

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 070504, AS AMENDED

Amending Chapter 38, Code of Ordinances, by adding new Sections 38-83.1 through 38-83.13, to establish a construction employment program, that sets goals for utilization of minority, women and resident workers on construction projects and establishing an effective date.

BE IT ORDAINED BY THE COUNCIL OF KANSAS CITY:

Section 1. That Chapter 38, Code of Ordinances of the City of Kansas City, Missouri, is hereby amended by enacting new Sections 38-83.1 through 38-83.13, to read as follows:

Sec. 38-83.1. Definitions applicable to the Construction Employment Program.

The following definitions apply to Sections 38-83.1 through 38-83.13:

Apprentice means person of legal working age who has entered into a program for training and employment to learn a skilled construction trade.

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.

City means the City of Kansas City, Missouri.

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 \$324,000.00 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.

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.

Construction Employment Goals means the percentages of construction labor hours to be performed by, minority and women workers for a Construction Contractor on all construction projects of that Construction Contractor throughout the Kansas City

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Metropolitan Statistical Area, on a particular City Construction Contract, during the construction time period of that City Construction Contract unless otherwise waived by the Director or the Construction Work Force Board.

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 “Workforce Ordinance.”

Construction Hours Affidavit means a statement by a Construction Contractor, verified under oath, setting forth the Construction Contractor’s intent to meet or exceed the Construction Employment Goals while performing a City Construction Contract.

Construction Labor Hour means a sixty 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.

Construction Project means any project performed by a Construction Contractor in the Kansas City Metropolitan Statistical Area.

Construction Workforce Board means a board, created as provided herein.

Director means the Director of the Human Relations Department of the City of Kansas City, Missouri 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 Department by this Article.

Equal Opportunity Clause means a statement prohibiting discrimination on construction projects based on race, color, sexual orientation, age, gender, national origin, religion, mental or physical disability as proscribed in the Kansas City Code of Ordinances, Chapter 38, Article III, Section 38-132.

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 this Ordinance, the Construction Contractor was unable to achieve the Minimum Employment Goals.

Incentive Construction Employment Goal means an aspirational goal for company-wide employment of minorities and women intended to encourage Construction 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 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.

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Journeyperson means one who has completed an apprenticeship in a trade or craft and is recognized in the particular trade or craft as a journeyperson.

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.

Metropolitan Statistical Area (MSA) means the Kansas City metropolitan statistical area as defined by the United States Department of Labor.

Minimum Construction Employment Goal means a minimum goal for company-wide employment of minorities and women that a Construction Contractor is expected to endeavor to meet by undertaking in good faith the actions outlined in this Ordinance.

Minority means a person who is a citizen or lawful permanent resident of the United States and who is:

- (1) 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
- (2) 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
- (3) 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
- (4) Native American, a person having origins in any of the original peoples of North America, and who maintain tribal affiliation or demonstrate at least one-quarter descent from such groups, and who has historically and consistently identified himself or herself as being such a person.

Resident means an individual residing or domiciled within the City.

Woman means a person who is a citizen or lawful permanent resident of the United States and who is a female.

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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. 38-83.2. 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 recruitment, training, and retention 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 this Ordinance; and
- (3) Promote Workforce Preparedness Programs and Apprenticeship Programs to increase the number of skilled minority and women employees in the construction trades with the goal of increasing minority participation in Apprenticeship Programs to 30% by 2011 and female participation in Apprenticeship Programs to 5% by 2011.
- (4) 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) This ordinance 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. 38-83.3. Application of Ordinance.

(a) The provisions of this Ordinance shall apply to all City Construction Contracts as defined in this Ordinance.

(b) Entities with the authority to issue tax increment financing or grant tax abatement shall adopt a workforce policy that is consistent with this Ordinance.

Sec. 38-83.4. Construction Employment Goals.

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(a) Construction Employment Goals, expressed as a percentage of total construction labor hours of a Construction Contractor on all Construction Projects within the Kansas City MSA shall be established by this Ordinance for an initial five year time period subject to adjustment and renewal by the City Council as provided herein. Such goals shall be reviewed annually by the Director in consultation with the Construction Workforce Board and the Director and Construction Workforce Board shall have the right to recommend to the City Council adjustments as it deems to be in the best interests of the City and its citizenry.

(b) In establishing the Construction Employment Goals the City has considered:

- (1) The general population in the City and in the Kansas City Metropolitan Statistical Area (MSA); and
- (2) The general workforce in the City and in the Kansas City Metropolitan Statistical Area (MSA); and
- (3) The availability of minority and women in the workforce in the City and in the Kansas City Metropolitan Statistical Area (MSA); and
- (4) The utilization of minorities and women in the workforce in the City and in the Kansas City Metropolitan Statistical Area (MSA); and
- (5) The projected growth of the Kansas City construction industry;
- (6) Information from contracting associations, labor organizations, workforce preparedness programs and community groups concerning workforce availability in the commercial marketplace; and
- (7) Any other requirements imposed by federal, state or local laws.

(c) In recommending any adjustments to the Construction Employment Goals, the Director in consultation with the Construction Workforce Board shall consider all of the information described in subsection (b) and any statistical data subsequently gathered regarding the Construction Employment Program

(d) Construction Employment Goals are established as follows:

- (1) For minorities an Incentive Goal of 20% and a Minimum Goal of 10%
- (2) For women an Incentive Goal of 4% and a Minimum Goal of 2%

(e) These Construction Employment Goals are not the goals for individual City Construction Contracts; they are company-wide goals for any Construction Contractor performing work on a City Construction Contract. Company-wide goals are intended to further the City's interest in promoting greater long term retention of minorities and

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women. Both goals shall be based upon minorities and women working sufficient hours to qualify for benefits.

(f) The Construction Employment Goals shall be reviewed on an annual basis by the Director in consultation with the Construction Workforce Board. The Director and the Construction Workforce Board shall present an evaluation to the City Council of the Construction Employment Program every year. Annually, the City Council shall review the Director's and Construction Workforce Board's evaluation of the Construction Employment Program and evaluate whether the Program should be amended. Every five years, the City Council shall evaluate whether the Program should be extended or terminated, but failure to do so shall not invalidate this Ordinance or any contract or solicitation.

(g) A Construction Contractor is expected to meet the Minimum Employment Goals unless granted a Good Faith Waiver. In the event that Minimum Construction Employment Goals have not been met, the City Construction Contractor may request that the Director waive the goals. The Director shall grant a Construction Contractor's request for waiver if the Construction Contractor can demonstrate that good-faith efforts have been made to achieve the goals. In determining whether a Construction Contractor made a good faith effort to meet the Minimum Employment Goals, the Director shall consider whether the Construction Contractor undertook the following actions:

- (1) For those Construction Contractors 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 organizations, schools with a significant minority student population, and training organizations serving the recruitment area; and

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- e. Established and maintained a current list of resident, minority and women recruitment sources, providing written notifications 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. Required by written contract all subcontractors to comply with this provision.
 - h. 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.
- (2) For those Construction Contractors that are signatories to collective bargaining agreements with organized labor:

Support 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.

- b. Requested in writing from each Labor Union representing crafts to be employed by the City Contractor that:
 - i. The Labor Union make efforts to promote the utilization of residents of the City, minorities and women in the workforce;
 - ii. The Labor Union identify any residents of the City, minorities and women in its membership eligible for employment by the City Contractor;
 - 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;
 - iv. the JATC take substantial and real steps to increase the participation of women in the union Apprenticeship

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Programs in the aggregate to 5% by 2011 and encourage other Labor Unions to do the same

- v. the JATC partner with workforce preparedness programs, community based organizations, employment referral programs and school-sponsored programs to accomplish these goals
- c. Collaborate 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.
- d. Maintained a current file with the name, address, and telephone number of each resident, minority and woman 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 that the good-faith effort requirements set forth in this section are in conflict with the procedures implemented by the Construction Contractor in order to comply with a competitive bargaining agreement, the Construction Contractor shall substitute other procedures, as may be approved by the Director in writing, in order to accomplish the purpose and intent of this section

(h) Required by written contract all subcontractors to comply with this provision;
and

(i) Notwithstanding anything contained in this section, if the waiver is required by federal or state or local law, the Director shall grant a waiver to a Construction Contractor that nonetheless fails to meet: (a) the minority and women employment goals; and (b) the standards set forth in Section 38-83.4.

(j) When a request for Good Faith Waiver has been filed and the Director has determined that the Construction Contractor has not met the goals despite its good faith efforts as defined in this section, the Director may grant a full or partial waiver to the Construction Contractor. If the Director denies a Construction Contractor's request for waiver, the Construction Contractor may appeal the Director's decision to the Construction Workforce Board.

Sec. 38-83.5. City Sponsored Recruitment of Construction Workforce.

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The City shall partner with Workforce Preparedness Programs, Apprenticeship Programs, Labor Unions, other construction training programs, community-based organizations, employment referral programs and school-sponsored 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; and
- (2) Partnering with community-based organizations, the Kansas City School District, and post secondary educational institutions to create programs that facilitate entry into the construction industry by providing job readiness training, construction trades awareness, construction trades training, skills assessment testing, and increasing the ability to pass the construction trades entrance examinations.
- (3) Establishing a “First Source” program intended to give the first opportunity during the first 30 days of the 60 day notice period as described herein to qualified residents of Kansas City, Missouri to apply, be interviewed and be hired on City Construction Contracts.
- (4) Making a good faith effort to inform residents of Kansas City, Missouri 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 for a particular City Construction Contract, if deemed practical by the City to do so, of:
 - (1.) the name of the project;
 - (2.) the nature of the work to be performed;
 - (3.) the crafts anticipated to be required for the work; and,
 - (4.) locations within the City of Kansas City, Missouri 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 .

- (5) Conducting real and substantial recruitment efforts, both oral and written, targeting resident, minority and women community-based organizations,

- schools with a significant minority student population, and training organizations serving the recruitment area; and
- (6) 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
 - (7) Collaborating with Labor Unions, contractors and their respective associations to determine information that may be reasonably required of prospective workers.
 - (8) 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.
 - (9) 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 website to assist Construction Contractors in identifying those subcontractors that can assist the Construction Contractor in meeting the Construction Employment Goals.
 - (10) Submitting an Affirmative Action Monthly Report (AAMR) to the Construction Workforce Board by the end of each month for the previous month stating the number of resident, minority and women construction labor hours performed by Construction Contractors, in a format acceptable to the Construction Workforce Board.

Sec. 38-83.6. Incentive Construction Employment Goals.

The Director, in consultation with the Construction Workforce Board, is authorized to provide public recognition to Construction Contractors on a City Construction Contract that achieve the minority and female Incentive Construction Employment Goals of the Construction Employment Program.

Sec. 38-83.7. Monitoring and Compliance with Construction Employment Program.

(a) At the time a bid is submitted, the Construction Contractor shall submit a Construction Hours Affidavit in a format determined by the Director stating the City Construction Contractor's intent to meet or exceed the Minimum Construction Employment Goals while performing the City Construction Contract or request a waiver.

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(b) After the City Construction Contract has been awarded, but before construction begins, the Director may require the selected Construction Contractor to meet with the Director or his/her designee for the purpose of discussing first opportunity given to residents of the City, the Construction Employment Goals for minority and women workers, how the Construction Contractor will endeavor in good faith to meet the Minimum Construction Employment Goals, and any problems that may affect the Construction Contractor's ability to employ residents of the City or achieve the Construction Employment Goals.

(c) After completion of work on the City Construction Contract but before release of retainage, final acceptance and closeout, the Construction Contractor shall provide to the Director, in a format approved by the Director, the payroll records of the Construction Company and its subcontractors on the City Construction Contract, for the economic quarter years spanning the duration of the City Construction Contract: (i) the total number of hours of work performed by minorities and women on the City Construction Contract and company-wide on all projects in the Kansas City MSA as compared to the total number of hours of work performed by all workers on the City Construction Contract and company-wide on all projects in the Kansas City MSA and (ii) the hours worked per capita by minorities and women as compared to the hours worked per capita by all other workers in the workforce.

(d) All City Contractors are expected to comply with all federal laws, including those of the Immigration and Naturalization Service and the Department of Homeland Security. Only those hours performed by workers in compliance with federal law may be counted towards the Construction Employment Goals.

(e) On all City Construction Contracts, the Director shall have access, at all reasonable times, to all books, papers, records, reports or accounts in possession of or under the control of all Construction Contractors and subcontractors as may be reasonably necessary to ascertain compliance with this Ordinance, and all Construction Contractors and their respective subcontractors shall furnish such further information as may be required of such person within ten working days of the date it is so requested in writing. The Construction Contractor shall require all its subcontractors to comply with the requirements of this subsection.

(f) The Director shall be authorized to conduct on-site audits and records inspections of any Construction Contractor and subcontractor without prior notice as may be necessary to ascertain compliance with this Ordinance. The Construction Contractor shall require all its subcontractors to comply with the requirements of this subsection.

(g) The Construction Contractor is required to obtain and retain documentation establishing the residence of record for any person working on a Construction Project. The documentation must show an address within the City and may be one of the following:

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- (1) driver's license or identification card issued by a government or governmental agency with a photograph of the holder; or
- (2) voter's Registration Card; or
- (3) utility bill showing the account holder's name and address; or
- (4) valid United States Passport; or
- (5) document falling within any other category that the Director determines sufficiently establishes residency.

(h) Monthly Reporting: The Construction Contractor performing work on a City Construction Contract shall submit a Contractor Affirmative Action Monthly Report (CAAMR) to the Director by the 15th of each month through the duration of the City Construction Contract. The Contractor Affirmative Action Monthly Report shall state the number of resident, minority and women construction labor hours performed on site per trade, and shall be submitted in a format determined by the Director.

Sec. 38-83.8. Equal Employment Standards.

(a) All City Construction Contracts shall contain language requiring as a condition thereof that all Construction Contractors will adhere to the Equal Opportunity Clause set forth in the Kansas City Code of City Ordinances, Chapter 38, Article III, Section 38-132. The Equal Opportunity Clause shall include, at a minimum, the following provisions:

- (1) The Construction Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, disability or sexual orientation.
- (2) The Construction Contractor will take affirmative action to ensure that employees are treated fairly during employment without regard to their race, color, religion, sex, national origin, disability or sexual orientation. Such action shall include, but not be limited to the following: Employment, promotion, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
- (3) The Construction Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of the nondiscrimination clause.

(b) The Construction Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Construction Contractor, state that all qualified

applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, disability or sexual orientation.

(c) In the event of the Construction Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, the contract may be canceled, terminated, or suspended in whole or in part and the Construction Contractor may be declared ineligible for further contracts with the City. A Construction Contractor may appeal any such determination to the Construction Workforce Board.

Sec. 38-83.9. Complaint Procedures.

The City shall provide complaint procedures set forth in the Code of City Ordinances, Chapter 38, Article III, Section 38-132 to all persons working under the Construction Employment Program.

Sec. 38-83.10. Remedies.

(a) If the Director shall find after investigation that a Construction Contractor has not met the Construction Employment Goals and the Construction Contractor has not made a good faith effort to meet the goals, the Director may:

- (1) recommend the assessment of liquidated damages, as specified in the City Construction Contract;
- (2) recommend that the Construction Contractor be declared ineligible to receive any City Construction Contract for a period of time up to one year.

(b) Any recommendation by the Director to assess liquidated damages or to bar a Construction Contractor from bidding on City Construction Contracts may be appealed by the Construction Contractor to the Construction Workforce Board.

Sec. 38-83.11. Construction Workforce Board.

(a) There is hereby established the Kansas City Construction Workforce Board for the purpose of offering community input to the Director; reporting issues and recommendations to the City Manager and City Council concerning the construction employment program; hearing certain appeals of determinations and recommendations of the Director; and making certain recommendations to the City Council. The Construction Workforce Board's responsibilities specifically include:

- (1) Meeting quarterly in a forum open to the public, to review the monthly workforce reports including the Director's AAMR, monitor compliance with the provisions of the Ordinance, and make recommendations to the Director regarding enforcement of this Ordinance; and

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- (2) Hearing appeals brought by Construction Contractors after a determination by the Director that a Construction Contractor has failed to make a good faith effort to meet the resident, minority and women workforce goals and has recommended a remedy authorized by this Ordinance.

(b) The Construction Workforce Board shall be composed of eleven members and ten alternates proposed by the following groups to represent the following groups and appointed by the mayor, as follows:

- (1) One member and one alternate representing the local labor organizations/unions;
- (2) One member and one alternate representing the school sponsored training programs;
- (3) One member and one alternate representing the workforce referral organizations;
- (4) Two members and two alternates representing the community;
- (5) One member and one alternate representing the Heavy Constructors Association;
- (6) One member and one alternate representing the Builder's Association;
- (7) One member and one alternate representing the MBE Contractors Coalition (Minority Contractors Association (MCA) and Kansas City Hispanic Association Contractors Enterprise (KCHACE));
- (8) One member and one alternate representing WBE Contractors Coalition (Women Construction Owners and Executives and National Association of Women in Construction),
- (9) One member and one alternate representing the subcontractor associations (Sheet Metal Contractors National Association (SMACNA), National Electrical Contractor's Association (NECA), and Mechanical Contractors Association (MCA))
- (10) Chairperson appointed by the mayor.

(c) Board members serve at the leisure of the constituents each board member represents and may be recalled by such constituents or the mayor at anytime .

(d) In the event a board member is unable to attend a meeting of the board or has a conflict of interest with regard to a particular contract or issue, the alternate shall

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temporarily serve in such member's stead. The term of an alternate shall expire at the expiration of the term of the board member.

(e) The following are ineligible to serve on the Construction Workforce Board:

- (1) Members of the City Council; and
- (2) Employees of the City.

(f) In the event a board member becomes ineligible or is unable to serve on the Construction Workforce Board after appointment, the represented group shall nominate and the mayor shall appoint another person to fill the vacancy for the remainder of the board member's unexpired term.

(g) 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 Construction Workforce Board, the alternate shall recuse himself.

(h) In the event the chairperson is not in attendance at any Construction Workforce Board meeting, a majority of board members shall select a member to act as chairman for that meeting.

(i) Six members of the Construction Workforce Board shall constitute a quorum.

(j) The Construction Workforce Board shall adopt rules to govern the exercise of their duties.

Sec. 38-83.12. Appeals to the Construction Workforce Board.

(a) Any Construction Contractor may appeal to the Construction Workforce Board:

- (1) Determinations of the Director that a Construction Contractor did not meet the Construction Employment Goals and did not use good faith efforts to meet the goals; and
- (2) The Director's recommendation of assessment of liquidated damages pursuant to this Workforce Ordinance; and
- (3) The Director's recommendation that a Construction Contractor be declared ineligible to receive any City Construction Contract for a period of time up to one year.

(b) Appeals shall be made to the Construction Workforce Board by filing with the Director within ten (10) working days after notice of the Director's determination, a

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written request for review by the Construction Workforce Board, stating the grounds of such appeal with specificity. The Director shall promptly forward to the chairperson and members of the Construction Workforce Board a copy of any appeal.

(c) Failure to file a timely appeal shall constitute a waiver of the right of a Construction Contractor to appeal the Director's determination and such person shall be estopped to deny the validity of any order, recommendation, determination or action taken by the Director which could have been timely appealed.

(d) The Construction Workforce Board shall have authority to require that a party first make a written submission of its appeal prior to permitting a hearing and may summarily dispose of those appeals that it determines to be frivolous and without merit.

(e) After receiving an appeal from the City Construction Contractor, the Construction Workforce Board shall set a date upon which a hearing shall be held by the Construction Workforce Board and shall notify all parties of the date thereof. The notice of hearing shall be served upon the parties at least ten (10) calendar days prior to the date of the hearing. A copy of the Director's determination shall be attached to each such notice. A hearing shall be set no later than twenty-one (21) calendar days after receipt of the request for appeal by the Director.

(f) The hearing shall be conducted under rules adopted by the Board. The Board may subpoena witnesses, compel their attendance, administer oaths, take the testimony of persons under oath, and require the production for examination any books, papers or other materials relating to any matter under investigation or in question before the Board.

(g) The Board shall cause all proceedings before it to be either audio recorded or held before a certified court reporter.

(h) The Board shall have authority to affirm, modify or reverse the determination of the Director.

Sec. 38-83.13. Severability.

If any section, subsection, clause, or provision of this ordinance is deemed to be invalid or unenforceable in whole or in part, Sections 38-83.1 through 38-83.12 shall be deemed amended to delete or modify, in whole or in part, if necessary, the invalid or unenforceable subsection(s), clause(s), provision(s) or portion(s) thereof, and alter the balance of those same sections in order to render the same valid and enforceable.

Section 2. This ordinance takes effect on July 1, 2007.

Approved as to form and legality:

Brian T. Rabineau
Assistant City Attorney