



Agenda - Final

Transportation, Infrastructure and Operations Committee

Quinton Lucas, Chair
Teresa Loar, Vice Chair
Eric Bunch, Vice Chair
Katheryn Shields
Melissa Robinson
Kevin O'Neill

Wednesday, August 11, 2021

9:00 AM

26th Floor, Council Chamber

PUBLIC OBSERVANCE OF MEETINGS

Members of the City Council may attend this meeting via videoconference.

Any closed session may be held via teleconference.

The public can observe this meeting at the links provided below.

Applicants and citizens wishing to participate have the option of attending each meeting or they may do so through the videoconference platform ZOOM, using this link:
<https://us02web.zoom.us/j/84530222968>

FIRST READINGS

Water Services

[210640](#)

Authorizing a \$1,018,202.40 professional, specialized or technical services contract with Doxim Utilitec LLC, for the Water Bill Printing and Mailing Services project; authorizing two successive one-year renewal options without further City Council approval; and recognizing this ordinance as having an accelerated effective date.

Attachments: [210640 Fiscal Note](#)

[210640 Fact Sheet](#)

[210640 PST Contract](#)

[TIO 8-11-21 KCW](#)

[Ordinance 210640-Docket Memo 22003](#)

Aviation

Shields

210643 Authorizing the Manager of Procurement Services to execute a \$325,000.00 Art Purchase Contract with SOFTlab Inc. for the acquisition of the sculptural work “Cloud Gazing” through the One Percent for Art Program at the KCI New Single Terminal and Parking project.

Attachments: [210643 Contract](#)
[Ordinance 210643-Docket Memo-EV2879](#)
[210643 Fact Sheet](#)
[210643 Fiscal Note](#)

Shields

210644 Authorizing the Manager of Procurement Services to execute a \$192,000.00 Art Purchase Contract with John Balistreri for the acquisition of the sculptural work “Wings” through the One Percent for Art Program at the KCI New Single Terminal and Parking project.

Attachments: [210644 Contract](#)
[Ordinance 210644-Docket Memo-EV2877](#)
[210644 Fiscal Note](#)
[210644 Fact Sheet](#)

Shields

210646 Authorizing the Manager of Procurement Services to execute a \$475,000.00 Art Purchase Contract with Hou De Sousa LLC for the acquisition of the sculptural work “Riff/Lift” through the One Percent for Art Program at the KCI New Single Terminal and Parking project.

Attachments: [210646 Contract](#)
[Ordinance 210646-Docket Memo-EV2875](#)
[210646 Fact Sheet](#)
[210646 Fiscal Note](#)

Human Relations

Bough, O'Neill and Parks-Shaw

[210645](#)

Amending various sections of Chapter 2, "Administration," Chapter 3, "Contracts and Leases," and Chapter 38, "Human Relations," for the purpose of changing the name of the Human Relations Department to the Civil Rights and Equal Opportunity Department.

Attachments: [No Fact Sheet](#)
[210645 Compared Version](#)
[210645com](#)

HELD IN COMMITTEE

[210282](#)

Amending Chapter 64, Code of Ordinances, by repealing Section 64-168, Sidewalk café permit, and Section 64-171, Street café permit, and enacting in lieu thereof the same sections of like number and subject matter to provide consistency with other Code provisions in Chapters 10 and 64 and by repealing Section 64-172, Temporary permits for sidewalk cafés, parklets and street cafés.

Attachments: [No Fact Sheet](#)
[210282 Com](#)

ADDITIONAL BUSINESS

1. Staff from General Services and Public Works will give an update on Employee Parking and the status of City Hall's Garage renovations.
2. There may be a general discussion regarding current Transportation, Infrastructure and Operations Committee issues.

3. Closed Session

Any closed session may be held via teleconference.

- Pursuant to Section 610.021 subsection 1 of the Revised Statutes of Missouri to discuss legal matters, litigation, or privileged communications with attorneys;
- Pursuant to Section 610.021 subsection 2 of the Revised Statutes of Missouri to discuss real estate;
- Pursuant to Section 610.021 subsections 3 and 13 of the Revised Statutes of Missouri to discuss personnel matters;
- Pursuant to Section 610.021 subsection 9 of the Revised Statutes of Missouri to discuss employee labor negotiations;
- Pursuant to Section 610.021 subsection 11 of the Revised Statutes of Missouri to discuss specifications for competitive bidding;
- Pursuant to Section 610.021 subsection 12 of the Revised Statutes of Missouri to discuss sealed bids or proposals; or
- Pursuant to Section 610.021 subsection 17 of the Revised Statutes of Missouri to discuss confidential or privileged communications with auditors.

Those who wish to comment on proposed ordinances can email written testimony to public.testimony@kcmo.org. Comments received will be distributed to the Transportation Committee and added to the public record by the clerk .

The city provides several ways for residents to watch City Council meetings:

- Livestream on the city's website at www.kcmo.gov
- Livestream on the city's YouTube channel at <https://www.youtube.com/watch?v=3hOuBlg4fok>
- Watch Channel 2 on your cable system. The channel is available through Time Warner Cable (channel 2 or 98.2), AT&T U-verse (channel 99 then select Kansas City) and Google Fiber on Channel 142.
- To watch archived meetings, visit the City Clerk's website and look in the Video on Demand section: http://kansascity.granicus.com/ViewPublisher.php?view_id=2

Adjournment



Legislation Text

File #: 210640, Version: 1

ORDINANCE NO. 210640

Authorizing a \$1,018,202.40 professional, specialized or technical services contract with Doxim Utilitec LLC, for the Water Bill Printing and Mailing Services project; authorizing two successive one-year renewal options without further City Council approval; and recognizing this ordinance as having an accelerated effective date.

BE IT ORDAINED BY THE COUNCIL OF KANSAS CITY:

Section 1. That the Director of Water Services Department is authorized to execute Contract No. 22003 in the amount of \$1,018,202.40 with Doxim Utilitec LLC, for the Water Bill Printing and Mailing Services project. A copy of the contract is on file in the office of Water Services.

Section 2. That the Director of Water Services is authorized to expend up to the sum of \$1,018,202.40 from Account No. 22-8010-801100-B, Consumer Services, to satisfy the costs of this contract.

Section 3. That the Director of Water Services is hereby authorized to execute two successive one-year renewal options for this contract without additional Council approval with such funds as appropriated by the Council in future annual budgets.

Section 4. That this ordinance, relating to expenses of government, is recognized as an ordinance with an accelerated effective date as provided by Section 503(a)(3)(B) of the City Charter and shall take effect in accordance with Section 503, City Charter.

I hereby certify that there is a balance, otherwise unencumbered, to the credit of the appropriation to which the foregoing expenditure is to be charged, and a cash balance, otherwise unencumbered, in the treasury, to the credit of the fund from which payment is to be made, each sufficient to meet the obligation hereby incurred.

Tammy L. Queen
Director of Finance

Approved as to form and legality:

Charlotte Ferns
Assistant City Attorney

CONTRACT

210640

Ordinance Fact Sheet

A-E/Negotiated Form

Brief Title	Approval Deadline	Reason
Approving a professional, specialized or technical services contract for the Water Bill Printing and Mailing project		To authorize a professional, specialized or technical services contract and expenditure; and to authorize two successive one-year renewal options without additional Council approval.

Details

Reason for Contract

This contract will provide water bill printing and mailing services for correspondence to be sent to Kansas City, Missouri residential and commercial customers, and wholesale customers outside of Kansas City, Missouri.

The contract is for one year with two successive one-year renewal options without further City Council approval.

Discussion

Project Justification

This project entails printing and mailing of bills for water services and other consumer correspondence using the KWIC (Kansas City Water Information Center) billing software.

Project Description

Each business day the contractor receives an electronically delivered file containing the current day's bills for water services, delinquent and turn off notices and other consumer correspondence. The contractor generates the bills for water services, provides the envelopes and letter stock which are used to print and mail out consumers' water bills and letters. The contractor sorts the mail to achieve the best possible postal rates and sends the mail to the United States Postal Service each business day. Additionally, this contract promotes customer E-bills in an effort to reduce paper usage and postage.

This ordinance will also authorize the Director of Water Services to execute two additional one-year renewals of the Water Bill Printing and Mailing contract without further City Council approval.

This project affects residents, commercial, and wholesale customers in Kansas City, Missouri, and wholesale customers outside of Kansas City, Missouri.

Roles and Responsibilities

Sponsor	Water Services Department
Department or Programs Affected	Water Services Department
Recommended Awardee	Doxim Utilitec LLC
Contract Compliance Certification Obtained?	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes
Opponents	Groups or Individuals None known Reason for Opposition
Responsibilities	Design Engineering: Inspections: Construction or Project Management: Service Monitoring:

Policy/Program Impact

Policy or Program Emphasis Change	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes
Operational Impact Assessment	

PROFESSIONAL, SPECIALIZED OR TECHNICAL SERVICES CONTRACT
CONTRACT NO. 22003 – WATER BILL PRINTING AND MAILING SERVICES
WATER SERVICES DEPARTMENT

THIS CONTRACT is between KANSAS CITY, MISSOURI, a constitutionally chartered municipal corporation (“City”), and _____ (“Contractor”). City and Contractor agree as follows:

PART I
SPECIAL TERMS AND CONDITIONS

Sec. 1. Compensation.

- A. The amount the City will pay Contractor under this contract will not exceed \$ _____. Contractor will be paid on the following basis: By the job as listed on **Attachment E, Unit Price Form**.
- B. Contractor will bill the City, in a form acceptable to the City, on the following basis: Monthly.
- C. It shall be a condition precedent to payment of any invoice from Contractor that Contractor is in compliance with, and not in breach or default of, all terms, covenants and conditions of this Contract. If damages are sustained by City as a result of breach or default by Contractor, City may withhold payment(s) to Contractor for the purpose of set off until such time as the exact amount of damages due City from Contractor may be determined.
- D. No request for payment will be processed unless the request is in proper form, shown in **Attachment G**, correctly computed, and is approved as payable under the terms of this Contract.
- E. No request for payment will be processed unless it is accompanied by a copy of the most recent 00485.01 M/WBE Monthly Utilization Report submitted to the City’s Human Relations Department.
- F. City is not liable for any obligation incurred by Contractor except as approved under the provisions of this Contract.

Sec. 2. Responsibilities of Contractor. Contractor shall perform the Scope of Services listed on **Attachment A**.

Sec. 3. Notices. All notices required by this Agreement shall be in writing to the following:

City:

Water Services Department
Terry Leeds, Director
4800 E. 63rd Street, Kansas City, MO 64130
Phone: (816) 513-0271
Facsimile: (816) 513-0185
E-mail address: Terry.Leeds@kcmo.org

Contractor:

Contractor's Legal Name: _____

Contact: _____

Address: _____

Phone: (____) ____ - ____

Facsimile: (____) ____ - ____

E-mail address: _____

All notices are effective a) when delivered in person, b) upon confirmation of receipt when transmitted by facsimile transmission or by electronic mail, c) upon receipt after dispatch by registered or certified mail, postage prepaid, d) on the next business day if transmitted by overnight courier (with confirmation of delivery), or e) three business days after the date of mailing, whichever is earlier.

Sec. 4. Merger. This Contract consists of Part I, Special Terms and Conditions and any Attachments and any documents incorporated by reference; and Part II, Standard Terms and Conditions. This Contract, including any Attachments and incorporated documents, constitutes the entire agreement between City and Contractor with respect to this subject matter.

Sec. 5. Conflict Between Contract Parts. In the event of any conflict or ambiguity between the Special Terms and Conditions of Part I and the Standard Terms and Conditions of Part II of this Contract, Part I will be controlling.

Sec. 6. Term of Contract. The work to be performed under this contract shall begin on the date specified in the written Notice to Proceed issued by the Director of Water Services. The work shall be completed by April 30, 2022. The Director is authorized to extend the term of this contract and time of performance for this contract for two successive one-year renewals at the City's option.

Sec. 7. Attachments to Part I. The following documents are Attachments to Part I of this Contract and are attached hereto and incorporated herein by this reference:

Attachment A – Scope of Services

Attachment B – City's Responsibilities

Attachment C – Employee Eligibility Verification Affidavit

Attachment D – HRD Forms

HRD Form 6: HRD Instructions for Requests for Qualifications/Proposals

HRD 8: Contractor Utilization Plan/Request for Waiver

HRD 10: Timetable for MBE/WBE Utilization

HRD 11: Request for Modification or Substitution

00450.01: Letter of Intent to Subcontract

01290.14: Contractor Affidavit for Final Payment

01290.15: Subcontractor Affidavit for Final Payment

Attachment E – Unit Price Form

Attachment F – Non-Construction Subcontractors Listing Form

Attachment G – Non-Construction Application for Payment

Sec. 8. Responsibilities of City. City shall be responsible for items as listed on **Attachment B**.

Sec. 9. Subcontracting. Contractor agrees that it will only subcontract with the subcontractor(s) it has listed on **Attachment F, Non-Construction Subcontractors Listing**.

Sec. 10. Contract Information Management System. Contractor shall comply with City's Contract Information Management System requirements. Contractor shall use City's Internet web based Contract Information Management System/Project Management Communications Tool provided by City and protocols included in that software during the term of this Contract. Contractor shall maintain user applications to City's provided system for all personnel, subcontractors or suppliers as applicable.

Sec. 11. Minority and Women's Business Enterprises. City is committed to ensuring that minority and women's business enterprises (M/WBE) participate to the maximum extent possible in the performance of City contracts. If M/WBE participation goals have been set for this Contract, Contractor agrees to comply with all requirements of City's Minority and Women's Business Enterprise Program as enacted in City's Code Sections 3-421 through 3-469 and as hereinafter amended. Contractor shall make its good faith efforts in carrying out this policy by implementing its contractor utilization plan, which is attached as **Attachment D**. If Contractor fails to achieve the M/WBE goals stated in its contractor utilization plan, as amended, the City will sustain damages, the exact extent of which would be difficult or impossible to ascertain or estimate at the time of execution of this contract. Therefore, in order to liquidate those damages, the monetary difference between the amount of the M/WBE goals set forth in this contractor utilization plan, as amended, and the amount actually paid to qualified MBEs and WBEs for performing a commercially useful function will be deducted from the Contractor's payments as liquidated damages. In determining the amount actually paid to qualified MBEs and WBEs, no credit will be given for the portion of participation that was not approved by the Director of City's Human Relations Division, unless the Director determines that the Contractor acted in good faith. No deduction for liquidated damages will be made when, for reasons beyond the control of the Contractor, the M/WBE participation stated in the Contractor Utilization Plan, as amended and approved by the Director, is not met.

Sec. 12. Effectiveness; Date. This contract will become effective when the City's Director of Finance has signed it. The date this contract is signed by the City's Director of Finance will be deemed the date of this contract.

Each party is signing this contract on the date stated opposite the party's signature.

THIS CONTRACT CONTAINS INDEMNIFICATION PROVISIONS

CONTRACTOR

I hereby certify that I have authority to execute
this document on behalf of Contractor

Date: _____

By: _____

Name: _____

Title: _____

KANSAS CITY, MISSOURI

Date: _____

By: _____

Name: _____

Title: _____

Approved as to form:

Assistant City Attorney

I hereby certify that there is a balance, otherwise unencumbered, to the credit of the appropriation to which the foregoing expenditure is to be charged, and a cash balance, otherwise unencumbered, in the treasury, to the credit of the fund from which payment is to be made, each sufficient to meet the obligation hereby incurred.

Director of Finance

PART II

STANDARD TERMS AND CONDITIONS

Sec. 1. Indemnification: Definitions

A. For purposes of this Section 1 only, the following terms shall have the meanings listed:

a. **Claims** means all claims, damages, liability, losses, costs and expenses, court costs and reasonable attorneys' fees, including attorneys' fees incurred by the City in the enforcement of this indemnity obligation.

b. **Contractor's Agents** means Contractor's officers, employees, subconsultants, subcontractors, successors, assigns, invitees, and other agents.

c. **City** means City and its agents, officials, officers and employees.

B. Contractor's obligations under this Paragraph with respect to indemnification for acts or omissions, including negligence, of City, shall be limited to the coverage and limits of insurance that Contractor is required to procure and maintain under this Contract. Contractor affirms that it has had the opportunity to recover the costs of the liability insurance required in this Contract in its contract price.

C. Contractor shall defend, indemnify and hold harmless City from and against all claims arising out of or resulting from all acts or omissions in connection with this Contract caused in whole or in part by Contractor or Contractor's Agents, regardless of whether or not caused in part by any act or omission, including negligence, of City. Contractor is not obligated under this Section to indemnify City for the sole negligence of City.

D. Nothing in this section shall apply to indemnification for professional negligence which is specified in a separate provision of this Contract.

E. In no event shall the language in this Section constitute or be construed as a waiver or limitation of the City's rights or defenses with regard to

sovereign immunity, governmental immunity, or other official immunities and protections as provided by the federal and state constitutions or by law.

Sec. 2. Indemnification for Professional Negligence.

If this contract is for professional services, Contractor shall indemnify, and hold harmless City and any of its agencies, officials, officers, or employees from and against all claims, damages, liability, losses, costs, and expenses, including reasonable attorneys' fees, arising out of any negligent acts or omissions in connection with this Contract, caused by Contractor, its employees, agents, subcontractors, or caused by others for whom Contractor is liable, in the performance of professional services under this Contract. Contractor is not obligated under this section to indemnify City for the negligent acts of City or any of its agencies, officials, officers, or employees.

Sec. 3. Independent Contractor.

Contractor is an independent contractor and is not City's agent. Contractor has no authority to take any action or execute any documents on behalf of City.

Sec. 4. Insurance.

A. Contractor shall procure and maintain in effect throughout the duration of this Contract insurance coverage not less than the types and amounts specified in this section. In the event that additional insurance, not specified herein, is required during the term of this Contract, Contractor shall supply such insurance at City's cost. Policies containing a Self-Insured Retention are unacceptable to City unless City approves in writing the Contractor's Self-Insured Retention.

1. Commercial General Liability Insurance: with limits of \$1,000,000 per occurrence and \$2,000,000 aggregate, written on an "occurrence" basis. The policy shall be written or endorsed to include the following provisions:

a. Severability of Interests Coverage applying to Additional Insureds

- b. Per Project Aggregate Liability Limit or, where not available, the aggregate limit shall be \$2,000,000.
- c. No Contractual Liability Limitation Endorsement.
- d. Additional Insured Endorsement, ISO form CG20 10, or its equivalent.

2. If applicable, Workers' Compensation Insurance, as required by statute, including Employers Liability with limits of:

Workers' Compensation Statutory Employers Liability \$100,000 accident with limits of:

- \$500,000 disease-policy limit
- \$100,000 disease-each employee

3. Commercial Automobile Liability Insurance: with a limit of \$1,000,000 written on an "occurrence" basis, covering owned, hired, and non-owned automobiles. If the Contractor owns vehicles, coverage shall be provided on an "any auto" basis. If the Contractor does not own any vehicles, coverage shall be provided on a "hired autos" and "nonowned autos" basis. The insurance will be written on a Commercial Business Auto form, or an acceptable equivalent, and will protect against claims arising out of the operation of motor vehicles, as to acts done in connection with the Agreement, by Contractor.

4. If applicable, Professional Liability Insurance with limits per claim and annual aggregate of \$1,000,000.

B. The Commercial General Liability Insurance specified above shall provide that City and its agencies, officials, officers, and employees, while acting within the scope of their authority, will be named as additional insureds for the services performed under this Contract. Contractor shall provide to City at execution of this Contract a certificate of insurance showing all required endorsements and additional insureds. The certificates of insurance will contain a provision stating that should any of the policies described in the certificate be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.

C. All insurance coverage must be written by companies that have an A.M. Best's rating of "A-V" or better, and are licensed or approved by the State of Missouri to do business in Missouri.

D. Contractor's failure to maintain the required insurance coverage will not relieve Contractor of its contractual obligation to indemnify the City pursuant to Sections 1 and 2. If the coverage afforded is cancelled or changed or its renewal is refused, Contractor shall give at least thirty (30) days prior written notice to City. In the event of Contractor's failure to maintain the required insurance in effect, City may order Contractor to immediately stop work, and upon ten (10) days notice and an opportunity to cure, may pursue its remedies for breach of this Contract as provided for herein and by law.

E. In no event shall the language in this Section constitute or be construed as a waiver or limitation of the City's rights or defenses with regard to sovereign immunity, governmental immunity, or other official immunities and protections as provided by the federal and state constitutions or by law.

Sec. 5. Governing Law.

This Contract shall be construed and governed in accordance with the laws of the State of Missouri without giving effect to Missouri's choice of law provisions. The City and Contractor: (1) submit to the jurisdiction of the state and federal courts located in Jackson County, Missouri; (2) waive any and all objections to jurisdiction and venue; and (3) will not raise forum *non conveniens* as an objection to the location of any litigation.

Sec. 6. Compliance with Laws.

Contractor shall comply with all federal, state and local laws, ordinances and regulations applicable to the work and this contract.

Sec. 7. Termination for Convenience.

A. City may, at any time upon ten (10) days notice to Contractor specifying the effective date of termination, terminate this Contract, in whole or in part. If this Contract is terminated by City, City shall be liable only for payment for services rendered before the effective date of termination. Contractor shall prepare an accounting of the services performed and money spent by Contractor up to the effective date of termination and shall return to City any remaining sums within thirty (30) days of such date.

B. If this Contract is terminated prior to Contractor's completion of services, all work or materials prepared or obtained by Contractor pursuant to this contract shall become City's property.

C. If this Contract is terminated prior to Contractor's completion of the services to be performed hereunder, Contractor shall return to City any sums paid in advance by City for services that would otherwise have had to be rendered between the effective date of termination and the original ending date of the Contract. Contractor shall prepare an accounting of the services performed and money spent by Contractor up to the effective date of termination and shall return to City any remaining sums within thirty (30) days of such date.

Sec. 8. Default and Remedies.

If Contractor shall be in default or breach of any provision of this Contract, City may terminate this contract, suspend City's performance, withhold payment or invoke any other legal or equitable remedy after giving Contractor notice and opportunity to correct such default or breach.

Sec. 9. Waiver.

Waiver by City of any term, covenant, or condition hereof shall not operate as a waiver of any subsequent breach of the same or of any other term, covenant or condition. No term, covenant, or condition of this Contract can be waived except by written consent of City, and forbearance or indulgence by City in any regard whatsoever shall not constitute a waiver of same to be performed by Contractor to which the same may apply and, until complete performance by Contractor of the term, covenant or condition, City shall be entitled to invoke any remedy available to it under this Contract or by law despite any such forbearance or indulgence.

Sec. 10. Modification.

Unless stated otherwise in this Contract, no provision of this Contract may be waived, modified or amended except in writing signed by City.

Sec. 11. Headings; Construction of Contract.

The headings of each section of this Contract are for reference only. Unless the context of this Contract clearly requires otherwise, all terms and words used herein, regardless of the number and gender in which used, shall be construed to include any other number, singular or plural, or any other gender, masculine, feminine or neuter, the same as if such words had been fully and properly written in that number or gender.

Sec. 12. Severability of Provisions.

Except as specifically provided in this Contract, all of the provisions of this Contract shall be severable. In the event that any provision of this Contract is found by a court of competent jurisdiction to be unconstitutional or unlawful, the remaining provisions of this Contract shall be valid unless the court finds that the valid provisions of this Contract are so essentially and inseparably connected with and so dependent upon the invalid provision(s) that it cannot be presumed that the parties to this Contract could have included the valid provisions without the invalid provision(s); or unless the court finds that the valid provisions, standing alone, are incapable of being performed in accordance with the intentions of the parties.

Sec. 13. Records.

A. For purposes of this section:

1. "City" shall mean the City Auditor, the City's Internal Auditor, the city's Director of Human Relations, the city Manager, the City department administering this Contract and their delegates and agents.

2. "Record" shall mean any document, book, paper, photograph, map, sound recordings or other material, regardless of physical form or characteristics, made or received in connection with this Contract and all Contract amendments and renewals.

B. Contractor shall maintain and retain all Records for a term of five (5) years that shall begin after the expiration or termination of this Contract and all Contract amendments. City shall have a right to examine or audit all Records and Contractor shall provide access

to City of all Records upon ten (10) days written notice from the City.

C. The books, documents and records of Contractor in connection with this Contract shall be made available to the City Auditor, the City's Internal Auditor, the City's Director of Human Relations and the City department administering this Contract within ten (10) days after the written request is made.

Sec. 14. Affirmative Action.

If this Contract exceeds \$300,000.00 and Contractor employs fifty (50) or more people, Contractor shall comply with City's Affirmative Action requirements in accordance with the provisions of Chapter 3 of City's Code, the rules and regulations relating to those sections, and any additions or amendments thereto; in executing any Contract subject to said provisions, Contractor warrants that it has an affirmative action program in place and will maintain the affirmative action program in place for the duration of the Contract. Contractor shall not discriminate against any employee or applicant for employment because of race, color, sex, religion, national origin or ancestry, disability, sexual orientation, gender identity or age in a manner prohibited by Chapter 3 of City's Code. Contractor shall:

1. Submit, in print or electronic format, a copy of Contractor's current certificate of compliance to the City's Human Relations Department (HRD) prior to receiving the first payment under the Contract, unless a copy has already been submitted to HRD at any point within the previous two calendar years. If, and only if, Contractor does not possess a current certification of compliance, Contractor shall submit, in print or electronic format, a copy of its affirmative action program to HRD prior to receiving the first payment under the Contract, unless a copy has already been submitted to HRD at any point within the previous two calendar years.

2. Require any Subcontractor awarded a subcontract exceeding \$300,000.00 to affirm that Subcontractor has an affirmative action program in place and will maintain the affirmative action program in place for the duration of the subcontract.

3. Obtain from any Subcontractor awarded a subcontract exceeding \$300,000.00 a copy of the Subcontractor's current certificate of compliance and tender a copy of the same, in print or electronic format, to HRD within thirty (30) days from the date the subcontract is executed. If, and only if, Subcontractor does not possess a current certificate of compliance, Contractor shall obtain a copy of the Subcontractor's affirmative action program and tender a copy of the same, in print or electronic format, to HRD within thirty (30) days from the date the subcontract is executed.

City has the right to take action as directed by City's Human Relations Department to enforce this provision. If Contractor fails, refuses or neglects to comply with the provisions of Chapter 3 of City's Code, then such failure shall be deemed a total breach of this Contract and this Contract may be terminated, canceled or suspended, in whole or in part, and Contractor may be declared ineligible for any further contracts funded by City for a period of one (1) year. This is a material term of this Contract.

Sec. 15. Tax Compliance.

Contractor shall provide proof of compliance with the City's tax ordinances administered by the City's Commissioner of Revenue as a precondition to the City making the first payment under this contract or any contract renewal when the total contract amount exceeds \$160,000.00. If contractor performs work on a contract that is for a term longer than one (1) year, the contractor also shall submit to the City proof of compliance with the City's tax ordinances administered by the City's Commissioner of Revenue as a condition precedent to the City making final payment under the contract.

Sec. 16. Assignability and Subcontracting

(a) Assignability. Contractor shall not assign or transfer any part or all of Contractor's obligation or interest in this Contract without prior written approval of City. If Contractor shall assign or transfer any of its obligations or interests under this Contract without the City's prior written approval, it shall constitute a material breach of this Contract. This provision shall not prohibit contractor from

subcontracting as otherwise provided for herein.

(b) Subcontracting. Contractor shall not subcontract any part or all of Contractor's obligations or interests in this Contract unless the subcontractor has been identified in a format required by City. If Contractor shall subcontract any part of Contractor's obligations or interests under this Contract without having identified the subcontractor, it shall constitute a material breach of this Contract. The utilization of subcontractors shall not relieve Contractor of any of its responsibilities under the Contract, and Contractor shall remain responsible to City for the negligent acts, errors, omissions or neglect of any subcontractor and of such subcontractor's officers, agents and employees. City shall have the right to reject, at any point during the term of this Contract, any subcontractor identified by Contractor, and to require that any subcontractor cease working under this Contract. City's right shall be exercisable in its sole and subjective discretion. City shall not be obligated to pay or be liable for payment of any monies which may be due to any subcontractor. Contractor shall include in any subcontract a requirement that the subcontractor comply with all requirements of this Contract in performing Contractor's services hereunder.

Sec. 17. Conflicts of Interest.

Contractor certifies that no officer or employee of City has, or will have, a direct or indirect financial or personal interest in this Contract, and that no officer or employee of City, or member of such officer's or employee's immediate family, either has negotiated, or has or will have an arrangement, concerning employment to perform services on behalf of Contractor in this Contract.

Sec. 18. Buy American Preference.

It is the policy of the City that any manufactured goods or commodities used or supplied in the performance of any City contract or any subcontract thereto shall be manufactured or produced in the United States whenever possible.

Sec. 19. Professional Services – Conflict of Interest Certification.

If this Contract is for professional services other than for medical doctors or appraisers, Contractor certifies that Contractor is not an expert witness for any party in litigation against the City at the time of the issuance of this Contract.

Sec. 20. Attorney Services – Conflict of Interest Certification.

If this Contract is for professional attorney services, Contractor certifies that Contractor and any of its individual attorneys, do not represent any party in litigation against the City at the time of the issuance of this Contract. Contractor's certification shall not apply to: representation in municipal court; attorneys employed by a not-for-profit legal services corporation; litigation where the City is named as a nominal party; litigation that has been filed with the agreement of the City and the party represented by the attorney; or where the City Council has otherwise waived this requirement. Nothing set forth in this section shall be deemed to supersede the Rules of Professional Conduct for Attorneys.

Sec. 21. Employee Eligibility Verification

If this Contract exceeds five thousand dollars(\$5,000.00), Contractor shall execute and submit an affidavit, in a form prescribed by City, affirming that Contractor does not knowingly employ any person in connection with the contracted services who does not have the legal right or authorization under federal law to work in the United States as defined in 8 U. S. C. § 1324a(h)(3). Contractor shall attach to the affidavit documentation sufficient to establish Contractor's enrollment and participation in an electronic verification of work program operated by the United States Department of Homeland Security (E-Verify) or an equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, under the Immigration Reform and Control Act of 1986. Contractor may obtain additional information about E-Verify and enroll at www.dhs.gov/xprevprot/programs/gc_118522_1678150.shtm. For those Contractors enrolled in E-Verify, the first and last pages of the E-

Verify Memorandum of Understanding that Contractor will obtain upon successfully enrolling in the program shall constitute sufficient documentation for purposes of complying with this Section. Contractor shall submit the affidavit and attachments to the City prior to execution of the Contract, or at any point during the term of the Contract if requested by City.

Sec. 22. Quality Services Assurance Act. If this Contract exceeds \$160,000.00, Contractor certifies Contractor will pay all employees who will work on this Contract in the city limits of Kansas City, Missouri at least \$12.50 per hour in compliance with the CITY's Quality Services Assurance Act, Section 3-66, Code of Ordinances or City has granted Contractor an exemption.

Sec. 23. Anti-Discrimination Against Israel. If this Contract exceeds \$100,000.00 and Contractor employs at least ten employees, pursuant to Section 34.600, RSMo., by executing this Contract, Contractor certifies it is not currently engaged in and shall not, for the duration of this contract, engage in a boycott of goods or services from the State of Israel; companies doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel; or persons or entities doing business in the State of Israel.

CONTRACT NO. 22003 – WATER BILL PRINTING AND MAILING SERVICES

ATTACHMENT A – CONTRACTOR RESPONSIBILITIES/SCOPE OF SERVICES

- 1) Each business day receives an electronically delivered KWIC CIS billing data file on the FTP site from KC Water Services. These files could contain master bills, commercial, wholesale and residential bills, loan bills, payment arrangement bills, credit balance bills, estimated bills, final bills, meter exchange with overflow, fire protection, multiple meters/compound meters, riverside sewer only custom bills, storm water only, adjustments, e-bill email addresses, backflow letters, and turn off notices. Any suppression bills based on billing bunch codes, return mail that includes vacant properties, no water consumption, no payments, P.O. Boxes expired, no forwarding address to reduce percentages of undeliverable mail, and letters to be printed and mailed.
- 2) Send Delivery confirmation to KC IT and Customer Services Division (CSD) management that file is intact or notification that file is damaged or missing via email.
- 3) Each business day print the entire set of bill print files in PDFs, provide an output file and reports and include the ability to pull bills as specified by KCWS/Customer Services Division associates for review prior to mailing.
- 4) Print and/or provide the following items:
 - a) Water bill stock with perforated bill stub on the bottom – to be printed by Contractor
 - b) Envelopes, both outbound and inbound
 - c) Turn Off Notice bill stock with perforated bill stub on the bottom – to be printed by Contractor
 - d) Delinquent notices printed on next regular bill based on delinquency rules provided by KC Water Services.
 - e) Letterhead or bill stock for consumer letters
 - f) Deliver to KCWS any needed bill stock or envelopes
 - g) KCWS bill Inserts and any Kansas City Missouri's City Special Inserts
 - h) Electronic (e-bill) reports on-line for review by KC Water Services with email addresses and dates e-bills were sent to customers.
 - i) Insert bill messages as required by KCWS Marketing for customer notification.
 - j) Provide on-line portal access for KCWS staff to review return mail suppressed bills that include vacant properties, no water consumption, no payments, P.O. Boxes expired, no forwarding addressed to reduce percentages of undeliverable mail on vacant property, and the ability to add or delete bills researched.
 - k) E-mail high usage alerts to customers from a file created by KCWS.
 - l) Complete a conversion from CCF to gallons on each customer bill.
- 5) Each business day insert the water bill, letters and any other KC Water Services or City of Kansas City Missouri's *City Special Inserts in an* outbound envelope and include an inbound envelope and deliver to USPS for same day first-class mailing service **if** the file is received by 11:00am central standard time. This will include:
 - a) ACH customers the inbound envelope will not be inserted.
 - b) Bills with a bunch code of **HIGH** in the data will be mailed with a high bill letter provided by the City.
 - c) Bills with a bunch code of **OVER** in the data will be mailed with an over-estimated letter provided by the City for bunch code **OVER**.

- d) Bills with a bunch code **BKBL** in the data will be mailed with a back-bill letter provided by the City for bunch code of **BKBL**.
 - e) Provide payment arrangement detail from bill print data file on customer bills as required by the City.
 - f) Bills with a bunch code of **SEEN** will be delivered a braille bill.
- 6) Each business day insert printed Turn-off Notices with only an inbound envelope and deliver to USPS for same day first-class mailing service.
- 7) Bills to be suppressed from daily mailing:
- a) Credit balance bills \$10.00 or less
 - b) Final \$0.00 dollars bills
 - c) Master bills final with \$0.00 dollars
 - d) Master bills with \$0.00 new charges
 - e) All City accounts in bunch code AJV or City
 - f) All Inactive bills
- 8) Quickbill
- a) Quickbill is an interactive email delivery product that automatically generates and sends bill-notification email messages to KCWS customers that have enrolled in Email communication, and can allow your customer to “go paperless” without having to log into the Ebilling portal. The Quickbill framework includes a link that will present an encrypted image of the customers’ bill in a PDF format. Quickbill functionality includes:
 - i) Bill notification management
 - ii) Secure (encrypted) PDF presentment
 - iii) Allow customers to go paperless from email
 - iv) Communication back to KCWS on paperless choice
 - v) “Bundling” of accounts that share 1 email address within a billing cycle
 - vi) Allows KCWS customers to connect to one-time payment without logging in
 - vii) Email dashboard showing trends for emails sent
 - viii) Reporting on Emails sent
 - ix) Ability for KCWS call center employees to resend email to a customer
 - x) Track how KCWS customers are using emails
 - xi) Email bounce back report
- The bill print vendor can also host or connect to an online insert library for KCWS where customers can access any inserts sent with bills. The library can only include the current inserts, or all inserts can be stored for access. The Pay My Bill button would take KCWS customers to the one-time payment option. KCWS customers can go paperless from the email.
- 9) Provide KCWS with the lowest possible postage costs for first-class delivery on water bills and notices.
- 10) Assist KCWS in testing software changes by electronically processing and delivering test output files of water bills.
- 11) Provide KCWS with the Contractor’s Quality Assurance.
- 12) Provide KCWS with the Contractor’s Disaster Recovery Services Plan.
- 13) Provide KCWS with all Contractor’s Holiday Schedules.

- 14) Provide KCWS with invoices that are separated by postage, services and indicate each type of file processed or mailed.
- 15) Contractor must be prepared to perform the outlined specifications of the contract and attachments as of May 1, 2021.

Attachment B – City’s Responsibilities

- 1) City means Water Service Department (KCWS) for the purpose of this contract.
- 2) KCWS has two divisions that are responsible for the daily operations of water accounts. The KCWS IT Division handles the batch processing and provides the daily water bill print files. Consumer Services Division is responsible for the day-to-day work on water accounts and this contract.
- 3) KCWS shall provide a contact hierarchy for both CSD and WSD IT regarding the daily water bill print file, any software changes and any bill print problems.
- 4) KCWS Divisions shall conform to the Daily Water Bill Print SOP WSD/CSD/M2 for operating procedures.
- 5) KCWS shall provide notice of all City Holidays and non-bill print days to the contractor on an annual basis.
- 6) KCWS shall provide prompt payment of invoices once statements are verified.
- 7) KCWS will handle any “pulled” bills daily.
- 8) KCWS will notify vendor when bill stock and envelopes are needed for CSD’s work.
- 9) KCWS will ensure that the contractor is provided information on the KCWS Lockbox’s concerns with bill stubs, so that any quality issues can be addressed.
- 10) KCWS will approve the Contractor’s Operations Manual prior to contract being approved by the City.
- 11) KCWS shall update “Bill To” addresses in order to keep the contractors in compliance with USPS’s postal requirements on “Move Update”.
- 12) KCWS will make Banner Data file corrections by the specified time in the operations manual in order to keep same day mailing service. If a business day’s print file is delayed, this shall be documented in an email to the contractor.

I acknowledge that I am signing this affidavit as the free act and deed of the business entity and that I am not doing so under duress.

Affiant's signature

Subscribed and sworn to before me this _____ day of _____, 20____.

Notary Public

My Commission expires:

**HRD INSTRUCTIONS
FOR REQUESTS FOR QUALIFICATIONS/PROPOSALS**

PART A. MINORITY/WOMEN BUSINESS ENTERPRISE REQUIREMENTS

I. City's MBE/WBE Program.

- A. The City has adopted a Minority/Women Business Enterprise ("MBE/WBE") Program (Sections 4-421 through 3-469, Code of Ordinances) (the "Program") to implement the City's policy of supporting the fullest possible participation in City contracts and change orders of firms owned and controlled by minorities and women. Each construction project may have an MBE and/or WBE goal for participation. An MBE or WBE goal is a numerical objective the City has set for the contract. Goals are stated as a percentage of contract dollars. For example, if an MBE goal for a contract is 10% and a Proposer submits a proposal of \$100,000, the goal for MBE participation would equal \$10,000. The specific MBE/WBE goals on this project are set forth elsewhere in the proposal specifications.
- B. By submitting a proposal, the Proposer agrees, as a material term of the contract, to carry out the City's MBE/WBE Program by making good faith efforts to include certified MBE/WBEs in the project work to the extent of the goals listed for the project and to the fullest extent consistent with submitting the best proposal to the City. Proposer agrees that the Program is incorporated into this document and agrees to follow the Program. Although it is not a requirement that a Proposer in fact meet or exceed both the MBE and WBE Goals, it is a requirement for approval of the proposal that a Proposer objectively demonstrate to the City that good faith efforts have been made to meet the Goals.
- C. The following HRD Forms are attached and must be used for MBE/WBE submittals:
 - 1. Affidavit of Intended Utilization (HRD Form 13); and
 - 2. Contractor Utilization Plan/Request for Waiver (HRD Form 8A); and
 - 3. Letter of Intent to Subcontract (HRD Form 00450.01); and
 - 4. Timetable for MBE/WBE Utilization (HRD Form 10); and
 - 5. Request for Modification or Substitution (HRD Form 11); and
 - 6. Contractor Affidavit for Final Payment (Form 01290.14); and
 - 7. Subcontractor Affidavit for Final Payment (Form 01290.15).

Warning: The City only gives MBE/WBE credit for a Proposer's use of City certified MBE/WBEs. A certified MBE/WBE firm is a firm that has been certified by the City's Human Relations Department as such. An MBE/WBE firm must be certified before the date on which the contractor utilization plan is due. Certified MBEs and WBEs are listed in the M/W/DBE Kansas City Mo. Online Directory, which is available on the City's website at www.kcmo.org. Before a Proposer submits a proposal, Proposer should contact HRD and consult the directory to make sure any firm proposed for use for MBE/WBE participation has been certified.

II. Required Submissions with Proposal.

A. Proposer must submit the following document with its proposal:

1. **Affidavit of Intended Utilization (HRD Form 13).** This form states a Proposer's intent to use certified MBE/WBEs in the performance of the contract.

III. Required Submissions Prior to Contract Award.

A. Proposer must submit the following documents prior to contract award.

1. **Contractor Utilization Plan/Request for Waiver (HRD Form 8).** This form states a Proposer's plan to use specific certified MBE/WBEs in the performance of the contract and includes the following:
 - a. The work to be performed by each MBE/WBE and the amounts each is to be paid for the work; and
 - b. The name, address, race or ethnic origin, gender and employer identification number or social security number of each MBE/WBE that will perform the work.
 - c. An automatic request for waiver in the event Proposer has not met or exceeded the MBE and/or WBE goals for the contract but believes that it has made good faith efforts to meet or exceed the goals and desires a waiver of the goals. If a waiver is requested, HRD will examine the Proposer's documentation of good faith efforts and make a recommendation to grant or deny the waiver. HRD will recommend a waiver be granted only if the Proposer has made good faith efforts to obtain MBE/WBE participation.
2. **Letter(s) of Intent to Subcontract (HRD Form 00450.01).** A letter must be provided from each MBE/WBE listed on the Contractor Utilization Plan. These letters verify that the MBE/WBE has agreed to execute a formal agreement for the work and indicate the scope of work to be performed and the price agreed upon for the work.

IV. Additional Required Submissions when Requested by City.

A. Proposer must submit the following documents when requested by City:

1. **Timetable for MBE/WBE Utilization (HRD Form 10).**
2. **Documentation of good faith efforts.**

V. Required Monthly Submissions during term of Contract.

A. Proposers must submit the following document on a monthly basis if awarded the contract:

1. **M/WBE Monthly Utilization Report (HRD Form 00485.01).** This report must be submitted to the Director by the 15th of each month. Failure to submit timely reports may result in delays in processing of current and future contract approvals and payment applications.

VI. Required Submittals for Final Contract Payment.

- A. Proposer must submit the following documents with its request for final payment under the contract:
1. **Contractor Affidavit for Final Payment (Form 01290.14)**
 2. **Subcontractor Affidavit(s) for Final Payment (Form 01290.15)**

VII. Additional Submittals.

- A. Proposer may be required to make additional submittals during the term of the Contract, including **Request for Modification or Substitution (HRD Form 11)**. Refer to Section X, Modification of the Contractor Utilization Plan or Substitution of an MBE/WBE, for additional instructions on when this form must be submitted.

VIII. MBE/WBE Participation Credit.

- A. The following shall be credited towards achieving the goals:
1. The total contract dollar amount that a prime contractor has paid or is obligated to pay to a subcontractor that is a certified MBE or WBE, except as otherwise expressly provided for herein.
 2. The total contract dollar amount that a prime contractor that is a certified MBE or WBE performed itself.
 3. Sixty percent (60%) of the total dollar amount paid or to be paid by a prime contractor to obtain supplies or goods from a supplier who is a certified MBE or WBE.
 4. Ten percent (10%) of the total dollar amount paid or to be paid by a prime contractor to obtain supplies or goods from a supply broker who is a certified MBE or WBE.
 5. One hundred percent (100%) of the total dollar amount paid or to be paid by a prime contractor to a manufacturer of construction supplies who is a certified MBE or WBE.
 6. Subcontractor participation with a lower tier MBE/WBE subcontractor using one of the above methods of participation.
- B. **NO CREDIT**, however, will be given for the following:
1. Participation in a contract by a MBE or WBE that does not perform a commercially useful function as defined by the Program; and
 2. Any portion of the value of the contract that an MBE or WBE subcontractor subcontracts back to the prime contractor or any other contractor who is not a qualified MBE/WBE; and
 3. Materials and supplies used on the contract unless the MBE/WBE is responsible for negotiating the price, determining quality and quantity, ordering the materials and installing (where applicable) and paying for material itself; and
 4. Work performed by an MBE or WBE in a scope of work other than that in which the

MBE or WBE is currently certified.

IX. Methods for Securing Participation of MBE/WBEs and Good Faith Efforts.

- A. A Proposer is required to make good faith efforts to achieve the MBE/WBE goals. Good faith efforts are efforts that, given all relevant circumstances, a Proposer actively and aggressively seeking to meet the goals can reasonably be expected to make. Good faith efforts must be made before the Proposer submits a Contractor Utilization Plan/Request for Waiver (HRD Form 8). However, efforts made to increase participation of MBEs and WBEs following submission of the CUP can be considered as evidence of good faith efforts to meet the goals.
- B. In evaluating good faith efforts, the Director of HRD will consider whether the Proposer has performed the following, along with any other relevant factors:
 - 1. 1. Advertised for at least 15 calendar days prior to the bid or proposal due date opportunities to participate in the contract in general circulation media, trade and professional association publications, small and minority business media, and publications of minority and women’s business organizations which are included in a list along with their current contact information identified on the directory as the list of publications available to publish such advertisements, which list shall be updated by HRD no less than every three (3) months.
 - 2. Sent written notices at least fifteen (15) calendar days prior to the bid or proposal due date containing the information required in section (9) below, by certified mail, e-mail, or facsimile, to at least 80% of MBEs and WBEs which are included in a list along with their contact information identified on the directory as the list of organizations available to receive such notices, which list shall be updated by HRD no less than every three (3) months.
 - 3. Sent written notices, containing the information required by section (9) below, by certified mail, e-mail or facsimile, to at least 80% of MBEs and WBEs listed on the directory certified in the applicable scopes of work for the particular bid soliciting their participation in the contract at least 15 calendar days prior to the bid or proposal due date.
 - 4. Attempted to identify portions of the work for qualified MBE and/or WBE participation in order to increase the likelihood of meeting the goals, including breaking down contracts into economically feasible units that take into consideration the capacity of available MBEs/WBEs appearing on the HRD directory.
 - 5. At any time prior to submission of the CUP or submittal of a request for modification of a CUP, requested assistance in achieving the goals from the Director and acted on the Director’s recommendations.
 - 6. Conferred with certified MBEs and WBEs which inquired about or responded to the bid solicitation and explained to such MBEs and WBEs the scope and requirements of the work for which their bids or proposals were solicited, and if not all certified MBEs and WBEs in the particular scopes listed on the directory have inquired about or responded to the bid solicitation for each scope of work, then contact by certified

mail, e-mail or telephone the greater of ten (10) or 80% of additional certified MBEs and WBEs in the particular scopes of work listed on the directory and offer to confer with such MBEs and WBEs for such particular scope of work and request such MBEs and WBEs to submit a proposal.

7. Attempted to negotiate in good faith with certified MBEs and WBEs which responded to the bid solicitation or those certified MBEs and WBEs that were conferred with as contemplated in section (6) above, and other qualified MBEs and WBEs, at the option of the bidder, proposer, or contractor, as applicable, to perform specific subcontracts; not rejecting them as unqualified without sound reasons based on a thorough investigation of their capabilities by the bidder, proposer, or contractor; in the event an MBE or WBE is the low bid, but rejected as unqualified, the bidder, proposer, or contractor and the director or board, as applicable, shall provide sound reasons for rejecting such MBE or WBE.
8. Attended pre-bid meeting when such meetings were indicated in the solicitation of bids or otherwise by the bidder, proposer, or contractor, as applicable or by the director provided the director provides written direction to the bidder, proposer, or contractor at the time the goals are recommended.
9. Written notices and advertisements to be provided pursuant to sections (1), (2) and (3) above shall include the following information:
 - a. The bid due date;
 - b. The name of the project;
 - c. The address or general location of the project;
 - d. The location of plans and specifications for viewing;
 - e. Contact information of the prime contractor;
 - f. A general description of the scopes of work that are the subject of the solicitation;
 - g. The goals established for the applicable contract, and if the goals are still subject to board approval, then a statement that the goals as stated are preliminary and are subject to board approval;
 - h. If the project or any portion of the project is subject to prevailing wage then a statement that all or a portion of the project will be subject to the prevailing wage, as applicable; and if only a portion of the scopes are subject to prevailing wage, then identification of such scopes provided that such scopes are known as of the time of bid solicitation;
 - i. The date and time of any pre-bid meeting(s), if any, which have been scheduled by the bidder, proposer, or contractor as of the bid solicitation; and
 - j. Any other information deemed relevant by the bidder, proposer, or contractor, as applicable, or the director to the extent the director provides

written direction to the bidder, proposer, or contractor of such additional information at the time the goals are recommended by the director.

- C. A Proposer will be required to give the City documentation to prove that it made good faith efforts. The Proposer will be contacted by the City with further instructions about when this documentation must be submitted.

X. Modification of the Contractor Utilization Plan or Substitution of an MBE/WBE.

- A. A Proposer may need to substitute an MBE and/or WBE or request that the amount of MBE/WBE participation listed in its Contractor Utilization Plan be modified. Proposer must file a **Request for Modification or Substitution (HRD Form 11) prior to actual substitution and within a reasonable time after learning that a modification or substitution is necessary.** The Director may approve substitutions or modifications and upon approval, the modifications and substitutions will become an amendment to the Contractor Utilization Plan. Modifications or substitutions may be approved when:

- 1. The Director finds that the Proposer made and provided evidence of good faith efforts to substitute the MBE/WBE listed on the Contractor Utilization Plan with other certified MBE/WBEs for the scope of work or any other scope of work in the contract; and
- 2. The Proposer or Contractor has not attempted intentionally to evade the requirements of the program and it is in the best interests of the City to allow a modification or substitution; and
- 3. The Director also finds one of the following:
 - a. The listed MBE/WBE is non-responsive or cannot perform; or
 - b. The listed MBE/WBE has increased its previously quoted price to the bidder, proposer or contractor without a corresponding change in the scope of the work; or
 - c. The listed MBE/WBE has committed a material default or breach of its contract with the contractor; or
 - d. Requirements of the scope of work of the contract have changed and render subcontracting not feasible or not feasible at the levels required by the goals established for the contract; or
 - e. The listed MBE/WBE is unacceptable to the contracting department; or
 - f. The listed MBE/WBE thereafter had its certification revoked; or

- B. A modification shall not be made unless the modification or substitution has first been requested and approved by the Director.

XI. Appeals.

- A. In conformance with the Act, appeals may be made to the City Fairness in Construction Board or Fairness in Professional Services and Goods Board on the following:
 - 1. The grant or denial of a Request for Waiver;

2. Substitution for an MBE/WBE listed on a Contractor Utilization Plan;
 3. Modification of the percentage of MBE/WBE participation on a Contractor Utilization Plan;
 4. Liquidated Damages;
 5. The amount of MBE/WBE credit the Contractor may receive for MBE/WBE participation identified in the contractor utilization plan.
- B. Any appeal must be filed in writing with the Director within fifteen (15) calendar days of notice of the determination. Mailing, faxing, personal delivery or posting at HRD of determinations shall constitute notice. The appeal shall state with specificity why the Proposer or Contractor believes the determination is incorrect
 - C. Failure to file a timely appeal shall constitute a waiver of a Proposer's or Contractor's right to appeal such determination and such person shall be estopped to deny the validity of any determination which could have been timely appealed.

XII. Access to Documents and Records.

- A. By submitting a proposal, each Proposer agrees to permit the City, its duly authorized agents or employees, access at all reasonable times to all books and business records of Proposer as may be necessary to ascertain compliance with the requirements of this document and the Act, within ten (10) calendar days of the date of the written request.
- B. All Proposers agree to cooperate with the contracting department and HRD in studies and surveys regarding the MBE/WBE program.

XIII. Miscellaneous.

- A. A Proposer or Contractor shall bear the burden of proof with regard to all issues on appeal.
- B. In the event of any conflict between this document and the Program, the provisions of the Program shall control. The terms used in this document are defined in the Program.
- C. Oral representations are not binding on the City.
- D. The City Council may waive the requirements of this document and the Program and award the contract to the best proposer if the City Council determines a waiver is in the best interests of the City.

XIV. Liquidated Damages – MBE/WBE Program.

- A. If Contractor fails to achieve the MBE/WBE goals stated in its Contractor Utilization Plan, as amended, the City will sustain damages, the exact extent of which would be difficult or impossible to ascertain. Therefore, in order to liquidate those damages, the monetary difference between either (1) the amount of the MBE/WBE goals set forth in the Contractor Utilization Plan, as amended, or (2) the goals established (whichever is lower) and the amount actually paid to qualified MBEs and WBEs for performing a commercially useful function will be deducted from the Contractor's payments as liquidated damages. In determining the amount actually paid to qualified MBEs and WBEs, no credit will be given for the portion of participation that was not approved by

the Director, unless the Director determines that the Contractor acted in good faith. No deduction for liquidated damages will be made when, for reasons beyond the control of the Contractor, the MBE/WBE participation stated in the Contractor Utilization Plan, as amended and approved by the Director is not met.

[Specifier: The remainder of this document is applicable ONLY IF the RFQ/P is for a construction project that the City estimates will require more than 800 construction labor hours and cost in excess of \$324,000.00 to construct. If this is not applicable to your RFQ/P, delete the remainder of this document. Be sure to delete this note before printing]

PART B. CONSTRUCTION EMPLOYMENT PROGRAM REQUIREMENTS

(THIS PART IS APPLICABLE TO CITY CONSTRUCTION CONTRACTS ESTIMATED BY THE CITY PRIOR TO SOLICITATION AS REQUIRING MORE THAN 800 CONSTRUCTION LABOR HOURS AND COSTING IN EXCESS OF \$324,000.00.)

I. City's Construction Employment Program.

- A. The City has adopted a Construction Employment Program (Sections 3-501 through 3-525, Code of Ordinances) (the "Program") to implement the City's policy of supporting the fullest possible utilization of minority and women workers in the construction industry. A person or firm who is awarded a contract to construct, reconstruct, improve, enlarge or alter any fixed work that is estimated by the City prior to solicitation as requiring more than 800 construction labor hours, has an estimated costs that exceeds \$324,000.00, and involves the expenditure of public funds, is subject to company-wide construction employment goals. The minimum goals are currently set at 10% for minorities and 2% for women, but public recognition may be provided if the Proposer achieves at least twice the minimum participation. The successful Proposer may meet these company-wide goals by counting the Proposer's utilization of minorities and women throughout the Kansas City metropolitan statistical area.
- B. By submitting a proposal, the Proposer agrees, as a material term of the contract, to carry out the City's Construction Employment Program by making good faith efforts to utilize minority and women workers on the Proposer's job sites to the fullest extent consistent with submitting the best proposal to the City. Proposer agrees that the Program is incorporated into this document and agrees to follow the Program. Although it is not a requirement that a Proposer in fact meet or exceed the construction employment goals to receive approval from HRD, a Proposer not doing so is required to objectively demonstrate to HRD that good faith efforts have been made.
- C. The following HRD Forms are to be used for Construction Employment Program submittals:
 1. Project Workforce Monthly Report (HRD Form 00485.02)

2. Company-Wide Workforce Monthly Report (HRD Form 00485.03)

II. Required Monthly Submissions during Term of Contract.

- A. Proposer must submit the following documents on a monthly basis if awarded the contract:
 1. **Project Workforce Monthly Report (HRD Form 00485.02).** This report is contract specific. Two copies of this report must be submitted to the Director by the 15th of each month. The first copy will be utilized to report the Proposer's own workforce compliance data with regard to the City's construction contract. The second copy will be utilized to report consolidated workforce compliance data for every subcontractor retained on the City's construction contract. Failure to submit timely reports may result in delays in processing of current and future contract approvals and payment applications.
 2. **Company-Wide Workforce Monthly Report (HRD Form 00485.03).** This report is not contract specific; it is used to report on the utilization of females and minorities, by trade, company-wide. Two copies of this report must be submitted to the Director by the 15th of each month. The first copy will be utilized to report the Proposer's own workforce compliance data with regard to every contract (both privately and publicly funded) Proposer has in progress throughout the Kansas City metropolitan statistical area. The second copy will be utilized to report consolidated workforce compliance data for every subcontractor retained by Proposer on every contract Proposer has in progress throughout the Kansas City metropolitan statistical area. Failure to submit timely reports may result in delays in processing of current and future contract approvals and payment applications.

III. Submittal Required for Final Contract Payment.

- A. The last Project Workforce Monthly Report(s) and Company-Wide Workforce Monthly Report(s) shall serve as the final reports and must be submitted before final payment will be made and/or retainage released. Proposer shall note the submittal of the final reports by notation in the box entitled "Final Cumulative Report"

IV. Methods for Securing Workforce Participation and Good Faith Efforts.

- A. A Proposer is required to make good faith efforts to achieve the construction employment goals. If a Proposer will be unable to secure enough minority and female participation to meet or exceed the construction employment goals, a Proposer must, within a reasonable time after so learning, request a waiver or modification of the goals by the Director of HRD. The Director will examine the Proposer's request and the Proposer's documentation of good faith efforts and grant or deny a waiver or modification. The Director will grant a waiver or modification only if the Proposer has made good faith efforts to secure minority and female participation.
- B. In evaluating good faith efforts, the Director will consider whether the Proposer has performed the following:
 1. For those Proposers that are not signatories to a collective bargaining agreement with organized labor:

- a. Requested in writing the assistance of the Director with respect to efforts to promote the utilization of minorities and women in the workforce and acted upon the Director's recommendations; and
 - b. Advertised in minority or women trade association newsletters and/or minority or women owned media at least 15 calendar days prior to the utilization of any construction services on the city construction contract and used terminology that sufficiently describes the work available, the pay scale, the application process, and anything else that one might reasonably be expected to be informed of relevant to the position being advertised; and
 - c. Maintained copies of each advertisement and a log identifying the publication and date of publication; and
 - d. Conducted real and substantial recruitment efforts, both oral and written, targeting resident, minority and women community-based organization, schools with a significant minority student population, and training organizations serving the recruitment area; and
 - e. Established and maintained a current list of resident, minority and women recruitment sources, providing written notification to the recruitment sources of available employment opportunities, and maintained records of the notices submitted to the organizations and any responses thereto; and
 - f. Maintained a current file for the time period of the city construction contract with the name, address, and telephone number of each resident, minority and woman job applicant, the source of the referral, whether or not the person was hired, and in the event that the applicant was not hired, the reason therefore; and
 - g. Promoted the retention of minorities and women in its workforce with the goals of achieving sufficient annual hours for minorities and women to qualify for applicable benefits; and
 - h. Required by written contract that all subcontractors comply with the above efforts.
2. For those Proposers that are signatories to collective bargaining agreements with organized labor:
- a. Supported the efforts of the Joint Apprenticeship Training Committee (JATC), a joint effort of Labor Unions and contractors, or some other apprenticeship program, whose purpose is to recruit, train and employ new workers for a full time career in the construction industry; and
 - b. Requested in writing from each labor union representing crafts to be employed that:
 - i. the labor union make efforts to promote the utilization of residents of the City, minorities and women in the workforce; and
 - ii. the labor union identify any residents of the City, minorities and

women in its membership eligible for employment; and

- iii. the JATC take substantial and real steps to increase the participation of minorities in the union apprenticeship programs in the aggregate to 30% by 2011 and encourage other labor unions to do the same; and
 - iv. the JATC take substantial and real steps to increase the participation of women in the union apprenticeship programs in the aggregate to 5% by 2011 and encourage other labor unions to do the same; and
 - v. the JATC partner with workforce preparedness programs, community based organizations, employment referral programs and school-sponsored programs to accomplish these goals.
- c. Collaborated with labor unions in promoting mentoring programs intended to assist minorities and women in increasing retention with the goals of achieving sufficient annual hours to qualify for applicable benefits; and
 - d. Maintained a current file with the name, address, and telephone number of each resident, minority and women worker identified by the labor union, whether or not the person was hired, and in the event the person was not hired, the reason therefore.
 - e. To the extent the good faith efforts applicable to Proposers that are signatories to collective bargaining agreements with organized labor conflict with the procedures implemented by the Proposer in order to comply with the relevant bargaining agreement, the Proposer shall substitute other procedures as may be approved by the Director in writing.
- C. A Proposer will be required to give the City documentation to prove that it made good faith efforts. The Proposer will be contacted by the City with further instructions about when this documentation must be submitted.

V. Appeals.

- A. In conformance with the Program, appeals may be made to the Construction Workforce Board on the following:
 - 1. Determinations by the Director that a contractor did not meet the construction employment goals and did not make a good faith effort to meet the goals;
 - 2. Recommendations by the Director to assess liquidated damages;
 - 3. Recommendation by the Director that a contractor be declared ineligible to receive any city construction contract for a period of time up to one year.
- B. Any appeal must be filed in writing with the Director within ten (10) working days of notice of the recommendation or determination. The appeal shall state with specificity why the Proposer believes the recommendation or determination is incorrect.
- C. Failure to file a timely appeal shall constitute a waiver of a Proposer's right to appeal such determination or recommendation and such person shall be estopped to deny the validity of any order, determination, recommendation or action of HRD which could have

been timely appealed.

VI. Access to Documents and Records.

- A. By submitting a proposal, each Proposer agrees to permit the City, its duly authorized agents or employees, access at all reasonable times to all books and business records of Proposer as may be necessary to ascertain compliance with the requirements of this document and the Program, within ten (10) days of the date of the written request. Each Proposer further agrees to require, if awarded the contract, that every subcontractor permit the City the same access to documents and records.
- B. All Proposers agree to cooperate with the contracting department and HRD in studies and surveys regarding the construction employment program.

VII. Miscellaneous.

- A. A Proposer shall bear the burden of proof with regard to all issues on appeal.
- B. The successful Proposer may be required to meet with the Director of HRD or the Director's designee for the purpose of discussing the construction employment program, the Proposer's efforts to realize the goals, and any other problems and/or issues affecting the realization of the goals or the program in general.
- C. In the event of any conflict between this document and the Program, the provisions of the Program shall control. The terms used in this document are defined in the Program.
- D. Oral representations are not binding on the City.

VIII. Liquidated Damages; Suspension – Workforce Program.

- A. If a Proposer fails to achieve the construction employment goals without having previously obtained a waiver or modification of those goals, the City will sustain damages, the exact extent of which would be difficult or impossible to ascertain. These damages are magnified if the failure to abide by the requirements of the Workforce Program is recurring. Therefore, in order to liquidate those damages, City shall be entitled to deduct and withhold the following amounts:

If Proposer failed to meet or exceed the minimum employment goals or otherwise establish that Proposer is entitled to a waiver under circumstances in which Proposer has failed to meet or exceed the goals on one prior occasion within the twenty-four month period immediately preceding the completion of the work under the Contract, the sum of three thousand dollars (\$3,000.00).

If Proposer failed to meet or exceed the minimum employment goals or otherwise establish that Proposer is entitled to a waiver under circumstances in which Proposer has failed to meet or exceed the goals on two or more prior occasions within the twenty-four month period immediately preceding the completion of the work under the Contract, the sum of seven thousand dollars (\$7,000.00).

- B. In addition, Proposer shall be required to attend mandatory compliance training or be declared ineligible to contract with the City for a term provided herein, and as authorized by City's Code of Ordinances:

If Proposer failed to meet or exceed the minimum employment goals or otherwise establish that Proposer is entitled to a waiver under circumstances in which Proposer has not previously failed to meet or exceed the goals within the twenty-four month period immediately preceding the completion of the work under the Contract, Proposer shall be required to attend a mandatory training class on Workforce Program compliance.

If Proposer failed to meet or exceed the minimum employment goals or otherwise establish that Proposer is entitled to a waiver under circumstances in which Proposer has failed to meet or exceed the goals on one prior occasion within the twenty-four month period immediately preceding the completion of the work under the Contract, Proposer shall be suspended from participating, either as a contractor or subcontractor, on any future contract with the City for a period of thirty (30) days. Proposer waives any right to invoke any proceeding or procedure under Sections 3-321 of City's Code of Ordinances with regards to any suspension arising hereunder.

If Proposer failed to meet or exceed the minimum employment goals or otherwise establish that Proposer is entitled to a waiver under circumstances in which Proposer has failed to meet or exceed the goals on two or more prior occasions within the twenty-four month period immediately preceding the completion of the work under the Contract, Proposer shall be suspended from participating, either as a contractor or subcontractor, on any future contract with the City for a period of six (6) months. Proposer waives any right to invoke any proceeding or procedure under Sections 3-321 of City's Code of Ordinances with regards to any suspension arising hereunder.

- b. Name of M/WBE Firm _____
 Address _____
 Telephone No. _____
 I.R.S. No. _____

- c. Name of M/WBE Firm _____
 Address _____
 Telephone No. _____
 I.R.S. No. _____

- d. Name of M/WBE Firm _____
 Address _____
 Telephone No. _____
 I.R.S. No. _____

- e. Name of M/WBE Firm _____
 Address _____
 Telephone No. _____
 I.R.S. No. _____

- f. Name of M/WBE Firm _____
 Address _____
 Telephone No. _____
 I.R.S. No. _____

(List additional M/WBEs, if any, on additional page and attach to this form)

4. The following is a breakdown of the percentage of the total contract amount that Bidder/Proposer agrees to pay to each listed M/WBE:

MBE/WBE BREAKDOWN SHEET

MBE FIRMS:

Name of MBE Firm	Supplier/Broker/Contractor	Subcontract Amount*	Weighted Value**	% of Total Contract
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

TOTAL MBE \$ / TOTAL MBE %: \$ _____ %

WBE FIRMS:

Name of WBE Firm	Supplier/Broker/Contractor	Subcontract Amount*	Weighted Value**	% of Total Contract
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

TOTAL WBE \$ / TOTAL WBE %: \$ _____ %

*“Subcontract Amount” refers to the dollar amount that Bidder/Proposer has agreed to pay each M/WBE subcontractor as of the date of contracting and is indicated here solely for the purpose of calculating the percentage that this sum represents in proportion to the total contract amount. Any contract amendments and/or change orders changing the total contract amount may alter the amount due an M/WBE under their subcontract for purposes of meeting or exceeding the Bidder/Proposer participation.

**“Weighted Value” means the portion of the subcontract amount that will be credited towards meeting the Bidder/Proposer participation. See HRD Forms and Instructions for allowable credit and special instructions for suppliers.

- Bidder/Proposer acknowledges that the monetary amount to be paid each listed M/WBE for their work, and which is approved herein, is an amount corresponding to the percentage of the total contract amount allocable to each listed M/WBE as calculated in the MBE/WBE Breakdown Sheet. Bidder/Proposer further acknowledges that this amount may be higher than the subcontract amount listed therein as change orders and/or amendments changing the total

contract amount may correspondingly increase the amount of compensation due an M/WBE for purposes of meeting or exceeding the Bidder/Proposer participation

6. Bidder/Proposer acknowledges that it is responsible for considering the effect that any change orders and/or amendments changing the total contract amount may have on its ability to meet or exceed the Bidder/Proposer participation. Bidder/Proposer further acknowledges that it is responsible for submitting a Request for Modification or Substitution if it will be unable to meet or exceed the Bidder/Proposer participation set forth herein.
7. If Bidder/Proposer has not achieved both the M/WBE goal(s) set for this Project, Bidder/Proposer hereby requests a waiver of the MBE and/or WBE goal(s) that Bidder/Proposer has failed to achieve
8. Bidder/Proposer will present documentation of its good faith efforts, a narrative summary detailing its efforts and the reasons its efforts were unsuccessful when requested by the City.
9. I hereby certify that I am authorized to make this Affidavit on behalf of the Bidder/Proposer named below and who shall abide by the terms set forth herein:

Bidder/Proposer primary contact: _____

Address: _____

Phone Number: _____

Facsimile number: _____

E-mail Address: _____

By: _____

Title: _____

Date: _____

(Attach corporate seal if applicable)

Subscribed and sworn to before me this _____ day of _____, 20__.

My Commission Expires: _____

Notary Public



LETTER OF INTENT TO SUBCONTRACT

Project Name/Title: _____

Project Location/Number: _____

_____ (“Prime Contractor”) agrees to enter into a contractual agreement with _____ (“M/W/DBE/Section 3 Subcontractor”), who will provide the following goods/services in connection with the above-referenced contract: [Insert a brief narrative describing the goods/services to be provided. Broad categorizations (e.g., “electrical,” “plumbing,” etc.) or the listing of the NAICS Codes in which M/W/DBE Subcontractor is certified are insufficient and may result in this Letter of Intent to Subcontract not being accepted.]

for an estimated amount of \$ _____ (or _____ %) of the total estimated contract value.

M/W/DBE Subcontractor is, to the best of Prime Contractor’s knowledge, currently certified with the City of Kansas City’s Human Relations Department to perform in the capacities indicated herein. Prime Contractor agrees to utilize M/W/DBE Subcontractor in the capacities indicated herein, and M/W/DBE Subcontractor agrees to work on the above-referenced contract in the capacities indicated herein, contingent upon award of the contract to Prime Contractor.

This section is to be completed by the M/W/DBE subcontractor listed above. Please state specifically if there are no subcontracts intended for the above scopes of work. Please attach additional sheets for more than one intended sub-tier contract. **IMPORTANT: Please note that falsification of this document will result in denial and other remedies available under the City Code.**

The M/W/DBE Subcontractor is subcontracting certain portions of the above stated scope of work to:

(1) Company Name: _____
Full Address: _____
Primary Contact: _____

a) This subcontractor **is/is not** an M/W/DBE certified with the City of Kansas City, Missouri (circle one).

- NOTE 1: If this subcontractor **is** an M/W/DBE certified with the City of Kansas City, Missouri, a separate Letter of Intent must be attached to this document.
- NOTE 2: If this subcontractor **is not** a certified M/W/DBE certified with the City of Kansas City, Missouri, the firm must still be listed for reporting purposes but no corresponding Letter of Intent is required.

b) Scope of work to be performed: _____

c) The dollar value of the agreement is: _____

d) Date of the contractual agreement (if applicable): _____



REQUEST FOR MODIFICATION OR SUBSTITUTION

(This Form **must** be submitted to HRD to request substitutions for an MBE/WBE listed in the Contractor Utilization Plan or for modification of the amount of MBE/WBE participation listed in the Contractor Utilization Plan. This Form shall be an amendment to the Contractor Utilization Plan.)

BIDDER/PROPOSER/CONTRACTOR: _____

ADDRESS: _____

PROJECT NUMBER OR TITLE: _____

AMENDMENT/CHANGE ORDER NO: (if applicable) _____

Project Goals:	_____ % MBE	_____ % WBE
Contractor Utilization Plan:	_____ % MBE	_____ % WBE

1. I am the duly authorized representative of the above Bidder/Contractor/Proposer and am authorized to request this substitution or modification on behalf of the Bidder/Contractor/Proposer.

2. I hereby request that the Director of HRD recommend or approve: (check appropriate space(s))

a. _____ A substitution of the certified MBE/WBE firm _____,
(Name of new firm)
 to perform _____,
(Scope of work to be performed by new firm)

for the MBE/WBE firm _____ which is currently
(Name of old firm)
 listed on the Bidder's/Contractor's/Proposer's Contractor Utilization Plan to
 perform the following scope of work: _____.
(Scope of work of old firm)

b. _____ A modification of the amount of MBE/WBE participation currently listed on the Bidder's/Contractor's/Proposer's Contractor Utilization Plan from
 _____ % MBE _____ % WBE *(Fill in % of MBE/WBE Participation currently listed on Contractor Utilization Plan)*

TO

_____ % MBE _____ % WBE *(Fill in New % of MBE/WBE Participation requested for Contractor Utilization Plan)*

- c. Attach 00450.01 Letter of Intent to Subcontract letter for each new MBE/WBE to be added.
- d. Attach a copy of the most recent 00485.01 or on-line M/WBE Monthly Utilization Report

3. Bidder/Contractor/Proposer states that a substitution or modification is necessary because: (check applicable reason(s))

- ___ The MBE/WBE listed on the Contractor Utilization Plan is non-responsive or cannot perform.
- ___ The MBE/WBE listed on the Contractor Utilization Plan has increased its previously quoted price without a corresponding change in the scope of work.
- ___ The MBE/WBE listed on the Contractor Utilization Plan has committed a material default or breach of its contract.
- ___ Requirements of the scope of work of the contract have changed and make subcontracting not feasible or not feasible at the levels required by the goals established for the contract.
- ___ The MBE/WBE listed on the Contractor Utilization Plan is unacceptable to the City contracting department.
- ___ Bidder/Contractor/Proposer has not attempted intentionally to evade the requirements of the Act and it is in the best interests of the City to allow a modification or substitution.

4. The following is a narrative summary of the Bidder's/Contractor's/Proposer's good faith efforts exhausted in attempts to substitute the MBE/WBE firm named above which is currently listed on the Contractor Utilization Plan with other qualified, certified MBE/WBE firms for the listed scope of work or any other scope of work in the project:

5. Bidder/Proposer/Contractor will present documentation when requested by the City to evidence its good faith efforts.

Dated: _____

(Bidder/Proposer/Contractor)

By: _____
(Authorized Representative)

HRD MONTHLY REPORTING INSTRUCTIONS

M/WBE Monthly Utilization Report Instructions

1. MBE/WBE Reporting applies to Contracts that have approved MBE/WBE goals assigned.
2. The City will utilize a web based MBE/WBE Reporting System in the administration of this Contract. This web based application database is a collaboration tool selected and provided by City, which will allow Contractors and Consultants/Subcontractors and Subconsultants to enter data and report on compliance.

Prevailing Wage Certified Payroll Report Instructions

1. Prevailing Wage Certified Payroll Report applies to Contracts that include Prevailing Wage or Davis Bacon Provisions.
2. This web based application database is provided by City for reporting certified payrolls and other related prevailing wage data.
3. Computer Requirements: Minimum Intel Pentium® 4 Processor 2.4 GHz or equivalent processor with 512MB of RAM; recommended Centrino Duo® Processors 1.6 GHz or equivalent with 2GB of RAM, or higher.
 - a. Computer Operation System: Windows XP, Windows Vista, or Windows 7
 - b. Web Browser: Google Chrome
 - c. Connection Speed/Minimum Bandwidth: DSL, ADSL or T1 Line for transferring a minimum of 3 Mbps Downstream and 512 Kbps Upstream
4. City will assist Contractor in providing training of personnel and Subcontractor's personnel.
5. Contractor and Subcontractors shall have the responsibility for visiting the web site and entering data in on timely basis, and as necessary to be in compliance with Prevailing Wage Requirements included in their contracts.

Workforce Monthly Report Instructions

1. Workforce Monthly Reporting only applies to Construction Contracts greater than \$300,000 and greater than 800 projected labor hours.
2. The City will utilize a web based Reporting System in the administration of this Contract. This web based application database is a collaboration tool selected and provided by City, which will allow Contractors and Subcontractors to enter data and report on Workforce compliance.



CONTRACTOR AFFIDAVIT FOR FINAL PAYMENT

Project Number _____

Project Title _____

STATE OF _____)
)SS
COUNTY OF _____)

The Undersigned, _____ of lawful
(Name)

age, being first duly sworn, states under oath as follows:

1. I am the _____ of _____ who is the general
(Title) (CONTRACTOR)
CONTRACTOR for the CITY on Project No. _____ and Project Title _____.

2. All payrolls, material bills, use of equipment and other indebtedness connected with the Work for this Project have been paid and all Claims of whatever nature have been satisfied, as required by the Contract.

3. (✓) ___ Prevailing wage does not apply; or

(✓) ___ All provisions and requirements set forth in Chapter 290, Section 290.210 through and including 290.340, Missouri Revised Statutes, pertaining to the payment of wages to workmen employed on public works projects have been fully satisfied and there has been no exception to the full and complete compliance with these provisions and requirements and the Annual Wage Order contained in the Contract in carrying out the Contract and Work. CONTRACTOR has fully complied with the requirements of the prevailing wage law as required in the Contract and has attached affidavits from all Subcontractors on this Project, regardless of tier, affirming compliance with the prevailing wage law as stipulated in the Contract.

4. I hereby certify that (a) at project completion and pursuant to contractor's final request for payment, contractor achieved (____%) Minority Business Enterprise (MBE) participation and (____%) Women Business Enterprise (WBE) participation on this contract, and (b) listed herein are the names of all certified M/WBE subcontractors, regardless of tier, with whom I, or my subcontractors contracted.

1. Name of MBE/WBE Firm _____
Address _____
Telephone Number (____) _____
IRS Number _____
Area/Scope*of Work _____
Subcontract Final Amount _____

2. Name of MBE/WBE Firm _____
Address _____
Telephone Number (____) _____
IRS Number _____
Area/Scope*of Work _____
Subcontract Final Amount _____

List additional subcontractors, if any, on a similar form and attach to the bid.

Supplier** Final Amount: _____

*Reference to specification sections or bid item number.

- (✓) ___ Met or exceeded the Contract utilization goals; or
- (✓) ___ Failed to meet the Contract utilization goals (attach waiver, substitution or modification); or
- (✓) ___ No goals applied to this Project.

5. CONTRACTOR certifies that each Subcontractor has received full payment for its respective work in connection with the Contract.

6. If applicable, I hereby certify that (a) at project completion and pursuant to contractor's final request for payment, contractor achieved, company-wide, at least ten percent (10%) minority workforce participation and two percent (2%) women workforce participation and (2) a true and accurate copy of my final project workforce monthly report (HRD Form 00485.02 and final company-wide workforce monthly report (HRD Form 00485.03) are attached. **NOTE: This paragraph is only applicable if you completed a construction contract that was estimated by the City, prior to solicitation, as requiring more than 800 construction labor hours and costing in excess of \$324,000.01. If applicable you MUST attach copies of your final monthly workforce reports.**

7. This affidavit is made in behalf of the CONTRACTOR for the purpose of securing from Kansas City, Missouri, the certification of completion of the Project and receiving payment therefore.

8. If the Contract amount exceeded \$150,000, CONTRACTOR has submitted proof of compliance with the City tax ordinances administered by the City's Commissioner of Revenue and has on file proof of tax compliance from all Subcontractors. If the Contract term exceeded one (1) year, CONTRACTOR has provided proof of compliance with the City tax ordinances administered by the City's Commissioner of Revenue prior to receiving final payment and has on file proof of tax compliance from all Subcontractors prior to the Subcontractor receiving final payment from CONTRACTOR.

CONTRACTOR _____

By _____
(Authorized Signature)

Title _____

On this _____ day of _____, _____, before me
appeared _____, to me personally known to be the
_____ of the _____,

and who executed the foregoing instrument and acknowledged that (s)he executed the same on behalf of
_____ as its free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal on the day and year first above written.

My commission expires:

Notary Public



SUBCONTRACTOR AFFIDAVIT FOR FINAL PAYMENT

Project Number _____

Project Title _____

STATE OF MISSOURI)

) ss:

COUNTY OF _____)

After being duly sworn the person whose name and signature appears below hereby states under penalty of perjury that:

1. I am the duly authorized officer of the business indicated below (hereinafter Subcontractor) and I make this affidavit on behalf of Subcontractor in accordance with the requirements set forth in Section 290.290, RSMo. Subcontractor has completed all of the Work required under the terms and conditions of a subcontract as follows:

Subcontract with: _____, Contractor

Work Performed: _____

Total Dollar Amount of Subcontract and all Change Orders: \$ _____

City Certified MBE WBE DBE NA

List certifications: _____

2. Subcontractor fully complied with the provisions and requirements of the Missouri Prevailing Wage Law set forth in Sections 290.210, RSMo through 290.340, RSMo.

Business Entity Type:

- Missouri Corporation
- Foreign Corporation
- Fictitious Name Corporation
- Sole Proprietor
- Limited Liability Company
- Partnership
- Joint Venture
- Other (Specify)

Subcontractor's Legal Name and Address

 Phone No. _____
 Fax: _____
 E:mail: _____
 Federal ID No. _____

I hereby certify that I have the authority to execute this affidavit on behalf of Subcontractor.

By: _____
(Signature)

(Print Name)

(Title)

(Date)

NOTARY

Subscribed and sworn to before me this _____ day of _____, 20_____.

My Commission Expires: _____ By _____

Print Name

Title



UNIT PRICES

Contract Number: **22003**

Project Title: **WATER BILL PRINTING AND MAILING SERVICES**

NOTE: IN THE EVENT OF DISCREPANCY, UNIT PRICE SHALL GOVERN.

Item No.	Unit	Quantity	Item Description:	Unit	Extension
1		140,000	Two page bills		
2		3,100	Multiple page bills (second and succeeding pages should be printed on front and back of the sheets)		
3		15,000	Turn Off Notices		
4		2,000	Back Flow Letters/Special Letters		
5		2	Inserting		
6		1,600	Returned Mail - NCOA LINK		
7		10	Braille Bills		
			Cost for Bill Stock and Envelopes		
8		1	Monthly Materials (letterhead, envelopes)		
9		3,800	UMail Vacant Holds		
10			Second and succeeding pages		
11			Turn Off Notices		
12			Letters		
13			Out-bound Envelope one window		
14			In-bound Envelope - one window		
			Anticipated postage costs		
15		1	Monthly Postage Cost		
16		1	Monthly Additional Shipping and handling		
17			Mailing Permit Fee		
18			Return Mail costs		
			Other Costs - Note Item and per piece prices		
19			High usage alert email Notifications		
20			4 full-page, double-sided, two-color inserts		
21			20 third-page, double-sided, full-color inserts		
22			12 customizable monthly bill messages printed on statement		
23		40,000	Print suppressions		
24		220,000	Webview images		
25			Email Vacant Holds		
26		1	Email Management		
27		1	Image Creation		
28		1	IT Programming		
29		1	Electronic ability to update bill messages and preview changes		
30		1	Electronic review of daily bill pulls, EASE bills, and other bills a requested		
			Total Unit Prices: (LAST PAGE ONLY)		

ATTACHMENT F

Non-Construction Subcontractors Listing

Contractor shall submit Subcontractor information on this form prior to Subcontractor beginning Work. Contractor shall update this listing and keep it current for the life of the Contract.

	Company Name Contact Name and Email	Address Phone No. and Fax No.
1.	Name: _____ Email: _____	Address: _____ Phone: _____ Fax: _____
2.	Name: _____ Email: _____	Address: _____ Phone: _____ Fax: _____
3.	Name: _____ Email: _____	Address: _____ Phone: _____ Fax: _____
4.	Name: _____ Email: _____	Address: _____ Phone: _____ Fax: _____
5.	Name: _____ Email: _____	Address: _____ Phone: _____ Fax: _____
6.	Name: _____ Email: _____	Address: _____ Phone: _____ Fax: _____
7.	Name: _____ Email: _____	Address: _____ Phone: _____ Fax: _____
8.	Name: _____ Email: _____	Address: _____ Phone: _____ Fax: _____
9.	Name: _____ Email: _____	Address: _____ Phone: _____ Fax: _____
10.	Name: _____ Email: _____	Address: _____ Phone: _____ Fax: _____

Contractor – Company Name: _____
 Submitted By: _____
 Title: _____
 Telephone No.: _____
 Fax No.: _____
 E-mail: _____
 Date: _____



**NON-CONSTRUCTION
APPLICATION FOR PAYMENT**
Project Number _____
Contract Number _____
Project Title _____

ATTACHMENT G

Application Number: _____ Final Payment
 Ordinance Number: _____ Date: _____
 City PO Number: _____ Ordinance Date: _____

Design Professional/Contractor:

Legal Name _____
 Mail Address: _____
 City, ST Zip _____
 Vendor Number _____
 Application for Work Accomplished: From _____ To: _____
 Name of Kansas City, MO Project Mgr: _____
 Kansas City, MO Contract Administrator: _____

Original Contract Amount	[1]	_____	\$0.00
Net by Amendments ___ through ___	[2]	_____	\$0.00
Optional Services Amount in Contract	[3]	_____	\$0.00
Net by Optional Services Authorizations ___ through ___	[4]	_____	\$0.00
Unauthorized Optional Services Amount Remaining (3-4)	[5]	_____	\$0.00
Maximum Obligation Authorized ((1+2+4) - [3])	[6]	_____	\$0.00
Total Work Completed to Date	[7]	_____	\$0.00
Total Previous Payment Applications	[8]	_____	\$0.00
PAYMENT DUE CONTRACTOR (7-8)	[9]	_____	\$0.00

Instructions to Design Professional/Contractor:

- Complete and sign this Application and attach the following items: A) **documentation** of expenses (direct payroll, direct expenses, and sub-consultants) per contract (ie.services performed; actual salary of personnel for time charges directly to the project; and/or actual reasonable expenses incurred, AND, B) a photocopy of your most recent **00485.01 HRD MWBE Monthly Utilization Report** submitted to Human Relations Dept., if required by contract, AND C) Monthly Progress Report, if required by contract.
- If this is the First application for payment and if Contract amount exceeds \$150,000.00, then also attach proof of tax compliance (**Revenue Clearance Letter**).
- If this is the Final application for payment, then also attach: **01290.14 Contractor Affidavit for Final Payment; 01290.15 Subcontractor Affidavit for Final Payment**, if required by contract; and proof of tax compliance (**Revenue Clearance Letter**).
- Submit current insurance certificate for the following policies General Liability, Automobile, Workers Compensation and Professional Liability upon renewal.

5. Submit Application to: Water Services Department
 Name, Project Manager
 4800 E 63rd St
 Kansas City, MO 64130

Contractor:

Submitted By: _____ Signature: _____ Date: _____
 Phone: _____ Fax: _____ E-mail: _____

Kansas City:

Approved By: _____ Project Manager Date: _____
 Approved By: _____ Director or Designee Date: _____



AUTHORIZATION TO RELEASE A REVENUE CLEARANCE LETTER

Revenue Division
414 East 12th Street, 2nd floor, Room 202 W
Kansas City, MO 64106 Phone (816) 513-1135 Fax (816) 513-1077 email: revenue@kcmo.org

I authorize the City of Kansas City, Missouri, Finance Department, Revenue Division, to release a Revenue Clearance Letter for:

Name of Taxpayer: _____ Tax I.D.# _____
(PRINT)

Address: _____

Check this box and the City will send the Clearance Letter to you or the contractor designated.

I authorize the City to provide a copy of the Taxpayer's Revenue Clearance Letter to the following:

NAME <i>(PRINT)</i>	BUSINESS NAME	TITLE
ADDRESS	CITY, STATE, ZIP CODE	
PHONE NUMBER	FAX NUMBER	E-MAIL ADDRESS

I authorize the City to provide the Taxpayer's Revenue Clearance Letter to all City Departments and to publish on the City's internet/intranet website that the Taxpayer is in compliance with the tax ordinances administered by the City's Commissioner of Revenue.

Please send my 1st Revenue Clearance Letter to: _____
(Print Name of City Department/Contact Person/E-mail/Fax Number)

This authorization shall expire one (1) year from the date of the signature.

The City, Commissioner of Revenue and the Revenue Division personnel (hereinafter "the City"), are hereby held harmless from any and all liability relating to unauthorized disclosure of confidential tax information resulting from release of information under all applicable confidentiality laws including federal, state, or local including any damages sustained by wrongful transmission of confidential tax information to any other person.

UNDER PENALTIES OF PERJURY, I DECLARE THAT I HAVE EXAMINED THIS AUTHORIZATION, AND TO THE BEST OF MY KNOWLEDGE AND BELIEF, IT IS TRUE, CORRECT AND COMPLETE.

I hereby certify that I am the Taxpayer named herein or that I have the authority to execute this authorization and hold harmless agreement on behalf of the Taxpayer.

NAME <i>(PRINT)</i>	TITLE <i>(IF APPLICABLE)</i>	
SIGNATURE	PHONE NUMBER	DATE

A FACSIMILE OF THIS DOCUMENT SHALL CONSTITUTE AN ORIGINAL



ADDENDUM NUMBER 1

Contract/Project Number 22003

Title/Description Water Bill Printing and Mailing Services

ISSUE DATE: February 19, 2021

TO ALL PROSPECTIVE BIDDERS/PROPOSERS:

This Addendum addresses the following questions:

Q1.	Who is your utility software provider?
A1.	Hansen / Banner
Q2.	Can you please provide samples of the utility bill, delinquent notice, turn off notice, consumer letters and outer and return envelopes?
A2.	See Attachment A.
Q3.	I did not see mention of references in the RFP. Would you like us to provide those in the proposal? If so, would 3 to 5 be sufficient?
A3.	Yes, KC Water would like 2 to 3 references.
Q4.	Are the requested services currently being done in-house? If not, who is your current vendor for these services?
A4.	UtiliTec, a Doxim company
Q5.	If utilizing an outside vendor, what is the City currently paying for the requested service?
A5.	\$1,180,014

Q6.	What is the estimated monthly volume of each of the document types described in Attachment A, Item 1)?
A6.	KC Water averages around 174,000 statements each month.
Q7.	Will the Water Services Department provide samples of the front and back of the documents described in Attachment A, Item 1 and the envelopes currently used?
A7.	See Attachment A.
Q8.	Who is the current provider and how long as the vendor provided services to the Water Services Department?

A8.	UtiliTec, a Doxim company, they have been the bill print vendor for KC Water for greater than five years.
Q9.	What is the current pricing for the materials and for the services described in the RFP?
A9.	See Attachment B.
Q10.	What evaluation criteria will be utilized in rating proposers?
A10.	Criteria to be evaluated will include pricing, experience, references, and scope of service.
Q11.	Unit Prices Form 050113, Items 1 & 2 refer to two page and multiple page bills, respectively, and Item 2 also refers to “sheets”. Can KCWS confirm Item 1 “Two page bills” is seeking the price for one piece of paper (sheet) printed on both sides, while Item 2 is seeking the price for each sheet printed on both sides that are in addition to Item 1?
A11.	KC Water has two main types of bills. A regular two page bill (front and back) and master bills which are bills with multiple accounts combined into one bill and are multiple pages. Example included in attachment A
Q12.	Unit Prices Form 050113, Item 5 provides an item description of “Inserting” and lists a quantity of “2”. Will KCWS provide details on the specific items they desire vendors to price for insertion (i.e. bill, in-bound envelope, inserts) and confirm the monthly quantity of inserting?
A12.	KC Water will provide information to the bill print vendor for inserts to be included with the statements.
Q13.	Unit Prices Form 050113, Item 6 refers to “Returned Mail – NCOA LINK” and lists a quantity of 1,600. Can KCWS confirm it seeks vendors to provide the unit price for an address corrected through the NCOA LINK process?
A13.	KC Water would like the unit price for an address corrected through the NCOA link process.

Q14.	Unit Prices Form 050113, Item 8 describes “Monthly Materials (letterhead, envelopes)” and lists a quantity of “1”. What specific items (i.e. sheet of paper, type of envelope) does KCWS desire vendors to price for this item and can it confirm the monthly quantity it desires the vendor to price for this item?
A14.	These are monthly materials that are not included in the daily production and mailing process which are included in the cost of service.
Q15.	Unit Prices Form 050113, Items 10, 11 & 12 (Second and succeeding pages, Turn Off Notices & Letters, respectively) do not list quantities. Can KCWS provide the quantities it desires vendors to price for these items?
A15.	KC Water would like any item broken out that is not included in the cost of service section of Attachment B that is required to complete monthly billing.
Q16.	Unit Prices Form 050113, Item 13 provides a description of “Out-bound Envelope one window” with no quantity provided. RFP Section 3. G. “Material Supply and/or Handling” describes out-bound envelopes having “two windows (KCWS and consumer’s address)”. Can KCWS confirm the number of windows and quantity of out-bound envelopes it desires vendors to provide pricing for?
A16.	The outbound envelope should have two windows. The cost should be quoted for each outgoing statement.
Q17.	Unit Prices Form 050113, Item 15 “Monthly Postage Cost” lists a quantity of “1”. Does the current vendor provide a fixed price for postage, and if so, what is that cost? Will KCWS accept the actual pass-through postage from vendors? Can KCWS provide the quantity of mail pieces upon which it desires vendors to calculate the Monthly Postage Cost?
A17.	Not sure what is meant by pass-through postage. We will consider different options available to pay postage. Monthly postage is currently estimated at \$66,000. We produce around 174,000 statements per month.
Q18.	Unit Prices Form 050113, Item 16 “Monthly Shipping and handling” is not described elsewhere in the RFO and lists a quantity of “1”. Can KCWS describe the monthly shipping and handling it desires the vendor to price and confirm the monthly volume as being 1?
A18.	This is a cost for any additional shipping and handling that we may need during the month.
Q19.	Unit Prices Form 050113, Item 18 “Return Mail costs” does not list a quantity. Can KCWS confirm the service it desires the vendor to price is the same as Item 6 “Returned Mail – NCOA LINK” or whether KCWS desires pricing for processing returned mail on behalf of KCWS and what the quantity of monthly return mail it desires the vendor to price?
A19.	Please include pricing for the NCOA Link.

Q20.	Unit Prices Form 050113, Item 20, has an Item Description “4 full-page, double sided, two-color inserts” and does not list a quantity. Can KCWS describe what the “4” refers to and the quantity of inserts it desires vendors to price?
A20.	These would be special project costs as needed. Estimate cost of full page, double-sided two color inserts.
Q21.	Unit Prices Form 050113, Item 21, provides an item description of “20 third-page, double-sided, full-color inserts” and does not list a unit or quantity. Can KCWS describe what “20 third page” refers to and what quantity does the KCWS desire vendors to price for Item 21?
A21.	These would be special project costs as needed. Estimate cost of additional, double-sided two color inserts (3 pages and more).
Q22.	Unit Prices Form 050113, Item 24, refers to “webview images” which are not described elsewhere in the RFP. Will KCWS please provide specifications including what images are used for?
A22.	This would be the ability to have a webview for each statement printed or emailed so that KC Water can review and send customers information as requested.
Q23.	Unit Prices Form 050113, Item 25, refers to “email vacant holds” which are not described elsewhere in the RFP. Will KCWS please provide specifications for this email. Is this related to UMail Vacant Holds in item 9? Please provide a quantity.
A23.	UMail vacant holds very month to month, please include pricing under item 9, the monthly postage cost is around \$66,000.
Q24.	Unit Prices Form 050113, Item 30, refers to “EASE bills” which not described elsewhere in the RFP. Will KCWS provide the specifications (printing, # pages, volume, etc.) for EASE bills?
A24.	EASE bills are bills that KC Water will request to hold for further review or action. EASE would be included with the HIGH, OVER, BKBL, and SEEN bills in Attachment A, section 5.
Q25.	For the bottom item “Total Unit Prices: (LAST PAGE ONLY)” of Unit Prices Form 050113, what does the reference to “LAST PAGE ONLY” mean? Can KCWS confirm which of the above listed 30 items should be included in the “Unit” and “Extension” columns for this item?
A25.	Please include the total for all items listed.
Q26.	What is the current per mail piece postage cost?
A26.	Varies based on number of bills mailed, monthly cost is around \$66,000.
Q27.	Does KCWS desire the vendor to archive documents produced by the vendor? If so, for what period of time?
A27.	KC Water does require the documents to be archived. We would require 4 years.

Q28.	Who is currently emailing bills to enrolled customers?
A28.	Ebills are currently sent by the bill print vendor.
Q29.	Is the Quickbill email service related to the City's online bill pay offering or is it a separate function?
A29.	This is a separate function.
Q30.	Is KCWS seeking a vendor's solution to replace Quickbill, or rather are you requiring the selected vendor to support bill presentment options within Quickbill? If replacing Quickbill, where should vendors incorporate this pricing? We do not see a specific area in Price Form 050113.
A30.	KC water is seeking the vendor's solution to Quickbill. Please include this quote under item #23 Print Suppression.
Q31.	Is the City interested in full electronic bill presentment and payment pricing?
A31.	KC Water would like our customers to have the option to receive ebills. Payment processing is not a part of this proposal.
Q32.	For daily jobs, are all bills batched together into one run, or does each bill type represent a unique set of data/print run?
A32.	We have two batches each day, a regular file and a master bill file. We also have a notice file each day.
Q33.	Regarding Attachment A Item 15 "Contractor must be prepared to perform the outlined specifications of the contract and attachments as of May 1, 2021.", can KCWS provide further details about the implementation process including: 1. When the project will be awarded 2. When vendors will receive sample data? 3. implementation timeline allocated. 4. Will there be any bill design changes? 5. Will all bill/letter types need to go-live one May 1?
A33.	<ol style="list-style-type: none"> 1. The tentative date is March 10, 2021 2. The vendors will receive sample data following the execution of the contract. 3. The implementation timeline will be agreed upon after the contract is awarded. 4. There will be minimal bill redesign. 5. Target date for go-live is May 1, 2021. We will adjust as needed to accommodate a reasonable implementation timeline.
Q34.	Do we have to get all the forms notarized given the lock downs in the States?
A34.	Notarization is required.
Q35.	Can we utilize electronic signatures instead of wet signatures in the current covid 19 environment?
A35.	As of now, hard copy documents and notarized signatures are required.

Q36.	Is electronic submission acceptable?
A36.	No. Five hard copies and one electronic copy is required by March 3, 2021.
Q37.	What issues do you have with the current vendor?
A37.	KC Water has no issues with our current vendor, this is a standard bidding process for the city.
Q38.	Unable to get ahold of Human Relations at contact number listed.
A38.	An alternate number for Human Relations is 816-513-1836.
Q39.	If a WBE / MBE vendor is used but not listed in the directory, what would need to be completed to add them to the list?
A39.	Any company that is not on the list would have to be certified with the City of Kansas City.



LOCATION

4800 E. 63rd St. Kansas City, MO 64130



ONLINE

www.kcwater.us



PHONE

Account Issues: 816.513.1313 or 311
7am-7pm Monday - Friday

MESSAGE CENTER

Thank you for using AutoPay. Have you considered receiving a paperless bill by signing up for e-billing? It will allow you to receive your bill in an expedited time frame and help the environment. For more information or to sign up, visit www.kcwater.us.

USAGE COMPARISON

See how this month's water usage compares to the same month last year.

2020	VS.	2021
31 Days	Days of Service	30 Days
4,974 GAL	Water Used	4,413 GAL

Detach and return this portion with your payment



KC WATER
4800 E. 63RD STREET
KANSAS CITY, MO 64130

7080 1 AV 0.398 0146251-KANS170182-ST.1GRP-007080
PHIL SMITH
00000 N MADISON AVE
KANSAS CITY MO 64155-7305

T23



\$ TOTAL AMOUNT DUE
\$124.59
by 02/26/21

Billing Period: 30 Days 01/03/21 - 02/02/21

ACCOUNT INFORMATION

Bill Date: 02/05/21

Account Number 000000000 0000000 6
Customer Name PHIL SMITH
Service Address 00000 N MADISON AVE

ACCOUNT SUMMARY

Previous Balance \$124.50
Payments Received - Thank you! -\$124.50
Balance Forward \$0.00
Total Current Charges \$124.59

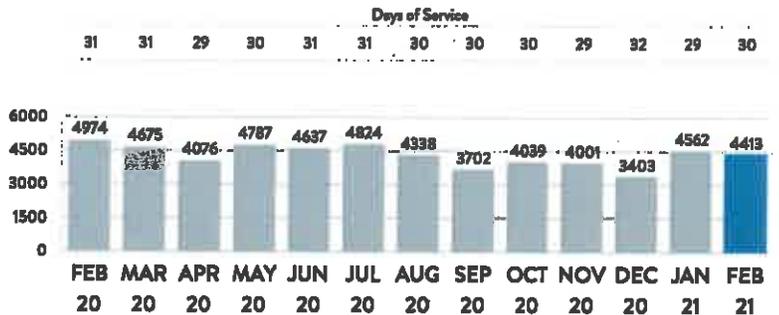
Total Amount Due \$124.59

Amount Due if Paid After 02/26/21 \$131.97

See reverse side for account details and additional information

USAGE HISTORY

Monthly water usage shown in gallons



Bill Date 02/05/21
Account Number 000000000 0000000 6
Due Date 02/26/21

Total Amount Due \$124.59

Paid Via ACH

Amount Due if Paid After 02/26/21 \$131.97

MAKE CHECKS PAYABLE TO:



KC WATER
PO BOX 807045
KANSAS CITY MO 64180-7045

000000000000000006 000000012459 0000000131975

METER READINGS

1 CCF = 748 Gallons

STORMWATER

Meter Number	Previous Read CCF	Current Read CCF	Usage CCF	Gallons Used	Runoff Surface	Daily Rate
81033287	1112.55	1118.45	5.90	4,413	3,957 Sq Ft	\$0.1333

KC WATER NEWS

State of Missouri Primacy Fees

To comply with State of Missouri regulations, KC Water assesses annual Water and Sewer Primacy Fees to your February billing statement. The State utilizes these fees to support efforts to ensure public drinking water is safe. Learn more at www.dnr.mo.gov/env/wpp/primacyfee.htm.

ACCOUNT DETAILS

Billing Period: 30 Days 01/03/21 - 02/02/21

Previous Balance	\$124.50
Payments Received - Thank you!	-\$124.50
Balance Forward	\$0.00

CURRENT WATER CHARGES

Water Service Charge	\$14.38
Water Usage Charge	\$28.32
Annual Water Primacy	\$1.08

CURRENT WASTEWATER CHARGES

Wastewater Service Charge	\$22.58
Wastewater Volume Charge	\$53.75
Annual Wastewater Primacy	\$0.48

CURRENT STORMWATER CHARGES

Stormwater Charges	\$4.00
Total Current Charges	\$124.59

TOTAL AMOUNT DUE \$124.59

AUTOPAY



Save time and enroll in Auto Pay
Enroll online at www.kcwater.us
or call us at 816.513.1313.
M-F 7:00am-7:00pm

ONLINE



www.kcwater.us
Create an online account
to pay your bill anywhere,
anytime!

PHONE



816.513.0567
Accepts payments
24 hours a day, 7 days a week

DROP BOX



KC Water Main
(South) Entrance
4800 E. 63rd Street
Kansas City, MO 64130
Drop off payments
24 hours a day, 7 days a week

IN PERSON



KC Water
4800 E. 63rd Street
Kansas City, MO 64130
Treasurer's Office 1st Floor
414 E. 12th Street
Kansas City, MO 64106
M-F 8:00am-5:00pm

CONTACT US

Account inquiries may be submitted online at www.kcwater.us then click on customer support or by calling 816.513.1313.

REPORT A SERVICE ISSUE

To report no water, low water pressure, water main break or leak, sewer odors, and/or a fire hydrant leak please call 816.513.1313 or 311, or visit us online at www.kcmo.gov/311/.



LOCATION

4800 E. 63rd St. Kansas City, MO 64130



ONLINE

www.kcwater.us



PHONE

Account Issues: 816.513.1313 or 311
7am-7pm Monday - Friday

MESSAGE CENTER

Your current bill is based on an estimated reading because there may be a problem with your water meter and/or Automated Meter Reading (AMR) unit. Please contact us at 816.513.1313 as soon as possible to resolve this matter. This problem may impact future billing statements.

TOTAL AMOUNT DUE
by 03/01/21 **\$103,253.01**

ACCOUNT INFORMATION

Bill Date: 02/08/21

Account Number 000000000 0000000 6
Customer Name XXXX HOSPITAL c/o

MASTER ACCOUNT DETAILS

Previous Balance \$195,985.88
Payments Received - Thank you! -\$195,985.88
Balance Forward \$0.00

CURRENT CHARGES

Water Charges \$36,622.25
Wastewater Charges \$66,630.76
Stormwater Charges \$0.00
Other Charges & Penalties \$0.00
Total Current Charges \$103,253.01

Total Amount Due \$103,253.01

Amount Due if Paid After 03/01/21 \$109,448.19

See reverse side for account details and additional information

KC WATER NEWS

State of Missouri Primacy Fees

To comply with State of Missouri regulations, KC Water assesses annual Water and Sewer Primacy Fees to your February billing statement. The State utilizes these fees to support efforts to ensure public drinking water is safe. Learn more at www.dnr.mo.gov/env/wpp/primacyfee.htm.

Detach and return this portion with your payment



KC WATER
4800 E. 63RD STREET
KANSAS CITY, MO 64130

MASTER BILL

Bill Date 02/08/21
Account Number 000000000 0000000 6
Due Date 03/01/21

Total Amount Due \$103,253.01

AMOUNT ENCLOSED

Amount Due if Paid After 03/01/21 \$109,448.19



5223 2 AV 0.398 0148391-KANS170292-ST.1GRP-005223
XXXX HOSPITAL C / O AMERICAN PO
BOX XXX
KANSAS CITY MO 64116-0321

T:18

MAKE CHECKS PAYABLE TO:



KC WATER
PO BOX 807045
KANSAS CITY MO 64180-7045

0000000000000000 000010325301 0000109448199

LOCATION DETAILS

TOTAL NUMBER OF LOCATIONS: 13

1 CCF = 748 Gallons

Service Address: 000 W 45TH

Premise: 479405

Billing Period: 30 Days 12/30/20 to 01/29/21

Water Charges	\$82.44
Wastewater Charges	\$50.07
Stormwater Charges	\$0.00
Other Charges & Penalties	\$0.00

Meter Number	Meter Type	Previous Read	Current Read	Usage
70368800	WTR	1575.49	1597.90	22.41

Total Premise Charges \$132.51

Total Gallons Used for Premise: 16,762 GAL

Service Address: 000 W 45TH ST LOT S

Premise: 479406

Billing Period: 30 Days 12/30/20 to 01/29/21

Water Charges	\$7.44
Wastewater Charges	\$32.07
Stormwater Charges	\$0.00
Other Charges & Penalties	\$0.00

Meter Number	Meter Type	Previous Read	Current Read	Usage
70368801	WTR	13593.71	14680.65	1,086.94

Total Premise Charges \$39.51

Total Gallons Used for Premise: 813,031 GAL

Service Address: 0000 J C NICHOLS PKWY

Premise: 479407

Billing Period: 30 Days 12/30/20 to 01/29/21

Water Charges	\$82.44
Wastewater Charges	\$50.07
Stormwater Charges	\$0.00
Other Charges & Penalties	\$0.00

Meter Number	Meter Type	Previous Read	Current Read	Usage
31984330	WTR	29485.00	29915.00	430.00

Total Premise Charges \$132.51

Total Gallons Used for Premise: 321,640 GAL

Continued on next page

AUTOPAY



Save time and enroll in Auto Pay
Enroll online at www.kcwater.us
or call us at 816.513.1313
M-F 7:00am-7:00pm

ONLINE



www.kcwater.us
Create an online account
to pay your bill anywhere,
anytime!

PHONE



816.513.0567
Accepts payments
24 hours a day, 7 days a week

DROP BOX



KC Water Main
(South) Entrance
4800 E. 63rd Street
Kansas City, MO 64130
Drop off payments
24 hours a day, 7 days a week

IN PERSON



KC Water
4800 E. 63rd Street
Kansas City, MO 64130
Treasurer's Office 1st Floor
414 E. 12th Street
Kansas City, MO 64106
M-F 8:00am-5:00pm

CONTACT US

Account inquiries may be submitted online at www.kcwater.us then click on customer support or by calling 816.513.1313.

REPORT A SERVICE ISSUE

To report no water, low water pressure, water main break or leak, sewer odors, and/or a fire hydrant leak please call 816.513.1313 or 311, or visit us online at www.kcmo.gov/311/.



Account Number
Customer Name

000000000 0000000 6
XXXX HOSPITAL c/o AMERICAN

LOCATION DETAILS

TOTAL NUMBER OF LOCATIONS: 13

1 CCF = 748 Gallons

Service Address: 0000 BROADWAY LOT S

Premise: 479408

Billing Period: 30 Days 12/30/20 to 01/29/21

	Meter Number	Meter Type	Previous Read	Current Read	Usage
Water Charges	70360303	WTR	CCF 6.45	CCF 6.65	CCF 0.20
Wastewater Charges					
Stormwater Charges					
Other Charges & Penalties					

Total Premise Charges \$39.51

Total Gallons Used for Premise: 149 GAL

Service Address: 0000 BROADWAY

Premise: 479409

Billing Period: 30 Days 12/30/20 to 01/29/21

	Meter Number	Meter Type	Previous Read	Current Read	Usage
Water Charges	70360302	WTR	CCF 3.16	CCF 3.16	CCF 0.00
Wastewater Charges					
Stormwater Charges					
Other Charges & Penalties					

Total Premise Charges \$132.51

Total Gallons Used for Premise: 0 GAL

Service Address: 0000 WORNALL RD LOT S

Premise: 479410

Billing Period: 30 Days 12/30/20 to 01/29/21

	Meter Number	Meter Type	Previous Read	Current Read	Usage
Water Charges	72001593	WTR	CCF 3981.42	CCF 3981.42	CCF 0.00
Wastewater Charges					
Stormwater Charges					
Other Charges & Penalties					

Total Premise Charges \$39.51

*Your current bill is based on an estimated reading

Total Gallons Used for Premise: 0 GAL

Service Address: 0000 WORNALL RD

Premise: 479411

Billing Period: 36 Days 12/30/20 to 02/04/21

	Meter Number	Meter Type	Previous Read	Current Read	Usage
Water Charges	66905773	WTR	CCF 608.79	CCF 617.26	CCF 8.47
Wastewater Charges					
Stormwater Charges					
Other Charges & Penalties					

Total Premise Charges \$132.51

Total Gallons Used for Premise: 6,335 GAL



LOCATION DETAILS

TOTAL NUMBER OF LOCATIONS: 13

1 CCF = 748 Gallons

Service Address: 0000 WORNALL RD LOT A S

Premise: 479413

Billing Period: 30 Days 12/30/20 to 01/29/21

		Meter Number	Meter Type	Previous Read	Current Read	Usage
Water Charges	\$232.05					
Wastewater Charges	\$22.58					
Stormwater Charges	\$0.00	70335263 LO	WTRL	22105.04	22751.80	646.76
Other Charges & Penalties	\$0.00	70335263 HI	WTR	59573.28	59697.90	124.62
Total Premise Charges	\$254.63					

Total Gallons Used for Premise: 576,992 GAL

Service Address: 0000 WORNALL RD

Premise: 479414

Billing Period: 30 Days 12/30/20 to 01/29/21

		Meter Number	Meter Type	Previous Read	Current Read	Usage
Water Charges	\$35,941.21					
Wastewater Charges	\$63,693.36					
Biochemical Oxygen Demand	\$2,156.33	70293105 LO	WTRL	9366.40	9867.35	500.95
Oil & Grease	\$315.81	70293105 HI	WTR	45207.00	50722.50	5,515.50
Suspended Solids	\$51.35					
Stormwater Charges	\$0.00					
Other Charges & Penalties	\$0.00					

Total Gallons Used for Premise: 4,500,304 GAL

Total Premise Charges \$102,158.06

Service Address: 0000 WORNALL RD LOT B S

Premise: 479415

Billing Period: 30 Days 12/30/20 to 01/29/21

		Meter Number	Meter Type	Previous Read	Current Read	Usage
Water Charges	\$36.21					
Wastewater Charges	\$22.58					
Stormwater Charges	\$0.00	60745640	WTR	8446.50	8446.50	0.00
Other Charges & Penalties	\$0.00					

Total Gallons Used for Premise: 0 GAL

Total Premise Charges \$58.79

Service Address: 0000 WORNALL RD LOT C S

Premise: 479416

Billing Period: 36 Days 12/30/20 to 02/04/21

		Meter Number	Meter Type	Previous Read	Current Read	Usage
Water Charges	\$22.76					
Wastewater Charges	\$27.10					
Stormwater Charges	\$0.00	52725952	WTR	2476.10	2476.11	0.01
Other Charges & Penalties	\$0.00					

Total Gallons Used for Premise: 7 GAL

Total Premise Charges \$49.86

Service Address: 0000 WORNALL RD LOT D S

Premise: 479417

Billing Period: 30 Days 12/30/20 to 01/29/21

		Meter Number	Meter Type	Previous Read	Current Read	Usage
Water Charges	\$18.97					
Wastewater Charges	\$22.58					
Stormwater Charges	\$0.00	52725951	WTR	55.85	55.85	0.00
Other Charges & Penalties	\$0.00					

Total Gallons Used for Premise: 0 GAL

Total Premise Charges \$41.55



Account Number
Customer Name

00000000 000000 6
XXXX HOSPITAL c/o AMERICAN

LOCATION DETAILS

TOTAL NUMBER OF LOCATIONS: 13

1 CCF = 748 Gallons

Service Address: 0000 WORNALL RD LOT E S

Premise: 479420

Billing Period: 30 Days 12/30/20 to 01/29/21

Water Charges	\$18.97
Wastewater Charges	\$22.58
Stormwater Charges	\$0.00
Other Charges & Penalties	\$0.00

Meter Number	Meter Type	Previous Read CCF	Current Read CCF	Usage CCF
52725949	WTR	2060.75	2060.75	0.00

Total Premise Charges \$41.55

Total Gallons Used for Premise: 0 GAL

.....





LOCATION

4800 E. 63rd St. Kansas City, MO 64130



ONLINE

www.kcwater.us



PHONE

Account Issues: 816.513.1313 or 311
7am-7pm Monday - Friday

MESSAGE CENTER

YOUR ACCOUNT IS DELINQUENT AND IS ELIGIBLE FOR SHUT OFF

Please note, your account is past due. While KC Water is not currently conducting shutoffs due to non-payment, you remain responsible for any outstanding balance. To avoid future collection activity pay your past due balance in full or set up a payment arrangement by calling 816.513.1313. You may pay your account online at www.kcwater.us or by calling 816.513.0567, 24 hours a day / 7 days a week.

USAGE COMPARISON

See how this month's water usage compares to the same month last year.

2020	VS.	2021
31 Days	Days of Service	30 Days
3,777 GAL	Water Used	3,590 GAL

Detach and return this portion with your payment



KC WATER
4800 E. 63RD STREET
KANSAS CITY, MO 64130

DELINQUENT



1456 1 AV 0.388 0146116-KANS170019-ST.1GRP-001456
BARB MITH
0000 NW 66TH TER
KANSAS CITY MO 64118-2922

T:5



\$	TOTAL AMOUNT DUE	\$768.49
	by 02/24/21	

Billing Period: 30 Days 12/31/20 - 01/30/21

ACCOUNT INFORMATION

Bill Date: 02/03/21

Account Number	000000000 0000000 2
Customer Name	BARB MITH
Service Address	0000 NW 66TH TER

ACCOUNT SUMMARY

DELINQUENT

Previous Balance	\$652.93
Payments Received	\$0.00
Balance Forward !	\$652.93
Total Current Charges	\$115.56

Total Amount Due	\$768.49
-------------------------	-----------------

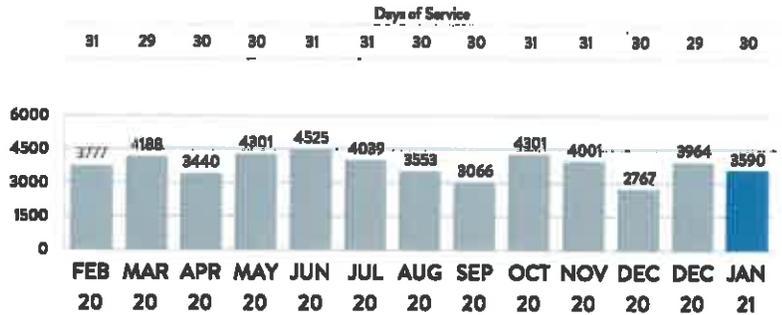
Amount Due if Paid After 02/24/21

\$775.33

See reverse side for account details and additional information

USAGE HISTORY

Monthly water usage shown in gallons



Bill Date 02/03/21

Account Number 000000000 0000000 2

Due Date 02/24/21

Total Amount Due	\$768.49
-------------------------	-----------------

AMOUNT ENCLOSED

Amount Due if Paid After 02/24/21

\$775.33

MAKE CHECKS PAYABLE TO:



KC WATER
PO BOX 807045
KANSAS CITY MO 64180-7045

000000000000000002 000000076849 0000000775335

METER READINGS

1 CCF = 748 Gallons

STORMWATER

Meter Number	Previous Read CCF	Current Read CCF	Usage CCF	Gallons Used	Runoff Surface	Daily Rate
82431699	1246.40	1251.20	4.80	3,590	3,415 Sq Ft	\$0.1167

KC WATER NEWS

State of Missouri Primacy Fees

To comply with State of Missouri regulations, KC Water assesses annual Water and Sewer Primacy Fees to your February billing statement. The State utilizes these fees to support efforts to ensure public drinking water is safe. Learn more at www.dnr.mo.gov/env/wpp/primacyfee.htm.

ACCOUNT DETAILS

Billing Period: 30 Days 12/31/20 - 01/30/21

Previous Balance	\$652.93
Payments Received	\$0.00
Balance Forward	\$652.93

CURRENT WATER CHARGES

Water Service Charge	\$14.38
Water Usage Charge	\$23.04
Annual Water Primacy	\$1.08

CURRENT WASTEWATER CHARGES

Wastewater Service Charge	\$22.58
Wastewater Volume Charge	\$43.73
Annual Wastewater Primacy	\$0.48

CURRENT STORMWATER CHARGES

Stormwater Charges	\$3.50
--------------------	--------

OTHER CHARGES

Late Payment Charge	\$6.77
Total Current Charges	\$115.56

TOTAL AMOUNT DUE \$768.49

AUTOPAY



Save time and enroll in Auto Pay
Enroll online at www.kcwater.us
or call us at 816.513.1313
M-F 7:00am-7:00pm

ONLINE



www.kcwater.us
Create an online account
to pay your bill anywhere,
anytime!

PHONE



816.513.0567
Accepts payments
24 hours a day, 7 days a week

DROP BOX



KC Water Main
(South) Entrance
4800 E. 63rd Street
Kansas City, MO 64130
Drop off payments
24 hours a day, 7 days a week

IN PERSON



KC Water
4800 E. 63rd Street
Kansas City, MO 64130
Treasurer's Office 1st Floor
414 E. 12th Street
Kansas City, MO 64106
M-F 8:00am-5:00pm

CONTACT US

Account inquiries may be submitted online at www.kcwater.us then click on customer support or by calling 816.513.1313.

REPORT A SERVICE ISSUE

To report no water, low water pressure, water main break or leak, sewer odors, and/or a fire hydrant leak please call 816.513.1313 or 311, or visit us online at www.kcmo.gov/311/.



4800 E. 63rd Street • Kansas City, MO 64130
 Phone: 816-513-1313
 www.kcwater.us

Statement Date: January 13, 2020
 Account Number: 000001929 0012021 2
 Customer Name: BARBARA MILLER
 Service Address: 1616 NW 66TH TER
 Amount Due: \$214.91
 Due Date: PAST DUE

SHUT-OFF NOTICE

Water Service is eligible for SHUT OFF immediately at 1616 NW 66TH TER due to non-payment.

This statement shows the last billed amount. Additional water service charges may be assessed, all of which are the responsibility of the account holder.

Please note that a 6% penalty has been assessed to your account (the penalty is not reflected on this statement). In addition, a minimum \$120 fee for termination and restoration is required if your water service is shut off.

Please contact us immediately at 816-513-1313 or 3-1-1 to make a payment arrangement in order to avoid your water service being shut off.

SHUT-OFF DATE: IMMEDIATELY

PAY THIS AMOUNT: \$214.91

DETACH AND RETURN THIS PORTION WITH YOUR PAYMENT.



Amount Now Due: \$214.91
 Please make checks payable to: KC Water
 Account Number: 000001929 0012021 2
 Due Date: PAST DUE PAY IMMEDIATELY

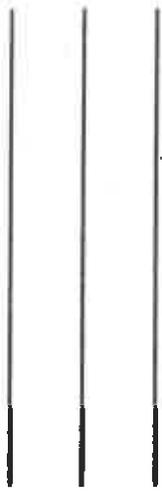
Amount Enclosed:

91 1 AV 0.383
 0127474-KANN143432-NT.1GRP-000091
 BARBARA MILLER
 1616 NW 66TH TER
 KANSAS CITY MO 64118-2922

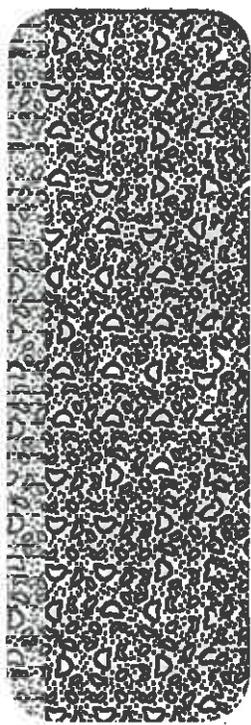
KC Water
 PO Box 807045
 Kansas City MO 64180-7045

00000192900120212 000000021491 0000000214910

First Class Mail
Presorted
U.S. Postage Paid
UTULTEC



PLACE
STAMP
HERE





**ATTACHMENT B - SAMPLE FOR ADDENDUM 1
UNIT PRICES**

Contract No. 18013-4

Project Title: Water Bill Printing and Mailing Services, Renewal 4

NOTE: IN THE EVENT OF DISCREPANCY, UNIT PRICE SHALL GOVERN.

Item No.	Unit	Quantity	Item Description:	Unit	Extension
		Monthly	Cost for Services		Yearly
1		132,214	Single page bills (back side of the bill has required language that must be included on each bill)	0.105	\$166,589.64
2		3,051	Multiple page bills (second and succeeding pages should be printed on front and back of the sheets)	0.055	\$2,013.72
3		14,636	Turn Off Notices	0.105	\$18,441.36
4		1,665	Back Flow Letters/Special Letters	0.120	\$2,397.60
5		2	Inserting	\$3,745.00	\$89,880.00
6		1,542	Returned Mail - NCOA LINK	0.200	\$3,700.80
7		8	Braille Bills	20.000	\$1,920.00
			Cost for Bill Stock and Envelopes		
8		1	Monthly Materials (letterhead, envelopes)	33.770	\$405.24
9		3,748	UMail Vacant Holds	0.100	\$4,497.60
10			Second and succeeding pages		
11			Turn Off Notices		
12			Letters		
13			Out-bound Envelope one window		
14			In-bound Envelope - one window		
			Anticipated postage costs		
15		1	Monthly Postage Cost	66,858.250	\$802,299.00
16		1	Monthly Additional Shipping and handling	100.000	\$1,200.00
17			Mailing Permit Fee		
18			Return Mail costs		
			Other Costs - Note item and per piece prices		
19			High usage alert email Notifications		
20			4 full-page, double-sided, two-color inserts		
21			20 third-page, double-sided, full-color inserts		
22			12 customizable monthly bill messages printed on statement		
23		40,161	Print suppressions	0.060	\$28,915.92
24		219,327	Webview images	0.010	\$26,319.24
25			Email Vacant Holds		
26		1	Email Management	995	\$11,940.00
27		1	Image Creation	500.000	\$6,000.00
28		0.83	IT Programming	150.000	\$1,494.00
29		1	UChange	500.000	\$6,000.00
30		1	UReview	500.000	\$6,000.00
			Total Unit Prices: (LAST PAGE ONLY)		TOTAL
					\$1,180,014.12

Note: May be printed, for manual fill-in, or filled in on electronic excel spreadsheet version.



ADDENDUM NUMBER 2

Contract/Project Number 22003

Title/Description Water Bill Printing and Mailing Services

ISSUE DATE: February 23, 2021

TO ALL PROSPECTIVE BIDDERS/PROPOSERS:

This Addendum addresses the following questions:

Q1.	HRD instructions Section I. City’s MBE/WBE Program Item A. states “Each construction project may have an MBE and/or WBE goal for participation” and that “Goals are stated as a percentage of contract dollars”. Will the City confirm whether USPS postage costs will be included in the contract value for purposes of calculating the percentage of MBE & WBE participation if the vendor is passing through actual USPS postage rates?
A1.	USPS costs will be excluded in the calculation of MWBE goals.
Q2.	HRD instructions Section I. City’s MBE/WBE Program Item B. states “Proposer agrees that the Program is incorporated into this document and agrees to follow the Program. If a non-MBE/WBE vendor that can provide the services and products required by the RFP without the use of subcontractors, what does the City require relative to following the Program?
A2.	The city will require the contractor to make “Good Faith Efforts” to meet or exceed the goals as stated in the RFP.
Q3.	HRD instructions Section I. City’s MBE/WBE Program Item B. states “Although it is not a requirement that a Proposer in fact meet or exceed both the MBE and WBE Goals, it is a requirement for approval of the proposal that a Proposer objectively demonstrate to the City that good faith efforts have been made to meet the Goals.” Section IX. Methods for Securing Participation of MBE/WBE’s and Good Faith Efforts includes at least 3 requirements to be met at least 15 days before the bid due date. As of the submission date of this question (February 19), there are fewer than 15 days before the bid due date. Will the City provide sufficient time following its response to HRD instruction related questions submitted by vendors to allow vendors to pursue good faith efforts?
A3.	HRD cannot authorized an extension to fulfill this requirement. Only the City’s RFP owing department can extend the bid due date.

Q4.	Section III. Required Submissions Prior to Contract Award item c. states “If a waiver is requested, HRD will examine the Proposers documentation of good faith efforts and make a recommendation to grant or deny the waiver. HRD will recommend a waiver be granted only if the Proposer has made good faith efforts to obtain MBE/WBE participation.” Will the City provide an example of documentation of good faith efforts submitted by a proposer that resulted in a recommendation by HRD to grant a waiver?
A4.	Please see the City’s “Good Faith Efforts” requirements as stated in the municipal code.
Q5.	Section XIV. Liquidated Damages – MBE/WBE Program item A. states “No deduction for liquidated damages will be made when, for reasons beyond the control of the Contractor, the MBE/WBE participation stated in the Contractor Utilization Plan, as amended and approved by the Director is not met.” Will liquidated damages be imposed if a contractor satisfies the 6% participation requirements (3% MBE and 3% WBE) based on the RFP’s estimated document production (i.e. inserts) when the City fails to meet the estimated volume of documents, resulting in the 6% requirement not being met?
A5.	If you are selected, HRD will evaluate the contractor’s Good Faith Efforts in meeting the recommended goals. HRD will take into consideration your efforts to utilize firms identified in your CUP, as well as efforts to add firms and scopes (if applicable) at a later date to assist in meeting or exceeding the goals. If you failed to meet the goals as a result of the City Department reducing volume or service, make sure to document these incidents and submit with your GFE waiver.
Q6.	Does the City’s current contractor satisfy the MBE/WBE requirements itself, through subcontracting or through a waiver based on good faith efforts?
A6.	Yes, through subcontracting.
Q7.	Does the City’s certified MBE/WBE businesses include bulk paper suppliers?
A7.	Yes, we have MWBE firms certified that provide bulk paper and office supplies.
Q8.	The Affidavit of Intended Utilization states “All firms must currently be certified by Kansas City, Missouri Dept. Of Human Relations.” InfoSend intends to utilize a MBE/WBE subcontractor certified in Illinois and requires information on how to certify this subcontractor by Kansas City HRD before the due date of the above referenced RFP. I have attached a copy of the Illinois certification for this subcontractor. Can you please provide information on how we secure the required certification for this subcontractor?
A8.	The city’s MWBE program is local and does not certify firms outside our seven county area. The firm listed would not qualify for the local program.



ADDENDUM NUMBER 3

Contract/Project Number 22003

Title/Description Water Bill Printing and Mailing Services

ISSUE DATE: _____

TO ALL PROSPECTIVE BIDDERS/PROPOSERS:

This Addendum addresses the following questions:

Q1.	The RFP contains several signature pages, some of which are not for inclusion in our proposal response, and some of which are not mentioned otherwise. Will you confirm for us whether the following should be signed and included: <ul style="list-style-type: none"> • Professional, Specialized or Technical Services Contract (is this a template example of your contract?) • Employee Eligibility Verification Affidavit • Non-Construction Subcontractors Listing • Non-Construction Application for Payment • Certificate of Insurance • Authorization to Release Revenue Clearing Letter
A1.	These forms are not required with the RFP. They will be required for the vendor who is award the contract.
Q2.	The City asks, “describe the types of data feeds you accept.” Will you clarify – does this mean data file formats?
A2.	Yes, the data file formats.
Q3.	Will you clarify what you mean by “formatting software” in “What is the formatting software you use?” Does this ask for our software used in programming data or for statement design or something else?
A3.	Software used to create the bill presentation and/or letters prior to printing.
Q4.	The City seems to use “stock” in reference to paper weight as well as in reference to a form template shell. Will you clarify what is meant by “stock” in the following: “How many different paper stocks can you con-mingle in an envelope?”
A4.	At this time, the paper stock is the same for inserts as it for the bill. There is one paper stock.
Q5.	The City has asked if we will commit to a performance guarantee. What does this entail?

A5.	Establishing mutually agreed upon performance targets and managing to those goals.
-----	--

Q6.	Does the City expect their print vendor to provide braille printing? Will you provide us with the specifications for that product?
A6.	Yes, the preference is that our bill print vendor have the capability to provide braille printing if possible. It is not a requirement but a preference. We don't specifications because our current vendor provides the braille bill.
Q7.	
A7.	
Q8.	
A8.	



ADDENDUM NUMBER 4

Contract/Project Number 22003

Title/Description Water Bill Printing and Mailing Services

ISSUE DATE: _____

TO ALL PROSPECTIVE BIDDERS/PROPOSERS:

This Addendum addresses the following questions:

Q1.	Will the City's Water Services Department extend the submission deadline to allow for responses to unanswered questions by proposers?
A1.	Yes. KC Water has extended the submission deadline to March 11, 2021 at 4:00pm.



ADDENDUM NUMBER 5

Contract/Project Number 22003

Title/Description Water Bill Printing and Mailing Services

ISSUE DATE: March 10, 2021

TO ALL PROSPECTIVE BIDDERS/PROPOSERS:

This Addendum addresses the following questions:

Q1.	Please confirm whether the City will provide an example of documentation of good faith efforts submitted by a proposer that resulted in a recommendation by HRD to grant a waiver?
A1.	“Good Faith Effort” standards address the specific areas the City requires, and are inclusive of all the GFE. You cannot do a majority, all are required.
Q2	Will the City’s Water Services Department extend the due date in order to allow proposers the time to satisfy the HRD Good Faith Efforts requirements?
A2.	Good Faith Efforts will be required prior to execution of the contract with the successful proposer.
Q3.	Will the City provide information on how to submit a protest, what information should be included in the protest and when it has to be submitted to be considered timely?
A3.	The City does not have a formal protest procedure and there is no right to protest. Nevertheless, the City does evaluate all complaints from proposers and bidders.



TRANSPORTATION, INFRASTRUCTURE & OPERATIONS COMMITTEE

AUGUST 11, 2021



ORDINANCE NO. 210640

Water Bill Printing and Mailing Services

Authorizing a \$1,018,202.40 professional, specialized or technical services contract with Doxim Utilitec LLC, for the Water Bill Printing and Mailing Services project; authorizing two successive one-year renewal options without further City Council approval; and recognizing this ordinance as having an accelerated effective date.



THANK YOU



Inter-Departmental Communication

Date: August 9, 2021

To: Mayor Quinton Lucas, Chair: Transportation, Infrastructure & Operations Committee

From: Andrea Dorch, Director; Human Relations Department

Subject: Revised Docket Memo #: 210640

CONTRACTOR:	Doxim Utilitec, LLC
Address:	1911 Woodslee Dr. Troy, MI 48083
Contract #	22003 – Water Bill Printing & Mailing Services
Contract Amount:	\$1,018,202.40*
MBE Goal	0%
WBE Goal:	6%
Total MBE Achieved:	0%
Total WBE Achieved:	6%

MBE SUBCONTRACTORS:

None

WBE SUBCONTRACTORS:

Name:	KC Blueprint Co.
Address:	1804 Swift Ave. N. Kansas City, MO 64116
Scope of Work:	Supply / Printing of Envelopes
Dollar Amount:	\$56,002 (6%)
Ownership:	Lane, Ruby
Structure:	Caucasian Female Code 27

Comments:

^Note: The contract amount includes postage costs which represent over 70% of the total amount. Postage costs for the contract are currently estimated at \$718,741.32, however that amount will increase when the postage increase takes effect later this year. The WBE participation amount of \$56,002 represents 19% of the remaining \$299,461.08. There is no possible MBE/WBE participation on the postage costs. The MBE/WBE goals of 0% MBE and 6% WBE for the project were set based on the fact that there was no MBE availability in Printing services at the time that the contract was solicited.



Legislation Text

File #: 210643, Version: 1

ORDINANCE NO. 210643

Authorizing the Manager of Procurement Services to execute a \$325,000.00 Art Purchase Contract with SOFTlab Inc. for the acquisition of the sculptural work “Cloud Gazing” through the One Percent for Art Program at the KCI New Single Terminal and Parking project.

WHEREAS, the Municipal Arts Commission met on June 4, 2021, and voted unanimously to approve the artist’s proposal; NOW, THEREFORE,

BE IT ORDAINED BY THE COUNCIL OF KANSAS CITY:

Section 1. That the Manager of Procurement Services is authorized to execute a \$325,000.00 Art Purchase Contract with SOFTlab Inc. for the acquisition of “Cloud Gazing” for the new KCI single terminal. A copy of the contract, in substantial form, is on file with the Manager of Procurement Services.

Section 2. That the sum of \$325,000.00 has been previously appropriated to Account No. 22-3090-077700-619080-07A21000.

I hereby certify that there is a balance, otherwise unencumbered, to the credit of the appropriation to which the foregoing expenditure is to be charged, and a cash balance, otherwise unencumbered, in the treasury, to the credit of the fund from which payment is to be made, each sufficient to meet the obligation hereby incurred.

Tammy Queen
Director of Finance

Approved as to form and legality:

James M. Brady
Assistant City Attorney

ART PURCHASE CONTRACT
GENERAL SERVICES DEPARTMENT

EV2879- KCI Art Project- Development of "Cloud Gazing"

This art purchase contract is between KANSAS CITY, MISSOURI, a constitutionally chartered municipal corporation ("City"), and SOFTlab ("Artist"). City and Artist agree as follows:

In consideration of the payments and mutual agreements contained in this contract, City and Artist agree as follows:

Sec. 1. Services to be Performed. Artist shall perform the following services in connection with the Artist's work (the "Work") as set forth in Attachment A:

- A. Scope of Services - **Attachment A**
- B. Schedule of Performance – **Attachment B**
- C. Submit all documents, including plans, design drawings, specifications, reports, maps, models and renderings in the form requested by City. A list with the specific requirements is included in **Attachment A – Scope of Services**.
- D. City shall have the right to inspect and review the Work being done and to consult with Artist at any reasonable time. Meetings will be held at the request of City or Artist.
- E. If it is determined to be in the best interest of the Work, Artist shall replace the project manager or any other employee of the Artist, Subcontractors, Suppliers or other persons or organizations performing or furnishing any of the Work on the project upon written request by City.

Sec. 2. Responsibilities of City.

- A. City will conduct reviews of plans and respond to Artist with comments and/or approval in the times specified in the approved schedule.
- B. City will display the Artist's name, copyright notice, title, and date of the Work near or on the Work.
- C. City recognizes that maintenance of the Work on a regular basis is essential to the integrity of the Work. City, to the extent allowed by law and subject to appropriation of funds, will maintain and protect the Work against the ravages of time, vandalism and the elements, taking into account the instructions of the Artist set forth when the Art is completed and installed.
- D. Repairs and Restoration.
 - 1. City will have the right to determine, after consultation with the Artist or a professional familiar with art conservation, when and if repairs and restorations to the Work will be made. During the Artist's lifetime, the Artist will have the right to approve all repairs and restorations; provided however, that the Artist shall not unreasonably withhold approval for any repair or restoration of the Work. If the Artist unreasonably fails to approve any repair or restoration, City shall have the right to make such repair or restoration. To the extent practical, the Artist, during the Artist's lifetime, will be given the opportunity to make or personally supervise significant repairs and restorations.
 - 2. All repairs and restorations will be made in accordance with recognized principles of conservation.
- E. Alterations of the Work or of the Work site. City agrees:
 - 1. Not to intentionally damage, alter, modify or change the Work without written approval of the Artist.

2. To notify the Artist of any proposed alteration of the site that would affect the intended character and appearance of the Work and will consult with the Artist in the planning and execution of any site alteration and will make a reasonable effort to maintain the integrity of the Work.
3. Not to remove the Work from public display or destroy the work for a period of fifteen (15) years from final acceptance.
4. In the event the City desires to remove the Work from the site after fifteen (15) years, and the removal would result in the destruction, distortion, mutilation or other modification of the Work, City will give the Artist notice as provided herein of the City's intended action. The Artist has 90 days after the mailing of such notice either to remove the Work or to pay for its removal. If the Work is removed at the expense of the Artist, title to the Work shall be deemed to be in the Artist. If the Artist fails to remove the Work within the 90-day period, City may proceed to remove the Work with no further liability to Artist.
5. Not to intentionally use the Work in any manner which would reflect discredit on the Artist's name or reputation as an Artist or which would violate the spirit of the Work.

Sec. 3. Term of Contract.

- A. Contract shall start upon executed signatures by all parties. This executed contract will serve as the Notice to Proceed (NTP). The contract shall expire on March 31, 2023. A contract amendment will be needed to extend the expiration date, if applicable.

Sec. 4. Compensation and Reimbursables.

- A. The maximum amount that City shall pay Artist under this contract is \$325,000. City is not liable for any obligation incurred by Artist except as approved under the provisions of this contract.

Sec. 5. Method of Payment.

- A. Method of Payment. Upon completion of each task set forth below Artist shall invoice City, stating completion of the task and all actual reasonable expenses incurred and allowed under this contract and the amount due. City, upon approving the invoice, shall remit payment to Artist in accordance with the following schedule:
 1. \$40,625 upon execution of this contract;
 2. \$121,875 upon approval of the final design concept and issuance of NTP;
 3. \$121,875 upon certification by the Artist that fabrication of the Work is complete;
 4. \$28,438 upon delivery and installation of the Work to the site; and
 5. \$12,187 within thirty (30) days following final acceptance of the Work.
- B. Condition Precedent to Payment.
 1. Artist shall submit all invoices in a form provided by the City.
 2. It shall be a condition precedent to payment of any invoice from Artist that Artist is in compliance with, and not in breach or default of, all terms, covenants and conditions of this contract. If damages are sustained by City as a result of breach or default by Artist, City may withhold payment(s) to Artist for the purpose of set off until such time as the exact amount of damages due City from Artist may be determined.

3. No request for payment will be processed unless the request is in proper form, correctly computed, and is approved as payable under the contract. City is not liable for any obligation incurred by Artist except as approved under the provisions of this contract.
4. The Work shall be developed, fabricated and installed without further compensation than that provided for in this contract.

Sec. 6. Warranties of Title. The Artist represents and warrants that:

1. The Work is solely the result of the artistic effort of Artist;
2. The Work is unique and original and does not infringe upon any copyright;
3. That the Work, or a duplicate has not been accepted for sale elsewhere;
4. The Work is free and clear of any liens from any source whatsoever; and
5. Prior to final payment, Artist will furnish City with notarized statements from the fabricator, if applicable, and all other suppliers of materials used in the Work that all monies due have been paid.

Sec. 7. Notices. All notices required by this contract shall be in writing and sent to the following:

City:

General Services Department
Darrell Everette, Acting Manager of Procurement Services
414 E 12th St, 1st Floor
Kansas City, MO 64106
Phone: (816) 513-0798
E-mail address: darrell.everette@kcmo.org

General Services Department
James Martin, Public Art Administrator
414 E 12th St, 17th Floor
Kansas City, MO 64106
Phone: (816) 315-0504
E-mail address: james.martin@kcmo.org

Artist:

SOFTlab
34 West 27th Street
New York, NY 10001
(212) 481-5759
mszivos@softlabnyc.com

All notices are effective (a) when delivered in person, (b) upon confirmation of receipt when transmitted by facsimile transmission or by electronic mail, (c) upon receipt after dispatch by registered or certified mail, postage prepaid, (d) on the next business day if transmitted by overnight courier (with confirmation of delivery), or (e) three (3) business days after the date of mailing, whichever is earlier.

Sec. 8. Risk of Loss. The risk of loss or damage to the Work shall be borne by the Artist and the Artist shall take such measures as are necessary to protect the Work from loss or damage until its final acceptance by City.

Sec. 9. Title and Ownership. Upon completion and installation of the Work and upon final acceptance and final payment to the Artist by City, title to the Work shall pass to the City. Consistent with Section 2. E.4., and in the case of removal, the Artist is aware of and hereby specifically waives all rights under the Artists Visual Rights Act of 1990, 17 U.S.C. Sections 106A and 1133, or as subsequently amended, with regard to the Work.

Sec. 10. Copyright.

- A. The Artist shall retain the ownership of copyrights in and to the Work, plans, drawings, schematics, design studies and models prepared by the Artist in connection with this commission, except as limited by this paragraph. The Artist agrees that it will not make any additional exact duplicates or three-dimensional reproductions of the exact design dimensions and materials of the Work nor grant others permission to do so, except with the written permission of City.
- B. The Artist grants to City a license to use photographic reproductions of the Work in advertising brochures, media publicity, and promotion of its activities, catalogues, site guides, books and publications for noncommercial purposes. If reproductions by either party where the Work is the central focus of the reproductions are made, there shall be included credits listing the Artist as the creator of the Work and owner of its copyright, and City as the party which owns and commissioned the Work, and they agree to use their best efforts to secure credits in any reproduction or public showing of a reproduction or public show of a reproduction by other parties.

Sec. 11. No Gratuities and Kickbacks. The provisions of City's Code Section 3-303, prohibiting gratuities to city employees, and kickbacks by subcontractors, and Code Sections 3-307, imposing sanctions for violations, shall apply to this contract.

- A. **Gratuities.** Artist certifies that it has not and will not offer or give any city employee or officer a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation or preparation of any part of a contract requirement or purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any contract or subcontract, or to any solicitation or proposal therefore.
- B. **Kickbacks.** Artist certifies that no payment, gratuity, offer of employment or benefit has been or will be made by or on behalf of or solicited from a subcontractor under a contract to Artist or higher tier subcontractor or any person associated therewith as an inducement for the award of a subcontract or order.

Sec. 12. Prohibition Against Contingent Fees. The provisions of City's Code Section 3-305 prohibiting the retention of persons to solicit contracts for contingent fees, and Sections 3-307, imposing sanctions for violations, shall apply to this contract. Artist certifies that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by Artist for the purpose of securing business. For breach or violation of this warranty, City shall have the right to annul this contract without liability or, at its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

Sec. 13. Subcontracting. City authorizes Artist to subcontract with the individuals, firms or entities identified in **Attachment D**, Subcontractors List. **Attachment D**, and the additional conditions stated therein, shall be incorporated into this contract. Artist shall not subcontract, assign or transfer any part or all of Artist's obligations or interests without City's prior written approval.

Sec. 14. Attachments. The following documents are attachments to this contract and are attached hereto and incorporated herein by this reference:

- Attachment A – Scope of Services**
- Attachment B – Schedule of Performance**
- Attachment C – Non-Construction Subcontractor Listing**
- Attachment D – Prevailing Wage Requirements**

Annual Wage Order No. 27
County Clay
Work Type:
State – Building
Federal – Building

- Division of Labor Standards Rules & Regulations
- 01290.03 Certified Payroll Instructions
- 01290.04 Certified Payroll Example
- 01290.05-06 Certified Payroll Report
- 01290.07 Payroll Certification
- 01290.08 Wage Rate Verification Questionnaire
- 01290.11 Daily Labor Force Report
- 01290.14 Contractor Affidavit for Final Payment

- Attachment E – 00560 Missouri Project Exemption Certificate**
 - 00560.01 Kansas City Missouri Tax Exempt Certificate
- Attachment F – 00620 Insurance Certificate**

Sec. 15. Design Standards.

Except as otherwise directed in writing by City, Artist shall use all applicable design standards required by federal, state, local laws or codes or such standards recognized and used in the industry in the performance of services under this contract. In the development of any design under this contract, Artist shall comply with all provisions of the Americans with Disabilities Act, Public Law 101-336 as well as 28 CFR parts 35 and 36 and 29 CFR part 1630, as applicable and as amended from time to time, and shall comply with the provisions of the Missouri Domestic Product Procurement Act, Section 34.350 RSMo. Artist shall notify and explain to City any applicable exceptions under these acts. Artist shall endorse all plans and specifications, or estimates, and engineering data furnished under this contract. All subcontractors as appropriate shall endorse their respective plans and specifications.

Sec. 16. General Indemnification.

- A. For purposes of this Section 16 only, the following terms shall have the meanings listed:
 - 1. **Claims** means all claims, damages, liability, losses, costs and expenses, court costs and reasonable attorneys’ fees, including attorneys’ fees incurred by City in the enforcement of this indemnity obligation.
 - 2. **Artist’s Agents** means Artist’s officers, employees, subcontractors, su-bconsultants, successors, assigns, invitees, and other agents.
 - 3. **City** means City, its Program Manager/Construction Advisor, if any, and their respective agents, officials, officers and employees.

- B. Artists' obligations under this section with respect to indemnification for acts or omissions, including negligence, of City shall be limited to the coverage and limits of General (not Professional) Liability insurance that Artist is required to procure and maintain under this contract. Artist affirms that it has had the opportunity to recover the costs of the liability insurance required in this contract in its contract price.
- C. Artist shall defend, indemnify and hold harmless City from and against all Claims arising out of or resulting from all acts or omissions in connection with this contract caused in whole or in part by Artist or Artist's Agents, regardless of whether or not caused in part by an act or omission, including negligence, of City. Artist is not obligated under this section to indemnify City for the sole negligence of City.
- D. Nothing in this section shall apply to indemnification for professional negligence which is specified in a separate provision of this contract.

Sec. 17. Indemnification for Professional Negligence. Artist shall indemnify, and hold harmless City and any of its agencies, officials, officers, or employees from and against all claims, damages, liability, losses, costs, and expenses, including court costs and reasonable attorneys' fees, to the extent caused by any negligent acts, errors, or omissions of the Artist, its officers, employees, subconsultants, subcontractors, successors, assigns, invitees and other agents, in the performance of professional services under this contract. Artist is not obligated under this section to indemnify City for the negligent acts of City or any of its agencies, officials, officers, or employees.

Sec. 18. Insurance

- A. Artist shall procure and maintain in effect per the requirements below, insurance coverage not less than the types and amounts specified below. In the event that additional insurance, not specified herein, is required during the term of this contract, Artist shall supply such insurance at City's cost. Policies containing a Self-Insured Retention are unacceptable to City unless City approves in writing the Artist Self-Insured Retention.
 - 1. Commercial General Liability Insurance: with limits of \$1,000,000 per occurrence and \$2,000,000 aggregate, written on an "occurrence" basis. The policy shall be written or endorsed to include the following provisions:
 - a. Severability of Interests Coverage applying to Additional Insureds
 - b. Per Project Aggregate Liability Limit or, where not available, the aggregate limit shall be \$2,000,000.
 - c. No Contractual Liability Limitation Endorsement
 - d. Additional Insured Endorsement, ISO form CG20 10, or its equivalent
 - 2. Worker's Compensation Insurance: as required by statute, including Employers Liability with limits of:
 - a. Workers Compensation Statutory
 - b. Employers Liability
 - c. \$100,000 accident with limits of:
 - d. \$500,000 disease-policy limit
 - e. \$100,000 disease-each employee
 - 3. Commercial Automobile Liability Insurance at the execution of the contract and throughout the duration of the contract: with a limit of \$1,000,000 written on an "occurrence" basis, covering

owned, hired, and non-owned automobiles. If the Artist owns vehicles, coverage shall be provided on an “any auto” basis. If the Artist does not own any vehicles, coverage shall be provided on a “hired autos” and “nonowned autos” basis. The insurance will be written on a Commercial Business Auto form, or an acceptable equivalent, and will protect against claims arising out of the operation of motor vehicles, as to acts done in connection with the contract, by Artist.

4. If applicable, Professional Liability Insurance with limits Per Claim/Annual Aggregate of \$1,000,000.
- B. The Commercial General Liability Insurance specified above shall provide that City and its agencies, officials, officers, and employees, while acting within the scope of their authority, will be named as additional insureds for the services performed under this contract. Artist shall provide to City at execution of this contract a certificate of insurance showing all required endorsements and additional insureds. The certificates of insurance will contain a provision stating that should any of the policies described in the certificate be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.
- C. If Artist provides Commercial General Liability Insurance or Professional Liability Insurance through a Subcontractor, Artist shall contractually require the Subcontractor to include City as additional insured in the Subcontractor’s policy. Artist shall deliver to City, prior to the start of any work at the project site, properly completed certificates of insurance or other evidence that the required insurance is in full force and effect, in a form acceptable to City. Artist shall contractually require its Subcontractor to defend, indemnify and hold harmless City from and against all claims arising out of or resulting from all acts or omissions in connection with this Contract caused in whole or in part by Subcontractor or Subcontractor’s agents, regardless of whether or not caused in part by any act or omission, including negligence, of City. Artist must provide evidence that this requirement has been complied in accordance with the provisions of this contract.
- D. All insurance coverage must be written by companies that have an A.M. Best’s rating of “A-V” or better, and are licensed or approved by the State of Missouri to do business in Missouri.
- E. Artist’s failure to maintain the required insurance coverage will not relieve Artist of its contractual obligation to indemnify City pursuant to Sections 16 and 17. If the coverage afforded is cancelled or changed or its renewal is refused, Artist shall give at least thirty (30) days prior written notice to City. In the event of Artist’s failure to maintain the required insurance in effect, City may order Artist to immediately stop work, and upon ten (10) days’ notice and an opportunity to cure, may pursue its remedies for breach of this contract as provided for herein and by law.
- F. In no event shall the language in this section constitute or be construed as a waiver or limitation of City’s rights or defenses with regard to sovereign immunity, governmental immunity, or other official immunities and protections as provided by the federal and state constitutions or by law.

Sec. 19. Defaults and Remedies.

- A. Artist shall be in default of this contract upon the happening of any of the following events:
 1. If Artist fails to comply with any of the provisions required of Artist under this contract, and such failure continues for a period of ten (10) days after written notice thereof is given to Artist by City; or
 2. If, by operation of law or otherwise, the right, title, or interest of Artist in this contract is transferred to, passes to, or devolves upon any other person, firm or corporation without written consent of City; or

3. Upon the levy of any attachment or execution of any process of a court of competent jurisdiction which does or will interfere with Artist's performance under this contract, and which attachment, execution or other process of such court is not enjoined, vacated, dismissed, or set aside within a period of thirty (30) days; or
 4. Upon the suspension, revocation or termination of any power, license, permit, or authority that has the effect of preventing Artist from performing under this contract.
- B. Upon the occurrence of any one or more of the events as set forth in sub-paragraphs A1 through A4 of this Section, or upon any other default or breach of this contract, City may, at City's option, exercise concurrently or successively, any one or more of the following rights and remedies without waiving such default:
1. Suspend City's performance withhold payment or invoke any other legal or equitable remedy after giving Artist notice and opportunity to correct such default or breach.
 2. Interplead funds to a court or pay any sum required to be paid by Artist to parties other than City, and which Artist has incurred in connection with this contract and failed to pay. Any amount so paid in good faith by City, together with interest thereon at the maximum rate provided by law from the date of such payment, and all expenses connected therewith shall be repaid by Artist to City on demand; or
 3. Enjoin any breach or threatened breach by Artist of any covenants, agreements, terms, provisions or conditions hereof; or
 4. Bring suit for the performance of any covenant devolving upon Artist for performance or damage thereof, all without terminating this contract; or
 5. Terminate this contract upon ten (10) days written notice to Artist, specifying date of termination.

Sec. 20. Rights and Remedies Cumulative and Not Exclusive. All rights and remedies granted to City herein and any other rights and remedies which City may have at law and in equity are hereby declared to be cumulative and not exclusive, and the fact that City may have exercised any remedy without terminating this contract shall not impair City's rights thereafter to terminate or to exercise any other remedy herein granted or to which City may be otherwise entitled.

Sec. 21. Americans with Disabilities Act. Artist agrees to comply, during the course of this contract, with all provisions of the Americans with Disabilities Act, Public Law 101-336 as well as 28 CFR parts 35 and 36 and 29 CFR part 1630, as applicable and as amended from time to time.

Sec. 22. Merger. This contract, including any referenced Attachments, constitutes the entire agreement between City and Artist with respect to this subject matter, and supersedes all prior agreements between City and Artist with respect to this subject matter, and any such prior agreement shall be void and of no further force or effect as of the date of this contract.

Sec. 23. Modification.

- A. Unless stated otherwise in this contract, no provision of this contract may be waived, modified or amended except by written amendment signed by City and Artist.
- B. No act, conversation or communication with any officer, agent or employee of City, either before or after the execution of this contract, shall affect or modify any term or terminology of this contract and any such act, conversation or communication shall not be binding upon City or Artist.

Sec. 24. Binding Effect. This Contract shall be binding upon City and Artist and their successors in interest.

Sec. 25. Representations and Warranties. City and Artist each certify that it has the power and authority to execute and deliver this contract, to use the funds as contemplated hereby and to perform this contract in accordance with its terms.

Sec. 26. Prevailing Wage.

A. Prevailing Wage.

1. Artist shall comply and require its Subcontractors to comply with;
 - a. Sections 290.210 to 290.340, RSMo the State of Missouri Prevailing Wage Law (the “Law”); and
 - b. 8 CSR 30-3.010 to 8 CSR 30-3.060, the Prevailing Wage Law Rules (the “Rules”); and
 - c. the Annual Wage Order (Wage Order) issued by the State of Missouri’s Department of Labor and Industrial Relations; and
 - d. any applicable Annual Incremental Wage Increase (Wage Increase) to the Annual Wage Order.
2. The Law, Rules, Wage Order and any Wage Increase are incorporated into and made part hereof this Contract and shall be collectively referred to in this Section as the “Prevailing Wage Requirements.” In the event this Contract is renewed for an additional term, the Wage Order in effect as of the commencement date of the additional term, as amended by any applicable Wage Increase, shall be deemed incorporated herein and shall apply to and remain in effect for the duration of the additional term. The new Wage Order and any applicable Wage Increase shall govern notwithstanding the fact that the Wage Order being replaced might be physically attached to this Contract.
3. Artist shall pay and require its Subcontractors to pay to all workers performing work under this Contract not less than the prevailing hourly rate of wages for the class or type of work performed by the worker in accordance with the Law, Rules, Wage Order and any applicable Wage Increase. Artist shall take whatever steps are necessary to insure that the prevailing hourly wage rates are paid and that all workers for Artist and each of its Subcontractors are paid for the class or type of work performed by the worker in accordance with the Prevailing Wage Requirements.
4. Artist shall keep and require each of its Subcontractors engaged in the construction of public works in performance of the Contract to keep full and accurate records on City’s:
 - a. Keep and require each of its Subcontractors engaged in the construction of public works in performance of the Contract to keep full and accurate records on City’s “Daily Labor Force Report” Form indicating the worker’s name, occupational title or classification group and skill and the workers’ hours. City shall furnish blank copies of the Daily Labor Force Report Form to Artist for its use and for distribution to Subcontractors. Artist shall submit its and its Subcontractors Daily Labor Force Reports to City each day; and
 - b. Submit, and require each of its Subcontractors engaged in the construction of public works in performance of the Contract to submit, electronically, in a format prescribed by the City, Certified Payroll Report Information indicating the worker’s name, address, social security number, occupation(s), craft(s) of every worker employed in connection with the public work together with the number of hours worked by each worker and the actual wages paid in connection with the Project and other pertinent information as requested by the City; and
 - c. Submit, and require each of its Subcontractors engaged in the construction of public works in performance of the Contract to submit, electronically, in format prescribed by the City, a

Payroll Certification. The Payroll Certification must be signed by the employee or agent who pays or supervises the payment of the workers employed under the Contract for the Artist and each Subcontractor.

- d. The Daily Labor Force Report, documents used to compile information for the Certified Payroll Report, and Payroll Certification are collectively referred to in this Section as the "Records."
5. Artist shall make all of Artist's and Subcontractors' Records open to inspection by any authorized representatives of City and the Missouri Department of Labor and Industrial Relations at any reasonable time and as often as they may be necessary and such Records shall not be destroyed or removed from the State of Missouri for a period of one (1) year following the completion of the public work in connection with which the Records are made. Artist shall have its and its Subcontractors Certified Payroll Reports and Payroll Certifications available at the Artist's office and shall provide the Records to the City electronically at City's sole discretion. In addition, all Records shall be considered a public record and Artist shall provide the Records to the City in the format required by the City within three (3) working days of any request by City at the Artist's cost. City, in its sole discretion, may require Artist to send any of the Records directly to the person who requested the Record at Artist's expense.
6. Artist shall post and keep posted a clearly legible statement of all prevailing hourly wage rates to be paid to all workers employed by Artist and each of its Subcontractors in the performance of this Contract in a prominent and easily accessible place at the Site of the Work by all workers.
7. If the Contract Price exceeds \$250,000.00, Artist shall and shall require each Subcontractor engaged in any construction of public works to have its name, acceptable abbreviation or recognizable logo and the name of the city and state of the mailing address of the principal office of the company, on each motor vehicle and motorized self-propelled piece of equipment which is used in connection with the Project during the time the Artist or Subcontractor is engaged on the project. The sign shall be legible from a distance of twenty (20') feet, but the size of the lettering need not be larger than two (2") inches. In cases where equipment is leased or where affixing a legible sign to the equipment is impractical, the Artist may place a temporary stationary sign, with the information required pursuant to this section, at the main entrance of the Project in place of affixing the required information on the equipment so long as such sign is not in violation of any state or federal statute, rule or regulation. Motor vehicles which are required to have similar information affixed thereto pursuant to requirements of a regulatory agency of the state or federal government are exempt from the provisions of this subsection.
8. Artist must correct any errors in Artist's or any Subcontractors' Records, or Artist's or any Subcontractors' violations of the Law, Rules, Annual Wage Order and any Wage Increase within fourteen (14) calendar days after notice from City.
9. Artist shall and shall require its Subcontractors to cooperate with the City and the Department of Labor and Industrial Relations in the enforcement of this Section, the Law, Rules, Annual Wage Order and any Wage Increase. Artist shall and shall require its Subcontractors to permit City and the Department of Labor and Industrial Relations to interview any and all workers during working hours on the Project at Artist's sole cost and expense.
10. Artist shall file with City, upon completion of the Project and prior to final payment therefore, affidavits from Artist and each of its Subcontractors, stating that each has fully complied with the provisions and requirements of the Missouri Prevailing Wage Law. City shall not make final payment until the affidavits, in proper form and order, from Artist and each of its Subcontractors, are filed by Artist.

11. Artist shall forfeit as a statutory penalty to the City one hundred dollars (\$100.00) for each worker employed, for each calendar day, or portion thereof, such worker is paid less than the prevailing hourly rates for any work done under this Contract, by Artist or by any of Artist's Subcontractors. If Artist or any of its Subcontractors have violated any section(s) of 290.210 to 290.340, RSMo, in the course of the execution of the Contract, City shall when making payments to the Artist becoming due under this Contract, withhold and retain therefrom all sums and amounts due and owing as a result of any violation of sections 290.210 to 290.340, RSMo.

B. Prevailing Wage Damages. Artist acknowledges and agrees that, based on the experience of City, violations of the Missouri Prevailing Wage Act, whether by Artist or its Subcontractors, commonly result in additional costs to City. Artist agrees that additional costs to City for any particular violation are difficult to establish and include but are not limited to: costs of construction delays, additional work for City, additional interest expenses, investigations, and the cost of establishing and maintaining a special division working under the City Manager to monitor prevailing wage compliance.

1. In the event of the failure by Artist or any of its Subcontractors to pay wages as provided in the Missouri Prevailing Wage Act, City shall be entitled to deduct from the Contract Price, and shall retain as liquidated damages, one hundred dollars (\$100.00) per day, per worker who is paid less than the prevailing hourly rate of wages, to approximate the additional costs. The sum shall be deducted, paid or owed whether or not the Contract Times have expired.

2. City shall give written notice to Artist setting forth the workers who have been underpaid, the amount of the statutory penalty and the amount of the liquidated damages as provided for in this Subparagraph. Artist shall have fourteen (14) calendar days to respond, which time may be extended by City upon written request. If Artist fails to respond within the specified time, the City's original notice shall be deemed final. If Artist responds to City's notice, City will furnish Artist a final decision in writing within five (5) days of completing any investigation.

Sec. 27. Workforce. If Artist is required to pay prevailing wages for the work performed pursuant to this Contract, Artist agrees to comply with all requirements of City's Construction Employment Program as enacted in City's Code, Sections 3-501 through 3-527 and as hereinafter amended. Artist shall meet or exceed the construction employment goals unless the same shall have been waived in the manner provided by law. Artist's compliance with this provision is a material part of this Contract.

Sec. 28. Professional services certification. Code Section 2-83, prohibiting contracts with certain attorneys, architects, engineers and other professionals thereunder, shall apply to this contract. Artist certifies that it is not an architect, engineer, or other professional, exclusive of medical doctors or appraisers, who at the time of the issuance of this contract, serves as an expert witness for any litigation against City, and that it will not serve as an expert witness for any litigation against City during the term of this contract.

Sec. 29. Design Standards and Endorsement.

A. Except as otherwise directed in writing by City, Artist shall use all applicable design standards required by federal, state, local laws or codes or such standards recognized and used in the industry in the performance of services under this contract.

B. Artist shall endorse all plans and specifications, or estimates, and engineering data furnished under this contract if prepared by Artist. All subcontractors as appropriate shall endorse their respective plans and specifications, or estimates, and engineering data furnished for the project.

C. Artist shall monitor quality assurance for their design services and shall revise the design and plans at their own expense in case of error or oversight in design by Artist.

Sec. 30. Governing Law. This contract shall be construed and governed in accordance with the laws of the State of Missouri without giving effect to Missouri's choice of law provisions. City and Artist: (1) submit to the jurisdiction of the state and federal courts located in Jackson County, Missouri; and no other (2) waive any and all objections to jurisdiction and venue; and (3) will not raise forum non conveniens as an objection to the location of any litigation.

Sec. 31. Compliance with Laws. Artist shall comply with all federal, state and local laws, ordinances and regulations applicable to the work and this contract.

Sec. 32. Termination for Convenience.

- D. City may, at any time upon ten (10) days' notice to Artist specifying the effective date of termination, terminate this contract, in whole or in part. If this contract is terminated by City, City shall be liable only for payment for services rendered before the effective date of termination. Artist shall prepare an accounting of the services performed and money spent by Artist up to the effective date of termination and shall return to City and remaining sums within thirty (30) days of such date.
- E. If this contract is terminated prior to Artist's completion of services, all work or materials prepared or obtained by Artist pursuant to this contract shall become City's property.
- F. If this contract is terminated prior to Artist's completion of the services to be performed hereunder, Artist shall return to City any sums paid in advance by City for services that would otherwise have had to be rendered between the effective date of termination and the original ending date of the contract. Artist shall prepare an accounting of the services performed and money spent by Artist up to the effective date of termination and shall return to City any remaining sums within thirty (30) days of such date.

Sec. 33. Waiver. Waiver by City of any term, covenant, or condition hereof shall not operate as a waiver of any subsequent breach of the same or of any term, covenant or condition. No term, covenant, or condition of this contract can be waived except by written consent of City, and forbearance or indulgence by City in any regard whatsoever shall not constitute a waiver of same to be performed by Artist to which the same may apply and, until complete performance by Artist of the term, covenant or condition, City shall be entitled to invoke any remedy available to it under this contract or by law despite any such forbearance or indulgence.

Sec. 34. Acceptance. No payment made under this contract shall be proof of satisfactory performance of the contract, either wholly or in part, and no payment shall be construed as acceptance of deficient or unsatisfactory work.

Sec. 35. Modification. Unless stated otherwise in this contract, no provision of this contract may be waived, modified or amended except in writing signed by City.

Sec. 36. Headings; Construction of Contract. The headings of each section of this contract are for reference only. Unless the context of this contract clearly requires otherwise, all terms and words used herein, regardless of the number and gender in which used, shall be construed to include any other number, singular or plural, or any other gender, masculine, feminine or neuter, the same as if such words had been fully and properly written in that number or gender.

Sec. 37. Severability of Provisions. Except as specifically provided in this contract, all of the provisions of this contract shall be severable. In the event that any provision of this contract is found by a court of competent jurisdiction to be unconstitutional or unlawful, the remaining provisions of this contract shall be valid unless the court finds that the valid provisions of this contract are so essentially and inseparably connected with and so dependent upon the invalid provision(s) that it cannot be presumed that the parties to this contract could have included the valid provisions without the invalid provision(s); or unless the court finds that the valid provisions, standing alone, are incapable of being performed in accordance with the intentions of the parties.

Sec. 38. Records.

- G. For purposes of this section:
 - 1. "City" shall mean the City Auditor, the City's Internal Auditor, the City's Director of Human Relations, the City Manager, the City department administering this contract and their delegates and agents.
 - 2. "Record" shall mean any document, book, paper, photograph, map, sound recordings or other material, regardless of physical form or characteristics, made or received in connection with this contract and all contract amendments and renewals.
- H. Artist shall maintain and retain all Records for a term of five (5) years that shall begin after the expiration or termination of this contract and all contract amendments. City shall have a right to examine or audit all Records and Artist shall provide access to City of all Records upon ten (10) days written notice from City.

Sec. 39. Affirmative Action.

- I. If this Contract exceeds \$300,000.00 and Artist employs fifty (50) or more people, Artist shall comply with City's Affirmative Action requirements in accordance with the provisions of Chapter 3 of City's Code, the rules and regulations relating to those sections, and any additions or amendments thereto; in executing any Contract subject to said provisions, Artist warrants that it has an affirmative action program in place and will maintain the affirmation action program in place for the duration of the Contract. Artist shall not discriminate against any employee or applicant for employment because of race, color, sex, religion, national origin or ancestry, disability, sexual orientation, gender identity or age in a manner prohibited by Chapter 38 of City's Code. Artist shall:
 - 1. Submit, in print or electronic format, a copy of Artist's current certificate of compliance to the City's Human Relations Department (HRD) prior to receiving the first payment under the Contract, unless a copy has already been submitted to HRD at any point within the previous two calendar years. If, and only if, Artist does not possess a current certification of compliance, Artist shall submit, in print or electronic format, a copy of its affirmative action program to HRD prior to receiving the first payment under the Contract, unless a copy has already been submitted to HRD at any point within the previous two calendar years.
 - 2. Require any Subcontractor awarded a subcontract exceeding \$300,000.00 to affirm that Subcontractor has an affirmative action program in place and will maintain the affirmative action program in place for the duration of the subcontract.
 - 3. Obtain from any Subcontractor awarded a subcontract exceeding \$300,000.00 a copy of the Subcontractor's current certificate of compliance and tender a copy of the same, in print or electronic format, to HRD within thirty (30) days from the date the subcontract is executed. If, and only if, Subcontractor does not possess a current certificate of compliance, Artist shall obtain a copy of the Subcontractor's affirmative action program and tender a copy of the same, in print or electronic format, to HRD within thirty (30) days from the date the subcontract is executed.
- J. City has the right to take action as directed by City's Human Relations Department to enforce this provision. If Artist fails, refuses or neglects to comply with the provisions of Chapter 38 of City's Code, then such failure shall be deemed a total breach of this Contract and this Contract may be terminated, canceled or suspended, in whole or in part, and Artist may be declared ineligible for any further contracts funded by City for a period of one (1) year. This is a material term of this Contract.

Sec. 40. Tax Compliance. Artist shall provide proof of compliance with City's tax ordinances administered by the City's commissioner of revenue as a precondition to City making the first payment under this contract or any contract when the total contract amount exceeds \$160,000.00. If Artist performs work on a contract that is for a

term longer than one year, the Artist also shall submit to City proof of compliance with City's tax ordinances administered by City's commissioner of revenue as a condition precedent to City making final payment under the contract.

Sec. 41. Assignability or Subcontracting. Artist shall not subcontract, assign or transfer any part or all of Artist's obligations or interests without City's prior approval. If Artist shall subcontract, assign, or transfer any part of Artist's interests or obligations under this contract without the prior approval of City, it shall constitute a material breach of this contract.

Sec. 42. Conflicts of Interest. Artist certifies that no officer or employee of City has, or will have, a direct or indirect financial or personal interest in this contract, and that no officer or employee of City, or member of such officer's or employee's immediate family, either has negotiated, or has or will have an arrangement, concerning employment to perform services on behalf of Artist in this contract.

Sec. 43. Buy American Preference. It is the policy of City that any manufactured goods or commodities used or supplied in the performance of any City contract or any subcontract hereto shall be manufactured or produced in the United States whenever possible.

Sec. 44. Independent Contractor. Artist is an independent contractor and is not City's agent. Artist has no authority to take any action or execute any documents on behalf of City.

Sec. 45. Employee Eligibility Verification. If this contract exceeds five thousand dollars (\$5,000.00), Artist shall execute and submit an affidavit, in a form prescribed by City, affirming that Artist does not knowingly employ any person in connection with the contracted services who does not have the legal right or authorization under federal law to work in the United States as defined in 8 U.S. C. § 1324a(h)(3). Artist shall attach to the affidavit documentation sufficient to establish Artist's enrollment and participation in an electronic verification of work program operated by the United States Department of Homeland Security (E-Verify) or an equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, under the Immigration Reform and Control Act of 1986. Artist may obtain additional information about E-Verify and enroll at <https://www.e-verify.gov/>. For those Artists enrolled in E-Verify, the first and last pages of the E-Verify Memorandum of Understanding that Artist will obtain upon successfully enrolling in the program shall constitute sufficient documentation for purposes of complying with this Section. Artist shall submit affidavit and attachments to City prior to execution of the contract, or at any point during the term of the contract if requested by City.

Sec. 46. Missouri Sales Tax Exemption. Pursuant to Section 144.062, RSMo, City is a Missouri exempt entity and tangible personal property to be incorporated or consumed in the construction of this Project may be purchased without sales tax. City shall furnish Artist a Missouri Project Exemption Certificate for Sales Tax at the time of issuance of the Notice to Proceed.

Sec. 47. Contract Authorization. Any contract for an amount over \$400,000.00 requires City Council approval.

Sec. 48. Effectiveness; Date. This contract will become effective when City's Director of Finance has signed it. The date this contract is signed by City's Director of Finance will be deemed the date of this contract.

Sec. 49. Annual Appropriation of Funds.

- A. Multi-year term supply and service contracts and leases and the exercise of options to renew term contracts are subject to annual appropriation of funds by the City Council. Payments made under term contracts and leases are considered items of current expense. Purchase orders are funded when issued, therefore are current expense items and are not subject to any subsequent appropriation of funds.

- B. In the event sufficient funds are not appropriated for the payment of lease payments or anticipated term contract payments required to be paid in the next occurring lease or contract term and if no funds are legally available from other sources, the lease or contract may be terminated at the end of the original term or renewal term and the CITY shall not be obligated to make further payments beyond the then current original or renewal term. The CITY will provide notice of its inability to continue the lease or contract at such time as the Manager of Procurement Services is aware of the non-appropriation of funds; however, failure to notify does not renew the term of lease or contract. If a lease is cancelled, the events of default will occur as described in the lease and/or the section titled TERMINATION FOR DEFAULT. The CITY has no monetary obligations in event of termination or reduction of a term contract since such contracts represent estimated quantities and are not funded as a contract, but only to the extent of purchase orders issued.

THIS AGREEMENT CONTAINS INDEMNIFICATION PROVISIONS

ARTIST

I hereby certify that I have the authority to execute

this document on behalf of ARTIST

Contractor: _____

By: _____

Title: _____

Date: _____

APPROVED AS TO FORM

Assistant City Attorney (Date)

KANSAS CITY, MISSOURI

By: _____

Title: _____

Date: _____

ATTACHMENT A- SCOPE OF SERVICES
KCI Art Project- Development of “Cloud Gazing”

A. Project Understanding

Artist has been selected by the General Services Department of the City of Kansas City and the Kansas City Aviation (KCAD) Department to develop the work of art “Cloud Gazing” for the Connector area in the KCI New Single Terminal and Parking project in accordance with the attached proposal, while allowing for design refinements due to feedback from the KCI New Single Terminal and Parking project team and authorities having jurisdiction including, but not limited to, engineering needs and compliance with building and safety codes.

1. City will provide technical support services, as reasonably requested by the Artist, in order to permit the Artist to prepare and submit the Working Drawings.
 - a. The City shall use its best efforts to facilitate the work of the Artist and to assist the Artist, if necessary, in connection with the Artist’s services.

B. Scope of Services

1. Preliminary Phase, Design and Coordination
 - a. Artist will work with the KCI New Single Terminal and Parking Design Team to determine the specific location of the Work and prepare and submit detailed working drawings and plans and specifications, that may include but is not limited to foundation plans, connection details, special installation details, lighting plans, calculations of foundation design, calculations of structural design, specifications which clearly outline any special materials or installation methods required (collectively “Working Drawings”) for fabrication and installation of the Work for approval by the KCMO Municipal Art Commission.
 - b. Artist shall provide detailed Working Drawings and Plans and Specifications to KCAD Including but not limited to:
 - (1) Sprinkler coverage analysis may be required and may need to be provided by artist.
 - (2) Structural loading and construction documents need to be submitted for review.
 - (3) Artist may need to submit information on transparency levels for lighting evaluation.
 - c. Artist shall attend meetings with City and design team for Art approvals and coordination.
 - d. Artist will not proceed with the Work until the City has approved the Site and Plans and Specifications and issued written authorization to proceed.
 - e. Work will be completed as set out in **Attachment B – Schedule of Performance**.
2. Fabrication
 - a. Artist shall fabricate the Work in accordance with the approved proposal.
 - b. City shall have the right to inspect the Work at reasonable times during the fabrication at City’s expense

3. Shipping and Delivery

- a. Artist shall notify the City for delivery and final preparation of the site for installation of the Work.
- b. Artist shall oversee the transportation of all components of the Work to KCI New Single Terminal and Parking project.

4. Installation and Final Acceptance

- a. Artist &/or Artists team shall comply with all safety protocols and security access requirements. Completing on site Safety Training will be required.
- b. Installation and maintenance details to be submitted to The City by Artist.
- c. Artist shall install the Work. Artist will be responsible for providing any installation equipment (i.e. lifts, scaffolding, etc.) required to install the art and supervise any installation assistance.
- d. Artist shall advise, consult, and inspect the completed installation of the Work at the site to ensure that the installation is in conformance with the proposal.
- e. The Artist will provide information for a plaque that the City will have fabricated and installed on site as specified by the KCMO One Percent for Art program.
- f. The Artist is responsible for contracting with a photographer to document the Work and will provide hi-resolution, print quality digital photographs to the Public Art Administrator for use in accordance with the Artist's copyright in Section 10 of this contract.

5. Final Acceptance.

- a. The Artist will advise City in writing when all services required under **Attachment A - Scope of Services**, have been completed. City will make a final inspection with the Artist and will notify the Artist in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. Artist shall immediately take such measures as are necessary to complete such work or remedy such deficiencies.
- b. Prior to final acceptance, the Artist will provide City with a description of the methods of cleaning, preserving and maintaining the Work.
- c. City will notify the Artist of its final acceptance of the Work. Final acceptance shall be effective as of the date City's notification of final acceptance.
- d. Artist will guarantee to make good, at its own expense and in accordance with the instructions of City, any and all faulty or defective material or workmanship which may appear in the Artist's work for a period of one (1) year from the date of final acceptance.

ATTACHMENT B- SCHEDULE OF PERFORMANCE

KCI Art Project- Development of "Cloud Gazing"

Schedule of Performance. The services required of the Artist as set forth in this contract will be completed in accordance with the schedule for completion of the Work as outlined by the project schedule, provided by the design/build team and approved in writing by City, but the time limits may be extended or modified by written agreement between the Artist and City.

- A. Design and Coordination
 - 1. Artist shall complete City paperwork, licenses, insurances and required documents as outlined in the Contract. (30 days)
 - 2. Artist shall complete the Work per the Production Schedule in Section E below.
 - 3. Artist shall provide detailed Working Drawings and Plans and Specifications to City. (60 days)
 - 4. Attend meetings with City and design team for Art approvals and coordination. (monthly)
- B. Fabrication
 - 1. Fabricate the Art in accordance with the proposal. See Section E below.
 - 2. Attend monthly check-in meetings with City and design team for fabrication milestones.
- C. Shipping and Delivery
 - 1. Artist shall notify City in writing when the Work is complete and ready to deliver and install.
- D. Installation: to begin October 2022, See Section E below.
 - 1. Artist &/or Artists team shall comply with all safety protocols and security access requirements and attend on-site safety training as required prior to installation.
 - 2. Installation and maintenance details to be submitted to The City by Artist.
 - 3. City agrees to grant reasonable extensions of time to the Artist in the event that there is a delay caused by conditions beyond the Artist's control or Acts of God render timely performance of the Artist's services impossible. Failure to fulfill contractual obligations due to conditions beyond the Artist's reasonable control will not be considered a breach of contract; but the obligations will be suspended only for the duration of the conditions.
 - 4. City will notify Artist of final acceptance.
 - 5. Final Close-Out and Final Payment
 - a. Within thirty (30) days of final acceptance of the Work, Artist shall provide City with a description of the methods of cleaning, preserving and maintaining the Work.
 - b. Upon acceptance of preservation submittal by City, Artist shall submit final payment application invoice.
 - 6. Inauguration/Dedication
 - a. The Artist will be available at a mutually agreed to time for the inauguration or dedication ceremonies of the work, if any.
- E. Production Schedule
 - 1. August 2021 Agreement execution: contract signed.
 - 2. August 2021 through Dec 2022: Artist will attend monthly (virtual) check-in meetings with design team, stakeholders and KCMO City Administrator to track project progress.
 - 3. Summer/Fall 2021: KCI site-visit, meet with design team (*additional site visits to be scheduled as needed*)
 - 4. Aug-Sept 2021; Artist to further develop details, working drawings, lighting design, material specifications, etc. for final design of art piece.
 - 5. Sept-Oct 2021: Artist to finalize and submit artwork details, and resolve stakeholder comments. Final design approval to proceed with fabrication of artwork.
 - 6. Oct-November 2021 hanging connection components fabricated & installed prior to ceiling close in, Connector area. (see additional dates below in 6a,6b,6c,6d)
 - a. June 2021: Project Electrical Rough-In complete

- b. October 2021: Sprinkler and lighting final installation
- c. January 2022: Flooring installation completed
- 7. Fall-Winter 2022: Artwork fabrication complete. Packing and shipping.
- 8. Delivery of artwork to site by October 2022.
- 9. Artist on site October/November 2022 for artwork installation with Installation Team.
- 10. December 2022: Last day of install, final walk through with City of Kansas City, Mo. representatives for final approval.
- 11. March 2023: New Single Terminal and Parking at KCI Opens

Inter-Departmental Communication

Date: August 10, 2021

To: Mayor Quinton Lucas; Chair: Transportation, Infrastructure & Operations Committee

From: Andrea Dorch; Director; Human Relations Department

Subject: Docket Memo #: 210643

CONTRACTOR: SOFTlab, Inc.
Address: 34 W. 27th St.
New York, NY 10001
Contract # EV2879 – Art Purchase Contract for “Cloud Gazing”
Contract Amount: \$325,000.00
MBE Goal: 0%
WBE Goal: 0%

MBE SUBCONTRACTORS:
None

WBE SUBCONTRACTORS:
None

Comments:
This project is under the One Percent for Art program for the New Single Terminal project at KCI. No MBE/WBE goals were established for the Art Purchase contracts.

GENERAL

Ordinance Fact Sheet

210643

Ordinance Number

Brief Title	Approval Deadline	Reason
One Percent for Art project at KCI New Single Terminal - "Cloud Gazing"	Aug-21	Per Ordinance 60321 1% of verticle construction costs have been set aside for adornment

Details

Reason for Legislation

Per Ordinance 60321, 1% of verticle co nstruction costs have been set aside for adornment

Discussion

The Municipal Arts Commission met on June 4, 2021, and voted unanimously to approve the artist's proposal

Sponsor	Councilwoman Katheryn Shields
Programs, Departments, or Groups Affected	Aviation, General Services
Applicants / Proponents	Applicant City Department General Services Other
Opponents	Groups or Individuals Basis of opposition
Staff Recommendation	<input checked="" type="checkbox"/> For <input type="checkbox"/> Against Reason Against
Board or Commission Recommendation	By <input type="checkbox"/> For <input type="checkbox"/> Against <input type="checkbox"/> No action taken <input type="checkbox"/> For, with revisions or conditions (see details column for conditions)
Council Committee Actions	<input type="checkbox"/> Do pass <input type="checkbox"/> Committee Sub. <input type="checkbox"/> Without Recommendation <input type="checkbox"/> Hold <input type="checkbox"/> Do not pass

(Continued on reverse side)

Details

Is It Good For The Children?

Children will enjoy the bright colors and visual effects of this artwork

How will this contribute to a sustainable Kansas City?

This work of art will have a lifespan as long as the KCI new single terminal or longer.

Policy/Program Impact

Policy or Program Change	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes
Operational Impact Assessment	

Finances

Cost & Revenue Projections -- Including Indirect Costs	\$325,000.00
Financial Impact	
Fund Source (s) and Appropriation Account Codes	8561-627270-B-62210544

Fact Sheet Prepared by:

Kitty Steffens

Date:

8/10/2021

Reviewed by:

Date:

LEGISLATIVE FISCAL NOTE	LEGISLATION NUMBER:	210643
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LEGISLATION IN BRIEF:

Authorizing the Manager of Procurement Services to execute a \$325,000.00 Art Purchase Contract with SOFTlab Inc. for the acquisition of the sculptural work "Cloud Gazing" through the One Percent for Art Program at the KCI New Single Terminal and Parking project.

What is the purpose of this legislation? OPERATIONAL

For the purpose of authorizing expenditures new or planned to conduct municipal services

Does this legislation spend money? YES Yes/No
See Sections 01, 02 and 03 for sources of funding

Does this legislation estimate new Revenues? NO Yes/No
 0

Does this Legislation Increase Appropriations? NO Yes/No

Are costs associated with this legislation ongoing (Yes)? Or one-time (No) YES Yes/No
See Section 04 for five years of ongoing costs (Operational and Maintenance)

Section 00: Notes:

Estimated lifespan of the project is 50 years with annual operating and maintenance costs of \$5,000/year. These costs are represented in Section 04. O&M costs are not reflected in the current budget.

Five years of operational costs for ongoing programs should be included in Section 04 below.

FINANCIAL IMPACT OF LEGISLATION

Section 01: If applicable, where are funds appropriated in the current budget?

FUND	DEPTID	ACCOUNT	PROJECT	FY 21-22 BUD	FY 22-23 EST
8561	627270	B	62210544	\$ 325,000.00	

Section 02: If applicable, where will new revenues be estimated?

FUND	DEPTID	ACCOUNT	PROJECT	FY 21-22 BUD	FY 22-23 EST

Section 03: If applicable, where will appropriations be increased?

FUND	DEPTID	ACCOUNT	PROJECT	FY 21-22 BUD	FY 22-23 EST

NET IMPACT ON OPERATIONAL BUDGET RESERVE STATUS:

	\$ -	\$ -
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SECTION 04: FIVE-YEAR FISCAL IMPACT (Direct and indirect)

FUND	FUND NAME	FY 21-22	FY 22-23	FY 23-24	FY 24-25	FY 25-26	FY 26-27	All Outyears
	TOTAL REV	-	-	-	-	-	-	-

FUND	FUND NAME	FY 21-22	FY 22-23	FY 23-24	FY 24-25	FY 25-26	FY 26-27	All Outyears
8561	Airport Improvement	\$ 325,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 225,000.00
	TOTAL EXP	\$ 325,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 225,000.00

NET Per-YEAR IMPACT \$ (325,000.00) \$ (5,000.00) \$ (5,000.00) \$ (5,000.00) \$ (5,000.00) \$ (5,000.00) \$ (225,000.00)

NET IMPACT (SIX YEARS) **(575,000.00)**

REVIEWED BY Kitty Steffens, OMB DATE 8/10/2021



Legislation Text

File #: 210644, Version: 1

ORDINANCE NO. 210644

Authorizing the Manager of Procurement Services to execute a \$192,000.00 Art Purchase Contract with John Balistreri for the acquisition of the sculptural work “Wings” through the One Percent for Art Program at the KCI New Single Terminal and Parking project.

WHEREAS, the Municipal Arts Commission met on June 4, 2021, and voted unanimously to approve the artist’s proposal; NOW, THEREFORE,

BE IT ORDAINED BY THE COUNCIL OF KANSAS CITY:

Section 1. That the Manager of Procurement Services is authorized to execute a \$192,000.00 Art Purchase Contract with John Balistreri for the acquisition of “Wings” for the KCI New Single Terminal and Parking project. A copy of the contract, in substantial form, is on file with the Manager of Procurement Services.

Section 2. That the sum of \$192,000.00 has been previously appropriated to Account No. 22-3090-077700-619080-07A21000.

I hereby certify that there is a balance, otherwise unencumbered, to the credit of the appropriation to which the foregoing expenditure is to be charged, and a cash balance, otherwise unencumbered, in the treasury, to the credit of the fund from which payment is to be made, each sufficient to meet the obligation hereby incurred.

Tammy Queen
Director of Finance

Approved as to form and legality:

James M. Brady
Assistant City Attorney

ART PURCHASE CONTRACT

GENERAL SERVICES DEPARTMENT

EV2847- KCI Art Project- Development of “Wings”

This art purchase contract is between KANSAS CITY, MISSOURI, a constitutionally chartered municipal corporation (“City”), and John A. Balistreri (“Artist”). City and Artist agree as follows:

In consideration of the payments and mutual agreements contained in this contract, City and Artist agree as follows:

Sec. 1. Services to be Performed. Artist shall perform the following services in connection with the Artist’s work (the “Work”) as set forth in Attachment A:

- A. Scope of Services - **Attachment A**
- B. Schedule of Performance – **Attachment B**
- C. Submit all documents, including plans, design drawings, specifications, reports, maps, models and renderings in the form requested by City. A list with the specific requirements is included in **Attachment A – Scope of Services**.
- D. City shall have the right to inspect and review the Work being done and to consult with Artist at any reasonable time. Meetings will be held at the request of City or Artist.
- E. If it is determined to be in the best interest of the Work, Artist shall replace the project manager or any other employee of the Artist, Subcontractors, Suppliers or other persons or organizations performing or furnishing any of the Work on the project upon written request by City.

Sec. 2. Responsibilities of City.

- A. City will conduct reviews of plans and respond to Artist with comments and/or approval in the times specified in the approved schedule.
- B. City will display the Artist’s name, copyright notice, title, and date of the Work near or on the Work.
- C. City recognizes that maintenance of the Work on a regular basis is essential to the integrity of the Work. City, to the extent allowed by law and subject to appropriation of funds, will maintain and protect the Work against the ravages of time, vandalism and the elements, taking into account the instructions of the Artist set forth when the Art is completed and installed.
- D. Repairs and Restoration.
 - 1. City will have the right to determine, after consultation with the Artist or a professional familiar with art conservation, when and if repairs and restorations to the Work will be made. During the Artist’s lifetime, the Artist will have the right to approve all repairs and restorations; provided however, that the Artist shall not unreasonably withhold approval for any repair or restoration of the Work. If the Artist unreasonably fails to approve any repair or restoration, City shall have the right to make such repair or restoration. To the extent practical, the Artist, during the Artist’s lifetime, will be given the opportunity to make or personally supervise significant repairs and restorations.
 - 2. All repairs and restorations will be made in accordance with recognized principles of conservation.
- E. Alterations of the Work or of the Work site. City agrees:
 - 1. Not to intentionally damage, alter, modify or change the Work without written approval of the Artist.

2. To notify the Artist of any proposed alteration of the site that would affect the intended character and appearance of the Work and will consult with the Artist in the planning and execution of any site alteration and will make a reasonable effort to maintain the integrity of the Work.
3. Not to remove the Work from public display or destroy the work for a period of fifteen (15) years from final acceptance.
4. In the event the City desires to remove the Work from the site after fifteen (15) years, and the removal would result in the destruction, distortion, mutilation or other modification of the Work, City will give the Artist notice as provided herein of the City's intended action. The Artist has 90 days after the mailing of such notice either to remove the Work or to pay for its removal. If the Work is removed at the expense of the Artist, title to the Work shall be deemed to be in the Artist. If the Artist fails to remove the Work within the 90-day period, City may proceed to remove the Work with no further liability to Artist.
5. Not to intentionally use the Work in any manner which would reflect discredit on the Artist's name or reputation as an Artist or which would violate the spirit of the Work.

Sec. 3. Term of Contract.

- A. Contract shall start upon executed signatures by all parties. This executed contract will serve as the Notice to Proceed (NTP). The contract shall expire on March 31, 2023. A contract amendment will be needed to extend the expiration date, if applicable.

Sec. 4. Compensation and Reimbursables.

- A. The maximum amount that City shall pay Artist under this contract is \$192,000. City is not liable for any obligation incurred by Artist except as approved under the provisions of this contract.

Sec. 5. Method of Payment.

- A. Method of Payment. Upon completion of each task set forth below Artist shall invoice City, stating completion of the task and all actual reasonable expenses incurred and allowed under this contract and the amount due. City, upon approving the invoice, shall remit payment to Artist in accordance with the following schedule:
 1. \$24,000 upon execution of this contract;
 2. \$72,000 upon approval of the final design concept and issuance of NTP;
 3. \$72,000 upon certification by the Artist that fabrication of the Work is complete;
 4. \$16,800 upon delivery and installation of the Work to the site; and
 5. \$7,200 within thirty (30) days following final acceptance of the Work.
- B. Condition Precedent to Payment.
 1. Artist shall submit all invoices in a form provided by the City.
 2. It shall be a condition precedent to payment of any invoice from Artist that Artist is in compliance with, and not in breach or default of, all terms, covenants and conditions of this contract. If damages are sustained by City as a result of breach or default by Artist, City may withhold payment(s) to Artist for the purpose of set off until such time as the exact amount of damages due City from Artist may be determined.

3. No request for payment will be processed unless the request is in proper form, correctly computed, and is approved as payable under the contract. City is not liable for any obligation incurred by Artist except as approved under the provisions of this contract.
4. The Work shall be developed, fabricated and installed without further compensation than that provided for in this contract.

Sec. 6. Warranties of Title. The Artist represents and warrants that:

1. The Work is solely the result of the artistic effort of Artist;
2. The Work is unique and original and does not infringe upon any copyright;
3. That the Work, or a duplicate has not been accepted for sale elsewhere;
4. The Work is free and clear of any liens from any source whatsoever; and
5. Prior to final payment, Artist will furnish City with notarized statements from the fabricator, if applicable, and all other suppliers of materials used in the Work that all monies due have been paid.

Sec. 7. Notices. All notices required by this contract shall be in writing and sent to the following:

City:

General Services Department
Darrell Everette, Acting Manager of Procurement Services
414 E 12th St, 1st Floor
Kansas City, MO 64106
Phone: (816) 513-0798
E-mail address: darrell.everette@kcmo.org

General Services Department
James Martin, Public Art Administrator
414 E 12th St, 17th Floor
Kansas City, MO 64106
Phone: (816) 315-0504
E-mail address: james.martin@kcmo.org

Artist:

John A. Balistreri
11 Valleyview Dr
Bowling Green, OH 43402
419-308-5774
balistr@bgsu.edu

All notices are effective (a) when delivered in person, (b) upon confirmation of receipt when transmitted by facsimile transmission or by electronic mail, (c) upon receipt after dispatch by registered or certified mail, postage prepaid, (d) on the next business day if transmitted by overnight courier (with confirmation of delivery), or (e) three (3) business days after the date of mailing, whichever is earlier.

Sec. 8. Risk of Loss. The risk of loss or damage to the Work shall be borne by the Artist and the Artist shall take such measures as are necessary to protect the Work from loss or damage until its final acceptance by City.

Sec. 9. Title and Ownership. Upon completion and installation of the Work and upon final acceptance and final payment to the Artist by City, title to the Work shall pass to the City. Consistent with Section 2. E.4., and in the case of removal, the Artist is aware of and hereby specifically waives all rights under the Artists Visual Rights Act of 1990, 17 U.S.C. Sections 106A and 1133, or as subsequently amended, with regard to the Work.

Sec. 10. Copyright.

- A. The Artist shall retain the ownership of copyrights in and to the Work, plans, drawings, schematics, design studies and models prepared by the Artist in connection with this commission, except as limited by this paragraph. The Artist agrees that it will not make any additional exact duplicates or three-dimensional reproductions of the exact design dimensions and materials of the Work nor grant others permission to do so, except with the written permission of City.
- B. The Artist grants to City a license to use photographic reproductions of the Work in advertising brochures, media publicity, and promotion of its activities, catalogues, site guides, books and publications for noncommercial purposes. If reproductions by either party where the Work is the central focus of the reproductions are made, there shall be included credits listing the Artist as the creator of the Work and owner of its copyright, and City as the party which owns and commissioned the Work, and they agree to use their best efforts to secure credits in any reproduction or public showing of a reproduction or public show of a reproduction by other parties.

Sec. 11. No Gratuities and Kickbacks. The provisions of City's Code Section 3-303, prohibiting gratuities to city employees, and kickbacks by subcontractors, and Code Sections 3-307, imposing sanctions for violations, shall apply to this contract.

- A. **Gratuities.** Artist certifies that it has not and will not offer or give any city employee or officer a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation or preparation of any part of a contract requirement or purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any contract or subcontract, or to any solicitation or proposal therefore.
- B. **Kickbacks.** Artist certifies that no payment, gratuity, offer of employment or benefit has been or will be made by or on behalf of or solicited from a subcontractor under a contract to Artist or higher tier subcontractor or any person associated therewith as an inducement for the award of a subcontract or order.

Sec. 12. Prohibition Against Contingent Fees. The provisions of City's Code Section 3-305 prohibiting the retention of persons to solicit contracts for contingent fees, and Sections 3-307, imposing sanctions for violations, shall apply to this contract. Artist certifies that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by Artist for the purpose of securing business. For breach or violation of this warranty, City shall have the right to annul this contract without liability or, at its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

Sec. 13. Subcontracting. City authorizes Artist to subcontract with the individuals, firms or entities identified in **Attachment D**, Subcontractors List. **Attachment D**, and the additional conditions stated therein, shall be incorporated into this contract. Artist shall not subcontract, assign or transfer any part or all of Artist's obligations or interests without City's prior written approval.

Sec. 14. Attachments. The following documents are attachments to this contract and are attached hereto and incorporated herein by this reference:

- Attachment A – Scope of Services**
- Attachment B – Schedule of Performance**
- Attachment C – Non-Construction Subcontractor Listing**
- Attachment D – Prevailing Wage Requirements**

Annual Wage Order No. 27
County Clay
Work Type:
State – Building
Federal – Building

- Division of Labor Standards Rules & Regulations
- 01290.03 Certified Payroll Instructions
- 01290.04 Certified Payroll Example
- 01290.05-06 Certified Payroll Report
- 01290.07 Payroll Certification
- 01290.08 Wage Rate Verification Questionnaire
- 01290.11 Daily Labor Force Report
- 01290.14 Contractor Affidavit for Final Payment

- Attachment E – 00560 Missouri Project Exemption Certificate**
 - 00560.01 Kansas City Missouri Tax Exempt Certificate
- Attachment F – 00620 Insurance Certificate**

Sec. 15. Design Standards.

Except as otherwise directed in writing by City, Artist shall use all applicable design standards required by federal, state, local laws or codes or such standards recognized and used in the industry in the performance of services under this contract. In the development of any design under this contract, Artist shall comply with all provisions of the Americans with Disabilities Act, Public Law 101-336 as well as 28 CFR parts 35 and 36 and 29 CFR part 1630, as applicable and as amended from time to time, and shall comply with the provisions of the Missouri Domestic Product Procurement Act, Section 34.350 RSMo. Artist shall notify and explain to City any applicable exceptions under these acts. Artist shall endorse all plans and specifications, or estimates, and engineering data furnished under this contract. All subcontractors as appropriate shall endorse their respective plans and specifications.

Sec. 16. General Indemnification.

- A. For purposes of this Section 16 only, the following terms shall have the meanings listed:
 - 1. **Claims** means all claims, damages, liability, losses, costs and expenses, court costs and reasonable attorneys’ fees, including attorneys’ fees incurred by City in the enforcement of this indemnity obligation.
 - 2. **Artist’s Agents** means Artist’s officers, employees, subcontractors, su-bconsultants, successors, assigns, invitees, and other agents.
 - 3. **City** means City, its Program Manager/Construction Advisor, if any, and their respective agents, officials, officers and employees.

- B. Artists' obligations under this section with respect to indemnification for acts or omissions, including negligence, of City shall be limited to the coverage and limits of General (not Professional) Liability insurance that Artist is required to procure and maintain under this contract. Artist affirms that it has had the opportunity to recover the costs of the liability insurance required in this contract in its contract price.
- C. Artist shall defend, indemnify and hold harmless City from and against all Claims arising out of or resulting from all acts or omissions in connection with this contract caused in whole or in part by Artist or Artist's Agents, regardless of whether or not caused in part by an act or omission, including negligence, of City. Artist is not obligated under this section to indemnify City for the sole negligence of City.
- D. Nothing in this section shall apply to indemnification for professional negligence which is specified in a separate provision of this contract.

Sec. 17. Indemnification for Professional Negligence. Artist shall indemnify, and hold harmless City and any of its agencies, officials, officers, or employees from and against all claims, damages, liability, losses, costs, and expenses, including court costs and reasonable attorneys' fees, to the extent caused by any negligent acts, errors, or omissions of the Artist, its officers, employees, subconsultants, subcontractors, successors, assigns, invitees and other agents, in the performance of professional services under this contract. Artist is not obligated under this section to indemnify City for the negligent acts of City or any of its agencies, officials, officers, or employees.

Sec. 18. Insurance

- A. Artist shall procure and maintain in effect per the requirements below, insurance coverage not less than the types and amounts specified below. In the event that additional insurance, not specified herein, is required during the term of this contract, Artist shall supply such insurance at City's cost. Policies containing a Self-Insured Retention are unacceptable to City unless City approves in writing the Artist Self-Insured Retention.
 - 1. Commercial General Liability Insurance: with limits of \$1,000,000 per occurrence and \$2,000,000 aggregate, written on an "occurrence" basis. The policy shall be written or endorsed to include the following provisions:
 - a. Severability of Interests Coverage applying to Additional Insureds
 - b. Per Project Aggregate Liability Limit or, where not available, the aggregate limit shall be \$2,000,000.
 - c. No Contractual Liability Limitation Endorsement
 - d. Additional Insured Endorsement, ISO form CG20 10, or its equivalent
 - 2. Worker's Compensation Insurance: as required by statute, including Employers Liability with limits of:
 - a. Workers Compensation Statutory
 - b. Employers Liability
 - c. \$100,000 accident with limits of:
 - d. \$500,000 disease-policy limit
 - e. \$100,000 disease-each employee
 - 3. Commercial Automobile Liability Insurance at the execution of the contract and throughout the duration of the contract: with a limit of \$1,000,000 written on an "occurrence" basis, covering

owned, hired, and non-owned automobiles. If the Artist owns vehicles, coverage shall be provided on an “any auto” basis. If the Artist does not own any vehicles, coverage shall be provided on a “hired autos” and “nonowned autos” basis. The insurance will be written on a Commercial Business Auto form, or an acceptable equivalent, and will protect against claims arising out of the operation of motor vehicles, as to acts done in connection with the contract, by Artist.

4. If applicable, Professional Liability Insurance with limits Per Claim/Annual Aggregate of \$1,000,000.
- B. The Commercial General Liability Insurance specified above shall provide that City and its agencies, officials, officers, and employees, while acting within the scope of their authority, will be named as additional insureds for the services performed under this contract. Artist shall provide to City at execution of this contract a certificate of insurance showing all required endorsements and additional insureds. The certificates of insurance will contain a provision stating that should any of the policies described in the certificate be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.
- C. If Artist provides Commercial General Liability Insurance or Professional Liability Insurance through a Subcontractor, Artist shall contractually require the Subcontractor to include City as additional insured in the Subcontractor’s policy. Artist shall deliver to City, prior to the start of any work at the project site, properly completed certificates of insurance or other evidence that the required insurance is in full force and effect, in a form acceptable to City. Artist shall contractually require its Subcontractor to defend, indemnify and hold harmless City from and against all claims arising out of or resulting from all acts or omissions in connection with this Contract caused in whole or in part by Subcontractor or Subcontractor’s agents, regardless of whether or not caused in part by any act or omission, including negligence, of City. Artist must provide evidence that this requirement has been complied in accordance with the provisions of this contract.
- D. All insurance coverage must be written by companies that have an A.M. Best’s rating of “A-V” or better, and are licensed or approved by the State of Missouri to do business in Missouri.
- E. Artist’s failure to maintain the required insurance coverage will not relieve Artist of its contractual obligation to indemnify City pursuant to Sections 16 and 17. If the coverage afforded is cancelled or changed or its renewal is refused, Artist shall give at least thirty (30) days prior written notice to City. In the event of Artist’s failure to maintain the required insurance in effect, City may order Artist to immediately stop work, and upon ten (10) days’ notice and an opportunity to cure, may pursue its remedies for breach of this contract as provided for herein and by law.
- F. In no event shall the language in this section constitute or be construed as a waiver or limitation of City’s rights or defenses with regard to sovereign immunity, governmental immunity, or other official immunities and protections as provided by the federal and state constitutions or by law.

Sec. 19. Defaults and Remedies.

- A. Artist shall be in default of this contract upon the happening of any of the following events:
 1. If Artist fails to comply with any of the provisions required of Artist under this contract, and such failure continues for a period of ten (10) days after written notice thereof is given to Artist by City; or
 2. If, by operation of law or otherwise, the right, title, or interest of Artist in this contract is transferred to, passes to, or devolves upon any other person, firm or corporation without written consent of City; or

3. Upon the levy of any attachment or execution of any process of a court of competent jurisdiction which does or will interfere with Artist's performance under this contract, and which attachment, execution or other process of such court is not enjoined, vacated, dismissed, or set aside within a period of thirty (30) days; or
 4. Upon the suspension, revocation or termination of any power, license, permit, or authority that has the effect of preventing Artist from performing under this contract.
- B. Upon the occurrence of any one or more of the events as set forth in sub-paragraphs A1 through A4 of this Section, or upon any other default or breach of this contract, City may, at City's option, exercise concurrently or successively, any one or more of the following rights and remedies without waiving such default:
1. Suspend City's performance withhold payment or invoke any other legal or equitable remedy after giving Artist notice and opportunity to correct such default or breach.
 2. Interplead funds to a court or pay any sum required to be paid by Artist to parties other than City, and which Artist has incurred in connection with this contract and failed to pay. Any amount so paid in good faith by City, together with interest thereon at the maximum rate provided by law from the date of such payment, and all expenses connected therewith shall be repaid by Artist to City on demand; or
 3. Enjoin any breach or threatened breach by Artist of any covenants, agreements, terms, provisions or conditions hereof; or
 4. Bring suit for the performance of any covenant devolving upon Artist for performance or damage thereof, all without terminating this contract; or
 5. Terminate this contract upon ten (10) days written notice to Artist, specifying date of termination.

Sec. 20. Rights and Remedies Cumulative and Not Exclusive. All rights and remedies granted to City herein and any other rights and remedies which City may have at law and in equity are hereby declared to be cumulative and not exclusive, and the fact that City may have exercised any remedy without terminating this contract shall not impair City's rights thereafter to terminate or to exercise any other remedy herein granted or to which City may be otherwise entitled.

Sec. 21. Americans with Disabilities Act. Artist agrees to comply, during the course of this contract, with all provisions of the Americans with Disabilities Act, Public Law 101-336 as well as 28 CFR parts 35 and 36 and 29 CFR part 1630, as applicable and as amended from time to time.

Sec. 22. Merger. This contract, including any referenced Attachments, constitutes the entire agreement between City and Artist with respect to this subject matter, and supersedes all prior agreements between City and Artist with respect to this subject matter, and any such prior agreement shall be void and of no further force or effect as of the date of this contract.

Sec. 23. Modification.

- A. Unless stated otherwise in this contract, no provision of this contract may be waived, modified or amended except by written amendment signed by City and Artist.
- B. No act, conversation or communication with any officer, agent or employee of City, either before or after the execution of this contract, shall affect or modify any term or terminology of this contract and any such act, conversation or communication shall not be binding upon City or Artist.

Sec. 24. Binding Effect. This Contract shall be binding upon City and Artist and their successors in interest.

Sec. 25. Representations and Warranties. City and Artist each certify that it has the power and authority to execute and deliver this contract, to use the funds as contemplated hereby and to perform this contract in accordance with its terms.

Sec. 26. Prevailing Wage.

A. Prevailing Wage.

1. Artist shall comply and require its Subcontractors to comply with;
 - a. Sections 290.210 to 290.340, RSMo the State of Missouri Prevailing Wage Law (the “Law”); and
 - b. 8 CSR 30-3.010 to 8 CSR 30-3.060, the Prevailing Wage Law Rules (the “Rules”); and
 - c. the Annual Wage Order (Wage Order) issued by the State of Missouri’s Department of Labor and Industrial Relations; and
 - d. any applicable Annual Incremental Wage Increase (Wage Increase) to the Annual Wage Order.
2. The Law, Rules, Wage Order and any Wage Increase are incorporated into and made part hereof this Contract and shall be collectively referred to in this Section as the “Prevailing Wage Requirements.” In the event this Contract is renewed for an additional term, the Wage Order in effect as of the commencement date of the additional term, as amended by any applicable Wage Increase, shall be deemed incorporated herein and shall apply to and remain in effect for the duration of the additional term. The new Wage Order and any applicable Wage Increase shall govern notwithstanding the fact that the Wage Order being replaced might be physically attached to this Contract.
3. Artist shall pay and require its Subcontractors to pay to all workers performing work under this Contract not less than the prevailing hourly rate of wages for the class or type of work performed by the worker in accordance with the Law, Rules, Wage Order and any applicable Wage Increase. Artist shall take whatever steps are necessary to insure that the prevailing hourly wage rates are paid and that all workers for Artist and each of its Subcontractors are paid for the class or type of work performed by the worker in accordance with the Prevailing Wage Requirements.
4. Artist shall keep and require each of its Subcontractors engaged in the construction of public works in performance of the Contract to keep full and accurate records on City’s:
 - a. Keep and require each of its Subcontractors engaged in the construction of public works in performance of the Contract to keep full and accurate records on City’s “Daily Labor Force Report” Form indicating the worker’s name, occupational title or classification group and skill and the workers’ hours. City shall furnish blank copies of the Daily Labor Force Report Form to Artist for its use and for distribution to Subcontractors. Artist shall submit its and its Subcontractors Daily Labor Force Reports to City each day; and
 - b. Submit, and require each of its Subcontractors engaged in the construction of public works in performance of the Contract to submit, electronically, in a format prescribed by the City, Certified Payroll Report Information indicating the worker’s name, address, social security number, occupation(s), craft(s) of every worker employed in connection with the public work together with the number of hours worked by each worker and the actual wages paid in connection with the Project and other pertinent information as requested by the City; and
 - c. Submit, and require each of its Subcontractors engaged in the construction of public works in performance of the Contract to submit, electronically, in format prescribed by the City, a

Payroll Certification. The Payroll Certification must be signed by the employee or agent who pays or supervises the payment of the workers employed under the Contract for the Artist and each Subcontractor.

- d. The Daily Labor Force Report, documents used to compile information for the Certified Payroll Report, and Payroll Certification are collectively referred to in this Section as the "Records."
5. Artist shall make all of Artist's and Subcontractors' Records open to inspection by any authorized representatives of City and the Missouri Department of Labor and Industrial Relations at any reasonable time and as often as they may be necessary and such Records shall not be destroyed or removed from the State of Missouri for a period of one (1) year following the completion of the public work in connection with which the Records are made. Artist shall have its and its Subcontractors Certified Payroll Reports and Payroll Certifications available at the Artist's office and shall provide the Records to the City electronically at City's sole discretion. In addition, all Records shall be considered a public record and Artist shall provide the Records to the City in the format required by the City within three (3) working days of any request by City at the Artist's cost. City, in its sole discretion, may require Artist to send any of the Records directly to the person who requested the Record at Artist's expense.
6. Artist shall post and keep posted a clearly legible statement of all prevailing hourly wage rates to be paid to all workers employed by Artist and each of its Subcontractors in the performance of this Contract in a prominent and easily accessible place at the Site of the Work by all workers.
7. If the Contract Price exceeds \$250,000.00, Artist shall and shall require each Subcontractor engaged in any construction of public works to have its name, acceptable abbreviation or recognizable logo and the name of the city and state of the mailing address of the principal office of the company, on each motor vehicle and motorized self-propelled piece of equipment which is used in connection with the Project during the time the Artist or Subcontractor is engaged on the project. The sign shall be legible from a distance of twenty (20') feet, but the size of the lettering need not be larger than two (2") inches. In cases where equipment is leased or where affixing a legible sign to the equipment is impractical, the Artist may place a temporary stationary sign, with the information required pursuant to this section, at the main entrance of the Project in place of affixing the required information on the equipment so long as such sign is not in violation of any state or federal statute, rule or regulation. Motor vehicles which are required to have similar information affixed thereto pursuant to requirements of a regulatory agency of the state or federal government are exempt from the provisions of this subsection.
8. Artist must correct any errors in Artist's or any Subcontractors' Records, or Artist's or any Subcontractors' violations of the Law, Rules, Annual Wage Order and any Wage Increase within fourteen (14) calendar days after notice from City.
9. Artist shall and shall require its Subcontractors to cooperate with the City and the Department of Labor and Industrial Relations in the enforcement of this Section, the Law, Rules, Annual Wage Order and any Wage Increase. Artist shall and shall require its Subcontractors to permit City and the Department of Labor and Industrial Relations to interview any and all workers during working hours on the Project at Artist's sole cost and expense.
10. Artist shall file with City, upon completion of the Project and prior to final payment therefore, affidavits from Artist and each of its Subcontractors, stating that each has fully complied with the provisions and requirements of the Missouri Prevailing Wage Law. City shall not make final payment until the affidavits, in proper form and order, from Artist and each of its Subcontractors, are filed by Artist.

11. Artist shall forfeit as a statutory penalty to the City one hundred dollars (\$100.00) for each worker employed, for each calendar day, or portion thereof, such worker is paid less than the prevailing hourly rates for any work done under this Contract, by Artist or by any of Artist's Subcontractors. If Artist or any of its Subcontractors have violated any section(s) of 290.210 to 290.340, RSMo, in the course of the execution of the Contract, City shall when making payments to the Artist becoming due under this Contract, withhold and retain therefrom all sums and amounts due and owing as a result of any violation of sections 290.210 to 290.340, RSMo.

B. Prevailing Wage Damages. Artist acknowledges and agrees that, based on the experience of City, violations of the Missouri Prevailing Wage Act, whether by Artist or its Subcontractors, commonly result in additional costs to City. Artist agrees that additional costs to City for any particular violation are difficult to establish and include but are not limited to: costs of construction delays, additional work for City, additional interest expenses, investigations, and the cost of establishing and maintaining a special division working under the City Manager to monitor prevailing wage compliance.

1. In the event of the failure by Artist or any of its Subcontractors to pay wages as provided in the Missouri Prevailing Wage Act, City shall be entitled to deduct from the Contract Price, and shall retain as liquidated damages, one hundred dollars (\$100.00) per day, per worker who is paid less than the prevailing hourly rate of wages, to approximate the additional costs. The sum shall be deducted, paid or owed whether or not the Contract Times have expired.

2. City shall give written notice to Artist setting forth the workers who have been underpaid, the amount of the statutory penalty and the amount of the liquidated damages as provided for in this Subparagraph. Artist shall have fourteen (14) calendar days to respond, which time may be extended by City upon written request. If Artist fails to respond within the specified time, the City's original notice shall be deemed final. If Artist responds to City's notice, City will furnish Artist a final decision in writing within five (5) days of completing any investigation.

Sec. 27. Workforce. If Artist is required to pay prevailing wages for the work performed pursuant to this Contract, Artist agrees to comply with all requirements of City's Construction Employment Program as enacted in City's Code, Sections 3-501 through 3-527 and as hereinafter amended. Artist shall meet or exceed the construction employment goals unless the same shall have been waived in the manner provided by law. Artist's compliance with this provision is a material part of this Contract.

Sec. 28. Professional services certification. Code Section 2-83, prohibiting contracts with certain attorneys, architects, engineers and other professionals thereunder, shall apply to this contract. Artist certifies that it is not an architect, engineer, or other professional, exclusive of medical doctors or appraisers, who at the time of the issuance of this contract, serves as an expert witness for any litigation against City, and that it will not serve as an expert witness for any litigation against City during the term of this contract.

Sec. 29. Design Standards and Endorsement.

A. Except as otherwise directed in writing by City, Artist shall use all applicable design standards required by federal, state, local laws or codes or such standards recognized and used in the industry in the performance of services under this contract.

B. Artist shall endorse all plans and specifications, or estimates, and engineering data furnished under this contract if prepared by Artist. All subcontractors as appropriate shall endorse their respective plans and specifications, or estimates, and engineering data furnished for the project.

C. Artist shall monitor quality assurance for their design services and shall revise the design and plans at their own expense in case of error or oversight in design by Artist.

Sec. 30. Governing Law. This contract shall be construed and governed in accordance with the laws of the State of Missouri without giving effect to Missouri's choice of law provisions. City and Artist: (1) submit to the jurisdiction of the state and federal courts located in Jackson County, Missouri; and no other (2) waive any and all objections to jurisdiction and venue; and (3) will not raise forum non conveniens as an objection to the location of any litigation.

Sec. 31. Compliance with Laws. Artist shall comply with all federal, state and local laws, ordinances and regulations applicable to the work and this contract.

Sec. 32. Termination for Convenience.

- D. City may, at any time upon ten (10) days' notice to Artist specifying the effective date of termination, terminate this contract, in whole or in part. If this contract is terminated by City, City shall be liable only for payment for services rendered before the effective date of termination. Artist shall prepare an accounting of the services performed and money spent by Artist up to the effective date of termination and shall return to City and remaining sums within thirty (30) days of such date.
- E. If this contract is terminated prior to Artist's completion of services, all work or materials prepared or obtained by Artist pursuant to this contract shall become City's property.
- F. If this contract is terminated prior to Artist's completion of the services to be performed hereunder, Artist shall return to City any sums paid in advance by City for services that would otherwise have had to be rendered between the effective date of termination and the original ending date of the contract. Artist shall prepare an accounting of the services performed and money spent by Artist up to the effective date of termination and shall return to City any remaining sums within thirty (30) days of such date.

Sec. 33. Waiver. Waiver by City of any term, covenant, or condition hereof shall not operate as a waiver of any subsequent breach of the same or of any term, covenant or condition. No term, covenant, or condition of this contract can be waived except by written consent of City, and forbearance or indulgence by City in any regard whatsoever shall not constitute a waiver of same to be performed by Artist to which the same may apply and, until complete performance by Artist of the term, covenant or condition, City shall be entitled to invoke any remedy available to it under this contract or by law despite any such forbearance or indulgence.

Sec. 34. Acceptance. No payment made under this contract shall be proof of satisfactory performance of the contract, either wholly or in part, and no payment shall be construed as acceptance of deficient or unsatisfactory work.

Sec. 35. Modification. Unless stated otherwise in this contract, no provision of this contract may be waived, modified or amended except in writing signed by City.

Sec. 36. Headings; Construction of Contract. The headings of each section of this contract are for reference only. Unless the context of this contract clearly requires otherwise, all terms and words used herein, regardless of the number and gender in which used, shall be construed to include any other number, singular or plural, or any other gender, masculine, feminine or neuter, the same as if such words had been fully and properly written in that number or gender.

Sec. 37. Severability of Provisions. Except as specifically provided in this contract, all of the provisions of this contract shall be severable. In the event that any provision of this contract is found by a court of competent jurisdiction to be unconstitutional or unlawful, the remaining provisions of this contract shall be valid unless the court finds that the valid provisions of this contract are so essentially and inseparably connected with and so dependent upon the invalid provision(s) that it cannot be presumed that the parties to this contract could have included the valid provisions without the invalid provision(s); or unless the court finds that the valid provisions, standing alone, are incapable of being performed in accordance with the intentions of the parties.

Sec. 38. Records.

- G. For purposes of this section:
 - 1. "City" shall mean the City Auditor, the City's Internal Auditor, the City's Director of Human Relations, the City Manager, the City department administering this contract and their delegates and agents.
 - 2. "Record" shall mean any document, book, paper, photograph, map, sound recordings or other material, regardless of physical form or characteristics, made or received in connection with this contract and all contract amendments and renewals.
- H. Artist shall maintain and retain all Records for a term of five (5) years that shall begin after the expiration or termination of this contract and all contract amendments. City shall have a right to examine or audit all Records and Artist shall provide access to City of all Records upon ten (10) days written notice from City.

Sec. 39. Affirmative Action.

- I. If this Contract exceeds \$300,000.00 and Artist employs fifty (50) or more people, Artist shall comply with City's Affirmative Action requirements in accordance with the provisions of Chapter 3 of City's Code, the rules and regulations relating to those sections, and any additions or amendments thereto; in executing any Contract subject to said provisions, Artist warrants that it has an affirmative action program in place and will maintain the affirmation action program in place for the duration of the Contract. Artist shall not discriminate against any employee or applicant for employment because of race, color, sex, religion, national origin or ancestry, disability, sexual orientation, gender identity or age in a manner prohibited by Chapter 38 of City's Code. Artist shall:
 - 1. Submit, in print or electronic format, a copy of Artist's current certificate of compliance to the City's Human Relations Department (HRD) prior to receiving the first payment under the Contract, unless a copy has already been submitted to HRD at any point within the previous two calendar years. If, and only if, Artist does not possess a current certification of compliance, Artist shall submit, in print or electronic format, a copy of its affirmative action program to HRD prior to receiving the first payment under the Contract, unless a copy has already been submitted to HRD at any point within the previous two calendar years.
 - 2. Require any Subcontractor awarded a subcontract exceeding \$300,000.00 to affirm that Subcontractor has an affirmative action program in place and will maintain the affirmative action program in place for the duration of the subcontract.
 - 3. Obtain from any Subcontractor awarded a subcontract exceeding \$300,000.00 a copy of the Subcontractor's current certificate of compliance and tender a copy of the same, in print or electronic format, to HRD within thirty (30) days from the date the subcontract is executed. If, and only if, Subcontractor does not possess a current certificate of compliance, Artist shall obtain a copy of the Subcontractor's affirmative action program and tender a copy of the same, in print or electronic format, to HRD within thirty (30) days from the date the subcontract is executed.
- J. City has the right to take action as directed by City's Human Relations Department to enforce this provision. If Artist fails, refuses or neglects to comply with the provisions of Chapter 38 of City's Code, then such failure shall be deemed a total breach of this Contract and this Contract may be terminated, canceled or suspended, in whole or in part, and Artist may be declared ineligible for any further contracts funded by City for a period of one (1) year. This is a material term of this Contract.

Sec. 40. Tax Compliance. Artist shall provide proof of compliance with City's tax ordinances administered by the City's commissioner of revenue as a precondition to City making the first payment under this contract or any contract when the total contract amount exceeds \$160,000.00. If Artist performs work on a contract that is for a

term longer than one year, the Artist also shall submit to City proof of compliance with City's tax ordinances administered by City's commissioner of revenue as a condition precedent to City making final payment under the contract.

Sec. 41. Assignability or Subcontracting. Artist shall not subcontract, assign or transfer any part or all of Artist's obligations or interests without City's prior approval. If Artist shall subcontract, assign, or transfer any part of Artist's interests or obligations under this contract without the prior approval of City, it shall constitute a material breach of this contract.

Sec. 42. Conflicts of Interest. Artist certifies that no officer or employee of City has, or will have, a direct or indirect financial or personal interest in this contract, and that no officer or employee of City, or member of such officer's or employee's immediate family, either has negotiated, or has or will have an arrangement, concerning employment to perform services on behalf of Artist in this contract.

Sec. 43. Buy American Preference. It is the policy of City that any manufactured goods or commodities used or supplied in the performance of any City contract or any subcontract hereto shall be manufactured or produced in the United States whenever possible.

Sec. 44. Independent Contractor. Artist is an independent contractor and is not City's agent. Artist has no authority to take any action or execute any documents on behalf of City.

Sec. 45. Employee Eligibility Verification. If this contract exceeds five thousand dollars (\$5,000.00), Artist shall execute and submit an affidavit, in a form prescribed by City, affirming that Artist does not knowingly employ any person in connection with the contracted services who does not have the legal right or authorization under federal law to work in the United States as defined in 8 U.S. C. § 1324a(h)(3). Artist shall attach to the affidavit documentation sufficient to establish Artist's enrollment and participation in an electronic verification of work program operated by the United States Department of Homeland Security (E-Verify) or an equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, under the Immigration Reform and Control Act of 1986. Artist may obtain additional information about E-Verify and enroll at <https://www.e-verify.gov/>. For those Artists enrolled in E-Verify, the first and last pages of the E-Verify Memorandum of Understanding that Artist will obtain upon successfully enrolling in the program shall constitute sufficient documentation for purposes of complying with this Section. Artist shall submit affidavit and attachments to City prior to execution of the contract, or at any point during the term of the contract if requested by City.

Sec. 46. Missouri Sales Tax Exemption. Pursuant to Section 144.062, RSMo, City is a Missouri exempt entity and tangible personal property to be incorporated or consumed in the construction of this Project may be purchased without sales tax. City shall furnish Artist a Missouri Project Exemption Certificate for Sales Tax at the time of issuance of the Notice to Proceed.

Sec. 47. Contract Authorization. Any contract for an amount over \$400,000.00 requires City Council approval.

Sec. 48. Effectiveness; Date. This contract will become effective when City's Director of Finance has signed it. The date this contract is signed by City's Director of Finance will be deemed the date of this contract.

Sec. 49. Annual Appropriation of Funds.

- A. Multi-year term supply and service contracts and leases and the exercise of options to renew term contracts are subject to annual appropriation of funds by the City Council. Payments made under term contracts and leases are considered items of current expense. Purchase orders are funded when issued, therefore are current expense items and are not subject to any subsequent appropriation of funds.

- B. In the event sufficient funds are not appropriated for the payment of lease payments or anticipated term contract payments required to be paid in the next occurring lease or contract term and if no funds are legally available from other sources, the lease or contract may be terminated at the end of the original term or renewal term and the CITY shall not be obligated to make further payments beyond the then current original or renewal term. The CITY will provide notice of its inability to continue the lease or contract at such time as the Manager of Procurement Services is aware of the non-appropriation of funds; however, failure to notify does not renew the term of lease or contract. If a lease is cancelled, the events of default will occur as described in the lease and/or the section titled TERMINATION FOR DEFAULT. The CITY has no monetary obligations in event of termination or reduction of a term contract since such contracts represent estimated quantities and are not funded as a contract, but only to the extent of purchase orders issued.

THIS AGREEMENT CONTAINS INDEMNIFICATION PROVISIONS

ARTIST

I hereby certify that I have the authority to execute

this document on behalf of ARTIST

Contractor: _____

By: _____

Title: _____

Date: _____

APPROVED AS TO FORM

Assistant City Attorney (Date)

KANSAS CITY, MISSOURI

By: _____

Title: _____

Date: _____

ATTACHMENT A- SCOPE OF SERVICES

KCI Art Project- Development of “Wings”

A. Project Understanding

Artist has been selected by the General Services Department to develop the work of art “Wings” for the north end of the Check-In Hall area in the KCI New Single Terminal in accordance with the attached proposal, while allowing for design refinements due to feedback from the KCI New Single Terminal project team and authorities having jurisdiction including, but not limited to, engineering needs and compliance with building and safety codes.

1. City will provide technical support services, as reasonably requested by the Artist, in order to permit the Artist to prepare and submit the Working Drawings.
 - a. The City shall use its best efforts to facilitate the work of the Artist and to assist the Artist, if necessary, in connection with the Artist’s services.

B. Scope of Services

1. Preliminary Phase, Design and Coordination

a. Artist will work with the KCI New Single Terminal Design Team to determine the specific location of the Work and prepare and submit detailed working drawings and plans and specifications, including but not limited to foundation plans, connection details, special installation details, lighting plans, calculations of foundation design, calculations of structural design, specifications which clearly outline any special materials or installation methods required (collectively “Working Drawings”) for fabrication and installation of the Work for approval by the KCMO Municipal Art Commission.

b. Artist shall provide detailed Working Drawings and Plans and Specifications to KCAD Including but not limited to:

(1) Sprinkler coverage analysis may be required and may need to be provided by artist.

(2) Structural loading and construction documents need to be submitted for review.

c. Artist shall attend meetings with City and design team for Art approvals and coordination.

d. Artist will not proceed with the Work until the City has approved the Site and Plans and Specifications and issued written authorization to proceed.

e. Work will be completed as set out in **Attachment B – Schedule of Performance**.

2. Fabrication

a. Artist shall fabricate the Work in accordance with the approved proposal.

b. City shall have the right to inspect the Work at reasonable times during the fabrication at City’s expense

3. Shipping and Delivery

a. Artist shall notify the City for delivery and final preparation of the site for installation of the Work.

b. Artist shall oversee the transportation of all components of the Work to KCI New Single Terminal.

4. Installation and Final Acceptance

- a. Artist &/or Artists team shall comply with all safety protocols and security access requirements. Completing on site Safety Training will be required.
- b. Installation and maintenance details to be submitted to The City by Artist.
- c. Artist shall install the Work. Artist will be responsible for providing any installation equipment (i.e. lifts, scaffolding, etc.) required to install the art and supervise any installation assistance.
- d. Artist shall advise, consult, and inspect the completed installation of the Work at the site to ensure that the installation is in conformance with the proposal.
- e. The Artist will provide information for a plaque that the City will have fabricated and installed on site as specified by the KCMO One Percent for Art program.
- f. The Artist is responsible for contracting with a photographer to document the Work and will provide hi-resolution, print quality digital photographs to the Public Art Administrator for use in accordance with the Artist's copyright in Section 10 of this contract.

5. Final Acceptance.

- a. The Artist will advise City in writing when all services required under **Attachment A - Scope of Services**, have been completed. City will make a final inspection with the Artist and will notify the Artist in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. Artist shall immediately take such measures as are necessary to complete such work or remedy such deficiencies.
- b. Prior to final acceptance, the Artist will provide City with a description of the methods of cleaning, preserving and maintaining the Work.
- c. City will notify the Artist of its final acceptance of the Work. Final acceptance shall be effective as of the date City's notification of final acceptance.
- d. Artist will guarantee to make good, at its own expense and in accordance with the instructions of City, any and all faulty or defective material or workmanship which may appear in the Artist's work for a period of one (1) year from the date of final acceptance.

ATTACHMENT B- SCHEDULE OF PERFORMANCE

KCI Art Project- Development of "Wings"

Schedule of Performance. The services required of the Artist as set forth in this contract will be completed in accordance with the schedule for completion of the Work as outlined by the project schedule, provided by the design/build team and approved in writing by City, but the time limits may be extended or modified by written agreement between the Artist and City.

- A. Design and Coordination
 - 1. Artist shall complete City paperwork, licenses, insurances and required documents as outlined in the Contract. (30 days)
 - 2. Artist shall complete the Work per the Production Schedule in Section E below.
 - 3. Artist shall provide detailed Working Drawings and Plans and Specifications to City. (60 days)
 - 4. Attend meetings with City and design team for Art approvals and coordination. (monthly)
- B. Fabrication
 - 1. Fabricate the Art in accordance with the proposal. See Section E below.
 - 2. Attend monthly check-in meetings with City and design team for fabrication milestones.
- C. Shipping and Delivery
 - 1. Artist shall notify City in writing when the Work is complete and ready to deliver and install.
- D. Installation: to begin October 2022, See Section E below.
 - 1. Artist &/or Artists team shall comply with all safety protocols and security access requirements and attend on-site safety training as required prior to installation.
 - 2. Installation and maintenance details to be submitted to The City by Artist.
 - 3. City agrees to grant reasonable extensions of time to the Artist in the event that there is a delay caused by conditions beyond the Artist's control or Acts of God render timely performance of the Artist's services impossible. Failure to fulfill contractual obligations due to conditions beyond the Artist's reasonable control will not be considered a breach of contract; but the obligations will be suspended only for the duration of the conditions.
 - 4. City will notify Artist of final acceptance.
 - 5. Final Close-Out and Final Payment
 - a. Within thirty (30) days of final acceptance of the Work, Artist shall provide City with a description of the methods of cleaning, preserving and maintaining the Work.
 - b. Upon acceptance of preservation submittal by City, Artist shall submit final payment application invoice.
 - 6. Inauguration/Dedication
 - a. The Artist will be available at a mutually agreed to time for the inauguration or dedication ceremonies of the work, if any.
- E. Production Schedule
 - 1. August 2021 Agreement execution: contract signed.
 - 2. August 2021 through Dec 2022: Artist will attend monthly (virtual) check-in meetings with design team, stakeholders and KCMO City Administrator to track project progress.
 - 3. Summer/Fall 2021: KCI site-visit, meet with design team (*additional site visits to be scheduled as needed*)
 - 4. Aug-Sept 2021; Artist to further develop plinth details, working drawings, lighting design, material specifications, etc. for final design of art piece
 - 5. Oct 2021: Artist to finalize and submit artwork and plinth details, and resolve stakeholder comments. Final design approval to proceed with fabrication of artwork. (see additional dates for reference below in 5a,5b,5c, 5d)
 - a. September 2021: Wall Close-In
 - b. November 2021-May 2022: Installation of power for lighting

- c. January 2022: Ceiling work close-in final
- d. May-July 2022: Flooring terrazzo installation
- 6. Fall 2022: Artwork fabrication complete. Packing and shipping.
- 7. Delivery of artwork to site October/November 2022.
- 8. Artist on site November 2022 for artwork installation with Installation Team.
- 9. December 2022: Last day of install, final walk through with City of Kansas City, Mo. representatives for final approval.
- 10. March 2023: New Single Terminal and Parking at KCI Opens

Inter-Departmental Communication

Date: August 10, 2021

To: Mayor Quinton Lucas; Chair: Transportation, Infrastructure & Operations Committee

From: Andrea Dorch; Director; Human Relations Department

Subject: Docket Memo #: 210644

CONTRACTOR:	David A. Balistreri
Address:	11 Valleyview Dr. Bowling Green, OH 43402
Contract #	EV2877 – Art Purchase Contract for “Wings”
Contract Amount:	\$192,000.00
MBE Goal:	0%
WBE Goal:	0%

MBE SUBCONTRACTORS:
None

WBE SUBCONTRACTORS:
None

Comments:
This project is under the One Percent for Art program for the New Single Terminal project at KCI. No MBE/WBE goals were established for the Art Purchase contracts.

GENERAL

Ordinance Fact Sheet

210644

Ordinance Number

Brief Title	Approval Deadline	Reason
One Percent for Art project at KCI New Single Terminal - "Wings"	Aug-21	Per Ordinance 60321 1% of verticle construction costs have been set aside for adornment

Details

Reason for Legislation

Per Ordinance 60321, 1% of verticle co nstruction costs have been set aside for adornment

Discussion

The Municipal Arts Commission met on June 4, 2021, and voted unanimously to approve the artist's proposal

Sponsor	Councilwoman Katheryn Shields
Programs, Departments, or Groups Affected	Aviation, General Services
Applicants / Proponents	Applicant City Department General Services Other
Opponents	Groups or Individuals Basis of opposition
Staff Recommendation	<input checked="" type="checkbox"/> For <input type="checkbox"/> Against Reason Against
Board or Commission Recommendation	By <input type="checkbox"/> For <input type="checkbox"/> Against <input type="checkbox"/> No action taken <input type="checkbox"/> For, with revisions or conditions (see details column for conditions)
Council Committee Actions	<input type="checkbox"/> Do pass <input type="checkbox"/> Committee Sub. <input type="checkbox"/> Without Recommendation <input type="checkbox"/> Hold <input type="checkbox"/> Do not pass

(Continued on reverse side)

Details

Is It Good For The Children?

Children will enjoy images like birds and planes in this work, as well as its large scale and wing-like shape.

How will this contribute to a sustainable Kansas City?

This work of art will have a lifespan as long as the KCI new single terminal or longer.

Policy/Program Impact

Policy or Program Change	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes
Operational Impact Assessment	

Finances

Cost & Revenue Projections -- Including Indirect Costs	\$192,000.00
Financial Impact	
Fund Source (s) and Appropriation Account Codes	8561-627270-B-62210544

Fact Sheet Prepared by:
Kitty Steffens

Date:
August 10, 2021

Reviewed by:

Date:



Legislation Text

File #: 210646, Version: 1

ORDINANCE NO. 210646

Authorizing the Manager of Procurement Services to execute a \$475,000.00 Art Purchase Contract with Hou De Sousa LLC for the acquisition of the sculptural work “Riff/Lift” through the One Percent for Art Program at the KCI New Single Terminal and Parking project.

WHEREAS, the Municipal Arts Commission met on June 4, 2021, and voted unanimously to approve the artist’s proposal; NOW, THERFORE,

BE IT ORDAINED BY THE COUNCIL OF KANSAS CITY:

Section 1. That the Manager of Procurement Services is authorized to execute a \$475,000.00 Art Purchase Contract with Hou De Sousa LLC for the acquisition of “Riff/Lift” for the new KCI parking garage. A copy of the contract, in substantial form, is on file with the Manager of Procurement Services.

Section 2. That the sum of \$475,000.00 has been previously appropriated to Account No. 22-3090-077700-619080-07A21000.

I hereby certify that there is a balance, otherwise unencumbered, to the credit of the appropriation to which the foregoing expenditure is to be charged, and a cash balance, otherwise unencumbered, in the treasury, to the credit of the fund from which payment is to be made, each sufficient to meet the obligation hereby incurred.

Tammy Queen
Director of Finance

Approved as to form and legality:

James M. Brady
Assistant City Attorney

ART PURCHASE CONTRACT
GENERAL SERVICES DEPARTMENT

EV2875- KCI Art Project- Development of "Riff/Lift"

This art purchase contract is between KANSAS CITY, MISSOURI, a constitutionally chartered municipal corporation ("City"), and Hou DeSousa LLC ("Artist"). City and Artist agree as follows:

In consideration of the payments and mutual agreements contained in this contract, City and Artist agree as follows:

Sec. 1. Services to be Performed. Artist shall perform the following services in connection with the Artist's work (the "Work") as set forth in Attachment A:

- A. Scope of Services - **Attachment A**
- B. Schedule of Performance – **Attachment B**
- C. Submit all documents, including plans, design drawings, specifications, reports, maps, models and renderings in the form requested by City. A list with the specific requirements is included in **Attachment A – Scope of Services**.
- D. City shall have the right to inspect and review the Work being done and to consult with Artist at any reasonable time. Meetings will be held at the request of City or Artist.

~~If it is determined to be in the best interest of the Work, Artist shall replace the project manager or any other employee of the Artist, Subcontractors, Suppliers or other persons or organizations performing or furnishing any of the Work on the project upon written request by City.~~

Sec. 2. Responsibilities of City.

- A. City will conduct reviews of plans and respond to Artist with comments and/or approval in the times specified in the approved schedule.
- B. City will display the Artist's name, copyright notice, title, and date of the Work near or on the Work.
- C. City recognizes that maintenance of the Work on a regular basis is essential to the integrity of the Work. City, to the extent allowed by law and subject to appropriation of funds, will maintain and protect the Work against the ravages of time, vandalism and the elements, taking into account the instructions of the Artist set forth when the Art is completed and installed.
- D. Repairs and Restoration.
 - 1. City will have the right to determine, after consultation with the Artist or a professional familiar with art conservation, when and if repairs and restorations to the Work will be made. During the Artist's lifetime, the Artist will have the right to approve all repairs and restorations; provided however, that the Artist shall not unreasonably withhold approval for any repair or restoration of the Work. If the Artist unreasonably fails to approve any repair or restoration, City shall have the right to make such repair or restoration. To the extent practical, the Artist, during the Artist's lifetime, will be given the opportunity to make or personally supervise significant repairs and restorations.
 - 2. All repairs and restorations will be made in accordance with recognized principles of conservation.
- E. Alterations of the Work or of the Work site. City agrees:
 - 1. Not to intentionally damage, alter, modify or change the Work without written approval of the Artist.

Commented [Hd51]: Please remove if possible. Language not consistent with typical artist agreements and potentially prevents artist from working with desired fabricator.

2. To notify the Artist of any proposed alteration of the site that would affect the intended character and appearance of the Work and will consult with the Artist in the planning and execution of any site alteration and will make a reasonable effort to maintain the integrity of the Work.
3. Not to remove the Work from public display or destroy the work for a period of fifteen (15) years from final acceptance.
4. In the event the City desires to remove the Work from the site after fifteen (15) years, and the removal would result in the destruction, distortion, mutilation or other modification of the Work, City will give the Artist notice as provided herein of the City's intended action. The Artist has 90 days after the mailing of such notice either to remove the Work or to pay for its removal. If the Work is removed at the expense of the Artist, title to the Work shall be deemed to be in the Artist. If the Artist fails to remove the Work within the 90-day period, City may proceed to remove the Work with no further liability to Artist.
5. Not to intentionally use the Work in any manner which would reflect discredit on the Artist's name or reputation as an Artist or which would violate the spirit of the Work.

Sec. 4. Sec. 3. Term of Contract.

- A. Contract shall start upon executed signatures by all parties. This executed contract will serve as the Notice to Proceed (NTP). The contract shall expire on March 31, 2023. A contract amendment will be needed to extend the expiration date, if applicable.

Sec. 5. Sec. 4. Compensation and Reimbursables.

- A. The maximum amount that City shall pay Artist under this contract is \$475,000. City is not liable for any obligation incurred by Artist except as approved under the provisions of this contract.

Sec. 6. Sec. 5. Method of Payment.

- A. Method of Payment. Upon completion of each task set forth below Artist shall invoice City, stating completion of the task and all actual reasonable expenses incurred and allowed under this contract and the amount due. City, upon approving the invoice, shall remit payment to Artist in accordance with the following schedule:
 1. \$59,375 upon execution of this contract;
 2. \$228,125 upon approval of the final design concept and issuance of NTP;
 3. \$128,125 upon certification by the Artist that fabrication of the Work is complete;
 4. \$41,563 upon delivery and installation of the Work to the site; and
 5. \$17,812 within thirty (30) days following final acceptance of the Work.
- B. Condition Precedent to Payment.
 1. Artist shall submit all invoices in a form provided by the City.
 2. It shall be a condition precedent to payment of any invoice from Artist that Artist is in compliance with, and not in breach or default of, all terms, covenants and conditions of this contract. If damages are sustained by City as a result of breach or default by Artist, City may withhold payment(s) to Artist for the purpose of set off until such time as the exact amount of damages due City from Artist may be determined.

Commented [Hd52]: It's preferable to increase payment #2, as the fabricator will request incremental payments following the start of work.

3. No request for payment will be processed unless the request is in proper form, correctly computed, and is approved as payable under the contract. City is not liable for any obligation incurred by Artist except as approved under the provisions of this contract.
4. The Work shall be developed, fabricated and installed without further compensation than that provided for in this contract.

Sec. 7. Sec. 6. Warranties of Title. The Artist represents and warrants that:

1. The Work is solely the result of the artistic effort of Artist;
2. The Work is unique and original and does not infringe upon any copyright;
3. That the Work, or a duplicate has not been accepted for sale elsewhere;
4. The Work is free and clear of any liens from any source whatsoever; and
5. Prior to final payment, Artist will furnish City with notarized statements from the fabricator, if applicable, and all other suppliers of materials used in the Work that all monies due have been paid.

Sec. 8. Sec. 7. Notices. All notices required by this contract shall be in writing and sent to the following:

City:

General Services Department
Darrell Everette, Acting Manager of Procurement Services
414 E 12th St, 1st Floor
Kansas City, MO 64106
Phone: (816) 513-0798
E-mail address: darrelle.everette@kcmo.org

General Services Department
James Martin, Public Art Administrator
414 E 12th St, 17th Floor
Kansas City, MO 64106
Phone: (816) 315-0504
E-mail address: james.martin@kcmo.org

Artist:

Hou DeSousa LLC
41 Union Square W Suite 1035
New York, NY 10003
(917) 822-5815
josh@hodesousa.com

All notices are effective (a) when delivered in person, (b) upon confirmation of receipt when transmitted by facsimile transmission or by electronic mail, (c) upon receipt after dispatch by registered or certified mail, postage prepaid, (d) on the next business day if transmitted by overnight courier (with confirmation of delivery), or (e) three (3) business days after the date of mailing, whichever is earlier.

Sec. 9. Sec. 8. Risk of Loss. The risk of loss or damage to the Work shall be borne by the Artist and the Artist shall take such measures as are necessary to protect the Work from loss or damage until its final acceptance by City.

Sec. 10. Sec. 9. Title and Ownership. Upon completion and installation of the Work and upon final acceptance and final payment to the Artist by City, title to the Work shall pass to the City. Consistent with Section 2. E.4., and in the case of removal, the Artist is aware of and hereby specifically waives all rights under the Artists Visual Rights Act of 1990, 17 U.S.C. Sections 106A and 1133, or as subsequently amended, with regard to the Work.

Sec. 11. Sec. 10. Copyright.

- A. The Artist shall retain the ownership of copyrights in and to the Work, plans, drawings, schematics, design studies and models prepared by the Artist in connection with this commission, except as limited by this paragraph. The Artist agrees that it will not make any additional exact duplicates or three-dimensional reproductions of the exact design dimensions and materials of the Work nor grant others permission to do so, except with the written permission of City.
- B. The Artist grants to City a license to use photographic reproductions of the Work in advertising brochures, media publicity, and promotion of its activities, catalogues, site guides, books and publications for noncommercial purposes. If reproductions by either party where the Work is the central focus of the reproductions are made, there shall be included credits listing the Artist as the creator of the Work and owner of its copyright, and City as the party which owns and commissioned the Work, and they agree to use their best efforts to secure credits in any reproduction or public showing of a reproduction or public show of a reproduction by other parties.

Sec. 12. Sec. 11. No Gratuities and Kickbacks. The provisions of City's Code Section 3-303, prohibiting gratuities to city employees, and kickbacks by subcontractors, and Code Sections 3-307, imposing sanctions for violations, shall apply to this contract.

- A. Gratuities. Artist certifies that it has not and will not offer or give any city employee or officer a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation or preparation of any part of a contract requirement or purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any contract or subcontract, or to any solicitation or proposal therefore.
- B. Kickbacks. Artist certifies that no payment, gratuity, offer of employment or benefit has been or will be made by or on behalf of or solicited from a subcontractor under a contract to Artist or higher tier subcontractor or any person associated therewith as an inducement for the award of a subcontract or order.

Sec. 13. Sec. 12. Prohibition Against Contingent Fees. The provisions of City's Code Section 3-305 prohibiting the retention of persons to solicit contracts for contingent fees, and Sections 3-307, imposing sanctions for violations, shall apply to this contract. Artist certifies that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by Artist for the purpose of securing business. For breach or violation of this warranty, City shall have the right to annul this contract without liability or, at its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

Sec. 14. Sec. 13. Subcontracting. City authorizes Artist to subcontract with the individuals, firms or entities identified in **Attachment D**, Subcontractors List. **Attachment D**, and the additional conditions stated therein, shall be incorporated into this contract. Artist shall not subcontract, assign or transfer any part or all of Artist's obligations or interests without City's prior written approval.

Sec. 15. **Sec. 14. Attachments.** The following documents are attachments to this contract and are attached hereto and incorporated herein by this reference:

Attachment A – Scope of Services

Attachment B – Schedule of Performance

Attachment C – Non-Construction Subcontractor Listing

Attachment D – Prevailing Wage Requirements

Annual Wage Order No. 27

County Clay

Work Type:

State – Building

Federal – Building

Division of Labor Standards Rules & Regulations

01290.03 Certified Payroll Instructions

01290.04 Certified Payroll Example

01290.05-06 Certified Payroll Report

01290.07 Payroll Certification

01290.08 Wage Rate Verification Questionnaire

01290.11 Daily Labor Force Report

01290.14 Contractor Affidavit for Final Payment

Attachment E – 00560 Missouri Project Exemption Certificate

00560.01 Kansas City Missouri Tax Exempt Certificate

Attachment F – 00620 Insurance Certificate

Sec. 15. Design Standards.

Except as otherwise directed in writing by City, Artist shall use all applicable design standards required by federal, state, local laws or codes or such standards recognized and used in the industry in the performance of services under this contract. In the development of any design under this contract, Artist shall comply with all provisions of the Americans with Disabilities Act, Public Law 101-336 as well as 28 CFR parts 35 and 36 and 29 CFR part 1630, as applicable and as amended from time to time, and shall comply with the provisions of the Missouri Domestic Product Procurement Act, Section 34.350 RSMo. Artist shall notify and explain to City any applicable exceptions under these acts. Artist shall endorse all plans and specifications, or estimates, and engineering data furnished under this contract. All subcontractors as appropriate shall endorse their respective plans and specifications.

Sec. 16. General Indemnification.

- A. For purposes of this Section 16 only, the following terms shall have the meanings listed:
1. **Claims** means all claims, damages, liability, losses, costs and expenses, court costs and reasonable attorneys' fees, including attorneys' fees incurred by City in the enforcement of this indemnity obligation.
 2. **Artist's Agents** means Artist's officers, employees, subcontractors, su-bconsultants, successors, assigns, invitees, and other agents.
 3. **City** means City, its Program Manager/Construction Advisor, if any, and their respective agents, officials, officers and employees.

- B. Artists' obligations under this section with respect to indemnification for acts or omissions, including negligence, of City shall be limited to the coverage and limits of General (not Professional) Liability insurance that Artist is required to procure and maintain under this contract. Artist affirms that it has had the opportunity to recover the costs of the liability insurance required in this contract in its contract price.
- C. Artist shall defend, indemnify and hold harmless City from and against all Claims arising out of or resulting from all acts or omissions in connection with this contract caused in whole or in part by Artist or Artist's Agents, regardless of whether or not caused in part by an act or omission, including negligence, of City. Artist is not obligated under this section to indemnify City for the sole negligence of City.
- D. Nothing in this section shall apply to indemnification for professional negligence which is specified in a separate provision of this contract.

Sec. 17. Indemnification for Professional Negligence. Artist shall indemnify, and hold harmless City and any of its agencies, officials, officers, or employees from and against all claims, damages, liability, losses, costs, and expenses, including court costs and reasonable attorneys' fees, to the extent caused by any negligent acts, errors, or omissions of the Artist, its officers, employees, subconsultants, subcontractors, successors, assigns, invitees and other agents, in the performance of professional services under this contract. Artist is not obligated under this section to indemnify City for the negligent acts of City or any of its agencies, officials, officers, or employees.

Sec. 18. Insurance

- A. Artist shall procure and maintain in effect per the requirements below, insurance coverage not less than the types and amounts specified below. In the event that additional insurance, not specified herein, is required during the term of this contract, Artist shall supply such insurance at City's cost. Policies containing a Self-Insured Retention are unacceptable to City unless City approves in writing the Artist Self-Insured Retention.
 - 1. Commercial General Liability Insurance: with limits of \$1,000,000 per occurrence and \$2,000,000 aggregate, written on an "occurrence" basis. The policy shall be written or endorsed to include the following provisions:
 - a. Severability of Interests Coverage applying to Additional Insureds
 - b. Per Project Aggregate Liability Limit or, where not available, the aggregate limit shall be \$2,000,000.
 - c. No Contractual Liability Limitation Endorsement
 - d. Additional Insured Endorsement, ISO form CG20 10, or its equivalent
 - 2. Worker's Compensation Insurance: as required by statute, including Employers Liability with limits of:
 - a. Workers Compensation Statutory
 - b. Employers Liability
 - c. \$100,000 accident with limits of:
 - d. \$500,000 disease-policy limit
 - e. \$100,000 disease-each employee
 - 3. Commercial Automobile Liability Insurance at the execution of the contract and throughout the duration of the contract: with a limit of \$1,000,000 written on an "occurrence" basis, covering

owned, hired, and non-owned automobiles. If the Artist owns vehicles, coverage shall be provided on an "any auto" basis. If the Artist does not own any vehicles, coverage shall be provided on a "hired autos" and "nonowned autos" basis. The insurance will be written on a Commercial Business Auto form, or an acceptable equivalent, and will protect against claims arising out of the operation of motor vehicles, as to acts done in connection with the contract, by Artist.

4. If applicable, Professional Liability Insurance with limits Per Claim/Annual Aggregate of \$1,000,000.
- B. The Commercial General Liability Insurance specified above shall provide that City and its agencies, officials, officers, and employees, while acting within the scope of their authority, will be named as additional insureds for the services performed under this contract. Artist shall provide to City at execution of this contract a certificate of insurance showing all required endorsements and additional insureds. The certificates of insurance will contain a provision stating that should any of the policies described in the certificate be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.
- C. If Artist provides Commercial General Liability Insurance or Professional Liability Insurance through a Subcontractor, Artist shall contractually require the Subcontractor to include City as additional insured in the Subcontractor's policy. Artist shall deliver to City, prior to the start of any work at the project site, properly completed certificates of insurance or other evidence that the required insurance is in full force and effect, in a form acceptable to City. Artist shall contractually require its Subcontractor to defend, indemnify and hold harmless City from and against all claims arising out of or resulting from all acts or omissions in connection with this Contract caused in whole or in part by Subcontractor or Subcontractor's agents, regardless of whether or not caused in part by any act or omission, including negligence, of City. Artist must provide evidence that this requirement has been complied in accordance with the provisions of this contract.
- D. All insurance coverage must be written by companies that have an A.M. Best's rating of "A-V" or better, and are licensed or approved by the State of Missouri to do business in Missouri.
- E. Artist's failure to maintain the required insurance coverage will not relieve Artist of its contractual obligation to indemnify City pursuant to Sections 16 and 17. If the coverage afforded is cancelled or changed or its renewal is refused, Artist shall give at least thirty (30) days prior written notice to City. In the event of Artist's failure to maintain the required insurance in effect, City may order Artist to immediately stop work, and upon ten (10) days' notice and an opportunity to cure, may pursue its remedies for breach of this contract as provided for herein and by law.
- F. In no event shall the language in this section constitute or be construed as a waiver or limitation of City's rights or defenses with regard to sovereign immunity, governmental immunity, or other official immunities and protections as provided by the federal and state constitutions or by law.

Sec. 19. Defaults and Remedies.

- A. Artist shall be in default of this contract upon the happening of any of the following events:
 1. If Artist fails to comply with any of the provisions required of Artist under this contract, and such failure continues for a period of ten (10) days after written notice thereof is given to Artist by City; or
 2. If, by operation of law or otherwise, the right, title, or interest of Artist in this contract is transferred to, passes to, or devolves upon any other person, firm or corporation without written consent of City; or

3. Upon the levy of any attachment or execution of any process of a court of competent jurisdiction which does or will interfere with Artist's performance under this contract, and which attachment, execution or other process of such court is not enjoined, vacated, dismissed, or set aside within a period of thirty (30) days; or
 4. Upon the suspension, revocation or termination of any power, license, permit, or authority that has the effect of preventing Artist from performing under this contract.
- B. Upon the occurrence of any one or more of the events as set forth in sub-paragraphs A1 through A4 of this Section, or upon any other default or breach of this contract, City may, at City's option, exercise concurrently or successively, any one or more of the following rights and remedies without waiving such default:
1. Suspend City's performance withhold payment or invoke any other legal or equitable remedy after giving Artist notice and opportunity to correct such default or breach.
 2. Interplead funds to a court or pay any sum required to be paid by Artist to parties other than City, and which Artist has incurred in connection with this contract and failed to pay. Any amount so paid in good faith by City, together with interest thereon at the maximum rate provided by law from the date of such payment, and all expenses connected therewith shall be repaid by Artist to City on demand; or
 3. Enjoin any breach or threatened breach by Artist of any covenants, agreements, terms, provisions or conditions hereof; or
 4. Bring suit for the performance of any covenant devolving upon Artist for performance or damage thereof, all without terminating this contract; or
 5. Terminate this contract upon ten (10) days written notice to Artist, specifying date of termination.

Sec. 20. Rights and Remedies Cumulative and Not Exclusive. All rights and remedies granted to City herein and any other rights and remedies which City may have at law and in equity are hereby declared to be cumulative and not exclusive, and the fact that City may have exercised any remedy without terminating this contract shall not impair City's rights thereafter to terminate or to exercise any other remedy herein granted or to which City may be otherwise entitled.

Sec. 21. Americans with Disabilities Act. Artist agrees to comply, during the course of this contract, with all provisions of the Americans with Disabilities Act, Public Law 101-336 as well as 28 CFR parts 35 and 36 and 29 CFR part 1630, as applicable and as amended from time to time.

Sec. 22. Merger. This contract, including any referenced Attachments, constitutes the entire agreement between City and Artist with respect to this subject matter, and supersedes all prior agreements between City and Artist with respect to this subject matter, and any such prior agreement shall be void and of no further force or effect as of the date of this contract.

Sec. 23. Modification.

- A. Unless stated otherwise in this contract, no provision of this contract may be waived, modified or amended except by written amendment signed by City and Artist.
- B. No act, conversation or communication with any officer, agent or employee of City, either before or after the execution of this contract, shall affect or modify any term or terminology of this contract and any such act, conversation or communication shall not be binding upon City or Artist.

Sec. 24. Binding Effect. This Contract shall be binding upon City and Artist and their successors in interest.

Sec. 25. Representations and Warranties. City and Artist each certify that it has the power and authority to execute and deliver this contract, to use the funds as contemplated hereby and to perform this contract in accordance with its terms.

Sec. 26. Prevailing Wage.

- A. Prevailing Wage.
1. Artist shall comply and require its Subcontractors to comply with;
 - a. Sections 290.210 to 290.340, RSMo the State of Missouri Prevailing Wage Law (the "Law"); and
 - b. 8 CSR 30-3.010 to 8 CSR 30-3.060, the Prevailing Wage Law Rules (the "Rules"); and
 - c. the Annual Wage Order (Wage Order) issued by the State of Missouri's Department of Labor and Industrial Relations; and
 - d. any applicable Annual Incremental Wage Increase (Wage Increase) to the Annual Wage Order.
 2. The Law, Rules, Wage Order and any Wage Increase are incorporated into and made part hereof this Contract and shall be collectively referred to in this Section as the "Prevailing Wage Requirements." In the event this Contract is renewed for an additional term, the Wage Order in effect as of the commencement date of the additional term, as amended by any applicable Wage Increase, shall be deemed incorporated herein and shall apply to and remain in effect for the duration of the additional term. The new Wage Order and any applicable Wage Increase shall govern notwithstanding the fact that the Wage Order being replaced might be physically attached to this Contract.
 3. Artist shall pay and require its Subcontractors to pay to all workers performing work under this Contract not less than the prevailing hourly rate of wages for the class or type of work performed by the worker in accordance with the Law, Rules, Wage Order and any applicable Wage Increase. Artist shall take whatever steps are necessary to insure that the prevailing hourly wage rates are paid and that all workers for Artist and each of its Subcontractors are paid for the class or type of work performed by the worker in accordance with the Prevailing Wage Requirements.
 4. Artist shall keep and require each of its Subcontractors engaged in the construction of public works in performance of the Contract to keep full and accurate records on City's:
 - a. Keep and require each of its Subcontractors engaged in the construction of public works in performance of the Contract to keep full and accurate records on City's "Daily Labor Force Report" Form indicating the worker's name, occupational title or classification group and skill and the workers' hours. City shall furnish blank copies of the Daily Labor Force Report Form to Artist for its use and for distribution to Subcontractors. Artist shall submit its and its Subcontractors Daily Labor Force Reports to City each day; and
 - b. Submit, and require each of its Subcontractors engaged in the construction of public works in performance of the Contract to submit, electronically, in a format prescribed by the City, Certified Payroll Report Information indicating the worker's name, address, social security number, occupation(s), craft(s) of every worker employed in connection with the public work together with the number of hours worked by each worker and the actual wages paid in connection with the Project and other pertinent information as requested by the City; and
 - c. Submit, and require each of its Subcontractors engaged in the construction of public works in performance of the Contract to submit, electronically, in format prescribed by the City, a

Payroll Certification. The Payroll Certification must be signed by the employee or agent who pays or supervises the payment of the workers employed under the Contract for the Artist and each Subcontractor.

- d. The Daily Labor Force Report, documents used to compile information for the Certified Payroll Report, and Payroll Certification are collectively referred to in this Section as the "Records."
5. Artist shall make all of Artist's and Subcontractors' Records open to inspection by any authorized representatives of City and the Missouri Department of Labor and Industrial Relations at any reasonable time and as often as they may be necessary and such Records shall not be destroyed or removed from the State of Missouri for a period of one (1) year following the completion of the public work in connection with which the Records are made. Artist shall have its and its Subcontractors Certified Payroll Reports and Payroll Certifications available at the Artist's office and shall provide the Records to the City electronically at City's sole discretion. In addition, all Records shall be considered a public record and Artist shall provide the Records to the City in the format required by the City within three (3) working days of any request by City at the Artist's cost. City, in its sole discretion, may require Artist to send any of the Records directly to the person who requested the Record at Artist's expense.
6. Artist shall post and keep posted a clearly legible statement of all prevailing hourly wage rates to be paid to all workers employed by Artist and each of its Subcontractors in the performance of this Contract in a prominent and easily accessible place at the Site of the Work by all workers.
7. If the Contract Price exceeds \$250,000.00, Artist shall and shall require each Subcontractor engaged in any construction of public works to have its name, acceptable abbreviation or recognizable logo and the name of the city and state of the mailing address of the principal office of the company, on each motor vehicle and motorized self-propelled piece of equipment which is used in connection with the Project during the time the Artist or Subcontractor is engaged on the project. The sign shall be legible from a distance of twenty (20') feet, but the size of the lettering need not be larger than two (2") inches. In cases where equipment is leased or where affixing a legible sign to the equipment is impractical, the Artist may place a temporary stationary sign, with the information required pursuant to this section, at the main entrance of the Project in place of affixing the required information on the equipment so long as such sign is not in violation of any state or federal statute, rule or regulation. Motor vehicles which are required to have similar information affixed thereto pursuant to requirements of a regulatory agency of the state or federal government are exempt from the provisions of this subsection.
8. Artist must correct any errors in Artist's or any Subcontractors' Records, or Artist's or any Subcontractors' violations of the Law, Rules, Annual Wage Order and any Wage Increase within fourteen (14) calendar days after notice from City.
9. Artist shall and shall require its Subcontractors to cooperate with the City and the Department of Labor and Industrial Relations in the enforcement of this Section, the Law, Rules, Annual Wage Order and any Wage Increase. Artist shall and shall require its Subcontractors to permit City and the Department of Labor and Industrial Relations to interview any and all workers during working hours on the Project at Artist's sole cost and expense.
10. Artist shall file with City, upon completion of the Project and prior to final payment therefore, affidavits from Artist and each of its Subcontractors, stating that each has fully complied with the provisions and requirements of the Missouri Prevailing Wage Law. City shall not make final payment until the affidavits, in proper form and order, from Artist and each of its Subcontractors, are filed by Artist.

11. Artist shall forfeit as a statutory penalty to the City one hundred dollars (\$100.00) for each worker employed, for each calendar day, or portion thereof, such worker is paid less than the prevailing hourly rates for any work done under this Contract, by Artist or by any of Artist's Subcontractors. If Artist or any of its Subcontractors have violated any section(s) of 290.210 to 290.340, RSMo, in the course of the execution of the Contract, City shall when making payments to the Artist becoming due under this Contract, withhold and retain therefrom all sums and amounts due and owing as a result of any violation of sections 290.210 to 290.340, RSMo.
- B. **Prevailing Wage Damages.** Artist acknowledges and agrees that, based on the experience of City, violations of the Missouri Prevailing Wage Act, whether by Artist or its Subcontractors, commonly result in additional costs to City. Artist agrees that additional costs to City for any particular violation are difficult to establish and include but are not limited to: costs of construction delays, additional work for City, additional interest expenses, investigations, and the cost of establishing and maintaining a special division working under the City Manager to monitor prevailing wage compliance.
 1. In the event of the failure by Artist or any of its Subcontractors to pay wages as provided in the Missouri Prevailing Wage Act, City shall be entitled to deduct from the Contract Price, and shall retain as liquidated damages, one hundred dollars (\$100.00) per day, per worker who is paid less than the prevailing hourly rate of wages, to approximate the additional costs. The sum shall be deducted, paid or owed whether or not the Contract Times have expired.
 2. City shall give written notice to Artist setting forth the workers who have been underpaid, the amount of the statutory penalty and the amount of the liquidated damages as provided for in this Subparagraph. Artist shall have fourteen (14) calendar days to respond, which time may be extended by City upon written request. If Artist fails to respond within the specified time, the City's original notice shall be deemed final. If Artist responds to City's notice, City will furnish Artist a final decision in writing within five (5) days of completing any investigation.

C. Prevailing Wage requirements are only applicable to sub-contractor work performed at the install location.

Sec. 27. Workforce. If Artist is required to pay prevailing wages for the work performed pursuant to this Contract, Artist agrees to comply with all requirements of City's Construction Employment Program as enacted in City's Code, Sections 3-501 through 3-527 and as hereinafter amended. Artist shall meet or exceed the construction employment goals unless the same shall have been waived in the manner provided by law. Artist's compliance with this provision is a material part of this Contract.

Sec. 28. Professional services certification. Code Section 2-83, prohibiting contracts with certain attorneys, architects, engineers and other professionals thereunder, shall apply to this contract. Artist certifies that it is not an architect, engineer, or other professional, exclusive of medical doctors or appraisers, who at the time of the issuance of this contract, serves as an expert witness for any litigation against City, and that it will not serve as an expert witness for any litigation against City during the term of this contract.

Sec. 29. Design Standards and Endorsement.

- A. Except as otherwise directed in writing by City, Artist shall use all applicable design standards required by federal, state, local laws or codes or such standards recognized and used in the industry in the performance of services under this contract.
- B. Artist shall endorse all plans and specifications, or estimates, and engineering data furnished under this contract if prepared by Artist. All subcontractors as appropriate shall endorse their respective plans and specifications, or estimates, and engineering data furnished for the project.

- C. Artist shall monitor quality assurance for their design services and shall revise the design and plans at their own expense in case of error or oversight in design by Artist.

Sec. 30. Governing Law. This contract shall be construed and governed in accordance with the laws of the State of Missouri without giving effect to Missouri's choice of law provisions. City and Artist: (1) submit to the jurisdiction of the state and federal courts located in Jackson County, Missouri; and no other (2) waive any and all objections to jurisdiction and venue; and (3) will not raise forum non conveniens as an objection to the location of any litigation.

Sec. 31. Compliance with Laws. Artist shall comply with all federal, state and local laws, ordinances and regulations applicable to the work and this contract.

Sec. 32. Termination for Convenience.

- D. City may, at any time upon ten (10) days' notice to Artist specifying the effective date of termination, terminate this contract, in whole or in part. If this contract is terminated by City, City shall be liable only for payment for services rendered before the effective date of termination. Artist shall prepare an accounting of the services performed and money spent by Artist up to the effective date of termination and shall return to City and remaining sums within thirty (30) days of such date.

- E. If this contract is terminated prior to Artist's completion of services, all work or materials prepared or obtained by Artist pursuant to this contract shall become City's property.

F. If this contract is terminated prior to Artist's completion of the services to be performed hereunder, Artist shall return to City any sums paid in advance by City for services that would otherwise have had to be rendered between the effective date of termination and the original ending date of the contract. Artist shall prepare an accounting of the services performed and money spent by Artist up to the effective date of termination and shall return to City any remaining sums within thirty (30) days of such date.

F.G. If this contract is terminated following the City directing artist to perform work and/or purchase materials in advance of a payment, the City will compensate artist for the services rendered and materials purchased.

Sec. 33. Waiver. Waiver by City of any term, covenant, or condition hereof shall not operate as a waiver of any subsequent breach of the same or of any term, covenant or condition. No term, covenant, or condition of this contract can be waived except by written consent of City, and forbearance or indulgence by City in any regard whatsoever shall not constitute a waiver of same to be performed by Artist to which the same may apply and, until complete performance by Artist of the term, covenant or condition, City shall be entitled to invoke any remedy available to it under this contract or by law despite any such forbearance or indulgence.

Sec. 34. Acceptance. No payment made under this contract shall be proof of satisfactory performance of the contract, either wholly or in part, and no payment shall be construed as acceptance of deficient or unsatisfactory work.

Sec. 35. Modification. Unless stated otherwise in this contract, no provision of this contract may be waived, modified or amended except in writing signed by City.

Sec. 36. Headings; Construction of Contract. The headings of each section of this contract are for reference only. Unless the context of this contract clearly requires otherwise, all terms and words used herein, regardless of the number and gender in which used, shall be construed to include any other number, singular or plural, or any other gender, masculine, feminine or neuter, the same as if such words had been fully and properly written in that number or gender.

Sec. 37. Severability of Provisions. Except as specifically provided in this contract, all of the provisions of this contract shall be severable. In the event that any provision of this contract is found by a court of competent jurisdiction to be unconstitutional or unlawful, the remaining provisions of this contract shall be valid unless the court finds that the valid provisions of this contract are so essentially and inseparably connected with and so dependent upon the invalid provisions(s) that it cannot be presumed that the parties to this contract could have included the valid provisions without the invalid provision(s); or unless the court finds that the valid provisions, standing alone, are incapable of being performed in accordance with the intentions of the parties.

Sec. 38. Records.

G.H. For purposes of this section:

1. "City" shall mean the City Auditor, the City's Internal Auditor, the City's Director of Human Relations, the City Manager, the City department administering this contract and their delegates and agents.
2. "Record" shall mean any document, book, paper, photograph, map, sound recordings or other material, regardless of physical form or characteristics, made or received in connection with this contract and all contract amendments and renewals.

H.I. Artist shall maintain and retain all Records for a term of five (5) years that shall begin after the expiration or termination of this contract and all contract amendments. City shall have a right to examine or audit all Records and Artist shall provide access to City of all Records upon ten (10) days written notice from City.

Sec. 39. Affirmative Action.

I.J. If this Contract exceeds \$300,000.00 and Artist employs fifty (50) or more people, Artist shall comply with City's Affirmative Action requirements in accordance with the provisions of Chapter 3 of City's Code, the rules and regulations relating to those sections, and any additions or amendments thereto; in executing any Contract subject to said provisions, Artist warrants that it has an affirmative action program in place and will maintain the affirmation action program in place for the duration of the Contract. Artist shall not discriminate against any employee or applicant for employment because of race, color, sex, religion, national origin or ancestry, disability, sexual orientation, gender identity or age in a manner prohibited by Chapter 38 of City's Code. Artist shall:

1. Submit, in print or electronic format, a copy of Artist's current certificate of compliance to the City's Human Relations Department (HRD) prior to receiving the first payment under the Contract, unless a copy has already been submitted to HRD at any point within the previous two calendar years. If, and only if, Artist does not possess a current certification of compliance, Artist shall submit, in print or electronic format, a copy of its affirmative action program to HRD prior to receiving the first payment under the Contract, unless a copy has already been submitted to HRD at any point within the previous two calendar years.
2. Require any Subcontractor awarded a subcontract exceeding \$300,000.00 to affirm that Subcontractor has an affirmative action program in place and will maintain the affirmative action program in place for the duration of the subcontract.
3. Obtain from any Subcontractor awarded a subcontract exceeding \$300,000.00 a copy of the Subcontractor's current certificate of compliance and tender a copy of the same, in print or electronic format, to HRD within thirty (30) days from the date the subcontract is executed. If, and only if, Subcontractor does not possess a current certificate of compliance, Artist shall obtain a copy of the Subcontractor's affirmative action program and tender a copy of the same, in print or electronic format, to HRD within thirty (30) days from the date the subcontract is executed.

J.K. City has the right to take action as directed by City's Human Relations Department to enforce this provision. If Artist fails, refuses or neglects to comply with the provisions of Chapter 38 of City's Code, then such failure shall be deemed a total breach of this Contract and this Contract may be terminated, canceled or suspended, in whole or in part, and Artist may be declared ineligible for any further contracts funded by City for a period of one (1) year. This is a material term of this Contract.

Sec. 40. Tax Compliance. Artist shall provide proof of compliance with City's tax ordinances administered by the City's commissioner of revenue as a precondition to City making the first payment under this contract or any contract when the total contract amount exceeds \$160,000.00. If Artist performs work on a contract that is for a term longer than one year, the Artist also shall submit to City proof of compliance with City's tax ordinances administered by City's commissioner of revenue as a condition precedent to City making final payment under the contract.

Sec. 41. Assignability or Subcontracting. Artist shall not subcontract, assign or transfer any part or all of Artist's obligations or interests without City's prior approval. If Artist shall subcontract, assign, or transfer any part of Artist's interests or obligations under this contract without the prior approval of City, it shall constitute a material breach of this contract.

Sec. 42. Conflicts of Interest. Artist certifies that no officer or employee of City has, or will have, a direct or indirect financial or personal interest in this contract, and that no officer or employee of City, or member of such officer's or employee's immediate family, either has negotiated, or has or will have an arrangement, concerning employment to perform services on behalf of Artist in this contract.

Sec. 43. Buy American Preference. It is the policy of City that any manufactured goods or commodities used or supplied in the performance of any City contract or any subcontract hereto shall be manufactured or produced in the United States whenever possible.

Sec. 44. Independent Contractor. Artist is an independent contractor and is not City's agent. Artist has no authority to take any action or execute any documents on behalf of City.

Sec. 45. Employee Eligibility Verification. If this contract exceeds five thousand dollars (\$5,000.00), Artist shall execute and submit an affidavit, in a form prescribed by City, affirming that Artist does not knowingly employ any person in connection with the contracted services who does not have the legal right or authorization under federal law to work in the United States as defined in 8 U.S. C. § 1324a(h)(3). Artist shall attach to the affidavit documentation sufficient to establish Artist's enrollment and participation in an electronic verification of work program operated by the United States Department of Homeland Security (E-Verify) or an equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, under the Immigration Reform and Control Act of 1986. Artist may obtain additional information about E-Verify and enroll at <https://www.e-verify.gov/>. For those Artists enrolled in E-Verify, the first and last pages of the E-Verify Memorandum of Understanding that Artist will obtain upon successfully enrolling in the program shall constitute sufficient documentation for purposes of complying with this Section. Artist shall submit affidavit and attachments to City prior to execution of the contract, or at any point during the term of the contract if requested by City.

Sec. 46. Missouri Sales Tax Exemption. Pursuant to Section 144.062, RSMo, City is a Missouri exempt entity and tangible personal property to be incorporated or consumed in the construction of this Project may be purchased without sales tax. City shall furnish Artist a Missouri Project Exemption Certificate for Sales Tax at the time of issuance of the Notice to Proceed.

Sec. 47. Contract Authorization. Any contract for an amount over \$400,000.00 requires City Council approval.

Sec. 48. Effectiveness; Date. This contract will become effective when City's Director of Finance has signed it. The date this contract is signed by City's Director of Finance will be deemed the date of this contract.

Sec. 49. Annual Appropriation of Funds.

- A. Multi-year term supply and service contracts and leases and the exercise of options to renew term contracts are subject to annual appropriation of funds by the City Council. Payments made under term contracts and leases are considered items of current expense. Purchase orders are funded when issued, therefore are current expense items and are not subject to any subsequent appropriation of funds.

- B. In the event sufficient funds are not appropriated for the payment of lease payments or anticipated term contract payments required to be paid in the next occurring lease or contract term and if no funds are legally available from other sources, the lease or contract may be terminated at the end of the original term or renewal term and the CITY shall not be obligated to make further payments beyond the then current original or renewal term. The CITY will provide notice of its inability to continue the lease or contract at such time as the Manager of Procurement Services is aware of the non-appropriation of funds; however, failure to notify does not renew the term of lease or contract. If a lease is cancelled, the events of default will occur as described in the lease and/or the section titled TERMINATION FOR DEFAULT. The CITY has no monetary obligations in event of termination or reduction of a term contract since such contracts represent estimated quantities and are not funded as a contract, but only to the extent of purchase orders issued.

THIS AGREEMENT CONTAINS INDEMNIFICATION PROVISIONS

ARTIST

I hereby certify that I have the authority to execute

this document on behalf of ARTIST

Contractor: _____

By: _____

Title: _____

Date: _____

APPROVED AS TO FORM

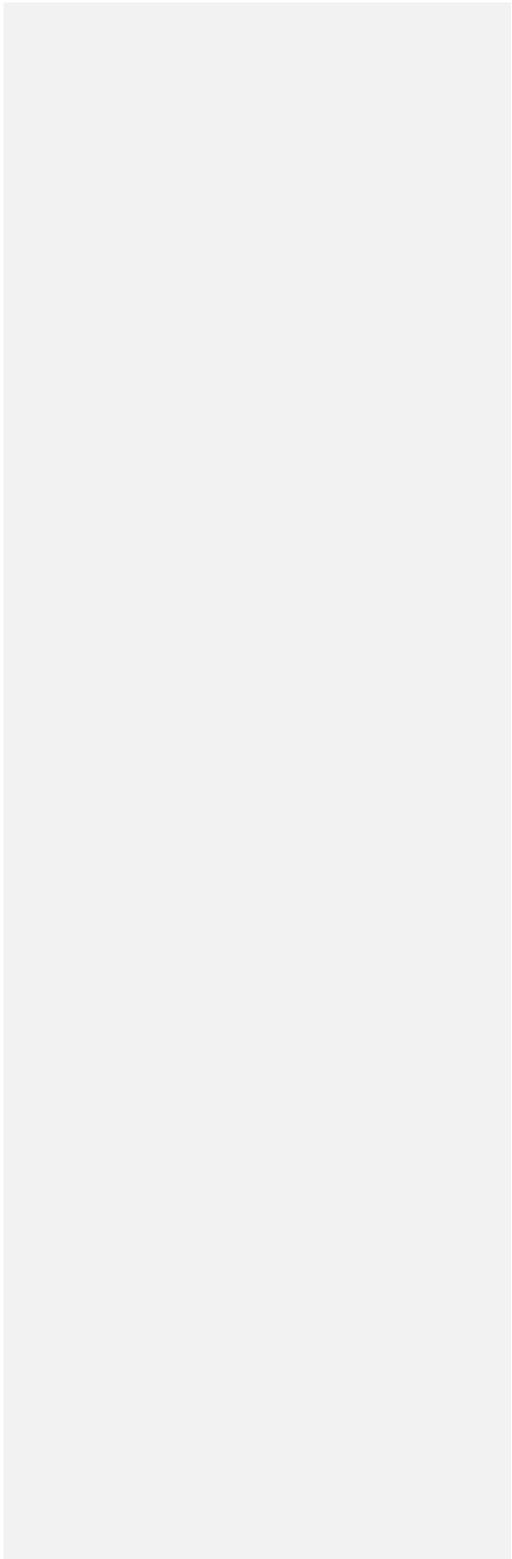
Assistant City Attorney (Date)

KANSAS CITY, MISSOURI

By: _____

Title: _____

Date: _____



ATTACHMENT A- SCOPE OF SERVICES
KCI Art Project- Development of “Riff/Lift”

A. Project Understanding

Artist has been selected by the General Services Department of the City of Kansas City and the Kansas City Aviation (KCAD) Department to develop the work of art “Riff/Lift” for the Garage Stairwells area in the KCI New Single Terminal and Parking project in accordance with the attached proposal, while allowing for design refinements due to feedback from the KCI New Single Terminal and Parking project team and authorities having jurisdiction including, but not limited to, engineering needs and compliance with building and safety codes.

1. City will provide technical support services, as reasonably requested by the Artist, in order to permit the Artist to prepare and submit the Working Drawings.
 - a. The City shall use its best efforts to facilitate the work of the Artist and to assist the Artists, if necessary, in connection with the Artist’s services.

B. Scope of Services

1. Preliminary Phase, Design and Coordination

a. Artist will work with the KCI New Single Terminal and Parking Design Team to determine the specific location of the Work and prepare and submit detailed working drawings and plans and specifications, including but not limited to foundation plans, connection details, special installation details, lighting plans, calculations of foundation design, calculations of structural design, specifications which clearly outline any special materials or installation methods required (collectively “Working Drawings”) for fabrication and installation of the Work for approval by the KCMO Municipal Art Commission.

b. Artist shall provide detailed Working Drawings and Plans and Specifications to KCAD Including but not limited to:

(1) Sprinkler coverage analysis may be required and may need to be provided by artist, if applicable. It is understood that this project site does not feature sprinklers.

(2) Structural loading and construction documents need to be submitted for review.

(3) Artist should submit information on transparency levels for lighting evaluation.

c. Artist shall attend meetings with City and design team for Art approvals and coordination.

d. Artist will not proceed with the Work until the City has approved the Site and Plans and Specifications and issued written authorization to proceed.

e. Work will be completed as set out in **Attachment B – Schedule of Performance.**

2. Fabrication

a. Artist shall fabricate the Work in accordance with the approved proposal.

b. City shall have the right to inspect the Work at reasonable times during the fabrication at City's expense

3. Shipping and Delivery

- a. Artist shall notify the City for delivery and final preparation of the site for installation of the Work.
- b. Artist shall oversee the transportation of all components of the Work to KCI New Single Terminal and Parking project.

4. Installation and Final Acceptance

- a. Artist &/or Artists team shall comply with all safety protocols and security access requirements. Completing on site Safety Training will be required.
- b. Installation and maintenance details to be submitted to The City by Artist.
- c. Artist shall install the Work. Artist will be responsible for providing any installation equipment (i.e. lifts, scaffolding, etc.) required to install the art and supervise any installation assistance.
- d. Artist shall advise, consult, and inspect the completed installation of the Work at the site to ensure that the installation is in conformance with the proposal.
- e. The Artist will provide information for a plaque that the City will have fabricated and installed on site as specified by the KCMO One Percent for Art program.
- f. The Artist is responsible for contracting with a photographer to document the Work and will provide hi-resolution, print quality digital photographs to the Public Art Administrator for use in accordance with the Artist's copyright in Section 10 of this contract.

5. Final Acceptance.

- a. The Artist will advise City in writing when all services required under **Attachment A - Scope of Services**, have been completed. City will make a final inspection with the Artist and will notify the Artist in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. Artist shall immediately take such measures as are necessary to complete such work or remedy such deficiencies.
- b. Prior to final acceptance, the Artist will provide City with a description of the methods of cleaning, preserving and maintaining the Work.
- c. City will notify the Artist of its final acceptance of the Work. Final acceptance shall be effective as of the date City's notification of final acceptance.
- d. Artist will guarantee to make good, at its own expense and in accordance with the instructions of City, any and all faulty or defective material or workmanship which may appear in the Artist's work for a period of one (1) year from the date of final acceptance.

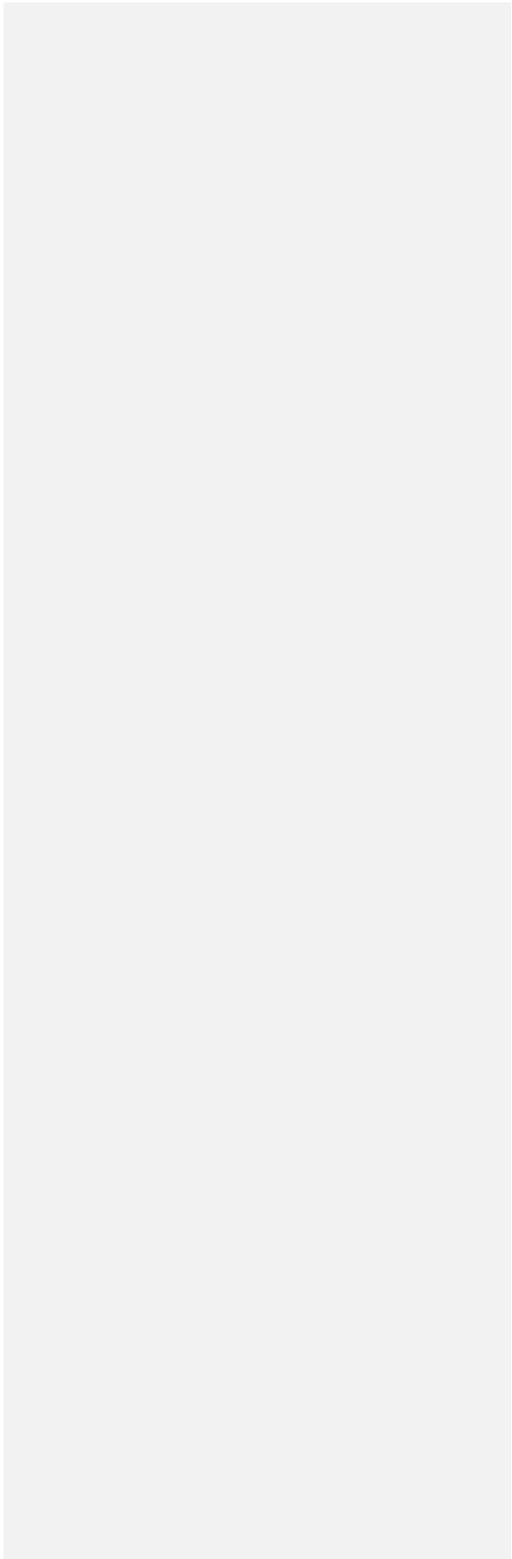
ATTACHMENT B- SCHEDULE OF PERFORMANCE

KCI Art Project- Development of "Riff/Lift"

Schedule of Performance. The services required of the Artist as set forth in this contract will be completed in accordance with the schedule for completion of the Work as outlined by the project schedule, provided by the design/build team and approved in writing by City, but the time limits may be extended or modified by written agreement between the Artist and City.

- A. Design and Coordination
 - 1. Artist shall complete City paperwork, licenses, insurances and required documents as outlined in the Contract. (30 days)
 - 2. Artist shall complete the Work per the Production Schedule in Section E below.
 - 3. Artist shall provide detailed Working Drawings and Plans and Specifications to City. (60 days)
 - 4. Attend meetings with City and design team for Art approvals and coordination. (monthly)
- B. Fabrication
 - 1. Fabricate the Art in accordance with the proposal. See Section E below.
 - 2. Attend monthly check-in meetings with City and design team for fabrication milestones.
- C. Shipping and Delivery
 - 1. Artist shall notify City in writing when the Work is complete and ready to deliver and install.
- D. Installation: to begin October 2022, See Section E below.
 - 1. Artist &/or Artists team shall comply with all safety protocols and security access requirements and attend on-site safety training as required prior to installation.
 - 2. Installation and maintenance details to be submitted to The City by Artist.
 - 3. City agrees to grant reasonable extensions of time to the Artist in the event that there is a delay caused by conditions beyond the Artist's control or Acts of God render timely performance of the Artist's services impossible. Failure to fulfill contractual obligations due to conditions beyond the Artist's reasonable control will not be considered a breach of contract; but the obligations will be suspended only for the duration of the conditions.
 - 4. City will notify Artist of final acceptance.
 - 5. Final Close-Out and Final Payment
 - a. Within thirty (30) days of final acceptance of the Work, Artist shall provide City with a description of the methods of cleaning, preserving and maintaining the Work.
 - b. Upon acceptance of preservation submittal by City, Artist shall submit final payment application invoice.
 - 6. Inauguration/Dedication
 - a. The Artist will be available at a mutually agreed to time for the inauguration or dedication ceremonies of the work, if any.
- E. Production Schedule
 - 1. August 2021 Agreement execution: contract signed.
 - 2. August 2021 through Dec 2022: Artist will attend monthly (virtual) check-in meetings with design team, stakeholders and KCMO City Administrator to track project progress.
 - 3. Summer/Fall 2021: KCI site-visit, meet with design team (*additional site visits to be scheduled as needed*)
 - 4. Sept-Oct 2021: Artist to further develop connection details, working drawings, lighting design, material specifications, etc. for final design of art piece.
 - 5. Nov 2021: Artist to finalize and submit artwork details, and resolve stakeholder comments. Final design approval to proceed with fabrication of artwork. (see additional dates for reference below in 5a,5b,5c, 5d)
 - a. Aug 2021: Stairwells structural Installation complete
 - b. (South end) Sept, (North End) Dec 2021: Stairwell utilities rough-in

- c. November 2021: Installation of power for lighting
- d. (South end) Aug 2021, (North End) Nov 2021: Glass install & close-in
- 6. Fall 2022: Artwork fabrication complete. Packing and shipping.
- 7. Delivery of artwork to site October/November 2022.
- 8. Artist on site November 2022 for artwork installation with Installation Team.
- 9. December 2022: Last day of install, final walk through with City of Kansas City, Mo. representatives for final approval.
- 10. March 2023: New Single Terminal and Parking at KCI Opens



Inter-Departmental Communication

Date: August 10, 2021

To: Mayor Quinton Lucas; Chair: Transportation, Infrastructure & Operations Committee

From: Andrea Dorch; Director; Human Relations Department

Subject: Docket Memo #: 210646

CONTRACTOR: Hou de Sousa, LLC
Address: 48 Union Square W, Suite 1035
New York, NY 10003
Contract # EV2875 – Art Purchase Contract for “Riff / Lift”
Contract Amount: \$475,000.00
MBE Goal: 0%
WBE Goal: 0%

MBE SUBCONTRACTORS:
None

WBE SUBCONTRACTORS:
None

Comments:
This project is under the One Percent for Art program for the New Single Terminal project at KCI. No MBE/WBE goals were established for the Art Purchase contracts.

GENERAL

Ordinance Fact Sheet

210646

Ordinance Number

Brief Title	Approval Deadline	Reason
One Percent for Art project at KCI New Single Terminal - "Riff/Lift"	Aug-21	Per Ordinance 60321 1% of verticle construction costs have been set aside for adornment

Details

Reason for Legislation

Per Ordinance 60321, 1% of verticle co nstruction costs have been set aside for adornment

Discussion

The Municipal Arts Commission met on June 4, 2021, and voted unanimously to approve the artist's proposal

Sponsor	Councilwoman Katheryn Shields
Programs, Departments, or Groups Affected	Aviation, General Services
Applicants / Proponents	Applicant City Department General Services Other
Opponents	Groups or Individuals Basis of opposition
Staff Recommendation	<input checked="" type="checkbox"/> For <input type="checkbox"/> Against Reason Against
Board or Commission Recommendation	By <input type="checkbox"/> For <input type="checkbox"/> Against <input type="checkbox"/> No action taken <input type="checkbox"/> For, with revisions or conditions (see details column for conditions)
Council Committee Actions	<input type="checkbox"/> Do pass <input type="checkbox"/> Committee Sub. <input type="checkbox"/> Without Recommendation <input type="checkbox"/> Hold <input type="checkbox"/> Do not pass

(Continued on reverse side)

Details

Is It Good For The Children?

Children will enjoy the bright colors and energetic form of this artwork.

How will this contribute to a sustainable Kansas City?

This work of art will have a lifespan as long as the KCI new single terminal or longer.

Policy/Program Impact

Policy or Program Change	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes
Operational Impact Assessment	

Finances

Cost & Revenue Projections -- Including Indirect Costs	\$475,000.00
Financial Impact	
Fund Source (s) and Appropriation Account Codes	8561-627270-B-62210544

Fact Sheet Prepared by:
Kitty Steffens

Date:
August 10, 2021

Reviewed by:

Date:

LEGISLATIVE FISCAL NOTE	LEGISLATION NUMBER:	210646
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LEGISLATION IN BRIEF:

Authorizing the Manager of Procurement Services to execute a \$475,000.00 Art Purchase Contract with Hou De Sousa LLC for the acquisition of the sculptural work "Riff/Lift" through the One Percent for Art Program at the KCI New Single Terminal and Parking project.

What is the purpose of this legislation? OPERATIONAL

For the purpose of authorizing expenditures new or planned to conduct municipal services

Does this legislation spend money? YES Yes/No
See Sections 01, 02 and 03 for sources of funding

Does this legislation estimate new Revenues? NO Yes/No
 0

Does this Legislation Increase Appropriations? NO Yes/No

Are costs associated with this legislation ongoing (Yes)? Or one-time (No) YES Yes/No
See Section 04 for five years of ongoing costs (Operational and Maintenance)

Section 00: Notes:

Estimated lifespan of the project is 50 years with annual operating and maintenance costs of \$5,000/year. These costs are represented in Section 04. O&M costs are not reflected in the current budget.

Five years of operational costs for ongoing programs should be included in Section 04 below.

FINANCIAL IMPACT OF LEGISLATION

Section 01: If applicable, where are funds appropriated in the current budget?

FUND	DEPTID	ACCOUNT	PROJECT	FY 21-22 BUD	FY 22-23 EST
8561	627270	B	62210544	\$ 475,000.00	

Section 02: If applicable, where will new revenues be estimated?

FUND	DEPTID	ACCOUNT	PROJECT	FY 21-22 BUD	FY 22-23 EST

Section 03: If applicable, where will appropriations be increased?

FUND	DEPTID	ACCOUNT	PROJECT	FY 21-22 BUD	FY 22-23 EST

NET IMPACT ON OPERATIONAL BUDGET

	\$ -	\$ -
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RESERVE STATUS:

SECTION 04: FIVE-YEAR FISCAL IMPACT (Direct and indirect)

FUND	FUND NAME	FY 21-22	FY 22-23	FY 23-24	FY 24-25	FY 25-26	FY 26-27	All Outyears
	TOTAL REV	-	-	-	-	-	-	-

FUND	FUND NAME	FY 21-22	FY 22-23	FY 23-24	FY 24-25	FY 25-26	FY 26-27	All Outyears
8561	Airport Improvement	\$ 475,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 225,000.00
	TOTAL EXP	\$ 475,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 225,000.00

NET Per-YEAR IMPACT \$ (475,000.00) \$ (5,000.00) \$ (5,000.00) \$ (5,000.00) \$ (5,000.00) \$ (5,000.00) \$ (225,000.00)

NET IMPACT (SIX YEARS) **(725,000.00)**

REVIEWED BY Kitty Steffens, OMB DATE 8/10/2021



Legislation Text

File #: 210645, Version: 1

ORDINANCE NO. 210645

Amending various sections of Chapter 2, “Administration,” Chapter 3, “Contracts and Leases,” and Chapter 38, “Human Relations,” for the purpose of changing the name of the Human Relations Department to the Civil Rights and Equal Opportunity Department.

BE IT ORDAINED BY THE COUNCIL OF KANSAS CITY:

Section 1. That Chapter 2 of the Code of Ordinances entitled “Administration” is hereby amended by repealing Sections 2-141, 2-551, 2-552, 2-553, 2-554, 2-1902, and 2-1903, and enacting in lieu thereof new sections of like number and subject matter to read as follows:

Sec. 2-141. Reorganization of departmental duties.

(a) Findings.

- (1) The city is called upon to perform a multitude of functions.
- (2) The organizational structures appropriate to the most efficient and effective delivery of services can quickly change depending upon forces and pressures outside the complete control of the city.
- (3) From time to time the council has established new departments to meet important needs of the time.
- (4) For the city manager to possess the necessary discretion to organize city government to best meet the current needs of the city's residents, the ability to shift certain responsibilities between departments from time to time, either on a temporary or permanent basis, is necessary.
- (5) When established by ordinance, the functions of departments are intended to constitute the initial assignment of duties, but are not intended to preclude later transfer of duties.

(b) Purpose. The purpose of this section is to permit the city manager to modify the assignment of duties among departments, except when the city charter mandates a specific responsibility be held by a certain department, or its successor.

(c) Authority of the city manager.

- (1) *Transfer of duties.* The city manager is authorized to transfer duties or activities among departments within his management control, subject to the limitations below.

- (2) *Purpose of transfers.* Such transfers may be made when the city manager finds reassignment of duties or activities should improve the efficiency or effectiveness of the service or activity.
- (3) *Limitation--Express prohibition.* Establishment of duties for specific departments by the council shall not preclude reassignment by the city manager unless those duties or activities are assigned to the Civil Rights and Equal Opportunity Department by ordinance, resolution or contract or expressly prohibited in the ordinance mandating an activity be performed by a specific department.
- (4) *Limitation--City Charter.* The city manager may not transfer the duties and activities of departments made by the people through the City Charter.

(d) *Council notification.* Before effecting a transfer of duties and activities of departments, the city manager will inform the city council by reporting to a standing committee of the council designated by the mayor for that purpose.

Sec. 2-551. Establishment.

There is hereby established a department to be known as the civil rights and equal opportunity department.

Sec. 2-552. Appointment and designation of director.

The civil rights and equal opportunity department shall be under the supervision, control and management of a director to be appointed by the city manager, and to be known as the director of the civil rights and equal opportunity department.

Sec. 2-553. Qualifications of director.

The director of civil rights and equal opportunity shall be a person skilled and experienced in the science of human relations, and shall possess executive and administrative ability.

Sec. 2-554. Duties of director.

The director of civil rights and equal opportunity shall be responsible for the management and operation of the civil rights and equal opportunity department, and shall perform such other duties as may from time to time be imposed upon him or her by the city council by ordinance.

Sec. 2-555. Personnel; assistance to advisory commission on civil rights and equal opportunity.

The director of civil rights and equal opportunity shall appoint such subordinates and clerical employees as may be required to carry out the duties and functions of the department as established by ordinance, for whom appropriation of funds may be made by the city council from time to time, and shall furnish the advisory commission on civil rights and equal opportunity such clerical assistance as required for the performance of its duties.

Sec. 2-1902. Responsibility for development of program; implementation of program.

The director of human resources jointly with the director of civil rights and equal opportunity shall be responsible for the development and administration of a comprehensive affirmative action program, and, when the program, together with such rules and regulations as are described in this article, shall have been adopted by ordinance duly passed by the council of the city, they shall have the force and effect of an enactment of the council.

Sec. 2-1903. Rules and regulations for administration and enforcement.

The director of human resources jointly with the director of civil rights and equal opportunity shall have power to adopt, promulgate, amend and enforce rules and regulations relating to the administration and enforcement of the affirmative action program. A true copy of the rules and regulations promulgated by the directors of human resources and civil rights and equal opportunity as authorized in this section shall be filed in the office of the director of records upon approval by the council and shall be available at all times for inspection by interested persons. Copies of the rules and regulations may be obtained from the director of records by payment of a proper charge therefor.

Section 2. That Chapter 3 of the Code of Ordinances entitled “Contracts and Leases” is hereby amended by repealing Sections 3-401, 3-403, 3-421, 3-429, 3-449, 3-461, 3-463, 3-501, 3-509, 3-601, 3-603, and 3-622 and enacting in lieu thereof new sections of like number and subject matter to read as follows:

Section 3-401. Definitions.

(a) The following words, terms and phrases, when used in this Division 1 shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning or an alternative definition has been provided:

- (1) *Affirmative action program* means a positive program designed to ensure that a good-faith effort will be made to employ applicants and to treat employees equally without regard to their race, color, sex, religion, national origin or ancestry, disability, sexual orientation, gender identity or age. Such program shall apply, where applicable, to the following: recruitment and recruitment advertising, employment, employment upgrading, promotion, demotion or compensation, other terms or conditions of employment and selection for training, including apprenticeship; and shall include goals, methodology and timetables for implementation of the program.
- (2) *Age* means an age of 40 or more years, except that it shall not be an unlawful employment practice for an employer to require the compulsory retirement of any person who has attained the age of 85 and who, for the two-year period immediately before retirement, is employed in a bona fide executive or high policymaking position, if such person is entitled to an immediate nonforfeitable annual retirement benefit from a pension, profit sharing, savings or deferred compensation plan, or any combination of such plans, of the employer, which equals, in the aggregate, at least \$344,000.00.
- (3) *Certificate of compliance* means a written certificate issued by an agency or body, other than City, charged with the administration of a governmentally recognized affirmative action program and which indicates that the person named therein is in compliance with the terms of an affirmative action program.

- (4) *City* means the City of Kansas City, Missouri.
- (5) *Commission* means the city human rights commission.
- (6) *Complaint* means a verified written statement of facts and circumstances, including dates, times, places and names of persons involved in any alleged violation of any provision of Chapter 213, RSMo or this Division.
- (7) *Contract* means any contract to which the city shall be a contracting party, except the following:
 - a. Personal services contracts.
 - b. Emergency requisitions for goods, supplies or services.
 - c. Impressed accounts in the nature of petty cash funds.
 - d. Contract or lease, the cost of which will not exceed \$300,000.00.
- (8) *Contractor* means any individual, partnership, corporation, association or other entity, or any combination of such entities, who or which enters into a contract with the city and who has 50 or more employees exclusive of parents, spouse or children of such contractor.
- (9) *Department* means the department of civil rights and equal opportunity.
- (10) *Director* means the director of the civil rights and equal opportunity department or such director's delegate.
- (11) *Disability*. With respect to employment, a person with a disability is a person who is otherwise qualified and who, with reasonable accommodation, can perform the essential functions of the job in question. Generally, a person with a disability is any person who:
 - a. Has a physical or mental impairment which substantially limits one or more major life activities;
 - b. Has a record of having such impairment; or
 - c. Is regarded as having such an impairment.
- (12) *Employee* means any individual employed by an employer, but does not include an individual employed by his parents, spouse or child or any individual employed to render services as a domestic in the home of the employer.
- (13) *Gender identity* means the actual or perceived appearance, expression, identity or behavior of a person as being male or female, whether or not that appearance, expression, identity or behavior is different from that traditionally associated with the person's designated sex at birth.
- (14) *Person* includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint stock companies, trusts,

unincorporated organizations, trustees, trustees in bankruptcy, receivers, fiduciaries and other organizations; except the term "person" does not include any local, state or federal governmental entity.

- (15) *Respondent* means any person against whom it shall be alleged by complaint or identified during the course of an investigation that such person has violated, is violating or is about to violate any provision of Chapter 213, RSMo or this Division.
- (16) *Sexual orientation* means actual or perceived heterosexuality, homosexuality or bisexuality.
- (17) *Subcontractor* means any individual, partnership, corporation, association or other entity, or other combination of such entities, which shall undertake, by virtue of a separate contract with a contractor, to fulfill all or any part of any contractor's obligation under a contract with the city, or who shall exercise any right granted to a franchise holder, and who has 50 or more employees exclusive of the parents, spouse or children or such subcontractor.
- (18) *Unlawful discriminatory practice* means any discriminatory practice as defined and prohibited by sections 38-103, 38-105, 38-107, 38-109, 38-111 and 38-113, Code of Ordinances.

Section 3-403. Affirmative action.

- (a) Any contract exceeding \$300,000.00 shall include the following requirements as material terms thereof:
 - (1) That contractor execute and submit an affidavit, in a form prescribed by the city, warranting that contractor has an affirmative action program in place and will maintain the affirmative action program in place for the duration of the contract.
 - (2) That contractor submit, in print or electronic format, a copy of its current certificate of compliance to the civil rights and equal opportunity department prior to receiving its first payment under the contract, unless a copy thereof shall have already been submitted to the civil rights and equal opportunity department at any point within the previous two calendar years. If contractor does not possess a current certificate of compliance, contractor shall submit, in print or electronic format, a copy of its affirmative action program to the civil rights and equal opportunity department prior to receiving its first payment under the contract, unless a copy thereof shall have already been submitted to the civil rights and equal opportunity department at any point within the previous two calendar years.
 - (3) That contractor require any subcontractor awarded a subcontract exceeding \$300,000.00 to affirm that subcontractor has an affirmative action program in place and will maintain the affirmative action program in place for the duration of the subcontract.
 - (4) That contractor obtain from any subcontractor awarded a subcontract exceeding \$300,000.00 a copy of the subcontractor's current certificate of compliance and tender a copy of the same, in print or electronic format, to the civil rights and equal opportunity department within thirty (30) days from the date the subcontract is executed. If the subcontractor does not possess a current certificate of compliance, the contractor shall obtain a copy of the subcontractor's affirmative action program and tender a copy of the same, in print or electronic format, to the civil rights

and equal opportunity department within thirty (30) days from the date the subcontract is executed.

Sec. 3-421. Definitions.

(a) The following definitions apply to this division 2, except where an alternate definition has specifically been made applicable:

- (1) *Affidavit of intended utilization*: An affidavit, in a form prescribed by the director, stating the bidder's intent to meet the MBE/WBE goals or to timely request a waiver of the MBE/WBE goals.
- (2) *Award of contract*: Execution of a contract and, if necessary, city council or park board authorization.
- (3) *Bid*: An offer to enter into a contract submitted pursuant to an invitation for bid.
- (4) *Bidder*: Any person who submits a bid to the city or an incentive agency in response to an invitation for bid.
- (5) *Bid opening*: The event whereby bids are opened and read aloud at the place, date and time specified in the invitation for bid and any subsequent amendment thereto.
- (6) *Bid shopping*: The practice whereby a person divulges or requires another to divulge a subcontractors bid or proposal for the purpose of securing a lower bid or proposal.
- (7) *Board or boards*: Fairness in construction board, fairness in professional services and goods board, or both, as applicable.
- (8) *Budget*: The total costs reflected within a contract for which MBE/WBE goals are to be set pursuant to this division.
- (9) *City*: City of Kansas City, Missouri.
- (10) *City department*: Department of the city or the division of procurement services when acting on behalf of a department director.
- (11) *Commercially useful function*: Real and actual services that are a distinct and verifiable element of the contracted work based upon private sector trade or industry standards. Determination that an enterprise performs a commercially useful function will be made based on the following considerations:
 - a. An MBE or WBE performs a commercially useful function when it is responsible for execution of the ordinary and necessary work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the MBE or WBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price,

determining the quality and quantity, ordering the material, installing (where applicable) and paying for the material itself. To determine whether an MBE or WBE is performing a commercially useful function, one must evaluate the following:

1. The amount of work subcontracted; and
 2. Industry practices; and
 3. Whether the amount the enterprise is to be paid under the contract is commensurate with the work it is actually performing; and
 4. Whether the MBE or WBE has the skill and expertise to perform work for which it is being utilized; and
 5. The credit claimed for its performance of the work; and
 6. Other relevant factors.
- b. An MBE or 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 MBE or WBE participation. In determining whether an MBE or WBE is such an extra participant, one must examine similar transactions, particularly those in which MBEs or WBEs do not participate.
- c. An MBE or WBE firm is not performing a commercially useful function if the MBE or WBE subcontracts a greater portion of the work on a contract or purchases a greater amount of material than would be expected on the basis of normal industry practice for the type of work involved.
- d. Whether the MBE or WBE is participating in the contract as a middle person or broker in the normal course of that business or trade by purchasing the goods and/or services from another business, thereby qualifying expenditures for such goods and/or services to be counted toward utilization requirements for MBEs and WBEs.
- e. Whether the MBE or WBE is responsible for the purchase and quality of, and payment for, materials used to perform its work under the contract.

There shall be a rebuttable presumption that, when the MBE or WBE subcontracts a greater portion of the contract work than normal industry practice, the MBE or WBE is not performing a commercially useful function.

- (12) *Construction contract:* A contract for the construction, reconstruction, improvement, enlargement or alteration of any fixed work or construction site preparation, of which any amount is paid for out of city or agency funds.
- (13) *Contract:* Any contract more than \$300,000.00, and all other city or agency contracts more than \$160,000.00 the majority of either of which is paid for out of city funds or in which an incentive agency is a party, except the following:

- a. Personal services contracts; and
 - b. Emergency contracts; and
 - c. Imprest accounts in the nature of petty cash funds.
- (14) *Contractor*: Any person who enters into a contract with the city or an incentive agency.
- (15) *Contractor utilization plan or CUP*: The statement, in a form prescribed by the director, that must be submitted by a bidder or proposer pursuant to section 3-433 and that states its plan to utilize qualified MBEs and/or WBEs in the performance of a contract.
- (16) *Day*: A calendar day, except as otherwise indicated.
- (17) *Department*: The civil rights and equal opportunity department or the division within the city manager's office that is assigned to perform the tasks delegated to the civil rights and equal opportunity department by this division.
- (18) *Department director*: Person appointed by the city manager to be responsible for a city department or the manager of procurement services when acting on behalf of a department director or the city.
- (19) *Developer*: Entity seeking tax increment financing or city tax abatement incentives from an incentive agency described in subsection 3-425(b) or 3-425(c).
- (20) *Director*: The director of the civil rights and equal opportunity department or his authorized representative, or the person designated by the city manager to perform the tasks delegated to the director of the civil rights and equal opportunity department by this article.
- (21) *Disadvantaged business enterprise (DBE)*: A business concern that meets the federal requirements for certification as a DBE.
- (22) *Economic disadvantage*: A diminished ability to compete in the free enterprise system due to diminished capital and credit opportunities as compared to others in the same or similar line of business who are found to be socially disadvantaged. In determining whether an individual is economically disadvantaged, the director shall follow the guidance provided in appendix E to 49 CFR Part 26.
- (23) *Expertise*: Experience or training in a specialized field that is critical to the firm's operations, indispensable to the firm's potential success, and specific to the type of work the firm performs.
- (24) *Goal*: A numerical objective stated as a percentage of contract dollars for participation by qualified MBEs and WBEs in contracts.
- (25) *Incentive agency or agency*: Each of the commissions, agencies and authorities described in subsection 3-425(b) or 3-425(c), or any entity with the authority to recommend to the city tax increment financing or tax abatement.

- (26) *Incentive agency head*: Person authorized to act on behalf of an incentive agency.
- (27) *Incentive project*: A project receiving tax increment financing or tax abatement or exemption from an incentive agency pursuant to contracts described in sections 3-425(b) and 3-425(c).
- (28) *Invitation for bid*: A request or invitation for submission of an offer to enter into a contract pursuant to a competitive bidding process.
- (29) *Kansas City metropolitan area*: The Missouri counties of Cass, Clay, Jackson and Platte and the Kansas counties of Johnson, Leavenworth and Wyandotte.
- (30) *Letter of intent to subcontract*: A document, in a form prescribed by the director that demonstrates the prime contractor or developer's intent to enter a contractual agreement with a selected MBE/WBE.
- (31) *M/W/DBE Kansas City Mo. online directory or directory*: A source list compiled, maintained and updated by the civil rights and equal opportunity department containing (when provided) the names, mailing addresses, e-mail addresses and facsimiles of certified MBE/WBE/DBEs and the NAICS codes denoting scopes of work for which each such MBE/WBE/DBE is certified, which MBE/WBE/DBEs are in the business of providing construction, professional services and other services and goods from whom bids and proposals can be solicited. The directory is to facilitate identifying MBE/WBE/DBE subcontractors with capabilities relevant to general contracting requirements and to particular solicitations.
- (32) *Mentor/protégé*: A relationship between an MBE or WBE (protégé) and a person in the same trade or industry (mentor). The mentor/protégé relationship is to provide technical, financial, bonding, equipment and personnel assistance. The purpose of the relationship is to increase the capacity of MBE/WBEs to perform contracts.
- (33) *Minority*: A person who is a citizen or lawful permanent resident of the United States and who is:
- a. African American, a person whose origins are in any of the Black racial groups of Africa, and who has historically and consistently identified himself or herself as being such a person; or
 - b. Hispanic American and/or Latino American, a person whose origins are in Mexico, Central or South America, or any of the Spanish speaking islands of the Caribbean, (for example Cuba and Puerto Rico) regardless of race, and who has historically and consistently identified himself or herself as being such a person; or
 - c. Asian and/or Pacific Islander American, a person whose origins are in any of the original peoples of the Far East, Southeast Asia, the islands of the Pacific or the Northern Marianas, or the Indian Subcontinent, and who has historically and consistently identified himself or herself as being such a person; or
 - d. Native American, a person having origins in any of the original peoples of North

America, and who maintains tribal affiliation or demonstrates at least one-quarter descent from such groups, and who has historically and consistently identified himself or herself as being such a person; or

- e. On a case-by-case basis, an individual found by the director to have been subjected to individualized prejudice or cultural bias within American society within the city's marketplace and has demonstrated economic disadvantage and social disadvantage as defined in this section.

(34) *Minority business enterprise (MBE)*: A for-profit small business concern that:

- a. Is at least 51 percent owned, managed, and independently controlled by one or more minorities; and
- b. Has a real and substantial presence in the Kansas City metropolitan area as defined by section 3-461(c) and
- c. Meets the business size standards imposed by 13 CFR 121.201 as subsequently amended and this division; and
- d. Performs a commercially useful function; and
- e. Is certified by the civil rights and equal opportunity department.

Beginning October 1, 2020, a for-profit small business concern must meet the following additional criteria to qualify as an MBE:

- f. Whose owner's or, for businesses with multiple owners, each individual owner's personal net worth (as defined in this section) is equal to or less than the permissible personal net worth amount determined by the U.S. Department of Transportation to be applicable to its DBE program.

Submission of documentation evidencing that an owner meets this personal net worth criteria shall begin on July 1, 2020 and be completed by August 1, 2020.

Only persons meeting each of the above criteria shall be deemed an MBE for purposes of this division. In order to be credited towards the goals on a particular solicitation for a particular scope of work, the MBE shall be certified as of or listed on the directory on the date a contractor utilization plan is submitted.

(35) *Person*: One or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers, fiduciaries and other organizations; except "person" does not include any local, state or federal governmental entity.

(36) *Personal Net Worth*: The net value of the assets of an individual after total liabilities is deducted. An individual's personal net worth does not include the individual's ownership interest in a

certified M/WBE or applicant for such certification or the individual's equity, if any, in his or her primary place of residence. An individual's personal net worth includes only his or her share of assets held individually or jointly with the individual's spouse.

- a. Except as set forth in subsection b., an individual's personal net worth also includes any assets which that individual has transferred to an immediate family member, to a trust a beneficiary of which is the individual or an immediate family member, or to the certified M/WBE or applicant firm for less than fair market value, within two years prior to an application for certification as an M/WBE or within two years of submission of the firm's annual affidavit, unless the individual can demonstrate that the transfer is to or on behalf of an immediate family member for that family member's education, medical expenses, or some other form of essential support.
- b. Any assets transferred by an individual to an immediate family member that are consistent with the customary recognition of special occasions, such as, but not limited to, birthdays, graduations, weddings, anniversaries, and retirements shall not be included in the personal net worth calculation.

- (37) *Personal services contract*: A contract or agreement of employment with an individual who is not acting as an independent contractor and who is not part of the cities classified or unclassified service.
- (38) *Principal place of business*: The location at which the business records of the MBE/WBE applicant concern are maintained and the location at which the minority or woman individual owner who manages and controls the day-to-day operations spends the majority of his/her working hours.
- (39) *Proposal*: Any offer or list of qualifications submitted to the city in response to a request for proposal.
- (40) *Proposer*: Any person who submits a proposal to enter into a contract, either in response to a request for proposals, request for qualifications or otherwise, but not pursuant to an invitation for bid.
- (41) *Qualified*: Possessing the demonstrated ability to perform the contracted task.
- (42) *Request for proposals*: An invitation for submission of an offer to enter into a contract pursuant to a negotiated process and not a competitive bid, including requests for qualifications.
- (43) *Social disadvantage*: A diminished ability to compete in the free enterprise system due to at least one objective, distinguishing feature that has contributed to social disadvantage, such as race, ethnic origin, gender, sexual orientation, or disability. In determining whether an individual is socially disadvantaged, the director shall follow the guidance in appendix E to 49 CRF Part 26.
- (44) *Supplier*: An enterprise that owns operates or maintains a store, warehouse or other establishment in which materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock and regularly sold or leased to the public in the usual course of business.

- (45) *Supply broker*: An enterprise that acts as an agent in negotiating contracts for the purchase of materials, supplies, articles or equipment but does not itself own, operate or maintain a store, warehouse or other establishment where such materials, supplies, articles or equipment are bought, kept in stock and regularly sold or leased to the public in the usual course of business.
- (46) *Woman*: A person who is a citizen or lawful permanent resident of the United States and who is a female.
- (47) *Women's business enterprise (WBE)*: A for-profit small business concern that:
- a. Is at least 51 percent owned, managed, and independently controlled by one or more women; and
 - b. Has a real and substantial presence in the Kansas City Metropolitan Area as defined by section 3-461(c); and
 - c. Meets the business size standards imposed by 13 CFR 121.201 and as subsequently amended and this division; and
 - d. Performs a commercially useful function; and
 - e. Is certified by the civil rights and equal opportunity department; and

Beginning October 1, 2020, a for-profit small business concern must meet the following additional criteria to qualify as a WBE:

- f. The owner's or, for businesses with multiple owners, each individual owner's personal net worth is equal to or less than the permissible personal net worth amount determined by the U.S. Department of Transportation to be applicable to its DBE program.

Submission of documentation evidencing that an owner meets this personal net worth criteria shall begin on July 1, 2020 and be completed by August 1, 2020.

Only persons meeting each of the above criteria shall be deemed a WBE for purposes of this division. In order to be credited towards the WBE goals on a particular solicitation for a particular scope of work, the WBE shall be certified as of or listed in the directory on the date a contractor utilization plan is submitted.

Sec. 3-429. City department and incentive agency MBE/WBE utilization plan.

(a) Each city department and incentive agency shall prepare and submit to the director by April 1, unless otherwise extended by the director, an annual MBE/WBE utilization plan for the next city fiscal year. Each city department and agency MBE/WBE utilization plan shall include:

- (1) Separate city department or incentive agency goals for participation by qualified MBEs and WBEs as prime contractors and subcontractors in the procurement of goods, professional services, services and construction for the upcoming fiscal year. The goals should be expressed

as a percentage of the city department or incentive agency's total fiscal year contract expenditures; and

- (2) Any other information that the city department or incentive agency or the director deems relevant or necessary.

(b) A city department or incentive agency may amend its MBE/WBE utilization plan during the fiscal year to reflect changes in its projected contract expenditures or other relevant circumstances, and shall inform the director of such changes.

(c) In planning its individual contracts, each city department and incentive agency shall utilize the methodologies described in this division and use its good faith efforts to encourage and attempt to obtain participation of qualified MBEs and/or WBEs and shape the scope, specifications and size of a contract to enhance such participation.

- (d) City departments and incentive agencies shall encourage eligible businesses to:

- (1) Apply to the city's department, Kansas Department of Transportation (KDOT) or Missouri Department of Transportation (MODOT) for certification; and
- (2) Have their names included on departmental bidders and proposers lists in the directory; and
- (3) Seek pre-qualification when applicable; and
- (4) Compete for city business as prime contractors, subcontractors and suppliers.

- (e) City departments and incentive agencies shall make reasonable efforts to:

- (1) Advertise contract opportunities in general circulation media, trade and professional association publications, small business media, and publications of minority and women's business organizations; and
- (2) Send written notice of specific contract opportunities to minority and women's business organizations and those entities on the departmental bidder's and proposer's list; and
- (3) With the assistance of the director, shape the scope, specifications and size of a contract to enhance participation opportunities for qualified MBEs and WBEs.

(f) Each city department, as part of his or her annual evaluation, shall be reviewed concerning the implementation of the city's MBE/WBE program. In the event a deficiency is found, the director of civil rights and equal opportunity or his or her designee will work with the city department to identify prohibiting factors and offer any assistance necessary to successfully implement this minority and women business enterprise program.

Sec. 3-449. Fairness in professional services and goods board.

(a) Establishment and authority. There is hereby established a fairness in professional services and goods board. The board's authority is limited to bids, proposals and contracts for professional services, other

services, goods, materials and supplies, (other than construction materials and supplies) for the city or an incentive project in which the estimated cost of such professional services, other services, goods, materials and supplies is more than \$160,000. The board shall set goals to increase the utilization of MBEs/WBEs in professional services contracts, other services contracts, goods, materials and supplies contracts (other than construction materials and supplies), to make determinations as to whether good faith efforts have been made and the assessment and amount of liquidated damages on incentive agency projects when the applicable agency and the director fail to mutually agree, and has the authority to hear and investigate appeals on city contracts as set forth in section 3-450.

(b) Board composition. The board shall be composed of seven members (including a chairperson) and six alternates, all appointed by the mayor and all of whom shall be industry experts in the areas of professional services, general services and goods and materials.

(c) Term. The terms of all board members shall be for a period of four years; however, all members shall continue in office as such until the respective successors shall have been appointed.

(d) Alternates. In the event a board member is unable to attend a meeting or has a conflict of interest with regard to an issue at hand, the alternate shall temporarily serve in such member's stead. It is the board member's responsibility to notify his or her alternate that they may be needed at the meeting. The term of an alternate shall expire at the expiration of the term of the board member.

(e) Absence of chairperson. In the event the chairperson is not in attendance at any board meeting, a majority of board members shall select a member to act as chairperson for that meeting.

(f) Ineligibility. The following persons are ineligible to serve on the board:

- (1) Members of the city council; and
- (2) Employees of the city; and
- (3) Nonresidents of the city, unless the nonresident works in the city metropolitan area or is appointed to represent the interests of an organization that maintains an office in the city metropolitan area.

(g) Conflict of interest. In the event a board member has a conflict of interest in a contract or issue that comes before the board, the member shall be temporarily replaced by the alternate. In the event an alternate has a conflict of interest in a bid, contract or issue that comes before the board, the alternate shall recuse himself.

(h) Quorum. Four members of the board shall constitute a minimum quorum.

(i) Convening the board. The board shall be appointed and first convene no later than February 1, 2019. The goal-setting responsibilities of the board as stated in section 3-450(a) will be performed by the director or the civil rights and equal opportunity department until such time as the board is convened.

Sec. 3-461. Certification and appeals.

(a) To ensure that this article benefits only MBEs and WBEs that are owned and controlled by bona fide minorities and women, the director shall certify MBEs and WBEs and mentor/protégés who wish to participate

in the program. Any person not certified by the civil rights and equal opportunity department shall not be regarded as an MBE, WBE, or mentor/protégé program under this division.

(b) Each person that seeks certification as an MBE/WBE must demonstrate by written documentation or affidavit that it has suffered from past race or gender discrimination in the city and in the applicable trade or industry. A unified certification process (UCP) certificate, a Missouri Highway and Transportation Department certification or a Kansas Department of Transportation certification along with the documentation stated in this subsection, is sufficient for certification as a DBE so long as the firm has never been denied certification by any federal, state or local authority at any time and meets the definition of section 3-421(a) (20) and the requirements of this section.

(c) Each entity seeking certification as an MBE/WBE must demonstrate by written documentation or affidavit that it's owner or individual owner's personal net worth (as defined in this section) is equal to or less than the permissible personal net worth amount determined by the U.S. Department of Transportation to be applicable to its DBE programs. Entities seeking certification as an MBE/WBE shall submit all information or documentation requested by the city's civil rights and equal opportunity department in determining whether the entity complies with this subsection.

(d) Each person that seeks certification as an MBE/WBE in the Kansas City metropolitan area must demonstrate the business enterprise has a real and substantial presence. After the effective date of this provision, any business enterprise shall be deemed to have a real and substantial presence in the Kansas City metropolitan area if:

- (1) The firm's principal office or place of business is in the Kansas City metropolitan area; and
- (2) The firm maintains full-time employees in one or more of the firm's offices within the Kansas City metropolitan area to conduct or solicit business in the Kansas City metropolitan Area the majority of their working time; and
- (3) The firm has transacted business more than once in the Kansas City metropolitan area within the last three years; and
- (4) The firm's principal office or place of business has been in existence in the Kansas City metropolitan area at least six months prior to application for participation in the MBE/WBE program.

If an MBE/WBE does not have a real and substantial presence in the Kansas City metropolitan area as specified under subsection (c)(1) through (c)(4), the firm shall remain certified until their certification expires. After the firm's certification expires, the firm must meet the requirements of subsection (c) (1) through (c) (4) to be recertified.

(e) All applicants and certified businesses shall be subject to an audit by the director at any time. An applicant's or certified business' refusal to facilitate an audit shall be grounds for denial of its certification application or revocation of its certification.

(f) All applicants and certified businesses shall be required to demonstrate and prove that the business has the skill and expertise to perform as a subcontractor in the particular area of work for which it is requesting listing or is listed on the M/W/DBE Kansas City, Mo. Online Directory.

(g) All applicants and certified businesses shall submit such information or documentation as may be required by the director in connection with its certification as an MBE or WBE, including, but not limited to current licenses and federal, state and local tax returns and schedules (business and personal), and all other forms that are required to be included with or attached to the return at the time of filing. Failure to submit such information or documentation shall result in the denial of its certification application or revocation of its certification.

(h) A certification application may be withdrawn by an applicant without prejudice at any time prior to an on-site audit. All applications and documentation submitted to support an application will not be returned to the applicant. Following the withdrawal of a certification application, the applicant may not reapply for certification for a period of one year from the date of withdrawal of the application.

(i) Burden of proof in the certification process. The firm seeking certification has the burden of demonstrating to the director, by a preponderance of the evidence, that it meets all the requirements for certification. The director shall make determinations concerning whether individuals and firms have met their burden of demonstrating minority and woman status, business size, expertise, commercially useful function, ownership, management, independence and control by considering all the facts in the record, viewed as a whole.

(j) Determination of minority and woman status. If the director has reason to question whether an individual is a minority or woman, the director shall require the individual to demonstrate, by a preponderance of the evidence, that he or she is a minority or woman. In making such a determination, the director must consider whether the person has held himself or herself out to be a minority or woman over a long period of time prior to application for certification and whether the person is regarded as such by the relevant community. Evidence of active participation in relevant community organizations will be considered in such determinations. The director may require the applicant to produce appropriate documentation. An entity may be simultaneously certified as an MBE or WBE if it meets all criteria for both MBE and WBE certification

(k) Business size determinations. To be an MBE/WBE, a firm (including its affiliates) must be an existing and currently functioning small business. The director shall apply the SBA business size standard(s) found in 13 CFR part 121.201 and as amended as of the date of application and appropriate to the type(s) of work the firm seeks to perform.

(l) Determination of ownership. In determining whether the minority or women participants in a firm own the firm, the director shall consider all the facts in the record, viewed as a whole.

- (1) To be an MBE/WBE, a firm must be at least 51 percent owned by one or more minority and women individuals, reflected as follows:
 - a. In the case of a corporation, such individuals must own at least 51 percent of each class of voting stock outstanding and 51 percent of the aggregate of all stock outstanding.
 - b. In the case of a partnership, 51 percent of each class of partnership interest must be owned by minority and women. Such ownership must be reflected in the firm's partnership agreement.
 - c. In the case of a limited liability company, at least 51 percent of each class of member

interest must be owned by the minority and women individuals.

- (2) The firm's ownership by minority or women must be real, substantial, and continuing, going beyond pro forma ownership of the firm as reflected in ownership documents. The minority or women owners must enjoy the customary incidents of ownership, and share in the risks and profits commensurate with their ownership interests, as demonstrated by the substance, not merely the form, of arrangements.
- (3) All securities that constitute ownership of a firm shall be held directly by the minorities or women. Except as provided in this subsection (3), no securities or assets held in trust, or by any guardian for a minor, are considered as held by minority or women individuals in determining the ownership of a firm. However, securities or assets held in trust are regarded as held by a minority or woman for purposes of determining ownership of the firm, if:
 - a. The beneficial owner of securities or assets held in trust is a minority or woman, and the trustee is the same or another such individual; or
 - b. The beneficial owner of a trust is a minority or woman who, rather than the trustee, exercises effective control over the management, policy-making, and daily operational activities of the firm. Assets held in a revocable living trust may be counted only in the situation where the same minority or woman is the sole grantor, beneficiary, and trustee.
- (4) The contributions of capital or expertise by the minority or women owners to acquire their ownership interests must be real and substantial. Examples of insufficient contributions include a promise to contribute capital, an unsecured note payable to the firm or an owner who is not a disadvantaged individual, or mere participation in a firm's activities as an employee. Debt instruments from financial institutions or other organizations that lend funds in the normal course of their business do not render a firm ineligible, even if the debtor's ownership interest is security for the loan.
- (5) In situations where expertise is relied upon as part of a minority or woman owner's contribution to acquire ownership:
 - a. The owner's expertise must be:
 1. In a specialized field; and
 2. In areas critical to the firm's operations; and
 3. Indispensable to the firm's potential success; and
 4. Specific to the type of work the firm performs; and
 5. Documented in the records of the firm. These records must clearly show the contribution of expertise and its value to the firm.
 - b. The individual whose expertise is relied upon must have a significant financial investment in the firm.

- (6) The director shall always deem as held by a minority or woman individual, for purposes of determining ownership, all interests in a business or other assets obtained by the individual:
- a. As the result of a final property settlement or court order in a divorce or legal separation, provided that no term or condition of the agreement or divorce decree is inconsistent with this section; or
 - b. Through inheritance, or otherwise because of the death of the former owner.
- (7) Presumptions regarding interests obtained without consideration:
- a. The director shall presume as not being held by a minority or woman individuals, for purposes of determining ownership, all interests in a business or other assets obtained by the individual as the result of a gift, or transfer without adequate consideration, from any non-minority or male individual or non-MBE/WBE firm who is:
 1. Involved in the same firm for which the individual is seeking certification, or an affiliate of that firm; or
 2. Involved in the same or a similar line of business; or
 3. Engaged in an ongoing business relationship with the firm, or an affiliate of the firm, for which the individual is seeking certification.
 - b. To overcome this presumption and permit the interests or assets to be counted, the minority or woman individual must demonstrate to the director, by clear and convincing evidence, that:
 1. The gift or transfer to the disadvantaged individual was made for reasons other than obtaining certification as an MBE/WBE; and
 2. The minority or woman individual actually controls the management, policy, and operations of the firm, notwithstanding the continuing participation of non-minority or male individual or non-MBE/WBE firm who provided the gift or transfer.
- (8) The director shall apply the following rules in situations in which marital assets form a basis for ownership of a firm:
- a. When marital assets (other than the assets of the business in question), held jointly or as community property by both spouses, are used to acquire the ownership interest asserted by one spouse, the director shall deem the ownership interest in the firm to have been acquired by that spouse with his or her own individual resources, provided that the other spouse irrevocably renounces and transfers all rights in the ownership interest in the manner sanctioned by the laws of the state in which either spouse or the firm is domiciled. The director shall not count a greater portion of joint or community property assets toward ownership than state law would recognize as belonging to the minority or

woman owner of the applicant firm.

b. A copy of the document legally transferring and renouncing the other spouse's rights in the jointly owned or community assets used to acquire an ownership interest in the firm must be included as part of the firm's application for MBE/WBE certification.

(9) The director may consider the following factors in determining the ownership of a firm. However, the director must not regard a contribution of capital as failing to be real and substantial, or find a firm ineligible, solely because:

a. A minority or woman individual acquired his or her ownership interest as the result of a gift, or transfer without adequate consideration, other than the types set forth in subsection (7) of this section; or

b. There is a provision for the co-signature of a spouse who is not a minority or woman individual on financing agreements, contracts for the purchase or sale of real or personal property, bank signature cards, or other documents; or

c. Ownership of the firm in question or its assets is transferred for adequate consideration from a spouse who is not a minority or woman to a spouse who is such an individual. In this case, the director must give particularly close and careful scrutiny to the ownership and control of a firm to ensure that it is owned and controlled, in substance as well as in form, by a minority or woman individual.

(m) Determinations concerning control. In determining whether the minority or women owners control a firm, the director must consider all the facts in the record, viewed as a whole.

(1) Only an independent business may be certified as an MBE/WBE. An independent business is one the viability of which does not depend on its relationship with another firm or firms.

a. In determining whether a potential MBE/WBE is an independent business, the director must scrutinize relationships with non-MBE/WBE firms, in such areas as personnel, facilities, equipment, financial and/or bonding support, and other resources.

b. The director must consider whether present or recent employer/employee relationships between the minority and woman owner(s) of the potential MBE/WBE and non-MBE/WBE firms or persons associated with non-MBE/WBE firms compromise the independence of the potential MBE/WBE firm.

c. The director must examine the firm's relationships with prime contractors to determine whether a pattern of exclusive or primary dealings with a prime contractor compromises the independence of the potential MBE/WBE firm.

d. In considering factors related to the independence of a potential MBE/WBE firm, the director must consider the consistency of relationships between the potential MBE/WBE and non-MBE/WBE firms with normal industry practice.

(2) An MBE/WBE firm must not be subject to any formal or informal restrictions which limit the

customary discretion of the minority or women owners. There can be no restrictions through corporate charter provisions, by-law provisions, contracts or any other formal or informal devices (e.g., cumulative voting rights, voting powers attached to different classes of stock, employment contracts, requirements for concurrence by non-disadvantaged partners, conditions precedent or subsequent, executory agreements, voting trusts, restrictions on or assignments of voting rights) that prevent the minority or women owners, without the cooperation or vote of any non-minority or male, from making any business decision of the firm. This paragraph does not preclude a spousal co-signature on documents.

- (3) The minority and women owners must possess the power to direct or cause the direction of the management and policies of the firm and to make day-to-day as well as long-term decisions on matters of management, policy and operations.
 - a. A minority or women owner must hold the highest officer position in the company (e.g., chief executive officer or president).
 - b. In a corporation, minority or women owners must control the board of directors.
 - c. In a partnership, one or more minorities or women owners must serve as general partners, with control over all partnership decisions.
- (4) Individuals who are not minorities or women may be involved in an MBE/WBE firm as owners, managers, employees, stockholders, officers, and/or directors. Such individuals must not, however, possess or exercise the power to control the firm, or be disproportionately responsible for the operation of the firm.
- (5) The minority and women owners of the firm may delegate various areas of the management, policymaking, or daily operations of the firm to other participants in the firm, regardless of whether these participants are minority or women. Such delegations of authority must be revocable, and the minority and women owners must retain the power to hire and fire any person to whom such authority is delegated. The managerial role of the minority and women owners in the firm's overall affairs must be such that the recipient can reasonably conclude that the minority and women owners actually exercise control over the firm's operations, management, and policy.
- (6) The minority and women owners must have an overall understanding of, and managerial and technical competence and experience directly related to, the type of business in which the firm is engaged and the firm's operations. The minority and women owners are not required to have experience or expertise in every critical area of the firm's operations, or to have greater experience or expertise in a given field than managers or key employees. The minority and women owners must have the expertise, technical competence, and ability to intelligently and critically evaluate information presented by other participants in the firm's activities and to use this information to make independent decisions concerning the firm's daily operations, management, and policymaking. Generally, expertise limited to office management, administration, or bookkeeping functions unrelated to the principal business activities of the firm is insufficient to demonstrate control.
- (7) If state or local law requires the persons to have a particular license or other credential in order

to own and/or control a certain type of firm, then the minority or women persons who own and control a potential MBE/WBE firm of that type must possess the required license or credential. If state or local law does not require such a person to have such a license or credential to own and/or control a firm, the director must not deny certification solely on the ground that the person lacks the license or credential. However, the director may take into account the absence of the license or credential as one factor in determining whether the minority or women owners actually control the firm.

- (8) The director may consider differences in remuneration between the minority and women owners and other participants in the firm in determining whether to certify a firm as an MBE/WBE. Such consideration shall be in the context of the duties of the persons involved, normal industry practices, the firm's policy and practice concerning reinvestment of income, and any other explanations for the differences proffered by the firm. The director may determine that a firm is controlled by its minority or woman owner although that owner's remuneration is lower than that of some other participants in the firm. In a case where a non-minority or non-woman individual formerly controlled the firm, and a minority or women individual now controls it, the director may consider a difference between the remuneration of the former and current controller of the firm as a factor in determining who controls the firm, particularly when the non-minority or non-woman individual remains involved with the firm and continues to receive greater compensation than the minority or woman individual.
- (9) In order to be viewed as controlling a firm, a minority or woman owner cannot engage in outside employment or other business interests that conflict with the management of the firm or prevent the individual from devoting sufficient time and attention to the affairs of the firm to control its activities. For example, absentee ownership of a business and part-time work in a full-time firm are not viewed as constituting control. However, an individual could be viewed as controlling a part-time business that operates only on evenings and/or weekends, if the individual controls it all the time it is operating.
- (10) A minority or woman individual may control a firm even though one or more of the individual's immediate family members (who themselves are not minorities or women) participate in the firm as a manager, employee, owner, or in another capacity. Except as otherwise provided in this paragraph, the director must make a judgment about the control the minority or woman owner exercises vis-à-vis other persons involved in the business as in other situations, without regard to whether or not the other persons are immediate family members. If the director cannot determine that the minority or woman owners, as distinct from the family as a whole, control the firm, then the minority or woman owners have failed to carry their burden of proof concerning control, even though they may participate significantly in the firm's activities.
- (11) Where a firm was formerly owned and/or controlled by a non-minority or non-woman individual (whether or not an immediate family member), ownership and/or control were transferred to a minority or woman individual, and the non-minority or non-woman individual remains involved with the firm in any capacity, the minority or woman individual now owning the firm must demonstrate to the director, by clear and convincing evidence, that:
- a. The transfer of ownership and/or control to the minority or woman individual was made for reasons other than obtaining certification as an MBE/WBE; and

- b. The minority or woman individual actually controls the management, policy, and operations of the firm, notwithstanding the continuing participation of a non-minority or non-woman individual who formerly owned and/or controlled the firm.
- (12) In determining whether a firm is controlled by its minority or women owners, the director shall consider whether the firm owns equipment necessary to perform its work. However, the director must not determine that a firm is not controlled by minority or women individuals solely because the firm leases, rather than owns, such equipment, where leasing equipment is a normal industry practice and the lease does not involve a relationship with a prime contractor or other party that compromises the independence of the firm.
- (13) The director shall grant certification to a firm only for specific types of work in which they are currently functioning and in which the minority or women owners have the ability to control the firm. To become certified in an additional type of work, the firm needs to demonstrate to the director that its minority or women owners are able to control the firm with respect to that type of work. The director may not, in this situation, require that the firm be recertified or submit a new application for certification, but must verify the minority or women owner's control of the firm in the additional type of work.
- (14) A business operating under a franchise or license agreement may be certified if it meets the standards in this subpart and the franchiser or licensor is not affiliated with the franchisee or licensee. In determining whether affiliation exists, the director should generally not consider the restraints relating to standardized quality, advertising, accounting format, and other provisions imposed on the franchisee or licensee by the franchise agreement or license, provided that the franchisee or licensee has the right to profit from its efforts and bears the risk of loss commensurate with ownership. Alternatively, even though a franchisee or licensee may not be controlled by virtue of such provisions in the franchise agreement or license, affiliation could arise through other means, such as common management or excessive restrictions on the sale or transfer of the franchise interest or license.
- (15) In order for a partnership to be controlled by minority or women individuals, any non-minority or non-women partners must not have the power, without the specific written concurrence of the minority or women partner(s), to contractually bind the partnership or subject the partnership to contract or tort liability.
- (16) The minority or women individuals controlling a firm may use a professional and commercial employee leasing company. The use of such a company does not preclude the minority or woman individuals from controlling their firm if they continue to maintain an employer-employee relationship with the leased employees. This includes being responsible for hiring, firing, training, assigning, and otherwise controlling the on-the-job activities of the employees, as well as ultimate responsibility for wage and tax obligations related to the employees.
- (17) The director may consider, in making certification decisions, whether a firm has exhibited a pattern of conduct indicating its involvement in attempts to evade or subvert the intent or requirements of the MBE/WBE program.
- (18) The director shall evaluate the eligibility of a firm on the basis of present circumstances. The director shall not refuse to certify a firm based solely on historical information indicating a lack

of ownership or control of the firm by the minorities or women at some time in the past, if the firm currently meets the ownership and control standards of this part.

- (19) MBE/WBE firms and firms seeking MBE/WBE certification shall cooperate fully with the director's requests (and DOT requests) for information relevant to the certification process. Failure or refusal to provide such information is a ground for a denial or removal of certification.
- (20) An eligible MBE/WBE firm must be owned by individuals who are minorities and women. Except as provided in this paragraph, a firm that is not owned by such individuals, but instead is owned by another firm—even an MBE/WBE firm—cannot be an eligible MBE/WBE.
- a. If the minorities or women own and control a firm through a parent or holding company, established for tax, capitalization or other purposes consistent with industry practice, and the parent or holding company in turn owns and controls an operating subsidiary, the director may certify the subsidiary if it otherwise meets all requirements of this section. In this situation, the individual owners and controllers of the parent or holding company are deemed to control the subsidiary through the parent or holding company.
- b. The director may certify such a subsidiary only if there is cumulatively 51 percent ownership of the subsidiary by the minority and women individuals. The following examples illustrate how this cumulative ownership provision works:

Example 1: Minority and women individuals own 100 percent of a holding company, which has a wholly-owned subsidiary. The subsidiary may be certified, if it meets all other requirements.

Example 2: Minority and women individuals own 100 percent of the holding company, which owns 51 percent of a subsidiary. The subsidiary may be certified, if all other requirements are met.

Example 3: Minority and women individuals own 80 percent of the holding company, which in turn owns 70 percent of a subsidiary. In this case, the cumulative ownership of the subsidiary by minority and women individuals is 56 percent (80 percent of the 70 percent). This is more than 51 percent, so the director may certify the subsidiary, if all other requirements are met.

Example 4: Same as example 2 or 3, but someone other than minorities or women owners of the parent or holding company controls the subsidiary. Even though the subsidiary is owned by minority or women individuals, through the holding or parent company, the director cannot certify it because it fails to meet control requirements.

Example 5: Minority or women individuals own 60 percent of the holding company, which in turn owns 51 percent of a subsidiary. In this case, the cumulative ownership of the subsidiary by minority or women individuals is about 31 percent. This is less than 51 percent, so the director cannot certify the subsidiary.

Example 6: The holding company, in addition to the subsidiary seeking certification, owns several other companies. The combined gross receipts of the holding companies

and its subsidiaries are greater than the size standard for the subsidiary seeking certification and/or the gross receipts cap. Under the rules concerning affiliation, the subsidiary fails to meet the size standard and cannot be certified.

- (21) Recognition of a business as a separate entity for tax or corporate purposes is not necessarily sufficient to demonstrate that a firm is an independent business, owned and controlled by minority and women individuals.

(n) An MBE/WBE's certification shall expire three years from the date of certification effective immediately. An application for renewal shall be submitted on forms provided by the director. The director is authorized to require MBE/WBE's firms to submit yearly updates of information including, but not limited to, current licenses and federal, state and local tax returns and schedules (business and personal), and all other forms that are required to be included with or attached to the return at the time of filing.

(o) Once certified, an MBE/WBE must notify the department in writing within 30 calendar days of any change(s) in circumstances affecting the firm's ability to meet ownership, control, or size requirements or any material change(s) in the information provided in the certification application process. The statement must include supporting documentation describing in detail the nature of such changes. Change(s) in management responsibility among members of a limited liability company are also covered by this requirement. If the MBE/WBE fails to make timely notification of such change(s), it will be deemed to have failed to cooperate and certification may be revoked.

(p) The director shall safeguard information that reasonably may be regarded as confidential business information from disclosure to unauthorized persons consistent with federal, state and local law.

(q) If the United States Department of Transportation changes the requirements for certifications, the city council shall re-examine the certification requirements imposed by this section.

(r) Appeals of denials of certification.

(1) If the city denies a request for MBE/WBE certification from a firm which is not currently certified by the city, then the firm shall be ineligible to reapply for MBE/WBE certification for one year from the later of the date of the denial of certification or the final date of any decision on an appeal.

(2) Persons who have applied for DBE certification in conjunction with MBE/WBE certification and have been denied MBE/WBE certification may be certified if the reason(s) for denial is solely for MBE/WBE certification criteria equivalent to the DBE certification criteria and they successfully appeal their DBE certification and otherwise fulfill the requirements for MBE/WBE certification.

(3) Persons who have applied for MBE/WBE certification and who have not applied for DBE status may appeal the denial of certification to the same extent and subject to the same provisions applicable to appeals of revocation of certification, except as provided in (4) of this subsection.

(4) In circumstances where a firm has failed to submit required documentation, failed to demonstrate real and substantial presence, or exceeded business size standards, there will be no administrative re-consideration of a denial of MBE/WBE certification.

(s) *Appeals of revocations of certification.*

- (1) Persons who have who have had their MBE/WBE certification revoked by the department may be reinstated if the reason(s) for revocation is solely for MBE/WBE certification criteria equivalent to the DBE certification criteria and they successfully appeal their DBE certification, and they otherwise fulfill the requirements for MBE/WBE certification. If a person was certified as a DBE, the person must follow the UCP appeal procedures and there is no city appeal.
- (2) In circumstances where a certified firm has failed to submit required documentation, failed to demonstrate real and substantial presence, or exceeded business size standards, there will be no administrative reconsideration of a revocation of MBE/WBE certification.
- (3) Upon the revocation of certification as an MBE/WBE/DBE or mentor/protégé by the department, the director shall notify the affected party in writing by certified mail, setting forth the reason(s) for the revocation of certification. Except as provided in (1) and (2) of this subsection, any firm who has had certification as an MBE/WBE or mentor/protégé revoked by the department may appeal the decision by filing a written notice of appeal as designated by the director within 20 business days of receipt of the notice of the revocation of certification. The procedures applicable to any appeal shall be as follows:
 - a. The written notice of appeal must state the reason(s) for the appeal and include all supporting documentation to be considered for the appeal. The information or documentation submitted is limited to the issue(s) raised in the written notice of appeal. No new or additional documentation or information shall be considered for the appeal without a showing by the firm that it was not available or, through due diligence, could not have been made available. The written notice must specify whether the firm wishes to appeal in writing and/or appear personally for a hearing and if they intend to be accompanied by counsel.
 - b. Within ten business days of receipt of the notice of appeal from the aggrieved party, the director shall forward the notice to a neutral hearing officer selected through the city's standard procurement process.
 - c. Within ten business days from the date of receipt of the notice from the director, the hearing officer shall set a hearing date. The hearing officer shall cause notice of the hearing to be served upon all parties by certified mail. Such notice shall set forth with particularity the charges filed by the aggrieved business and shall include the hearing date, time, and place.
 - d. At the hearing, all parties shall be provided a fair and impartial hearing and shall be allowed to make a presentation concerning the determination of noncompliance with the requirements of this article or the revocation of certification as an MBE/WBE or mentor/protégé. Legal counsel may accompany the firm during the hearing, speak on behalf of the firm, respond to questions, and otherwise make a presentation. Each owner will be limited to a period of 15 minutes to address the hearing officer, unless extended by the hearing officer for good cause. Reasonable accommodations will be made for those with disabilities and/or limited language proficiency. For the appeal, the burden of

proof rests on the MBE/WBE or mentor/protégé to show that the revocation of certification was improper.

- e. The hearing officer shall, within 15 business days of the hearing or within 15 days of the deadline set by the hearing officer for the submission of any additional documentation, if applicable, make a written decision on the appeal, which decision shall affirm, alter, or reverse the revocation of certification by the department. Written notice of the decision on the appeal shall be sent to all parties by mail setting forth the reasons for the decision.
- f. If the hearing officer finds for the aggrieved party, as appropriate, the business shall be reinstated as an MBE/WBE or mentor/protégé and added to the certification database maintained by the department. The decision of the hearing officer shall be binding on all parties, subject to the right of appeal as provided by law.
- g. The firm that receives a decision from the hearing officer upholding the revocation of certification is ineligible to reapply for MBE/WBE certification for two years from the later of the date of the revocation of certification, or the final date of any court decision.

(t) The city manager is authorized to revoke MBE and WBE certification for cause. The certification of a person who has been debarred by the city in a debarment proceeding shall be automatically terminated or modified in a manner provided by the debarment ordinance. If an MBE/WBE has its DBE or MBE/WBE certification revoked by another governmental entity after a hearing, its MBE/WBE certification shall automatically be terminated with the city unless the MBE/WBE's certification was revoked for violating a certification requirement that is not a violation of the city's MBE/WBE certification requirements. No individual, corporation, partnership, limited liability company or any other business entity whatsoever shall be certified as an MBE or WBE if the minority or female whose ownership interest would serve as the basis for obtaining certification, or who would control the entity seeking certification, presently owns or previously owned a majority interest in or controlled an MBE or WBE whose certification has been revoked for cause within the five year period immediately preceding the submittal of the certification application. No individual, corporation, partnership, limited liability company or any other business entity whatsoever shall be certified as an MBE or WBE if the minority or female whose ownership interest would serve as the basis for obtaining certification, or who would control the entity seeking certification, presently owns or previously owned a majority interest in or controlled an MBE or WBE whose certification has been suspended for cause, provided however that this restriction shall last no longer than the term of the suspension.

(u) MBE/WBE program graduation.

- (1) If an MBE or WBE has been certified by the city in more than one North American Industry Classification System (NAICS) code or has an affiliate which has been certified by the city in a NAICS code other than that of the MBE or WBE, then the annual receipt level used as the graduation criterion for such MBE or WBE shall apply separately to each NAICS code for which the MBE or WBE and its affiliate have been certified subject to the business size standards in this division. Such an MBE or WBE and any affiliate that has exceeded the graduation criteria in one NAICS code shall be deemed to be graduated from the MBE/WBE contracting program as to that major group, and may continue to be certified in another NAICS code having a higher monetary graduation level but shall no longer be considered eligible to be or remain certified in the NAICS code with the lower size standard. An MBE or WBE that has exceeded the graduation criteria for the largest NAICS code applicable to its activities shall be

deemed to be graduated from the MBE/WBE program for all purposes.

- (2) The department shall send a graduation determination letter which shall serve to notify the MBE or WBE that it has graduated from the MBE/WBE program. The mailing of the graduation determination letter shall trigger a three-year termination period. During the termination period, an MBE or WBE may bid and perform work to the same extent it was able to do so before graduation, and its utilization may be applied towards satisfaction of contract goals, if any, to the extent it is performing a commercially useful function corresponding to a NAICS code in which it was certified prior to graduation.
- (3) The termination period shall expire three years from the date of mailing of the graduation determination letter. Any work bid by the graduated MBE or WBE after expiration of the termination period shall not be applied towards satisfaction of contract goals, if any. Any work performed by the graduated MBE or WBE after expiration of the termination period shall not be applied towards satisfaction of contract goals, if any, unless the work was commenced or is scheduled to commence pursuant to solicitation made prior to the expiration of the termination period.
- (4) During the termination period, the MBE or WBE shall comply with the requirements of this article to the same extent it was required to comply prior to graduation. A failure to do so may result in the reduction or elimination of the termination period.
- (5) Application to affiliates. The graduation criteria set forth above shall be deemed to apply to the minorities or women upon whom eligibility for certification is based and all affiliates to such minorities and women. No business enterprise shall be certified based upon one or more minorities or women who owned or who was an affiliate of an MBE or WBE which has become ineligible for renewed certification because of the achievement of graduation criteria.

Sec. 3-463. Duties and authority of director.

(a) The director is hereby authorized to establish rules and regulations to implement this division which rules and regulations shall be submitted to the city council for its approval and shall be in writing and published.

(b) Notwithstanding any other section to the contrary, the director is hereby authorized to establish rules and regulations to implement the city's MBE/WBE program requirements into contracts that utilize alternative construction delivery methods pursuant to chapter 3, Code of Ordinances, or other alternative procurement or contracting methods if the contract would be subject to MBE/WBE goals under this division. Except for cooperative agreements that involve construction, the fairness in construction board shall set the MBE/WBE goals for construction contracts.

(c) The director shall, in addition to any other duties specified herein:

- (1) Administer and enforce this article to ensure that MBE/WBEs have equal opportunity to participate in city contracts and subcontracts and work with all city department directors and agency heads to implement the city's MBE/WBE program; and
- (2) Coordinate the establishment of MBE/WBE methodologies with all city departments and

incentive agencies including establishment of goals, except goals to be established by the applicable Board, as may be appropriate to remedy underutilization of MBE/WBEs; and

- (3) Update the M/W/DBE Kansas City Mo. Online Directory available to all bidders, proposers, the general public, city departments and incentive agencies no less frequently than every three (3) months; and
- (4) Assist city departments incentive agencies, bidders, proposers, contractors and developers in finding qualified MBEs and WBEs to participate in contracts; and
- (5) Identify appropriate participation opportunities for qualified MBEs and WBEs in contracts; and
- (6) Publish an annual report for the city's fiscal year which states for each city department and agency:
 - a. The number of contracts awarded and the total contract dollars awarded pursuant to such contracts; and
 - b. The number of prime contracts awarded to WBEs and MBEs as identified by race and/or ethnicity and the total dollars awarded and paid pursuant to such contracts; and
 - c. The number of subcontracts awarded to WBEs and MBEs as identified by race and/or ethnicity and the total contract dollars awarded and paid pursuant to such contracts; and
 - d. A summary of total waiver requests submitted that are granted or denied and the reasons for the grant or denial; and
 - e. The number of MBE/WBE firms certified by race and/or ethnicity; and
- (7) Provide a compliance report to the city manager within 30 days after the end of each quarter which shall include:
 - a. The total number of contracts awarded and the total contract dollar amount awarded pursuant to such contracts; and
 - b. The number of contracts awarded to qualified MBEs as identified by race and/or ethnicity and WBEs and the total contract dollar amount awarded and paid pursuant to such contracts; and
 - c. The director of civil rights and equal opportunity evaluation of the city's progress toward meeting MBE/WBE utilization plans and any actions he or she intends to take to address any shortfall in meeting the goals established in such plans; and
 - d. Any other information as may be required by the city manager; and
- (8) Provide monthly compliance reports to the applicable incentive agency for contracts entered into in connection with sections 3-425(b) and 3-425(c) updating the incentive agency as to the project developer's compliance with the M/WBE goals and work with the applicable incentive

agency to assist developers who are not compliant. Failure of the director to furnish these reports does not absolve incentive agency or developer from complying with the processes outlined by agreement with the incentive agency; and

- (9) Provide the city council a report outlining the effects of any revisions to this division within 18 months of their effective date. The purpose of this report is to ensure that such revisions promote increased opportunities for minority or women business enterprise participation on contracts.
- (10) Develop and maintain relationships with organizations representing contractors, including minorities and women organizations, and solicit their support for the city's program; and
- (10) Furnish staff assistance to the boards established in this division. This shall include but not be limited to providing to the boards within thirty days following the end of each quarter interim reports containing the information described in subsection (6) and such other reports and information as the board, from time to time, may request; and
- (11) Implement any federal or state minority business enterprise program required by law or federal or state contract; and
- (12) Appoint a designated neutral hearing examiner for certification revocation hearings.

Sec. 3-501. Definitions applicable to the construction employment program.

(a) The following definitions apply to sections 3-501 through 3-527:

- (1) *Apprentice* means person of legal working age who has entered into a program for training and employment to learn a skilled construction trade.
- (2) *Apprenticeship program* means a program approved by the bureau of apprenticeship training providing for no less than 2,000 hours of reasonably continuous employment and for participation in an approved schedule of work experience through employment, which shall be supplemented by a minimum of 144 hours per year of related instruction.
- (3) *City* means the City of Kansas City, Missouri.
- (4) *City construction contract* means a contract estimated by the city prior to solicitation as requiring more than 800 construction labor hours and with an estimated cost that exceeds \$300,000.00 for the construction, reconstruction, improvement, enlargement or alteration of any fixed work for which tax abatement has been granted, or in which any portion is paid for out of city funds, tax increment financing, or funds administered by the city pursuant to a federal or state grant, including, but not limited to any building, road, street, public utility or other public facility, regardless of the contract's dollar amount, and regardless further of whether the city is a signatory to the contract.
- (5) *Construction contractor* means any individual, partnership, corporation, association or other entity, or any combination of such entities, who or which enters into a city construction contract, regardless of the number of employees.

- (6) *Construction employment goals* means the percentages of construction labor hours to be performed by minorities and women working under the city construction contract and on construction projects in the metropolitan statistical area during the term of the city construction contract, unless otherwise waived by the director or the Construction Workforce Board on appeal from a determination of the director.
- (7) *Construction employment program* means a program enacted by ordinance regarding the recruitment, training, mentoring and retention of employees, including apprentices and journeymen, on construction projects. The term "construction employment program" shall also mean construction workforce ordinance.
- (8) *Construction hours affidavit* means a statement by a construction contractor, verified under oath, setting forth the construction contractor's intent to meet or exceed, and to cause the subcontractors of every tier to meet or exceed, the construction employment goals while performing a city construction contract.
- (9) *Construction labor hour* means a 60-minute period of time devoted by a worker, employed by a contractor or subcontractor, performing labor on a construction project job site; or, preparing, fabricating or painting materials or equipment to be used or incorporated on a construction project job site.
- (10) *Construction project* means any project performed by a construction contractor in the Kansas City metropolitan statistical area.
- (11) *Construction Workforce Board* means a board, created as provided herein.
- (12) *Director* means the director of the civil rights and equal opportunity department of the city or his/her designee, or the person within the city manager's office that is assigned to perform the tasks delegated to the director of the civil rights and equal opportunity department by this article.
- (13) *Equal opportunity clause* means a statement prohibiting discrimination on construction projects based on race, color, sex, sexual orientation, gender identity, age, national origin, or ancestry, religion, or disability as proscribed in the Kansas City Code of Ordinances, chapter 38, article III, section 38-103.
- (14) *Good faith waiver* means a waiver that is granted by the director, or upon appeal of the director's decision by the Construction Workforce Board, based upon a showing by a construction contractor that despite undertaking in good faith the actions outlined in sections 3-501-3-527, the construction contractor, the subcontractors of any tier, or both, were unable to achieve the minimum construction employment goals.
- (15) *Incentive construction employment goal* means an aspirational goal for company-wide employment of minorities and women intended to encourage contractors to invest additional money and resources to hire and retain minorities and women on their workforce in order to achieve participation percentages well in excess of the minimum construction employment goals and the percentage of minorities and women generally available in the workforce by providing public recognition upon the completion of a city construction contract, to the construction contractor who achieves such goal.

- (16) *Journey person* means one who has completed an apprenticeship in a trade or craft and is recognized in the particular trade or craft as a journey person.
- (17) *Labor union* means any organization which exists, in whole or in part, for the purpose of collective bargaining; for dealing with employers concerning grievances, terms, or conditions of employment; or, for other mutual aid or protection of workers in relation to employment.
- (18) *Metropolitan statistical area (MSA)* means the Kansas City metropolitan statistical area as defined by the United States Department of Labor.
- (19) *Minority* means a person who is a citizen or lawful permanent resident of the United States and who is:
- a. African American, a person whose origins are in any of the Black racial groups of Africa, and who has historically and consistently identified himself or herself as being such a person; or
 - b. Hispanic American and/or Latino American, a person whose origins are in Mexico, Central or South America, or any of the Spanish-speaking islands of the Caribbean, (for example Cuba and Puerto Rico) regardless of race, and who has historically and consistently identified himself or herself as being such a person; or
 - c. Asian and/or Pacific Islander American, a person whose origins are in any of the original peoples of the Far East, Southeast Asia, the islands of the Pacific or the Northern Marianas, or the Indian Subcontinent, and who has historically and consistently identified himself or herself as being such a person; or
 - d. Native American, a person having origins in any of the original peoples of North America, and who maintains tribal affiliation or demonstrates at least one-quarter descent from such groups, and who has historically and consistently identified himself or herself as being such a person.
- (20) *Resident* means an individual residing or domiciled within the city.
- (21) *Woman* means a person who is a citizen or lawful permanent resident of the United States and who is a female.
- (22) *Workforce preparedness program* means a program that actively seeks the participation of minorities and women and provides them with the skills and resources necessary to enter a program for training and employment to learn a skilled construction trade.

Sec. 3-509. City sponsored recruitment of existing construction workforce.

(a) The city shall partner with labor unions, community-based organizations, and employment referral programs to accomplish the goals of the construction employment program. Activities to increase resident, minority and women participation shall be conducted on a scheduled basis and shall include:

- (1) Sponsoring workshops and events involving local minority community-based organizations and educational institutions to promote the construction industry and encourage residents to apply for apprenticeship programs and journey worker jobs on construction projects or jobs requiring prior construction labor experience; and
- (2) Establishing a first source program intended to give residents of the city the first opportunity to apply, be interviewed and be hired on city construction contracts; and
- (3) Making a good faith effort to inform residents of the city and minorities and women, regardless of residency, through advertisements in media in the city and in minority or women trade association newsletters and/or minority or women owned media at least 60 calendar days prior to the issuance of an invitation for bid or request for proposals for a particular city construction contract, if deemed practical by the city to do so, of:
 - a. The name of the project;
 - b. The nature of the work to be performed;
 - c. The crafts anticipated to be required for the work; and,
 - d. Locations within the city and a website in which residents of the city may register for consideration for employment on the city construction project.

Failure of the city to advertise shall not invalidate any solicitation or contract.

- (4) Establishing and maintaining a current list of resident, minority and women recruitment sources, providing written notifications to the recruitment sources of available employment opportunities, and maintaining records of the notices submitted to the organizations and any responses thereto; and
- (5) Collaborating with labor unions, contractors and their respective associations to determine information that may be reasonably required of prospective workers.
- (6) Collecting and furnishing such information to labor unions, contractors and their respective associations for their use in identifying qualified residents of the city desiring work on city construction contracts.
- (7) Establishing a pre-qualification program for subcontractors whereby subcontractors can provide employment data to the director evidencing that they meet or exceed the minimum construction employment goals for the purpose of being included in a subcontractor directory on the department's website to assist construction contractors in identifying those subcontractors that can assist the construction contractor in meeting the construction employment goals.
- (8) Submitting monthly reports to the Construction Workforce Board stating the number of resident, minority and women construction labor hours performed by construction contractors and their subcontractors, in a format acceptable to the Construction Workforce Board.

Sec. 3-601. Definitions.

- (a) The following definitions apply to this Division 4:
- (1) *Agency*. Any public or private entity that receives 66 percent of its funding from the city or any entity with the authority to recommend city tax increment financing or city tax abatements.
 - (2) *Agency head*. The individual authorized to act on behalf of an agency.
 - (3) *Business*. An individual, corporation, partnership, limited liability company, or other recognized business association that may lawfully be established for the purpose of conducting a for-profit business within the state.
 - (4) *City*. The City of Kansas City, Missouri.
 - (5) *Construction contract*. A contract for the construction, reconstruction, improvement, enlargement or alteration of any fixed work or construction site preparation, the majority of which is paid for out of city or agency funds.
 - (6) *Construction supply contract*. A contract for the purchase of construction materials, supplies, articles or equipment intended to be used or consumed on a construction contract, the majority of which is paid for out of city or agency funds.
 - (7) *Department*. The civil rights and equal opportunity department, or the division within the city manager's office that is assigned to perform the tasks delegated to the civil rights and equal opportunity department.
 - (8) *Department director*. The individual appointed by the city manager to be responsible for a city department or the manager of procurement services when acting on behalf of a department director or the city.
 - (9) *Director*. The director of the civil rights and equal opportunity department or his authorized representative, or the person designated by the city manager to perform the tasks delegated to the civil rights and equal opportunity department.
 - (10) *Eligible contract*. Any construction contract or construction supply contract estimated by the city or agency prior to solicitation as having a value less than \$300,000.00, and all other professional services or supplies city or agency contracts having a value less than \$117,000.00, the majority of either of which is paid for out of city funds or in which an agency is a party.
 - (11) *Invitation for bid*. A request or invitation for submission of an offer to enter into a contract pursuant to a competitive bidding process.
 - (12) *Kansas City Metropolitan Area*. The Missouri counties of Cass, Clay, Jackson and Platte and the Kansas counties of Johnson, Leavenworth and Wyandotte.
 - (13) *Person*. An individual, corporation, partnership, limited liability company, or other recognized business association which may lawfully be established for the purpose of conducting a for-

profit business within the state.

- (14) *Principal place of business.* The location at which the business records of the SLBE applicant are maintained and the location at which the individual who manages the concern's day-to-day operations spends the majority of his/her working hours.
- (15) *Request for proposals.* An invitation for submission of an offer to enter into a contract pursuant to a negotiated process and not a competitive bid, including requests for qualifications.
- (16) *Professional services or supplies.* The term includes contracts for purely labor-related services up to and including highly technical or specialized services and design professional services, as well as contracts for the purchase of materials, supplies, articles or equipment intended to be used or consumed by the city or agency procuring the same, provided however that the term excludes construction contracts and construction supply contracts.
- (17) *Small local business enterprise (SLBE).* A for-profit business that:
 - a. Is at least 51 percent owned, managed and independently controlled by the applicant(s); and
 - b. Exists independently and is not an affiliate or subsidiary of any other business.
 - c. Is able to demonstrate that they have the skill and expertise to perform in the particular area(s) of work for which they are seeking certification; and
 - d. Has a real and substantial presence in the Kansas City Metropolitan Area. A business enterprise shall be deemed to have a real and substantial presence in the Kansas City Metropolitan Area if:
 - 1. The business' principal place of business is in the Kansas City Metropolitan Area.
 - 2. The business maintains the majority of its full-time employees in the Kansas City Metropolitan Area.
 - 3. The business has transacted business more than once in the Kansas City Metropolitan Area within the last two (2) years; and
 - e. Has annual gross receipts that, when added with those of its subsidiary or subsidiaries and averaged over three consecutive years, do not exceed five percent of the applicable business size standard for the SBA General Contractor Classification which is equivalent of the NAIC code 236220 as established in 13 CFR 121.201, as amended; and
 - f. Is certified by the civil rights and equal opportunity department as a small local business enterprise.
- (18) *SLBE directory.* A source list compiled by the civil rights and equal opportunity department containing names and addresses of SLBEs eligible to participate in the SLBE program.

(19) *SLBE program.* The small local business enterprise program as enacted in this Division.

Sec. 3-603. Policy; applicability.

(a) The SLBE program is intended to provide opportunities by limiting solicitations to SLBEs or providing SLBEs a bid incentive, as provided in section 3-607. The SLBE program is not a goal-based program, nor shall it be extended to every contract. Application of the SLBE program shall be limited to those eligible contracts in which the director has determined it to be proper as provided herein.

(b) The SLBE program, when determined to be applicable by the director, shall extend to eligible contracts solicited by the city or any agency. Every agency shall adopt a small local business enterprise program that is substantially consistent in every material respect with this Division, as determined and approved by the director of civil rights and equal opportunity. No ordinance shall be passed to approve any development plan, redevelopment plan, urban renewal plan, or particular project arising under any such plan and for which economic incentives have been approved or recommended for approval by an agency, nor shall the city execute a contract with an agency for the purpose of providing funds for their development and redevelopment services, unless the agency has first adopted and implemented a small local business enterprise program in the manner provided for herein.

(c) The director shall review the SLBE program annually and make recommendations to the city council as to whether the SLBE program should be maintained or modified, but the failure of the director to do so shall not invalidate the SLBE program.

(d) The city council shall have the authority to waive the applicability of the SLBE program in its entirety, or any portion thereof, if it determines that doing so is in the city's best interests.

Sec. 3-622. Prevailing Wage Application to Incentive Plans.

(a) For any new development plan, or substantial modification to an existing plan, that is approved by the city council or any economic development agency created by the city and that seeks ad valorem real and personal property tax abatement, exemption or redirection, the developer, redeveloper or other entity that applies for approval of such plan or modification shall pay or cause to be paid a Prevailing Wage Rate to all workmen performing work as a part of the construction, reconstruction, improvement, enlargement, alteration, painting and decorating, or major repair of any project for which the total project cost exceeds seventy-five thousand dollars conducted as part of the plan.

(b) For the purposes of this section, Prevailing Wage Rate shall be determined as set forth in Sections 290.210 to 290.340 of the Revised Statutes of Missouri.

(c) The director of the civil rights and equal opportunity department of the city shall promulgate rules and regulation as are necessary to carry out the provisions of this section. All such rules and regulations shall be provided to the economic development agencies created by the city and authorized to approve tax abatement, exemption or redirection within 10 days of their promulgation.

(d) Notwithstanding the foregoing provisions of this section, the City Council and any economic development agency created by the City shall retain the discretion to authorize the abatement, redirection or exemption, in whole or in part, of ad valorem real property taxes to the full extent authorized by any provision of law. The City Council shall give particular consideration to the following exceptions

("Extraordinary Qualifications") in determining whether to authorize any abatement or exemption structure, or approve any development plan providing for incentives to be conveyed on a project-specific basis that is not in compliance with this section:

- (1) Projects located in a severely distressed census tract that has continuously maintained such status for not less than ten (10) years immediately prior to the effective date of the request; or
- (2) Projects that support affordable housing and extremely affordable housing by meeting the requirements of Committee Substitute for Ordinance No. 201038, as Amended, for such housing.
- (3) Projects that connect residents living in continuously distressed census tracts to new employment opportunities by:
 - (i) providing at least 100 new entry-level jobs to Kansas City with an annual salary of at least \$32,000, or \$42,000 inclusive of wages and benefits; and
 - (ii) incorporating options for mass public transportation or locating in an established high-frequency transit corridor.
- (4) Projects that involve the renovation or rehabilitation of a building has been designated by a government entity as a local or national historic landmark or contribute to a historic district, or projects that have filed an application with the National Park Service to be placed on the National Register of Historic Places, in which case the exclusion would be subject to such designation being approved.

Determination of eligibility for Extraordinary Qualifications shall be made upon receipt by the City or any economic development agency created by the City of an application or request for ad valorem real and personal property tax abatement, exemption or redirection.

(e) This section shall apply only to projects that have not yet submitted an application for the abatement, redirection or exemption of taxes and shall not be construed in a manner as to apply to any tax abatement or transaction authorized by the City or any other public entity prior to May 14, 2021. Notwithstanding the foregoing, the requirements of this ordinance shall be imposed on any project that has submitted an application for the abatement, redirection or exemption of taxes prior to its effective date but has not received final approval from the relevant authorizing body within three years of May 14, 2021.

Section 3. For any new development plan, or substantial modification to an existing plan, that is not required to have approval of the City Council and that seeks ad valorem real and personal property tax abatement, exemption or redirection, the City Council recommends that any economic development agency created by the City, including Port KC, shall only approve abatements, exemptions or redirections for projects that a prevailing wage rate is paid to all workmen performing work as a part of the construction, reconstruction, improvement, enlargement, alteration, painting and decorating, or major repair of any project if the total project cost exceeds seventy-five thousand dollars.

Section 4. That this ordinance shall have an effective date of May 14, 2021, which is an additional 60 days beyond the minimum effective date established by the City Charter.

Section 5. That Chapter 38 of the Code of Ordinances entitled “Human Relations” is hereby amended by changing the name to “Civil Rights” and repealing Sections 38-1, 38-21, 38-43, 38-63, 38-65, and 38-113 and enacting in lieu thereof new sections of like number and subject matter to read as follows:

Sec. 38-1. Definitions.

(a) The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning or an alternative definition has been provided:

- (1) *Age* means an age of 40 or more years, except that it shall not be an unlawful employment practice for an employer to require the compulsory retirement of any person who has attained the age of 85 and who, for the two-year period immediately before retirement, is employed in a bona fide executive or high policymaking position, if such person is entitled to an immediate nonforfeitable annual retirement benefit from a pension, profit sharing, savings or deferred compensation plan, or any combination of such plans, of the employer, which equals, in the aggregate, at least \$344,000.00.
- (2) *City* means the City of Kansas City, Missouri.
- (3) *Commission* means the city human rights commission.
- (4) *Complainant* means any person claiming injury by the alleged violation of Chapter 213, RSMo, or of this Chapter, including persons who believe they will be injured by an unlawful discriminatory practice that is about to occur.
- (5) *Complaint* means a verified written statement of facts and circumstances, including dates, times, places and names of persons involved in any alleged violation of any provision of Chapter 213, RSMo, or of this Chapter.
- (6) *Contract* means any contract to which the city shall be a contracting party, except the following:
 - a. Personal services contracts.
 - b. Emergency requisitions for goods, supplies or services.
 - c. Impressed accounts in the nature of petty cash funds.
 - d. Contract or lease, the cost of which will not exceed \$300,000.00.
- (7) *Covered multifamily dwelling* means a building consisting of four or more units if the building has one or more elevators or a ground floor unit in a building consisting of four or more units.
- (8) *Department* means the department of civil rights and equal opportunity.
- (9) *Director* means the director of the civil rights and equal opportunity department or their delegate.

- (10) *Disability* means with respect to employment, a person who is otherwise qualified and who, with reasonable accommodation, can perform the essential functions of the job in question. Generally, a person with a disability is any person who:
- a. Has a physical or mental impairment which substantially limits one or more major life activities;
 - b. Has a record of having such impairment; or
 - c. Is regarded as having such an impairment.
- (11) *Dwelling* means any building, structure or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure or portion thereof.
- (12) *Employee* means any individual employed by an employer, but does not include an individual employed by his parents, spouse or child or any individual employed to render services as a domestic in the home of the employer.
- (13) *Employer* includes any person employing six or more employees.
- (14) *Employment agency* means any person, agency or organization, regularly undertaking, with or without compensation, to procure opportunities for employment or to procure, recruit, refer or place employees.
- (15) *Familial status* means one or more individuals, who have not attained the age of 18 years, being domiciled with:
- a. A parent or another person having legal custody of such individual or individuals; or
 - b. The designee of such parent or other person having such custody, with the written permission of such parent or other person. The protection afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years. No provision in this chapter regarding familial status shall apply to housing for older persons, as defined in section 3607 of title 42 of the United States Code Annotated.
- (16) *Family* includes a single individual.
- (17) *Franchise holder* means any individual, partnership, corporation, association or other entity, or any combination of such entities, holding a franchise hereafter granted or renewed by the city.
- (18) *Gender identity* means the actual or perceived appearance, expression, identity or behavior of a person as being male or female, whether or not that appearance, expression, identity or behavior is different from that traditionally associated with the person's designated sex at birth.

- (19) *Labor organization* means any organization which exists for the purpose in whole or in part of collective bargaining or for dealing with employers concerning grievances, terms or conditions of employment, or for other mutual aid or protection in relation to employment.
- (20) *Performance of work* means the furnishing of any personal service, labor, materials or equipment used in the fulfillment of a contractor's obligation under a city contract.
- (21) *Person* includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers, fiduciaries and other organizations; except the term "person" does not include any local, state or federal governmental entity.
- (22) *Prohibited dress code* means a set of rules governing, prohibiting or limiting access to a place or business, or portion thereof, defined herein as a "public accommodation" because of any of the following:
- a. The wearing of jewelry, the manner in which jewelry is worn or the combination of items of jewelry worn,
 - b. The wearing of a garment or headdress which is generally associated with specific religions, national origins or ancestry,
 - c. The length of the sleeve of a shirt or the leg of a pair of pants or shorts is too long, except that nothing herein shall be construed to prohibit a dress code that requires the wearing of a shirt,
 - d. The style, cut or length of a hair style,
 - e. The colors of the garments,
 - f. In conjunction with a major Kansas City sporting event the wearing of athletic apparel which displays either a number, a professional or college team name or the name of a player;
 - g. The wearing of tee-shirts, except that nothing herein shall be construed to prohibit a dress code that requires such tee-shirts to have sleeves, or to prohibit a dress code that does not allow undershirts, undergarments, or tee-shirts of an inappropriate length. Designer tee-shirts, which are fitted and neat, cannot be banned.
- (23) *Public accommodation* means any place or business offering or holding out to the general public goods, services, privileges, facilities, advantages or accommodations for the peace, comfort, health, welfare and safety of the general public, or providing food, drink, shelter, recreation or amusement, including but not limited to:
- a. Any inn, hotel, motel or other establishment which provides lodging to transient guests, other than an establishment located within a building which contains not more than five rooms for rent or hire and which is actually occupied by the proprietor of such

establishment as his residence.

- b. Any restaurant, tavern, cafeteria, lunchroom, lunch counter, soda fountain or other facility principally engaged in selling food for consumption on the premises, including but not limited to any such facility located on the premises of any retail establishment.
 - c. Any gasoline station, including all facilities located on the premises of such gasoline station and made available to the patrons thereof.
 - d. Any motion picture house, theater, concert hall, sports arena, stadium or other place of exhibition or entertainment.
 - e. Any public facility owned, operated or managed by or on behalf of this city or any agency or subdivision thereof, or any public corporation; and any such facility supported in whole or in part by public funds.
 - f. Any establishment which is physically located within the premises of any establishment otherwise covered by this definition or within the premises in which is physically located any such covered establishment, and which holds itself out as serving patrons of such covered establishment.
 - g. Any institution, association, club or other entity that has over 250 members, provides regular meal service, and regularly receives payment for meals, beverages, dues, fees, the use of its facilities or services directly or indirectly from or on behalf of nonmembers in furtherance of trade or business.
- (24) *Redevelopment area* means a tax increment redevelopment area as defined in section 99.805 (11); RSMo, a planned industrial expansion project area as defined in section 100.300, et seq., RSMo; an urban renewal project area or land clearance project area as defined in section 99.300, et seq., RSMo; any area under the control of the port authority of Kansas City, Missouri, or subject to a contract, lease or other instrument to which the port authority is a party; or an area determined by the city to be blighted pursuant to chapter 353, RSMo.
- (25) *Rent* means to lease, sublease, let or otherwise grant for a consideration the right to occupy premises not owned by the occupant.
- (26) *Respondent* means any person against whom it shall be alleged by complaint or identified during the course of an investigation that such person has violated, is violating or is about to violate any provision of Chapter 213, RSMo, or this Chapter.
- (27) *Sex* shall include sexual harassment.
- (28) *Sexual orientation* means actual or perceived heterosexuality, homosexuality or bisexuality.
- (29) *Subcontractor* means any individual, partnership, corporation, association or other entity, or other combination of such entities, which shall undertake, by virtue of a separate contract with a contractor, to fulfill all or any part of any contractor's obligation under a contract with the city, or who shall exercise any right granted to a franchise holder, and who has 50 or more employees

exclusive of the parents, spouse or children or such subcontractor.

- (30) *Unlawful discriminatory practice* means any discriminatory practice as defined and prohibited by sections 38-103, 38-105, 38-107, 38-109, 38-111 and 38-113.

Sec. 38-21. Powers and duties of director.

(a) The director is hereby charged with administration and enforcement of all sections of this chapter and is hereby authorized and empowered to do the following:

- (1) *Rules and regulations.* To adopt, amend and enforce rules and regulations relating to any matter or thing pertaining to the administration of this chapter.
- (2) *Complaint investigation.* To receive, investigate and, upon finding probable cause on any complaint of violation of Chapter 213, RSMo, to bring such complaint before the human rights commission. If the director finds probable cause to believe that a violation of this chapter has occurred, he or she may refer the matter to the city counselor's office for prosecution in municipal court. Any staff assigned to assist the commission shall be supervised by the director of civil rights and equal opportunity. The director shall not have the power to process complaints of discrimination brought against the city and shall defer any such complaints to the state commission on human rights or any appropriate federal agency for processing.
- (3) *Authority regarding discrimination within city administration.* To investigate and recommend to the city manager any policy changes or specific actions that the director determines are necessary to ensure that the city administration is in compliance with the provisions of this chapter or with state and federal discrimination laws.
- (4) *Initiation of complaints.* Whenever the director has reasonable cause to believe that an unlawful discriminatory practice has occurred, he or she may initiate a complaint alleging violation of any section Chapter 213, RSMo, or of this chapter.
- (5) *Compliance investigation.* To investigate, survey and review any and all affirmative action programs, city contracts and franchises which are subject to this chapter and to take such action with respect thereto as shall ensure compliance with this chapter.
- (6) *Conciliation.* To attempt to eliminate any unlawful discriminatory practice or any other violation of the terms of this chapter by means of conference, conciliation, persuasion and negotiation and to enter into conciliation agreements.
- (7) *Authority to dismiss complaints.* To dismiss any complaint upon finding such complaint to be frivolous or without merit on its face or upon a finding that the allegedly unlawful discriminatory practice has been eliminated through conciliation.

Sec. 38-43. Powers and duties.

(a) The commission may adopt rules of procedure consistent with Chapters 213 and 536, RSMo, and this chapter.

(b) The commission shall prepare an annual report to be presented to the mayor and council concerning the conditions of minority groups in the city, with special reference to discrimination, civil rights, human relations, hate group activity, bias crimes and bias practices and attitudes among institutions and individuals in the community. The report may also include other social and economic factors that influence conditions of minority groups, as well as the causes of these conditions and the effects and implications to minority groups and the entire city. In preparation for the report the commission may conduct hearings and conduct whatever other research is necessary. The report shall include appropriate recommendations to the mayor and the council.

(c) The commission shall form task forces as follows:

(1) The commission shall form task forces including: youth, business, media, education, law enforcement, religion, labor, gay and lesbian issues, metropolitan area cooperation, and others as may be deemed appropriate.

(2) One member of each task force may be appointed from each councilmanic district, that member to be agreed upon jointly by the councilmembers from that district. Councilmembers may recommend additional members as appropriate.

(3) Except as provided in subsection (c)(2) of this section, the chairperson of the commission shall appoint the chairs and members of the task forces.

(4) The task forces shall consist of no more than 15 members except where the commission chairperson specifically approves additional members.

(5) The task forces will assist the commission in the preparation of the commission's annual report to the mayor and council.

(d) The commission is empowered to investigate hate group activity and incidents of bias crimes and work with law enforcement agencies and others to implement programs and activities to combat hate group activity and bias crimes.

(e) The commission may seek information from any and all persons, agencies and businesses, in both the public and private sectors, to identify and investigate problems of discrimination and bias as they affect the citizens of the city either directly or indirectly.

(f) The commission may cooperate with public and private educational institutions at primary, secondary and post-secondary levels to foster better human relations among the citizens of the city and within the metropolitan Kansas City area.

(g) The commission may work with civil rights organizations, community organizations, law enforcement agencies, school districts and others to collect and review data relating to patterns of discrimination, bias crimes, hate group activity, and general issues of civil and human rights.

(h) The commission may conduct studies, assemble pertinent data, implement educational programs and organize training materials for use by the commission to assist civil and human rights agencies, neighborhood organizations, educational institutions, law enforcement agencies, labor unions and businesses and others to prevent discrimination.

(i) The commission may serve as an advocate to prevent discrimination and bias crimes.

(j) The commission chairperson may appoint such committees from its membership or other citizens to fully effectuate the purpose of this chapter.

(k) The commission is empowered to hold hearings regarding issues of general or specific civil and human rights affecting the citizens of the city, to review decisions of hearing examiners appointed by the city to hear charges of violations of Chapter 213, RSMo, to administer oaths, and to take the testimony of any person under oath.

(l) Based upon its hearings or those held by its hearing examiners, the commission shall issue such findings as it deems appropriate under the circumstances. If the commission finds that a respondent has engaged in an unlawful discriminatory practice as defined in Chapter 213, RSMo, the commission shall issue and cause to be served on the respondent an order requiring the respondent to cease and desist from the unlawful discriminatory practice. The order shall require the respondent to take such affirmative action or award such relief as in the commission's judgment will implement the purposes of this chapter and of Chapter 213, RSMo, including but not limited to the assessment of civil penalties, reinstatement, back pay, making available the dwelling or public accommodation, actual damages, or any other relief that is deemed appropriate and which is consistent with Chapter 213, RSMo.

(m) Should the respondent also be a city contractor, upon complaint by the civil rights and equal opportunity department and after hearing duly held, the commission shall make findings of fact and conclusions of law; and when it finds a breach of conditions of any contract or franchise wherein compliance with this chapter is assured, it shall make an order specifying the terms and conditions under which any contract or franchise will be continued in force, or in the alternative shall order the cancellation, termination or suspension of such contract or franchise, or order that such contractor or franchise holder be ineligible to receive any city contract or franchise for a period of one year.

(n) The chairperson may appoint hearing review panels composed of not less three persons to review hearings conducted by a hearing examiner regarding violations of Chapter 213, RSMo. Panels shall be appointed on a rotating basis to ensure that all commission members have an opportunity to review recommended findings of the hearing examiner. Any member of the commission who has a conflict of interest or the appearance of a conflict of interest regarding an issue to be heard by the commission will not participate in the proceedings regarding that issue.

(o) The commission is empowered to hold hearings, upon complaint of an aggrieved party or upon an investigation by the director to determine whether the owner, operator, agent or an employee of a business or facility within a redevelopment area is using a prohibited dress code. Based upon its hearings, or those held by its hearing examiners, the commission shall issue such findings as it deems appropriate under the circumstances. If the commission finds that the owner, operator or employee of such a business or facility has used, or is using, a prohibited dress code, and, therefore, has engaged in an unlawful discriminatory practice as defined in Chapter 213, RSMo, or in Section 38-113, the commission shall issue and cause to be served on the owner, operator, agent or employee an order requiring the owner, operator or employee to cease and desist from the use of the prohibited dress code. The order may also require the owner, operator, agent or employee to take further affirmative action or award such relief as in the commission's judgment will implement the purposes of this chapter and of Chapter 213, RSMo, including but not limited to the assessment of civil penalties, making access available to those individuals denied access to the public accommodation because of the use of a prohibited dress code, actual damages, or any other relief that is deemed appropriate and which is consistent

with Chapter 213, RSMo, and Chapter 38

<http://library.municode.com/HTML/10156/level2/PTIICOOR_CH38HURE.html>, Code of Ordinances.

(p) The commission shall study, advise and make other recommendations for legislation, policies, procedures and practices of the city, other businesses entities, and other public entities as are consistent with the purposes of this chapter.

Sec. 38-63. Reporting system.

The police department of the city shall develop a system by which the required reporting shall be accomplished. The reporting system shall include monthly distribution of the information collected to the civil rights and equal opportunity department of the city, and to the United States Department of Justice, Community Relations Service, Central Region.

Sec. 38-65. Incident reports.

(a) Whenever any police officer has identified a victim of an alleged bias crime or city ordinance violation, the police department of the city shall, to the extent known, supply the name, address and telephone number of the victim to the director of the civil rights and equal opportunity department, acting for the human rights commission, together with other relevant information concerning the victim. Whenever any police officer has identified an incident that does not constitute a crime or city ordinance violation the officer will refer the victim to the civil rights and equal opportunity department. The director of civil rights and equal opportunity shall establish a telephone line for citizens to call to report incidents of possible bias incidents that are not crimes or city ordinance violations.

(b) The purposes of this reporting are to permit the director of civil rights and equal opportunity, or other designated party appointed by the director, acting for the human rights commission, to:

- (1) Contact the victim for the purpose of offering to help the victim deal with the police department, prosecutors and other interested agencies, and to help secure any other support which may be available to the victim; and
- (2) Determine whether the incident is related to a pattern of discrimination, or if, due to bias-related tensions in the area where the incident occurred, further incidents are likely to occur if remedial action is not taken.

Sec. 38-113. Discriminatory accommodation practices.

(a) It shall be a discriminatory accommodation practice for any owner, agent or employee of any place of public accommodation, directly or indirectly, to refuse, withhold from or deny to any person any of the accommodations mentioned in this chapter or to discriminate against any person in the furnishing thereof on account of race, religion, color, ancestry, national origin, sex, marital status, familial status, disability, sexual orientation or gender identity of such person, or directly or indirectly to publish, circulate or display any written or printed communication, notice or advertisement to the effect that any of the accommodations or the facilities of such place of public accommodation will be refused, withheld from or denied to any person on account of race, religion, color, ancestry, national origin, sex, disability, marital status, familial status, sexual orientation or gender identity, or that, for such reasons, the patronage or custom of any person described in this section is unwelcome or objectionable or not acceptable to such place.

(b) It shall be a discriminatory accommodation practice for any owner, agent, operator or employee of a business or facility within a redevelopment area to use a prohibited dress code as defined in Section 38-1, directly or indirectly, to refuse, withhold from or deny to any person any of the accommodations mentioned in this chapter or to discriminate against any person in the furnishing thereof on account of race, religion, color, ancestry, national origin, sex, marital status, familial status, disability, sexual orientation or gender identity of such person. Any dress code enforced in a redevelopment area or in any establishment with such area must be posted in accordance with the requirements of Section 10-331(d), and must contain the phone number of the city's civil rights and equal opportunity department and a phone number of a representative of the establishment who is available to respond to complaints regarding the enforcement of the dress code during all hours when the establishment is open or such dress code is in effect. Any such dress code shall list all prohibited items of dress. Notwithstanding the foregoing, nothing herein shall be construed as prohibiting:

- (1) Any owner or operator of a business or facility within a redevelopment area from establishing an employee dress code or requiring that an employee abide by the employee dress code while at work.
- (2) Any owner, agent, operator or employee of a business or facility within a redevelopment area from affirmatively requiring the wearing of specified articles of clothing, which may include collared shirts and ties, sports jackets, business suits, business casual, formal clothing or smart casual clothing in keeping with the ambiance and quality of the particular business or facility and formal footwear, so long as the requirements are enforced with regard to each and every patron, regardless of race, religion, color, ancestry, national origin, sex, marital status, familial status, disability, sexual orientation or gender identity.

Approved as to form and legality:

Dustin E. Johnson
Assistant City Attorney

**No Fact Sheet
for
Ordinance
No. 210645**

COMPARED VERSION
NEW ORDINANCE TO CODE BOOKS

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ORDINANCE NO. 210645

Amending various sections of Chapter 2, "Administration," Chapter 3, "Contracts and Leases," and Chapter 38, "Human Relations," for the purpose of changing the name of the Human Relations Department to the Civil Rights and Equal Opportunity Department.

BE IT ORDAINED BY THE COUNCIL OF KANSAS CITY:

Section 1. That Chapter 2 of the Code of Ordinances entitled "Administration" is hereby amended by repealing Sections 2-141, 2-551, 2-552, 2-553, 2-554, 2-1902, and 2-1903, and enacting in lieu thereof new sections of like number and subject matter to read as follows:

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Sec. 2-141. Reorganization of departmental duties.

(a) *Findings.*

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- (1) The city is called upon to perform a multitude of functions.
- (2) The organizational structures appropriate to the most efficient and effective delivery of services can quickly change depending upon forces and pressures outside the complete control of the city.
- (3) From time to time the council has established new departments to meet important needs of the time.
- (4) For the city manager to possess the necessary discretion to organize city government to best meet the current needs of the city's residents, the ability to shift certain responsibilities between departments from time to time, either on a temporary or permanent basis, is necessary.
- (5) When established by ordinance, the functions of departments are intended to constitute the initial assignment of duties, but are not intended to preclude later transfer of duties.

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(b) *Purpose.* The purpose of this section is to permit the city manager to modify the assignment of duties among departments, except when the city charter mandates a specific responsibility be held by a certain department, or its successor.

(c) *Authority of the city manager.*

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- (1) *Transfer of duties.* The city manager is authorized to transfer duties or activities among departments within his management control, subject to the limitations below.
- (2) *Purpose of transfers.* Such transfers may be made when the city manager finds reassignment of duties or activities should improve the efficiency or effectiveness of the service or activity.
- (3) *Limitation--Express prohibition.* Establishment of duties for specific departments by the council shall not preclude reassignment by the city manager unless those duties or activities are assigned to the Civil Rights and Equal Opportunity Department by ordinance, resolution or contract or expressly prohibited in the ordinance mandating an activity be performed by a specific department.
- (4) *Limitation--City Charter.* The city manager may not transfer the duties and activities of departments made by the people through the City Charter.

(d) *Council notification.* Before effecting a transfer of duties and activities of departments, the city manager will inform the city council by reporting to a standing committee of the council designated by the mayor for that purpose.

Sec. 2-551. Establishment.

There is hereby established a department to be known as the civil rights and equal opportunity department.

Sec. 2-552. Appointment and designation of director.

The civil rights and equal opportunity department shall be under the supervision, control and management of a director to be appointed by the city manager, and to be known as the director of the civil rights and equal opportunity department.

Sec. 2-553. Qualifications of director.

The director of civil rights and equal opportunity shall be a person skilled and experienced in the science of human relations, and shall possess executive and administrative ability.

Sec. 2-554. Duties of director.

The director of civil rights and equal opportunity shall be responsible for the management and operation of the civil rights and equal opportunity department, and shall perform such other duties as may from time to time be imposed upon him or her by the city council by ordinance.

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Sec. 2-555. Personnel; assistance to advisory commission on civil rights and equal opportunity.

The director of civil rights and equal opportunity shall appoint such subordinates and clerical employees as may be required to carry out the duties and functions of the department as established by ordinance, for whom appropriation of funds may be made by the city council from time to time, and shall furnish the advisory commission on civil rights and equal opportunity such clerical assistance as required for the performance of its duties.

Sec. 2-1902. Responsibility for development of program; implementation of program.

The director of human resources jointly with the director of civil rights and equal opportunity shall be responsible for the development and administration of a comprehensive affirmative action program, and, when the program, together with such rules and regulations as are described in this article, shall have been adopted by ordinance duly passed by the council of the city, they shall have the force and effect of an enactment of the council.

Sec. 2-1903. Rules and regulations for administration and enforcement.

The director of human resources jointly with the director of civil rights and equal opportunity shall have power to adopt, promulgate, amend and enforce rules and regulations relating to the administration and enforcement of the affirmative action program. A true copy of the rules and regulations promulgated by the directors of human resources and civil rights and equal opportunity as authorized in this section shall be filed in the office of the director of records upon approval by the council and shall be available at all times for inspection by interested persons. Copies of the rules and regulations may be obtained from the director of records by payment of a proper charge therefor.

Section 2. That Chapter 3 of the Code of Ordinances entitled "Contracts and Leases" is hereby amended by repealing Sections 3-401, 3-403, 3-421, 3-429, 3-449, 3-461, 3-463, 3-501, 3-509, 3-601, 3-603, and 3-622 and enacting in lieu thereof new sections of like number and subject matter to read as follows:

Section 3-401. Definitions.

(a) The following words, terms and phrases, when used in this Division 1 shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning or an alternative definition has been provided:

- (1) *Affirmative action program* means a positive program designed to ensure that a good-faith effort will be made to employ applicants and to treat employees equally without regard to their race, color, sex, religion, national origin or ancestry, disability, sexual orientation, gender identity or age. Such program shall apply, where applicable, to the following: recruitment and recruitment advertising, employment, employment upgrading, promotion, demotion or compensation, other

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terms or conditions of employment and selection for training, including apprenticeship; and shall include goals, methodology and timetables for implementation of the program.

- (2) *Age* means an age of 40 or more years, except that it shall not be an unlawful employment practice for an employer to require the compulsory retirement of any person who has attained the age of 85 and who, for the two-year period immediately before retirement, is employed in a bona fide executive or high policymaking position, if such person is entitled to an immediate nonforfeitable annual retirement benefit from a pension, profit sharing, savings or deferred compensation plan, or any combination of such plans, of the employer, which equals, in the aggregate, at least \$344,000.00.
- (3) *Certificate of compliance* means a written certificate issued by an agency or body, other than City, charged with the administration of a governmentally recognized affirmative action program and which indicates that the person named therein is in compliance with the terms of an affirmative action program.
- (4) *City* means the City of Kansas City, Missouri.
- (5) *Commission* means the city human rights commission.
- (6) *Complaint* means a verified written statement of facts and circumstances, including dates, times, places and names of persons involved in any alleged violation of any provision of Chapter 213, RSMo or this Division.
- (7) *Contract* means any contract to which the city shall be a contracting party, except the following:
 - a. Personal services contracts.
 - b. Emergency requisitions for goods, supplies or services.
 - c. Impressed accounts in the nature of petty cash funds.
 - d. Contract or lease, the cost of which will not exceed \$300,000.00.
- (8) *Contractor* means any individual, partnership, corporation, association or other entity, or any combination of such entities, who or which enters into a contract with the city and who has 50 or more employees exclusive of parents, spouse or children of such contractor.
- (9) *Department* means the department of civil rights and equal opportunity.

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- (10) *Director* means the director of the civil rights and equal opportunity department or such director's delegate.
- (11) *Disability*. With respect to employment, a person with a disability is a person who is otherwise qualified and who, with reasonable accommodation, can perform the essential functions of the job in question. Generally, a person with a disability is any person who:
- a. Has a physical or mental impairment which substantially limits one or more major life activities;
 - b. Has a record of having such impairment; or
 - c. Is regarded as having such an impairment.
- (12) *Employee* means any individual employed by an employer, but does not include an individual employed by his parents, spouse or child or any individual employed to render services as a domestic in the home of the employer.
- (13) *Gender identity* means the actual or perceived appearance, expression, identity or behavior of a person as being male or female, whether or not that appearance, expression, identity or behavior is different from that traditionally associated with the person's designated sex at birth.
- (14) *Person* includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers, fiduciaries and other organizations; except the term "person" does not include any local, state or federal governmental entity.
- (15) *Respondent* means any person against whom it shall be alleged by complaint or identified during the course of an investigation that such person has violated, is violating or is about to violate any provision of Chapter 213, RSMo or this Division.
- (16) *Sexual orientation* means actual or perceived heterosexuality, homosexuality or bisexuality.
- (17) *Subcontractor* means any individual, partnership, corporation, association or other entity, or other combination of such entities, which shall undertake, by virtue of a separate contract with a contractor, to fulfill all or any part of any contractor's obligation under a contract with the city, or who shall exercise any right granted to a franchise holder, and who has 50 or more employees exclusive of the parents, spouse or children or such subcontractor.

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- (18) *Unlawful discriminatory practice* means any discriminatory practice as defined and prohibited by sections 38-103, 38-105, 38-107, 38-109, 38-111 and 38-113, Code of Ordinances.

Section 3-403. Affirmative action.

(a) Any contract exceeding \$300,000.00 shall include the following requirements as material terms thereof:

- (1) That contractor execute and submit an affidavit, in a form prescribed by the city, warranting that contractor has an affirmative action program in place and will maintain the affirmative action program in place for the duration of the contract.
- (2) That contractor submit, in print or electronic format, a copy of its current certificate of compliance to the civil rights and equal opportunity department prior to receiving its first payment under the contract, unless a copy thereof shall have already been submitted to the civil rights and equal opportunity department at any point within the previous two calendar years. If contractor does not possess a current certificate of compliance, contractor shall submit, in print or electronic format, a copy of its affirmative action program to the civil rights and equal opportunity department prior to receiving its first payment under the contract, unless a copy thereof shall have already been submitted to the civil rights and equal opportunity department at any point within the previous two calendar years.
- (3) That contractor require any subcontractor awarded a subcontract exceeding \$300,000.00 to affirm that subcontractor has an affirmative action program in place and will maintain the affirmative action program in place for the duration of the subcontract.
- (4) That contractor obtain from any subcontractor awarded a subcontract exceeding \$300,000.00 a copy of the subcontractor's current certificate of compliance and tender a copy of the same, in print or electronic format, to the civil rights and equal opportunity department within thirty (30) days from the date the subcontract is executed. If the subcontractor does not possess a current certificate of compliance, the contractor shall obtain a copy of the subcontractor's affirmative action program and tender a copy of the same, in print or electronic format, to the civil rights and equal opportunity department within thirty (30) days from the date the subcontract is executed.

Sec. 3-421. Definitions.

(a) The following definitions apply to this division 2, except where an alternate definition has specifically been made applicable:

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- (1) *Affidavit of intended utilization:* An affidavit, in a form prescribed by the director, stating the bidder's intent to meet the MBE/WBE goals or to timely request a waiver of the MBE/WBE goals.
- (2) *Award of contract:* Execution of a contract and, if necessary, city council or park board authorization.
- (3) *Bid:* An offer to enter into a contract submitted pursuant to an invitation for bid.
- (4) *Bidder:* Any person who submits a bid to the city or an incentive agency in response to an invitation for bid.
- (5) *Bid opening:* The event whereby bids are opened and read aloud at the place, date and time specified in the invitation for bid and any subsequent amendment thereto.
- (6) *Bid shopping:* The practice whereby a person divulges or requires another to divulge a subcontractors bid or proposal for the purpose of securing a lower bid or proposal.
- (7) *Board or boards:* Fairness in construction board, fairness in professional services and goods board, or both, as applicable.
- (8) *Budget:* The total costs reflected within a contract for which MBE/WBE goals are to be set pursuant to this division.
- (9) *City:* City of Kansas City, Missouri.
- (10) *City department:* Department of the city or the division of procurement services when acting on behalf of a department director.
- (11) *Commercially useful function:* Real and actual services that are a distinct and verifiable element of the contracted work based upon private sector trade or industry standards. Determination that an enterprise performs a commercially useful function will be made based on the following considerations:
 - a. An MBE or WBE performs a commercially useful function when it is responsible for execution of the ordinary and necessary work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the MBE or WBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining the quality and quantity, ordering the material, installing (where applicable) and paying for the material itself. To determine whether an MBE or WBE is performing a commercially useful function, one must evaluate the following:

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1. The amount of work subcontracted; and
 2. Industry practices; and
 3. Whether the amount the enterprise is to be paid under the contract is commensurate with the work it is actually performing; and
 4. Whether the MBE or WBE has the skill and expertise to perform work for which it is being utilized; and
 5. The credit claimed for its performance of the work; and
 6. Other relevant factors.
- b. An MBE or 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 MBE or WBE participation. In determining whether an MBE or WBE is such an extra participant, one must examine similar transactions, particularly those in which MBEs or WBEs do not participate.
- c. An MBE or WBE firm is not performing a commercially useful function if the MBE or WBE subcontracts a greater portion of the work on a contract or purchases a greater amount of material than would be expected on the basis of normal industry practice for the type of work involved.
- d. Whether the MBE or WBE is participating in the contract as a middle person or broker in the normal course of that business or trade by purchasing the goods and/or services from another business, thereby qualifying expenditures for such goods and/or services to be counted toward utilization requirements for MBEs and WBEs.
- e. Whether the MBE or WBE is responsible for the purchase and quality of, and payment for, materials used to perform its work under the contract.

There shall be a rebuttable presumption that, when the MBE or WBE subcontracts a greater portion of the contract work than normal industry practice, the MBE or WBE is not performing a commercially useful function.

- (12) *Construction contract:* A contract for the construction, reconstruction, improvement, enlargement or alteration of any fixed work or construction site preparation, of which any amount is paid for out of city or agency funds.

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- (13) *Contract*: Any contract more than \$300,000.00, and all other city or agency contracts more than \$160,000.00 the majority of either of which is paid for out of city funds or in which an incentive agency is a party, except the following:
- a. Personal services contracts; and
 - b. Emergency contracts; and
 - c. Imprest accounts in the nature of petty cash funds.
- (14) *Contractor*: Any person who enters into a contract with the city or an incentive agency.
- (15) *Contractor utilization plan or CUP*: The statement, in a form prescribed by the director, that must be submitted by a bidder or proposer pursuant to section 3-433 and that states its plan to utilize qualified MBEs and/or WBEs in the performance of a contract.
- (16) *Day*: A calendar day, except as otherwise indicated.
- (17) *Department*: The civil rights and equal opportunity department or the division within the city manager's office that is assigned to perform the tasks delegated to the civil rights and equal opportunity department by this division.
- (18) *Department director*: Person appointed by the city manager to be responsible for a city department or the manager of procurement services when acting on behalf of a department director or the city.
- (19) *Developer*: Entity seeking tax increment financing or city tax abatement incentives from an incentive agency described in subsection 3-425(b) or 3-425(c).
- (20) *Director*: The director of the civil rights and equal opportunity department or his authorized representative, or the person designated by the city manager to perform the tasks delegated to the director of the civil rights and equal opportunity department by this article.
- (21) *Disadvantaged business enterprise (DBE)*: A business concern that meets the federal requirements for certification as a DBE.
- (22) *Economic disadvantage*: A diminished ability to compete in the free enterprise system due to diminished capital and credit opportunities as compared to others in the same or similar line of business who are found to be socially disadvantaged. In determining whether an individual is economically disadvantaged, the director shall follow the guidance provided in appendix E to 49 CFR Part 26.

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- (23) *Expertise*: Experience or training in a specialized field that is critical to the firm's operations, indispensable to the firm's potential success, and specific to the type of work the firm performs.
- (24) *Goal*: A numerical objective stated as a percentage of contract dollars for participation by qualified MBEs and WBEs in contracts.
- (25) *Incentive agency* or *agency*: Each of the commissions, agencies and authorities described in subsection 3-425(b) or 3-425(c), or any entity with the authority to recommend to the city tax increment financing or tax abatement.
- (26) *Incentive agency head*: Person authorized to act on behalf of an incentive agency.
- (27) *Incentive project*: A project receiving tax increment financing or tax abatement or exemption from an incentive agency pursuant to contracts described in sections 3-425(b) and 3-425(c).
- (28) *Invitation for bid*: A request or invitation for submission of an offer to enter into a contract pursuant to a competitive bidding process.
- (29) *Kansas City metropolitan area*: The Missouri counties of Cass, Clay, Jackson and Platte and the Kansas counties of Johnson, Leavenworth and Wyandotte.
- (30) *Letter of intent to subcontract*: A document, in a form prescribed by the director that demonstrates the prime contractor or developer's intent to enter a contractual agreement with a selected MBE/WBE.
- (31) *M/W/DBE Kansas City Mo. online directory* or *directory*: A source list compiled, maintained and updated by the [civil rights and equal opportunity](#) department containing (when provided) the names, mailing addresses, e-mail addresses and facsimiles of certified MBE/WBE/DBEs and the NAICS codes denoting scopes of work for which each such MBE/WBE/DBE is certified, which MBE/WBE/DBEs are in the business of providing construction, professional services and other services and goods from whom bids and proposals can be solicited. The directory is to facilitate identifying MBE/WBE/DBE subcontractors with capabilities relevant to general contracting requirements and to particular solicitations.
- (32) *Mentor/protégé*: A relationship between an MBE or WBE (protégé) and a person in the same trade or industry (mentor). The mentor/protégé relationship is to provide technical, financial, bonding, equipment and personnel assistance. The purpose of the relationship is to increase the capacity of MBE/WBEs to perform contracts.
- (33) *Minority*: A person who is a citizen or lawful permanent resident of the United States and who is:

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- a. African American, a person whose origins are in any of the Black racial groups of Africa, and who has historically and consistently identified himself or herself as being such a person; or
- b. Hispanic American and/or Latino American, a person whose origins are in Mexico, Central or South America, or any of the Spanish speaking islands of the Caribbean, (for example Cuba and Puerto Rico) regardless of race, and who has historically and consistently identified himself or herself as being such a person; or
- c. Asian and/or Pacific Islander American, a person whose origins are in any of the original peoples of the Far East, Southeast Asia, the islands of the Pacific or the Northern Marianas, or the Indian Subcontinent, and who has historically and consistently identified himself or herself as being such a person; or
- d. Native American, a person having origins in any of the original peoples of North America, and who maintains tribal affiliation or demonstrates at least one-quarter descent from such groups, and who has historically and consistently identified himself or herself as being such a person; or
- e. On a case-by-case basis, an individual found by the director to have been subjected to individualized prejudice or cultural bias within American society within the city's marketplace and has demonstrated economic disadvantage and social disadvantage as defined in this section.

(34) *Minority business enterprise (MBE)*: A for-profit small business concern that:

- a. Is at least 51 percent owned, managed, and independently controlled by one or more minorities; and
- b. Has a real and substantial presence in the Kansas City metropolitan area as defined by section 3-461(c) and
- c. Meets the business size standards imposed by 13 CFR 121.201 as subsequently amended and this division; and
- d. Performs a commercially useful function; and
- e. Is certified by the civil rights and equal opportunity department.

Beginning October 1, 2020, a for-profit small business concern must meet the following additional criteria to qualify as an MBE:

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- f. Whose owner's or, for businesses with multiple owners, each individual owner's personal net worth (as defined in this section) is equal to or less than the permissible personal net worth amount determined by the U.S. Department of Transportation to be applicable to its DBE program.

Submission of documentation evidencing that an owner meets this personal net worth criteria shall begin on July 1, 2020 and be completed by August 1, 2020.

Only persons meeting each of the above criteria shall be deemed an MBE for purposes of this division. In order to be credited towards the goals on a particular solicitation for a particular scope of work, the MBE shall be certified as of or listed on the directory on the date a contractor utilization plan is submitted.

- (35) *Person*: One or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers, fiduciaries and other organizations; except "person" does not include any local, state or federal governmental entity.
- (36) *Personal Net Worth*: The net value of the assets of an individual after total liabilities is deducted. An individual's personal net worth does not include the individual's ownership interest in a certified M/WBE or applicant for such certification or the individual's equity, if any, in his or her primary place of residence. An individual's personal net worth includes only his or her share of assets held individually or jointly with the individual's spouse.
- a. Except as set forth in subsection b., an individual's personal net worth also includes any assets which that individual has transferred to an immediate family member, to a trust a beneficiary of which is the individual or an immediate family member, or to the certified M/WBE or applicant firm for less than fair market value, within two years prior to an application for certification as an M/WBE or within two years of submission of the firm's annual affidavit, unless the individual can demonstrate that the transfer is to or on behalf of an immediate family member for that family member's education, medical expenses, or some other form of essential support.
- b. Any assets transferred by an individual to an immediate family member that are consistent with the customary recognition of special occasions, such as, but not limited to, birthdays, graduations, weddings, anniversaries, and retirements shall not be included in the personal net worth calculation.
- (37) *Personal services contract*: A contract or agreement of employment with an individual who is not acting as an independent contractor and who is not part of the cities classified or unclassified service.

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- (38) *Principal place of business*: The location at which the business records of the MBE/WBE applicant concern are maintained and the location at which the minority or woman individual owner who manages and controls the day-to-day operations spends the majority of his/her working hours.
- (39) *Proposal*: Any offer or list of qualifications submitted to the city in response to a request for proposal.
- (40) *Proposer*: Any person who submits a proposal to enter into a contract, either in response to a request for proposals, request for qualifications or otherwise, but not pursuant to an invitation for bid.
- (41) *Qualified*: Possessing the demonstrated ability to perform the contracted task.
- (42) *Request for proposals*: An invitation for submission of an offer to enter into a contract pursuant to a negotiated process and not a competitive bid, including requests for qualifications.
- (43) *Social disadvantage*: A diminished ability to compete in the free enterprise system due to at least one objective, distinguishing feature that has contributed to social disadvantage, such as race, ethnic origin, gender, sexual orientation, or disability. In determining whether an individual is socially disadvantaged, the director shall follow the guidance in appendix E to 49 CRF Part 26.
- (44) *Supplier*: An enterprise that owns operates or maintains a store, warehouse or other establishment in which materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock and regularly sold or leased to the public in the usual course of business.
- (45) *Supply broker*: An enterprise that acts as an agent in negotiating contracts for the purchase of materials, supplies, articles or equipment but does not itself own, operate or maintain a store, warehouse or other establishment where such materials, supplies, articles or equipment are bought, kept in stock and regularly sold or leased to the public in the usual course of business.
- (46) *Woman*: A person who is a citizen or lawful permanent resident of the United States and who is a female.
- (47) *Women's business enterprise (WBE)*: A for-profit small business concern that:
 - a. Is at least 51 percent owned, managed, and independently controlled by one or more women; and
 - b. Has a real and substantial presence in the Kansas City Metropolitan Area as defined by section 3-461(c); and

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- c. Meets the business size standards imposed by 13 CFR 121.201 and as subsequently amended and this division; and
- d. Performs a commercially useful function; and
- e. Is certified by the civil rights and equal opportunity department; and

Beginning October 1, 2020, a for-profit small business concern must meet the following additional criteria to qualify as a WBE:

- f. The owner's or, for businesses with multiple owners, each individual owner's personal net worth is equal to or less than the permissible personal net worth amount determined by the U.S. Department of Transportation to be applicable to its DBE program.

Submission of documentation evidencing that an owner meets this personal net worth criteria shall begin on July 1, 2020 and be completed by August 1, 2020.

Only persons meeting each of the above criteria shall be deemed a WBE for purposes of this division. In order to be credited towards the WBE goals on a particular solicitation for a particular scope of work, the WBE shall be certified as of or listed in the directory on the date a contractor utilization plan is submitted.

Sec. 3-429. City department and incentive agency MBE/WBE utilization plan.

(a) Each city department and incentive agency shall prepare and submit to the director by April 1, unless otherwise extended by the director, an annual MBE/WBE utilization plan for the next city fiscal year. Each city department and agency MBE/WBE utilization plan shall include:

- (1) Separate city department or incentive agency goals for participation by qualified MBEs and WBEs as prime contractors and subcontractors in the procurement of goods, professional services, services and construction for the upcoming fiscal year. The goals should be expressed as a percentage of the city department or incentive agency's total fiscal year contract expenditures; and
- (2) Any other information that the city department or incentive agency or the director deems relevant or necessary.

(b) A city department or incentive agency may amend its MBE/WBE utilization plan during the fiscal year to reflect changes in its projected contract expenditures or other relevant circumstances, and shall inform the director of such changes.

(c) In planning its individual contracts, each city department and incentive agency shall utilize the methodologies described in this division and use its good faith efforts to encourage and

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attempt to obtain participation of qualified MBEs and/or WBEs and shape the scope, specifications and size of a contract to enhance such participation.

(d) City departments and incentive agencies shall encourage eligible businesses to:

- (1) Apply to the city's department, Kansas Department of Transportation (KDOT) or Missouri Department of Transportation (MODOT) for certification; and
- (2) Have their names included on departmental bidders and proposers lists in the directory; and
- (3) Seek pre-qualification when applicable; and
- (4) Compete for city business as prime contractors, subcontractors and suppliers.

(e) City departments and incentive agencies shall make reasonable efforts to:

- (1) Advertise contract opportunities in general circulation media, trade and professional association publications, small business media, and publications of minority and women's business organizations; and
- (2) Send written notice of specific contract opportunities to minority and women's business organizations and those entities on the departmental bidder's and proposer's list; and
- (3) With the assistance of the director, shape the scope, specifications and size of a contract to enhance participation opportunities for qualified MBEs and WBEs.

(f) Each city department, as part of his or her annual evaluation, shall be reviewed concerning the implementation of the city's MBE/WBE program. In the event a deficiency is found, the director of civil rights and equal opportunity or his or her designee will work with the city department to identify prohibiting factors and offer any assistance necessary to successfully implement this minority and women business enterprise program.

Sec. 3-449. Fairness in professional services and goods board.

(a) Establishment and authority. There is hereby established a fairness in professional services and goods board. The board's authority is limited to bids, proposals and contracts for professional services, other services, goods, materials and supplies, (other than construction materials and supplies) for the city or an incentive project in which the estimated cost of such professional services, other services, goods, materials and supplies is more than \$160,000. The board shall set goals to increase the utilization of MBEs/WBEs in professional services contracts, other services contracts, goods, materials and supplies contracts (other than construction materials and supplies), to make determinations as to whether good faith efforts have been made and the assessment and amount of liquidated damages on incentive agency projects when the applicable

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agency and the director fail to mutually agree, and has the authority to hear and investigate appeals on city contracts as set forth in section 3-450.

(b) Board composition. The board shall be composed of seven members (including a chairperson) and six alternates, all appointed by the mayor and all of whom shall be industry experts in the areas of professional services, general services and goods and materials.

(c) Term. The terms of all board members shall be for a period of four years; however, all members shall continue in office as such until the respective successors shall have been appointed.

(d) Alternates. In the event a board member is unable to attend a meeting or has a conflict of interest with regard to an issue at hand, the alternate shall temporarily serve in such member's stead. It is the board member's responsibility to notify his or her alternate that they may be needed at the meeting. The term of an alternate shall expire at the expiration of the term of the board member.

(e) Absence of chairperson. In the event the chairperson is not in attendance at any board meeting, a majority of board members shall select a member to act as chairperson for that meeting.

(f) Ineligibility. The following persons are ineligible to serve on the board:

- (1) Members of the city council; and
- (2) Employees of the city; and
- (3) Nonresidents of the city, unless the nonresident works in the city metropolitan area or is appointed to represent the interests of an organization that maintains an office in the city metropolitan area.

(g) Conflict of interest. In the event a board member has a conflict of interest in a contract or issue that comes before the board, the member shall be temporarily replaced by the alternate. In the event an alternate has a conflict of interest in a bid, contract or issue that comes before the board, the alternate shall recuse himself.

(h) Quorum. Four members of the board shall constitute a minimum quorum.

(i) Convening the board. The board shall be appointed and first convene no later than February 1, 2019. The goal-setting responsibilities of the board as stated in section 3-450(a) will be performed by the director or the civil rights and equal opportunity department until such time as the board is convened.

Sec. 3-461. Certification and appeals.

(a) To ensure that this article benefits only MBEs and WBEs that are owned and controlled by bona fide minorities and women, the director shall certify MBEs and WBEs and

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mentor/protégés who wish to participate in the program. Any person not certified by the ~~human relations~~civil rights and equal opportunity department shall not be regarded as an MBE, WBE, or mentor/protégé program under this division.

(b) Each person that seeks certification as an MBE/WBE must demonstrate by written documentation or affidavit that it has suffered from past race or gender discrimination in the city and in the applicable trade or industry. A unified certification process (UCP) certificate, a Missouri Highway and Transportation Department certification or a Kansas Department of Transportation certification along with the documentation stated in this subsection, is sufficient for certification as a DBE so long as the firm has never been denied certification by any federal, state or local authority at any time and meets the definition of section 3-421(a) (20) and the requirements of this section.

(c) Each entity seeking certification as an MBE/WBE must demonstrate by written documentation or affidavit that it's owner or individual owner's personal net worth (as defined in this section) is equal to or less than the permissible personal net worth amount determined by the U.S. Department of Transportation to be applicable to its DBE programs. Entities seeking certification as an MBE/WBE shall submit all information or documentation requested by the city's civil rights and equal opportunity department in determining whether the entity complies with this subsection.

(d) Each person that seeks certification as an MBE/WBE in the Kansas City metropolitan area must demonstrate the business enterprise has a real and substantial presence. After the effective date of this provision, any business enterprise shall be deemed to have a real and substantial presence in the Kansas City metropolitan area if:

- (1) The firm's principal office or place of business is in the Kansas City metropolitan area; and
- (2) The firm maintains full-time employees in one or more of the firm's offices within the Kansas City metropolitan area to conduct or solicit business in the Kansas City metropolitan Area the majority of their working time; and
- (3) The firm has transacted business more than once in the Kansas City metropolitan area within the last three years; and
- (4) The firm's principal office or place of business has been in existence in the Kansas City metropolitan area at least six months prior to application for participation in the MBE/WBE program.

If an MBE/WBE does not have a real and substantial presence in the Kansas City metropolitan area as specified under subsection (c)(1) through (c)(4), the firm shall remain certified until their certification expires. After the firm's certification expires, the firm must meet the requirements of subsection (c) (1) through (c) (4) to be recertified.

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(e) All applicants and certified businesses shall be subject to an audit by the director at any time. An applicant's or certified business' refusal to facilitate an audit shall be grounds for denial of its certification application or revocation of its certification.

(f) All applicants and certified businesses shall be required to demonstrate and prove that the business has the skill and expertise to perform as a subcontractor in the particular area of work for which it is requesting listing or is listed on the M/W/DBE Kansas City, Mo. Online Directory.

(g) All applicants and certified businesses shall submit such information or documentation as may be required by the director in connection with its certification as an MBE or WBE, including, but not limited to current licenses and federal, state and local tax returns and schedules (business and personal), and all other forms that are required to be included with or attached to the return at the time of filing. Failure to submit such information or documentation shall result in the denial of its certification application or revocation of its certification.

(h) A certification application may be withdrawn by an applicant without prejudice at any time prior to an on-site audit. All applications and documentation submitted to support an application will not be returned to the applicant. Following the withdrawal of a certification application, the applicant may not reapply for certification for a period of one year from the date of withdrawal of the application.

(i) Burden of proof in the certification process. The firm seeking certification has the burden of demonstrating to the director, by a preponderance of the evidence, that it meets all the requirements for certification. The director shall make determinations concerning whether individuals and firms have met their burden of demonstrating minority and woman status, business size, expertise, commercially useful function, ownership, management, independence and control by considering all the facts in the record, viewed as a whole.

(j) Determination of minority and woman status. If the director has reason to question whether an individual is a minority or woman, the director shall require the individual to demonstrate, by a preponderance of the evidence, that he or she is a minority or woman. In making such a determination, the director must consider whether the person has held himself or herself out to be a minority or woman over a long period of time prior to application for certification and whether the person is regarded as such by the relevant community. Evidence of active participation in relevant community organizations will be considered in such determinations. The director may require the applicant to produce appropriate documentation. An entity may be simultaneously certified as an MBE or WBE if it meets all criteria for both MBE and WBE certification

(k) Business size determinations. To be an MBE/WBE, a firm (including its affiliates) must be an existing and currently functioning small business. The director shall apply the SBA business size standard(s) found in 13 CFR part 121.201 and as amended as of the date of application and appropriate to the type(s) of work the firm seeks to perform.

(l) Determination of ownership. In determining whether the minority or women participants in a firm own the firm, the director shall consider all the facts in the record, viewed as a whole.

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- (1) To be an MBE/WBE, a firm must be at least 51 percent owned by one or more minority and women individuals, reflected as follows:
 - a. In the case of a corporation, such individuals must own at least 51 percent of each class of voting stock outstanding and 51 percent of the aggregate of all stock outstanding.
 - b. In the case of a partnership, 51 percent of each class of partnership interest must be owned by minority and women. Such ownership must be reflected in the firm's partnership agreement.
 - c. In the case of a limited liability company, at least 51 percent of each class of member interest must be owned by the minority and women individuals.
- (2) The firm's ownership by minority or women must be real, substantial, and continuing, going beyond pro forma ownership of the firm as reflected in ownership documents. The minority or women owners must enjoy the customary incidents of ownership, and share in the risks and profits commensurate with their ownership interests, as demonstrated by the substance, not merely the form, of arrangements.
- (3) All securities that constitute ownership of a firm shall be held directly by the minorities or women. Except as provided in this subsection (3), no securities or assets held in trust, or by any guardian for a minor, are considered as held by minority or women individuals in determining the ownership of a firm. However, securities or assets held in trust are regarded as held by a minority or woman for purposes of determining ownership of the firm, if:
 - a. The beneficial owner of securities or assets held in trust is a minority or woman, and the trustee is the same or another such individual; or
 - b. The beneficial owner of a trust is a minority or woman who, rather than the trustee, exercises effective control over the management, policy-making, and daily operational activities of the firm. Assets held in a revocable living trust may be counted only in the situation where the same minority or woman is the sole grantor, beneficiary, and trustee.
- (4) The contributions of capital or expertise by the minority or women owners to acquire their ownership interests must be real and substantial. Examples of insufficient contributions include a promise to contribute capital, an unsecured note payable to the firm or an owner who is not a disadvantaged individual, or mere participation in a firm's activities as an employee. Debt instruments from financial institutions or other organizations that lend funds in the normal course of their business do not render a firm ineligible, even if the debtor's ownership interest is security for the loan.

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- (5) In situations where expertise is relied upon as part of a minority or woman owner's contribution to acquire ownership:
- a. The owner's expertise must be:
 - 1. In a specialized field; and
 - 2. In areas critical to the firm's operations; and
 - 3. Indispensable to the firm's potential success; and
 - 4. Specific to the type of work the firm performs; and
 - 5. Documented in the records of the firm. These records must clearly show the contribution of expertise and its value to the firm.
 - b. The individual whose expertise is relied upon must have a significant financial investment in the firm.
- (6) The director shall always deem as held by a minority or woman individual, for purposes of determining ownership, all interests in a business or other assets obtained by the individual:
- a. As the result of a final property settlement or court order in a divorce or legal separation, provided that no term or condition of the agreement or divorce decree is inconsistent with this section; or
 - b. Through inheritance, or otherwise because of the death of the former owner.
- (7) Presumptions regarding interests obtained without consideration:
- a. The director shall presume as not being held by a minority or woman individuals, for purposes of determining ownership, all interests in a business or other assets obtained by the individual as the result of a gift, or transfer without adequate consideration, from any non-minority or male individual or non-MBE/WBE firm who is:
 - 1. Involved in the same firm for which the individual is seeking certification, or an affiliate of that firm; or
 - 2. Involved in the same or a similar line of business; or
 - 3. Engaged in an ongoing business relationship with the firm, or an affiliate of the firm, for which the individual is seeking certification.

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- b. To overcome this presumption and permit the interests or assets to be counted, the minority or woman individual must demonstrate to the director, by clear and convincing evidence, that:
 - 1. The gift or transfer to the disadvantaged individual was made for reasons other than obtaining certification as an MBE/WBE; and
 - 2. The minority or woman individual actually controls the management, policy, and operations of the firm, notwithstanding the continuing participation of non-minority or male individual or non-MBE/WBE firm who provided the gift or transfer.

- (8) The director shall apply the following rules in situations in which marital assets form a basis for ownership of a firm:
 - a. When marital assets (other than the assets of the business in question), held jointly or as community property by both spouses, are used to acquire the ownership interest asserted by one spouse, the director shall deem the ownership interest in the firm to have been acquired by that spouse with his or her own individual resources, provided that the other spouse irrevocably renounces and transfers all rights in the ownership interest in the manner sanctioned by the laws of the state in which either spouse or the firm is domiciled. The director shall not count a greater portion of joint or community property assets toward ownership than state law would recognize as belonging to the minority or woman owner of the applicant firm.
 - b. A copy of the document legally transferring and renouncing the other spouse's rights in the jointly owned or community assets used to acquire an ownership interest in the firm must be included as part of the firm's application for MBE/WBE certification.

- (9) The director may consider the following factors in determining the ownership of a firm. However, the director must not regard a contribution of capital as failing to be real and substantial, or find a firm ineligible, solely because:
 - a. A minority or woman individual acquired his or her ownership interest as the result of a gift, or transfer without adequate consideration, other than the types set forth in subsection (7) of this section; or
 - b. There is a provision for the co-signature of a spouse who is not a minority or woman individual on financing agreements, contracts for the purchase or sale of real or personal property, bank signature cards, or other documents; or

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- c. Ownership of the firm in question or its assets is transferred for adequate consideration from a spouse who is not a minority or woman to a spouse who is such an individual. In this case, the director must give particularly close and careful scrutiny to the ownership and control of a firm to ensure that it is owned and controlled, in substance as well as in form, by a minority or woman individual.

(m) Determinations concerning control. In determining whether the minority or women owners control a firm, the director must consider all the facts in the record, viewed as a whole.

- (1) Only an independent business may be certified as an MBE/WBE. An independent business is one the viability of which does not depend on its relationship with another firm or firms.
 - a. In determining whether a potential MBE/WBE is an independent business, the director must scrutinize relationships with non-MBE/WBE firms, in such areas as personnel, facilities, equipment, financial and/or bonding support, and other resources.
 - b. The director must consider whether present or recent employer/employee relationships between the minority and woman owner(s) of the potential MBE/WBE and non-MBE/WBE firms or persons associated with non-MBE/WBE firms compromise the independence of the potential MBE/WBE firm.
 - c. The director must examine the firm's relationships with prime contractors to determine whether a pattern of exclusive or primary dealings with a prime contractor compromises the independence of the potential MBE/WBE firm.
 - d. In considering factors related to the independence of a potential MBE/WBE firm, the director must consider the consistency of relationships between the potential MBE/WBE and non-MBE/WBE firms with normal industry practice.
- (2) An MBE/WBE firm must not be subject to any formal or informal restrictions which limit the customary discretion of the minority or women owners. There can be no restrictions through corporate charter provisions, by-law provisions, contracts or any other formal or informal devices (e.g., cumulative voting rights, voting powers attached to different classes of stock, employment contracts, requirements for concurrence by non-disadvantaged partners, conditions precedent or subsequent, executory agreements, voting trusts, restrictions on or assignments of voting rights) that prevent the minority or women owners, without the cooperation or vote of any non-minority or male, from making any business decision of the firm. This paragraph does not preclude a spousal co-signature on documents.

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- (3) The minority and women owners must possess the power to direct or cause the direction of the management and policies of the firm and to make day-to-day as well as long-term decisions on matters of management, policy and operations.
 - a. A minority or women owner must hold the highest officer position in the company (e.g., chief executive officer or president).
 - b. In a corporation, minority or women owners must control the board of directors.
 - c. In a partnership, one or more minorities or women owners must serve as general partners, with control over all partnership decisions.
- (4) Individuals who are not minorities or women may be involved in an MBE/WBE firm as owners, managers, employees, stockholders, officers, and/or directors. Such individuals must not, however, possess or exercise the power to control the firm, or be disproportionately responsible for the operation of the firm.
- (5) The minority and women owners of the firm may delegate various areas of the management, policymaking, or daily operations of the firm to other participants in the firm, regardless of whether these participants are minority or women. Such delegations of authority must be revocable, and the minority and women owners must retain the power to hire and fire any person to whom such authority is delegated. The managerial role of the minority and women owners in the firm's overall affairs must be such that the recipient can reasonably conclude that the minority and women owners actually exercise control over the firm's operations, management, and policy.
- (6) The minority and women owners must have an overall understanding of, and managerial and technical competence and experience directly related to, the type of business in which the firm is engaged and the firm's operations. The minority and women owners are not required to have experience or expertise in every critical area of the firm's operations, or to have greater experience or expertise in a given field than managers or key employees. The minority and women owners must have the expertise, technical competence, and ability to intelligently and critically evaluate information presented by other participants in the firm's activities and to use this information to make independent decisions concerning the firm's daily operations, management, and policymaking. Generally, expertise limited to office management, administration, or bookkeeping functions unrelated to the principal business activities of the firm is insufficient to demonstrate control.
- (7) If state or local law requires the persons to have a particular license or other credential in order to own and/or control a certain type of firm, then the minority or women persons who own and control a potential MBE/WBE firm of that type must possess the required license or credential. If state or local law does not require such a person to have such a license or credential to own and/or control a firm, the

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director must not deny certification solely on the ground that the person lacks the license or credential. However, the director may take into account the absence of the license or credential as one factor in determining whether the minority or women owners actually control the firm.

- (8) The director may consider differences in remuneration between the minority and women owners and other participants in the firm in determining whether to certify a firm as an MBE/WBE. Such consideration shall be in the context of the duties of the persons involved, normal industry practices, the firm's policy and practice concerning reinvestment of income, and any other explanations for the differences proffered by the firm. The director may determine that a firm is controlled by its minority or woman owner although that owner's remuneration is lower than that of some other participants in the firm. In a case where a non-minority or non-woman individual formerly controlled the firm, and a minority or women individual now controls it, the director may consider a difference between the remuneration of the former and current controller of the firm as a factor in determining who controls the firm, particularly when the non-minority or non-woman individual remains involved with the firm and continues to receive greater compensation than the minority or woman individual.
- (9) In order to be viewed as controlling a firm, a minority or woman owner cannot engage in outside employment or other business interests that conflict with the management of the firm or prevent the individual from devoting sufficient time and attention to the affairs of the firm to control its activities. For example, absentee ownership of a business and part-time work in a full-time firm are not viewed as constituting control. However, an individual could be viewed as controlling a part-time business that operates only on evenings and/or weekends, if the individual controls it all the time it is operating.
- (10) A minority or woman individual may control a firm even though one or more of the individual's immediate family members (who themselves are not minorities or women) participate in the firm as a manager, employee, owner, or in another capacity. Except as otherwise provided in this paragraph, the director must make a judgment about the control the minority or woman owner exercises vis-à-vis other persons involved in the business as in other situations, without regard to whether or not the other persons are immediate family members. If the director cannot determine that the minority or woman owners, as distinct from the family as a whole, control the firm, then the minority or woman owners have failed to carry their burden of proof concerning control, even though they may participate significantly in the firm's activities.
- (11) Where a firm was formerly owned and/or controlled by a non-minority or non-woman individual (whether or not an immediate family member), ownership and/or control were transferred to a minority or woman individual, and the non-minority or non-woman individual remains involved with the firm in any capacity, the

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minority or woman individual now owning the firm must demonstrate to the director, by clear and convincing evidence, that:

- a. The transfer of ownership and/or control to the minority or woman individual was made for reasons other than obtaining certification as an MBE/WBE; and
 - b. The minority or woman individual actually controls the management, policy, and operations of the firm, notwithstanding the continuing participation of a non-minority or non-woman individual who formerly owned and/or controlled the firm.
- (12) In determining whether a firm is controlled by its minority or women owners, the director shall consider whether the firm owns equipment necessary to perform its work. However, the director must not determine that a firm is not controlled by minority or women individuals solely because the firm leases, rather than owns, such equipment, where leasing equipment is a normal industry practice and the lease does not involve a relationship with a prime contractor or other party that compromises the independence of the firm.
- (13) The director shall grant certification to a firm only for specific types of work in which they are currently functioning and in which the minority or women owners have the ability to control the firm. To become certified in an additional type of work, the firm needs to demonstrate to the director that its minority or women owners are able to control the firm with respect to that type of work. The director may not, in this situation, require that the firm be recertified or submit a new application for certification, but must verify the minority or women owner's control of the firm in the additional type of work.
- (14) A business operating under a franchise or license agreement may be certified if it meets the standards in this subpart and the franchiser or licensor is not affiliated with the franchisee or licensee. In determining whether affiliation exists, the director should generally not consider the restraints relating to standardized quality, advertising, accounting format, and other provisions imposed on the franchisee or licensee by the franchise agreement or license, provided that the franchisee or licensee has the right to profit from its efforts and bears the risk of loss commensurate with ownership. Alternatively, even though a franchisee or licensee may not be controlled by virtue of such provisions in the franchise agreement or license, affiliation could arise through other means, such as common management or excessive restrictions on the sale or transfer of the franchise interest or license.
- (15) In order for a partnership to be controlled by minority or women individuals, any non-minority or non-women partners must not have the power, without the specific written concurrence of the minority or women partner(s), to contractually bind the partnership or subject the partnership to contract or tort liability.

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- (16) The minority or women individuals controlling a firm may use a professional and commercial employee leasing company. The use of such a company does not preclude the minority or woman individuals from controlling their firm if they continue to maintain an employer-employee relationship with the leased employees. This includes being responsible for hiring, firing, training, assigning, and otherwise controlling the on-the-job activities of the employees, as well as ultimate responsibility for wage and tax obligations related to the employees.
- (17) The director may consider, in making certification decisions, whether a firm has exhibited a pattern of conduct indicating its involvement in attempts to evade or subvert the intent or requirements of the MBE/WBE program.
- (18) The director shall evaluate the eligibility of a firm on the basis of present circumstances. The director shall not refuse to certify a firm based solely on historical information indicating a lack of ownership or control of the firm by the minorities or women at some time in the past, if the firm currently meets the ownership and control standards of this part.
- (19) MBE/WBE firms and firms seeking MBE/WBE certification shall cooperate fully with the director's requests (and DOT requests) for information relevant to the certification process. Failure or refusal to provide such information is a ground for a denial or removal of certification.
- (20) An eligible MBE/WBE firm must be owned by individuals who are minorities and women. Except as provided in this paragraph, a firm that is not owned by such individuals, but instead is owned by another firm—even an MBE/WBE firm—cannot be an eligible MBE/WBE.
 - a. If the minorities or women own and control a firm through a parent or holding company, established for tax, capitalization or other purposes consistent with industry practice, and the parent or holding company in turn owns and controls an operating subsidiary, the director may certify the subsidiary if it otherwise meets all requirements of this section. In this situation, the individual owners and controllers of the parent or holding company are deemed to control the subsidiary through the parent or holding company.
 - b. The director may certify such a subsidiary only if there is cumulatively 51 percent ownership of the subsidiary by the minority and women individuals. The following examples illustrate how this cumulative ownership provision works:

Example 1: Minority and women individuals own 100 percent of a holding company, which has a wholly-owned subsidiary. The subsidiary may be certified, if it meets all other requirements.

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Example 2: Minority and women individuals own 100 percent of the holding company, which owns 51 percent of a subsidiary. The subsidiary may be certified, if all other requirements are met.

Example 3: Minority and women individuals own 80 percent of the holding company, which in turn owns 70 percent of a subsidiary. In this case, the cumulative ownership of the subsidiary by minority and women individuals is 56 percent (80 percent of the 70 percent). This is more than 51 percent, so the director may certify the subsidiary, if all other requirements are met.

Example 4: Same as example 2 or 3, but someone other than minorities or women owners of the parent or holding company controls the subsidiary. Even though the subsidiary is owned by minority or women individuals, through the holding or parent company, the director cannot certify it because it fails to meet control requirements.

Example 5: Minority or women individuals own 60 percent of the holding company, which in turn owns 51 percent of a subsidiary. In this case, the cumulative ownership of the subsidiary by minority or women individuals is about 31 percent. This is less than 51 percent, so the director cannot certify the subsidiary.

Example 6: The holding company, in addition to the subsidiary seeking certification, owns several other companies. The combined gross receipts of the holding companies and its subsidiaries are greater than the size standard for the subsidiary seeking certification and/or the gross receipts cap. Under the rules concerning affiliation, the subsidiary fails to meet the size standard and cannot be certified.

- (21) Recognition of a business as a separate entity for tax or corporate purposes is not necessarily sufficient to demonstrate that a firm is an independent business, owned and controlled by minority and women individuals.

(n) An MBE/WBE's certification shall expire three years from the date of certification effective immediately. An application for renewal shall be submitted on forms provided by the director. The director is authorized to require MBE/WBE's firms to submit yearly updates of information including, but not limited to, current licenses and federal, state and local tax returns and schedules (business and personal), and all other forms that are required to be included with or attached to the return at the time of filing.

(o) Once certified, an MBE/WBE must notify the department in writing within 30 calendar days of any change(s) in circumstances affecting the firm's ability to meet ownership, control, or size requirements or any material change(s) in the information provided in the certification application process. The statement must include supporting documentation describing in detail the nature of such changes. Change(s) in management responsibility among members of a limited liability company are also covered by this requirement. If the MBE/WBE fails to make timely

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notification of such change(s), it will be deemed to have failed to cooperate and certification may be revoked.

(p) The director shall safeguard information that reasonably may be regarded as confidential business information from disclosure to unauthorized persons consistent with federal, state and local law.

(q) If the United States Department of Transportation changes the requirements for certifications, the city council shall re-examine the certification requirements imposed by this section.

(r) Appeals of denials of certification.

- (1) If the city denies a request for MBE/WBE certification from a firm which is not currently certified by the city, then the firm shall be ineligible to reapply for MBE/WBE certification for one year from the later of the date of the denial of certification or the final date of any decision on an appeal.
- (2) Persons who have applied for DBE certification in conjunction with MBE/WBE certification and have been denied MBE/WBE certification may be certified if the reason(s) for denial is solely for MBE/WBE certification criteria equivalent to the DBE certification criteria and they successfully appeal their DBE certification and otherwise fulfill the requirements for MBE/WBE certification.
- (3) Persons who have applied for MBE/WBE certification and who have not applied for DBE status may appeal the denial of certification to the same extent and subject to the same provisions applicable to appeals of revocation of certification, except as provided in (4) of this subsection.
- (4) In circumstances where a firm has failed to submit required documentation, failed to demonstrate real and substantial presence, or exceeded business size standards, there will be no administrative re-consideration of a denial of MBE/WBE certification.

(s) Appeals of revocations of certification.

- (1) Persons who have who have had their MBE/WBE certification revoked by the department may be reinstated if the reason(s) for revocation is solely for MBE/WBE certification criteria equivalent to the DBE certification criteria and they successfully appeal their DBE certification, and they otherwise fulfill the requirements for MBE/WBE certification. If a person was certified as a DBE, the person must follow the UCP appeal procedures and there is no city appeal.
- (2) In circumstances where a certified firm has failed to submit required documentation, failed to demonstrate real and substantial presence, or exceeded

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business size standards, there will be no administrative reconsideration of a revocation of MBE/WBE certification.

- (3) Upon the revocation of certification as an MBE/WBE/DBE or mentor/protégé by the department, the director shall notify the affected party in writing by certified mail, setting forth the reason(s) for the revocation of certification. Except as provided in (1) and (2) of this subsection, any firm who has had certification as an MBE/WBE or mentor/protégé revoked by the department may appeal the decision by filing a written notice of appeal as designated by the director within 20 business days of receipt of the notice of the revocation of certification. The procedures applicable to any appeal shall be as follows:
- a. The written notice of appeal must state the reason(s) for the appeal and include all supporting documentation to be considered for the appeal. The information or documentation submitted is limited to the issue(s) raised in the written notice of appeal. No new or additional documentation or information shall be considered for the appeal without a showing by the firm that it was not available or, through due diligence, could not have been made available. The written notice must specify whether the firm wishes to appeal in writing and/or appear personally for a hearing and if they intend to be accompanied by counsel.
 - b. Within ten business days of receipt of the notice of appeal from the aggrieved party, the director shall forward the notice to a neutral hearing officer selected through the city's standard procurement process.
 - c. Within ten business days from the date of receipt of the notice from the director, the hearing officer shall set a hearing date. The hearing officer shall cause notice of the hearing to be served upon all parties by certified mail. Such notice shall set forth with particularity the charges filed by the aggrieved business and shall include the hearing date, time, and place.
 - d. At the hearing, all parties shall be provided a fair and impartial hearing and shall be allowed to make a presentation concerning the determination of noncompliance with the requirements of this article or the revocation of certification as an MBE/WBE or mentor/protégé. Legal counsel may accompany the firm during the hearing, speak on behalf of the firm, respond to questions, and otherwise make a presentation. Each owner will be limited to a period of 15 minutes to address the hearing officer, unless extended by the hearing officer for good cause. Reasonable accommodations will be made for those with disabilities and/or limited language proficiency. For the appeal, the burden of proof rests on the MBE/WBE or mentor/protégé to show that the revocation of certification was improper.
 - e. The hearing officer shall, within 15 business days of the hearing or within 15 days of the deadline set by the hearing officer for the submission of any

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additional documentation, if applicable, make a written decision on the appeal, which decision shall affirm, alter, or reverse the revocation of certification by the department. Written notice of the decision on the appeal shall be sent to all parties by mail setting forth the reasons for the decision.

- f. If the hearing officer finds for the aggrieved party, as appropriate, the business shall be reinstated as an MBE/WBE or mentor/protégé and added to the certification database maintained by the department. The decision of the hearing officer shall be binding on all parties, subject to the right of appeal as provided by law.
- g. The firm that receives a decision from the hearing officer upholding the revocation of certification is ineligible to reapply for MBE/WBE certification for two years from the later of the date of the revocation of certification, or the final date of any court decision.

(t) The city manager is authorized to revoke MBE and WBE certification for cause. The certification of a person who has been debarred by the city in a debarment proceeding shall be automatically terminated or modified in a manner provided by the debarment ordinance. If an MBE/WBE has its DBE or MBE/WBE certification revoked by another governmental entity after a hearing, its MBE/WBE certification shall automatically be terminated with the city unless the MBE/WBE's certification was revoked for violating a certification requirement that is not a violation of the city's MBE/WBE certification requirements. No individual, corporation, partnership, limited liability company or any other business entity whatsoever shall be certified as an MBE or WBE if the minority or female whose ownership interest would serve as the basis for obtaining certification, or who would control the entity seeking certification, presently owns or previously owned a majority interest in or controlled an MBE or WBE whose certification has been revoked for cause within the five year period immediately preceding the submittal of the certification application. No individual, corporation, partnership, limited liability company or any other business entity whatsoever shall be certified as an MBE or WBE if the minority or female whose ownership interest would serve as the basis for obtaining certification, or who would control the entity seeking certification, presently owns or previously owned a majority interest in or controlled an MBE or WBE whose certification has been suspended for cause, provided however that this restriction shall last no longer than the term of the suspension.

(u) MBE/WBE program graduation.

- (1) If an MBE or WBE has been certified by the city in more than one North American Industry Classification System (NAICS) code or has an affiliate which has been certified by the city in a NAICS code other than that of the MBE or WBE, then the annual receipt level used as the graduation criterion for such MBE or WBE shall apply separately to each NAICS code for which the MBE or WBE and its affiliate have been certified subject to the business size standards in this division. Such an MBE or WBE and any affiliate that has exceeded the graduation criteria in one NAICS code shall be deemed to be graduated from the MBE/WBE contracting program as to that major group, and may continue to be certified in another NAICS

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code having a higher monetary graduation level but shall no longer be considered eligible to be or remain certified in the NAICS code with the lower size standard. An MBE or WBE that has exceeded the graduation criteria for the largest NAICS code applicable to its activities shall be deemed to be graduated from the MBE/WBE program for all purposes.

- (2) The department shall send a graduation determination letter which shall serve to notify the MBE or WBE that it has graduated from the MBE/WBE program. The mailing of the graduation determination letter shall trigger a three-year termination period. During the termination period, an MBE or WBE may bid and perform work to the same extent it was able to do so before graduation, and its utilization may be applied towards satisfaction of contract goals, if any, to the extent it is performing a commercially useful function corresponding to a NAICS code in which it was certified prior to graduation.
- (3) The termination period shall expire three years from the date of mailing of the graduation determination letter. Any work bid by the graduated MBE or WBE after expiration of the termination period shall not be applied towards satisfaction of contract goals, if any. Any work performed by the graduated MBE or WBE after expiration of the termination period shall not be applied towards satisfaction of contract goals, if any, unless the work was commenced or is scheduled to commence pursuant to solicitation made prior to the expiration of the termination period.
- (4) During the termination period, the MBE or WBE shall comply with the requirements of this article to the same extent it was required to comply prior to graduation. A failure to do so may result in the reduction or elimination of the termination period.
- (5) Application to affiliates. The graduation criteria set forth above shall be deemed to apply to the minorities or women upon whom eligibility for certification is based and all affiliates to such minorities and women. No business enterprise shall be certified based upon one or more minorities or women who owned or who was an affiliate of an MBE or WBE which has become ineligible for renewed certification because of the achievement of graduation criteria.

Sec. 3-463. Duties and authority of director.

(a) The director is hereby authorized to establish rules and regulations to implement this division which rules and regulations shall be submitted to the city council for its approval and shall be in writing and published.

(b) Notwithstanding any other section to the contrary, the director is hereby authorized to establish rules and regulations to implement the city's MBE/WBE program requirements into contracts that utilize alternative construction delivery methods pursuant to chapter 3, Code of Ordinances, or other alternative procurement or contracting methods if the contract would be

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subject to MBE/WBE goals under this division. Except for cooperative agreements that involve construction, the fairness in construction board shall set the MBE/WBE goals for construction contracts.

- (c) The director shall, in addition to any other duties specified herein:
- (1) Administer and enforce this article to ensure that MBE/WBEs have equal opportunity to participate in city contracts and subcontracts and work with all city department directors and agency heads to implement the city's MBE/WBE program; and
 - (2) Coordinate the establishment of MBE/WBE methodologies with all city departments and incentive agencies including establishment of goals, except goals to be established by the applicable Board, as may be appropriate to remedy underutilization of MBE/WBEs; and
 - (3) Update the M/W/DBE Kansas City Mo. Online Directory available to all bidders, proposers, the general public, city departments and incentive agencies no less frequently than every three (3) months; and
 - (4) Assist city departments incentive agencies, bidders, proposers, contractors and developers in finding qualified MBEs and WBEs to participate in contracts; and
 - (5) Identify appropriate participation opportunities for qualified MBEs and WBEs in contracts; and
 - (6) Publish an annual report for the city's fiscal year which states for each city department and agency:
 - a. The number of contracts awarded and the total contract dollars awarded pursuant to such contracts; and
 - b. The number of prime contracts awarded to WBEs and MBEs as identified by race and/or ethnicity and the total dollars awarded and paid pursuant to such contracts; and
 - c. The number of subcontracts awarded to WBEs and MBEs as identified by race and/or ethnicity and the total contract dollars awarded and paid pursuant to such contracts; and
 - d. A summary of total waiver requests submitted that are granted or denied and the reasons for the grant or denial; and
 - e. The number of MBE/WBE firms certified by race and/or ethnicity; and

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- (7) Provide a compliance report to the city manager within 30 days after the end of each quarter which shall include:
 - a. The total number of contracts awarded and the total contract dollar amount awarded pursuant to such contracts; and
 - b. The number of contracts awarded to qualified MBEs as identified by race and/or ethnicity and WBEs and the total contract dollar amount awarded and paid pursuant to such contracts; and
 - c. The director of civil rights and equal opportunity evaluation of the city's progress toward meeting MBE/WBE utilization plans and any actions he or she intends to take to address any shortfall in meeting the goals established in such plans; and
 - d. Any other information as may be required by the city manager; and
- (8) Provide monthly compliance reports to the applicable incentive agency for contracts entered into in connection with sections 3-425(b) and 3-425(c) updating the incentive agency as to the project developer's compliance with the M/WBE goals and work with the applicable incentive agency to assist developers who are not compliant. Failure of the director to furnish these reports does not absolve incentive agency or developer from complying with the processes outlined by agreement with the incentive agency; and
- (9) Provide the city council a report outlining the effects of any revisions to this division within 18 months of their effective date. The purpose of this report is to ensure that such revisions promote increased opportunities for minority or women business enterprise participation on contracts.
- (10) Develop and maintain relationships with organizations representing contractors, including minorities and women organizations, and solicit their support for the city's program; and
- (10) Furnish staff assistance to the boards established in this division. This shall include but not be limited to providing to the boards within thirty days following the end of each quarter interim reports containing the information described in subsection (6) and such other reports and information as the board, from time to time, may request; and
- (11) Implement any federal or state minority business enterprise program required by law or federal or state contract; and
- (12) Appoint a designated neutral hearing examiner for certification revocation hearings.

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Sec. 3-501. Definitions applicable to the construction employment program.

- (a) The following definitions apply to sections 3-501 through 3-527:
- (1) *Apprentice* means person of legal working age who has entered into a program for training and employment to learn a skilled construction trade.
 - (2) *Apprenticeship program* means a program approved by the bureau of apprenticeship training providing for no less than 2,000 hours of reasonably continuous employment and for participation in an approved schedule of work experience through employment, which shall be supplemented by a minimum of 144 hours per year of related instruction.
 - (3) *City* means the City of Kansas City, Missouri.
 - (4) *City construction contract* means a contract estimated by the city prior to solicitation as requiring more than 800 construction labor hours and with an estimated cost that exceeds \$300,000.00 for the construction, reconstruction, improvement, enlargement or alteration of any fixed work for which tax abatement has been granted, or in which any portion is paid for out of city funds, tax increment financing, or funds administered by the city pursuant to a federal or state grant, including, but not limited to any building, road, street, public utility or other public facility, regardless of the contract's dollar amount, and regardless further of whether the city is a signatory to the contract.
 - (5) *Construction contractor* means any individual, partnership, corporation, association or other entity, or any combination of such entities, who or which enters into a city construction contract, regardless of the number of employees.
 - (6) *Construction employment goals* means the percentages of construction labor hours to be performed by minorities and women working under the city construction contract and on construction projects in the metropolitan statistical area during the term of the city construction contract, unless otherwise waived by the director or the Construction Workforce Board on appeal from a determination of the director.
 - (7) *Construction employment program* means a program enacted by ordinance regarding the recruitment, training, mentoring and retention of employees, including apprentices and journeymen, on construction projects. The term "construction employment program" shall also mean construction workforce ordinance.
 - (8) *Construction hours affidavit* means a statement by a construction contractor, verified under oath, setting forth the construction contractor's intent to meet or exceed, and to cause the subcontractors of every tier to meet or exceed, the construction employment goals while performing a city construction contract.

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- (9) *Construction labor hour* means a 60-minute period of time devoted by a worker, employed by a contractor or subcontractor, performing labor on a construction project job site; or, preparing, fabricating or painting materials or equipment to be used or incorporated on a construction project job site.
- (10) *Construction project* means any project performed by a construction contractor in the Kansas City metropolitan statistical area.
- (11) *Construction Workforce Board* means a board, created as provided herein.
- (12) *Director* means the director of the civil rights and equal opportunity department of the city or his/her designee, or the person within the city manager's office that is assigned to perform the tasks delegated to the director of the civil rights and equal opportunity department by this article.
- (13) *Equal opportunity clause* means a statement prohibiting discrimination on construction projects based on race, color, sex, sexual orientation, gender identity, age, national origin, or ancestry, religion, or disability as proscribed in the Kansas City Code of Ordinances, chapter 38, article III, section 38-103.
- (14) *Good faith waiver* means a waiver that is granted by the director, or upon appeal of the director's decision by the Construction Workforce Board, based upon a showing by a construction contractor that despite undertaking in good faith the actions outlined in sections 3-501—3-527, the construction contractor, the subcontractors of any tier, or both, were unable to achieve the minimum construction employment goals.
- (15) *Incentive construction employment goal* means an aspirational goal for company-wide employment of minorities and women intended to encourage contractors to invest additional money and resources to hire and retain minorities and women on their workforce in order to achieve participation percentages well in excess of the minimum construction employment goals and the percentage of minorities and women generally available in the workforce by providing public recognition upon the completion of a city construction contract, to the construction contractor who achieves such goal.
- (16) *Journey person* means one who has completed an apprenticeship in a trade or craft and is recognized in the particular trade or craft as a journey person.
- (17) *Labor union* means any organization which exists, in whole or in part, for the purpose of collective bargaining; for dealing with employers concerning grievances, terms, or conditions of employment; or, for other mutual aid or protection of workers in relation to employment.
- (18) *Metropolitan statistical area (MSA)* means the Kansas City metropolitan statistical area as defined by the United States Department of Labor.

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- (19) *Minority* means a person who is a citizen or lawful permanent resident of the United States and who is:
- a. African American, a person whose origins are in any of the Black racial groups of Africa, and who has historically and consistently identified himself or herself as being such a person; or
 - b. Hispanic American and/or Latino American, a person whose origins are in Mexico, Central or South America, or any of the Spanish-speaking islands of the Caribbean, (for example Cuba and Puerto Rico) regardless of race, and who has historically and consistently identified himself or herself as being such a person; or
 - c. Asian and/or Pacific Islander American, a person whose origins are in any of the original peoples of the Far East, Southeast Asia, the islands of the Pacific or the Northern Marianas, or the Indian Subcontinent, and who has historically and consistently identified himself or herself as being such a person; or
 - d. Native American, a person having origins in any of the original peoples of North America, and who maintains tribal affiliation or demonstrates at least one-quarter descent from such groups, and who has historically and consistently identified himself or herself as being such a person.
- (20) *Resident* means an individual residing or domiciled within the city.
- (21) *Woman* means a person who is a citizen or lawful permanent resident of the United States and who is a female.
- (22) *Workforce preparedness program* means a program that actively seeks the participation of minorities and women and provides them with the skills and resources necessary to enter a program for training and employment to learn a skilled construction trade.

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~~program.~~

~~(a) The construction employment program is hereby established. The purpose of the construction employment program is to:~~

~~(0) Increase retention, training and recruitment of residents, minorities and women on city construction contracts and throughout the Kansas City MSA; and~~

~~(0) Prescribe policies and procedures to implement the city's objective in accordance with sections 3-501-3-527; and~~

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509. City sponsored recruitment of existing construction workforce.

~~Further the retention of minorities and women in the current workforce by promoting mentoring programs to assist such workers and establishing goals to encourage city contractors to retain such workers.~~

~~(b) Sections 3-501-3-527 shall not be construed as requiring or encouraging a construction contractor, or any subcontractor or supplier working in conjunction with the construction contractor, to make employment decisions or otherwise alter the terms and conditions of employment based upon race or gender.~~

~~(c) The director is authorized to adopt rules and regulations to implement the construction employment program.~~

Sec. 3-509. City sponsored recruitment of existing construction workforce.

(a) The city shall partner with labor unions, community-based organizations, and employment referral programs to accomplish the goals of the construction employment program. Activities to increase resident, minority and women participation shall be conducted on a scheduled basis and shall include:

- (1) Sponsoring workshops and events involving local minority community-based organizations and educational institutions to promote the construction industry and encourage residents to apply for apprenticeship programs and journey worker jobs on construction projects or jobs requiring prior construction labor experience; and
- (2) Establishing a first source program intended to give residents of the city the first opportunity to apply, be interviewed and be hired on city construction contracts; and
- (3) Making a good faith effort to inform residents of the city and minorities and women, regardless of residency, through advertisements in media in the city and in minority or women trade association newsletters and/or minority or women owned media at least 60 calendar days prior to the issuance of an invitation for bid or request for proposals for a particular city construction contract, if deemed practical by the city to do so, of:
 - a. The name of the project;
 - b. The nature of the work to be performed;
 - c. The crafts anticipated to be required for the work; and,
 - d. Locations within the city and a website in which residents of the city may register for consideration for employment on the city construction project.

Failure of the city to advertise shall not invalidate any solicitation or contract.

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- (4) Establishing and maintaining a current list of resident, minority and women recruitment sources, providing written notifications to the recruitment sources of available employment opportunities, and maintaining records of the notices submitted to the organizations and any responses thereto; and
- (5) Collaborating with labor unions, contractors and their respective associations to determine information that may be reasonably required of prospective workers.
- (6) Collecting and furnishing such information to labor unions, contractors and their respective associations for their use in identifying qualified residents of the city desiring work on city construction contracts.
- (7) Establishing a pre-qualification program for subcontractors whereby subcontractors can provide employment data to the director evidencing that they meet or exceed the minimum construction employment goals for the purpose of being included in a subcontractor directory on [the department's](#) website to assist construction contractors in identifying those subcontractors that can assist the construction contractor in meeting the construction employment goals.
- (8) Submitting monthly reports to the Construction Workforce Board stating the number of resident, minority and women construction labor hours performed by construction contractors and their subcontractors, in a format acceptable to the Construction Workforce Board.

Sec. 3-601. Definitions.

- (a) The following definitions apply to this Division 4:
- (1) *Agency*. Any public or private entity that receives 66 percent of its funding from the city or any entity with the authority to recommend city tax increment financing or city tax abatements.
 - (2) *Agency head*. The individual authorized to act on behalf of an agency.
 - (3) *Business*. An individual, corporation, partnership, limited liability company, or other recognized business association that may lawfully be established for the purpose of conducting a for-profit business within the state.
 - (4) *City*. The City of Kansas City, Missouri.
 - (5) *Construction contract*. A contract for the construction, reconstruction, improvement, enlargement or alteration of any fixed work or construction site preparation, the majority of which is paid for out of city or agency funds.

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- (6) *Construction supply contract.* A contract for the purchase of construction materials, supplies, articles or equipment intended to be used or consumed on a construction contract, the majority of which is paid for out of city or agency funds.
- (7) *Department.* The civil rights and equal opportunity department or the division within the city manager's office that is assigned to perform the tasks delegated to the civil rights and equal opportunity department.
- (8) *Department director.* The individual appointed by the city manager to be responsible for a city department or the manager of procurement services when acting on behalf of a department director or the city.
- (9) *Director.* The director of the civil rights and equal opportunity department or his authorized representative, or the person designated by the city manager to perform the tasks delegated to the civil rights and equal opportunity department.
- (10) *Eligible contract.* Any construction contract or construction supply contract estimated by the city or agency prior to solicitation as having a value less than \$300,000.00, and all other professional services or supplies city or agency contracts having a value less than \$117,000.00, the majority of either of which is paid for out of city funds or in which an agency is a party.
- (11) *Invitation for bid.* A request or invitation for submission of an offer to enter into a contract pursuant to a competitive bidding process.
- (12) *Kansas City Metropolitan Area.* The Missouri counties of Cass, Clay, Jackson and Platte and the Kansas counties of Johnson, Leavenworth and Wyandotte.
- (13) *Person.* An individual, corporation, partnership, limited liability company, or other recognized business association which may lawfully be established for the purpose of conducting a for-profit business within the state.
- (14) *Principal place of business.* The location at which the business records of the SLBE applicant are maintained and the location at which the individual who manages the concern's day-to-day operations spends the majority of his/her working hours.
- (15) *Request for proposals.* An invitation for submission of an offer to enter into a contract pursuant to a negotiated process and not a competitive bid, including requests for qualifications.
- (16) *Professional services or supplies.* The term includes contracts for purely labor-related services up to and including highly technical or specialized services and design professional services, as well as contracts for the purchase of materials, supplies, articles or equipment intended to be used or consumed by the city or

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agency procuring the same, provided however that the term excludes construction contracts and construction supply contracts.

- (17) *Small local business enterprise (SLBE)*. A for-profit business that:
- a. Is at least 51 percent owned, managed and independently controlled by the applicant(s); and
 - b. Exists independently and is not an affiliate or subsidiary of any other business.
 - c. Is able to demonstrate that they have the skill and expertise to perform in the particular area(s) of work for which they are seeking certification; and
 - d. Has a real and substantial presence in the Kansas City Metropolitan Area. A business enterprise shall be deemed to have a real and substantial presence in the Kansas City Metropolitan Area if:
 1. The business' principal place of business is in the Kansas City Metropolitan Area.
 2. The business maintains the majority of its full-time employees in the Kansas City Metropolitan Area.
 3. The business has transacted business more than once in the Kansas City Metropolitan Area within the last two (2) years; and
 - e. Has annual gross receipts that, when added with those of its subsidiary or subsidiaries and averaged over three consecutive years, do not exceed five percent of the applicable business size standard for the SBA General Contractor Classification which is equivalent of the NAIC code 236220 as established in 13 CFR 121.201, as amended; and
 - f. Is certified by the civil rights and equal opportunity department as a small local business enterprise.
- (18) *SLBE directory*. A source list compiled by the civil rights and equal opportunity department containing names and addresses of SLBEs eligible to participate in the SLBE program.
- (19) *SLBE program*. The small local business enterprise program as enacted in this Division.

Sec. 3-603. Policy; applicability.

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(a) The SLBE program is intended to provide opportunities by limiting solicitations to SLBEs or providing SLBEs a bid incentive, as provided in section 3-607. The SLBE program is not a goal-based program, nor shall it be extended to every contract. Application of the SLBE program shall be limited to those eligible contracts in which the director has determined it to be proper as provided herein.

(b) The SLBE program, when determined to be applicable by the director, shall extend to eligible contracts solicited by the city or any agency. Every agency shall adopt a small local business enterprise program that is substantially consistent in every material respect with this Division, as determined and approved by the director of civil rights and equal opportunity. No ordinance shall be passed to approve any development plan, redevelopment plan, urban renewal plan, or particular project arising under any such plan and for which economic incentives have been approved or recommended for approval by an agency, nor shall the city execute a contract with an agency for the purpose of providing funds for their development and redevelopment services, unless the agency has first adopted and implemented a small local business enterprise program in the manner provided for herein.

(c) The director shall review the SLBE program annually and make recommendations to the city council as to whether the SLBE program should be maintained or modified, but the failure of the director to do so shall not invalidate the SLBE program.

(d) The city council shall have the authority to waive the applicability of the SLBE program in its entirety, or any portion thereof, if it determines that doing so is in the city's best interests.

Sec. 3-622. Prevailing Wage Application to Incentive Plans.

(a) For any new development plan, or substantial modification to an existing plan, that is approved by the city council or any economic development agency created by the city and that seeks ad valorem real and personal property tax abatement, exemption or redirection, the developer, redeveloper or other entity that applies for approval of such plan or modification shall pay or cause to be paid a Prevailing Wage Rate to all workmen performing work as a part of the construction, reconstruction, improvement, enlargement, alteration, painting and decorating, or major repair of any project for which the total project cost exceeds seventy-five thousand dollars conducted as part of the plan.

(b) For the purposes of this section, Prevailing Wage Rate shall be determined as set forth in Sections 290.210 to 290.340 of the Revised Statutes of Missouri.

(c) The director of the civil rights and equal opportunity department of the city shall promulgate rules and regulation as are necessary to carry out the provisions of this section. All such rules and regulations shall be provided to the economic development agencies created by the city and authorized to approve tax abatement, exemption or redirection within 10 days of their promulgation.

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(d) Notwithstanding the foregoing provisions of this section, the City Council and any economic development agency created by the City shall retain the discretion to authorize the abatement, redirection or exemption, in whole or in part, of ad valorem real property taxes to the full extent authorized by any provision of law. The City Council shall give particular consideration to the following exceptions ("Extraordinary Qualifications") in determining whether to authorize any abatement or exemption structure, or approve any development plan providing for incentives to be conveyed on a project-specific basis that is not in compliance with this section:

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- 1.(1) Projects located in a severely distressed census tract that has continuously maintained such status for not less than ten (10) years immediately prior to the effective date of the request; or
- (2) Projects that support affordable housing and extremely affordable housing by meeting the requirements of Committee Substitute for Ordinance No. 201038, as Amended, for such housing.
- (3) Projects that connect residents living in continuously distressed census tracts to new employment opportunities by:
 - (i) providing at least 100 new entry-level jobs to Kansas City with an annual salary of at least \$32,000, or \$42,000 inclusive of wages and benefits; and
 - (ii) incorporating options for mass public transportation or locating in an established high-frequency transit corridor.
- (4) Projects that involve the renovation or rehabilitation of a building has been designated by a government entity as a local or national historic landmark or contribute to a historic district, or projects that have filed an application with the National Park Service to be placed on the National Register of Historic Places, in which case the exclusion would be subject to such designation being approved.

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Determination of eligibility for Extraordinary Qualifications shall be made upon receipt by the City or any economic development agency created by the City of an application or request for ad valorem real and personal property tax abatement, exemption or redirection.

(e) This section shall apply only to projects that have not yet submitted an application for the abatement, redirection or exemption of taxes and shall not be construed in a manner as to apply to any tax abatement or transaction authorized by the City or any other public entity prior to May 14, 2021. Notwithstanding the foregoing, the requirements of this ordinance shall be imposed on any project that has submitted an application for the abatement, redirection or exemption of taxes prior to its effective date but has not received final approval from the relevant authorizing body within three years of May 14, 2021.

Section 3. For any new development plan, or substantial modification to an existing plan, that is not required to have approval of the City Council and that seeks ad valorem real and personal property tax abatement, exemption or redirection, the City Council recommends that any

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economic development agency created by the City, including Port KC, shall only approve abatements, exemptions or redirections for projects that a prevailing wage rate is paid to all workmen performing work as a part of the construction, reconstruction, improvement, enlargement, alteration, painting and decorating, or major repair of any project if the total project cost exceeds seventy-five thousand dollars.

Section 4. That this ordinance shall have an effective date of May 14, 2021, which is an additional 60 days beyond the minimum effective date established by the City Charter.

Section 5. That Chapter 38 of the Code of Ordinances entitled "Human Relations" is hereby amended by changing the name to "Civil Rights" and repealing Sections 38-1, 38-21, 38-43, 38-63, 38-65, and 38-113 and enacting in lieu thereof new sections of like number and subject matter to read as follows:

Sec. 38-1. Definitions.

(a) The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning or an alternative definition has been provided:

- (1) Age means an age of 40 or more years, except that it shall not be an unlawful employment practice for an employer to require the compulsory retirement of any person who has attained the age of 85 and who, for the two-year period immediately before retirement, is employed in a bona fide executive or high policymaking position, if such person is entitled to an immediate nonforfeitable annual retirement benefit from a pension, profit sharing, savings or deferred compensation plan, or any combination of such plans, of the employer, which equals, in the aggregate, at least \$344,000.00.
- (2) ~~(2)~~ City means the City of Kansas City, Missouri.
~~(2)~~ City
- (3) ~~(3)~~ City means the City of Kansas City, Missouri.
- (3) Commission means the city human rights commission.
- (4) Complainant means any person claiming injury by the alleged violation of Chapter 213, RSMo., or of this Chapter, including persons who believe they will be injured by an unlawful discriminatory practice that is about to occur.
- (5) Complaint means a verified written statement of facts and circumstances, including dates, times, places and names of persons involved in any alleged violation of any provision of Chapter 213, RSMo. or of this Chapter.

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(6) Contract means any contract to which the city shall be a contracting party, except the following:

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- a. Personal services contracts.
- b. Emergency requisitions for goods, supplies or services.
- c. Impressed accounts in the nature of petty cash funds.
- d. Contract or lease, the cost of which will not exceed \$300,000.00.

(7) Covered multifamily dwelling means a building consisting of four or more units if the building has one or more elevators or a ground floor unit in a building consisting of four or more units.

(8) Department means the department of civil rights and equal opportunity.

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~~(10) (8) Department~~ means the department of ~~human relations~~ civil rights and equal opportunity.

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(9) Director means the director of the civil rights and equal opportunity department or their delegate.

(10) Disability means with respect to employment, a person who is otherwise qualified and who, with reasonable accommodation, can perform the essential functions of the job in question. Generally, a person with a disability is any person who:

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- a. Has a physical or mental impairment which substantially limits one or more major life activities;
- b. Has a record of having such impairment; or
- c. Is regarded as having such an impairment.

(11) Dwelling means any building, structure or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure or portion thereof.

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(12) *Employee* means any individual employed by an employer, but does not include an individual employed by his parents, spouse or child or any individual employed to render services as a domestic in the home of the employer.

(13) *Employer* includes any person employing six or more employees.

(14) *Employment agency* means any person, agency or organization, regularly

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~~(14) *Employment agency* means any person, agency or organization, regularly~~

~~(17) *Employment agency*~~ (14) *Employment agency* means any person, agency or organization, regularly undertaking, with or without compensation, to procure opportunities for employment or to procure, recruit, refer or place employees.

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(15) *Familial status* means one or more individuals, who have not attained the age of 18 years, being domiciled with:

a. A parent or another person having legal custody of such individual or individuals; or

b. The designee of such parent or other person having such custody, with the written permission of such parent or other person. The protection afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years. No provision in this chapter regarding familial status shall apply to housing for older persons, as defined in section 3607 of title 42 of the United States Code Annotated.

(16) *Family* includes a single individual.

(17) *Franchise holder* means any individual, partnership, corporation, association or other entity, or any combination of such entities, holding a franchise hereafter granted or renewed by the city.

(18) *Gender identity* means the actual or perceived appearance, expression, identity or behavior of a person as being male or female, whether or not that appearance, expression, identity or behavior is different from that traditionally associated with the person's designated sex at birth.

~~(22) *Inquire* means to communicate any question or statement to an applicant, an applicant's current or prior employers, or a current or former employee or agent of the applicant's current or prior employer, in writing or otherwise, for the purpose of obtaining an applicant's salary history, or to conduct a search of publicly available records or reports for the purpose of obtaining an applicant's salary history, but does~~

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~~not include informing the applicant in writing or otherwise about the position's proposed or anticipated salary or salary range.~~

- ~~(23)~~ (19) *Labor organization* means any organization which exists for the purpose in whole or in part of collective bargaining or for dealing with employers concerning grievances, terms or conditions of employment, or for other mutual aid or protection in relation to employment. _
- (20) *Performance of work* means the furnishing of any personal service, labor, materials or equipment used in the fulfillment of a contractor's obligation under a city contract. _
- (21) *Person* includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers, fiduciaries and other organizations; except the term "person" does not include any local, state or federal governmental entity. _
- (22) *Prohibited dress code* means a set of rules governing, prohibiting or limiting access to a place or business, or portion thereof, defined herein as a "public accommodation" because of any of the following: _
- a. The wearing of jewelry, the manner in which jewelry is worn or the combination of items of jewelry worn,
 - b. The wearing of a garment or headdress which is generally associated with specific religions, national origins or ancestry,
 - c. The length of the sleeve of a shirt or the leg of a pair of pants or shorts is too long, except that nothing herein shall be construed to prohibit a dress code that requires the wearing of a shirt,
 - d. The style, cut or length of a hair style,
 - e. The colors of the garments,
 - f. In conjunction with a major Kansas City sporting event the wearing of athletic apparel which displays either a number, a professional or college team name or the name of a player;
 - g. The wearing of tee-shirts, except that nothing herein shall be construed to prohibit a dress code that requires such tee-shirts to have sleeves, or to prohibit a dress code that does not allow undershirts, undergarments, or tee-shirts of an inappropriate length. Designer tee-shirts, which are fitted and neat, cannot be banned.

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~~(23)~~ *Public accommodation* means any place or business offering or holding out to the
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~~(28)-(23)~~ *Public accommodation* means any place or business offering or holding out to the general public goods, services, privileges, facilities, advantages or accommodations for the peace, comfort, health, welfare and safety of the general public, or providing food, drink, shelter, recreation or amusement, including but not limited to:

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- a. Any inn, hotel, motel or other establishment which provides lodging to transient guests, other than an establishment located within a building which contains not more than five rooms for rent or hire and which is actually occupied by the proprietor of such establishment as his residence.
- b. Any restaurant, tavern, cafeteria, lunchroom, lunch counter, soda fountain or other facility principally engaged in selling food for consumption on the premises, including but not limited to any such facility located on the premises of any retail establishment.
- c. Any gasoline station, including all facilities located on the premises of such gasoline station and made available to the patrons thereof.
- d. Any motion picture house, theater, concert hall, sports arena, stadium or other place of exhibition or entertainment.
- e. Any public facility owned, operated or managed by or on behalf of this city or any agency or subdivision thereof, or any public corporation; and any such facility supported in whole or in part by public funds.
- f. Any establishment which is physically located within the premises of any establishment otherwise covered by this definition or within the premises in which is physically located any such covered establishment, and which holds itself out as serving patrons of such covered establishment.
- g. Any institution, association, club or other entity that has over 250 members, provides regular meal service, and regularly receives payment for meals, beverages, dues, fees, the use of its facilities or services directly or indirectly from or on behalf of nonmembers in furtherance of trade or business.

~~(24)~~ *Redevelopment area* means a tax increment redevelopment area as defined in
~~(24)~~ *Redevelopment area* means a tax increment redevelopment area as defined

~~(30)-(24)~~ *Redevelopment area* means a tax increment redevelopment area as defined in ~~RSMo §section~~ 99.805(11); ~~RSMo~~, a planned industrial expansion project area as defined in ~~RSMo §section~~ 100.300, et seq.; ~~RSMo~~; an urban renewal project area or land clearance project area as defined in ~~RSMo §section~~ 99.300, et seq.

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RSMo: any area under the control of the port authority of ~~the city~~Kansas City, Missouri, or subject to a contract, lease or other instrument to which the port authority is a party; or an area determined by the city to be blighted pursuant to chapter 353, RSMo~~eh. 353.~~

(25) Rent means to lease, sublease, let or otherwise grant for a consideration the right to occupy premises not owned by the occupant.

(26) Respondent means any person against whom it shall be alleged by complaint or identified during the course of an investigation that such person has violated, is violating or is about to violate any provision of Chapter 213, RSMo, or this Chapter.

(27) Sex shall include sexual harassment.

(27) Sex shall include sexual harassment.

(27) Sex shall include sexual harassment.

~~(34)-(27)~~ Sex shall include sexual harassment.

(28) Sexual orientation means actual or perceived heterosexuality, homosexuality or bisexuality.

(29) Subcontractor means any individual, partnership, corporation, association or other entity, or other combination of such entities, which shall undertake, by virtue of a separate contract with a contractor, to fulfill all or any part of any contractor's obligation under a contract with the city, or who shall exercise any right granted to a franchise holder, and who has 50 or more employees exclusive of the parents, spouse or children or such subcontractor.

(30) Unlawful discriminatory practice means any discriminatory practice as defined and prohibited by sections 38-103, 38-105, 38-107, 38-109, 38-111 and 38-113.

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Sec. 38-21. Powers and duties of director.

(a) The director is hereby charged with administration and enforcement of all sections of this chapter and is hereby authorized and empowered to do the following:

(1) Rules and regulations. To adopt, amend and enforce rules and regulations relating to any matter or thing pertaining to the administration of this chapter.

(2) Complaint investigation. To receive, investigate and, upon finding probable cause on any complaint of violation of Chapter 213, RSMo, to bring such complaint before the human rights commission. If the director finds probable cause to believe that a violation of this chapter has occurred, he or she may refer the matter to the city counselor's office for prosecution in municipal court. Any staff assigned to

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assist the commission shall be supervised by the director of ~~human relations-civil rights and equal opportunity~~. The director shall not have the power to process complaints of discrimination brought against the city and shall defer any such complaints to the state commission on human rights or any appropriate federal agency for processing.

- (3) *Authority regarding discrimination within city administration.* To investigate and recommend to the city manager any policy changes or specific actions that the director determines are necessary to ensure that the city administration is in compliance with the provisions of this chapter or with state and federal discrimination laws.
- (4) *Initiation of complaints.* Whenever the director has reasonable cause to believe that an unlawful discriminatory practice has occurred, he ~~or she~~ may initiate a complaint alleging violation of any section Chapter 213, RSMo, or of this chapter.
- (5) *Compliance investigation.* To investigate, survey and review any and all affirmative action programs, city contracts and franchises which are subject to this chapter and to take such action with respect thereto as shall ensure compliance with this chapter.
- (6) *Conciliation.* To attempt to eliminate any unlawful discriminatory practice or any other violation of the terms of this chapter by means of conference, conciliation, persuasion and negotiation and to enter into conciliation agreements.
- (7) *Authority to dismiss complaints.* To dismiss any complaint upon finding such complaint to be frivolous or without merit on its face or upon a finding that the allegedly unlawful discriminatory practice has been eliminated through conciliation.

Sec. 38-43. Powers and duties.

(a) The commission may adopt rules of procedure consistent with Chapters 213 and 536, RSMo, and this chapter.

(b) The commission shall prepare an annual report to be presented to the mayor and council concerning the conditions of minority groups in the city, with special reference to discrimination, civil rights, human relations, hate group activity, bias crimes and bias practices and attitudes among institutions and individuals in the community. The report may also include other social and economic factors that influence conditions of minority groups, as well as the causes of these conditions and the effects and implications to minority groups and the entire city. In preparation for the report the commission may conduct hearings and conduct whatever other research is necessary. The report shall include appropriate recommendations to the mayor and the council.

(c) The commission shall form task forces as follows:

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- (1) The commission shall form task forces including: youth, business, media, education, law enforcement, religion, labor, gay and lesbian issues, metropolitan area cooperation, and others as may be deemed appropriate.
- (2) One member of each task force may be appointed from each councilmanic district, that member to be agreed upon jointly by the councilmembers from that district. Councilmembers may recommend additional members as appropriate.
- (3) Except as provided in subsection (c)(2) of this section, the chairperson of the commission shall appoint the chairs and members of the task forces.
- (4) The task forces shall consist of no more than 15 members except where the commission chairperson specifically approves additional members.
- (5) The task forces will assist the commission in the preparation of the commission's annual report to the mayor and council.

(d) The commission is empowered to investigate hate group activity and incidents of bias crimes and work with law enforcement agencies and others to implement programs and activities to combat hate group activity and bias crimes.

(e) The commission may seek information from any and all persons, agencies and businesses, in both the public and private sectors, to identify and investigate problems of discrimination and bias as they affect the citizens of the city either directly or indirectly.

(f) The commission may cooperate with public and private educational institutions at primary, secondary and post-secondary levels to foster better human relations among the citizens of the city and within the metropolitan Kansas City area.

(g) The commission may work with civil rights organizations, community organizations, law enforcement agencies, school districts and others to collect and review data relating to patterns of discrimination, bias crimes, hate group activity, and general issues of civil and human rights.

(h) The commission may conduct studies, assemble pertinent data, implement educational programs and organize training materials for use by the commission to assist civil and human rights agencies, neighborhood organizations, educational institutions, law enforcement agencies, labor unions and businesses and others to prevent discrimination.

(i) The commission may serve as an advocate to prevent discrimination and bias crimes.

(j) The commission chairperson may appoint such committees from its membership or other citizens to fully effectuate the purpose of this chapter.

(k) The commission is empowered to hold hearings regarding issues of general or specific civil and human rights affecting the citizens of the city, to review decisions of hearing examiners

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appointed by the city to hear charges of violations of Chapter 213, RSMo, to administer oaths, and to take the testimony of any person under oath.

(l) Based upon its hearings or those held by its hearing examiners, the commission shall issue such findings as it deems appropriate under the circumstances. If the commission finds that a respondent has engaged in an unlawful discriminatory practice as defined in Chapter 213, RSMo, the commission shall issue and cause to be served on the respondent an order requiring the respondent to cease and desist from the unlawful discriminatory practice. The order shall require the respondent to take such affirmative action or award such relief as in the commission's judgment will implement the purposes of this chapter and of Chapter 213, RSMo, including but not limited to the assessment of civil penalties, reinstatement, back pay, making available the dwelling or public accommodation, actual damages, or any other relief that is deemed appropriate and which is consistent with Chapter 213, RSMo.

(m) Should the respondent also be a city contractor, upon complaint by the civil rights and equal opportunity department and after hearing duly held, the commission shall make findings of fact and conclusions of law; and when it finds a breach of conditions of any contract or franchise wherein compliance with this chapter is assured, it shall make an order specifying the terms and conditions under which any contract or franchise will be continued in force, or in the alternative shall order the cancellation, termination or suspension of such contract or franchise, or order that such contractor or franchise holder be ineligible to receive any city contract or franchise for a period of one year.

(n) The chairperson may appoint hearing review panels composed of not less three persons to review hearings conducted by a hearing examiner regarding violations of Chapter 213, RSMo. Panels shall be appointed on a rotating basis to ensure that all commission members have an opportunity to review recommended findings of the hearing examiner. Any member of the commission who has a conflict of interest or the appearance of a conflict of interest regarding an issue to be heard by the commission will not participate in the proceedings regarding that issue.

(o) The commission is empowered to hold hearings, upon complaint of an aggrieved party or upon an investigation by the director to determine whether the owner, operator, agent or an employee of a business or facility within a redevelopment area is using a prohibited dress code. Based upon its hearings, or those held by its hearing examiners, the commission shall issue such findings as it deems appropriate under the circumstances. If the commission finds that the owner, operator or employee of such a business or facility has used, or is using, a prohibited dress code, and, therefore, has engaged in an unlawful discriminatory practice as defined in Chapter 213, RSMo, or in Section 38-113, the commission shall issue and cause to be served on the owner, operator, agent or employee an order requiring the owner, operator or employee to cease and desist from the use of the prohibited dress code. The order may also require the owner, operator, agent or employee to take further affirmative action or award such relief as in the commission's judgment will implement the purposes of this chapter and of Chapter 213, RSMo, including but not limited to the assessment of civil penalties, making access available to those individuals denied access to the public accommodation because of the use of a prohibited dress code, actual damages, or any other relief that is deemed appropriate and which is consistent with Chapter 213, RSMo, and Chapter 38, Code of Ordinances.

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(p) The commission shall study, advise and make other recommendations for legislation, policies, procedures and practices of the city, other businesses entities, and other public entities as are consistent with the purposes of this chapter.

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Sec. 38-63. Reporting system.

The police department of the city shall develop a system by which the required reporting shall be accomplished. The reporting system shall include monthly distribution of the information collected to the civil rights and equal opportunity department of the city, and to the United States Department of Justice, Community Relations Service, Central Region.

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Sec. 38-65. Incident reports.

(a) Whenever any police officer has identified a victim of an alleged bias crime or city ordinance violation, the police department of the city shall, to the extent known, supply the name, address and telephone number of the victim to the director of the civil rights and equal opportunity department, acting for the human rights commission, together with other relevant information concerning the victim. Whenever any police officer has identified an incident that does not constitute a crime or city ordinance violation the officer will refer the victim to the civil rights and equal opportunity department. The director of civil rights and equal opportunity shall establish a telephone line for citizens to call to report incidents of possible bias incidents that are not crimes or city ordinance violations.

(b) The purposes of this reporting are to permit the director of civil rights and equal opportunity, or other designated party appointed by the director, acting for the human rights commission, to:

- (1) Contact the victim for the purpose of offering to help the victim deal with the police department, prosecutors and other interested agencies, and to help secure any other support which may be available to the victim; and
- (2) Determine whether the incident is related to a pattern of discrimination, or if, due to bias-related tensions in the area where the incident occurred, further incidents are likely to occur if remedial action is not taken.

Sec. 38-113. Discriminatory accommodation practices.

(a) It shall be a discriminatory accommodation practice for any owner, agent or employee of any place of public accommodation, directly or indirectly, to refuse, withhold from or deny to any person any of the accommodations mentioned in this chapter or to discriminate against any person in the furnishing thereof on account of race, religion, color, ancestry, national origin, sex, marital status, familial status, disability, sexual orientation or gender identity of such person, or directly or indirectly to publish, circulate or display any written or printed communication, notice or advertisement to the effect that any of the accommodations or the facilities of such place of public accommodation will be refused, withheld from or denied to any person on account of race,

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religion, color, ancestry, national origin, sex, disability, marital status, familial status, sexual orientation or gender identity, or that, for such reasons, the patronage or custom of any person described in this section is unwelcome or objectionable or not acceptable to such place.

(b) It shall be a discriminatory accommodation practice for any owner, agent, operator or employee of a business or facility within a redevelopment area to use a prohibited dress code as defined in Section 38-1, directly or indirectly, to refuse, withhold from or deny to any person any of the accommodations mentioned in this chapter or to discriminate against any person in the furnishing thereof on account of race, religion, color, ancestry, national origin, sex, marital status, familial status, disability, sexual orientation or gender identity of such person. Any dress code enforced in a redevelopment area or in any establishment with such area must be posted in accordance with the requirements of Section 10-331(d), and must contain the phone number of the city's civil rights and equal opportunity department and a phone number of a representative of the establishment who is available to respond to complaints regarding the enforcement of the dress code during all hours when the establishment is open or such dress code is in effect. Any such dress code shall list all prohibited items of dress. Notwithstanding the foregoing, nothing herein shall be construed as prohibiting:

- (1) Any owner or operator of a business or facility within a redevelopment area from establishing an employee dress code or requiring that an employee abide by the employee dress code while at work.
- (2) Any owner, agent, operator or employee of a business or facility within a redevelopment area from affirmatively requiring the wearing of specified articles of clothing, which may include collared shirts and ties, sports jackets, business suits, business casual, formal clothing or smart casual clothing in keeping with the ambiance and quality of the particular business or facility and formal footwear, so long as the requirements are enforced with regard to each and every patron, regardless of race, religion, color, ancestry, national origin, sex, marital status, familial status, disability, sexual orientation or gender identity.

Approved as to form and legality:

Dustin E. Johnson
Assistant City Attorney

COMPARED VERSION
NEW ORDINANCE TO CODE BOOKS

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Amending various sections of Chapter 2, "Administration," Chapter 3, "Contracts and Leases," and Chapter 38, "Human Relations," for the purpose of changing the name of the Human Relations Department to the Civil Rights and Equal Opportunity Department.

BE IT ORDAINED BY THE COUNCIL OF KANSAS CITY:

Section 1. That Chapter 2 of the Code of Ordinances entitled "Administration" is hereby amended by repealing Sections 2-141, 2-551, 2-552, 2-553, 2-554, 2-1902, and 2-1903, and enacting in lieu thereof new sections of like number and subject matter to read as follows:

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Sec. 2-141. Reorganization of departmental duties.

(a) *Findings.*

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- (1) The city is called upon to perform a multitude of functions.
- (2) The organizational structures appropriate to the most efficient and effective delivery of services can quickly change depending upon forces and pressures outside the complete control of the city.
- (3) From time to time the council has established new departments to meet important needs of the time.
- (4) For the city manager to possess the necessary discretion to organize city government to best meet the current needs of the city's residents, the ability to shift certain responsibilities between departments from time to time, either on a temporary or permanent basis, is necessary.
- (5) When established by ordinance, the functions of departments are intended to constitute the initial assignment of duties, but are not intended to preclude later transfer of duties.

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(b) *Purpose.* The purpose of this section is to permit the city manager to modify the assignment of duties among departments, except when the city charter mandates a specific responsibility be held by a certain department, or its successor.

(c) *Authority of the city manager.*

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- (1) *Transfer of duties.* The city manager is authorized to transfer duties or activities among departments within his management control, subject to the limitations below.
- (2) *Purpose of transfers.* Such transfers may be made when the city manager finds reassignment of duties or activities should improve the efficiency or effectiveness of the service or activity.
- (3) *Limitation--Express prohibition.* Establishment of duties for specific departments by the council shall not preclude reassignment by the city manager unless those duties or activities are assigned to the ~~Human Relations~~Civil Rights and Equal Opportunity Department by ordinance, resolution or contract or expressly prohibited in the ordinance mandating an activity be performed by a specific department.
- (4) *Limitation--City Charter.* The city manager may not transfer the ~~_____~~ duties and activities of departments made by the people through the City Charter.

(d) *Council notification.* Before effecting a transfer of duties and activities of departments, the city manager will inform the city council by reporting to a standing committee of the council designated by the mayor for that purpose.

Sec. 2-551. Establishment.

~~Pursuant to the provisions of article III, section 25, of the city Charter,~~ There is hereby established a department to be known as the ~~human relations~~civil rights and equal opportunity department.

Sec. 2-552. Appointment and designation of director.

~~The human relations~~The civil rights and equal opportunity department shall be under the supervision, control and management of a director to be appointed by the city manager, and to be known as the director of the ~~human relations~~civil rights and equal opportunity department.

Sec. 2-553. Qualifications of director.

The director of ~~human relations~~civil rights and equal opportunity shall be a person skilled and experienced in the science of human relations, and shall possess executive and administrative ability.

Sec. 2-554. Duties of director.

The director of ~~human relations~~civil rights and equal opportunity shall be responsible for the management and operation of the ~~human relations~~civil rights and equal opportunity department, and shall perform such other duties as may from time to time be imposed upon him or her by the city council by ordinance.

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Sec. 2-555. Personnel; assistance to advisory commission on civil rights and equal opportunity.

The director of ~~human relations~~civil rights and equal opportunity, shall appoint such subordinates and clerical employees as may be required to carry out the duties and functions of the department as established by ordinance, for whom appropriation of funds may be made by the city council from time to time, and shall furnish the advisory commission on ~~human relations~~civil rights and equal opportunity such clerical assistance as required for the performance of its duties.

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Sec. 2-1902. Responsibility for development of program; implementation of program.

The director of human resources jointly with the director of ~~human relations~~civil rights and equal opportunity shall be responsible for the development and administration of a comprehensive affirmative action program, and, when the program, together with such rules and regulations as are described in this article, shall have been adopted by ordinance duly passed by the council of the city, they shall have the force and effect of an enactment of the council.

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Sec. 2-1903.- Rules and regulations for administration and enforcement.

The director of human resources jointly with the director of ~~human relations~~civil rights and equal opportunity shall have power to adopt, promulgate, amend and enforce rules and regulations relating to the administration and enforcement of the affirmative action program. A true copy of the rules and regulations promulgated by the directors of human resources and ~~human relations~~civil rights and equal opportunity as authorized in this section shall be filed in the office of the director of records upon approval by the council and shall be available at all times for inspection by interested persons. Copies of the rules and regulations may be obtained from the director of records by payment of a proper charge therefor.

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Section 2. That Chapter 3 of the Code of Ordinances entitled "Contracts and Leases" is hereby amended by repealing Sections 3-401, 3-403, 3-421, 3-429, 3-449, 3-461, 3-463, 3-501, 3-509, 3-601, 3-603, and 3-622 and enacting in lieu thereof new sections of like number and subject matter to read as follows:

Section 3-401. Definitions.

(a) The following words, terms and phrases, when used in this Division 1 shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning or an alternative definition has been provided:

- (1) *Affirmative action program* means a positive program designed to ensure that a good-faith effort will be made to employ applicants and to treat employees equally without regard to their race, color, sex, religion, national origin or ancestry, disability, sexual orientation, gender identity or age. Such program shall apply, where applicable, to the following: recruitment and recruitment advertising, employment, employment upgrading, promotion, demotion or compensation, other

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terms or conditions of employment and selection for training, including apprenticeship; and shall include goals, methodology and timetables for implementation of the program.

- (2) *Age* means an age of 40 or more years, except that it shall not be an unlawful employment practice for an employer to require the compulsory retirement of any person who has attained the age of 85 and who, for the two-year period immediately before retirement, is employed in a bona fide executive or high policymaking position, if such person is entitled to an immediate nonforfeitable annual retirement benefit from a pension, profit sharing, savings or deferred compensation plan, or any combination of such plans, of the employer, which equals, in the aggregate, at least \$344,000.00.
- (3) *Certificate of compliance* means a written certificate issued by an agency or body, other than City, charged with the administration of a governmentally recognized affirmative action program and which indicates that the person named therein is in compliance with the terms of an affirmative action program.
- (4) *City* means the City of Kansas City, Missouri.
- (5) *Commission* means the city human rights commission.
- (6) *Complaint* means a verified written statement of facts and circumstances, including dates, times, places and names of persons involved in any alleged violation of any provision of Chapter 213, RSMo or this Division.
- (7) *Contract* means any contract to which the city shall be a contracting party, except the following:
 - a. Personal services contracts.
 - b. Emergency requisitions for goods, supplies or services.
 - c. Impressed accounts in the nature of petty cash funds.
 - d. Contract or lease, the cost of which will not exceed \$300,000.00.
- (8) *Contractor* means any individual, partnership, corporation, association or other entity, or any combination of such entities, who or which enters into a contract with the city and who has 50 or more employees exclusive of parents, spouse or children of such contractor.
- (9) *Department* means the department of ~~human relations~~civil rights and equal opportunity.

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- (10) *Director* means the director of the ~~human relations~~civil rights and equal opportunity department or such director's delegate.
- (11) *Disability*. With respect to employment, a person with a disability is a person who is otherwise qualified and who, with reasonable accommodation, can perform the essential functions of the job in question. Generally, a person with a disability is any person who:
- a. Has a physical or mental impairment which substantially limits one or more major life activities;
 - b. Has a record of having such impairment; or
 - c. Is regarded as having such an impairment.
- (12) *Employee* means any individual employed by an employer, but does not include an individual employed by his parents, spouse or child or any individual employed to render services as a domestic in the home of the employer.
- (13) *Gender identity* means the actual or perceived appearance, expression, identity or behavior of a person as being male or female, whether or not that appearance, expression, identity or behavior is different from that traditionally associated with the person's designated sex at birth.
- (14) *Person* includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers, fiduciaries and other organizations; except the term "person" does not include any local, state or federal governmental entity.
- (15) *Respondent* means any person against whom it shall be alleged by complaint or identified during the course of an investigation that such person has violated, is violating or is about to violate any provision of Chapter 213, RSMo or this Division.
- (16) *Sexual orientation* means actual or perceived heterosexuality, homosexuality or bisexuality.
- (17) *Subcontractor* means any individual, partnership, corporation, association or other entity, or other combination of such entities, which shall undertake, by virtue of a separate contract with a contractor, to fulfill all or any part of any contractor's obligation under a contract with the city, or who shall exercise any right granted to a franchise holder, and who has 50 or more employees exclusive of the parents, spouse or children or such subcontractor.

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- (18) *Unlawful discriminatory practice* means any discriminatory practice as defined and prohibited by sections 38-103, 38-105, 38-107, 38-109, 38-111 and 38-113, Code of Ordinances.

Section 3-403. Affirmative action.

(a) Any contract exceeding \$300,000.00 shall include the following requirements as material terms thereof:

- (1) That contractor execute and submit an affidavit, in a form prescribed by the city, warranting that contractor has an affirmative action program in place and will maintain the affirmative action program in place for the duration of the contract.
- (2) That contractor submit, in print or electronic format, a copy of its current certificate of compliance to the ~~Human Relations Department~~civil rights and equal opportunity department prior to receiving its first payment under the contract, unless a copy thereof shall have already been submitted to the ~~Human Relations Department~~civil rights and equal opportunity department at any point within the previous two calendar years. If contractor does not possess a current certificate of compliance, contractor shall submit, in print or electronic format, a copy of its affirmative action program to the ~~Human Relations Department~~civil rights and equal opportunity department prior to receiving its first payment under the contract, unless a copy thereof shall have already been submitted to the ~~Human Relations Department~~civil rights and equal opportunity department at any point within the previous two calendar years.
- (3) That contractor require any subcontractor awarded a subcontract exceeding \$300,000.00 to affirm that subcontractor has an affirmative action program in place and will maintain the affirmative action program in place for the duration of the subcontract.
- (4) That contractor obtain from any subcontractor awarded a subcontract exceeding \$300,000.00 a copy of the subcontractor's current certificate of compliance and tender a copy of the same, in print or electronic format, to the ~~Human Relations Department~~civil rights and equal opportunity department within thirty (30) days from the date the subcontract is executed. If the subcontractor does not possess a current certificate of compliance, the contractor shall obtain a copy of the subcontractor's affirmative action program and tender a copy of the same, in print or electronic format, to the ~~Human Relations Department~~civil rights and equal opportunity department within thirty (30) days from the date the subcontract is executed.

Sec. 3-421. Definitions.

(a) The following definitions apply to this division 2, except where an alternate definition has specifically been made applicable:

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- (1) *Affidavit of intended utilization:* An affidavit, in a form prescribed by the director, stating the bidder's intent to meet the MBE/WBE goals or to timely request a waiver of the MBE/WBE goals.
- (2) *Award of contract:* Execution of a contract and, if necessary, city council or park board authorization.
- (3) *Bid:* An offer to enter into a contract submitted pursuant to an invitation for bid.
- (4) *Bidder:* Any person who submits a bid to the city or an incentive agency in response to an invitation for bid.
- (5) *Bid opening:* The event whereby bids are opened and read aloud at the place, date and time specified in the invitation for bid and any subsequent amendment thereto.
- (6) *Bid shopping:* The practice whereby a person divulges or requires another to divulge a subcontractors bid or proposal for the purpose of securing a lower bid or proposal.
- (7) *Board or boards:* Fairness in construction board, fairness in professional services and goods board, or both, as applicable.
- (8) *Budget:* The total costs reflected within a contract for which MBE/WBE goals are to be set pursuant to this division.
- (9) *City:* City of Kansas City, Missouri.
- (10) *City department:* Department of the city or the division of procurement services when acting on behalf of a department director.
- (11) *Commercially useful function:* Real and actual services that are a distinct and verifiable element of the contracted work based upon private sector trade or industry standards. Determination that an enterprise performs a commercially useful function will be made based on the following considerations:
 - a. An MBE or WBE performs a commercially useful function when it is responsible for execution of the ordinary and necessary work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the MBE or WBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining the quality and quantity, ordering the material, installing (where applicable) and paying for the material itself. To determine whether an MBE or WBE is performing a commercially useful function, one must evaluate the following:

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1. The amount of work subcontracted; and
 2. Industry practices; and
 3. Whether the amount the enterprise is to be paid under the contract is commensurate with the work it is actually performing; and
 4. Whether the MBE or WBE has the skill and expertise to perform work for which it is being utilized; and
 5. The credit claimed for its performance of the work; and
 6. Other relevant factors.
- b. An MBE or 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 MBE or WBE participation. In determining whether an MBE or WBE is such an extra participant, one must examine similar transactions, particularly those in which MBEs or WBEs do not participate.
- c. An MBE or WBE firm is not performing a commercially useful function if the MBE or WBE subcontracts a greater portion of the work on a contract or purchases a greater amount of material than would be expected on the basis of normal industry practice for the type of work involved.
- d. Whether the MBE or WBE is participating in the contract as a middle person or broker in the normal course of that business or trade by purchasing the goods and/or services from another business, thereby qualifying expenditures for such goods and/or services to be counted toward utilization requirements for MBEs and WBEs.
- e. Whether the MBE or WBE is responsible for the purchase and quality of, and payment for, materials used to perform its work under the contract.

There shall be a rebuttable presumption that, when the MBE or WBE subcontracts a greater portion of the contract work than normal industry practice, the MBE or WBE is not performing a commercially useful function.

- (12) *Construction contract:* A contract for the construction, reconstruction, improvement, enlargement or alteration of any fixed work or construction site preparation, of which any amount is paid for out of city or agency funds.

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- (13) *Contract*: Any contract more than \$300,000.00, and all other city or agency contracts more than \$160,000.00 the majority of either of which is paid for out of city funds or in which an incentive agency is a party, except the following:
- a. Personal services contracts; and
 - b. Emergency contracts; and
 - c. Imprest accounts in the nature of petty cash funds.
- (14) *Contractor*: Any person who enters into a contract with the city or an incentive agency.
- (15) *Contractor utilization plan or CUP*: The statement, in a form prescribed by the director, that must be submitted by a bidder or proposer pursuant to section 3-433 and that states its plan to utilize qualified MBEs and/or WBEs in the performance of a contract.
- (16) *Day*: A calendar day, except as otherwise indicated.
- (17) *Department* ~~or HRD~~: The ~~human relations~~civil rights and equal opportunity department or the division within the city manager's office that is assigned to perform the tasks delegated to the ~~human relations~~civil rights and equal opportunity department by this division.
- (18) *Department director*: Person appointed by the city manager to be responsible for a city department or the manager of procurement services when acting on behalf of a department director or the city.
- (19) *Developer*: Entity seeking tax increment financing or city tax abatement incentives from an incentive agency described in subsection 3-425(b) or 3-425(c).
- (20) *Director*: The director of the ~~human relations~~civil rights and equal opportunity department or his authorized representative, or the person designated by the city manager to perform the tasks delegated to the director of the ~~human relations~~civil rights and equal opportunity department by this article.
- (21) *Disadvantaged business enterprise (DBE)*: A business concern that meets the federal requirements for certification as a DBE.
- (22) *Economic disadvantage*: A diminished ability to compete in the free enterprise system due to diminished capital and credit opportunities as compared to others in the same or similar line of business who are found to be socially disadvantaged. In determining whether an individual is economically disadvantaged, the director shall follow the guidance provided in appendix E to 49 CFR Part 26.

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- (23) *Expertise*: Experience or training in a specialized field that is critical to the firm's operations, indispensable to the firm's potential success, and specific to the type of work the firm performs.
- (24) *Goal*: A numerical objective stated as a percentage of contract dollars for participation by qualified MBEs and WBEs in contracts.
- (25) *Incentive agency* or *agency*: Each of the commissions, agencies and authorities described in subsection 3-425(b) or 3-425(c), or any entity with the authority to recommend to the city tax increment financing or tax abatement.
- (26) *Incentive agency head*: Person authorized to act on behalf of an incentive agency.
- (27) *Incentive project*: A project receiving tax increment financing or tax abatement or exemption from an incentive agency pursuant to contracts described in sections 3-425(b) and 3-425(c).
- (28) *Invitation for bid*: A request or invitation for submission of an offer to enter into a contract pursuant to a competitive bidding process.
- (29) *Kansas City metropolitan area*: The Missouri counties of Cass, Clay, Jackson and Platte and the Kansas counties of Johnson, Leavenworth and Wyandotte.
- (30) *Letter of intent to subcontract*: A document, in a form prescribed by the director that demonstrates the prime contractor or developer's intent to enter a contractual agreement with a selected MBE/WBE.
- (31) *M/W/DBE Kansas City Mo. online directory* or *directory*: A source list compiled, maintained and updated by the ~~human relations~~ civil rights and equal opportunity department containing (when provided) the names, mailing addresses, e-mail addresses and facsimiles of certified MBE/WBE/DBEs and the NAICS codes denoting scopes of work for which each such MBE/WBE/DBE is certified, which MBE/WBE/DBEs are in the business of providing construction, professional services and other services and goods from whom bids and proposals can be solicited. The directory is to facilitate identifying MBE/WBE/DBE subcontractors with capabilities relevant to general contracting requirements and to particular solicitations.
- (32) *Mentor/protégé*: A relationship between an MBE or WBE (protégé) and a person in the same trade or industry (mentor). The mentor/protégé relationship is to provide technical, financial, bonding, equipment and personnel assistance. The purpose of the relationship is to increase the capacity of MBE/WBEs to perform contracts.
- (33) *Minority*: A person who is a citizen or lawful permanent resident of the United States and who is:

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- a. African American, a person whose origins are in any of the Black racial groups of Africa, and who has historically and consistently identified himself or herself as being such a person; or
- b. Hispanic American and/or Latino American, a person whose origins are in Mexico, Central or South America, or any of the Spanish speaking islands of the Caribbean, (for example Cuba and Puerto Rico) regardless of race, and who has historically and consistently identified himself or herself as being such a person; or
- c. Asian and/or Pacific Islander American, a person whose origins are in any of the original peoples of the Far East, Southeast Asia, the islands of the Pacific or the Northern Marianas, or the Indian Subcontinent, and who has historically and consistently identified himself or herself as being such a person; or
- d. Native American, a person having origins in any of the original peoples of North America, and who maintains tribal affiliation or demonstrates at least one-quarter descent from such groups, and who has historically and consistently identified himself or herself as being such a person; or
- e. On a case-by-case basis, an individual found by the director to have been subjected to individualized prejudice or cultural bias within American society within the city's marketplace and has demonstrated economic disadvantage and social disadvantage as defined in this section.

(34) *Minority business enterprise (MBE)*: A for-profit small business concern that:

- a. Is at least 51 percent owned, managed, and independently controlled by one or more minorities; and
- b. Has a real and substantial presence in the Kansas City metropolitan area as defined by section 3-461(c) and
- c. Meets the business size standards imposed by 13 CFR 121.201 as subsequently amended and this division; and
- d. Performs a commercially useful function; and
- e. Is certified by the ~~human relations~~civil rights and equal opportunity department.

Beginning October 1, 2020, a for-profit small business concern must meet the following additional criteria to qualify as ~~a~~n MBE:

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- f. Whose owner's or, for businesses with multiple owners, each individual owner's personal net worth (as defined in this section) is equal to or less than the permissible personal net worth amount determined by the U.S. Department of Transportation to be applicable to its DBE program.

Submission of documentation evidencing that an owner meets this personal net worth criteria shall begin on July 1, 2020 and be completed by August 1, 2020.

Only persons meeting each of the above criteria shall be deemed an MBE for purposes of this division. In order to be credited towards the goals on a particular solicitation for a particular scope of work, the MBE shall be certified as of or listed on the directory on the date a contractor utilization plan is submitted.

- (35) *Person*: One or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers, fiduciaries and other organizations; except "person" does not include any local, state or federal governmental entity.

- (36) *Personal Net Worth*: The net value of the assets of an individual after total liabilities is deducted. An individual's personal net worth does not include the individual's ownership interest in a certified M/WBE or applicant for such certification or the individual's equity, if any, in his or her primary place of residence. An individual's personal net worth includes only his or her share of assets held individually or jointly with the individual's spouse.

- a. Except as set forth in subsection b., an individual's personal net worth also includes any assets which that individual has transferred to an immediate family member, to a trust a beneficiary of which is the individual or an immediate family member, or to the certified M/WBE or applicant firm for less than fair market value, within two years prior to an application for certification as an M/WBE or within two years of submission of the firm's annual affidavit, unless the individual can demonstrate that the transfer is to or on behalf of an immediate family member for that family member's education, medical expenses, or some other form of essential support.
- b. Any assets transferred by an individual to an immediate family member that are consistent with the customary recognition of special occasions, such as, but not limited to, birthdays, graduations, weddings, anniversaries, and retirements shall not be included in the personal net worth calculation.

- (37) *Personal services contract*: A contract or agreement of employment with an individual who is not acting as an independent contractor and who is not part of the cities classified or unclassified service.

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- (38) *Principal place of business*: The location at which the business records of the MBE/WBE applicant concern are maintained and the location at which the minority or woman individual owner who manages and controls the day-to-day operations spends the majority of his/her working hours.
- (39) *Proposal*: Any offer or list of qualifications submitted to the city in response to a request for proposal.
- (40) *Proposer*: Any person who submits a proposal to enter into a contract, either in response to a request for proposals, request for qualifications or otherwise, but not pursuant to an invitation for bid.
- (41) *Qualified*: Possessing the demonstrated ability to perform the contracted task.
- (42) *Request for proposals*: An invitation for submission of an offer to enter into a contract pursuant to a negotiated process and not a competitive bid, including requests for qualifications.
- (43) *Social disadvantage*: A diminished ability to compete in the free enterprise system due to at least one objective, distinguishing feature that has contributed to social disadvantage, such as race, ethnic origin, gender, sexual orientation, or disability. In determining whether an individual is socially disadvantaged, the director shall follow the guidance in appendix E to 49 CRF Part 26.
- (44) *Supplier*: An enterprise that owns operates or maintains a store, warehouse or other establishment in which materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock and regularly sold or leased to the public in the usual course of business.
- (45) *Supply broker*: An enterprise that acts as an agent in negotiating contracts for the purchase of materials, supplies, articles or equipment but does not itself own, operate or maintain a store, warehouse or other establishment where such materials, supplies, articles or equipment are bought, kept in stock and regularly sold or leased to the public in the usual course of business.
- (46) *Woman*: A person who is a citizen or lawful permanent resident of the United States and who is a female.
- (47) *Women's business enterprise (WBE)*: A for-profit small business concern that:
 - a. Is at least 51 percent owned, managed, and independently controlled by one or more women; and
 - b. Has a real and substantial presence in the Kansas City Metropolitan Area as defined by section 3-461(c); and

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- c. Meets the business size standards imposed by 13 CFR 121.201 and as subsequently amended and this division; and
- d. Performs a commercially useful function; and
- e. Is certified by the ~~human relations~~civil rights and equal opportunity department; and

Beginning October 1, 2020, a for-profit small business concern must meet the following additional criteria to qualify as a WBE:

- f. The owner's or, for businesses with multiple owners, each individual owner's personal net worth is equal to or less than the permissible personal net worth amount determined by the U.S. Department of Transportation to be applicable to its DBE program.

Submission of documentation evidencing that an owner meets this personal net worth criteria shall begin on July 1, 2020 and be completed by August 1, 2020.

Only persons meeting each of the above criteria shall be deemed a WBE for purposes of this division. In order to be credited towards the WBE goals on a particular solicitation for a particular scope of work, the WBE shall be certified as of or listed in the directory on the date a contractor utilization plan is submitted.

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Sec. 3-429. City department and incentive agency MBE/WBE utilization plan.

(a) Each city department and incentive agency shall prepare and submit to the director by April 1, unless otherwise extended by the director, an annual MBE/WBE utilization plan for the next city fiscal year. Each city department and agency MBE/WBE utilization plan shall include:

- (1) Separate city department or incentive agency goals for participation by qualified MBEs and WBEs as prime contractors and subcontractors in the procurement of goods, professional services, services and construction for the upcoming fiscal year. The goals should be expressed as a percentage of the city department or incentive agency's total fiscal year contract expenditures; and
- (2) Any other information that the city department or incentive agency or the director deems relevant or necessary.

(b) A city department or incentive agency may amend its MBE/WBE utilization plan during the fiscal year to reflect changes in its projected contract expenditures or other relevant circumstances, and shall inform the director of such changes.

(c) In planning its individual contracts, each city department and incentive agency shall utilize the methodologies described in this division and use its good faith efforts to encourage and

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attempt to obtain participation of qualified MBEs and/or WBEs and shape the scope, specifications and size of a contract to enhance such participation.

(d) City departments and incentive agencies shall encourage eligible businesses to:

- (1) Apply to the city's department, Kansas Department of Transportation (KDOT) or Missouri Department of Transportation (MODOT) for certification; and
- (2) Have their names included on departmental bidders and proposers lists in the directory; and
- (3) Seek pre-qualification when applicable; and
- (4) Compete for city business as prime contractors, subcontractors and suppliers.

(e) City departments and incentive agencies shall make reasonable efforts to:

- (1) Advertise contract opportunities in general circulation media, trade and professional association publications, small business media, and publications of minority and women's business organizations; and
- (2) Send written notice of specific contract opportunities to minority and women's business organizations and those entities on the departmental bidder's and proposer's list; and
- (3) With the assistance of the director, shape the scope, specifications and size of a contract to enhance participation opportunities for qualified MBEs and WBEs.

(f) Each city department, as part of his or her annual evaluation, shall be reviewed concerning the implementation of the city's MBE/WBE program. In the event a deficiency is found, the director of ~~human relations~~civil rights and equal opportunity or his or her designee will work with the city department to identify prohibiting factors and offer any assistance necessary to successfully implement this minority and women business enterprise program.

Sec. 3-449. Fairness in professional services and goods board.

(a) Establishment and authority. There is hereby established a fairness in professional services and goods board. The board's authority is limited to bids, proposals and contracts for professional services, other services, goods, materials and supplies, (other than construction materials and supplies) for the city or an incentive project in which the estimated cost of such professional services, other services, goods, materials and supplies is more than \$160,000. The board shall set goals to increase the utilization of MBEs/WBEs in professional services contracts, other services contracts, goods, materials and supplies contracts (other than construction materials and supplies), to make determinations as to whether good faith efforts have been made and the assessment and amount of liquidated damages on incentive agency projects when the applicable

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agency and the director fail to mutually agree, and has the authority to hear and investigate appeals on city contracts as set forth in section 3-450.

(b) Board composition. The board shall be composed of seven members (including a chairperson) and six alternates, all appointed by the mayor and all of whom shall be industry experts in the areas of professional services, general services and goods and materials.

(c) Term. The terms of all board members shall be for a period of four years; however, all members shall continue in office as such until the respective successors shall have been appointed.

(d) Alternates. In the event a board member is unable to attend a meeting or has a conflict of interest with regard to an issue at hand, the alternate shall temporarily serve in such member's stead. It is the board member's responsibility to notify his or her alternate that they may be needed at the meeting. The term of an alternate shall expire at the expiration of the term of the board member.

(e) Absence of chairperson. In the event the chairperson is not in attendance at any board meeting, a majority of board members shall select a member to act as chairperson for that meeting.

(f) Ineligibility. The following persons are ineligible to serve on the board:

- (1) Members of the city council; and
- (2) Employees of the city; and
- (3) Nonresidents of the city, unless the nonresident works in the city metropolitan area or is appointed to represent the interests of an organization that maintains an office in the city metropolitan area.

(g) Conflict of interest. In the event a board member has a conflict of interest in a contract or issue that comes before the board, the member shall be temporarily replaced by the alternate. In the event an alternate has a conflict of interest in a bid, contract or issue that comes before the board, the alternate shall recuse himself.

(h) Quorum. Four members of the board shall constitute a minimum quorum.

(i) Convening the board. The board shall be appointed and first convene no later than February 1, 2019. The goal-setting responsibilities of the board as stated in section 3-450(a) will be performed by the director or ~~HRD~~ the civil rights and equal opportunity department until such time as the board is convened.

Sec. 3-461. Certification and appeals.

(a) To ensure that this article benefits only MBEs and WBEs that are owned and controlled by bona fide minorities and women, the director shall certify MBEs and WBEs and

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mentor/protégés who wish to participate in the program. Any person not certified by the ~~human relations~~civil rights and equal opportunity department shall not be regarded as an MBE, WBE, or mentor/protégé program under this division.

(b) Each person that seeks certification as an MBE/WBE must demonstrate by written documentation or affidavit that it has suffered from past race or gender discrimination in the city and in the applicable trade or industry. A unified certification process (UCP) certificate, a Missouri Highway and Transportation Department certification or a Kansas Department of Transportation certification along with the documentation stated in this subsection, is sufficient for certification as a DBE so long as the firm has never been denied certification by any federal, state or local authority at any time and meets the definition of section 3-421(a) (20) and the requirements of this section.

(c) Each entity seeking certification as an MBE/WBE must demonstrate by written documentation or affidavit that it's owner or individual owner's personal net worth (as defined in this section) is equal to or less than the permissible personal net worth amount determined by the U.S. Department of Transportation to be applicable to its DBE programs. Entities seeking certification as an MBE/WBE shall submit all information or documentation requested by the city's ~~human relations~~civil rights and equal opportunity department in determining whether the entity complies with this subsection.

(ed) Each person that seeks certification as an MBE/WBE in the Kansas City metropolitan area must demonstrate the business enterprise has a real and substantial presence. After the effective date of this provision, any business enterprise shall be deemed to have a real and substantial presence in the Kansas City metropolitan area if:

- (1) The firm's principal office or place of business is in the Kansas City metropolitan area; and
- (2) The firm maintains full-time employees in one or more of the firm's offices within the Kansas City metropolitan area to conduct or solicit business in the Kansas City metropolitan Area the majority of their working time; and
- (3) The firm has transacted business more than once in the Kansas City metropolitan area within the last three years; and
- (4) The firm's principal office or place of business has been in existence in the Kansas City metropolitan area at least six months prior to application for participation in the MBE/WBE program.

If an MBE/WBE does not have a real and substantial presence in the Kansas City metropolitan area as specified under subsection (c)(1) through (c)(4), the firm shall remain certified until their certification expires. After the firm's certification expires, the firm must meet the requirements of subsection (c) (1) through (c) (4) to be recertified.

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(e) All applicants and certified businesses shall be subject to an audit by the director at any time. An applicant's or certified business' refusal to facilitate an audit shall be grounds for denial of its certification application or revocation of its certification.

(f) All applicants and certified businesses shall be required to demonstrate and prove that the business has the skill and expertise to perform as a subcontractor in the particular area of work for which it is requesting listing or is listed on the M/W/DBE Kansas City, Mo. Online Directory.

(g) All applicants and certified businesses shall submit such information or documentation as may be required by the director in connection with its certification as an MBE or WBE, including, but not limited to current licenses and federal, state and local tax returns and schedules (business and personal), and all other forms that are required to be included with or attached to the return at the time of filing. Failure to submit such information or documentation shall result in the denial of its certification application or revocation of its certification.

(h) A certification application may be withdrawn by an applicant without prejudice at any time prior to an on-site audit. All applications and documentation submitted to support an application will not be returned to the applicant. Following the withdrawal of a certification application, the applicant may not reapply for certification for a period of one year from the date of withdrawal of the application.

(i) Burden of proof in the certification process. The firm seeking certification has the burden of demonstrating to the director, by a preponderance of the evidence, that it meets all the requirements for certification. The director shall make determinations concerning whether individuals and firms have met their burden of demonstrating minority and woman status, business size, expertise, commercially useful function, ownership, management, independence and control by considering all the facts in the record, viewed as a whole.

(j) Determination of minority and woman status. If the director has reason to question whether an individual is a minority or woman, the director shall require the individual to demonstrate, by a preponderance of the evidence, that he or she is a minority or woman. In making such a determination, the director must consider whether the person has held himself or herself out to be a minority or woman over a long period of time prior to application for certification and whether the person is regarded as such by the relevant community. Evidence of active participation in relevant community organizations will be considered in such determinations. The director may require the applicant to produce appropriate documentation. An entity may be simultaneously certified as an MBE or WBE if it meets all criteria for both MBE and WBE certification

(k) Business size determinations. To be an MBE/WBE, a firm (including its affiliates) must be an existing and currently functioning small business. The director shall apply the SBA business size standard(s) found in 13 CFR part 121.201 and as amended as of the date of application and appropriate to the type(s) of work the firm seeks to perform.

(l) Determination of ownership. In determining whether the minority or women participants in a firm own the firm, the director shall consider all the facts in the record, viewed as a whole.

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- (1) To be an MBE/WBE, a firm must be at least 51 percent owned by one or more minority and women individuals, reflected as follows:
 - a. In the case of a corporation, such individuals must own at least 51 percent of each class of voting stock outstanding and 51 percent of the aggregate of all stock outstanding.
 - b. In the case of a partnership, 51 percent of each class of partnership interest must be owned by minority and women. Such ownership must be reflected in the firm's partnership agreement.
 - c. In the case of a limited liability company, at least 51 percent of each class of member interest must be owned by the minority and women individuals.
- (2) The firm's ownership by minority or women must be real, substantial, and continuing, going beyond pro forma ownership of the firm as reflected in ownership documents. The minority or women owners must enjoy the customary incidents of ownership, and share in the risks and profits commensurate with their ownership interests, as demonstrated by the substance, not merely the form, of arrangements.
- (3) All securities that constitute ownership of a firm shall be held directly by the minorities or women. Except as provided in this subsection (3), no securities or assets held in trust, or by any guardian for a minor, are considered as held by minority or women individuals in determining the ownership of a firm. However, securities or assets held in trust are regarded as held by a minority or woman for purposes of determining ownership of the firm, if:
 - a. The beneficial owner of securities or assets held in trust is a minority or woman, and the trustee is the same or another such individual; or
 - b. The beneficial owner of a trust is a minority or woman who, rather than the trustee, exercises effective control over the management, policy-making, and daily operational activities of the firm. Assets held in a revocable living trust may be counted only in the situation where the same minority or woman is the sole grantor, beneficiary, and trustee.
- (4) The contributions of capital or expertise by the minority or women owners to acquire their ownership interests must be real and substantial. Examples of insufficient contributions include a promise to contribute capital, an unsecured note payable to the firm or an owner who is not a disadvantaged individual, or mere participation in a firm's activities as an employee. Debt instruments from financial institutions or other organizations that lend funds in the normal course of their business do not render a firm ineligible, even if the debtor's ownership interest is security for the loan.

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- (5) In situations where expertise is relied upon as part of a minority or woman owner's contribution to acquire ownership:
- a. The owner's expertise must be:
 - 1. In a specialized field; and
 - 2. In areas critical to the firm's operations; and
 - 3. Indispensable to the firm's potential success; and
 - 4. Specific to the type of work the firm performs; and
 - 5. Documented in the records of the firm. These records must clearly show the contribution of expertise and its value to the firm.
 - b. The individual whose expertise is relied upon must have a significant financial investment in the firm.
- (6) The director shall always deem as held by a minority or woman individual, for purposes of determining ownership, all interests in a business or other assets obtained by the individual:
- a. As the result of a final property settlement or court order in a divorce or legal separation, provided that no term or condition of the agreement or divorce decree is inconsistent with this section; or
 - b. Through inheritance, or otherwise because of the death of the former owner.
- (7) Presumptions regarding interests obtained without consideration:
- a. The director shall presume as not being held by a minority or woman individuals, for purposes of determining ownership, all interests in a business or other assets obtained by the individual as the result of a gift, or transfer without adequate consideration, from any non-minority or male individual or non-MBE/WBE firm who is:
 - 1. Involved in the same firm for which the individual is seeking certification, or an affiliate of that firm; or
 - 2. Involved in the same or a similar line of business; or
 - 3. Engaged in an ongoing business relationship with the firm, or an affiliate of the firm, for which the individual is seeking certification.

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- b. To overcome this presumption and permit the interests or assets to be counted, the minority or woman individual must demonstrate to the director, by clear and convincing evidence, that:
 - 1. The gift or transfer to the disadvantaged individual was made for reasons other than obtaining certification as an MBE/WBE; and
 - 2. The minority or woman individual actually controls the management, policy, and operations of the firm, notwithstanding the continuing participation of non-minority or male individual or non-MBE/WBE firm who provided the gift or transfer.

- (8) The director shall apply the following rules in situations in which marital assets form a basis for ownership of a firm:
 - a. When marital assets (other than the assets of the business in question), held jointly or as community property by both spouses, are used to acquire the ownership interest asserted by one spouse, the director shall deem the ownership interest in the firm to have been acquired by that spouse with his or her own individual resources, provided that the other spouse irrevocably renounces and transfers all rights in the ownership interest in the manner sanctioned by the laws of the state in which either spouse or the firm is domiciled. The director shall not count a greater portion of joint or community property assets toward ownership than state law would recognize as belonging to the minority or woman owner of the applicant firm.
 - b. A copy of the document legally transferring and renouncing the other spouse's rights in the jointly owned or community assets used to acquire an ownership interest in the firm must be included as part of the firm's application for MBE/WBE certification.

- (9) The director may consider the following factors in determining the ownership of a firm. However, the director must not regard a contribution of capital as failing to be real and substantial, or find a firm ineligible, solely because:
 - a. A minority or woman individual acquired his or her ownership interest as the result of a gift, or transfer without adequate consideration, other than the types set forth in subsection (7) of this section; or
 - b. There is a provision for the co-signature of a spouse who is not a minority or woman individual on financing agreements, contracts for the purchase or sale of real or personal property, bank signature cards, or other documents; or

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- c. Ownership of the firm in question or its assets is transferred for adequate consideration from a spouse who is not a minority or woman to a spouse who is such an individual. In this case, the director must give particularly close and careful scrutiny to the ownership and control of a firm to ensure that it is owned and controlled, in substance as well as in form, by a minority or woman individual.

(m) ~~—~~ Determinations concerning control. In determining whether the minority or women owners control a firm, the director must consider all the facts in the record, viewed as a whole.

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- (1) Only an independent business may be certified as an MBE/WBE. An independent business is one the viability of which does not depend on its relationship with another firm or firms.
 - a. In determining whether a potential MBE/WBE is an independent business, the director must scrutinize relationships with non-MBE/WBE firms, in such areas as personnel, facilities, equipment, financial and/or bonding support, and other resources.
 - b. The director must consider whether present or recent employer/employee relationships between the minority and woman owner(s) of the potential MBE/WBE and non-MBE/WBE firms or persons associated with non-MBE/WBE firms compromise the independence of the potential MBE/WBE firm.
 - c. The director must examine the firm's relationships with prime contractors to determine whether a pattern of exclusive or primary dealings with a prime contractor compromises the independence of the potential MBE/WBE firm.
 - d. In considering factors related to the independence of a potential MBE/WBE firm, the director must consider the consistency of relationships between the potential MBE/WBE and non-MBE/WBE firms with normal industry practice.
- (2) An MBE/WBE firm must not be subject to any formal or informal restrictions which limit the customary discretion of the minority or women owners. There can be no restrictions through corporate charter provisions, by-law provisions, contracts or any other formal or informal devices (e.g., cumulative voting rights, voting powers attached to different classes of stock, employment contracts, requirements for concurrence by non-disadvantaged partners, conditions precedent or subsequent, executory agreements, voting trusts, restrictions on or assignments of voting rights) that prevent the minority or women owners, without the cooperation or vote of any non-minority or male, from making any business decision of the firm. This paragraph does not preclude a spousal co-signature on documents.

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- (3) The minority and women owners must possess the power to direct or cause the direction of the management and policies of the firm and to make day-to-day as well as long-term decisions on matters of management, policy and operations.
 - a. A minority or women owner must hold the highest officer position in the company (e.g., chief executive officer or president).
 - b. In a corporation, minority or women owners must control the board of directors.
 - c. In a partnership, one or more minorities or women owners must serve as general partners, with control over all partnership decisions.
- (4) Individuals who are not minorities or women may be involved in an MBE/WBE firm as owners, managers, employees, stockholders, officers, and/or directors. Such individuals must not, however, possess or exercise the power to control the firm, or be disproportionately responsible for the operation of the firm.
- (5) The minority and women owners of the firm may delegate various areas of the management, policymaking, or daily operations of the firm to other participants in the firm, regardless of whether these participants are minority or women. Such delegations of authority must be revocable, and the minority and women owners must retain the power to hire and fire any person to whom such authority is delegated. The managerial role of the minority and women owners in the firm's overall affairs must be such that the recipient can reasonably conclude that the minority and women owners actually exercise control over the firm's operations, management, and policy.
- (6) The minority and women owners must have an overall understanding of, and managerial and technical competence and experience directly related to, the type of business in which the firm is engaged and the firm's operations. The minority and women owners are not required to have experience or expertise in every critical area of the firm's operations, or to have greater experience or expertise in a given field than managers or key employees. The minority and women owners must have the expertise, technical competence, and ability to intelligently and critically evaluate information presented by other participants in the firm's activities and to use this information to make independent decisions concerning the firm's daily operations, management, and policymaking. Generally, expertise limited to office management, administration, or bookkeeping functions unrelated to the principal business activities of the firm is insufficient to demonstrate control.
- (7) If state or local law requires the persons to have a particular license or other credential in order to own and/or control a certain type of firm, then the minority or women persons who own and control a potential MBE/WBE firm of that type must possess the required license or credential. If state or local law does not require such a person to have such a license or credential to own and/or control a firm, the

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director must not deny certification solely on the ground that the person lacks the license or credential. However, the director may take into account the absence of the license or credential as one factor in determining whether the minority or women owners actually control the firm.

- (8) The director may consider differences in remuneration between the minority and women owners and other participants in the firm in determining whether to certify a firm as an MBE/WBE. Such consideration shall be in the context of the duties of the persons involved, normal industry practices, the firm's policy and practice concerning reinvestment of income, and any other explanations for the differences proffered by the firm. The director may determine that a firm is controlled by its minority or woman owner although that owner's remuneration is lower than that of some other participants in the firm. In a case where a non-minority or non-woman individual formerly controlled the firm, and a minority or women individual now controls it, the director may consider a difference between the remuneration of the former and current controller of the firm as a factor in determining who controls the firm, particularly when the non-minority or non-woman individual remains involved with the firm and continues to receive greater compensation than the minority or woman individual.
- (9) In order to be viewed as controlling a firm, a minority or woman owner cannot engage in outside employment or other business interests that conflict with the management of the firm or prevent the individual from devoting sufficient time and attention to the affairs of the firm to control its activities. For example, absentee ownership of a business and part-time work in a full-time firm are not viewed as constituting control. However, an individual could be viewed as controlling a part-time business that operates only on evenings and/or weekends, if the individual controls it all the time it is operating.
- (10) A minority or woman individual may control a firm even though one or more of the individual's immediate family members (who themselves are not minorities or women) participate in the firm as a manager, employee, owner, or in another capacity. Except as otherwise provided in this paragraph, the director must make a judgment about the control the minority or woman owner exercises vis-à-vis other persons involved in the business as in other situations, without regard to whether or not the other persons are immediate family members. If the director cannot determine that the minority or woman owners, as distinct from the family as a whole, control the firm, then the minority or woman owners have failed to carry their burden of proof concerning control, even though they may participate significantly in the firm's activities.
- (11) Where a firm was formerly owned and/or controlled by a non-minority or non-woman individual (whether or not an immediate family member), ownership and/or control were transferred to a minority or woman individual, and the non-minority or non-woman individual remains involved with the firm in any capacity, the

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minority or woman individual now owning the firm must demonstrate to the director, by clear and convincing evidence, that:

- a. The transfer of ownership and/or control to the minority or woman individual was made for reasons other than obtaining certification as an MBE/WBE; and
 - b. The minority or woman individual actually controls the management, policy, and operations of the firm, notwithstanding the continuing participation of a non-minority or non-woman individual who formerly owned and/or controlled the firm.
- (12) In determining whether a firm is controlled by its minority or women owners, the director shall consider whether the firm owns equipment necessary to perform its work. However, the director must not determine that a firm is not controlled by minority or women individuals solely because the firm leases, rather than owns, such equipment, where leasing equipment is a normal industry practice and the lease does not involve a relationship with a prime contractor or other party that compromises the independence of the firm.
- (13) The director shall grant certification to a firm only for specific types of work in which they are currently functioning and in which the minority or women owners have the ability to control the firm. To become certified in an additional type of work, the firm needs to demonstrate to the director that its minority or women owners are able to control the firm with respect to that type of work. The director may not, in this situation, require that the firm be recertified or submit a new application for certification, but must verify the minority or women owner's control of the firm in the additional type of work.
- (14) A business operating under a franchise or license agreement may be certified if it meets the standards in this subpart and the franchiser or licensor is not affiliated with the franchisee or licensee. In determining whether affiliation exists, the director should generally not consider the restraints relating to standardized quality, advertising, accounting format, and other provisions imposed on the franchisee or licensee by the franchise agreement or license, provided that the franchisee or licensee has the right to profit from its efforts and bears the risk of loss commensurate with ownership. Alternatively, even though a franchisee or licensee may not be controlled by virtue of such provisions in the franchise agreement or license, affiliation could arise through other means, such as common management or excessive restrictions on the sale or transfer of the franchise interest or license.
- (15) In order for a partnership to be controlled by minority or women individuals, any non-minority or non-women partners must not have the power, without the specific written concurrence of the minority or women partner(s), to contractually bind the partnership or subject the partnership to contract or tort liability.

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- (16) The minority or women individuals controlling a firm may use a professional and commercial employee leasing company. The use of such a company does not preclude the minority or woman individuals from controlling their firm if they continue to maintain an employer-employee relationship with the leased employees. This includes being responsible for hiring, firing, training, assigning, and otherwise controlling the on-the-job activities of the employees, as well as ultimate responsibility for wage and tax obligations related to the employees.
- (17) The director may consider, in making certification decisions, whether a firm has exhibited a pattern of conduct indicating its involvement in attempts to evade or subvert the intent or requirements of the MBE/WBE program.
- (18) The director shall evaluate the eligibility of a firm on the basis of present circumstances. The director shall not refuse to certify a firm based solely on historical information indicating a lack of ownership or control of the firm by the minorities or women at some time in the past, if the firm currently meets the ownership and control standards of this part.
- (19) MBE/WBE firms and firms seeking MBE/WBE certification shall cooperate fully with the director's requests (and DOT requests) for information relevant to the certification process. Failure or refusal to provide such information is a ground for a denial or removal of certification.
- (20) An eligible MBE/WBE firm must be owned by individuals who are minorities and women. Except as provided in this paragraph, a firm that is not owned by such individuals, but instead is owned by another firm—even an MBE/WBE firm—cannot be an eligible MBE/WBE.
 - a. If the minorities or women own and control a firm through a parent or holding company, established for tax, capitalization or other purposes consistent with industry practice, and the parent or holding company in turn owns and controls an operating subsidiary, the director may certify the subsidiary if it otherwise meets all requirements of this section. In this situation, the individual owners and controllers of the parent or holding company are deemed to control the subsidiary through the parent or holding company.
 - b. The director may certify such a subsidiary only if there is cumulatively 51 percent ownership of the subsidiary by the minority and women individuals. The following examples illustrate how this cumulative ownership provision works:

Example 1: Minority and women individuals own 100 percent of a holding company, which has a wholly-owned subsidiary. The subsidiary may be certified, if it meets all other requirements.

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Example 2: Minority and women individuals own 100 percent of the holding company, which owns 51 percent of a subsidiary. The subsidiary may be certified, if all other requirements are met.

Example 3: Minority and women individuals own 80 percent of the holding company, which in turn owns 70 percent of a subsidiary. In this case, the cumulative ownership of the subsidiary by minority and women individuals is 56 percent (80 percent of the 70 percent). This is more than 51 percent, so the director may certify the subsidiary, if all other requirements are met.

Example 4: Same as example 2 or 3, but someone other than minorities or women owners of the parent or holding company controls the subsidiary. Even though the subsidiary is owned by minority or women individuals, through the holding or parent company, the director cannot certify it because it fails to meet control requirements.

Example 5: Minority or women individuals own 60 percent of the holding company, which in turn owns 51 percent of a subsidiary. In this case, the cumulative ownership of the subsidiary by minority or women individuals is about 31 percent. This is less than 51 percent, so the director cannot certify the subsidiary.

Example 6: The holding company, in addition to the subsidiary seeking certification, owns several other companies. The combined gross receipts of the holding companies and its subsidiaries are greater than the size standard for the subsidiary seeking certification and/or the gross receipts cap. Under the rules concerning affiliation, the subsidiary fails to meet the size standard and cannot be certified.

- (21) Recognition of a business as a separate entity for tax or corporate purposes is not necessarily sufficient to demonstrate that a firm is an independent business, owned and controlled by minority and women individuals.

(n) An MBE/WBE's certification shall expire three years from the date of certification effective immediately. An application for renewal shall be submitted on forms provided by the director. The director is authorized to require MBE/WBE's firms to submit yearly updates of information including, but not limited to, current licenses and federal, state and local tax returns and schedules (business and personal), and all other forms that are required to be included with or attached to the return at the time of filing.

(o) Once certified, an MBE/WBE must notify the department in writing within 30 calendar days of any change(s) in circumstances affecting the firm's ability to meet ownership, control, or size requirements or any material change(s) in the information provided in the certification application process. The statement must include supporting documentation describing in detail the nature of such changes. Change(s) in management responsibility among members of a limited liability company are also covered by this requirement. If the MBE/WBE fails to make timely

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notification of such change(s), it will be deemed to have failed to cooperate and certification may be revoked.

(p) The director shall safeguard information that reasonably may be regarded as confidential business information from disclosure to unauthorized persons consistent with federal, state and local law.

(q) If the United States Department of Transportation changes the requirements for certifications, the city council shall re-examine the certification requirements imposed by this section.

(r) Appeals of denials of certification.

- (1) If the city denies a request for MBE/WBE certification from a firm which is not currently certified by the city, then the firm shall be ineligible to reapply for MBE/WBE certification for one year from the later of the date of the denial of certification or the final date of any decision on an appeal.
- (2) Persons who have applied for DBE certification in conjunction with MBE/WBE certification and have been denied MBE/WBE certification may be certified if the reason(s) for denial is solely for MBE/WBE certification criteria equivalent to the DBE certification criteria and they successfully appeal their DBE certification and otherwise fulfill the requirements for MBE/WBE certification.
- (3) Persons who have applied for MBE/WBE certification and who have not applied for DBE status may appeal the denial of certification to the same extent and subject to the same provisions applicable to appeals of revocation of certification, except as provided in (4) of this subsection.
- (4) In circumstances where a firm has failed to submit required documentation, failed to demonstrate real and substantial presence, or exceeded business size standards, there will be no administrative re-consideration of a denial of MBE/WBE certification.

(s) *Appeals of revocations of certification.*

- (1) Persons who have who have had their MBE/WBE certification revoked by the department may be reinstated if the reason(s) for revocation is solely for MBE/WBE certification criteria equivalent to the DBE certification criteria and they successfully appeal their DBE certification, and they otherwise fulfill the requirements for MBE/WBE certification. If a person was certified as a DBE, the person must follow the UCP appeal procedures and there is no city appeal.
- (2) In circumstances where a certified firm has failed to submit required documentation, failed to demonstrate real and substantial presence, or exceeded

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business size standards, there will be no administrative reconsideration of a revocation of MBE/WBE certification.

- (3) Upon the revocation of certification as an MBE/WBE/DBE or mentor/protégé by the department, the director shall notify the affected party in writing by certified mail, setting forth the reason(s) for the revocation of certification. Except as provided in (1) and (2) of this subsection, any firm who has had certification as an MBE/WBE or mentor/protégé revoked by the department may appeal the decision by filing a written notice of appeal as designated by the director within 20 business days of receipt of the notice of the revocation of certification. The procedures applicable to any appeal shall be as follows:
- a. The written notice of appeal must state the reason(s) for the appeal and include all supporting documentation to be considered for the appeal. The information or documentation submitted is limited to the issue(s) raised in the written notice of appeal. No new or additional documentation or information shall be considered for the appeal without a showing by the firm that it was not available or, through due diligence, could not have been made available. The written notice must specify whether the firm wishes to appeal in writing and/or appear personally for a hearing and if they intend to be accompanied by counsel.
 - b. Within ten business days of receipt of the notice of appeal from the aggrieved party, the director shall forward the notice to a neutral hearing officer selected through the city's standard procurement process.
 - c. Within ten business days from the date of receipt of the notice from the director, the hearing officer shall set a hearing date. The hearing officer shall cause notice of the hearing to be served upon all parties by certified mail. Such notice shall set forth with particularity the charges filed by the aggrieved business and shall include the hearing date, time, and place.
 - d. At the hearing, all parties shall be provided a fair and impartial hearing and shall be allowed to make a presentation concerning the determination of noncompliance with the requirements of this article or the revocation of certification as an MBE/WBE or mentor/protégé. Legal counsel may accompany the firm during the hearing, speak on behalf of the firm, respond to questions, and otherwise make a presentation. Each owner will be limited to a period of 15 minutes to address the hearing officer, unless extended by the hearing officer for good cause. Reasonable accommodations will be made for those with disabilities and/or limited language proficiency. For the appeal, the burden of proof rests on the MBE/WBE or mentor/protégé to show that the revocation of certification was improper.
 - e. The hearing officer shall, within 15 business days of the hearing or within 15 days of the deadline set by the hearing officer for the submission of any

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additional documentation, if applicable, make a written decision on the appeal, which decision shall affirm, alter, or reverse the revocation of certification by the department. Written notice of the decision on the appeal shall be sent to all parties by mail setting forth the reasons for the decision.

- f. If the hearing officer finds for the aggrieved party, as appropriate, the business shall be reinstated as an MBE/WBE or mentor/protégé and added to the certification database maintained by the department. The decision of the hearing officer shall be binding on all parties, subject to the right of appeal as provided by law.
- g. The firm that receives a decision from the hearing officer upholding the revocation of certification is ineligible to reapply for MBE/WBE certification for two years from the later of the date of the revocation of certification, or the final date of any court decision.

(t) The city manager is authorized to revoke MBE and WBE certification for cause. The certification of a person who has been debarred by the city in a debarment proceeding shall be automatically terminated or modified in a manner provided by the debarment ordinance. If an MBE/WBE has its DBE or MBE/WBE certification revoked by another governmental entity after a hearing, its MBE/WBE certification shall automatically be terminated with the city unless the MBE/WBE's certification was revoked for violating a certification requirement that is not a violation of the city's MBE/WBE certification requirements. No individual, corporation, partnership, limited liability company or any other business entity whatsoever shall be certified as an MBE or WBE if the minority or female whose ownership interest would serve as the basis for obtaining certification, or who would control the entity seeking certification, presently owns or previously owned a majority interest in or controlled an MBE or WBE whose certification has been revoked for cause within the five year period immediately preceding the submittal of the certification application. No individual, corporation, partnership, limited liability company or any other business entity whatsoever shall be certified as an MBE or WBE if the minority or female whose ownership interest would serve as the basis for obtaining certification, or who would control the entity seeking certification, presently owns or previously owned a majority interest in or controlled an MBE or WBE whose certification has been suspended for cause, provided however that this restriction shall last no longer than the term of the suspension.

(u) MBE/WBE program graduation.

- (1) If an MBE or WBE has been certified by the city in more than one North American Industry Classification System (NAICS) code or has an affiliate which has been certified by the city in a NAICS code other than that of the MBE or WBE, then the annual receipt level used as the graduation criterion for such MBE or WBE shall apply separately to each NAICS code for which the MBE or WBE and its affiliate have been certified subject to the business size standards in this division. Such an MBE or WBE and any affiliate that has exceeded the graduation criteria in one NAICS code shall be deemed to be graduated from the MBE/WBE contracting program as to that major group, and may continue to be certified in another NAICS

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code having a higher monetary graduation level but shall no longer be considered eligible to be or remain certified in the NAICS code with the lower size standard. An MBE or WBE that has exceeded the graduation criteria for the largest NAICS code applicable to its activities shall be deemed to be graduated from the MBE/WBE program for all purposes.

- (2) The department shall send a graduation determination letter which shall serve to notify the MBE or WBE that it has graduated from the MBE/WBE program. The mailing of the graduation determination letter shall trigger a three-year termination period. During the termination period, an MBE or WBE may bid and perform work to the same extent it was able to do so before graduation, and its utilization may be applied towards satisfaction of contract goals, if any, to the extent it is performing a commercially useful function corresponding to a NAICS code in which it was certified prior to graduation.
- (3) The termination period shall expire three years from the date of mailing of the graduation determination letter. Any work bid by the graduated MBE or WBE after expiration of the termination period shall not be applied towards satisfaction of contract goals, if any. Any work performed by the graduated MBE or WBE after expiration of the termination period shall not be applied towards satisfaction of contract goals, if any, unless the work was commenced or is scheduled to commence pursuant to solicitation made prior to the expiration of the termination period.
- (4) During the termination period, the MBE or WBE shall comply with the requirements of this article to the same extent it was required to comply prior to graduation. A failure to do so may result in the reduction or elimination of the termination period.
- (5) Application to affiliates. The graduation criteria set forth above shall be deemed to apply to the minorities or women upon whom eligibility for certification is based and all affiliates to such minorities and women. No business enterprise shall be certified based upon one or more minorities or women who owned or who was an affiliate of an MBE or WBE which has become ineligible for renewed certification because of the achievement of graduation criteria.

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Sec. 3-463. Duties and authority of director.

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(a) The director is hereby authorized to establish rules and regulations to implement this division which rules and regulations shall be submitted to the city council for its approval and shall be in writing and published.

(b) Notwithstanding any other section to the contrary, the director is hereby authorized to establish rules and regulations to implement the city's MBE/WBE program requirements into contracts that utilize alternative construction delivery methods pursuant to chapter 3, Code of Ordinances, or other alternative procurement or contracting methods if the contract would be

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subject to MBE/WBE goals under this division. Except for cooperative agreements that involve construction, the fairness in construction board shall set the MBE/WBE goals for construction contracts.

- (c) The director shall, in addition to any other duties specified herein:
- (1) Administer and enforce this article to ensure that MBE/WBEs have equal opportunity to participate in city contracts and subcontracts and work with all city department directors and agency heads to implement the city's MBE/WBE program; and
 - (2) Coordinate the establishment of MBE/WBE methodologies with all city departments and incentive agencies including establishment of goals, except goals to be established by the applicable Board, as may be appropriate to remedy underutilization of MBE/WBEs; and
 - (3) Update the M/W/DBE Kansas City Mo. Online Directory available to all bidders, proposers, the general public, city departments and incentive agencies no less frequently than every three (3) months; and
 - (4) Assist city departments incentive agencies, bidders, proposers, contractors and developers in finding qualified MBEs and WBEs to participate in contracts; and
 - (5) Identify appropriate participation opportunities for qualified MBEs and WBEs in contracts; and
 - (6) Publish an annual report for the city's fiscal year which states for each city department and agency:
 - a. The number of contracts awarded and the total contract dollars awarded pursuant to such contracts; and
 - b. The number of prime contracts awarded to WBEs and MBEs as identified by race and/or ethnicity and the total dollars awarded and paid pursuant to such contracts; and
 - c. The number of subcontracts awarded to WBEs and MBEs as identified by race and/or ethnicity and the total contract dollars awarded and paid pursuant to such contracts; and
 - d. A summary of total waiver requests submitted that are granted or denied and the reasons for the grant or denial; and
 - e. The number of MBE/WBE firms certified by race and/or ethnicity; and

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- (7) Provide a compliance report to the city manager within 30 days after the end of each quarter which shall include:
 - a. The total number of contracts awarded and the total contract dollar amount awarded pursuant to such contracts; and
 - b. The number of contracts awarded to qualified MBEs as identified by race and/or ethnicity and WBEs and the total contract dollar amount awarded and paid pursuant to such contracts; and
 - c. The director of ~~human relations~~civil rights and equal opportunity evaluation of the city's progress toward meeting MBE/WBE utilization plans and any actions he or she intends to take to address any shortfall in meeting the goals established in such plans; and
 - d. Any other information as may be required by the city manager; and
- (8) Provide monthly compliance reports to the applicable incentive agency for contracts entered into in connection with sections 3-425(b) and 3-425(c) updating the incentive agency as to the project developer's compliance with the M/WBE goals and work with the applicable incentive agency to assist developers who are not compliant. Failure of the director to furnish these reports does not absolve incentive agency or developer from complying with the processes outlined by agreement with the incentive agency; and
- (9) Provide the city council a report outlining the effects of any revisions to this division within 18 months of their effective date. The purpose of this report is to ensure that such revisions promote increased opportunities for minority or women business enterprise participation on contracts.
- (10) Develop and maintain relationships with organizations representing contractors, including minorities and women organizations, and solicit their support for the city's program; and
- (10) Furnish staff assistance to the boards established in this division. This shall include but not be limited to providing to the boards within thirty days following the end of each quarter interim reports containing the information described in subsection (6) and such other reports and information as the board, from time to time, may request; and
- (11) Implement any federal or state minority business enterprise program required by law or federal or state contract; and
- (12) Appoint a designated neutral hearing examiner for certification revocation hearings.

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Sec. 3-501. Definitions applicable to the construction employment program.

- (a) The following definitions apply to sections 3-501 through 3-527:
- (1) *Apprentice* means person of legal working age who has entered into a program for training and employment to learn a skilled construction trade.
 - (2) *Apprenticeship program* means a program approved by the bureau of apprenticeship training providing for no less than 2,000 hours of reasonably continuous employment and for participation in an approved schedule of work experience through employment, which shall be supplemented by a minimum of 144 hours per year of related instruction.
 - (3) *City* means the City of Kansas City, Missouri.
 - (4) *City construction contract* means a contract estimated by the city prior to solicitation as requiring more than 800 construction labor hours and with an estimated cost that exceeds \$300,000.00 for the construction, reconstruction, improvement, enlargement or alteration of any fixed work for which tax abatement has been granted, or in which any portion is paid for out of city funds, tax increment financing, or funds administered by the city pursuant to a federal or state grant, including, but not limited to any building, road, street, public utility or other public facility, regardless of the contract's dollar amount, and regardless further of whether the city is a signatory to the contract.
 - (5) *Construction contractor* means any individual, partnership, corporation, association or other entity, or any combination of such entities, who or which enters into a city construction contract, regardless of the number of employees.
 - (6) *Construction employment goals* means the percentages of construction labor hours to be performed by minorities and women working under the city construction contract and on construction projects in the metropolitan statistical area during the term of the city construction contract, unless otherwise waived by the director or the Construction Workforce Board on appeal from a determination of the director.
 - (7) *Construction employment program* means a program enacted by ordinance regarding the recruitment, training, mentoring and retention of employees, including apprentices and journeymen, on construction projects. The term "construction employment program" shall also mean construction workforce ordinance.
 - (8) *Construction hours affidavit* means a statement by a construction contractor, verified under oath, setting forth the construction contractor's intent to meet or exceed, and to cause the subcontractors of every tier to meet or exceed, the construction employment goals while performing a city construction contract.

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- (9) *Construction labor hour* means a 60-minute period of time devoted by a worker, employed by a contractor or subcontractor, performing labor on a construction project job site; or, preparing, fabricating or painting materials or equipment to be used or incorporated on a construction project job site.
- (10) *Construction project* means any project performed by a construction contractor in the Kansas City metropolitan statistical area.
- (11) *Construction Workforce Board* means a board, created as provided herein.
- (12) *Director* means the director of the ~~human relations~~civil rights and equal opportunity department of the city or his/her designee, or the person within the city manager's office that is assigned to perform the tasks delegated to the director of the ~~human relations~~civil rights and equal opportunity department by this article.
- (13) *Equal opportunity clause* means a statement prohibiting discrimination on construction projects based on race, color, sex, sexual orientation, gender identity, age, national origin, or ancestry, religion, or disability as proscribed in the Kansas City Code of Ordinances, chapter 38, article III, section 38-103.
- (14) *Good faith waiver* means a waiver that is granted by the director, or upon appeal of the director's decision by the Construction Workforce Board, based upon a showing by a construction contractor that despite undertaking in good faith the actions outlined in sections 3-501—3-527, the construction contractor, the subcontractors of any tier, or both, were unable to achieve the minimum construction employment goals.
- (15) *Incentive construction employment goal* means an aspirational goal for company-wide employment of minorities and women intended to encourage contractors to invest additional money and resources to hire and retain minorities and women on their workforce in order to achieve participation percentages well in excess of the minimum construction employment goals and the percentage of minorities and women generally available in the workforce by providing public recognition upon the completion of a city construction contract, to the construction contractor who achieves such goal.
- (16) *Journey person* means one who has completed an apprenticeship in a trade or craft and is recognized in the particular trade or craft as a journey person.
- (17) *Labor union* means any organization which exists, in whole or in part, for the purpose of collective bargaining; for dealing with employers concerning grievances, terms, or conditions of employment; or, for other mutual aid or protection of workers in relation to employment.
- (18) *Metropolitan statistical area (MSA)* means the Kansas City metropolitan statistical area as defined by the United States Department of Labor.

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- (19) *Minority* means a person who is a citizen or lawful permanent resident of the United States and who is:
- a. African American, a person whose origins are in any of the Black racial groups of Africa, and who has historically and consistently identified himself or herself as being such a person; or
 - b. Hispanic American and/or Latino American, a person whose origins are in Mexico, Central or South America, or any of the Spanish-speaking islands of the Caribbean, (for example Cuba and Puerto Rico) regardless of race, and who has historically and consistently identified himself or herself as being such a person; or
 - c. Asian and/or Pacific Islander American, a person whose origins are in any of the original peoples of the Far East, Southeast Asia, the islands of the Pacific or the Northern Marianas, or the Indian Subcontinent, and who has historically and consistently identified himself or herself as being such a person; or
 - d. Native American, a person having origins in any of the original peoples of North America, and who maintains tribal affiliation or demonstrates at least one-quarter descent from such groups, and who has historically and consistently identified himself or herself as being such a person.
- (20) *Resident* means an individual residing or domiciled within the city.
- (21) *Woman means* a person who is a citizen or lawful permanent resident of the United States and who is a female.
- (22) *Workforce preparedness program* means a program that actively seeks the participation of minorities and women and provides them with the skills and resources necessary to enter a program for training and employment to learn a skilled construction trade.

~~Sec. 3-503. Establishing and declaring the purpose of the construction employment program.~~

~~(a) The construction employment program is hereby established. The purpose of the construction employment program is to:~~

- ~~(1) Increase retention, training and recruitment of residents, minorities and women on city construction contracts and throughout the Kansas City MSA; and~~
- ~~(2) Prescribe policies and procedures to implement the city's objective in accordance with sections 3-501—3-527; and~~

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~~(3) Further the retention of minorities and women in the current workforce by promoting mentoring programs to assist such workers and establishing goals to encourage city contractors to retain such workers.~~

~~(b) Sections 3-501-3-527 shall not be construed as requiring or encouraging a construction contractor, or any subcontractor or supplier working in conjunction with the construction contractor, to make employment decisions or otherwise alter the terms and conditions of employment based upon race or gender.~~

~~(c) The director is authorized to adopt rules and regulations to implement the construction employment program.~~

Sec. 3-509. City sponsored recruitment of existing construction workforce.

(a) The city shall partner with labor unions, community-based organizations, and employment referral programs to accomplish the goals of the construction employment program. Activities to increase resident, minority and women participation shall be conducted on a scheduled basis and shall include:

- (1) Sponsoring workshops and events involving local minority community-based organizations and educational institutions to promote the construction industry and encourage residents to apply for apprenticeship programs and journey worker jobs on construction projects or jobs requiring prior construction labor experience; and
- (2) Establishing a first source program intended to give residents of the city the first opportunity to apply, be interviewed and be hired on city construction contracts; and
- (3) Making a good faith effort to inform residents of the city and minorities and women, regardless of residency, through advertisements in media in the city and in minority or women trade association newsletters and/or minority or women owned media at least 60 calendar days prior to the issuance of an invitation for bid or request for proposals for a particular city construction contract, if deemed practical by the city to do so, of:
 - a. The name of the project;
 - b. The nature of the work to be performed;
 - c. The crafts anticipated to be required for the work; and,
 - d. Locations within the city and a website in which residents of the city may register for consideration for employment on the city construction project.

Failure of the city to advertise shall not invalidate any solicitation or contract.

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- (4) Establishing and maintaining a current list of resident, minority and women recruitment sources, providing written notifications to the recruitment sources of available employment opportunities, and maintaining records of the notices submitted to the organizations and any responses thereto; and
- (5) Collaborating with labor unions, contractors and their respective associations to determine information that may be reasonably required of prospective workers.
- (6) Collecting and furnishing such information to labor unions, contractors and their respective associations for their use in identifying qualified residents of the city desiring work on city construction contracts.
- (7) Establishing a pre-qualification program for subcontractors whereby subcontractors can provide employment data to the director evidencing that they meet or exceed the minimum construction employment goals for the purpose of being included in a subcontractor directory on ~~HRD's~~ the department's website to assist construction contractors in identifying those subcontractors that can assist the construction contractor in meeting the construction employment goals.
- (8) Submitting monthly reports to the Construction Workforce Board stating the number of resident, minority and women construction labor hours performed by construction contractors and their subcontractors, in a format acceptable to the Construction Workforce Board.

Sec. 3-601. Definitions.

- (a) The following definitions apply to this Division 4:
- (1) *Agency*. Any public or private entity that receives 66 percent of its funding from the city or any entity with the authority to recommend city tax increment financing or city tax abatements.
 - (2) *Agency head*. The individual authorized to act on behalf of an agency.
 - (3) *Business*. An individual, corporation, partnership, limited liability company, or other recognized business association that may lawfully be established for the purpose of conducting a for-profit business within the state.
 - (4) *City*. The City of Kansas City, Missouri.
 - (5) *Construction contract*. A contract for the construction, reconstruction, improvement, enlargement or alteration of any fixed work or construction site preparation, the majority of which is paid for out of city or agency funds.

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- (6) *Construction supply contract.* A contract for the purchase of construction materials, supplies, articles or equipment intended to be used or consumed on a construction contract, the majority of which is paid for out of city or agency funds.
- (7) *Department.* The ~~human relations~~civil rights and equal opportunity department (~~HRD~~), or the division within the city manager's office that is assigned to perform the tasks delegated to the ~~human relations~~civil rights and equal opportunity department.
- (8) *Department director.* The individual appointed by the city manager to be responsible for a city department or the manager of procurement services when acting on behalf of a department director or the city.
- (9) *Director.* The director of the ~~human relations~~civil rights and equal opportunity department or his authorized representative, or the person designated by the city manager to perform the tasks delegated to the ~~human relations~~civil rights and equal opportunity department.
- (10) *Eligible contract.* Any construction contract or construction supply contract estimated by the city or agency prior to solicitation as having a value less than \$300,000.00, and all other professional services or supplies city or agency contracts having a value less than \$117,000.00, the majority of either of which is paid for out of city funds or in which an agency is a party.
- (11) *Invitation for bid.* A request or invitation for submission of an offer to enter into a contract pursuant to a competitive bidding process.
- (12) *Kansas City Metropolitan Area.* The Missouri counties of Cass, Clay, Jackson and Platte and the Kansas counties of Johnson, Leavenworth and Wyandotte.
- (13) *Person.* An individual, corporation, partnership, limited liability company, or other recognized business association which may lawfully be established for the purpose of conducting a for-profit business within the state.
- (14) *Principal place of business.* The location at which the business records of the SLBE applicant are maintained and the location at which the individual who manages the concern's day-to-day operations spends the majority of his/her working hours.
- (15) *Request for proposals.* An invitation for submission of an offer to enter into a contract pursuant to a negotiated process and not a competitive bid, including requests for qualifications.
- (16) *Professional services or supplies.* The term includes contracts for purely labor-related services up to and including highly technical or specialized services and design professional services, as well as contracts for the purchase of materials, supplies, articles or equipment intended to be used or consumed by the city or

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agency procuring the same, provided however that the term excludes construction contracts and construction supply contracts.

- (17) *Small local business enterprise (SLBE)*. A for-profit business that:
- a. Is at least 51 percent owned, managed and independently controlled by the applicant(s); and
 - b. Exists independently and is not an affiliate or subsidiary of any other business.
 - c. Is able to demonstrate that they have the skill and expertise to perform in the particular area(s) of work for which they are seeking certification; and
 - d. Has a real and substantial presence in the Kansas City Metropolitan Area. A business enterprise shall be deemed to have a real and substantial presence in the Kansas City Metropolitan Area if:
 1. The business' principal place of business is in the Kansas City Metropolitan Area.
 2. The business maintains the majority of its full-time employees in the Kansas City Metropolitan Area.
 3. The business has transacted business more than once in the Kansas City Metropolitan Area within the last two (2) years; and
 - e. Has annual gross receipts that, when added with those of its subsidiary or subsidiaries and averaged over three consecutive years, do not exceed five percent of the applicable business size standard for the SBA General Contractor Classification which is equivalent of the NAIC code 236220 as established in 13 CFR 121.201, as amended; and
 - f. Is certified by the ~~human relations~~civil rights and equal opportunity department as a small local business enterprise.
- (18) *SLBE directory*. A source list compiled by the ~~human relations~~civil rights and equal opportunity department containing names and addresses of SLBEs eligible to participate in the SLBE program.
- (19) *SLBE program*. The small local business enterprise program as enacted in this Division.

Sec. 3-603. Policy; applicability.

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(a) The SLBE program is intended to provide opportunities by limiting solicitations to SLBEs or providing SLBEs a bid incentive, as provided in section 3-607. The SLBE program is not a goal-based program, nor shall it be extended to every contract. Application of the SLBE program shall be limited to those eligible contracts in which the director has determined it to be proper as provided herein.

(b) The SLBE program, when determined to be applicable by the director, shall extend to eligible contracts solicited by the city or any agency. Every agency shall adopt a small local business enterprise program that is substantially consistent in every material respect with this Division, as determined and approved by the director of ~~human relations~~civil rights and equal opportunity. No ordinance shall be passed to approve any development plan, redevelopment plan, urban renewal plan, or particular project arising under any such plan and for which economic incentives have been approved or recommended for approval by an agency, nor shall the city execute a contract with an agency for the purpose of providing funds for their development and redevelopment services, unless the agency has first adopted and implemented a small local business enterprise program in the manner provided for herein.

(c) The director shall review the SLBE program annually and make recommendations to the city council as to whether the SLBE program should be maintained or modified, but the failure of the director to do so shall not invalidate the SLBE program.

(d) The city council shall have the authority to waive the applicability of the SLBE program in its entirety, or any portion thereof, if it determines that doing so is in the city's best interests.

Sec. 3-622. Prevailing Wage Application to Incentive Plans.

(a) For any new development plan, or substantial modification to an existing plan, that is approved by the city council or any economic development agency created by the city and that seeks ad valorem real and personal property tax abatement, exemption or redirection, the developer, redeveloper or other entity that applies for approval of such plan or modification shall pay or cause to be paid a Prevailing Wage Rate to all workmen performing work as a part of the construction, reconstruction, improvement, enlargement, alteration, painting and decorating, or major repair of any project for which the total project cost exceeds seventy-five thousand dollars conducted as part of the plan.

(b) For the purposes of this section, Prevailing Wage Rate shall be determined as set forth in Sections 290.210 to 290.340 of the Revised Statutes of Missouri.

(c) The director of the ~~human relations~~civil rights and equal opportunity department of the city shall promulgate rules and regulation as are necessary to carry out the provisions of this section. All such rules and regulations shall be provided to the economic development agencies created by the city and authorized to approve tax abatement, exemption or redirection within 10 days of their promulgation.

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(d) Notwithstanding the foregoing provisions of this section, the City Council and any economic development agency created by the City shall retain the discretion to authorize the abatement, redirection or exemption, in whole or in part, of ad valorem real property taxes to the full extent authorized by any provision of law. The City Council shall give particular consideration to the following exceptions ("Extraordinary Qualifications") in determining whether to authorize any abatement or exemption structure, or approve any development plan providing for incentives to be conveyed on a project-specific basis that is not in compliance with this section:

- ~~1.~~(1) Projects located in a severely distressed census tract that has continuously maintained such status for not less than ten (10) years immediately prior to the effective date of the request; or
- ~~2.~~(2) Projects that support affordable housing and extremely affordable housing by meeting the requirements of Committee Substitute for Ordinance No. 201038, as Amended, for such housing.
- ~~3.~~(3) Projects that connect residents living in continuously distressed census tracts to new employment opportunities by:
 - (i) providing at least 100 new entry-level jobs to Kansas City with an annual salary of at least \$32,000, or \$42,000 inclusive of wages and benefits; and
 - (ii) incorporating options for mass public transportation or locating in an established high-frequency transit corridor.
- ~~4.~~(4) Projects that involve the renovation or rehabilitation of a building has been designated by a government entity as a local or national historic landmark or contribute to a historic district, or projects that have filed an application with the National Park Service to be placed on the National Register of Historic Places, in which case the exclusion would be subject to such designation being approved.

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Determination of eligibility for Extraordinary Qualifications shall be made upon receipt by the City or any economic development agency created by the City of an application or request for ad valorem real and personal property tax abatement, exemption or redirection.

(e) This section shall apply only to projects that have not yet submitted an application for the abatement, redirection or exemption of taxes and shall not be construed in a manner as to apply to any tax abatement or transaction authorized by the City or any other public entity prior to May 14, 2021. Notwithstanding the foregoing, the requirements of this ordinance shall be imposed on any project that has submitted an application for the abatement, redirection or exemption of taxes prior to its effective date but has not received final approval from the relevant authorizing body within three years of May 14, 2021.

Section 3. For any new development plan, or substantial modification to an existing plan, that is not required to have approval of the City Council and that seeks ad valorem real and personal property tax abatement, exemption or redirection, the City Council recommends that any

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economic development agency created by the City, including Port KC, shall only approve abatements, exemptions or redirections for projects that a prevailing wage rate is paid to all workmen performing work as a part of the construction, reconstruction, improvement, enlargement, alteration, painting and decorating, or major repair of any project if the total project cost exceeds seventy-five thousand dollars.

Section 4. That this ordinance shall have an effective date of May 14, 2021, which is an additional 60 days beyond the minimum effective date established by the City Charter.

Section 5. That Chapter 38 of the Code of Ordinances entitled "Human Relations" is hereby amended by changing the name to "Civil Rights" and repealing Sections 38-1, 38-21, 38-43, 38-63, 38-65, and 38-113 and enacting in lieu thereof new sections of like number and subject matter to read as follows:

Sec. 38-1. Definitions.

(a) The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning or an alternative definition has been provided:

(1) Age means an age of 40 or more years, except that it shall not be an unlawful employment practice for an employer to require the compulsory retirement of any person who has attained the age of 85 and who, for the two-year period immediately before retirement, is employed in a bona fide executive or high policymaking position, if such person is entitled to an immediate nonforfeitable annual retirement benefit from a pension, profit sharing, savings or deferred compensation plan, or any combination of such plans, of the employer, which equals, in the aggregate, at least \$344,000.00.

(2) ~~Applicant means any person applying for employment with an employer located in Kansas (2) City, Missouri.~~

(3) ~~City~~ means the City of Kansas City, Missouri.

(4) ~~Commission~~ means the city human rights commission.

(5) (4) Complainant means any person claiming injury by the alleged violation of ~~RSMo ch. Chapter~~ 213, RSMo, or of this ~~chapter~~ Chapter, including persons who believe they will be injured by an unlawful discriminatory practice that is about to occur.

(6) ~~5) Complaint~~ means a verified written statement of facts and circumstances, including dates, times, places and names of persons involved in any alleged violation of any provision of ~~RSMo ch. Chapter~~ 213, RSMo, or of this ~~chapter~~ Chapter.

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~~(7)~~⁽⁶⁾ Contract means any contract to which the city shall be a contracting party, except the following:

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- a. Personal services contracts.
- b. Emergency requisitions for goods, supplies or services.
- c. Impressed accounts in the nature of petty cash funds.
- d. Contract or lease, the cost of which will not exceed \$300,000.00.

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~~(8)~~⁽⁷⁾ Covered multifamily dwelling means a building consisting of four or more units if the building has one or more elevators or a ground floor unit in a building consisting of four or more units.

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~~(9)~~ Criminal history means a record of a conviction, or a plea of guilty or no contest, to a violation of a federal or state criminal statute or municipal ordinance; records of arrests not followed by a valid conviction; convictions which have been, pursuant to law, annulled or expunged; pleas of guilty without conviction; convictions for which a person received a suspended imposition of sentence; and misdemeanor convictions where no jail sentence can be imposed.

~~(10)~~⁽⁸⁾ Department means the department of ~~human relations, civil rights and equal opportunity~~.

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~~(11)~~⁽⁹⁾ Director means the director of the ~~human relations, civil rights and equal opportunity~~ department or their delegate.

~~(12)~~⁽¹⁰⁾ Disability means with respect to employment, a person who is otherwise qualified and who, with reasonable accommodation, can perform the essential functions of the job in question. Generally, a person with a disability is any person who:

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- a. Has a physical or mental impairment which substantially limits one or more major life activities;
- b. Has a record of having such impairment; or
- c. Is regarded as having such an impairment.

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~~(13)~~⁽¹¹⁾ Dwelling means any building, structure or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure or portion thereof.

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~~(14)~~ (12) *Employee* means any individual employed by an employer, but does not include an individual employed by his parents, spouse or child or any individual employed to render services as a domestic in the home of the employer.

~~(15)~~ (13) *Employer* includes any person employing six or more employees.

~~(16)~~ *Employment* means any occupation, vocation, job, or work, including but not limited to temporary and seasonal work, part time work, contracted work, contingent work, work on commission, and work through the services of a temporary or other employment agency for which the applicant is to receive wages or a salary. Employment does not include work as an independent contractor.

~~(17)~~ *Employment agency* ~~(14)~~ *Employment agency* means any person, agency or organization, regularly undertaking, with or without compensation, to procure opportunities for employment or to procure, recruit, refer or place employees.

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~~(18)~~ (15) *Familial status* means one or more individuals, who have not attained the age of 18 years, being domiciled with:

a. A parent or another person having legal custody of such individual or individuals; or

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b. The designee of such parent or other person having such custody, with the written permission of such parent or other person. The protection afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years. No provision in this chapter regarding familial status shall apply to housing for older persons, as defined in section 3607 of title 42 of the United States Code Annotated.

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~~(19)~~ (16) *Family* includes a single individual.

~~(20)~~ (17) *Franchise holder* means any individual, partnership, corporation, association or other entity, or any combination of such entities, holding a franchise hereafter granted or renewed by the city.

~~(21)~~ (18) *Gender identity* means the actual or perceived appearance, expression, identity or behavior of a person as being male or female, whether or not that appearance, expression, identity or behavior is different from that traditionally associated with the person's designated sex at birth.

~~(22)~~ *Inquire* means to communicate any question or statement to an applicant, an applicant's current or prior employers, or a current or former employee or agent of the applicant's current or prior employer, in writing or otherwise, for the purpose of obtaining an applicant's salary history, or to conduct a search of publicly available records or reports for the purpose of obtaining an applicant's salary history, but does

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~~not include informing the applicant in writing or otherwise about the position's proposed or anticipated salary or salary range.~~

~~(23)~~ (19) *Labor organization* means any organization which exists for the purpose in whole or in part of collective bargaining or for dealing with employers concerning grievances, terms or conditions of employment, or for other mutual aid or protection in relation to employment.

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~~(24)~~ (20) *Performance of work* means the furnishing of any personal service, labor, materials or equipment used in the fulfillment of a contractor's obligation under a city contract.

~~(25)~~ (21) *Person* includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers, fiduciaries and other organizations; except the term "person" does not include any local, state or federal governmental entity.

~~(26)~~ (22) *Prohibited dress code* means a set of rules governing, prohibiting or limiting access to a place or business, or portion thereof, defined herein as a "public accommodation" because of any of the following:

- a. The wearing of jewelry, the manner in which jewelry is worn or the combination of items of jewelry worn,
- b. The wearing of a garment or headdress which is generally associated with specific religions, national origins or ancestry,
- c. The length of the sleeve of a shirt or the leg of a pair of pants or shorts is too long, except that nothing herein shall be construed to prohibit a dress code that requires the wearing of a shirt,
- d. The style, cut or length of a hair style,
- e. The colors of the garments,
- f. In conjunction with a major Kansas City sporting event, the wearing of athletic apparel which displays either a number, a professional or college team name or the name of a player;
- g. The wearing of tee-shirts, except that nothing herein shall be construed to prohibit a dress code that requires such tee-shirts to have sleeves, or to prohibit a dress code that does not allow undershirts, undergarments, or tee-shirts of an inappropriate length. Designer tee-shirts, which are fitted and neat, cannot be banned.

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~~(27) Protective hairstyles shall include, but not be limited to, such hairstyles as braids, locks, and twists.~~

~~(28)~~(23) *Public accommodation* means any place or business offering or holding out to the general public goods, services, privileges, facilities, advantages or accommodations for the peace, comfort, health, welfare and safety of the general public, or providing food, drink, shelter, recreation or amusement, including but not limited to:

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a.— Any inn, hotel, motel or other establishment which provides lodging to transient guests, other than an establishment located within a building which contains not more than five rooms for rent or hire and which is actually occupied by the proprietor of such establishment as his residence.

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b.— Any restaurant, tavern, cafeteria, lunchroom, lunch counter, soda fountain or other facility principally engaged in selling food for consumption on the premises, including but not limited to any such facility located on the premises of any retail establishment.

c.— Any gasoline station, including all facilities located on the premises of such gasoline station and made available to the patrons thereof.

d.— Any motion picture house, theater, concert hall, sports arena, stadium or other place of exhibition or entertainment.

e.— Any public facility owned, operated or managed by or on behalf of this city or any agency or subdivision thereof, or any public corporation; and any such facility supported in whole or in part by public funds.

f.— Any establishment which is physically located within the premises of any establishment otherwise covered by this definition or within the premises in which is physically located any such covered establishment, and which holds itself out as serving patrons of such covered establishment.

g.— Any institution, association, club or other entity that has over 250 members, provides regular meal service, and regularly receives payment for meals, beverages, dues, fees, the use of its facilities or services directly or indirectly from or on behalf of nonmembers in furtherance of trade or business.

~~(29) Race is inclusive of traits historically associated with race including, but not limited to, hair texture and protective hairstyles.~~

~~(30)~~(24) *Redevelopment area* means a tax increment redevelopment area as defined in ~~RSMo §section~~ 99.805(11); ~~RSMo~~, a planned industrial expansion project area as defined in ~~RSMo §section~~ 100.300, et seq.; ~~RSMo~~, an urban renewal project area or land clearance project area as defined in ~~RSMo §section~~ 99.300, et seq.;

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RSMo: any area under the control of the port authority of ~~the city~~Kansas City, Missouri, or subject to a contract, lease or other instrument to which the port authority is a party; or an area determined by the city to be blighted pursuant to chapter 353, RSMo~~ch. 353.~~

~~(31)-25)~~ *Rent* means to lease, sublease, let or otherwise grant for a consideration the right to occupy premises not owned by the occupant.

~~(32)-26)~~ *Respondent* means any person against whom it shall be alleged by complaint or identified during the course of an investigation that such person has violated, is violating or is about to violate any provision of RSMo ch. Chapter 213, RSMo, or this ~~chapter~~Chapter.

~~(33)~~ *Salary history* means ~~the applicant's current or prior wages, benefits, or other compensation. "Salary history" does not include any objective measure of the applicant's productivity, such as revenue, sales, or other production reports.~~

~~(34)-27)~~ *Sex* shall include sexual harassment.

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~~(35)-28)~~ *Sexual orientation* means actual or perceived heterosexuality, homosexuality or bisexuality.

~~(36)-29)~~ *Subcontractor* means any individual, partnership, corporation, association or other entity, or other combination of such entities, which shall undertake, by virtue of a separate contract with a contractor, to fulfill all or any part of any contractor's obligation under a contract with the city, or who shall exercise any right granted to a franchise holder, and who has 50 or more employees exclusive of the parents, spouse or children or such subcontractor.

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~~(37)-30)~~ *Unlawful discriminatory practice* means any discriminatory practice as defined and prohibited by sections 38-103, 38-105, 38-107, 38-109, 38-111 and 38-113.

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Sec. 38-21. Powers and duties of director.

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(a) The director is hereby charged with administration and enforcement of all sections of this chapter and is hereby authorized and empowered to do the following:

(1) *Rules and regulations.* To adopt, amend and enforce rules and regulations relating to any matter or thing pertaining to the administration of this chapter.

(2) *Complaint investigation.* To receive, investigate and, upon finding probable cause on any complaint of violation of Chapter 213, RSMo, to bring such complaint before the human rights commission. If the director finds probable cause to believe that a violation of this chapter has occurred, he or she may refer the matter to the city counselor's office for prosecution in municipal court. Any staff assigned to

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assist the commission shall be supervised by the director of ~~human relations-civil rights and equal opportunity~~. The director shall not have the power to process complaints of discrimination brought against the city and shall defer any such complaints to the state commission on human rights or any appropriate federal agency for processing.

- (3) *Authority regarding discrimination within city administration.* To investigate and recommend to the city manager any policy changes or specific actions that the director determines are necessary to ensure that the city administration is in compliance with the provisions of this chapter or with state and federal discrimination laws.
- (4) *Initiation of complaints.* Whenever the director has reasonable cause to believe that an unlawful discriminatory practice has occurred, he ~~or she~~ may initiate a complaint alleging violation of any section Chapter 213, RSMo, or of this chapter.
- (5) *Compliance investigation.* To investigate, survey and review any and all affirmative action programs, city contracts and franchises which are subject to this chapter and to take such action with respect thereto as shall ensure compliance with this chapter.
- (6) *Conciliation.* To attempt to eliminate any unlawful discriminatory practice or any other violation of the terms of this chapter by means of conference, conciliation, persuasion and negotiation and to enter into conciliation agreements.
- (7) *Authority to dismiss complaints.* To dismiss any complaint upon finding such complaint to be frivolous or without merit on its face or upon a finding that the allegedly unlawful discriminatory practice has been eliminated through conciliation.

Sec. 38-43. Powers and duties.

(a) The commission may adopt rules of procedure consistent with Chapters 213 and 536, RSMo, and this chapter.

(b) The commission shall prepare an annual report to be presented to the mayor and council concerning the conditions of minority groups in the city, with special reference to discrimination, civil rights, human relations, hate group activity, bias crimes and bias practices and attitudes among institutions and individuals in the community. The report may also include other social and economic factors that influence conditions of minority groups, as well as the causes of these conditions and the effects and implications to minority groups and the entire city. In preparation for the report the commission may conduct hearings and conduct whatever other research is necessary. The report shall include appropriate recommendations to the mayor and the council.

(c) The commission shall form task forces as follows:

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- (1) The commission shall form task forces including: youth, business, media, education, law enforcement, religion, labor, gay and lesbian issues, metropolitan area cooperation, and others as may be deemed appropriate.
- (2) One member of each task force may be appointed from each councilmanic district, that member to be agreed upon jointly by the councilmembers from that district. Councilmembers may recommend additional members as appropriate.
- (3) Except as provided in subsection (c)(2) of this section, the chairperson of the commission shall appoint the chairs and members of the task forces.
- (4) The task forces shall consist of no more than 15 members except where the commission chairperson specifically approves additional members.
- (5) The task forces will assist the commission in the preparation of the commission's annual report to the mayor and council.

(d) The commission is empowered to investigate hate group activity and incidents of bias crimes and work with law enforcement agencies and others to implement programs and activities to combat hate group activity and bias crimes.

(e) The commission may seek information from any and all persons, agencies and businesses, in both the public and private sectors, to identify and investigate problems of discrimination and bias as they affect the citizens of the city either directly or indirectly.

(f) The commission may cooperate with public and private educational institutions at primary, secondary and post-secondary levels to foster better human relations among the citizens of the city and within the metropolitan Kansas City area.

(g) The commission may work with civil rights organizations, community organizations, law enforcement agencies, school districts and others to collect and review data relating to patterns of discrimination, bias crimes, hate group activity, and general issues of civil and human rights.

(h) The commission may conduct studies, assemble pertinent data, implement educational programs and organize training materials for use by the commission to assist civil and human rights agencies, neighborhood organizations, educational institutions, law enforcement agencies, labor unions and businesses and others to prevent discrimination.

(i) The commission may serve as an advocate to prevent discrimination and bias crimes.

(j) The commission chairperson may appoint such committees from its membership or other citizens to fully effectuate the purpose of this chapter.

(k) The commission is empowered to hold hearings regarding issues of general or specific civil and human rights affecting the citizens of the city, to review decisions of hearing examiners

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appointed by the city to hear charges of violations of Chapter 213, RSMo, to administer oaths, and to take the testimony of any person under oath.

(l) Based upon its hearings or those held by its hearing examiners, the commission shall issue such findings as it deems appropriate under the circumstances. If the commission finds that a respondent has engaged in an unlawful discriminatory practice as defined in Chapter 213, RSMo, the commission shall issue and cause to be served on the respondent an order requiring the respondent to cease and desist from the unlawful discriminatory practice. The order shall require the respondent to take such affirmative action or award such relief as in the commission's judgment will implement the purposes of this chapter and of Chapter 213, RSMo, including but not limited to the assessment of civil penalties, reinstatement, back pay, making available the dwelling or public accommodation, actual damages, or any other relief that is deemed appropriate and which is consistent with Chapter 213, RSMo.

(m) Should the respondent also be a city contractor, upon complaint by the ~~human relations~~civil rights and equal opportunity department and after hearing duly held, the commission shall make findings of fact and conclusions of law; and when it finds a breach of conditions of any contract or franchise wherein compliance with this chapter is assured, it shall make an order specifying the terms and conditions under which any contract or franchise will be continued in force, or in the alternative shall order the cancellation, termination or suspension of such contract or franchise, or order that such contractor or franchise holder be ineligible to receive any city contract or franchise for a period of one year.

(n) The chairperson may appoint hearing review panels composed of not less three persons to review hearings conducted by a hearing examiner regarding violations of Chapter 213, RSMo. Panels shall be appointed on a rotating basis to ensure that all commission members have an opportunity to review recommended findings of the hearing examiner. Any member of the commission who has a conflict of interest or the appearance of a conflict of interest regarding an issue to be heard by the commission will not participate in the proceedings regarding that issue.

(o) The commission is empowered to hold hearings, upon complaint of an aggrieved party or upon an investigation by the director to determine whether the owner, operator, agent or an employee of a business or facility within a redevelopment area is using a prohibited dress code. Based upon its hearings, or those held by its hearing examiners, the commission shall issue such findings as it deems appropriate under the circumstances. If the commission finds that the owner, operator or employee of such a business or facility has used, or is using, a prohibited dress code, and, therefore, has engaged in an unlawful discriminatory practice as defined in Chapter 213, RSMo, or in Section 38-113, the commission shall issue and cause to be served on the owner, operator, agent or employee an order requiring the owner, operator or employee to cease and desist from the use of the prohibited dress code. The order may also require the owner, operator, agent or employee to take further affirmative action or award such relief as in the commission's judgment will implement the purposes of this chapter and of Chapter 213, RSMo, including but not limited to the assessment of civil penalties, making access available to those individuals denied access to the public accommodation because of the use of a prohibited dress code, actual damages, or any other relief that is deemed appropriate and which is consistent with Chapter 213, RSMo, and Chapter 38, Code of Ordinances.

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(p) The commission shall study, advise and make other recommendations for legislation, policies, procedures and practices of the city, other businesses entities, and other public entities as are consistent with the purposes of this chapter.

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Sec. 38-63. Reporting system.

The police department of the city shall develop a system by which the required reporting shall be accomplished. The reporting system shall include monthly distribution of the information collected to the human relations civil rights and equal opportunity department of the city, and to the United States Department of Justice, Community Relations Service, Central Region.

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Sec. 38-65. Incident reports.

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(a) Whenever any police officer has identified a victim of an alleged bias crime or city ordinance violation, the police department of the city shall, to the extent known, supply the name, address and telephone number of the victim to the director of the human relations civil rights and equal opportunity department, acting for the human rights commission, together with other relevant information concerning the victim. Whenever any police officer has identified an incident that does not constitute a crime or city ordinance violation the officer will refer the victim to the human relations civil rights and equal opportunity department. The director of human relations civil rights and equal opportunity shall establish a telephone line for citizens to call to report incidents of possible bias incidents that are not crimes or city ordinance violations.

(b) The purposes of this reporting are to permit the director of human relations civil rights and equal opportunity, or other designated party appointed by the director, acting for the human rights commission, to:

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- (1) Contact the victim for the purpose of offering to help the victim deal with the police department, prosecutors and other interested agencies, and to help secure any other support which may be available to the victim; and
- (2) Determine whether the incident is related to a pattern of discrimination, or if, due to bias-related tensions in the area where the incident occurred, further incidents are likely to occur if remedial action is not taken.

Sec. 38-113. Discriminatory accommodation practices.

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(a) It shall be a discriminatory accommodation practice for any owner, agent or employee of any place of public accommodation, directly or indirectly, to refuse, withhold from or deny to any person any of the accommodations mentioned in this chapter or to discriminate against any person in the furnishing thereof on account of race, religion, color, ancestry, national origin, sex, marital status, familial status, disability, sexual orientation or gender identity of such person, or directly or indirectly to publish, circulate or display any written or printed communication, notice or advertisement to the effect that any of the accommodations or the facilities of such place of public accommodation will be refused, withheld from or denied to any person on account of race,

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religion, color, ancestry, national origin, sex, disability, marital status, familial status, sexual orientation or gender identity, or that, for such reasons, the patronage or custom of any person described in this section is unwelcome or objectionable or not acceptable to such place.

(b) It shall be a discriminatory accommodation practice for any owner, agent, operator or employee of a business or facility within a redevelopment area to use a prohibited dress code as defined in Section 38-1, directly or indirectly, to refuse, withhold from or deny to any person any of the accommodations mentioned in this chapter or to discriminate against any person in the furnishing thereof on account of race, religion, color, ancestry, national origin, sex, marital status, familial status, disability, sexual orientation or gender identity of such person. Any dress code enforced in a redevelopment area or in any establishment with such area must be posted in accordance with the requirements of Section 10-331(d), and must contain the phone number of the city's ~~Human Relations Department~~civil rights and equal opportunity department and a phone number of a representative of the establishment who is available to respond to complaints regarding the enforcement of the dress code during all hours when the establishment is open or such dress code is in effect. Any such dress code shall list all prohibited items of dress. Notwithstanding the foregoing, nothing herein shall be construed as prohibiting:

(1) Any owner or operator of a business or facility within a redevelopment area from establishing an employee dress code or requiring that an employee abide by the employee dress code while at work.

(2) Any owner, agent, operator or employee of a business or facility within a redevelopment area from affirmatively requiring the wearing of specified articles of clothing, which may include collared shirts and ties, sports jackets, business suits, business casual, formal clothing or smart casual clothing in keeping with the ambiance and quality of the particular business or facility and formal footwear, so long as the requirements are enforced with regard to each and every patron, regardless of race, religion, color, ancestry, national origin, sex, marital status, familial status, disability, sexual orientation or gender identity.

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Approved as to form and legality:

Dustin E. Johnson
Assistant City Attorney



Legislation Text

File #: 210282, Version: 1

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Amending Chapter 64, Code of Ordinances, by repealing Section 64-168, Sidewalk café permit, and Section 64-171, Street café permit, and enacting in lieu thereof the same sections of like number and subject matter to provide consistency with other Code provisions in Chapters 10 and 64 and by repealing Section 64-172, Temporary permits for sidewalk cafés, parklets and street cafés.

WHEREAS, in response to the declaration of a state of emergency due to the COVID-19 pandemic, on May 21, 2020, the City Council passed Committee Substitute for Ordinance No. 200376, As Amended, which enacted two new sections in Chapter 64, Code of Ordinances, entitled “Streets, Sidewalks and Public Places,” and Chapter 10, Code of Ordinances, entitled “Alcoholic Beverages,” that authorized the issuance of temporary sidewalk café, parklet and street café permits and the expansion of premises retail sales-by-drink licenses to allow certain existing public parking spaces to be used for temporary dining purposes through December 31, 2020; and WHEREAS, in response to an extension of the state of emergency, on October 22, 2020, the City Council passed Ordinance No. 200892 which extended the temporary program until April 19, 2021; and WHEREAS, the City Council desires that the measures passed during the state of emergency become permanent changes; NOW, THEREFORE:

BE IT ORDAINED BY THE COUNCIL OF KANSAS CITY:

Section 1. That Chapter 64, Code of Ordinances of the City of Kansas City, Missouri, is hereby amended by repealing 64-168, Sidewalk café permit, and enacting in lieu thereof one new section of like number and subject, to read as follows:

Sec. 64-168. Sidewalk café permit.

(a) *Permit authorized.* Unless otherwise authorized under the Code of Ordinances, no person shall place tables or chairs or any other device for the sale or consumption of food or beverage upon any public sidewalk or footway without first obtaining an annual sidewalk café permit. The director is authorized to issue annual sidewalk café permits for the limited purpose of temporarily placing tables and chairs for customers in connection with the sale and consumption of food and beverages in or upon any public sidewalk or footway only if all of the following conditions are met:

- (1) A sidewalk café permit can only be issued for areas in the city zoned for business and for sidewalks that will allow a clear unobstructed passage not less than five feet in width following the placement of the tables and chairs.
- (2) A sidewalk café permit may only be issued for a business that has a nonalcohol city business license or a conventions and tourism food certificate for the sale and consumption of food and beverages on the premises provided that the permit may be issued only if such business is located immediately in front of the sidewalk and the permit shall not be issued for another business, if any, located in the same building.
- (3) A sidewalk café permit issued under this article may not be assigned.
- (4) The sidewalk café permit shall specify the location of the permit area by address.
- (5) The applicant for a sidewalk café permit obtains approval from the board of parks and recreation commissioners if the sidewalk is on a parkway or boulevard under the jurisdiction of that board.
- (6) The applicant for a sidewalk café permit meets all of the other permit requirements contained in the Code of Ordinances, including but not limited to the requirements of chapter 10 of the Code, if applicable and as required.
- (7) The applicant shall properly supervise and maintain the sidewalk café in a clean, orderly, and safe condition and

in such a manner as to protect the public health and safety. The applicant shall prevent the accumulation, blowing and scattering of trash, garbage, or any other such debris caused by use of the sidewalk café and shall maintain its own trash containers upon the parklet for disposal of any debris. All tables, chairs, umbrellas, and any other furnishings utilized in the sidewalk café shall be maintained with a clean and attractive appearance and shall be in good repair at all times.

(8) Sidewalk cafés shall be subject to inspection once installed and at any reasonable time deemed necessary by the director.

(b) *Status of permit.* A sidewalk café permit is a privilege and not a right, and the city shall at all times have the right to restrict the scope, time and manner of the placement of tables and chairs on the sidewalk at any time and for any reason by ordinance or regulation of the director.

(c) *Application for sidewalk café permits.*

(1) All applications for a sidewalk café permit shall be filed with the director in a form approved by the director.

(2) As a condition for the issuance of a sidewalk café permit, the applicant shall furnish to the director an indemnity agreement in the form approved by the director binding the applicant to defend, indemnify, and hold harmless the city and any of its agencies, officials, officers, or employees from and against all claims, damages, liability, losses, costs, and expenses, including reasonable attorneys' fees, arising out of or resulting from any acts or omissions in connection with the operations of the applicant caused in whole or in part by the applicant, its employees, agents, or subcontractors, customers or caused by others for whom the applicant is liable, regardless of whether caused in part by any act or omission of city, its agencies, officials, officers, or employees.

(3) As a condition for the issuance of a sidewalk café permit, the applicant shall furnish the city a certificate of insurance from a company approved by the director of finance evidencing that the applicant has a comprehensive general liability and property damage policy meeting the following conditions:

a. Liability insurance with either a combined single-limit policy of not less than \$2,000,000.00, or a split-limit policy of \$300,000.00/\$300,000.00 bodily injury and \$100,000.00 property damage.

b. The city shall be added as an additional insured to such policy by separate endorsement.

c. The policy shall contain a separate endorsement requiring the insurance company to notify the city in writing of any change in or cancellation of the policy at least ten days prior thereto.

The applicant's failure to obtain or maintain the required insurance in effect for the duration of the permit shall immediately render the permit void. Notwithstanding the foregoing, the applicant shall remain obligated to indemnify and hold harmless the city and any of its agencies, officials, officers, or employees to the full extent required by the indemnity agreement required by this section.

(4) Applicant shall follow design guidelines provided by the director.

(d) *Conduct of sidewalk café permit holder.* A person holding a sidewalk café permit (permittee) shall comply with all of the following conditions in connection with the placement of tables and chairs on a sidewalk:

(1) Sidewalk café permits shall be conspicuously displayed at all times at the business for the permit area and shall be available for inspection by the director, other city employees, and the public.

(2) No street or alley shall be blocked by tables and chairs placed pursuant to a sidewalk café permit issued under this section.

(3) The permittee shall comply with all applicable laws, including the Americans with Disabilities Act ("ADA"). Access to sidewalk cafés, including existing parking spaces, shall be accessible to all and shall comply with ADA requirements per the 2010 US Department of Justice ADA standards and PROWAG guidelines including access up, down and within the area.

(4) Tables and chairs shall be securely placed so that they will not endanger the public, or fall or protrude into any street or alley.

(5) Tables and chairs shall not be placed in a manner that creates or causes a nuisance, a fire hazard, or interferes with ingress to or from any building.

(6) Only tables and chairs for customer use may be placed and allowed to remain within the permit area. The permit area may not be used for the storage of other items.

(7) Tables and chairs shall only be placed in front of the business holding a sidewalk café permit and shall not extend to sidewalks abutting and adjacent to other properties. Notwithstanding the foregoing, the tables and chairs may be placed in front of a property immediately abutting and immediately adjacent to the business holding the sidewalk café permit if the owner of record of the affected property consents in writing in a form approved by the director; a property shall not be deemed to be immediately abutting and immediately adjacent if separated from the business holding the sidewalk café permit by a street or alley.

(8) The tables and chairs shall not be placed in the street.

(9) Tables and chairs for customers shall be placed no less than five feet back from the front of the curb of the abutting street, or other appurtenances.

(e) *Renewal.* Sidewalk café permits shall be granted on an annual basis. All sidewalk café permits may be renewed upon request by the permittee and upon approval by the director 30 days prior to the expiration of the permit. The term for the renewal shall also be one year. Upon a request for renewal, the permittee shall demonstrate that they have adhered to the provisions of this section. The director may inspect the sidewalk café at any time.

(f) *Fees.* The director shall have the authority to set fees to defray the various costs incurred by the city in establishing and regulating sidewalk cafes. Those fees shall include an application fee and an annual license fee. The fees shall be determined annually by the director, and shall be made available to any permittee seeking to establish a sidewalk café.

(g) *Revocation.* Any permit issued hereunder may be suspended or revoked for any reason that would justify a refusal to issue the permit originally or by reason of any failure by the permittee to comply with the provisions of this code, or any condition imposed by the director upon the issuance of the permit. The sidewalk cafe permit may also be suspended if the location of the sidewalk is necessary for city use, including for use by a utility with the right to access the city's right-of-way. Unless there is an emergency as defined by city ordinance or need for access from a utility utilizing city right-of-way, the permittee is entitled to a minimum of one week's advance notice of the city's intent to temporarily suspend, or a minimum of 30 days' advance notice to revoke a sidewalk café permit. The cost of removing the sidewalk café will be borne solely by the permittee. Should the permittee fail to remove the sidewalk café, the director may remove the sidewalk café and assess cost of the removal to the permittee.

(h) *Penalties.* A permittee operating a sidewalk café who violates or fails to comply with any of the provisions of this section shall be subject to a fine of triple the amount of the application fee for every day of non-compliance. Section 2. That Chapter 64, Code of Ordinances of the City of Kansas City, Missouri, is hereby amended by repealing 64-171, Street café permit, and enacting in lieu thereof one new section of like number and subject, to read as follows:

Sec. 64-171. Street café permit.

(a) *Definition.* A street café is defined as an outdoor dining facility located within areas used for on-street parking which is permitted by the city to be utilized by the immediately adjacent property owner or tenant for outdoor dining as an extension of the owner's or tenant's operations.

(b) *Street café permit established.* The director of public works is authorized to issue annual street café permits for the limited purpose of placing tables and chairs for customers in connection with the sale and consumption of food and beverages in or upon any on-street parking spaces. The director shall have the authority to establish reasonable regulations for the issuance, use, revocation, and denial of street café permits. Upon issuance of a street café permit, permittees shall perform all obligations, duties and responsibilities as set forth by the director. Issuance of a street café permit is a privilege and not a right, and the director shall have the right to modify the scope, time and manner of the street café permit for any reason.

When the applicant for a street café permit requests a street café permit adjacent to a parkway or boulevard, the applicant must obtain approval from the board of parks and recreation commissioners. In such circumstances, any authority delegated within this section to the director of public works shall instead be delegated to the director of parks and recreation.

(c) *Permit conditions.* A street café permit may be issued only if all of the following conditions are met:

(1) A street café permit may be issued to any individual, business or organization within on-street parking areas or other unutilized spaces within the public right-of-way immediately adjacent to property owned or leased by the

individual, business or organization.

(2) A street café permit may be issued adjacent to streets or roadways which have a posted speed limit not in excess of 30 miles per hour.

(3) A street café permit can only be issued for areas in the city zoned for business and which allow a clear unobstructed passage not less than five feet in width within the street café following the placement of the tables and chairs in the street café.

(4) A street café permit may only be issued for a business that has a nonalcohol city business license or a conventions and tourism food certificate for the sale and consumption of food and beverages on the premises provided that the permit may be issued only if such business is located immediately in front of the business and the permit shall not be issued for another business, if any, located in the same building.

(5) A street café permit may not be located within parking spaces designated for the exclusive use of vehicles which display a distinguishing license plate or placard issued to physically disabled or handicapped persons.

(6) The applicant for a street café permit must meet all other permit requirements contained in the Code of Ordinances, including but not limited to the requirements of chapter 10 of the Code, if applicable. As a condition for the issuance of a street café permit, the director of neighborhoods and housing services shall attest that the permittee has met any requirements of permits which the permittee holds under chapter 10, if applicable and as required.

(d) *Application for street café permits.*

(1) All applications for a street café permit shall be filed with the director of public works in a form approved by the director. Street café permits may not be transferred or assigned. All applications for a street café permit shall include the following:

a. An indemnity agreement in the form approved by the director binding the applicant to defend, indemnify, and hold harmless the city and any of its agencies, officials, officers, or employees from and against all claims, damages, liability, losses, costs, and expenses, including reasonable attorneys' fees, arising out of or resulting from any acts or omissions in connection with the operations of the applicant caused in whole or in part by the applicant, its employees, agents, or subcontractors, customers or caused by others for whom the applicant is liable, regardless of whether caused in part by any act or omission of city, its agencies, officials, officers, or employees. The permittee shall specifically indemnify and hold harmless the city and any of its agencies, officials, officers, or employees from and against all claims, damages, liability, losses, costs, and expenses, including reasonable attorney's fees, arising out of or resulting from the city's snow removal operations.

b. A certificate of insurance from a company approved by the director of finance evidencing that the applicant has a comprehensive general liability and property damage policy meeting the following conditions:

1. Liability insurance with either a combined single-limit policy of not less than \$2,000,000.00, or a split-limit policy of \$300,000.00/\$300,000.00 bodily injury and \$100,000.00 property damage.

2. The city shall be added as an additional insured to such policy by separate endorsement.

3. The policy shall contain a separate endorsement requiring the insurance company to notify the city in writing of any change in or cancellation of the policy at least ten days prior thereto.

The applicant's failure to obtain or maintain the required insurance in effect for the duration of the permit shall immediately render the permit void. Notwithstanding the foregoing, the applicant shall remain obligated to indemnify and hold harmless the city and any of its agencies, officials, officers, or employees to the full extent required by the indemnity agreement required by this section.

c. A design of the street café which adheres to design guidelines provided by the director of public works which shall be available to any permittee seeking to establish a street café. The applicant shall include a layout, drawn to scale, which accurately depicts the dimensions of the existing area to be utilized as a street café and adjacent private property, the proposed location of the street café, size and number of tables, chairs, steps, planters, and umbrellas, location of doorways, trees, existing parking meters, sidewalk benches, trash receptacles, light poles, and any other sidewalk obstructions, either existing or proposed, within the pedestrian area. This layout shall be submitted on eight and one-half-inch by eleven-inch paper, suitable for reproduction. Also, photographs, drawings, or manufacturer's brochures fully describing the appearance and dimensions of all proposed tables, chairs, weighted umbrellas, free-standing barriers or other objects to be used in the street café.

(e) *Conduct of street café permit holder.* Street café permittees shall comply with all of the following conditions:

- (1) Street cafés must at all times adhere the city's parklet and street café design standards which shall be provided by the director upon request.
 - (2) The permittee shall properly supervise and maintain the street café in a clean, orderly, and safe condition and in such a manner as to protect the public health and safety. The permittee shall prevent the accumulation, blowing, and scattering, of trash, garbage, or any other such debris caused by use of the street café and shall maintain its own trash containers upon the street café for disposal of any debris. All tables, chairs, umbrellas, and any other objects utilized in the street café shall be maintained with a clean and attractive appearance and shall be in good repair at all times.
 - (3) Street café permits shall be conspicuously displayed at all times at the business for the permit area and shall be available for inspection by the director of public works, other city employees, and the public.
 - (4) The permittee shall designate with signage the hours during which the street café is to be operated. At all other times, the street café shall be made available for public use.
 - (5) Permittee shall ensure the street café and its furnishings in no way interfere with pedestrian, bicycle, or automobile traffic within the sidewalk, street, or bicycle facilities including the parking of vehicles in adjacent parking spaces.
 - (6) No smoking shall be allowed in the street café. Alcohol or liquor shall not be consumed within the street café without proper licensure. The hours of outdoor liquor sales shall be allowed as authorized in chapter 10 of the Code.
 - (7) Permittee shall not erect, attach, or affix any permanent fixture upon the public right-of-way, even within the street café.
 - (8) No furnishings or any parts of the street café shall be attached, chained, or in any manner affixed to any tree, post, signs, sidewalk, streetlight, fire hydrant, or other public fixture within or near the street café.
 - (9) The permittee shall not be permitted to use or operate any public address system, or amplified music before 9:00 a.m. and after 10:00 p.m.
 - (10) The permittee shall comply with all applicable laws, including the Americans with Disabilities Act.
 - (11) The permit area may not be used for the storage of any items other than seating, landscaping, signs, or lighting.
 - (12) The street café and any furnishings shall only be placed in front of the business holding a street café permit and shall not extend to public right-of-way abutting and adjacent to other properties. Notwithstanding the foregoing, the street café and its furnishings may be placed in front of a property immediately abutting and immediately adjacent to the business holding the street café permit if the owner of record of the affected property consents in writing in a form approved by the director of public works; a property shall not be deemed to be immediately abutting and immediately adjacent if separated from the business holding the street café permit by a street or alley.
- (f) *Renewal.* Street café permits shall be granted on an annual basis. All street café permits may be renewed upon request by the permittee and upon approval by the director 30 days prior to the expiration of the permit. The term for the renewal shall also be one year. Upon a request for renewal, the permittee shall demonstrate that they have adhered to the provisions of this section as well as the city's parklet and street café design standards. The director may inspect the street café at any time.
- (g) *Fees.* The director shall have the authority to set fees to defray the various costs incurred by the city in establishing and regulating street cafes, including loss of value to the city in utilizing such spaces for no-street parking. Those fees shall include an application fee and an annual license fee. The fees shall be determined annually by the director, and shall be made available to any permittee seeking to establish a street café.
- (h) *Revocation.* Any permit issued hereunder may be suspended or revoked for any reason that would justify a refusal to issue the permit originally or by reason of any failure by the permittee to comply with the provisions of this code, or any condition imposed by the director upon the issuance of the permit. The street café permit may also be suspended if the location of the street café is necessary for city use, including for use by a utility with the right to access the city's right-of-way. Unless there is an emergency which threatens the health and safety of city residents and visitors, or a need for access from a utility utilizing city right-of-way, the permittee is entitled to a minimum of one week's advance notice of the city's intent to temporarily suspend, or a minimum of 30 days' advance notice to revoke a street café permit. The cost of removing the street café will be borne solely by the permittee. No advance warning is required in the case of an emergency which threatens the health and safety of city residents and visitors

or a need for access from a utility. Should the permittee fail to remove the street café, the director of public works may remove the street café and assess cost of the removal to the permittee.

(i) *Penalties.* A permittee operating a street café who violates or fails to comply with any of the provisions of this section shall be subject to a fine of triple the amount of the application fee for every day of non-compliance.

Section 3. That Chapter 64, Code of Ordinances of the City of Kansas City, Missouri, is hereby amended by repealing Section 64-172, Temporary permits for sidewalk cafés, parklets and street cafés.

Approved as to form and legality:

Nicole Rowlette
Assistant City Attorney

**No Fact Sheet
for
Ordinance
No. 210282**

COMPARED VERSION
NEW ORDINANCE TO CODE BOOKS

ORDINANCE NO. 210282

Amending Chapter 64, Code of Ordinances, by repealing Section 64-168, Sidewalk café permit, and Section 64-171, Street café permit, and enacting in lieu thereof the same sections of like number and subject matter to provide consistency with other Code provisions in Chapters 10 and 64 and by repealing Section 64-172, Temporary permits for sidewalk cafés, parklets and street cafés.

WHEREAS, in response to the declaration of a state of emergency due to the COVID-19 pandemic, on May 21, 2020, the City Council passed Committee Substitute for Ordinance No. 200376, As Amended, which enacted two new sections in Chapter 64, Code of Ordinances, entitled “Streets, Sidewalks and Public Places,” and Chapter 10, Code of Ordinances, entitled “Alcoholic Beverages,” that authorized the issuance of temporary sidewalk café, parklet and street café permits and the expansion of premises retail sales-by-drink licenses to allow certain existing public parking spaces to be used for temporary dining purposes through December 31, 2020; and

WHEREAS, in response to an extension of the state of emergency, on October 22, 2020, the City Council passed Ordinance No. 200892 which extended the temporary program until April 19, 2021; and

WHEREAS, the City Council desires that the measures passed during the state of emergency become permanent changes; NOW, THEREFORE:

BE IT ORDAINED BY THE COUNCIL OF KANSAS CITY:

Section 1. That Chapter 64, Code of Ordinances of the City of Kansas City, Missouri, is hereby amended by repealing 64-168, Sidewalk café permit, and enacting in lieu thereof one new section of like number and subject, to read as follows:

Sec. 64-168. Sidewalk café permit.

(a) *Permit authorized.* Unless otherwise authorized under the Code of Ordinances, no person shall place tables or chairs or any other device for the sale or consumption of food or beverage upon any public sidewalk or footway without first obtaining an annual sidewalk café permit. The director is authorized to issue annual sidewalk café permits for the limited purpose of temporarily placing tables and chairs for customers in connection with the sale and consumption of food and beverages in or upon any public sidewalk or footway only if all of the following conditions are met:

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- (1) A sidewalk café permit can only be issued for areas in the city zoned for business and for sidewalks that will allow a clear unobstructed passage not less than five feet in width following the placement of the tables and chairs.
- (2) A sidewalk café permit may only be issued for a business that has a nonalcohol city business license or a conventions and tourism food certificate for the sale and consumption of food and beverages on the premises provided that the permit may be issued only if such business is located immediately in front of the sidewalk and the permit shall not be issued for another business, if any, located in the same building.
- (3) A sidewalk café permit issued under this article may not be assigned.
- (4) The sidewalk café permit shall specify the location of the permit area by address.
- (5) The applicant for a sidewalk café permit obtains approval from the board of parks and recreation commissioners if the sidewalk is on a parkway or boulevard under the jurisdiction of that board.
- (6) The applicant for a sidewalk café permit meets all of the other permit requirements contained in the Code of Ordinances, including but not limited to the requirements of chapter 10 of the Code, if applicable and as required.

(7) The applicant shall properly supervise and maintain the sidewalk café in a clean, orderly, and safe condition and in such a manner as to protect the public health and safety. The applicant shall prevent the accumulation, blowing and scattering of trash, garbage, or any other such debris caused by use of the sidewalk café and shall maintain its own trash containers upon the parklet for disposal of any debris. All tables, chairs, umbrellas, and any other furnishings utilized in the sidewalk café shall be maintained with a clean and attractive appearance and shall be in good repair at all times.

(8) Sidewalk cafés shall be subject to inspection once installed and at any reasonable

(b) *Status of permit.* A sidewalk café permit is a privilege and not a right, and the city shall at all times have the right to restrict the scope, time and manner of the placement of tables and chairs on the sidewalk at any time and for any reason by ordinance or regulation of the director.

(c) *Application for sidewalk café permits.*

- (1) All applications for a sidewalk café permit shall be filed with the director in a form approved by the director.

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- (2) As a condition for the issuance of a sidewalk café permit, the applicant shall furnish to the director an indemnity agreement in the form approved by the director binding the applicant to defend, indemnify, and hold harmless the city and any of its agencies, officials, officers, or employees from and against all claims, damages, liability, losses, costs, and expenses, including reasonable attorneys' fees, arising out of or resulting from any acts or omissions in connection with the operations of the applicant caused in whole or in part by the applicant, its employees, agents, or subcontractors, customers or caused by others for whom the applicant is liable, regardless of whether caused in part by any act or omission of city, its agencies, officials, officers, or employees.
- (3) As a condition for the issuance of a sidewalk café permit, the applicant shall furnish the city a certificate of insurance from a company approved by the director of finance evidencing that the applicant has a comprehensive general liability and property damage policy meeting the following conditions:
 - a. Liability insurance with either a combined single-limit policy of not less than \$2,000,000.00, or a split-limit policy of \$300,000.00/\$300,000.00 bodily injury and \$100,000.00 property damage.
 - b. The city shall be added as an additional insured to such policy by separate endorsement.
 - c. The policy shall contain a separate endorsement requiring the insurance company to notify the city in writing of any change in or cancellation of the policy at least ten days prior thereto.

The applicant's failure to obtain or maintain the required insurance in effect for the duration of the permit shall immediately render the permit void. Notwithstanding the foregoing, the applicant shall remain obligated to indemnify and hold harmless the city and any of its agencies, officials, officers, or employees to the full extent required by the indemnity agreement required by this section.

(4) Applicant shall follow design guidelines provided by the director.

(d) *Conduct of sidewalk café permit holder.* A person holding a sidewalk café permit (permittee) shall comply with all of the following conditions in connection with the placement of tables and chairs on a sidewalk:

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- (1) Sidewalk café permits shall be conspicuously displayed at all times at the business for the permit area and shall be available for inspection by the director, other city employees, and the public.
- (2) No street or alley shall be blocked by tables and chairs placed pursuant to a sidewalk café permit issued under this section.
- (3) The permittee shall comply with all applicable laws, including the Americans with Disabilities Act (“ADA”). Access to sidewalk cafés, including existing parking spaces, shall be accessible to all and shall comply with ADA requirements per the 2010 US Department of Justice ADA standards and PROWAG guidelines including access up, down and within the area.
- (4) Tables and chairs shall be securely placed so that they will not endanger the public, or fall or protrude into any street or alley.
- (5) Tables and chairs shall not be placed in a manner that creates or causes a nuisance, a fire hazard, or interferes with ingress to or from any building.
- (6) Only tables and chairs for customer use may be placed and allowed to remain within the permit area. The permit area may not be used for the storage of other items.
- (7) Tables and chairs shall only be placed in front of the business holding a sidewalk café permit and shall not extend to sidewalks abutting and adjacent to other properties. Notwithstanding the foregoing, the tables and chairs may be placed in front of a property immediately abutting and immediately adjacent to the business holding the sidewalk café permit if the owner of record of the affected property consents in writing in a form approved by the director; a property shall not be deemed to be immediately abutting and immediately adjacent if separated from the business holding the sidewalk café permit by a street or alley.
- (8) The tables and chairs shall not be placed in the street.
- (9) Tables and chairs for customers shall be placed no less than five feet back from the front of the curb of the abutting street, or other appurtenances.

(e) *Renewal.* Sidewalk café permits shall be granted on an annual basis. All sidewalk café permits may be renewed upon request by the permittee and upon approval by the director 30 days prior to the expiration of the permit. The term for the renewal shall also be one year. Upon a request for renewal, the permittee shall demonstrate that they have adhered to the provisions of this section. The director may inspect the sidewalk café at any time.

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(f) *Fees.* The director shall have the authority to set fees to defray the various costs incurred by the city in establishing and regulating sidewalk cafes. Those fees shall include an application fee and an annual license fee. The fees shall be determined annually by the director, and shall be made available to any permittee seeking to establish a sidewalk café.

(g) *Revocation.* Any permit issued hereunder may be suspended or revoked for any reason that would justify a refusal to issue the permit originally or by reason of any failure by the permittee to comply with the provisions of this code, or any condition imposed by the director upon the issuance of the permit. The sidewalk cafe permit may also be suspended if the location of the sidewalk is necessary for city use, including for use by a utility with the right to access the city's right-of-way. Unless there is an emergency as defined by city ordinance or need for access from a utility utilizing city right-of-way, the permittee is entitled to a minimum of one week's advance notice of the city's intent to temporarily suspend, or a minimum of 30 days' advance notice to revoke a sidewalk café permit. The cost of removing the sidewalk café will be borne solely by the permittee. Should the permittee fail to remove the sidewalk café, the director may remove the sidewalk café and assess cost of the removal to the permittee.

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(h) *Penalties.* A permittee operating a sidewalk café who violates or fails to comply with any of the provisions of this section shall be subject to a fine of triple the amount of the application fee for every day of non-compliance.

Section 2. That Chapter 64, Code of Ordinances of the City of Kansas City, Missouri, is hereby amended by repealing 64-171, Street café permit, and enacting in lieu thereof one new section of like number and subject, to read as follows:

Sec. 64-171. Street café permit.

(a) *Definition.* A street café is defined as an outdoor dining facility located within areas used for on-street parking which is permitted by the city to be utilized by the immediately adjacent property owner or tenant for outdoor dining as an extension of the owner's or tenant's operations.

(b) *Street café permit established.* The director of public works is authorized to issue annual street café permits for the limited purpose of placing tables and chairs for customers in connection with the sale and consumption of food and beverages in or upon any on-street parking spaces. The director shall have the authority to establish reasonable regulations for the issuance, use, revocation, and denial of street café permits. Upon issuance of a street café permit, permittees shall perform all obligations, duties and responsibilities as set forth by the director. Issuance of a street café permit is a privilege and not a right, and the director shall have the right to modify the scope, time and manner of the street café permit for any reason.

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When the applicant for a street café permit requests a street café permit adjacent to a parkway or boulevard, the applicant must obtain approval from the board of parks and recreation commissioners. In such circumstances, any authority delegated within this

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section to the director of public works shall instead be delegated to the director of parks and recreation.

(c) *Permit conditions.* A street café permit may be issued only if all of the following conditions are met:

- (1) A street café permit may be issued to any individual, business or organization within on-street parking areas or other unutilized spaces within the public right-of-way immediately adjacent to property owned or leased by the individual, business or organization.
- (2) A street café permit may be issued adjacent to streets or roadways which have a posted speed limit not in excess of 30 miles per hour.
- (3) A street café permit can only be issued for areas in the city zoned for business and which allow a clear unobstructed passage not less than five feet in width within the street café following the placement of the tables and chairs in the street café.
- (4) A street café permit may only be issued for a business that has a nonalcohol city business license or a conventions and tourism food certificate for the sale and consumption of food and beverages on the premises provided that the permit may be issued only if such business is located immediately in front of the business and the permit shall not be issued for another business, if any, located in the same building.
- (5) A street café permit may not be located within parking spaces designated for the exclusive use of vehicles which display a distinguishing license plate or placard issued to physically disabled or handicapped persons. ▲
- (6) The applicant for a street café permit must meet all other permit requirements contained in the Code of Ordinances, including but not limited to the requirements of chapter 10 of the Code, if applicable. As a condition for the issuance of a street café permit, the director of neighborhoods and housing services shall attest that the permittee has met any requirements of permits which the permittee holds under chapter 10, if applicable and as required.

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(d) *Application for street café permits.*

- (1) All applications for a street café permit shall be filed with the director of public works in a form approved by the director. Street café permits may not be transferred or assigned. All applications for a street café permit shall include the following:
 - a. An indemnity agreement in the form approved by the director binding the applicant to defend, indemnify, and hold harmless the

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city and any of its agencies, officials, officers, or employees from and against all claims, damages, liability, losses, costs, and expenses, including reasonable attorneys' fees, arising out of or resulting from any acts or omissions in connection with the operations of the applicant caused in whole or in part by the applicant, its employees, agents, or subcontractors, customers or caused by others for whom the applicant is liable, regardless of whether caused in part by any act or omission of city, its agencies, officials, officers, or employees. The permittee shall specifically indemnify and hold harmless the city and any of its agencies, officials, officers, or employees from and against all claims, damages, liability, losses, costs, and expenses, including reasonable attorney's fees, arising out of or resulting from the city's snow removal operations.

- b. A certificate of insurance from a company approved by the director of finance evidencing that the applicant has a comprehensive general liability and property damage policy meeting the following conditions:
1. Liability insurance with either a combined single-limit policy of not less than \$2,000,000.00, or a split-limit policy of \$300,000.00/\$300,000.00 bodily injury and \$100,000.00 property damage.
 2. The city shall be added as an additional insured to such policy by separate endorsement.
 3. The policy shall contain a separate endorsement requiring the insurance company to notify the city in writing of any change in or cancellation of the policy at least ten days prior thereto.

The applicant's failure to obtain or maintain the required insurance in effect for the duration of the permit shall immediately render the permit void. Notwithstanding the foregoing, the applicant shall remain obligated to indemnify and hold harmless the city and any of its agencies, officials, officers, or employees to the full extent required by the indemnity agreement required by this section.

- c. A design of the street café which adheres to design guidelines provided by the director of public works which shall be available to any permittee seeking to establish a street café. The applicant shall include a layout, drawn to scale, which accurately depicts the dimensions of the existing area to be utilized as a street café and adjacent private property, the proposed location of the street café,

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size and number of tables, chairs, steps, planters, and umbrellas, location of doorways, trees, existing parking meters, sidewalk benches, trash receptacles, light poles, and any other sidewalk obstructions, either existing or proposed, within the pedestrian area. This layout shall be submitted on eight and one-half-inch by eleven-inch paper, suitable for reproduction. Also, photographs, drawings, or manufacturer's brochures fully describing the appearance and dimensions of all proposed tables, chairs, weighted umbrellas, free-standing barriers or other objects to be used in the street café.

(e) *Conduct of street café permit holder.* Street café permittees shall comply with all of the following conditions:

- (1) Street cafés must at all times adhere the city's parklet and street café design standards which shall be provided by the director upon request.
- (2) The permittee shall properly supervise and maintain the street café in a clean, orderly, and safe condition and in such a manner as to protect the public health and safety. The permittee shall prevent the accumulation, blowing, and scattering, of trash, garbage, or any other such debris caused by use of the street café and shall maintain its own trash containers upon the street café for disposal of any debris. All tables, chairs, umbrellas, and any other objects utilized in the street café shall be maintained with a clean and attractive appearance and shall be in good repair at all times.
- (3) Street café permits shall be conspicuously displayed at all times at the business for the permit area and shall be available for inspection by the director of public works, other city employees, and the public.
- (4) The permittee shall designate with signage the hours during which the street café is to be operated. At all other times, the street café shall be made available for public use.
- (5) Permittee shall ensure the street café and its furnishings in no way interfere with pedestrian, bicycle, or automobile traffic within the sidewalk, street, or bicycle facilities including the parking of vehicles in adjacent parking spaces.
- (6) No smoking shall be allowed in the street café. Alcohol or liquor shall not be consumed within the street café without proper licensure. The hours of outdoor liquor sales shall be allowed as authorized in chapter 10 of the Code.
- (7) Permittee shall not erect, attach, or affix any permanent fixture upon the public right-of-way, even within the street café.

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- (8) No furnishings or any parts of the street café shall be attached, chained, or in any manner affixed to any tree, post, signs, sidewalk, streetlight, fire hydrant, or other public fixture within or near the street café.
- (9) The permittee shall not be permitted to use or operate any public address system, or amplified music before 9:00 a.m. and after 10:00 p.m.
- (10) The permittee shall comply with all applicable laws, including the Americans with Disabilities Act.
- (11) The permit area may not be used for the storage of any items other than seating, landscaping, signs, or lighting.
- (12) The street café and any furnishings shall only be placed in front of the business holding a street café permit and shall not extend to public right-of-way abutting and adjacent to other properties. Notwithstanding the foregoing, the street café and its furnishings may be placed in front of a property immediately abutting and immediately adjacent to the business holding the street café permit if the owner of record of the affected property consents in writing in a form approved by the director of public works; a property shall not be deemed to be immediately abutting and immediately adjacent if separated from the business holding the street café permit by a street or alley.

(f) *Renewal.* Street café permits shall be granted on an annual basis. All street café permits may be renewed upon request by the permittee and upon approval by the director 30 days prior to the expiration of the permit. The term for the renewal shall also be one year. Upon a request for renewal, the permittee shall demonstrate that they have adhered to the provisions of this section as well as the city's parklet and street café design standards. The director may inspect the street café at any time.

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(g) *Fees.* The director shall have the authority to set fees to defray the various costs incurred by the city in establishing and regulating street cafes, including loss of value to the city in utilizing such spaces for no-street parking. Those fees shall include an application fee and an annual license fee. The fees shall be determined annually by the director, and shall be made available to any permittee seeking to establish a street café.

(h) *Revocation.* Any permit issued hereunder may be suspended or revoked for any reason that would justify a refusal to issue the permit originally or by reason of any failure by the permittee to comply with the provisions of this code, or any condition imposed by the director upon the issuance of the permit. The street café permit may also be suspended if the location of the street café is necessary for city use, including for use by a utility with the right to access the city's right-of-way. Unless there is an emergency which threatens the health and safety of city residents and visitors, or a need for access from a utility utilizing city right-of-way, the permittee is entitled to a minimum of one week's advance notice of the city's intent to temporarily suspend, or a minimum of 30 days' advance notice to revoke a street café permit. The cost of

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removing the street café will be borne solely by the permittee. No advance warning is required in the case of an emergency which threatens the health and safety of city residents and visitors or a need for access from a utility. Should the permittee fail to remove the street café, the director of public works may remove the street café and assess cost of the removal to the permittee.

(i) *Penalties.* A permittee operating a street café who violates or fails to comply with any of the provisions of this section shall be subject to a fine of triple the amount of the application fee for every day of non-compliance.

Section 3. That Chapter 64, Code of Ordinances of the City of Kansas City, Missouri, is hereby amended by repealing Section 64-172, Temporary permits for sidewalk cafés, parklets and street cafés.

Approved as to form and legality:

Nicole Rowlette
Assistant City Attorney