

1 **BOARD BILL NO. 270CS INTRODUCED BY ALDERMAN JEFFREY BOYD**
2 **KENENDY/MIDDLEBROOK/BOSLEY/MOORE/HUBBARD/DAVIS/MUHAMMAD/**
3 **WILLIAMSON/P. BOYD**

4
5 An ordinance approving a Minority and Women-Owned Business Enterprise Program for
6 the City of St. Louis; authorizing certain other actions; amending Ordinance 69427 pertaining to
7 workforce inclusion by amending Sections Three, Four, Five, and Ten of said ordinance, which
8 are codified as Sections 3.110.020, 3.110.030, 3.110.040, and 3.110.090 of the Revised Code of
9 the City of St. Louis, to increase percentage goals for minority, women, and city residents, and to
10 put in place a mandatory one-year disqualification penalty and liquidated damages for developers
11 and contractors who fail to meet the goals; and containing a severability clause.

12 **WHEREAS**, the City of St. Louis Minority and Women-Owned Business Enterprise
13 (M/WBE) Program was initially authorized under Executive Order 28 by Mayor Clarence Harmon
14 on July 24, 1997; and

15 **WHEREAS**, under Executive Order 28, the City of St. Louis determined that it had ample
16 evidence of discrimination against M/WBEs within the City and sought to rectify the under-
17 utilization through separate goals for M/WBEs; and

18 **WHEREAS**, Francis G. Slay, Mayor and Chief Executive Officer of the City of St. Louis,
19 through Executive Order 28 authorized the operation of the M/WBE Program until April 30, 2017;
20 and

21 **WHEREAS**, Mayor Lyda Krewson, through Executive Order 59, further extended and
22 authorized the operation of the M/WBE Program; and

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1 **WHEREAS**, the Supreme Court of the United States, in *City of Richmond v. J.A. Croson*
2 *Co. (Croson)* 488 U.S. 469 (1989), requires local governments to make an empirical assessment
3 to determine whether past discriminatory practices have contributed to the underutilization of
4 M/WBEs in the provision of goods and services; and

5 **WHEREAS**, on March 23, 2015, the City of St. Louis commissioned Mason Tillman
6 Associates, Ltd. to conduct a Disparity Study to determine whether M/WBEs are utilized on the
7 City's prime and subcontracts at the level that they are available in the City and County of St.
8 Louis; and

9 **WHEREAS**, the 2015 Disparity Study conforms to the legal tenets set forth in *Croson* and
10 its progeny, identifies any barriers to economic development and parity for M/WBEs, and
11 addresses any such barriers; and

12 **WHEREAS**, the 2015 Disparity Study was completed in May 2015 and the findings were
13 presented to the City in September 2015; and

14 **WHEREAS**, the 2015 Disparity Study revealed disparity for African American, Hispanic
15 American, and Women-Owned Business Enterprise construction prime contractors; African
16 American, Asian American, Hispanic American, and Women-Owned Business Enterprise
17 professional services prime contractors; and African American, Asian American, and Women-
18 Owned Business Enterprise goods and other services prime contractors; and

19 **WHEREAS**, the 2015 Disparity Study revealed disparity for African American, Hispanic
20 American, and Women-Owned Business Enterprise construction subcontractors; and

21 **WHEREAS**, the City of St. Louis is committed to using its spending powers in a manner
22 that eliminates the disparity documented in the 2015 Disparity Study; and

1 **WHEREAS**, the City of St. Louis is committed to ensuring that all St. Louis citizens
2 participate in its economic growth and development and that no citizen be denied an opportunity
3 to participate in the procurement of goods and services due to race, sex, or gender discrimination.

4 **BE IT ORDAINED BY THE CITY OF ST. LOUIS AS FOLLOWS:**

5 **SECTION 1. MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISE**
6 **PROGRAM.**

7 **i. Minority and Women-Owned Business Enterprise Program Established.** A
8 City of St. Louis Minority and Women–Owned Business Enterprise (M/WBE) Program is
9 established by adoption of this ordinance.

10 **ii. Management, Monitoring and Annual Report.** St. Louis Development
11 Corporation (SLDC) shall manage and monitor the certification and utilization of M/WBEs by the
12 City of St. Louis and its prime contractors. Specifically, SLDC shall: (1) adopt rules and
13 procedures to implement the M/WBE Program; (2) create, maintain, and distribute the directory
14 of certified M/WBEs; (3) provide information and assistance to M/WBEs to increase their ability
15 to effectively compete for City of St. Louis contracts; City should maintain a centralized website
16 that lists all procurement opportunities (4) annually review the progress of each agency,
17 department, and the corporation’s achievement of the M/WBE goals; each agency shall have a
18 procurement officer or designee who shall be the point of contact for monitoring and reporting
19 MWBE compliance for the agency (5) ensure that solicitations issued by the City of St. Louis
20 adhere to the M/WBE procurement procedures contained herein; (6) monitor M/WBE goals
21 throughout the duration of the contract; and (7) present an annual report by January 31 of each
22 year to the Mayor and the Board of Aldermen and hold a public forum no later than February 28
23 of each year detailing the participation of M/WBEs on the City of St. Louis contracts.

1 **iii. Delegation of Duties.** SLDC may delegate all or a part of the duties of certification
2 and compliance of the M/WBE Program.

3 **SECTION 2. DEFINITIONS.**

4 When used in Sections 2 through 8 of this Ordinance:

5 **M/WBE** shall mean Minority and Women-Owned Business Enterprise.

6 **Award** shall mean the selection of a vendor for a contract or subcontract for a specific
7 dollar amount. Contract awards are made by the City of St. Louis, acting through its Board of
8 Public Service (BPS) and as made through the Supply Division, to a prime contractor and by a
9 prime contractor to a subcontractor.

10 **Bid** shall mean a bidder’s response to a solicitation for bids, proposals, or statements of
11 qualifications for a project that is at least partially funded by the City of St. Louis, but does not
12 include state or federally-funded projects which have requirements that preempt the local M/WBE
13 Program.

14 **Bidder** shall mean any individual, company, or association responding to a City of St.
15 Louis and its associated entities solicitation.

16 **Board Letting** shall mean the process by which all public work, except emergency work
17 or repairs requiring prompt attention, shall be let by the Board of Public Service in compliance
18 with Article XXII of the City Charter of the City of St. Louis.

19 **Commercially-useful function** shall mean a subcontract fulfilled by a bidder responsible
20 for the materials, supplies, and services used in the performance of the contract. To determine
21 whether a subcontractor is performing a commercially-useful function, the amount of work
22 subcontracted shall be evaluated with respect to normal industry practices, including whether the
23 amount the subcontractor is to be paid under the contract is commensurate with the work it is to

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1 perform. The subcontractor does not perform a commercially-useful function if its role is limited
2 to an extra participant in a contract through which funds are passed in order to convey only the
3 appearance of meaningful and useful subcontractor participation.

4 **Contract** shall mean a mutually-binding legal relationship or any modification thereof
5 obligating the vendor to furnish construction, professional services, and/or goods and other
6 services and the City of St. Louis to pay for them.

7 **Formal procurement** shall mean a competitive solicitation method by which bidders are
8 invited by the City of St. Louis to bid through a published advertisement stating the scope,
9 specifications, and terms of the proposed contract.

10 **Good Faith Effort** shall mean all actions taken by a bidder or prime contractor consistent
11 with the requirements, rules and procedures established by SLDC to engage M/WBEs toward
12 meeting the goals for minority and women business enterprise utilization.

13 **Informal procurement** shall mean a solicitation method by which competition is not
14 required or an emergency work award is required, and the City of St. Louis is permitted to solicit
15 bids directly from bidders. The City shall make all efforts to include M/WBEs in such informal
16 procurements and ensure that M/WBEs are given fair and ample opportunity to participate.

17 **M/WBE Utilization Plan** shall mean the form detailing the goods and services to be
18 provided to the prime contractor by each M/WBE listed to meet the M/WBE goals. The M/WBE
19 Utilization Plan must be provided at bid opening by each bidder and include the name(s) of all
20 M/WBE subcontractors to be utilized in the contract, certification information, the items of work
21 to be performed, and their percentage of the bid amount.

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1 **Minority and women-owned business enterprise availability** shall mean the number of
2 businesses located in the St. Louis Metropolitan Area that are willing and able to provide the goods
3 and services being procured by the City of St. Louis.

4 **Notice of intent to perform a subcontract** shall mean the form the bidder is required to
5 submit to the City at the time of bid opening signed by each subcontractor listed in the M/WBE
6 Utilization Plan. Failure to include a completed Notice of Intent form signed by each subcontractor
7 will be sufficient cause to reject a bid as non-responsive.

8 **Prime contractor** shall mean the individual or business that has an agreement with the
9 City of St. Louis and that has the full responsibility for completing the terms of the agreement.

10 **Subcontractor** shall mean an individual or business that has a contract to perform a service
11 or provide materials, equipment, or supplies as a part of the scope of work set forth in a prime
12 contract with the City of St. Louis.

13 **User Department** shall mean the department that develops the requisitions for the City of
14 St. Louis.

15 **SECTION 3. STATEMENT OF POLICY.**

16 **i. Commitment.** The City of St. Louis is committed to promoting fair and open
17 competition for M/WBEs seeking to do business with the City of St. Louis. The City of St. Louis
18 shall ensure that prime contractors do not discriminate in their solicitation, selection, or treatment
19 of subcontractors. Therefore, the M/WBE Program shall have the resources necessary for the
20 effective implementation of the M/WBE Policy and the components contained within the M/WBE
21 Program. The M/WBE Program and related responsibilities shall be communicated to the City of
22 St. Louis' internal and external stakeholders.

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1 **ii. Policy Implementation.** The M/WBE Program shall be adopted to implement the
2 City of St. Louis' M/WBE Policy. The City of St. Louis shall take all necessary, reasonable, and
3 legal action to alleviate documented disparity and ensure that all businesses are afforded the
4 maximum opportunity for participation in the City's contracting. The M/WBE Program shall
5 ensure that the City of St. Louis contracts are awarded in a manner that promotes economic
6 inclusion of all segments of the business population, regardless of race, sex, or gender, to maximize
7 the economic vitality and development of the City of St. Louis.

8 **iii. Goals.** The City of St. Louis has established project goals to ensure that M/WBE
9 utilization on its construction, professional services, and goods and other services contracts reflects
10 the level of M/WBE availability. The project goals are based on the findings of statistically
11 significant disparity from the 2015 Disparity Study.

12 The 2015 Disparity Study documented a statistically significant disparity in the City of St.
13 Louis' award of construction prime contracts to African American, Hispanic American, and
14 Women-owned businesses. In addition, African American, Asian American, Hispanic American,
15 and Women-owned businesses were found to have a statistical disparity in the City of St. Louis'
16 award of professional services prime contracts. The study also documented a statistical disparity
17 in the City of St. Louis' award of goods and other services prime contracts to African American,
18 Asian American, and Women-owned businesses. **In addition, the study documented a certain**
19 **availability and disparity for Asian Americans and Native Americans.**

20 Furthermore, the 2015 Disparity Study documented a statistical disparity in the award of
21 construction subcontracts to African American, Hispanic American, and Women-owned
22 businesses by the City of St. Louis' prime contractors. There were insufficient contract records

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1 available to calculate disparity for professional services subcontracts. Based upon the 2015
2 Disparity Study the following shall be implemented:

3 **a.** Complete prime and all subcontract records will be collected for a 12-month
4 period and a disparity study update for professional services subcontracts will be performed within
5 six (6) months of effective date of this ordinance.

6 **b.** The project goal shall be applied to solicitations for construction bids. The
7 construction project goal is the goal that shall be met by utilization of African American, Hispanic
8 American, **Asian American, Native American** and Women-owned construction subcontractors.

9 **c.** Based on availability, the construction project goal shall be 21% for African
10 American-owned business enterprises, 2% for Hispanic American-owned business enterprises,
11 **.50% for Asian American-owned business enterprises, .50% for Native American-owned**
12 **business enterprises** and 11% for Women-owned business enterprises.

13 **d.** Proof of project goal attainment shall be submitted at the time of bid
14 opening and documented on the M/WBE Utilization Plan. If a bidder fails to meet the solicitation's
15 construction project goals, the bidder can provide evidence of a good faith effort to meet the goal.
16 A bid that does not meet the subcontract goals or evidence a good faith effort shall be deemed
17 non-responsive and therefore ineligible for award. The M/WBE Utilization Plan shall be submitted
18 at the time of bid opening or board letting, as applicable, for project goal compliance, verification
19 of subcontractor certification, and evidence that the subcontractor shall perform a commercially
20 useful function.

21 **e.** Good faith effort elements are evaluated to determine whether a bidder has
22 provided evidence of a good faith effort to meet the M/WBE subcontract goals. In order to be
23 considered a responsive bid, the bidder must demonstrate a sufficient good faith effort.

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1 **f.** M/WBE prime contract bid discount shall be applied to construction and
2 goods and other services prime contracts on contracts of \$300,000 or less. A five percent (5%)
3 bid discount on construction prime contracts shall be applied to African American, Hispanic
4 American, **Asian American, Native American**, and Women-Owned Business Enterprise bidders.
5 A five percent (5%) bid discount on goods and services prime contracts shall be applied to African
6 American, Asian American, **Native American** and Women-owned Business Enterprise bidders.
7 The bid discount shall be applied during the evaluation process. It shall lower the eligible
8 M/WBE's bid but shall not reduce the contract award amount. The solicitation shall describe the
9 bid discount as applied to eligible M/WBE prime contractors in the two industries. In order to
10 qualify for the bid discount, the eligible M/WBE bidder shall include in its bid a copy of the current
11 M/WBE certification approval letter issued by the M/WBE Program.

12 **g.** M/WBE incentive credits shall be applied to the evaluation of professional
13 service prime contracts, but may not include state or federally-funded projects which have
14 requirements that preempt the local M/WBE Program. A fifteen percent (15%) incentive credit as
15 part of the total points evaluated on professional service prime contracts shall be applied to African
16 American, Asian American, **Native American**, Hispanic American, and Women-owned Business
17 Enterprises. The incentive credit shall be applied during the evaluation process. In order to qualify
18 for the incentive credit, the M/WBE prime contractor must include a copy of the current M/WBE
19 certification approval letter issued by the M/WBE Program. The solicitation shall describe the
20 incentive credit as applied to eligible M/WBE prime contractors. In order to qualify for the
21 incentive credit, the M/WBE prime contractor must include in its proposal or statement of
22 qualifications a copy of the M/WBE certification approval letter issued by the M/WBE Program.

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1 h. Notwithstanding any other provision of this ordinance, the 2015 Disparity
2 Study will be updated two years from the effective date of this ordinance.

3 iv. **Training.** To increase the availability of African American, Hispanic
4 American, Asian American, Native American and Women-owned businesses in the City's
5 M/WBE certification pool, the City shall consider:

6 a. Increased M/WBE certification assistance to include training, technical
7 assistance and support services to help start-ups in such areas as:

- 8 1. Basic business management skills;
- 9 2. Marketing Plans;
- 10 3. Business financing resources;
- 11 4. Assistance in completing the City's M/WBE certification
12 application;
- 13 5. *How to Do Business with the City* seminars;
- 14 6. Offering services in additional languages other than English, i.e.
15 Spanish;

16 b. Partnering with local community colleges to provide business assistance for
17 start-up firms.

18 c. Providing grants up to \$10,000 to ethnic and gender focused chambers of
19 commerce to:

- 20 1. Provide business management skills including how to obtain a
21 business license;
- 22 2. Conduct outreach to businesses to increase the number of certified
23 M/WBEs;

1 3. Mentor businesses on local and state certified payroll requirements.

2 d. Partnering with local churches and ethnic grocery markets by providing
3 *How to Become M/WBE Certified* and *How to Do Business with the City* seminars.

4 **SECTION 4. RULES AND REGULATIONS.**

5 **BE IT FURTHER ORDAINED** that the implementation of the M/WBE Program adhere
6 to the following Rules and Regulations:

7 i. **Management.** The Minority Business Development and Compliance Office of
8 SLDC shall be the office that manages the M/WBE Program for SLDC. The President of the Board
9 of Public Services (BPS) and the Director of the Minority Business Development and Compliance
10 Office will work together to identify qualified contractors to be included in bidding public works
11 contracts.

12 ii. **Contract Rotation Program.** The City of St. Louis through its Supply Division
13 shall establish a contract rotation program for procuring goods and services contracts under
14 \$25,000 using an informal solicitation. Eligible businesses shall be placed on the rotation list
15 according to their initial certification date. Businesses with the same certification date are placed
16 on the list alphabetically according to their name. Once awarded a contract, the M/WBE shall be
17 subsequently placed at the bottom of the rotation list.

18 iii. **Advertisements.** The City of St. Louis shall advertise solicitations within a
19 sufficient period of time to allow bidders to solicit bids from M/WBE subcontractors. The City of
20 St. Louis shall publish notices of contract opportunities in The City Journal and on the City's
21 website at least thirty (30) days before the board letting date. Bid notices shall additionally be
22 disseminated by SLDC through the certified M/WBE electronic mailing list at least thirty (30)
23 days before the responses are due.

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1 All User Departments shall adopt a standard template for advertisements with input from
2 the Minority Business Development and Compliance Office. The Minority Business Development
3 and Compliance Office will review all advertisement templates and provide the User Departments
4 with comments.

5 If advertisements do not meet the M/WBE requirements, the Office of the Register shall
6 reject the advertisement and send it back to the User Department and recommend the next available
7 publication date that complies with the thirty (30) day publication requirement.

8 The notice shall include the name of the contract and bid opening date; project manager's
9 name and contact information, if known at the time the notice is prepared; pre-bid conference date,
10 time, and location; deadline for submission of written questions; summary of the scope of work;
11 contact information to secure the complete solicitation; and M/WBE subcontracting goals and bid
12 discounts.

13 An electronic directory listing certified M/WBEs shall be maintained by the Minority
14 Business Development and Compliance Office. The directory shall be updated monthly to reflect
15 any new certifications or changes to existing certifications. A link to The directory shall be
16 published on the City of St. Louis' Minority Business Development and Compliance Office
17 webpage and be downloadable in Microsoft Office Excel

18 **iv. Mobilization Payments.** When mobilization payments are approved as a contract
19 line item for the prime contractor, the subcontractor shall be paid a reasonable amount not to
20 exceed five percent (5%) of the amount of their contract by the prime contractor no later than five
21 (5) business days before they are required to mobilize to start their contracted work. The prime
22 contractor shall submit a request to BPS for mobilization payments using the normal monthly
23 payment process as detailed in the contract documents.

1 v. **Payment Verification Program.** The City of St. Louis shall establish a payment
2 verification program. Payments made to M/WBE subcontractors shall be verified in order to
3 monitor compliance with the Prompt Payment Act, Section 34.057.1 RSMo. The payment
4 verification system shall allow subcontractors to electronically notify the City of St. Louis of late
5 payments or non-payments in real time. Each subcontractor listed as paid for the previous billing
6 cycle shall be electronically contacted to verify that payment was received. The Minority Business
7 Development and Compliance Office shall manage the program.

8 vi. **Resolving Disputes.** Dispute resolution standards shall be established to allow
9 businesses to resolve issues relating to contract work performance. Invoice disputes between the
10 prime contractor and the subcontractor shall be presented to the BPS project manager and the
11 Minority Business Development and Compliance Office. BPS shall ensure that the dispute
12 resolution process is handled in a timely manner and in accordance with dispute resolution
13 standards. The decision can be appealed to a mediator comprised of a designee of the Mayor, the
14 Director of the Minority Business Development and Compliance Office and the President of the
15 Board of Public Service. The mediation process shall exhaust any administrative remedy available
16 to the contractor and/or subcontractor.

17 **SECTION 5. MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISE**
18 **PROGRAM STAFF AND STAFF TRAINING.**

19 **BE IT FURTHER ORDAINED,** that program implementation adheres to the following
20 staffing requirements:

21 i. **Program Staff**

22 a. There shall be adequate staff to support the responsibilities of the Minority
23 Business Development and Compliance Office. The Minority Business Development and

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1 Compliance Office shall minimally have a director, four (4) compliance staff and certification
2 staff, as their budget allows.

3 **b.** The Director of Minority Business Development and the staff shall develop
4 programs and services that advance opportunities for growth of M/WBEs and ensure compliance
5 with M/WBE Program objectives and responsibilities.

6 **c.** The Office shall oversee pre-award compliance with the M/WBE Program
7 requirements, and monitor post-contract compliance to ensure that the M/WBE contract provisions
8 are adhered to during the term of the contract.

9 **d.** The Office shall advise applicants regarding suitable completion of their
10 certification applications, perform site visits, and participate in business outreach activities to
11 increase the applicant pool.

12 **e.** The Office shall monitor M/WBE contract compliance and M/WBE
13 contractor and subcontractor on site participation, investigate complaints, ensure contracts are
14 properly and legally executed, and create a profile of each contractor by preparing site visit reports.

15 **f.** The Office shall compile, verify, and report data measuring the user
16 department's compliance with contract goals and requirements and manage the Global Project
17 Tracking System or any other system designated to ensure it captures the data necessary to generate
18 the reports required to measure compliance with the M/WBE Program requirements. The Office
19 shall also manage all solicitations received from the user departments and develop comprehensive
20 outreach strategies to meet the M/WBE goals using digital media vehicles.

21 **g.** The Office shall provide dispute resolution services and direct
22 investigations of complaints from user departments, as well as from prime contractors and
23 subcontractors.

1 **ii. Training and Training Manual.**

2 Routine User Department training shall be conducted to ensure all personnel are
3 knowledgeable about the M/WBE Program requirements and capable of supporting the M/WBE
4 Program and its policies and objectives. The training program shall be conducted by the Minority
5 Development Business and Compliance Office. Three training programs shall be implemented:

6 **a. Annual Training Seminar**

7 Annual training seminars shall be held to inform staff of any changes to the M/WBE
8 Program policy and procedures, and to promote the Program enhancements. An interactive portal
9 shall be set up for City of St. Louis staff to give and receive virtual assistance, information, and
10 responses to questions.

11 **b. New Employee Training**

12 New employee orientation shall be held quarterly by the Minority Development Business
13 and Compliance Office to ensure that new employees understand the established policies and
14 procedures. A printed copy of the M/WBE Program Training Manual shall be provided to each
15 new City employee that handles such matters for the City of St. Louis prior to quarterly training.

16 **c. M/WBE Program Training Manual**

17 An M/WBE Program Training Manual describing the M/WBE Program mission, policy,
18 and procedures shall be available to all staff electronically and shall be downloadable from the
19 Minority Development Business and Compliance Office webpage.

20 **SECTION 6. COMPLIANCE TRACKING, MONITORING AND REPORTING.**

21 **BE IT FURTHER ORDAINED** that the M/WBE Program shall adhere to the following
22 conditions of tracking, monitoring, and reporting:

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1 **i. Centralized Tracking and Monitoring System.** The Minority Business
2 Development and Compliance Office shall maintain a centralized tracking and monitoring system
3 – Global Project Tracking System (GPTS) or any other designated system to ensure compliance
4 with the M/WBE commitments listed in bid documents. The GPTS shall track subcontractor goals,
5 commitments, and payments. The GPTS shall also monitor unauthorized subcontract
6 substitutions, and late payments. A record of any discrepancies or proof of failure to comply with
7 the contract goals and regulations shall be filed by the Minority Business Development and
8 Compliance Office, and appropriate ramifications shall be determined by the Compliance Office
9 and the President of the Board of Public Service. Compliance reports shall be submitted annually
10 to the Mayor and the Board of Aldermen.

11 **ii. Tracking Compliance.** The GPTS shall track a prime contractor’s compliance
12 with the contract goal to ensure that the M/WBEs listed as subcontractors are utilized. In the
13 absence of a finding of a Good Faith Effort, a prime contractor’s failure to meet an M/WBE
14 subcontract goal during the contract term shall constitute a material breach of contract. The prime
15 contractor shall be subject to liquidated damages for such a breach. Damages shall be assessed
16 based upon the M/WBE goal shortfall and may not exceed the difference between the monetary
17 amount of the participation goals set by the contract and the amount actually paid to M/WBEs.
18 Damages shall be assessed during the project close-out by the Minority Business Development
19 and Compliance Office and the President of the Board of Public Service, and withheld from a
20 retention amount established to cover liquidated damages in addition to any other retention held
21 under the contract. To the extent allowed by law, these funds shall be provided to St. Louis
22 Development Corporation and used to provide business development and enhancement services
23 for M/WBEs. All contracts that contain participation goals for African American, Asian American,

1 and Women-owned businesses shall contain a provision that provides for the imposition of
2 liquidated damages in the absence of a finding of Good Faith Efforts in the event the General
3 Contractor fails to achieve the participation goals specified by Sections 2 through 8 of this
4 Ordinance.

5 **SECTION 7. BUSINESS ADVISORY COUNCIL (BAC) AND THE SMALL**
6 **BUSINESS PROGRAM.**

7 **i. Business Advisory Council.** A Business Advisory Council (BAC) shall be
8 established and appointed by the Mayor and approved by the Board of Alderman to serve as an
9 advocate for M/WBEs to increase access to the procurement process. The BAC shall have five
10 (5) but not more than nine (9) members, each appointed by the Mayor and approved by the Board
11 of Aldermen for staggered terms, with the Chairman designated and appointed by the Mayor. A
12 member may serve more than one term. The BAC members shall be approved by resolution of the
13 St. Louis Board of Aldermen. The BAC shall advise and make M/WBE Program recommendations
14 in the following areas:

- 15 **a.** Increasing access to contracting opportunities for M/WBEs;
16 **b.** Reviewing and advancing initiatives that impact M/WBE participation, and;
17 **c.** Enhancing the notification process regarding prospective contract
18 opportunities.

19 Rules and guidelines for the BAC shall be consistent with applicable laws for the conduct
20 of its business. The BAC membership and guidelines shall be published on the Minority Business
21 Development and Compliance Office's webpage.

22 Members shall serve for staggered terms of three (3) years. Initially up to four (4) members
23 shall be appointed for a term of three (3) years, up to three (3) members shall be appointed for a

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1 term of two (2) years and up to two (2) members shall be appointed for a term of one (1) year.
2 Vacancies shall be filled by appointment of the Mayor for the remainder of the vacant term. Each
3 member shall serve without compensation.

4 The Mayor shall designate and appoint a Chairman and the committee shall elect a
5 Secretary who shall each serve for three (3) years.

6 One (1) month prior to the end of the Chairman's and the Secretary's terms, successors shall
7 be replaced pursuant to paragraph 4 above. The committee shall adopt rules consistent with
8 applicable laws for the conduct of its business.

9 The committee shall meet quarterly to review compliance with this Ordinance. In addition,
10 the committee shall at a minimum meet twice annually in open public session to receive general
11 testimony from the public. All minutes and records of the committee shall be open to the public.

12 The committee shall monitor the effectiveness of the City's program described in this
13 Ordinance and make such recommendations to SLDC as it sees fit. The actions, decisions and
14 recommendations of the Committee are to further the policies and goals of this Ordinance and shall
15 not be final or binding on the City but shall be advisory only.

16 **ii. Annual Funding for M/WBE Program.** Subject to annual appropriation,
17 the City's governing body agrees, and the Comptroller and Budget Director are hereby directed,
18 to include annually in the City budget, to provide city revenues at a minimum sufficient to support
19 the Data Analyst position and the centralized tracking and monitoring system in support of the
20 M/WBE Program.

21 **iii. Sunset Provision.** The City will require a periodic update of the disparity study to
22 evaluate the effectiveness of the M/WBE Program. The M/WBE Program will sunset in eight

1 years from adoption of the Program. The City will perform a disparity study within three years
2 prior of the sunset date.

3 **SECTION 8. APPROVAL OF RULES AND REGULATIONS.**

4 All rules and procedures not expressly stated in Sections 2 through 8 of this ordinance for
5 the day-to-day operation and implementation of the M/WBE Program shall be approved by the St.
6 Louis Development Corporation.

7 **SECTION 9. SECTIONS FOUR AND FIVE OF ORDINANCE 69427**
8 **AMENDMENTS.**

9 Sections Three, Four and Five of Ordinance 69427, codified at Sections 3.110.020,
10 3.110.030 and 3.110.040 of the Revised Code of the City of St. Louis, are hereby repealed, and
11 enacted in lieu thereof is the following:

12 **SECTION THREE. Apprenticeship Goal.** On each public works
13 contract, tax increment financed (TIF) project and St. Louis City Bonded Project
14 for which the design team's estimated base value of the contract is one million
15 dollars (\$1,000,000) or more, the Agency shall set a goal that a minimum
16 percentage of 20% of all the contract's labor hours are to be performed by
17 apprentices enrolled in any training program approved or recognized by the
18 United States Department of Labor, Employment and Training Administration
19 (ETA), Office of Apprenticeship (OA). This goal shall be subject to the waiver
20 provision set forth in [Section 3.110.080](#) of the Revised Code of the City of St.
21 Louis. Such apprentices, if they are minorities and/or women, may also be
22 counted towards the goals set forth in [Section Four](#).

SECTION FOUR. Participation Goals for Minorities and Women.

On each Public Works Contract, Tax Increment Financed (TIF) Project and St. Louis City Bonded Project for which the design team’s estimated base value of the contract is One Million Dollars (\$1,000,000) or more, the contract goals shall be 25% of all Labor Hours are to be performed by Minorities and 7% of all contract Labor Hours are to be performed by women.

SECTION FIVE. City Resident Participation. On each Public Works

Contract, Tax Increment Financed (TIF) Project and St. Louis City Bonded Project for which the design team’s estimated base value of the contract is One Million Dollars or more, the contract goals shall be 23% of all Labor Hours are to be performed by persons who reside in the City of St. Louis (“City Residents”). Such City Residents, if they are minorities and/or women, may also be counted towards the goals set forth in Section Four.

SECTION 10. SECTION TEN OF ORDINANCE 69427 AMENDMENTS.

Section Ten of Ordinance 69427, codified at Section 3.110.090 of the Revised Code of the City of St. Louis, are hereby repealed, and enacted in lieu thereof is the following:

SECTION TEN. Non-Compliance.

A. Material Breach. The failure to meet the requirements of Ordinance 69427 as amended, including but not limited to failure to submit required documentation and reporting, failure to meet to resolve issues and failure to use Good Faith Efforts to comply, constitutes a violation of the Ordinance and shall be a material breach of the contract.

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1 1. If there is a violation of Ordinance 69427 as
2 amended, the Agency will first cite the violator in writing giving
3 the violator notice of the violation and a thirty-day (30-day) notice
4 to cure.

5 2. If after the thirty (30) days there is no cure, the
6 Agency shall exercise the remedies for breach provided herein and
7 any other remedies available by law.

8 **B. Remedies for Breach.** In the event of a violation of
9 Ordinance 69427 as amended, the Agency and the President of the Board
10 of Public Service **may** place the Developer and the General Contractor on
11 a list maintained by the Agency and the Developer and General Contractor
12 may be barred from participating in public works contracts or Tax
13 Increment Financed (TIF) Projects for a period of one (1) year following
14 the notice of violation, in addition to any other sanctions available to the
15 Board of Public Service for public works contracts. The Agency shall
16 make quarterly reports to the TIF Commission, the Board of Public
17 Service, the Board of Aldermen, the Mayor and the Comptroller of the
18 City of St. Louis regarding the Developers and General Contractors cited
19 and listed for violations of the Ordinance.

20 **C. Liquidated damages.** All contracts that contain
21 participation goals for minorities, women, or City Residents shall contain
22 a provision that provides for liquidated damages in the event the
23 Developer, General Contractor, or both fails or fail to achieve the

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1 participation goals specified by the Agency as directed by Ordinance
2 69427 as amended. The liquidated damages may not exceed the difference
3 between the monetary amount of the participation goals set by the Agency
4 and the amount actually paid to minorities, women, and City Residents.
5 SLATE shall set aside funds from assessed damages. To the extent
6 allowed by law, these funds shall be used solely to provide workforce
7 training and development services for minorities and women. In
8 determining the amount actually paid to minorities, women, and City
9 Residents, no credit shall be given for that portion of the minority, women,
10 and City Resident participation not approved by the Agency, provided
11 however that the Agency may allow credit if it determines, in its sole
12 discretion, that the Developers and General Contractors acted in good
13 faith.

14 **SECTION 11. SEVERABILITY CLAUSE.** The provisions of this ordinance shall be
15 severable. In the event that any provision of this ordinance is found by a court of competent
16 jurisdiction to be unconstitutional, the remaining provisions of this ordinance are valid unless the
17 court finds the valid provisions of this ordinance are so essentially and inseparably connected
18 with, and so dependent upon, the void provision that it cannot be presumed that the Board of
19 Aldermen would have enacted the valid provisions without the void ones or unless the Court
20 finds that the valid provisions, standing alone, are incomplete and incapable of being executed in
21 accordance with the legislative intent.