

## **Calhoun Place Condominium Renovation Project Basic City Financing Terms & Conditions**

- 1) The Association has determined that \$2.0M of the total project cost will be paid by unit owners. The Association will determine what portion of the \$2.0M each unit owes. Owners may prepay their portion of project costs prior to closing on the construction loan with Western Bank. Otherwise, their portion will be financed through the City's issuance of bonds and subsequent imposition of HIA fees.
- 2) City agrees to pay off the outstanding principal balance of the Association's construction loan (up to \$2,000,000) within 60 days of Project Completion. Project Completion is defined in Section 12(D) below.
- 3) The City will finance this payoff through the issuance of taxable general obligation housing improvement area bonds (the "Bonds"). The Bonds will be sized to include the construction loan payoff amount, capitalized interest, an approximate one-year debt service reserve, costs of issuance, and a \$30,000 city processing fee. The Bonds will be structured assuming a 20-year maximum life, level annual HIA fees of up to 19 years, a \$7,500 annual city administrative fee, and an annual expense coverage ratio of approximately 1.10.
- 4) If due to prevailing market conditions the maximum annual HIA fees authorized by the City Council will only support a bond issue size, that is consistent with the terms described above, but does not result in net bond proceeds sufficient to payoff the entire construction loan, then the Association will provide a cash infusion to payoff the shortfall.
- 5) Capitalized interest and debt service reserve funds will be retained by the City in a separate fund (the "Calhoun DS Fund"), and used exclusively for the payment of semi-annual debt service on the Bonds and city administrative fees. City administrative fees will not exceed \$7,500 per year.
- 6) Upon bond closing, the City will reimburse the Association \$15,000 for the portion of the loan processing fee it previously paid.
- 7) Annual Surplus Cash will be retained by the City in the Calhoun DS Fund. Annual Surplus Cash is defined as 1) annual revenues of the project (HIA fees collected, available capitalized interest, interest earnings, other) less 2) annual debt service and city administrative fees paid.
- 8) When all of the Bonds have been retired, no further HIA fees will be imposed, any outstanding HIA assistance will be forgiven, and all funds remaining in the Calhoun DS Fund will be disbursed to the Association within 60 days.
- 9) If at any time the City determines that the HIA fees for any unit in the Association are delinquent by one year or more, the City may request reimbursement from the Association. In this case, the Association has 30 days to pay this amount to the City from any and all assets at its disposal. If the delinquent HIA fee is later paid in full to Hennepin County, the City will reimburse the Association for the amount it paid (without interest).

- 10) It is currently anticipated that HIA fees will not be prepayable. However, the City's Finance Officer may amend this term to allow for the payment of HIA fees under certain circumstances, as determined by the City Finance Officer in his sole discretion.
- 11) The HIA fees will be allocated by the ownership percentage for each Unit in the Declaration for Calhoun Place Condominiums, which is the same as for assessments under the Association's organizational documents.
- 12) The City will not issue bonds or disburse proceeds until all of the following items have been satisfactorily received by the City:
  - A. A fully completed and executed Funding Agreement in form approved by the City committing the Association to certain obligations with respect to construction and management of the Housing Improvements including, but not limited to:
    - i. The obligation to insure the Housing Improvements through the maturity date of the bonds.
    - ii. The obligation to provide annual financial statements for the Association and a Capital Reserve Plan for Major Repairs and Replacements.
    - iii. Obligations to maintain the Association's existence and pay any bond payments not covered by the HIA fees.
    - iv. The obligation to maintain an experienced property manager for the property through maturity date of the bonds.
  - B. A fully completed and executed Pledge Agreement in form reasonably acceptable to the City from the Association pledging all of the Association's assets to cover any delinquent HIA fee payments.
  - C. Evidence that the Housing Improvements are insured in compliance with Minnesota Statutes, Chapter 515B.3-113 and Section 9 of the Declaration.
  - D. Evidence reasonably satisfactory to the City that the Housing Improvements have been completed substantially in accordance with the Construction Specifications, including a written statement from the Association certifying that, to the best of its knowledge, work on the Housing Improvements has been completed in accordance with the City's contracting requirements and all labor, services, materials and supplies used in such work have been paid for and lien waivers for such have been received.
  - E. Evidence reasonably satisfactory to the City that the completed Housing Improvements conform with all applicable building laws and regulations of the governmental authorities having jurisdiction over the Housing Improvements and all work requiring inspection by municipal or other governmental authorities having jurisdiction have been duly inspected and approved by such authorities and that all requisite certificates of occupancy and other approvals have been issued.
  - F. An opinion letter addressed to the City from the Association's attorney, acceptable to the City, stating that (i) all legal requirements have been complied with in the

formation of the Association, (ii) all legal requirements have been completed with the Association's execution of all documents relating to the HIA financing, and (iii) all of the documents relating to the HIA financing are fully enforceable against the Association.

- G. Evidence reasonably satisfactory to the City that the Association, Morcon and any subcontractor with a contract in excess of \$50,000 have approved affirmative action plans meeting the requirements of Section 139.50, Minneapolis Code of Ordinances and that a preconstruction booklet meeting the foregoing requirements as well as the requirements of Section H below has been approved by the Minneapolis Department of Civil Rights.
- H. Evidence reasonably satisfactory to the City that Morcon has complied with the Small and Underutilized Business Enterprise Program (SUBP) requirements as outlined in Minneapolis City Code Chapter 423 and the provisions attached hereto as **Attachment 1** (the "SUBP Requirements"). Any questions about the SUBP Requirements should be directed to the Small and Underutilized Business Enterprise Program, City of Minneapolis, Civil Rights Department, 239 City Hall, 350 South 5<sup>th</sup> Street, Minneapolis, Minnesota 55415, Attention: Director Small & Underutilized Business Enterprise Program (612-673-3076).
- I. Evidence reasonably satisfactory to the City that the Association has caused all contracts entered into by it or by any contractor for construction of the Housing Improvements to comply with the wage and hour standards issued by the United States Secretary of Labor pursuant to the Davis-Bacon Act, 40 U.S.C. Secs. 3141-3147, as amended, and the Contract Work Hours and Safety Standards Act, 40 U.S.C. Secs. 3701 et seq. The Association understands that the appropriate date for the wage decision shall be the earliest of (i) the date of formal bid opening for either the general contractor (if the general contractor was competitively procured) or for the subcontractor (if the general contractor was not competitively procured) provided the Construction Contract is awarded within 90 days; (ii) the start of construction; and (iii) the date of the Construction Contract where complete construction specifications are included, with such wage decision modified and updated as required by federal labor standards. The Association shall demonstrate compliance with this requirement by causing its contractors and all subcontractors with employment hours to submit certified payroll into the City's Department of Civil Rights' on-line database by the 10<sup>th</sup> of each month following any month in which labor was performed.
- J. Evidence reasonably satisfactory to the City that Morcon and each subcontractor with a contract in excess of \$50,000 performing construction work on the Housing Improvements participates in a registered apprenticeship program as certified by the State of Minnesota's Department of Labor.
- K. A preconstruction booklet meeting the requirements of Sections G and J above.
- L. Evidence reasonably satisfactory to the City that upon completion the Housing Improvements do not contain any asbestos, urea-formaldehyde insulation or other toxic or hazardous substances.

# ATTACHMENT 1

## MINNEAPOLIS DEPARTMENT OF CIVIL RIGHTS

### Small and Underutilized Business Enterprise Program (SUBP)

#### SPECIAL PROVISIONS FOR CONSTRUCTION CONTRACTS OR DEVELOPMENT PROJECTS WITH CITY ASSISTANCE IN EXCESS OF \$100,000

##### I. PURPOSE

These provisions explain the City of Minneapolis Small and Underutilized Business Enterprise Program (SUBP) requirements applicable to covered contracts, the process the Minneapolis Department of Civil Rights (MDCR) will follow to evaluate the developer's contractor's efforts to obtain SUBP participation, the standards MDCR will use to measure compliance with these requirements, and the sanctions that may result from noncompliance with these requirements.

##### II. POLICY

It is the policy of the City of Minneapolis to provide equal opportunities to all contractors, and to redress the discrimination in the city's marketplace and in public contracting against minority-owned ("MBE") and women-owned ("WBE") business enterprises. The City of Minneapolis shall set contract goals for the participation of Minnesota Uniform Certification Program (Mn/UCP) certified MBEs and WBEs in the marketplace based upon their qualifications and availability. Firms certified by the Mn/UCP can be found at <http://www.dot.state.mn.us/civilrights/>. The city's marketplace includes the geographical area of the Minnesota counties of Anoka, Carver, Chisago, Dakota, Hennepin, Isanti, Ramsey, Scott, Sherburne, Washington, and Wright. Only firms in these counties will be counted towards meeting SUBP goals.

##### III. SUBP GOALS ON THIS PROJECT

The SUBP goals on this project are: 2% MBE 2% WBE

The developer's contractor must either meet the goals listed above or show that it made good faith efforts, as defined in Minneapolis Code of Ordinances, Section 423.90, to meet the MBE/WBE goals for this project. MDCR will determine whether the contractor has made adequate good faith efforts to meet the SUBP goals. If the contractor fails to meet the goals and does not demonstrate good faith efforts, the City may refuse to award or advance project assistance to the developer, among other things.

##### IV. REQUIRED DOCUMENTATION AND SUBMITTAL OF INFORMATION

The developer's contractor must list in the preconstruction booklet the MBEs and WBEs it intends to contract with and the respective subcontract amounts.

The developer's contractor must make every necessary and reasonable effort to subcontract with MBEs/WBEs.

The contractor must thoroughly document its efforts to solicit and incorporate MBE/WBE participation in order to meet the SUBP goals.

If the preconstruction booklet demonstrates and MDCR has verified, sufficient MBE/WBE participation to meet the SUBP goals, the contractor must include with the preconstruction booklet the following:

*Bidders List.* The Bidders List must include all MBE/WBE and non-MBE/WBE subcontractors, sub-consultants, service providers or suppliers that submitted a bid or quote for the project. It also indicates which firms the contractor proposes to use.

If the preconstruction booklet does not demonstrate, or MDCR could not verify, sufficient MBE/WBE participation to meet the SUBP goals, the contractor must submit, within three (3) business days after submitting the preconstruction booklet, documentation demonstrating that the contractor made sufficient good faith efforts to meet the goals. The documentation must include the following:

1. *Bidders List.* The Bidders List must include all MBE/WBE and non-MBE/WBE subcontractors, sub-consultants, service providers or suppliers that submitted a bid or quote for the project. It also indicates which MBE/WBE firms the contractor proposes to use.
2. *Certificate of Good Faith Efforts.* The Certificate of Good Faith Efforts must list all MBE/WBE and non-MBE/WBE firms (including all subcontractors, sub-consultants, service providers, and suppliers) from which the contractor solicited bids or quotes for the project.
3. *Good Faith Efforts Affidavit.* The Good Faith Efforts Affidavit is a notarized document certifying the truth and accuracy of the information contained in the Certificate of Good Faith Efforts.
4. *Supporting Documentation to Demonstrate Good Faith Efforts.* The contractor must submit information that demonstrates its efforts to achieve the SUBP goals. The documentation must identify the actions taken to achieve the SUBP goals, including those listed in the section below entitled, “Good Faith Efforts Evaluation Where Goal Not Met.” The information may include, but is not limited to, copies of solicitation letters, actual bids received, faxes, phone conversations, and emails to MBE/WBE firms.

#### V. FAILURE TO SUBMIT INFORMATION.

If the contractor fails to submit the required information by the due date, the City of Minneapolis may refuse to award or advance project assistance to the developer.

#### VI. IDENTIFYING THE LEVEL OF MBE AND WBE PARTICIPATION

The information provided by the contractor will be used to determine the total base bid amount of the contract. Each total base amount will be multiplied by the MBE/WBE percentage established for the project to determine the exact dollar amount of MBE/WBE goal participation (without rounding up) for the project. This amount will then be compared against the exact dollar amounts that the contractor has listed as MBE/WBE participation. If the total dollar amount of participation listed meets or exceeds the established MBE/WBE goal participation for the project, MDCR will determine that the goal has been met and good faith efforts will be presumed.

In addition, MDCR will determine the exact commitment percentage for each listed MBE/WBE by dividing the dollar amount listed for each MBE/WBE by the total base bid dollar amount. These individual percentages, when totaled for all listed MBE/WBE, will establish the total committed percentage level of MBE/WBE participation for the project.

In providing the exact dollar amount of participation for each listed MBE/WBE, the contractor should take care never to round up in determining whether or not the total of these amounts meets or exceeds the established percentage goal. The goals must be met or exceeded by dollar amounts and percentages for MDCR to determine that the contractor has met or exceeded the applicable SUBP goals.

Compliance with the SUBP goal will be determined on the base bid amount. If a bid or proposal contains alternates, MBE/WBE participation contained in any alternate will not count towards the project goal. However, should any designated alternate be selected by the developer for inclusion in the contract ultimately awarded the MBE/WBE goal percentage levels submitted, on the base amount, will also apply to the selected alternates. Thus, even though such participation will not be considered in evaluating bids or proposals, bidders or proposers are urged to consider MBE/WBE participation in preparing bids or proposals for designated alternates.

MDCR will utilize the following guidelines in determining the percentage of eligible business participation that will be counted toward the project goals:

- a) If a business is not an MBE or WBE at the time of the execution of the contract, the business' participation toward any MBE/WBE project goals will not be counted.
- b) The dollar value of work performed under a contract with a subcontractor after the subcontractor has ceased to be an MBE or WBE, as defined by Minneapolis Code of Ordinances, Chapter 423, will not be counted toward the project goals.
- c) The participation of an MBE or WBE subcontractor toward the prime contractor's project goals will not be counted until the amount being counted toward the goals has been paid to the MBE/WBE.
- d) When an MBE or WBE participates in a contract, the value of the work actually performed will be counted as follows:
  - 1) The entire amount of that portion of a construction contract that is performed by the MBE's/WBE's own forces, including the cost of supplies and materials utilized by the MBE/WBE for the work of the contract, including supplies purchased or equipment leased by the MBE/WBE (except supplies and equipment the MBE/WBE subcontractor purchases or leases from the prime MBE/WBE contractor or its affiliate).
  - 2) The entire amount of fees or commissions charged by the MBE/WBE for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a contract toward MBE/WBE project goals, provided that MDCR determines the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services.
  - 3) When an MBE/WBE subcontracts part of the work of its contract to another business, the value of the subcontract work may be counted toward MBE/WBE project goals only if the MBE's/WBE's subcontractor is itself an MBE/WBE. Work that an MBE/WBE subcontracts to a non-MBE/non-WBE will not count toward MBE/WBE project goals.
- e) When an MBE/WBE performs as a participant in a joint venture, MDCR will count a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the MBE/WBE performs with its own forces toward MBE/WBE project goals.

## VII. COMMERCIALY USEFUL FUNCTION

MDCR will count expenditures of an MBE/WBE toward MBE/WBE project goals only if the MBE/WBE is performing a commercially useful function on that contract:

- 1) An MBE/WBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and

supervising the work involved. To perform a commercially useful function, the MBE/WBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, installing (where applicable) and paying for the material itself. To determine whether an MBE/WBE is performing a commercially useful function, MDCR may evaluate the amount of work subcontracted, industry practices, whether the amount the MBE/WBE is to be paid under the contract is commensurate with the work it is actually performing, and other relevant factors.

- 2) An MBE/WBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which the funds are passed in order to obtain the appearance of MBE/WBE participation. In determining whether an MBE/WBE is such an extra participant, MDCR may examine similar transactions, particularly those in which MBEs and WBEs do not participate, and other relevant factors.
- 3) If an MBE/WBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the MBE/WBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, MDCR may presume that it is not performing a commercially useful function.
- 4) When an MBE/WBE is presumed not to be performing a commercially useful function, the MBE/WBE may present evidence to rebut this presumption. MDCR may determine that the business is performing a commercially useful function given the type of work involved and normal industry practices, and other relevant factors.

#### VIII. GOOD FAITH EFFORTS EVALUATION WHERE GOALS NOT MET

If the contractor has not fully met the project goals, then it shall demonstrate its good faith efforts to do so. MDCR may consider the following list of actions when reviewing if the contractor solicited in good faith:

- 1) Soliciting through all reasonable and available means (attendance at pre-bid meetings, advertising and/or written notices) the interest of all MBEs/WBEs certified in the scopes of work of the contract. The contractor must solicit MBEs/WBEs in sufficient time prior to bid opening or the proposal deadline to allow MBEs/WBEs to respond to solicitations. The contractor must determine with reasonable certainty if the MBEs/WBEs are interested by taking appropriate steps to follow up on initial solicitations.
- 2) Selecting portions of the work to be performed by MBEs/WBEs in order to increase the likelihood that the project goals will be achieved. This includes, where appropriate, breaking out contract work into smaller units to facilitate MBE/WBE participation, even when a contractor might otherwise prefer to perform these work items with its own forces.
- 3) Providing interested MBEs/WBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
- 4) The contractor must negotiate in good faith with interested MBEs/WBEs and provide written documentation of such negotiation with each such business. In determining whether the bidder or proposer negotiated in good faith, MDCR may consider a number of factors including price, scheduling and capabilities as well as the contract goal.
- 5) The fact that there may be some additional costs involved in finding and using MBEs/WBEs is not itself sufficient reason for the contractor's failure to meet the project goals as long as such costs are reasonable.
- 6) If requested by a solicited MBE/WBE, the contractor must make reasonable efforts to assist such MBEs/WBEs in obtaining bonding, lines of credit or insurance as required by the developer or by the contractor, provided that the contractor need not provide financial assistance toward this effort.
- 7) Effectively using the services of minority/woman community organizations; minority/woman contractors' groups; local, state and federal business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the solicitation and placement of MBEs/WBEs.

## IX. POST-AWARD SUBSTITUTIONS

The developer's contractor shall not substitute any subcontractor listed in the preconstruction booklet without the prior written approval of MDCR. A substitution includes having someone or some entity other than the subcontractor listed in the preconstruction booklet perform the work of that subcontractor. A substitution is not allowed until both of the following occur: MDCR receives a written request for approval of the substitution, including the reasons for the substitution; and MDCR issues a written approval of the substitution.

The contractor must make good faith efforts to replace an MBE/WBE subcontractor that is unable to perform successfully with another MBE/WBE to perform the same scope of work. The contractor may request assistance from MDCR staff in replacing an MBE/WBE. Such assistance may include, but is not limited to, providing the contractor with information regarding the identification and availability of other MBE/WBEs.

## X. PENALTIES FOR NONCOMPLIANCE WITH THESE SUBP SPECIAL PROVISIONS

Contractor compliance with the requirements of these SUBP Special Provisions is a material condition of performance of the developer's contract with the City, and therefore contractor's failure to comply with these SUBP Special Provisions shall be deemed a breach of the contractor's contract with the developer. If a developer, contractor, subcontractor, supplier, vendor or subrecipient does not make a good faith effort to fulfill its obligations under Minneapolis Code of Ordinances, Chapter 423 and these SUBP Special Provisions, or fails to materially comply with the provisions of Minneapolis Code of Ordinances, Chapter 423 and these SUBP Special Provisions, the City of Minneapolis or the developer, as applicable, may take the following actions wholly, partly, or in any combination:

- a) Temporarily withhold cash payments pending correction of the deficiency.
- b) Disallow the use of funds for all or part of the cost of the activity or action not in compliance.
- c) Suspend or debar the developer, contractor, subcontractor, supplier, vendor or subrecipient as ineligible for all current or potential contracts.
- d) Designate the developer, contractor, subcontractor, supplier, vendor or subrecipient as high-risk for future contracts and require of the developer, contractor, subcontractor, supplier, vendor or subrecipient increased reporting requirements, mandatory audits and similar measures.



**CITY OF MINNEAPOLIS  
DEPARTMENT OF CIVIL RIGHTS**

**BIDDERS LIST**

The information on this form may be provided in an approved alternate format.

Project Name: \_\_\_\_\_

Prime Contractor \_\_\_\_\_

MBE Commitment % \_\_\_\_\_ WBE Commitment % \_\_\_\_\_

List all comparative quotes of participants performing on the project and participants that bid, including MBEs, WBEs and Non-MBEs and Non-WBEs.  
Include Subcontractors, Suppliers, Sub-Consultants & Service Providers (Including Trucking).

Name, Contact Name and Phone number of Contractor	Check (✓) Firms That Will Be Used	Description of Work	Dollar Amount of Subcontract/Quote
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			
11.			
12.			

Please indicate with a check mark (✓) which subcontractors, suppliers, sub-consultants & service providers you will be using on the project.  
(Make additional copies of this form as necessary.)



**CITY OF MINNEAPOLIS  
DEPARTMENT OF CIVIL RIGHTS  
CERTIFICATE OF GOOD FAITH EFFORTS**

Project Name \_\_\_\_\_

Prime Contractor \_\_\_\_\_

LIST YOUR SOLICITATION OF ALL SUBCONTRACTORS, SUB-CONSULTANTS, SUPPLIERS, AND SERVICE PROVIDERS  
(Include all MBEs, WBEs, and others solicited)

Subcontractor/Supplier/Service Provider and Address	MBE	WBE	Telephone #	Dates, Method of Contact					Description of Work or Service to be Provided	Dollar Amount of Contract
				Date	Letter	Fax	Phone	*Other		
1.										
2.										
3.										
4.										
5.										
6.										
7.										
8.										
9.										
10.										

\* Please indicate how subcontractors, suppliers, sub-consultants & service providers were contacted for a quote on this project: \_\_\_\_\_.

(Make additional copies of this form as necessary)

