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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 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

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.
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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.

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

75 **§ 2-9B-1 - FINDINGS.**

- 76 (V) In 2013, the City commissioned a disparity study from National Economic
77 Research Associates, Inc. (“NERA”) to develop evidence relevant to the
78 City’s continuing compelling interest in remedying discrimination. The
79 results of these efforts were presented in the December 2015 report entitled
80 “Race, Sex, and Business Enterprise: Evidence from the City of Austin”.
81
- 82 (W) Based on the evidence from the 2015 Report, the City determined that:
- 83
- 84 (1) Minorities and women are substantially and significantly less likely to
85 own their own businesses as the result of discrimination than would
86 be expected based upon their observable characteristics, including
87 age, education, geographic location and industry.
- 88 (2) Minorities and women earn substantially and significantly less than
89 their nonminority male counterparts.
- 90 (3) There are large, adverse, and statistically significant disparities
91 between MBE/WBEs share of overall revenues and their share of
92 overall firms in the U.S. as a whole, and in the State of Texas.
- 93 (4) There is evidence of discrimination against MBE/WBEs in the City of
94 Austin market area for the small business credit market.
- 95 (5) Anecdotal evidence from outreach meetings, mail surveys and
96 personal interviews suggests that minorities and women continue to
97 suffer discriminatory barriers to full and fair access to City of Austin,
98 other public sector and private sector contracts.
- 99 (6) Despite the City’s efforts to create equal opportunities in its
100 marketplace, the evidence continues to indicate that, absent the
101 MBE/WBE Program authorized by City Code, MBEs and WBEs
102 would be underutilized on City contracts relative to their availability.
- 103 (X) The City is authorized to establish race- and gender-conscious contracting
104 goals, and if utilized, required that goals be based on constitutional standards
105 related to the City’s marketplace.
- 106
- 107 (Y) Under these circumstances and based on the factual predicate which has
108 been established after careful study and review, the City still has a

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

- 114
115 (Z) The MBE/WBE Program adopted by the City is narrowly tailed to remedy
116 the discrimination described above and in City Code, and should be
117 continued.
118

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

121 **§ 2-9B-15 - PROGRAM ELIGIBILITY.**

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

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

139 **§ 2-9C-1 - FINDINGS.**

- 140 (V) In 2013, the City commissioned a disparity study from National Economic
141 Research Associates, Inc. (“NERA”) to develop evidence relevant to the
142 City’s continuing compelling interest in remedying discrimination. The
143 results of these efforts were presented in the December 2015 report entitled
144 “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 are 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.

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

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§ 2-9C-15 - PROGRAM ELIGIBILITY.

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(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.

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

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§ 2-9D-1 - FINDINGS.

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- (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.

- 217 (3) There are large, adverse, and statistically significant disparities
218 between MBE/WBEs share of overall revenues and their share of
219 overall firms in the U.S. as a whole, and in the State of Texas.
- 220 (4) There is evidence of discrimination against MBE/WBEs in the City of
221 Austin market area for the small business credit market.
- 222 (5) Anecdotal evidence from outreach meetings, mail surveys and
223 personal interviews suggests that minorities and women continue to
224 suffer discriminatory barriers to full and fair access to City of Austin,
225 other public sector and private sector contracts.
- 226 (6) Despite the City's efforts to create equal opportunities in its
227 marketplace, the evidence continues to indicate that, absent the
228 MBE/WBE Program authorized by City Code, MBEs and WBEs
229 would be underutilized on City contracts relative to their availability.
- 230 (X) The City is authorized to establish race- and gender-conscious contracting
231 goals, and if utilized, required that goals be based on constitutional standards
232 related to the City's marketplace.
- 233
234 (Y) Under these circumstances and based on the factual predicate which has
235 been established after careful study and review, the City still has a
236 compelling governmental interest in remedying the racial and gender
237 discrimination that exists in the market segments in which the City does
238 business, and in ensuring that the City is not a participant in such
239 discrimination, thereby allowing all segments of the Austin community to
240 share in the economic benefits of the City.
- 241
242 (Z) The MBE/WBE Program adopted by the City is narrowly tailed to remedy
243 the discrimination described above and in City Code, and should be
244 continued.
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246 **PART 8.** Subsection (K) of City Code Section 2-9D-15 (*Program Eligibility*) is
247 amended to read:

248 **§ 2-9D-15 - PROGRAM ELIGIBILITY.**

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

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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.

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

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PASSED AND APPROVED

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_____, 2018

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Steve Adler
Mayor

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APPROVED: _____
Anne L. Morgan
City Attorney

ATTEST: _____
Jannette S. Goodall
City Clerk