City's best interests in efficiently processing bid solicitations and applying Program Elements to them).

The GSC establishes M/WBE Program goals (e.g., Annual Aspirational Goals and contract-by-contract subcontracting goals) based upon Industry Categories, vendor availability and project-specific characteristics. The GSC also makes determinations about which Program Elements are to be applied to specific contracts based upon various criteria.

At a minimum, the GSC **shall**:

1. Meet as often as it deems necessary to accomplish its duties as outlined in this Program Plan, but not less than once monthly;
2. Review in advance proposed contract bid specifications to ensure that they are not unnecessarily restrictive and do not adversely affect the ability of M/WBE firms to competitively bid without adequate business justification;
3. Formulate, recommend to the City Manager or designee and implement additional rules and procedures for M/WBE Program goal-setting and other aspects of its duties in selecting and applying specific Program Elements to City solicitations and contracts in an efficient and effective manner; and
4. Monitor and support the implementation of the M/WBE Program
5. Determine the applicable bidding procedures (bifurcated or non-bifurcated) for each individual solicitation.
6. GSC shall review insurance requirements, in consultation with the City Attorney's Office, to determine when insurance requirements may be waived or reduced.

C. Annual Aspirational Goal- Setting

For each fiscal year, the GSC may establish a non-mandatory annual aspirational percentage goal for overall M/WBE prime and subcontract participation; or the GSC may establish segmented goals within the Annual Aspirational Goals based on the M/WBE availability by industry in accordance with the Disparity Study findings, along with such data to be collected by the City through the electronic vendor registration and contract monitoring systems on the utilization of M/WBE firms. The GSC may also establish M/WBE Subcontracting goals on an individual City contract wherein an overall combined goal is accompanied by subsets on one or more smaller goals that specifically target the participation of a particular subset of Minority Group member segments or the WBE segment based upon relative availability.

Annual Aspirational Goals are not to be routinely applied to individual contracts, but are intended to serve as a benchmark against which to measure the overall effectiveness of the M/WBE Program Plan

on an annual basis, and to gauge the need for future adjustments to the mix and aggressiveness of remedies and Program Elements being applied pursuant to this Policy.

D. Contract-by-Contract Subcontracting Goal-Setting

All subcontracting goals authorized under this Program Plan are intended to be established by the GSC and implemented only on a contract-by-contract basis. It is intended that such goal-setting will be based upon careful analysis of the availability of Commercially Useful subcontracting opportunities within a given contract and the relative availability of M/WBE firms to perform required tasks on such subcontract opportunities. Such contract-by-contract goal-setting shall be based upon reasonably reliable Respondent and Subcontractor availability data. Compliance with contract-specific subcontracting goals shall also require compliance with Good Faith Efforts and waiver procedures as established below in Sections VII. E through H. The M/WBE Coordinator and City Attorney's Office shall also ensure that contract language with the City's prime contractors contains flow-down provisions sufficient to manifest these M/WBE subcontracting goals for each tier of subcontractors performing on City contracts.

E. Determination of Program Compliance and Non-Compliance

The M/WBE Coordinator or designee, through the City Manager or designee, shall submit a written annual report to the M/WBE Coordinating Committee and the City Council on the progress of the City toward the utilization goals established by this Program Plan together with an identification of problems and specific recommendations for improving the City's performance. This report shall be issued semi-annually during the first two years following this Program Plan effective date, based on available data, and then annually thereafter.

The M/WBE Coordinator and Originating Departments shall work closely with the City Attorney's Office to include language in all City contracts that ensures compliance with the M/WBE Program. This language should also include a time period for the contractor to correct any and all deficiencies not later than fifteen (15) calendar days after notification of non-compliance.

Problems with compliance when appropriate will be referred to the "Good Faith" Committee which shall be comprised of a representative from the M/WBE Coordinating Committee and may be comprised of a representative from Engineering and Inspections, Finance, Human Relations, Planning and Neighborhood Development, Transportation, Water Resources and Human Resources. The City Manager or his designee will appoint the Chairperson of the Committee. M/WBE Staff and a representative from the Legal Department will serve as liaison to the Committee.

1. Contractor and Subcontract Non-Compliance

The M/WBE Coordinator, along with contracting staff of each City department, shall monitor compliance with these Program Element requirements during the term of the contract. If it is determined that there is cause to believe that a Prime Contractor or Subcontractor has failed to comply with any of the requirements of this Program Plan, or with the contract provisions pertaining to M/WBE utilization, the M/WBE Coordinator shall so notify the Originating Department and the contractor. The M/WBE Coordinator or designee may require such reports, information and

documentation from contractors, Respondents and the head of any City department, division or office as are reasonably necessary to determine compliance with the Program Plan requirements, within fifteen (15) calendar days after the notice of noncompliance. If the requested materials are not received within fifteen (15) calendar days, then a finding of noncompliance is determined and appropriate penalties and sanctions will apply as stated in Section VII. J. of this Program Plan.

It is the joint responsibility of the M/WBE Coordinator or designee and the Director of the Originating Department or designee to attempt to resolve the noncompliance with the requirements of this Program Plan, or the contract provisions pertaining to M/WBE utilization, within fifteen (15) calendar days. If noncompliance cannot be resolved within the fifteen (15) calendar days, the M/WBE Coordinator or designee and the Director of the Originating Department or designee shall submit written recommendations to the City Manager or designee and if the City Manager or designee concurs with the finding, such sanctions as stated in Section VII. J. of this Program Plan shall be imposed.

2. Originating Department Non-Compliance

Whenever the M/WBE Coordinator or designee finds, after investigation, that an Originating Department has failed to comply with the provisions of this Program Plan or the contract provisions pertaining to M/WBE utilization, a written finding specifying the nature of the noncompliance shall be transmitted to the Originating Department and shall attempt to resolve any noncompliance through conference and conciliation. Should such attempt fail to resolve the noncompliance, the M/WBE Coordinator or designee shall transmit a copy of the finding of noncompliance, with a statement that conciliation was attempted and failed, to the City Manager or designee who shall take appropriate action under this Program Plan to secure compliance.

The M/WBE Coordinator or designee, through the City Manager or designee, shall submit a written annual report to the M/WBE Coordinating Committee and the City Council on the progress of the City toward the utilization goals established by this Program Plan together with an identification of problems and specific recommendations for improving the City's performance. This report shall be issued semi-annually during the first two years following this Program Plan effective date, based on available data, and then annually thereafter.

The M/WBE Coordinator and Originating Departments shall work closely with the City Attorney's Office to include language in all City contracts that ensures compliance with the M/WBE Program. This language should also include a time period for the contractor to correct any and all deficiencies not later than fifteen (15) calendar days after notification of non-compliance.

Problems with compliance when appropriate will be referred to the "Good Faith" Committee which shall be comprised of a representative from the M/WBE Coordinating Committee and may be comprised of a representative from Engineering and Inspections, Finance, Human Relations, Planning and Neighborhood Development, Transportation, Water Resources and Human Resources. The City Manager or his designee will appoint the Chairperson of the Committee. M/WBE Staff and a representative from the Legal Department will serve as liaison to the Committee.

F. Penalties and Sanctions for Non-Compliance

Upon determination and recommendation of sanctions by the City Manager or designee regarding the failure of a contractor, vendor, Respondent or other business representative to comply with any portion of this Program Plan, the non-complying party shall be subject to any or all of the following penalties:

- i) Suspension of contract;
- ii) Withholding of funds;
- iii) Rescission of contract based upon a material breach of contract pertaining to M/WBE Program compliance;
- iv) Refusal to accept a response or proposal; and
- v) Disqualification of a Respondent, contractor or other business from eligibility for providing goods or services to the City for a period not to exceed two years (upon City Council approval).

It is a violation of this Program Plan to:

- i) Fraudulently obtain, retain or attempt to obtain, retain or aid another in fraudulently obtaining, retaining or attempting to obtain or retain Certification status as an , MBE, WBE, or M/WBE for purposes of this Program Plan.
- ii) Willfully falsify, conceal or cover up by a trick, scheme or device, a material fact or make any false, fictitious or fraudulent statements or representations, or make use of any false writing or document, knowing the same to contain any false, fictitious or fraudulent statement or entry pursuant to the terms of this Program Plan.
- iii) Willfully obstruct, impede or attempt to obstruct or impede any authorized official or employee who is investigating the qualifications of a business entity which has requested Certification as an M/WBE.
- iv) Fraudulently obtain, attempt to obtain or aid another person fraudulently obtaining or attempting to obtain public monies to which the person is not entitled under the terms of this Program Plan.
- v) Make false statements to any entity that any other entity is or is not certified as an M/WBE for purposes of this Program Plan.

Any person who violates the provisions of this section shall be subject to these sanctions, as well as any other remedies available under law up to the maximum penalty provided by law.

G. Verification of Certification and Re-Certification (M/WBE Status)

Verification of certification of all M/WBE firms shall be the responsibility of the Project Manager for the Operating Department initiating the contract. The M/WBE Coordinator shall be responsible for

developing, issuing and reviewing all M/WBE Certification and re-Certification forms and applications in a manner that is consistent with the standards, definitions and intent established by this Program Plan.

The M/WBE Coordinator shall also maintain an automated and up-to-date registry of all certified M/WBE firms that is readily available to the general public, as well as City personnel.

In executing its responsibility in connection with these Certifications, the M/WBE Coordinator may contract with a State government agency, regional, or private Certification agency/organization for the purpose of issuing Certifications in a manner that is consistent with the standards, definitions, and eligibility standards established under this Program Plan.

A firm eligible for Certification(s) under this M/WBE Program shall be an Independently Owned and Operated business. The ownership and Control by Minority Group Members or Women shall be real and substantial, and shall be indicated by customary incidents of ownership as demonstrated by an examination of the substance, rather than the form, of ownership and operating arrangements. In determining whether a potential firm is an Independently Owned and Operated business, the certifying agency considers all relevant factors including, but not limited to:

- i) The date the business was established;
- ii) The adequacy of its resources for the work of the contract; and
- iii) The degree to which financial, equipment leasing, supplier and other relationships with non-minority businesses vary from industry practice.

The Minority Group Member or women owners must possess and exercise the power to direct the management and policies of the firm and to make day-to-day decisions, as well as any decisions on matters of management policy, and operations. The firm shall not be subject to any formal or informal restrictions which limit the customary discretion of the Minority Group Member or women owners. There shall be no restrictions by partnership agreements, charter requirements, operating agreements or other arrangements which prevent the Minority Group Member or women owners from making business decisions of the firm without the cooperation or vote of any owner that is not minority or female.

Recognition of the business as a separate entity for tax or corporate purposes is not necessarily sufficient for recognition as an M/WBE. Certification as M/WBE firms will be in accordance with the definitions established in of this Program Plan. A claim of minority status as a Minority Group Member must be directly related to the applicant's parents' status. Neither birthplace nor marriage has any bearing on minority status of the Certification applicant. All Minority Group and women owners of certified firms must be Individuals that are lawfully residing in, or are citizens of, the United States or its territories.

A firm seeking Certification or re-Certification status under this Program Plan shall cooperate fully with the City in supplying additional information and in facilitating a site visit of the enterprise which may be requested in order to make a determination. Failure or refusal to cooperate shall result in denial or repeal of Certification.

Proof of Certification by another certifying entity may be accepted by the City in lieu of the City's own Certification process if the certifying entity adheres to the same or similar policies and standards as those established by the City. To the extent the City's factual predicate for its M/WBE Program requires, under applicable law, a narrower definition of M/WBE firm categories (e.g., due to ethnicity / gender of ownership or relevant geographic market considerations), the City shall limit the categories of M/WBE firms certified by other jurisdictions that shall be eligible for participation in the City's M/WBE Program as necessary to ensure that the Race-Conscious remedial relief provided by the City's Program remains appropriately narrowly-tailored.

Before accepting another jurisdiction's M/WBE Certification, the M/WBE Coordinator shall examine the definitions, standards and Certification practices of the program to ensure that it adheres to established City Certification guidelines. If the owners of the business who are not Minority Group Members or women are disproportionately responsible for the operation of the firm, the firm is not Controlled by minorities and/or women and may not be considered an M/WBE within the meaning of this Program Plan. Where the actual management of the business is contracted out to Individuals other than the owner, those persons who have the ultimate power to hire and fire the managers may, for the purposes of this Program Plan, be considered as controlling the business.

All securities that constitute ownership or Control of a corporation for purposes of establishing it as an M/WBE under this Program Plan shall be held directly by Minority Group Members or women. Securities held in trust, or by any guardian for a minor, may not be considered as held by Minority Group Members or women in determining the ownership or Control of a corporation.

The contributions of capital or expertise by the Minority Group Member or women owners to acquire their interests in the business shall be real and substantial. Examples of insufficient capital contributions include:

- i) A promise to contribute capital;
- ii) A note payable to the business or its owners who are not Minority Group Members or Women; and
- iii) Contributions in labor or expertise that result solely in employee compensation, without participation in business profits as an owner.

Special consideration of the following additional circumstances in determining eligibility:

i) Newly-formed businesses and businesses whose ownership or Control has changed since the date of the advertisement of the contract shall be closely scrutinized to determine the reasons for the timing of the formation of, or change in, the businesses;

ii) A previous or continuing employer–employee relationship between or among present owners shall be carefully reviewed to ensure that the employee–owner has management responsibilities and capabilities discussed in this Program Plan; and

iii) Any relationship between an M/WBE and a business that is not an M/WBE, but that has an interest in the M/WBE, shall be carefully reviewed to determine if the interest of the non-minority business conflicts with the ownership and Control requirements of this Program Plan.

iv) Once certified, an M/WBE firm shall update its status biennially by submitting a Certification affidavit. If ownership or Control of the firm has changed, the M/WBE firm shall submit a new Certification affidavit to the M/WBE Coordinator, or it's contracted Certification agency, within thirty (30) days of the change.

v) The certifying entity will notify applicants of staff's determinations on Certification and re-Certification status. Once denied Certification, a firm may not re-apply for Certification until the time indicated in the Certification entity's policy.

A firm shall be de-certified when it no longer meets the eligibility requirements for Certification, and such de-certified firms shall not be eligible to re-apply for Certification except in accordance with the graduation and suspension provisions of this Program Plan.

Complaints regarding the Certification status of a firm shall be forwarded to the M/WBE Coordinator for investigation of any possible violations of this Program Plan.

H. Graduation and Suspension

The M/WBE Coordinator or designee, shall graduate, suspend or terminate an M/WBE firm from the M/WBE Program established by this Program Plan if, under Program guidelines, the firm no longer is eligible for the Program's assistance, nor qualifies for its remedial benefits. The M/WBE Coordinator shall be responsible for monitoring and conducting periodic reviews of the size, City contract participation levels, and conduct of all certified M/WBE firms to determine when they should be graduated, suspended or terminated from the respective programs in a manner consistent with the standards, definitions and intent established by this Program Plan. The M/WBE Coordinator shall also ensure that its directory of certified M/WBE firms accurately and timely reflects the graduation, suspension or termination of certified firms. In making the determination required by this paragraph, the M/WBE Coordinator shall, to the extent practicable, adhere to the following guidelines:

(a) M/WBE firms shall be graduated from participation under the M/WBE Program's Program Elements when the firms are no longer eligible based upon the Certification standards and definitions set forth in this Program Plan.

(b) Certified M/WBE firms shall be temporarily suspended from participation under any race- or gender-conscious Program Elements for the remainder of any calendar year in which the firm has cumulatively received more than \$5 million in City contract or resulting subcontract payments. Provided the suspended firm has not exceeded the size standards and still meets other Certification requirements for an M/WBE, such firms may resume participation in race-and gender-conscious Program Elements the following calendar year.

(c) M/WBE firms shall be graduated from the M/WBE Program upon whichever of the following events occurs first:

i) The M/WBE firm cumulatively receives \$15 million in City prime contract and subcontract payments in each of two consecutive calendar years; or

ii) Upon submission of re-Certification documents that reflect the firm's average annual revenues or number of employees for the last three consecutive years have exceeded fifty (50) percent of the SBA's small business size standards for annual revenues or number of employees for the Relevant Industry.

Provided, however, that graduated M/WBE firms shall be eligible to apply one time for M/WBE re-Certification following the expiration of the two-year period immediately following graduation. Such application for M/WBE re-Certification shall only be granted on condition that the graduated M/WBE firm presents documentation as required by the M/WBE Coordinator that establishes that the M/WBE firm's annual revenues and number of employees have fallen below fifty (50) percent of the SBA's small business size standards for the Relevant Industry for two consecutive years of the post-graduation period. Each graduated M/WBE firm shall be entitled to only one such opportunity to apply for re-Certification, and all second graduations of M/WBE firms shall be permanent.

(d) For M/WBE firms that are certified by an agency that is recognized by the City, but does not have graduation provisions, the City will periodically audit these M/WBE firms to ensure that they meet the Certification criteria contained within this Program Plan.

I. Program Compliance Responsibilities

Responsibility for M/WBE Program Plan Compliance is shared as follows:

1. M/WBE Program

As noted above in Section VII. H., the M/WBE Coordinator or designee, has primary responsibility for undertaking investigations to ensure that Originating Departments and City vendors are complying with the provisions of this Program Plan. In the event of non-compliance, the M/WBE Coordinator or designee recommends the imposition of appropriate penalties and sanctions. In addition, the M/WBE Coordinator or designee has authority to general oversight and management of the Goal Setting Committee process, certification, graduation, Good Faith Effort waivers, and reporting requirements.

2. Vendors

To facilitate the M/WBE Coordinator completing its responsibilities in administering M/WBE Program Elements, a vendor shall:

(a) Permit the M/WBE Coordinator to inspect any relevant matter, including records and the jobsite, and to interview Subcontractors and workers (field compliance).

(b) If performing a City Construction contract, ensure that all Subcontractors are paid any undisputed amount to which the Subcontractor is entitled within 10 calendar days of receiving a progress or final payment from the City and otherwise comply with City's contract terms and conditions which sets forth the obligations of the Prime Contractor and Subcontractors and the remedies for delinquency or nonpayment of undisputed amounts.

(c) Notify the City in writing of any changes to their utilization and/or subcontracting plan. All changes (substitution and/or termination) must be approved in advance and in writing by the M/WBE Coordinator.

(d) Amendment for unforeseen circumstances: If at any time after submission of a solicitation response and before execution of a contract, the apparent successful Respondent determines that a certified M/WBE listed on the participation schedule has become or will become unavailable, then the apparent successful Respondent shall immediately notify the M/WBE Coordinator. Any desired change in the M/WBE participation schedule shall be approved in advance by the M/WBE Coordinator and shall indicate the Prime Contractor's Good Faith Efforts to substitute another certified M/WBE Subcontractor (as appropriate) to perform the work. Any desired changes (including substitutions or termination and self-performance) must be approved in writing in advance by the M/WBE Coordinator.

(e) Notify the Originating Department and M/WBE Coordinator or designee of transfer or assignment of contract with the City.

(f) Shall retain record of all Subcontractor payments for a minimum of four years following project termination date.

3. Originating Departments

It shall be the responsibility of each Originating Department to ensure that solicitations emanating from the department adhere to the procedures and provisions set forth in this Program Plan.

(a) The Originating Department Director or designee shall assume primary responsibility for achieving the objectives of this M/WBE Program within the Originating Department and shall review, on a continuing basis, all aspects of the Program's operations to assure that the purpose is being achieved.

(b) Originating Departments shall maintain accurate records for each contract awarded, including unsuccessful Respondents, 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 responses from M/WBEs, and all subcontracts awarded by the Prime Contractor identifying for each its dollar value, the nature of the goods or services provided and the name of the Subcontractor(s).

(c) The Originating Department shall take the following actions to ensure that M/WBEs have the maximum practicable opportunity to participate on City contracts:

i) Advertise Formal Solicitations in minority-targeted media before responses are due for specific contracting opportunities for no less than the length of the solicitation period required by state law;

ii) Post all Formal Solicitations on the City website, for the solicitation period required by state law for the type of procurement, and then direct targeted e-mail alerts containing links to the webpage where such City solicitations are posted. Such e-mail alerts should be directed to all Respondents that have registered with the appropriate commodity/industry codes on the City's electronic vendor registration and contract monitoring systems;

- iii) Encourage all prospective Prime Contractor Respondents to City solicitations to post their subcontract opportunities on the City webpage where the solicitation specifications have been posted by the City.
- iv) Send notification before solicitations are due to minority and women trade associations and contractor's associations regarding pending Formal Solicitations in accordance with state law;
- v) Include the Commercial Non-Discrimination Policy statement, compliance language and any materials required by this Program Plan in all contracts and solicitation documents;
- vi) Preview and evaluate all contracting opportunities in an effort to de-bundle the total requirements of a contract into smaller units to promote maximum and reasonable opportunities for M/WBE participation, without making separate, sequential or component purchases in violation of state purchasing laws;
- vii) Establish procedures to ensure that all contractors submitting correct invoices are paid within thirty (30) days and that Subcontractor are paid within ten (10) days after the City pays the Prime Contractor;
- viii) Ensure that a City contract is not executed and a Notice to Proceed is not issued until binding agreements between the Prime and subcontracting M/WBEs have been executed by all parties and submitted to the Originating Department;
- ix) Ensure that all required statistics and documentation are submitted to the M/WBE Coordinator as requested; and
- x) If circumstances prevent the Originating Department from meeting notification requirements contained herein, the Originating Department shall engage in direct and extensive outreach to M/WBE associations or other relevant organizations to inform them of the contracting opportunity, unless the circumstances are exigent and an emergency exists that requires immediate action.
- xi) Notify the M/WBE Coordinator of all change orders and amendments to contracts that are subject to this Program Plan and take necessary steps to ensure that Program Elements applied to the contract by the GSC are also extended and enforced, to the maximum practical extent, with regard to any modified scope of work under the terms of such change orders and contract amendments.
- xii) Inform and encourage P-Card users to use online directory of certified M/WBE firms to solicit quotes for P-Card purchases; establish supplier diversity as a job performance criteria that is rewarded through public recognition and perk rewards such as free public parking or tickets to a civic or sporting event.

J. Minority and Women Business Enterprise Coordinating Committee (M/WBE Coordinating Committee)

This voluntary eleven-member citizens committee is made up of business trade organization representatives and minority and women business owners, and appointed by the City Manager or designee as an advisory group to: (a) assist the M/WBE Coordinator or designee, and the City Manager or designee, in reviewing and monitoring the ongoing administration of the Program Plan and assessing its effectiveness in enhancing M/WBE participation in City contracts; (b) facilitate activities and outreach efforts by the M/WBE Coordinator, the Economic Development and Business Support Department, or Originating Departments; and (c) make recommendations to the M/WBE Coordinator or designee, and the City Manager or designee, concerning modifications of such Program Elements and various policies and procedures established pursuant to this Program Plan. /M/WBE Coordinating Committee members may participate as advisory non-voting members of Goal Setting Committees.

K. M/WBE Program Review, Factual Predicate Review, Modification, and Sunset

Beginning no later than July 1, 2022, and every five years thereafter, the City shall issue a Request For Proposals to undertake a comprehensive update of the full disparity study, and upon completion of each disparity study, present disparity study results to the City, and following City review and a public comment period regarding those study findings and recommendations, the City shall consider any proposed modifications to, or sunset of, this Program Plan. As part of this review process, the City Manager or designee shall make, or recommend to City Council as appropriate, modifications to the procedures or substantive provisions of this Program Plan, and submit any necessary draft legislation to the City Council for adoption as appropriate to effectuate the continuation, modification or termination of the M/WBE Program Plan.

VIII. Severability Clause

If any section, paragraph, sentence, clause, phrase or word of this M/WBE Program Plan, or the application thereof, to any person or circumstance is for any reason held by a Court of competent jurisdiction to be unconstitutional, inoperative, invalid or void, such holding shall not affect the remainder of this Policy or the application of any other provisions of this Program Plan which can be given effect without the invalid provision or application, and to this end, all the provisions of this Program Plan are hereby declared to be severable.