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ORDINANCE NO.

AN ORDINANCE AMENDING CITY CODE CHAPTERS 2-9A, 2-9B, 2-9C, AND 2-9D REGARDING THE MINORITY-OWNED AND WOMEN-OWNED BUSINESS ENTERPRISE PROCUREMENT PROGRAM.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. City Code Section 2-9A-1 (*Findings*) is amended to add subsections (V) through (Z) to read as follows:

§ 2-9A-1 - FINDINGS.

- (V) In 2013, the City commissioned a disparity study from National Economic Research Associates, Inc. (“NERA”) to develop evidence relevant to the City’s continuing compelling interest in remedying discrimination. The results of these efforts were presented in the December 2015 report entitled “Race, Sex, and Business Enterprise: Evidence from the City of Austin”.
- (W) Based on the evidence from the 2015 Report, the City determined that:
- (1) Minorities and women are substantially and significantly less likely to own their own businesses as the result of discrimination than would be expected based upon their observable characteristics, including age, education, geographic location and industry.
 - (2) Minorities and women earn substantially and significantly less than their nonminority male counterparts.
 - (3) There are large, adverse, and statistically significant disparities between MBE/WBEs share of overall revenues and their share of overall firms in the U.S. as a whole, and in the State of Texas.
 - (4) There is evidence of discrimination against MBE/WBEs in the City of Austin market area for the small business credit market.
 - (5) Anecdotal evidence from outreach meetings, mail surveys and personal interviews suggests that minorities and women continue to suffer discriminatory barriers to full and fair access to City of Austin, other public sector and private sector contracts.
 - (6) Despite the City’s efforts to create equal opportunities in its marketplace, the evidence continues to indicate that, absent the

37 MBE/WBE Program authorized by City Code, MBEs and WBEs
38 would be underutilized on City contracts relative to their availability.

- 39 (X) The City is authorized to establish race- and gender-conscious contracting
40 goals, and if utilized, required that goals be based on constitutional standards
41 related to the City's marketplace.
- 42
- 43 (Y) Under these circumstances and based on the factual predicate which has
44 been established after careful study and review, the City still has a
45 compelling governmental interest in remedying the racial and gender
46 discrimination that exists in the market segments in which the City does
47 business, and in ensuring that the City is not a participant in such
48 discrimination, thereby allowing all segments of the Austin community to
49 share in the economic benefits of the City.
- 50
- 51 (Z) The MBE/WBE Program adopted by the City is narrowly tailed to remedy
52 the discrimination described above and in City Code, and should be
53 continued.
54

55 **PART 2.** Subsection (K) of City Code Section 2-9A-15 (*Program Eligibility*) is amended
56 to read:

57 **§ 2-9A-15 - PROGRAM ELIGIBILITY.**

- 58 (K) The certification status of all MBEs and WBEs may [~~shall~~] be reviewed [~~on~~
59 ~~an annual basis~~] by SMBR or its designee, as approved by city council. Prior
60 to commencing any review, SMBR shall provide advance notice of the
61 review to the certified Business Enterprise or Firm. The [~~annual~~] review may
62 be conducted through examination of a sworn affidavit of continuing
63 eligibility (including all such attachments as may be required by rule)
64 submitted by the Business Enterprise or Firm seeking certification. MBEs
65 and WBEs are required to seek recertification upon the fourth [~~third~~]
66 anniversary of their initial certification and upon the fourth [~~third~~]
67 anniversary of all subsequent certifications. Failure of the Business
68 Enterprise or Firm to seek recertification by filing the necessary
69 documentation with SMBR within 60 calendar days from the date of receipt
70 of written notification from SMBR may result in decertification of the
71 Business Enterprise or Firm.

PART 3. City Code Section 2-9B-1 (*Findings*) is amended to add subsections (V) through (Z) to read as follows:

§ 2-9B-1 - FINDINGS.

- (V) In 2013, the City commissioned a disparity study from National Economic Research Associates, Inc. (“NERA”) to develop evidence relevant to the City’s continuing compelling interest in remedying discrimination. The results of these efforts were presented in the December 2015 report entitled “Race, Sex, and Business Enterprise: Evidence from the City of Austin”.
- (W) Based on the evidence from the 2015 Report, the City determined that:
 - (1) Minorities and women are substantially and significantly less likely to own their own businesses as the result of discrimination than would be expected based upon their observable characteristics, including age, education, geographic location and industry.
 - (2) Minorities and women earn substantially and significantly less than their nonminority male counterparts.
 - (3) There are large, adverse, and statistically significant disparities between MBE/WBEs share of overall revenues and their share of overall firms in the U.S. as a whole, and in the State of Texas.
 - (4) There is evidence of discrimination against MBE/WBEs in the City of Austin market area for the small business credit market.
 - (5) Anecdotal evidence from outreach meetings, mail surveys and personal interviews suggests that minorities and women continue to suffer discriminatory barriers to full and fair access to City of Austin, other public sector and private sector contracts.
 - (6) Despite the City’s efforts to create equal opportunities in its marketplace, the evidence continues to indicate that, absent the MBE/WBE Program authorized by City Code, MBEs and WBEs would be underutilized on City contracts relative to their availability.
- (X) The City is authorized to establish race- and gender-conscious contracting goals, and if utilized, required that goals be based on constitutional standards related to the City’s marketplace.
- (Y) Under these circumstances and based on the factual predicate which has been established after careful study and review, the City still has a

compelling governmental interest in remedying the racial and gender discrimination that exists in the market segments in which the City does business, and in ensuring that the City is not a participant in such discrimination, thereby allowing all segments of the Austin community to share in the economic benefits of the City.

- (Z) The MBE/WBE Program adopted by the City is narrowly tailed to remedy the discrimination described above and in City Code, and should be continued.

PART 4. Subsection (K) of City Code Section 2-9B-15 (*Program Eligibility*) is amended to read:

§ 2-9B-15 - PROGRAM ELIGIBILITY.

- (K) The certification status of all MBEs and WBEs may ~~shall~~ be reviewed ~~[on an annual basis]~~ by SMBR or its designee, as approved by city council. Prior to commencing any review, SMBR shall provide advance notice of the review to the certified Business Enterprise or Firm. The [annual] review may be conducted through examination of a sworn affidavit of continuing eligibility (including all such attachments as may be required by rule) submitted by the Business Enterprise or Firm seeking certification. MBEs and WBEs are required to seek recertification upon the fourth [third] anniversary of their initial certification and upon the fourth [third] anniversary of all subsequent certifications. Failure of the Business Enterprise or Firm to seek recertification by filing the necessary documentation with SMBR within 60 calendar days from the date of receipt of written notification from SMBR may result in decertification of the Business Enterprise or Firm.

PART 5. City Code Section 2-9C-1 (*Findings*) is amended to add subsections (V) through (Z) to read as follows:

§ 2-9C-1 - FINDINGS.

- (V) In 2013, the City commissioned a disparity study from National Economic Research Associates, Inc. (“NERA”) to develop evidence relevant to the City’s continuing compelling interest in remedying discrimination. The results of these efforts were presented in the December 2015 report entitled “Race, Sex, and Business Enterprise: Evidence from the City of Austin”.

- 145
146 (W) Based on the evidence from the 2015 Report, the City determined that:
147
148 (1) Minorities and women are substantially and significantly less likely to
149 own their own businesses as the result of discrimination than would
150 be expected based upon their observable characteristics, including
151 age, education, geographic location and industry.
- 152 (2) Minorities and women ear substantially and significantly less than
153 their nonminority male counterparts.
- 154 (3) There are large, adverse, and statistically significant disparities
155 between MBE/WBEs share of overall revenues and their share of
156 overall firms in the U.S. as a whole, and in the State of Texas.
- 157 (4) There is evidence of discrimination against MBE/WBEs in the City of
158 Austin market area for the small business credit market.
- 159 (5) Anecdotal evidence from outreach meetings, mail surveys and
160 personal interviews suggests that minorities and women continue to
161 suffer discriminatory barriers to full and fair access to City of Austin,
162 other public sector and private sector contracts.
- 163 (6) Despite the City's efforts to create equal opportunities in its
164 marketplace, the evidence continues to indicate that, absent the
165 MBE/WBE Program authorized by City Code, MBEs and WBEs
166 would be underutilized on City contracts relative to their availability.
- 167 (X) The City is authorized to establish race- and gender-conscious contracting
168 goals, and if utilized, required that goals be based on constitutional standards
169 related to the City's marketplace.
- 170
171 (Y) Under these circumstances and based on the factual predicate which has
172 been established after careful study and review, the City still has a
173 compelling governmental interest in remedying the racial and gender
174 discrimination that exists in the market segments in which the City does
175 business, and in ensuring that the City is not a participant in such
176 discrimination, thereby allowing all segments of the Austin community to
177 share in the economic benefits of the City.
- 178
179 (Z) The MBE/WBE Program adopted by the City is narrowly tailed to remedy
180 the discrimination described above and in City Code, and should be
181 continued.

PART 6. Subsection (K) of City Code Section 2-9C-15 (*Program Eligibility*) is amended to read:

§ 2-9C-15 - PROGRAM ELIGIBILITY.

- (K) The certification status of all MBEs and WBEs may ~~[shall]~~ be reviewed ~~[on an annual basis]~~ by SMBR or its designee, as approved by city council. Prior to commencing any review, SMBR shall provide advance notice of the review to the certified Business Enterprise or Firm. The ~~[annual]~~ review may be conducted through examination of a sworn affidavit of continuing eligibility (including all such attachments as may be required by rule) submitted by the Business Enterprise or Firm seeking certification. MBEs and WBEs are required to seek recertification upon the fourth ~~[third]~~ anniversary of their initial certification and upon the fourth ~~[third]~~ anniversary of all subsequent certifications. Failure of the Business Enterprise or Firm to seek recertification by filing the necessary documentation with SMBR within 60 calendar days from the date of receipt of written notification from SMBR may result in decertification of the Business Enterprise or Firm.

PART 7. City Code Section 2-9D-1 (*Findings*) is amended to add subsections (V) through (Z) to read as follows:

§ 2-9D-1 - FINDINGS.

- (V) In 2013, the City commissioned a disparity study from National Economic Research Associates, Inc. (“NERA”) to develop evidence relevant to the City’s continuing compelling interest in remedying discrimination. The results of these efforts were presented in the December 2015 report entitled “Race, Sex, and Business Enterprise: Evidence from the City of Austin”.
- (W) Based on the evidence from the 2015 Report, the City determined that:
- (1) Minorities and women are substantially and significantly less likely to own their own businesses as the result of discrimination than would be expected based upon their observable characteristics, including age, education, geographic location and industry.
 - (2) Minorities and women ear substantially and significantly less than their nonminority male counterparts.

- (3) There are large, adverse, and statistically significant disparities between MBE/WBEs share of overall revenues and their share of overall firms in the U.S. as a whole, and in the State of Texas.
- (4) There is evidence of discrimination against MBE/WBEs in the City of Austin market area for the small business credit market.
- (5) Anecdotal evidence from outreach meetings, mail surveys and personal interviews suggests that minorities and women continue to suffer discriminatory barriers to full and fair access to City of Austin, other public sector and private sector contracts.
- (6) Despite the City's efforts to create equal opportunities in its marketplace, the evidence continues to indicate that, absent the MBE/WBE Program authorized by City Code, MBEs and WBEs would be underutilized on City contracts relative to their availability.
- (X) The City is authorized to establish race- and gender-conscious contracting goals, and if utilized, required that goals be based on constitutional standards related to the City's marketplace.
- (Y) Under these circumstances and based on the factual predicate which has been established after careful study and review, the City still has a compelling governmental interest in remedying the racial and gender discrimination that exists in the market segments in which the City does business, and in ensuring that the City is not a participant in such discrimination, thereby allowing all segments of the Austin community to share in the economic benefits of the City.
- (Z) The MBE/WBE Program adopted by the City is narrowly tailed to remedy the discrimination described above and in City Code, and should be continued.

PART 8. Subsection (K) of City Code Section 2-9D-15 (*Program Eligibility*) is amended to read:

§ 2-9D-15 - PROGRAM ELIGIBILITY.

- (K) The certification status of all MBEs and WBEs may ~~shall~~ be reviewed ~~on an annual basis~~ by SMBR or its designee, as approved by city council. Prior to commencing any review, SMBR shall provide advance notice of the review to the certified Business Enterprise or Firm. The ~~[annual]~~ review may

253 be conducted through examination of a sworn affidavit of continuing
254 eligibility (including all such attachments as may be required by rule)
255 submitted by the Business Enterprise or Firm seeking certification. MBEs
256 and WBEs are required to seek recertification upon the fourth [~~third~~]
257 anniversary of their initial certification and upon the fourth [~~third~~]
258 anniversary of all subsequent certifications. Failure of the Business
259 Enterprise or Firm to seek recertification by filing the necessary
260 documentation with SMBR within 60 calendar days from the date of receipt
261 of written notification from SMBR may result in decertification of the
262 Business Enterprise or Firm.

263 **PART 9.** This ordinance takes effect on _____, 2018.

264 **PASSED AND APPROVED**

265 _____, 2018

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Steve Adler
Mayor

271 **APPROVED:** _____

Anne L. Morgan
City Attorney

272 **ATTEST:** _____

Jannette S. Goodall
City Clerk