

ATTACHMENT “A”

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I. Purpose

- A. The following Ordinance is adopted to establish a Small, Minority, and Woman Business Enterprise (S/M/WBE) Policy to exercise the spending powers of the City of San Antonio in a manner that promotes economic inclusion of all segments of the business population, regardless of race or gender, to maximize the economic vitality and development of the San Antonio region.
- B. To remedy the ongoing effects of marketplace discrimination that the City of San Antonio has found, which continue to adversely affect the participation of Minority and Woman Business Enterprises (M/WBEs) in City of San Antonio contracts.
- C. To clearly communicate the City's S/M/WBE Policy to internal stakeholders within the City and to the external stakeholders within the broader community served by the City.

II. Policy Statements

- A. The Policy herein and procedures established pursuant to this Ordinance serve the City's compelling interest to remedy the various ongoing effects of marketplace discrimination against S/M/WBEs that are ready, willing, and able to sell goods and services to the City.
- B. The narrowly tailored remedial efforts established in this Ordinance are designed to promote greater availability, capacity development and contract participation by (S/M/WBEs) in City of San Antonio contracts.
- C. The Policy established in this Ordinance is intended, in part, to further the City's compelling interest in ensuring that it is neither an active nor passive participant in private sector marketplace discrimination, and to actively promote equal opportunity for all segments of the contracting and business community to participate in City of San Antonio contracts.
- D. 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 race- and gender-neutral means alone will likely be insufficient to remedy the effects of identified discrimination.
- E. Having found that it has a compelling governmental interest to remedy the effects of discrimination through City contracts, the City Council directs the City Manager or designee, the City Attorney, and the Economic Development Department (EDD) Director or designee to collaborate in recommending to the City Council possible future amendments necessary to fully effectuate the purposes and Policy established in this Ordinance. Such proposed amendments shall be consistent with the Policy direction established in this Ordinance and shall also be narrowly tailored in accordance with applicable law and the specific barriers to M/WBE participation identified within the City's factual predicate as described below in Section III.A of this Ordinance.
- 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 S/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 the 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 EDD shall have primary oversight responsibility, with the full support and cooperation of all other City offices and departments, in the establishment and administration of the policy and procedures established herein and pursuant to this Ordinance.

III. S/M/WBE Program

A. Overview and Factual Predicate

Over the years since the inception of its first S/M/WBE program, the City has undertaken a number of extensive fact-finding studies, data gathering efforts, and public hearings to examine its marketplace and the effects of marketplace discrimination on its purchases of Construction services, Architectural and Engineering services, Professional Services, Other Services, and Goods and Supplies. As a result, there have been several revisions to the City's SBEDA and S/M/WBE Program since its inception in 1989. Since the Ordinance was established, the City has undertaken additional fact-finding and disparity studies. Most recently, in 2023, Colette Holt & Associates updated the City's factual predicate by providing a comprehensive Disparity Study that utilized various methodologies in gathering relevant quantitative and qualitative data to perform various analyses relating to the City's Relevant Markets for goods and services. The following findings of the City are based upon the totality of this factual predicate; including, but not limited to, a 1987 study that found that there was substantial disparity in the utilization of certain segments of available M/WBEs in all Industry Categories of City contracting; a 1992 study that found that there was substantial disparity in the utilization of certain segments of available M/WBEs in all Industry Categories of City contracting; a 2010 study performed by MGT that found disparity in the utilization of certain segments of available M/WBEs in all Industry Categories of City contracting; a 2015 study performed by National Economic Research Associates (NERA) that found disparity in the utilization of certain segments of available M/WBEs in most Industry Categories of City contracting, and the most recent 2023 study performed by Colette Holt & Associates that reflects continuing disparities across Industry Categories in City contract payments spanning the time frame from January 2014 through December 2020 which reflected the following:

1. There is evidence of past discrimination against M/WBEs affecting the Relevant Marketplace and City of San Antonio.
2. There is evidence of ongoing effects of past discrimination impacting opportunities for M/WBE participation in the local marketplace and in City of San Antonio purchases of goods and supplies.
3. The present opportunities for M/WBE participation in the local marketplace and in City of San Antonio contracts are affected by past discrimination.
4. There is contemporary evidence of discrimination against M/WBEs in the Relevant Marketplace. Some practices within the marketplace have the effect of causing disadvantage to M/WBE firms.
5. There is evidence that the M/WBE opportunities for participation in City of San Antonio contracts are affected by discrimination in the marketplace. The evidence indicated some Prime Contractors that are doing business with the City of San Antonio discriminated against M/WBE Subcontractors.
6. In some areas of City of San Antonio purchasing, race- and gender-neutral programs alone may be effective but, in other areas, race- and gender-neutral programs alone are not likely to be effective.

B. Definitions

Affirmative Procurement Initiatives (API) – refers to various race- and gender-neutral and race- and gender-conscious program tools that are used to encourage greater prime and subcontractor participation by Small Business Enterprises (SBEs), Emerging Small Business Enterprises (ESBEs), M/WBEs, and Emerging Minority and Woman-Owned Business Enterprises (E/M/WBEs) including evaluation preferences and contracting goals.

Annual Aspirational Goal – annual aspirational percentage goals for overall M/WBE Prime and Subcontractor participation in City contracts for Construction, Architectural & Engineering, Professional Services, Other Services, and Goods & Supplies Industry Categories. This Annual Aspirational Goal is to be set annually by the EDD based upon the M/WBE availability by Industry Category in accordance with the City’s 2023 Disparity Study findings, along with relative M/WBE availability data to be collected by the City through its Central Vendor Registry (CVR) system. Annual Aspirational Goals are intended to serve as a benchmark against which to measure the overall effectiveness of the S/M/WBE Program on an annual basis.

Aspirational Contracting Program – an API in which Respondents/Prime Contractors strive to contract a specified aspirational percentage of the value of total contract dollars to eligible SBEs, ESBEs, M/WBEs, and/or E/M/WBEs (E/S/M/WBEs). Such Aspirational Contracting Program goals may be set and applied by the EDD on a contract-by-contract basis to those types of contracts that provide actual or perceived scope of work opportunities for performing Commercially Useful Functions by E/S/M/WBEs. Further, a race- and gender-conscious application of the Aspirational Contracting Program shall consider whether the following is true before application:

- (1) There have been ongoing disparities in the utilization of available M/WBEs; and
- (2) Race- and gender-neutral efforts have failed to eliminate persistent and significant disparities in the utilization of M/WBEs in a particular Industry Category or industry segment.

When specified by the EDD, the Aspirational Contracting Program API may require a Respondent/Prime Contractor to demonstrate a Good Faith Effort (or commits to taking in the case of solicitations that do not include a detailed scope of work or those in which price cannot be considered a factor in evaluation) toward attainment of the non-mandatory Aspirational Contracting Program goals for E/S/M/WBEs. Note that if the Respondent/Prime Contractor is an eligible E/S/M/WBEs, then the Respondent/Prime Contractor may self-perform up to the entire E/S/M/WBE contracting goal amount with its own forces so long as it possesses the E/S/M/WBEs certification(s) as the Aspirational Contracting Program goal set on the contract. To the extent that the eligible E/S/M/WBE Respondent/Prime Contractor does not self-perform a portion of the E/S/M/WBE contracting goal, it shall be responsible for complying with all other requirements of this API, as necessary. Joint venture Respondents/Prime Contractors are permitted to count payments to E/S/M/WBE joint venture partner(s) toward self-performance of the Aspirational Contracting Program goal provided such partner(s) has the certification(s) set on the contract.

Award – the final selection of a Respondent for a specified Prime Contract or Subcontractor dollar amount. Contract awards are made by the City to Prime Contractors and by Prime Contractors to Subcontractors, 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 through which the Originating Department 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 statute.

Central Vendor Registration System (CVR) – a electronic system through which the City recommends all prospective Prime Contractors and Subcontractors register if they are ready, willing and able to sell goods or services to the City. All businesses awarded a City contract shall be required to register in the CVR. The CVR system assigns a unique identifier to each registrant that is then required for the purpose of submitting solicitation responses and invoices, and for receiving payments from the City. The CVR-assigned identifiers are also used by the EDD for measuring relative availability of SBE, ESBE, M/WBE, and E/M/WBEs by Industry or commodity codes, and for establishing Annual Aspirational Goals and contract-by-contract Contracting Goals. The CVR is also known as the San Antonio electronic Procurement System (SAePS).

Certification – the process by which the SBD staff determines a firm to be a bona-fide small, minority, woman-owned, or emerging small business enterprise (E/S/M/WBE). ESBEs are automatically eligible for Certification as SBEs. Any firm may apply for multiple Certifications that cover each status category (e.g., SBE, ESBE, Minority Business Enterprise (MBE), or Woman Business Enterprise (WBE)) for which it is able to satisfy eligibility standards. The SBD staff may contract these services to a Certification agency or other entity. For purposes of Certification, the City may in its discretion accept any firm that is certified by local government entities and other organizations identified herein that have adopted Certification standards and procedures similar to those followed by the EDD, provided the prospective firm satisfies the eligibility requirements set forth in this Ordinance in Section III.E.3.

Certification Application – this form shall be completed by vendors when applying for Certification and/or re-Certification status for participation in the City of San Antonio's S/M/WBE Program.

City – refers to the City of San Antonio, Texas.

Commercially Useful Function – an SBE, ESBE, M/WBE, and/or E/M/WBE (E/S/M/WBE) 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 E/S/M/WBE 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 E/S/M/WBE is performing a Commercially Useful Function, an evaluation must be performed of the amount of work subcontracted, normal industry practices, whether the amount the E/S/M/WBE is to be paid under the contract is commensurate with the work it is actually performing and the E/S/M/WBE credit claimed for its performance of the work, and other relevant factors. Specifically, an E/S/M/WBE 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 E/S/M/WBE participation, when in similar transactions in which E/S/M/WBEs do not participate, there is no such role performed.

Contracting Program – an API in which Respondents/Prime Contractors are required to make Good Faith Efforts to contract a specified percentage of the value of total contract dollars to eligible SBE, ESBE, M/WBE, and/or E/M/WBEs (E/S/M/WBEs). Such Contracting Program goals may be set and applied by the EDD on a contract-by-contract basis to those types of contracts that provide scope of work opportunities for performing Commercially Useful Functions for E/S/M/WBEs. Further, a race- and

gender-conscious application of the Contracting Program shall consider whether the following is true before application:

- (1) There have been ongoing disparities in the utilization of available M/WBEs; and
- (2) Race- and gender-neutral efforts have failed to eliminate persistent and significant disparities in the utilization of M/WBEs in a particular Industry Category or industry segment.

When specified by the EDD, the Contracting Program API may require a Respondent/Prime Contractor to demonstrate a Good Faith Effort (or commits to taking in the case of solicitations that do not include a detailed scope of work or those in which price cannot be considered a factor in evaluation), toward attainment of Contracting Program goals for E/S/M/WBEs. Note that if the Respondent/Prime Contractor is an eligible E/S/M/WBE, then the Respondent/Prime Contractor may self-perform up to the entire E/S/M/WBE Contracting Program goal amount with its own forces so long as it possesses the E/S/M/WBE certifications as the Contracting Program goal set on the contract. To the extent that the eligible E/S/M/WBE Respondent/Prime Contractor does not self-perform a portion of the E/S/M/WBE Contracting Program goal, it shall be responsible for complying with all other requirements of this API. Joint venture Respondents/Prime Contractors are permitted to count payments to E/S/M/WBE joint venture partner(s) toward self-performance of the Contracting Program goal provided such partner(s) has the certification(s) set on the contract.

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.

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 Marketplace.

Emerging SBE (ESBE) – a certified SBE whose annual revenues and number of employees are no greater than 25% of the small business size standards for its industry as established by the U.S. Small Business Administration and meets the Headquarter requirements as defined herein.

Emerging M/WBE (E/M/WBE) – a certified M/WBE whose annual revenues and number of employees are no greater than 25% of the small business size standards for its industry as established by the U.S. Small Business Administration and meets the Headquarter requirements as defined herein.

Evaluation Preference – an API that may be applied by the EDD to Construction, Architectural & Engineering, Professional Services, Other Services, and Goods and Supplies contracts that are to be awarded on a basis that includes factors other than lowest price, and wherein responses that are submitted to the City by SBEs and/or ESBEs may be awarded additional Points in the evaluation process in the scoring and ranking of their proposals against those submitted by other prime Respondents.

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 requires City Council approval, 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 – documentation of the Respondent’s intent to comply with SBE, ESBE, M/WBE, and/or E/M/WBE (E/S/M/WBE) Contracting Program goals and procedures including, but not limited to, the following: (1) documentation as stated in the solicitation reflecting the Respondent’s commitment to comply with E/S/M/WBE Program goals as established by the EDD for a particular contract; or (2) documentation of efforts made toward achieving the E/S/M/WBE contract goals (e.g., solicitations of bids/proposals/qualification statements from all certified E/S/M/WBEs listed in the EDD’s directory of eligible E/S/M/WBEs; correspondence from certified E/S/M/WBEs documenting their unavailability to perform on the contract; documentation of efforts to subdivide work into smaller quantities for subcontracting purposes to enhance opportunities for E/S/M/WBEs; documentation of a Prime Contractor’s posting of a bond covering the work of certified E/S/M/WBE Subcontractors; documentation of efforts to assist E/S/M/WBEs with obtaining financing, bonding or insurance required by the Respondent; and documentation of consultations with trade associations and consultants that represent the interests of E/S/M/WBEs in order to identify certified and available E/S/M/WBE Subcontractors.)

Graduation – a SBE, ESBE, M/WBE, and E/M/WBE (E/S/M/WBE) is longer eligible for the City’s S/M/WBE program when it meets the criteria for graduation set forth in Section III.E.4 of this Ordinance. A firm’s graduation or temporary suspension from the S/M/WBE program does not necessarily affect its eligibility to be recertified and to participate in the City’s S/M/WBE Program as an E/S/M/WBE at a later time, in accordance with recertification procedures found in the SBEDA Policy and Procedures Manual.

Headquarter – the main, centralized location of an entity’s executives, management and/or key staff and all its functions to direct and manage the enterprise, including operational decisions and oversight of overall business activities. To qualify for this Program, a SBE, ESBE, M/WBE, and/or E/M/WBE must be headquartered within the Relevant Marketplace.

Independently Owned and Operated – ownership of an SBE, ESBE, M/WBE, and/or E/M/WBE (E/S/M/WBE) must be direct, independent and by Individuals only. Ownership of an E/S/M/WBE may be by Individuals and/or by other businesses provided the ownership interests in the E/S/M/WBE can satisfy the E/S/M/WBE eligibility requirements for ownership and Control as specified herein in Section III.E.3. The E/S/M/WBE must also be Independently Owned and Operated in the sense that it cannot be the subsidiary of another firm that does not itself (and in combination with the certified E/S/M/WBE) satisfy the eligibility requirements for E/S/M/WBE Certification.

Individual – an adult person that is of legal age of majority in the state of Texas.

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

Joint Venture Program – an API that provides an incentive for non-S/M/WBEs to collaborate with SBEs partners in responses to solicitations and performing as a Prime Contractor. The incentive under this API includes Evaluation Preferences that are tied to the percentage of SBE participation in the joint venture. 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.

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.

Minority/Woman Business Enterprise (M/WBE) – firm that is certified as either a Minority Business Enterprise (MBE) or Woman Business Enterprise (WBE), and which is at least fifty-one percent (51%) owned, managed and Controlled by one or more Minority Group Members and/or women, and that is ready, willing and able to sell goods or services that are purchased by the City.

Minority Business Enterprise (MBE) – a legal entity 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 Headquarter requirement as defined herein. Unless otherwise stated, the term “MBE” as used in this Ordinance is not inclusive of 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 with origins in any of the black racial groups of Africa.

Hispanic Americans: Persons of Mexican, Puerto Rican, Cuban, Spanish, or Central and South American origin.

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, as recognized by the U.S. Department of the Interior, Bureau of Indian Affairs and as demonstrated by possession of personal tribal role documents.

Originating Department – the City department for which a solicitation is issued and is primarily responsible for the management of the contract.

Payment – dollars paid to Prime Contractors and/or Subcontractors 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, Architectural & Engineering, Professional Services, Other Services, and Goods & Supplies contracts (e.g., up to 20 points out of a total of 100 points assigned for SBE and/or ESBE participation 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 for purposes of providing goods or services for the City.

Race- and Gender-Conscious – any business classification or API wherein the race or gender of business owners is taken into consideration (e.g., references to M/WBE and/or E/M/WBE programs and APIs that are listed herein under the heading of “Race- and Gender-Conscious”, Section III.D.2).

Race- and Gender-Neutral – any business classification or API wherein the race or gender of business owners is not taken into consideration (e.g., references to SBE and/or ESBE programs and APIs that are listed herein under the heading of “Race- and Gender-Neutral”, Section III.D.1).

Relevant Marketplace – the geographic market area affecting the S/M/WBE Program as determined for purposes of collecting data to analyze utilization and availability in the 2023 Disparity Study, and for determining S/M/WBE eligibility for participation under various programs established by this Ordinance, is defined as the San Antonio Metropolitan Statistical Area (SAMSA), currently including the counties of Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson.

Respondent – a vendor 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 S/M/WBE Program requirements.

Segmented Contracting Program – the application of multiple goals for M/WBE participation within Annual Aspirational Goals or for contract-by-contract M/WBE Contracting/Aspirational Program goals on a City contract wherein an overall combined M/WBE Contracting Program goal is accompanied by subsets of one or more smaller goals. Such Segmented M/WBE Contracting Program goals specifically target the participation of a particular segment of business enterprises owned and Controlled by WBEs or certain Minority Group Members (e.g., African Americans or Hispanic Americans) based upon relative availability and significantly greater patterns of underutilization and disparity within an industry as compared to other gender and Minority Group Member categories of M/WBEs. The application of Segmented M/WBE Contracting Program goals is intended to ensure that those segments of M/WBEs that have been most significantly and persistently underutilized receive a fair measure of remedial assistance.

Small Business Economic Development Advocacy (SBEDA) Committee – an eleven-member citizens committee made up of business stakeholders and members of the general business community, and appointed by the City Council as an advisory group to: (a) assist the Director of EDD or designee, the City Manager or designee, and City Council in reviewing the continuing programs for Prime Contractors and Subcontractors that promote SBE, ESBE, M/WBE, and/or E/M/WBE participation; (b) coordinate activities and actions with the City Council Economic and Workforce Development Committee (EWDC) or corresponding committee designated by the Mayor and/or City Council; (c) make recommendations to the Director of EDD or designee, the City Manager or designee, and City Council concerning modifications of such programs and procedures established pursuant to this Ordinance; and (d) evaluate and provide feedback on SBEDA program outcomes and objectives, as listed in this Ordinance (i.e., attainment of Annual Aspirational Goals and Annual Marketing Plan).

Small Business Enterprise (SBE) – a corporation, partnership, sole proprietorship or other legal entity for the purpose of making a profit, which is Independently Owned and Operated by Individuals legally residing in, or that are citizens of, the United States or its territories, and which meets the U.S. Small Business Administration (SBA) size standard for a small business in its particular industry(ies), meets the Department of Transportation’s personal net worth standard, and meets the Headquarter requirements as defined herein.

Small/Minority/Woman Business Enterprise (S/M/WBE) Directory – a listing of SBE, ESBE, M/WBE, and/or E/M/WBEs that have been certified for participation in the City’s S/M/WBE Program APIs.

S/M/WBE Program – the combination of SBE Program, ESBE Program, M/WBE Program, and/or E/M/WBE Program features contained in this Ordinance.

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.

Utilization Documentation – a binding part of the contract which includes the name of all Subcontractors to be utilized in the contract, specifying the SBE, ESBE, M/WBE, and/or E/M/WBE (E/S/M/WBE) Certification category for each, as approved by the EDD Director or designee. Additions, deletions or modifications of the utilization amounts or substitutions or deletions of E/S/M/WBE Subcontractors requires an amendment to be approved by the EDD Director or designee.

Woman Business Enterprises (WBEs) – a legal entity that is organized to engage in for-profit transactions, that is certified for purposes of this Ordinance as being at least fifty-one percent (51%) owned, managed and Controlled by one or more non-minority women 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 Headquarter requirements as defined herein. Unless otherwise stated, the term “WBE” as used in this Ordinance is not inclusive of MBEs.

C. Procurement & Non-Industry-Specific Remedies

In furtherance of the policies and objectives of this Ordinance, the City Manager or designee shall be responsible for implementing the following procurement policy reforms and non-industry-specific remedies to address ongoing effects of discrimination that adversely affect M/WBE access to public and private sector contracting opportunities, and that will further facilitate the efficient implementation and successful enforcement of the S/M/WBE Program:

1. Commercial Nondiscrimination Policy

a. 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 Marketplace.

b. Policy Implementation

The EDD 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 City Manager or designee, the Director of Finance, and the City Attorney’s Office shall ensure 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 III.C.1 of the SBEDA Ordinance. 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 Marketplace. 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 SBEDA Ordinance, Section III.C.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 to the City a list of all instances within the immediate past four (4) years where there has been a final adjudicated determination in a legal or administrative proceeding in the State of Texas 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 SBEDA Ordinance, Section III.C.1.”

2. Central Vendor Registration Policy

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

- a. The CVR shall allow a prospective vendor to electronically enter, maintain, and update its vendor registration and profile data. The CVR shall capture relevant vendor contact information, nationally-recognized industry/commodity identification codes, ownership status, 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 EDD Director or designee, 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 every (2) years.

- b. **Every** vendor that seeks to respond to City solicitations, to receive a City prime contract or subcontract, or to receive payment for work performed, and/or to receive payment for goods or services delivered on behalf of the City, is recommended to register through the CVR System. All businesses awarded a City contract shall be required to register in the CVR. The City shall designate the acceptable methods for the unique identification of vendors.
- c. The City shall use the CVR for electronic outreach purposes and send alerts to CVR registrants of upcoming solicitation opportunities based upon the identified industry/commodity codes of CVR registrants or vendor-identified areas of interest, unless such notification is declined.
- d. The CVR 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 CVR system by vendors and by the general public.
- e. The City shall strive to ensure this registration process is integrated with any other registrations required by law or available by common practice. The City Manager or designee is hereby authorized to enter into interlocal, intergovernmental, and data-sharing agreements, as necessary for the development of this CVR, in a manner that promotes integration with other registrations. The CVR shall contain links to such other mandatory on-line business registration systems, business-licensing applications, and business ownership status certification applications that are not directly integrated with the CVR, as deemed appropriate by the City.

3. Solicitation Specification Review

Each Formal Solicitation issued by the City shall be referred to the Small Business Division (SBD) and the Director of Finance in advance of publication to determine whether it contains any specifications that may unnecessarily restrict competition or adversely impact the ability of SBE, ESBE, M/WBE, and/or E/M/WBEs to respond or participate as Subcontractors. If such objectionable specifications are identified through this review process, the Director of Finance, the Director or designee of EDD, and the Director or designee for the Originating Department shall seek consensus in developing an acceptable modification to the specification. In the event consensus cannot be reached, the City Manager or designee shall make a final determination regarding the proposed modifications to the specification.

4. Respondent De-briefings

For any contract in which the City has undertaken a Formal Solicitation and subsequent evaluation of responses in accordance with a “Best Value Contracting” method of procurement, the Director of the Originating Department issuing the solicitation, or of the department on whose behalf the solicitation was issued, 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.

D. Affirmative Procurement Initiatives

The EDD shall have the responsibility of evaluating categories of each prospective Formal Solicitation document in advance of posting an advertisement to the public to determine which of the following APIs it should apply to a given contract:

1. Race – and Gender – Neutral Programs

The EDD shall consider the application of one or more of the following race- and gender-neutral APIs for each Formal Solicitation for a City contract:

a. SBE Prime Contract Program

The City shall establish an SBE Prime Contract API to enhance long-term competition and to provide the City with its “Best Value” on City projects in accordance with relevant Texas Local Government Code(s). Under this program, the City may allocate up to 20% of weighted selection criteria in favor of the selection of a Respondent that is an eligible SBE. An SBE Prime Contractor that is awarded a prime contract under this program may not subcontract more than 49% of the contract value to a non-SBE without being subject to the penalties and sanctions listed in this Ordinance. In determining whether the SBE Prime Contract Program should be applied to a particular contract, the EDD shall consider the relative availability of SBEs, with a preference for at least three SBEs that are likely to bid as a Prime Contractor for the contract.

This API is available in the Construction, Architecture & Engineering, Professional Services, Other Services, and Goods & Supplies Industries.

b. ESBE Prime Contract Program

The City shall establish an Emerging Small Business Enterprise (ESBE) Prime Contract API to enhance long-term competition and to provide the City with its “Best Value” on City projects in accordance with relevant Texas Local Government Code(s). Under this program, the City may allocate up to 20% of weighted selection criteria in favor of the selection of a Respondent that is an eligible ESBE. An ESBE that is awarded a prime contract under this program may not subcontract more than 49% of the contract value to a non-ESBE without being subject to the penalties and sanctions listed in this Ordinance. In determining whether a particular contract is eligible for this program, the EDD shall consider the relative availability of ESBEs, with a preference for at least three ESBEs that are likely to bid as a Prime Contractor for the contract.

This API is available in the Construction, Architecture & Engineering, Professional Services, Other Services, and Goods & Supplies Industries.

c. SBE Joint Venture Program

The City shall establish an SBE Joint Venture Program API to enhance long-term competition and to provide the City with its “Best Value” on City projects in accordance with relevant Texas Local Government Code(s). Under this program, the City may allocate up to 20% of the weighted selection criteria in favor of the selection of a joint venture Respondent that is made up of one or more SBE joint venture partners. The allocation of evaluation preference points for a joint venture Respondent that is made up of one or more SBE joint venture partners shall be as follows:

- i. 20% of total points for joint venture Respondents wherein the SBE joint venture partner is performing 50% or greater of the overall contract value that is not subcontracted;
- ii. 15% of total points for joint venture Respondents wherein the SBE joint venture partner is performing from 40% up to 49% of the overall contract value that is not subcontracted;
- iii. 10% of total points for joint venture Respondents wherein the SBE joint venture partner is performing from 30% up to 39 % of the overall contract value that is not subcontracted;
- iv. 5% of total points for joint venture Respondents wherein the SBE joint venture partner is performing from 20% up to 29% of the overall contract value that is not subcontracted; and
- v. 0% of total points for joint venture Respondents wherein the SBE joint venture partner is performing less than 20% of the overall contract value that is not subcontracted.

A factor to be considered by the EDD in selecting this API shall include the relative availability of SBEs, with a preference for at least three SBEs that are likely to serve as an SBE joint venture partner as a Prime Contractor for the contract, who will perform Commercially Useful Functions on the specific contract.

A prospective joint venture Respondent on such a City contract shall submit, as required in the solicitation, such documentation as required by the City that includes, but is not limited to:

- i. The name of the SBE joint venture partner(s) that will participate on the project;
- ii. The percentage of prime contract dollars and/or the absolute dollar value of the services to be provided by the SBE joint venture partner(s); and
- iii. A description of the work that each SBE joint venture partner shall be responsible for performing under the terms of the joint venture agreement.

A Prime Contractor that is awarded a contract under this program and does not maintain the required percentage designated to the SBE joint venture partner may subject to the penalties and sanctions listed in this Ordinance.

This API is available in the Construction, Architecture & Engineering, Professional Services, Other Services, and Goods & Supplies Industries.

d. SBE Contracting Program

The City shall establish an SBE Contracting Program API that requires a predetermined percentage of a specific contract, up to 40%, be contracted to eligible SBEs. In determining whether the SBE Contracting Program should be applied to a particular contract, the EDD shall consider the relative availability of SBEs (preference of at least 3 SBEs) that can perform Commercially Useful Functions on the specific contract.

For a City solicitation in which price and scope are defined, a prospective Respondent shall submit, at the time as required in the solicitation, such documentation as required by the City that provides:

- i. The name(s) of the Subcontractor(s) it intends to use on the project;

- ii. The percentage of total contract dollars and/or the absolute dollar value of subcontracting services to be provided by each firm; and
- iii. A description of the work that each Subcontractor shall perform.

For a City solicitation in which price and scope are not predefined for initial evaluation, a prospective Respondent shall submit, at the time as required in the solicitation, such documentation as required by the City to affirm its intent to meet the contracting requirements indicated in the solicitation.

During the price proposal negotiation phase, Respondents shall be required to submit:

- i. The name(s) of the Subcontractor(s) it intends to use on the project;
- ii. The percentage of total contract dollars and/or the absolute dollar value of subcontracting services to be provided by each firm; and
- iii. A description of the work that each Subcontractor shall perform.

Failure of a Respondent to submit documentation meeting the SBE Contracting Program goal or commitment to satisfying the SBE Contracting Program goal, as identified in the solicitation, shall render its response non-Responsive.

A Respondent may request a full or partial waiver of this mandatory contracting requirement for good cause by submitting the appropriate form(s) and documentation at the time as required in the solicitation. Under no circumstances shall a waiver of a mandatory contracting requirement be granted without submission of adequate documentation of Good Faith Efforts by the Respondent and careful review by the EDD. The EDD shall base its determination of a waiver request on criteria such as, but not limited to:

- i. Whether the requestor of the waiver has made Good Faith Efforts to subcontract with qualified and available SBEs;
- ii. Whether subcontracting would be inappropriate and/or not provide a “Commercially Useful Function” under the scope of the contract; and
- iii. Whether there are no eligible SBEs that are qualified and available to provide the goods or services required.

In the absence of a waiver granted by the EDD, failure of a Respondent to submit documentation meeting the SBE Contracting Program goal or commitment to satisfying the SBE Contracting Program goal, as identified in the solicitation, shall render its response non-Responsive. Provided, however, if the Respondent/Prime Contractor is an eligible SBE, then the Respondent/Prime Contractor is allowed to self-perform up to the entire SBE Contracting Program goal amount with its own forces. To the extent that the eligible SBE Respondent/Prime Contractor does not self-perform a portion of the SBE Contracting Program goal, it shall be responsible for complying with all other requirements of this API. Also, if applicable, joint venture Respondents/Prime Contractors are permitted to count payments to SBE joint venture partner(s) toward self-performance of the SBE Contracting Program goal provided such partner(s) has the certification(s) set on the contract. This self-performance option for eligible SBE Respondent/joint venture Respondent/Prime Contractors may be suspended at the discretion of the EDD

Director or designee in the event it determines that the adverse cumulative effect of the use of this self-performance option upon subcontractor opportunities is too great.

In the absence of a waiver granted by the EDD, the failure of a Prime Contractor to attain a contracting goal for SBE participation in the performance of its contract, either through self-performance or utilization of eligible SBE(s), or otherwise comply with the provisions of this API, shall be considered a material breach of contract, grounds for termination of that contract with the City and shall be grounds for the imposition of any penalties and sanctions available under the terms of the SBEDA Ordinance, its contract with the City or by law.

A Prime Contractor is required to notify and obtain prior written approval from the EDD in advance of any reduction in subcontract scope, unless such reduction in scope is the direct and immediate result of a City-mandated change order or contract amendment, or the City has mandated the de-Certification, suspension, graduation or termination of a designated SBE contractor. However, under such circumstances, the Prime Contractor shall undertake Good Faith Efforts to replace the de-certified, suspended, graduated or terminated SBE with one or more other eligible SBE contractors and shall submit a waiver request to the EDD in the event such Good Faith Efforts are unsuccessful.

Further, 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 SBE Subcontractors. The Originating Department shall audit the reported payments to SBE and non-SBE Subcontractors to ensure that the Prime Contractor's reported subcontract participation is accurate. City contracts with Prime Contractors shall include clauses requiring Prime Contractors to pay Subcontractors in compliance with Chapter 2251, Texas Government Code (the "Prompt Payment Act"), and such clauses shall mandate that in the event of a Prime Contractor's non-compliance regarding such payments, the Prime Contractor shall be subject to any penalties and sanctions available under the terms of the SBEDA Ordinance, its contract with the City or by law.

This API is available in the Construction, Architecture & Engineering, Professional Services, Other Services, and Goods & Supplies Industries.

e. ESBE Contracting Program

The City shall establish an ESBE Contracting Program API that requires a predetermined percentage of a specific contract, up to 40%, be contracted to eligible ESBEs. ESBE Contracting Program goals shall operate in the manner and have the same requirements as the SBE Contracting Program set out in Section III.D.1.d of this Ordinance.

This API is available in the Construction, Architecture & Engineering, Professional Services, Other Services, and Goods & Supplies Industries.

f. SBE Aspirational Contracting Program

The City shall establish an SBE Aspirational Contracting Program API in which Respondents/Prime Contractors shall strive to contract a specified non-mandatory aspirational percentage of a specified contract, up to 40%, to eligible SBEs. In determining whether the SBE Aspirational Contracting Program should be applied to a particular contract, the EDD shall consider the relative or perceived availability of SBEs that can perform Commercially Useful Functions on the specific contract.

For a City solicitation in which price and scope are defined, a prospective Respondent shall submit, at the time as required in the solicitation, such documentation as required by the City that provides:

- i. The name(s) of the Subcontractor(s) it intends to use on the project;
- ii. The percentage of total contract dollars and/or the absolute dollar value of subcontracting services to be provided by each firm; and
- iii. A description of the work that each Subcontractor shall perform; and

For a City solicitation in which price and scope are not predefined for initial evaluation, a prospective Respondent shall submit, at the time as required in the solicitation, such documentation as required by the City to review its intent to strive to meet the non-mandatory contracting requirements indicated in the solicitation.

During the price proposal negotiation phase, Respondents shall be required to submit:

- i. The name(s) of the Subcontractor(s) it intends to use on the project;
- ii. The percentage of total contract dollars and/or the absolute dollar value of subcontracting services to be provided by each firm; and
- iii. A description of the work that each Subcontractor shall perform.

While a Respondent shall submit documentation as indicated above detailing how they will strive to meet the SBE Aspirational Contracting Program as specified in the solicitation, failure of a Respondent meet the non-mandatory SBE Aspirational Contract Program shall not render its response non-Responsive, nor is a full or partial waiver required for submission to the EDD.

Note that if the Respondent/Prime Contractor is an eligible SBE, then the Respondent/Prime Contractor is allowed to self-perform up to the entire SBE Aspirational Contracting Program goal amount with its own forces. To the extent that the eligible SBE Respondent/Prime Contractor does not self-perform a portion of the SBE Aspirational Contracting Program goal, it shall strive to comply with all other requirements of this non-mandatory API. Also, if applicable, joint venture Respondents/Prime Contractors are permitted to count payments to SBE joint venture partner(s) toward self-performance of the SBE Aspirational Contracting Program goal provided such partner(s) has the certification(s) set on the contract. This self-performance option for eligible SBE Respondent/joint venture Respondent/Prime Contractors may be suspended at the discretion of the EDD Director or designee in the event it determines that the adverse cumulative effect of the use of this self-performance option upon subcontractor opportunities is too great.

A Prime Contractor is required to notify and obtain prior written approval from the EDD in advance of any reduction in subcontract scope, unless such reduction in scope is the direct and immediate result of a City-mandated change order or contract amendment, or the City has mandated the de-Certification, suspension, graduation or termination of a designated SBE contractor. However, under such circumstances, the Prime Contractor shall strive to undertake Good Faith Efforts to replace the de-certified, suspended, graduated or terminated SBE with one or more other eligible SBE contractors.

Further, 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 SBE Subcontractors. The Originating Department shall audit the reported payments to SBE and non-SBE Subcontractors to ensure that the Prime Contractor's reported subcontract participation is accurate. City contracts with Prime Contractors shall include clauses requiring Prime Contractors to pay Subcontractors in compliance with Chapter 2251, Texas Government Code (the "Prompt Payment Act"), and such clauses shall mandate that in the event of a Prime Contractor's non-compliance regarding such payments, the Prime Contractor shall be subject to any penalties and sanctions available under the terms of the SBEDA Ordinance, its contract with the City or by law.

This API is available in the Construction, Architecture & Engineering, Professional Services, Other Services, and Goods & Supplies Industries.

g. ESBE Aspirational Contracting Program

The City shall establish an ESBE Aspirational Contracting Program API in which Respondent/Prime Contractors shall strive to contract a specified non-mandatory aspirational percentage of a specified contract, up to 40%, to eligible ESBes. ESBE Aspirational Contracting Program goals shall operate in the manner and have the same requirements as the SBE Aspirational Contracting Program set out in Section III.D.1.f of this Ordinance.

This API is available in the Construction, Architecture & Engineering, Professional Services, Other Services, and Goods & Supplies Industries.

h. Mentorship Program

The City shall establish a Mentorship Program API that, when applied to a City solicitation, requires the awarded Prime Contractor to serve as a mentor City's Mentor Protégé Program to a small business protégé. To fulfil the obligations of this API, the awarded Prime Contractor shall complete documentation necessary for matching within 30 calendar days of project award and shall comply with all provisions of the Mentor-Protégé Program Manual, which may be updated from time to time, including waiting up to two-years for potential matching, in addition to serving a two-year period as mentor once successfully matched. Failure of a Prime Contractor to comply with any provision of this API shall be grounds for the imposition of any or all of the penalties and sanctions authorized by this Ordinance.

2. Race- and Gender-Conscious Programs

The EDD shall consider establishment of an overall M/WBE Annual Aspirational Goal in accordance with Section III.E.2 and, in addition, shall review each prospective City Formal Solicitation in advance of its public release and advertisement, and shall make a determination whether to apply any of the other race- and gender-conscious APIs to those solicitations based upon the following criteria:

- i. Whether the most recent data on M/WBE utilization, in the absence of race- and gender-conscious APIs, indicate that City contracts have exhibited significant disparities in the utilization of M/WBEs;
- ii. Whether race- and gender-neutral remedies alone are likely to fully eliminate any such disparities in the utilization of M/WBEs based upon past contract Award and Payment data;
- iii. Whether a particular API is the least burdensome available remedy to non-M/WBE Respondents that is narrowly tailored and that can effectively eliminate the disparities in the utilization of

M/WBEs in City contracts; and

- iv. Whether the particular API is appropriate for the specific type of City contract being procured. Whenever the EDD uses its discretion to apply any of the following race- and gender-conscious APIs to City solicitations, it shall provide an explanation in the solicitation documents of its reasons for doing so based upon its determinations pursuant to these criteria. In making such determinations, the EDD may also take into consideration the experiences of M/WBEs within the City's Relevant Marketplace.

a. M/WBE Contracting Program

The City shall establish an M/WBE Contracting Program API that requires a predetermined percentage of a specific contract, up to 40%, be contracted to eligible M/WBEs. In determining whether the M/WBE Contracting Program should be applied to a particular contract, the EDD shall consider the relative availability of M/WBEs (preference of at least 3 M/WBEs) that can perform Commercially Useful Functions on the specific contract.

For a City solicitation in which price and scope are defined, a prospective Respondent shall submit, at the time as required in the solicitation, such documentation as required by the City that provides:

- i. The name(s) of the Subcontractor(s) it intends to use on the project;
- ii. The percentage of total contract dollars and/or the absolute dollar value of subcontracting services to be provided by each firm; and
- iii. A description of the work that each Subcontractor shall perform.

For a City solicitation in which price and scope are not predefined for initial evaluation, a prospective Respondent shall submit, at the time as required in the solicitation, such documentation as required by the City to affirm its intent to meet the contracting requirements indicated in the solicitation.

During the price proposal negotiation phase, Respondents shall be required to submit:

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

Failure of a Respondent to submit documentation meeting the M/WBE Contracting Program goal or commitment to satisfying the M/WBE Contracting Program goal, as identified in the solicitation, shall render its response non-Responsive.

A Respondent may request a full or partial waiver of this mandatory contracting requirement for good cause by submitting the appropriate form(s) and documentation at the time as required in the solicitation. Under no circumstances shall a waiver of a mandatory contracting requirement be granted without submission of adequate documentation of Good Faith Efforts by the Respondent and careful review by the EDD.

The EDD shall base its determination on a waiver request on criteria such as, but not limited to:

- i. Whether the requestor of the waiver has made Good Faith Efforts to subcontract with qualified and available M/WBEs;
- ii. Whether subcontracting would be inappropriate and/or not provide a “Commercially Useful Function” under the scope of the contract; and
- iii. Whether there are no eligible M/WBEs that are qualified and available to provide the goods or services required.

In the absence of a waiver granted by the EDD, failure of a Respondent to submit documentation meeting the M/WBE Contracting Program goal or commitment to satisfying the M/WBE Contracting Program goal, as identified in the solicitation, shall render its response non-Responsive. Provided, however, if the Respondent/Prime Contractor is an eligible M/WBE, then the Respondent/Prime Contractor is allowed to self-perform up to the entire M/WBE Contracting Program goal amount with its own forces. To the extent that the eligible M/WBE Respondent/Prime Contractor does not self-perform a portion of the M/WBE Contracting Program goal, it shall be responsible for complying with all other requirements of this API. Also, if applicable, joint venture Respondents/Prime Contractors are permitted to count payments to M/WBE joint venture partner(s) toward self-performance of the M/WBE Contracting Program goal provided such partner(s) has the certification(s) set on the contract. This self-performance option for eligible M/WBE Respondent/joint venture Respondent/Prime Contractors may be suspended at the discretion of the EDD Director or designee in the event it determines that the adverse cumulative effect of the use of this self-performance option upon subcontractor opportunities is too great.

In the absence of a waiver granted by the EDD, the failure of a Prime Contractor to attain a subcontracting goal for M/WBE participation in the performance of its contract, either through self-performance or utilization of eligible M/WBE(s), or otherwise comply with the provisions of this API shall be considered a material breach of contract, grounds for termination of that contract with the City and shall be grounds for the imposition of any penalties and sanctions available under the terms of the SBEDA Ordinance, its contract with the City or by law.

A Prime Contractor is required to notify and obtain prior written approval from the EDD in advance of any reduction in subcontract scope, unless such reduction in scope is the direct and immediate result of a City-mandated change order or contract amendment, or the City has mandated the de-Certification, suspension, graduation or termination of a designated M/WBE contractor. However, under such circumstances, the Prime Contractor shall undertake Good Faith Efforts to replace the de-certified, suspended, graduated or terminated M/WBE with one or more other eligible M/WBE contractor(s) and shall submit a waiver request to the EDD in the event such Good Faith Efforts are unsuccessful.

Further, 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 Originating Department shall audit the reported payments to M/WBE and non-M/WBE Subcontractors to ensure that the Prime Contractors’ reported subcontract participation is accurate. City contracts with Prime Contractors shall include clauses requiring Prime Contractors to pay Subcontractors in compliance with Chapter 2251, Texas Government Code (the “Prompt Payment Act”), and such clauses shall mandate that in the event of Prime Contractor non-compliance regarding such payments, such shall be subject to any penalties and sanctions available under the terms of the SBEDA Ordinance, its contract with the City or by law.

This API is available in the Construction, Architecture & Engineering, Professional Services, Other Services, and Goods & Supplies Industries.

b. Emerging M/WBE (E/M/WBE) Contracting Program

The City shall establish an E/M/WBE Contracting Program API that requires a predetermined percentage of a specific contract, up to 40%, be contracted to eligible E/M/WBEs. E/M/WBE Contracting Program goals shall operate in the manner and have the same requirements as the M/WBE Contracting Program set out in Section III.D.2.a of this Ordinance.

This API is available in the Construction, Architecture & Engineering, Professional Services, Other Services, and Goods & Supplies Industries.

c. Segmented M/WBE Contracting Program

The EDD may establish Segmented M/WBE Contracting Program goals based upon the M/WBE availability by industry in accordance with the City's 2023 Disparity Study findings, along with relative M/WBE availability data to be collected by the City through its CVR system. The EDD may also establish Segmented M/WBE Contracting Program goals on an individual City contract wherein an overall combined M/WBE Contracting Program goal is accompanied by subsets of one or more smaller goals that specifically target the participation of a particular segment of Minority Group Member segments or the WBE segment based upon relative availability. Such Segmented Contracting Program goals shall specifically target the participation of a particular segment of business enterprises owned and Controlled by WBEs or certain Minority Group Members (e.g., African Americans or Hispanic Americans) based upon relative availability and significantly greater patterns of underutilization and disparity within an industry as compared to other gender and Minority Group Member categories of M/WBEs. The application of Segmented M/WBE Contracting Program goals is intended to ensure that those segments of M/WBEs that have been most significantly and persistently underutilized receive a fair measure of remedial assistance. Segmented M/WBE Contracting Program goals shall operate in the manner and have the same requirements as the M/WBE Contracting Program set out in Section III.D.2.a of this ordinance.

This API is available in the Construction, Architecture & Engineering, Professional Services, Other Services, and Goods & Supplies Industries.

d. M/WBE Aspirational Contracting Program

The City shall establish an M/WBE Aspirational Contracting Program API in which Respondent/Prime Contractors shall strive to contract a specified non-mandatory aspirational percentage of a specified contract, up to 40%, to eligible M/WBEs. In determining whether the M/WBE Aspirational Contracting Program should be applied to a particular contract, the EDD shall consider the relative or perceived availability of M/WBEs that can perform Commercially Useful Functions on the specific contract.

For a City solicitation in which price and scope are defined, a prospective Respondent shall submit, at the time as required in the solicitation, such documentation as required by the City that provides:

- i. The name(s) of the Subcontractor(s) it intends to use on the project;
- ii. The percentage of total contract dollars and/or the absolute dollar value of subcontracting services to be provided by each firm; and

- iii. A description of the work that each Subcontractor shall perform.

For a City solicitation in which price and scope are not predefined for initial evaluation, a prospective Respondent shall submit, at the time as required in the solicitation, such documentation as required by the City to review its intent to strive to meet the non-mandatory contracting requirements indicated in the solicitation.

During the price proposal negotiation phase, Respondents shall be required to submit:

- i. The name(s) of the Subcontractor(s) it intends to use on the project;
- ii. The percentage of total contract dollars and/or the absolute dollar value of subcontracting services to be provided by each firm; and
- iii. A description of the work that each Subcontractor shall perform.

While a Respondent shall submit documentation as indicated above detailing how they will strive to meet the M/WBE Aspirational Contracting Program as specified in the solicitation, failure of a Respondent meet the non-mandatory M/WBE Aspirational Contract Program shall not render its response non-Responsive, nor is a full or partial waiver required for submission to the EDD.

Note that if the Respondent/Prime Contractor is an eligible M/WBE, then the Respondent/Prime Contractor is allowed to self-perform up to the entire M/WBE Aspirational Contracting Program goal amount with its own forces. To the extent that the eligible M/WBE Respondent/Prime Contractor does not self-perform a portion of the M/WBE Aspirational Contracting Program goal, it shall strive to be responsible for complying with all other requirements of this non-mandatory API. Also, if applicable, joint venture Respondents/Prime Contractors are permitted to count payments to M/WBE joint venture partner(s) toward self-performance of the M/WBE Aspirational Contracting Program goal provided such partner(s) has the certification(s) set on the contract. This self-performance option for eligible M/WBE Respondent/joint venture Respondent/Prime Contractors may be suspended at the discretion of the EDD Director or designee in the event it determines that the adverse cumulative effect of the use of this self-performance option upon subcontractor opportunities is too great.

A Prime Contractor is required to notify and obtain prior written approval from the EDD in advance of any reduction in subcontract scope, unless such reduction in scope is the direct and immediate result of a City-mandated change order or contract amendment, or the City has mandated the de-Certification, suspension, graduation or termination of a designated M/WBE contractor. However, under such circumstances, the Prime Contractor shall strive to undertake Good Faith Efforts to replace the de-certified, suspended, graduated or terminated M/WBE with one or more other eligible M/WBE contractors.

Further, 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 Originating Department shall audit the reported payments to M/WBE and non-M/WBE Subcontractors to ensure that the Prime Contractor's reported subcontract participation is accurate. City contracts with Prime Contractors shall include clauses requiring Prime Contractors to pay Subcontractors in compliance with Chapter 2251, Texas Government Code (the "Prompt Payment Act"), and such clauses shall mandate that in the event of a Prime Contractor's non-

compliance regarding such payments, the Prime Contractor shall be subject to any penalties and sanctions available under the terms of the SBEDA Ordinance, its contract with the City or by law.

This API is available in the Construction, Architecture & Engineering, Professional Services, Other Services, and Goods & Supplies Industries.

e. Emerging M/WBE (E/M/WBE) Aspirational Contracting Program

The City shall establish an E/M/WBE Aspirational Contracting Program API in which Respondent/Prime Contractors shall strive to contract a specified non-mandatory aspirational percentage of a specified contract, up to 40%, to eligible E/M/BEs. E/M/WBE Aspirational Contracting Program goals shall operate in the manner and have the same requirements as the M/WBE Aspirational Contracting Program set out in Section III.D.2.d of this Ordinance.

This API is available in the Construction, Architecture & Engineering, Professional Services, Other Services, and Goods & Supplies Industries.

f. Segmented M/WBE Aspirational Contracting Program

The EDD shall establish a Segmented M/WBE Aspirational Contracting Program API on an individual City contract wherein an overall combined M/WBE Aspirational Contracting Program goal is accompanied by subsets of one or more smaller goals that specifically target the participation of a particular segment of Minority Group Member segments or the WBE segment based upon relative or perceived availability. Such Segmented M/WBE Aspirational Contracting Program goals shall specifically target the participation of a particular segment of business enterprises owned and Controlled by WBEs or certain Minority Group Members (e.g., African Americans or Hispanic Americans) based upon relative or perceived availability and significantly greater patterns of underutilization and disparity within an industry as compared to other gender and Minority Group Member categories of M/WBEs. The application of Segmented M/WBE Aspirational Contracting Program goals is intended to assist those segments of M/WBEs that have been most significantly and persistently underutilized receive a fair measure of remedial assistance. Segmented M/WBE Aspirational Contracting Program goals shall operate in the manner and have the same requirements as the M/WBE Aspirational Contracting Program set out in Section III.D.2.d of this ordinance.

This API is available in the Construction, Architecture & Engineering, Professional Services, Other Services, and Goods & Supplies Industries.

E. S/M/WBE Program Administration

1. Economic Development Department Duties and Responsibilities

The SBEDA Program will be administered and managed by the EDD Director or designee. The Director of EDD or designee shall attend relevant City Council agenda meetings to address any SBE, ESBE, M/WBE, and/or E/M/WBE issues related to City contracting. The EDD shall be responsible for the overall administration of the City's S/M/WBE Program. At a minimum, the EDD shall:

- a. Establish and implement APIs authorized under this Ordinance on a contract-by-contract basis.
- b. 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 S/M/WBE Program purposes and policy objectives.

- c. Formulate, establish, distribute and implement additional forms, rules and procedures for S/M/WBE Program waivers, improvements and adjustments to the goal-setting methodologies and other Program features;
- d. Have advance substantive input in a contract specification review process consistent with this Ordinance to ensure that contract solicitation specifications are not unnecessarily restrictive and unduly burdensome to SBE, ESBE, M/WBE, and/or E/M/WBEs;
- e. Receive and analyze external and internal information, including statistical data and anecdotal testimony regarding the barriers encountered by SBE, ESBE, M/WBE, and/or E/M/WBEs in attempting to obtain contract opportunities at the City, and the relative effectiveness of various APIs in addressing those barriers;
- f. Monitor and support the implementation of the S/M/WBE Program and propose modifications to appropriate City officials as necessary to fully achieve the purpose and objectives of the Policy;
- g. Provide public advocacy internally and externally regarding the purposes and objectives of the S/M/WBE Program;
- h. Develop, maintain and distribute directories of eligible SBE, ESBE, M/WBE, and/or E/M/WBEs;
- i. Provide seminars and technical assistance to SBE, ESBEs, M/WBE, and/or E/M/WBEs to enhance their ability to effectively compete for City contracts;
- j. Investigate alleged violations of this Ordinance and provide written recommendations to appropriate authorities for remedial action and imposition of sanctions and penalties when necessary;
- k. Determine Prime Contractor compliance with S/M/WBE Program requirements prior to contract award presentation to City Council and prior to Originating Department release of final retainage;
- l. Oversee the maintenance of an accurate contract performance reporting system; and
- m. Provide staff support for the SBEDA Committee.
- n. Identify, implement, and maintain supplemental S/M/WBE capacity building initiatives, as directed by City leadership and/or City Council.
- o. Consult with vendors, advocacy groups, trade organizations, and chambers of commerce to identify barriers to S/M/WBEs doing business with the City. To facilitate this effort, the EDD will designate an Outreach Coordinator.
- p. Assist S/M/WBEs seeking certifications by facilitating priority certifications when necessary, facilitating connections with certification staff, and identifying efficiencies to certification processes.
- q. Assist S/M/WBEs registering in the CVR, by facilitating connections with City staff who oversee the CVR and identifying efficiencies to CVR registration and system processes.

- r. Conduct outreach and education on the SBEDA Program to SAMSA businesses, focusing on S/M/WBEs, and as an additional effort, include businesses owned by veterans, people with disabilities, and lesbian, gay, bisexual, transgender and queer (LGBTQ). Outreach and education should consider, at a minimum, the following initiatives:
 - i. Advertisements in local newspapers and magazines, as well as bus banners, bus stop banners, street banners, billboards, radio stations, television, TVSA, City's telephone hold messaging system, social media, and newsletters.
 - ii. Maintain the EDD website to contain current SBEDA Program information.
 - iii. Conduct events, such as prime contractor and subcontractor meet and greets, as well as partner with external organizations to participate in their events.
 - iv. Notify newly certified businesses, not registered in the CVR, about the SBEDA Program.
 - v. Create and distribute an annual procurement plan containing all planned and formal City procurement opportunities.
 - vi. Develop training/informative videos that, at a minimum, pertain to registering in the CVR completing certified payroll, managing City contracting system profiles, completing a SBEDA utilization plan, obtaining certifications, and reporting payments to subcontractors in the SBEDA compliance module.
 - vii. Annually, EDD shall present a marketing plan to the SBEDA Committee for review and feedback regarding annual efforts contained in this section.

2. Annual Aspirational Goals

The EDD shall establish non-mandatory annual aspirational percentage goals for overall M/WBE prime and subcontract participation for each major category of contracting at the City. Annual Aspirational Goals are to be established each fiscal year for Construction, Architecture & Engineering, Professional Services, Other Services and Goods & Supplies contracts. These Annual Aspirational Goals for M/WBE participation in the City contracts shall be established in each of these categories based upon the combined M/WBE availability by industry in accordance with its related factual predicate. These Annual Aspirational Goals are to be adjusted hereafter by the City on an annual basis based upon based upon the M/WBE availability by industry in accordance with the City's 2023 Disparity Study findings, along with relative M/WBE availability data to be collected by the City through its CVR system. Annual Aspirational Goals are not to be applied to individual contracts, but are intended to serve as a benchmark against which to measure the overall effectiveness of the S/M/WBE Program on an annual basis, and to gauge the need for future adjustments to the mix and aggressiveness of remedies and APIs being applied pursuant to this Policy.

This Annual Aspirational Goal for M/WBE participation in City contracts for all industries combined (prime and subcontract dollars combined) has initially been established at 24.9% based upon the combined M/WBE availability in accordance with the City's 2023 Disparity Study findings.

The Annual Aspirational Goal for M/WBE participation in City Construction contracts (prime and subcontract dollars combined) has initially been established at 28.8% based upon the combined M/WBE availability by its industry in accordance with its 2023 Disparity Study findings.

The Annual Aspirational Goal for M/WBE participation in City Architectural & Engineering contracts (prime and subcontract dollars combined) has initially been established at 25.2% based upon the combined M/WBE availability by industry in accordance with its 2023 Disparity Study findings.

The Annual Aspirational Goal for M/WBE participation in City Professional Services contracts (prime and subcontract dollars combined) has initially been established at 19.3% based upon the combined M/WBE availability by industry in accordance with its 2023 Disparity Study findings.

The Annual Aspirational Goal for M/WBE participation in City Other Services contracts (prime and subcontract dollars combined) has initially been established at 17.6% based upon the combined M/WBE availability by industry in accordance with its 2023 Disparity Study findings.

The Annual Aspirational Goal for M/WBE participation in City Goods & Supplies contracts (prime and subcontract dollars combined) has initially been established at 8.3% based upon the combined M/WBE availability by industry in accordance with its 2023 Disparity Study findings.

3. Certification

Certification of all SBE, ESBE, M/WBE, and/or E/M/WBEs (E/S/M/WBEs) shall be the responsibility of the EDD. The EDD shall be responsible for developing, issuing and reviewing all E/S/M/WBE Certification and re-Certification forms and applications in a manner that is consistent with the standards, definitions and intent established by this Ordinance. The EDD shall also maintain an automated and up-to-date registry of all eligible E/S/M/WBEs that are readily available to the general public, as well as City personnel.

- a. In executing its responsibility in connection with these Certifications, the EDD may contract with a Certification agency/organization for the purpose of issuing Certifications in a manner that is consistent with the standards established under this Ordinance.
- b. A firm eligible for Certification(s) under this S/M/WBE Program shall be an Independently Owned and Operated business. The ownership and Control by Minority Group Members or woman 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. 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.
- c. Recognition of the business as a separate entity for tax or corporate purposes is not necessarily sufficient for recognition as an E/S/M/WBE. Certification as E/S/M/WBE will be in accordance with the definitions established in Section III.B of this Ordinance.
- d. 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.

- e. A firm seeking Certification or re-Certification status under this Ordinance 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 S/M/WBE Program requires, under applicable law, a narrower definition of E/S/M/WBE categories (e.g., due to ethnicity / gender of ownership or relevant geographic market considerations), the City shall limit the categories of E/S/M/WBEs certified by other jurisdictions that shall be eligible for participation in the City's S/M/WBE Program as necessary to ensure that the race- and gender-conscious remedial relief provided by the City's Program remains appropriately narrowly tailored.

- f. Before accepting another jurisdiction's E/S/M/WBE Certification program, the EDD shall examine the definitions, standards and Certification practices of the program to ensure that it adheres to established City Certification guidelines.
- g. 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 Ordinance. 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 Ordinance, be considered as Controlling the business.
- h. All securities that constitute ownership or Control of a corporation for purposes of establishing it as an M/WBE under this Ordinance 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.
- i. 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 socially and economically disadvantaged, 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.
- j. 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 Ordinance; 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 Ordinance.
- iv. Once certified, an E/S/M/WBE shall update its status by submitting necessary Certification documentation in accordance with recertification procedures found in the SBEDA Policy & Procedures Manual. If ownership or Control of the firm has changed, the E/S/M/WBE shall submit a new Certification affidavit to the EDD, or its 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.
- k. Once denied Certification, a firm may not re-apply for Certification until the time indicated in the in accordance with certification procedures found in the SBEDA Policy & Procedures Manual.
- l. 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 Ordinance.
- m. Complaints regarding the Certification status of a firm shall be forwarded to the EDD for investigation of any possible violations of this Ordinance.

4. Graduation and Suspension

The EDD shall graduate, suspend or terminate an SBE, ESBE, M/WBE, and/or E/M/WBE (E/S/M/WBE) from the S/M/WBE Program established by this Ordinance if, under Program guidelines, the firm no longer is eligible for the Program’s assistance or qualifies for its remedial benefits. The EDD shall be responsible for monitoring and conducting periodic reviews of the size, City contract participation levels and conduct of all eligible E/S/M/WBEs 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 Ordinance. The EDD shall also ensure that its directory of eligible E/S/M/WBEs accurately and timely reflects the graduation, suspension or termination of certified firms. In making the determination required by this paragraph, the EDD shall, to the extent practicable, adhere to the following guidelines:

- (a) E/S/M/WBEs shall be graduated from participation under the S/M/WBE Program’s APIs when the firms are no longer eligible based upon the Certification standards and definitions set forth in this Ordinance.
 - i. Certified SBE and/or M/WBEs shall be graduated from the S/M/WBE Program when re-Certification documents reflect that the SBE and/or M/WBE’s annual revenues or number of employees exceed the U.S. Small Business Administration (SBA’s) size standards for the relevant Industry Category. Provided, however, that graduated SBE and/or M/WBEs

shall be eligible to apply for SBE and/or M/WBE re-Certification at a later time in accordance with recertification procedures found in the SBEDA Policy & Procedures Manual. Such application for SBE and/or M/WBE re-Certification shall only be granted on condition that the graduated SBE and/or M/WBE presents documentation as required by the EDD that establishes that the SBE and/or M/WBE's annual revenues and number of employees have fallen below the SBA's small business size standards for the Relevant Industry. In addition, the SBE and/or M/WBE must also meet the U.S. Department of Transportation's personal net worth standard.

- ii. ESBE and E/M/WBEs shall be permanently graduated from the ESBE and E/M/WBE Programs upon submission of re-Certification documents that reflect the firm's annual revenues or number of employees have exceeded 25% of the SBA's small business size standards for annual revenues or number of employees for the relevant Industry Category. Provided, however, that graduated ESBE and/or E/M/WBEs shall be eligible to apply for ESBE and/or E/M/WBE re-Certification at a later time in accordance with recertification procedures found in the SBEDA Policy & Procedures Manual. Such application for ESBE and/or E/M/WBE re-Certification shall only be granted on condition that the graduated ESBE and/or E/M/WBE presents documentation as required by the EDD that establishes that the ESBE and/or E/M/WBE's annual revenues and number of employees have fallen below 25% of the SBA's small business size standards for annual revenues or number of employees for the relevant Industry Category. In addition, ESBE and/or E/M/WBEs must also meet the U.S. Department of Transportation's personal net worth standard.

- (b) For E/S/M/WBEs that are certified by an agency that is recognized by the City, but does not have graduation provisions, the City will periodically audit these E/S/M/WBEs to ensure that they meet the Certification criteria contained within this Ordinance.

5. Economic Development Department Compliance Responsibilities

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

- a. The compliance module system shall track all payments, by industry/commodity classification codes that are made to each CVR registrant and relevant Subcontractors.
- b. Upon payment by the City to a vendor for goods or services provided, vendors shall be required to provide and aver at such times and in the format required by the City:
 - i. Their City vendor identifiers;
 - ii. The City vendor identifiers for all Subcontractors and suppliers;
 - iii. The claimed value of the respective goods or services provided by the vendor and any Subcontractor or supplier; and
 - iv. The nationally-recognized industry/commodity identification codes for all goods or services provided by the vendor and any Subcontractors or suppliers.

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

In addition to establishing an electronic compliance module system, the EDD and relevant City departments shall perform the following functions:

- a. The EDD, along with contracting staff of each City department, shall monitor compliance with these 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 Ordinance, or with the contract provisions pertaining to SBE, ESBE, M/WBE, and/or E/M/WBE (E/S/M/WBE) utilization, the EDD Director or designee shall so notify the Originating Department and the contractor. The Director of EDD 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 Ordinance requirements, within thirty (30) calendar days after the notice of noncompliance. If the requested materials are not received within thirty (30) calendar days, then a finding of noncompliance may be determined, and appropriate penalties and sanctions will apply as stated in Section III.E.10 of this Ordinance.
- b. Joint responsibility by the Director of EDD or designee and the Originating Department Director or designee shall attempt to resolve the noncompliance with the requirements of this Ordinance, or the contract provisions pertaining to E/S/M/WBE utilization, within thirty (30) calendar days. If noncompliance cannot be resolved within the thirty (30) calendar days, the Director or designee of EDD and/or the Director or designee of the Originating Department may 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 III.E.10 of this Ordinance shall be imposed.
- c. Whenever the Director of EDD or designee finds, after investigation, that an Originating Department has failed to comply with the provisions of this Ordinance or the contract provisions pertaining to E/S/M/WBE utilization, a written finding specifying the nature of the noncompliance shall be transmitted to the Originating Department and the Director of EDD or designee shall attempt to resolve any noncompliance through conference and conciliation. Should such attempt fail to resolve the noncompliance, the Director of EDD 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 Ordinance to secure compliance.
- d. The Director or designee of EDD, through the City Manager or designee, shall submit a written annual report to the SBEDA Committee and City Council on the progress of the City toward the utilization goals established by this Ordinance together with an identification of problems and specific recommendations for improving the City's performance annually.
- e. The terms of this Ordinance shall apply to all Respondents, as well as E/S/M/WBEs specified in this Ordinance that receive funds from the City subject to the scope and exclusions in the SBEDA Ordinance.
- f. The EDD Director or designee and Originating Departments shall work closely with the City Attorney's Office to include language in all City contracts that ensures compliance with the S/M/WBE Program. This language should also include a time period for the contractor to correct any and all deficiencies not later than thirty (30) calendar days after notification of non-compliance.

6. Vendor Responsibilities

To facilitate the EDD completing its responsibilities in administering S/M/WBE Program elements, a vendor shall:

- a. Permit the EDD 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 EDD.
- 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 an eligible SBE, ESBE, M/WBE, and/or E/M/WBE (E/S/M/WBE) listed on the participation schedule has become or will become unavailable, then the apparent successful Respondent shall immediately notify the EDD. Any desired change in the E/S/M/WBE participation schedule shall be approved in advance by the EDD and shall indicate the Prime Contractor's Good Faith Efforts to substitute another eligible E/S/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 EDD.
- e. Notify the Originating Department and EDD of transfer or assignment of contract with the City.
- f. Retain record of all Subcontractor payments for a minimum of four years following project termination date.

7. Reporting Requirements – Economic Development Director or Designee

The EDD Director or designee shall monitor the implementation of this Ordinance and the progress of the S/M/WBE Program. On an annual basis the EDD Director or designee shall report to the City Council, as data becomes available, on contract payments to Prime Contractors, Subcontractors, business certification types (SBE, ESBE, M/WBE, and E/M/WBE), and by industry for City contracts in which the SBEDA Program applied. This written report should also address stated S/M/WBE Program objectives including, but not limited to and as data is available, enhancement of competition as reflected in solicitation response activity, growth in availability for SBE, ESBE, M/WBE, and E/M/WBEs (E/S/M/WBEs), and reduction or elimination of disparities in contract awards and contract payments to WBEs in City contracts.

Other specific performance measures by which the success of the S/M/WBE Program might be evaluated at the time periodic disparity studies are conducted (depending upon the availability of data) include: (a) growth in the numbers of E/S/M/WBEs winning their first contract awards from COSA; (b) growth in the overall E/S/M/WBE Prime Contracting dollar volume; (c) growth in the numbers of E/S/M/WBEs that are bondable and in the collective bonding capacity of E/S/M/WBEs; (d) growth in the numbers of E/S/M/WBEs that successfully graduate from the programs and remain as viable competitors after the

passage of two years; (e) growth in the numbers of graduated E/S/M/WBEs that successfully compete for COSA contracts; (f) growth in the size of the largest COSA contracts won and successfully performed by E/S/M/WBEs; (g) comparability in the annual growth rates and median sales of E/S/M/WBEs as compared to other firms; and (h) growth in the percentage of contract dollar participation of E/S/M/WBEs in the private sector of the Relevant Marketplace. The written report should also contain any recommendations for modifications, suspension or termination of any portion of this Ordinance, with justifications for each such recommendation.

8. Exceptions and Waivers

- a. If a Respondent is unable to comply with the API requirements imposed by the GSC under the terms of this Ordinance, such Respondent shall submit, as required in the solicitation, a request for exception at the time as required in the solicitation. The exception request shall include specified documentation which demonstrates a Good Faith Effort to comply with the requirements as described under the selected APIs.
- b. If, after award of a contract, the contractor is unable to meet the participation requirements for SBE, ESBE, M/WBE, and/or E/M/WBEs (E/S/M/WBEs) specified at response submittal, the contractor must seek substitute E/S/M/WBEs to fulfill the requirements; the requested substitution must be approved by the Director of EDD or designee. If, after reasonable Good Faith Efforts, the contractor is unable to find a substitute E/S/M/WBEs, 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 substitute for the initial E/S/M/WBE proposed utilization, the contract may, in the City's sole discretion, be terminated 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.
- c. Prior to submission of a prospective solicitation to the EDD, and prior to the public release of solicitations, a City Originating Department may request the Director or designee of EDD to waive or modify the application of API requirements for E/S/M/WBE participation by submitting its reasons in writing. The Director or designee of EDD may grant such a waiver or modification upon determination that:
 - i) The extraordinary and necessary requirements of the contract render application of the APIs infeasible or impractical;
 - ii) The nature of the goods or services being procured are excluded from the scope of this Ordinance; or
 - iii) Sufficient qualified E/S/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 EDD for review and possible application of APIs. Any further requests from a City Originating Department for modification of goal amounts or other APIs as established by the EDD shall be presented to the City Manager or designee, whose decisions on such requests shall be final.

- d. The EDD may waive the application of APIs to enhance E/S/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 EDD 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 Ordinance; and
 - b) That the prospective contractor is an E/S/M/WBE or, if not, that the prospective contractor will make a Good Faith Effort to utilize E/S/M/WBEs.

Final approval of all such waivers shall be made by the City Manager or designee.

9. Originating Departments - Duties and Responsibilities

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 Ordinance.

- a. The Originating Department Director or designee shall assume primary responsibility for achieving the objectives of this S/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 SBE, ESBE, M/WBE, and/or E/M/WBEs (E/S/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 E/S/M/WBEs have the maximum practical opportunity to participate on City contracts:
 - i) Advertise Formal Solicitations (with a preference of using 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 CVR system;
 - iii) Send notification before solicitations are due to minority and woman trade associations, contractor's associations, and advocacy organizations regarding pending Formal Solicitations in accordance with state law;

- iv) Include the Commercial Non-Discrimination Policy statement, compliance language and any materials required by this Ordinance in all contracts and solicitation documents;
- v) 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 E/S/M/WBE participation, without making separate, sequential or component purchases in violation of state purchasing laws;
- vi) 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;
- vii) Ensure that all required statistics and documentation are submitted to the EDD as requested; and
- viii) If circumstances prevent the Originating Department from meeting notification requirements contained herein, the Originating Department shall engage in direct and extensive outreach to E/S/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.
- ix) Notify the EDD Director or designee of all change orders and amendments to contracts that are subject to this Ordinance and take necessary steps to ensure that APIs applied to the contract by the EDD 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.

10. Penalties and Sanctions

- a. 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 Ordinance, 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;
 - 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.
- b. It is a violation of this Ordinance 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 SBE, ESBE, M/WBE, and/or E/M/WBE (E/S/M/WBE) for purposes of this Ordinance.
 - 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 Ordinance.
 - 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 E/S/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 Ordinance.
 - v) Make false statements to any entity that any other entity is or is not certified as an E/S/M/WBE for purposes of this Ordinance.
- c. Any person who violates the provisions of this section shall be subject to the provisions of Section 10 of the Ordinance and to the maximum penalty provided by law.

11. Small Business Economic Development Advocacy (SBEDA) Committee

A citizens' committee, made up of business stakeholders and members of the general business community, herein referred to as the SBEDA Committee has been established to function as an advisory group only and shall: (a) assist the Director or designee of EDD, the City Manager or designee, and City Council in reviewing the continuing programs for contractors and Subcontractors that promote SBE, ESBE, M/WBE, and E/M/WBE participation; (b) coordinate activities and actions with the City Council Economic and Workforce Development Committee (EWDC) or corresponding committee designated by the Mayor and/or City Council; (c) make recommendations to the Director or designee of EDD, the City Manager or designee, and City Council concerning modifications of such programs and procedures established pursuant to this Ordinance; and (d) evaluate and provide feedback on SBEDA program outcomes and objectives, as listed in this Ordinance (i.e., attainment of Annual Aspirational Goals and Annual Marketing Plan). The SBEDA Committee consists of 11 members appointed to two-year terms by the City Council.

12. S/M/WBE Program Periodic Review of Factual Predicate, Modification, and Sunset

Beginning no later than December 31, 2028, approximately five years after City Council's adoption of the 2023 Disparity Study, the City shall issue a Request For Proposals to undertake a comprehensive update of the full disparity study, and upon completion of each periodic disparity study, the Director or designee of EDD shall present the disparity study findings and recommendations to the SBEDA Committee and the City Council. Following City review and a public comment period regarding those study findings and recommendations, the City Council shall consider any proposed modifications to, or sunset of, this Ordinance, and shall direct the City Manager or designee to propose modifications to this Ordinance and to submit any necessary draft legislation to the City Council for adoption as appropriate to effectuate the continuation, modification or termination of the SBE, ESBE, M/WBE, and E/M/WBE Programs. Absent an extension in the enabling legislation for this amended SBEDA Ordinance by the

City Council, the provisions of this Ordinance shall be void and may not be enforced after December 31, 2031.

F. Severability Clause

If any section, paragraph, sentence, clause, phrase or word of this S/M/WBE Program Policy, 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 Ordinance which can be given effect without the invalid provision or application, and to this end, all the provisions of this Ordinance are hereby declared to be severable.