

# Request for City Council Committee Action from the Department of Community Planning and Economic Development

**Date:** May 17, 2011

**To:** Council Member Lisa Goodman, Community Development Committee

**Subject:** Regional Economic Development Partnership

**Recommendation:** Authorize execution of a Memorandum of Understanding with the Minneapolis-St. Paul Regional Economic Development Partnership substantially similar to the attached draft Memorandum of Understanding providing \$150,000 for business recruitment, marketing and related services to promote the City of Minneapolis and its economic development.

**Previous Directives:** December 2010 – Budget approval of payment of \$150,000 to the REDP.

## Department Information

Prepared by: Cathy Polasky, Director of Economic Development, CPED    phone: 612-673-5159 Approved by: Charles T. Lutz, Deputy Director CPED Presenter in Committee: Cathy Polasky
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## Financial Impact

- Action is within the Business Plan

## Community Impact

- Neighborhood Notification: N/A
- City Goals: Jobs and Economic Vitality
- Sustainability Targets: Green Jobs

## Supporting Information

The Minneapolis – Saint Paul Regional Economic Development Partnership (REDP) was incorporated as a Minnesota nonprofit corporation in November, 2010 for the purpose of fostering economic development and prosperity for the residents of the Minneapolis – Saint Paul metropolitan region. The REDP is a collaborative, public – private partnership, created in the public interest. The stated goal and objectives of the REDP are to stimulate the creation and retention of jobs in the region, and deliver value to the private and public sectors by:

- (a) seeking to foster economic development and prosperity for all residents of the MSA;
- (b) promoting job creation, strengthening employment and attracting new business investment in the MSA;

- (c) enhancing and supplementing contemporaneous efforts of government agencies in the area of economic development and seeking to generate increased investment, tax revenue, and new jobs in the MSA;
- (d) cooperating with the various governmental and non-governmental agencies throughout the MSA that are engaged in related economic development activities, including the provision of services otherwise provided by public agencies; and
- (e) facilitating coordination of such activities and soliciting, collecting and expending funds to carry out the foregoing purposes and thereby, in all activities, lessening the burdens of government.

The City of Minneapolis budgeted \$150,000 for REDP activities and services through its 2011 budget process. Participation by the city is expected to further the City's goals of stimulating private investment in Minneapolis to strengthen its economic base, grow the property tax base, increase the job base, and support the retention, expansion and attraction of businesses to Minneapolis and the region.

**MEMORANDUM OF UNDERSTANDING**

**Between**

**Minneapolis-St. Paul Regional Economic Development Partnership**

**And**

**City of Minneapolis**

**THIS MEMORANDUM OF UNDERSTANDING** (“MOU”) is entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2011, by and between the Minneapolis-St. Paul Regional Economic Development Partnership, a Minnesota non-profit corporation (hereinafter the “Partnership”), and the City of Minneapolis, a Minnesota municipal corporation (hereinafter “Minneapolis”).

**WHEREAS**, the Partnership seeks to foster economic development and prosperity for all residents of the Minneapolis – St. Paul Metropolitan Statistical Area (MSA), stimulate the creation and retention of jobs in the region, and deliver value to the private and public sectors by:

- (a) seeking to foster economic development and prosperity for all residents of the MSA;
- (b) promoting job creation, strengthening employment and attracting new business investment in the MSA;
- (c) enhancing and supplementing contemporaneous efforts of government agencies in the area of economic development and seeking to generate increased investment, tax revenue and new jobs in the MSA;
- (d) cooperating with the various governmental and non-governmental agencies throughout the MSA that are engaged in related economic development activities, including the provision of services otherwise provided by public agencies; and
- (e) facilitating coordination of such activities and soliciting, collecting and expending funds to carry out the foregoing purposes and thereby, in all activities, lessening the burdens of government.

**WHEREAS**, the Partnership’s activities and efforts to accomplish the above-described goals will benefit Minneapolis, which seeks to stimulate private investment in Minneapolis to strengthen its economic base; retain and expand businesses to help stabilize neighborhoods; and build the job base to assure the opportunity for a better quality of life.

**WHEREAS**, Minnesota Statutes, sections 469.097 and 469.101, among others, authorize Minneapolis to contract for economic development activities and services of consultants and agents.

**NOW, THEREFORE**, in consideration of the foregoing recitals and the mutual promises, undertakings and covenants hereinafter set forth, the Partnership and Minneapolis hereby agree as follows:

1. Upon execution of this MOU, Minneapolis will pay \$150,000 to the Partnership for economic development activities and services in 2011 to accomplish the above-described goals.
2. The Partnership will expend all funds contributed by Minneapolis to advance the Partnership's mission in a manner that benefits Minneapolis consistent with Minneapolis' policies and ordinances.
3. Minneapolis will participate in Partnership activities and governance to assist the Partnership in fostering economic development and prosperity for all Minneapolis residents.
4. The Partnership will submit periodic written reports to Minneapolis describing the work performed under this MOU.
5. Notices and communications concerning this MOU will be directed to the following contract representatives:

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If to the Partnership: Kathy Schmidkofer, Executive Vice President

Minneapolis-St. Paul Regional Economic Development Partnership  
400 Robert Street North, Suite 1520  
St. Paul, MN 55101

If to Minneapolis: Cathy Polasky, Director of Economic Policy and Development

Department of Community Planning and Economic Development  
City of Minneapolis  
105 Fifth Avenue South, Suite 200  
Minneapolis, MN 55401

6. This MOU incorporates the applicable terms and conditions set forth in the attached "City of Minneapolis General Conditions for Contracts over \$50,000."

IN WITNESS WHEREOF, the parties have executed this Memorandum of Understanding on the above-written date.

**MINNEAPOLIS-ST. PAUL  
REGIONAL ECONOMIC  
DEVELOPMENT PARTNERSHIP**

**CITY OF MINNEAPOLIS**

By: \_\_\_\_\_  
\_\_\_\_\_

Its: \_\_\_\_\_

By:

Its: Finance Officer  
Enterprise Contracts Administrator  
City Purchasing Agent

Contractor SSN or Fed ID:

\_\_\_\_\_

Department head approval:

\_\_\_\_\_

Director of Economic Policy and  
Development, CPED

Approved as to form:

\_\_\_\_\_

Assistant City Attorney

# **City of Minneapolis - General Conditions for Contracts over \$50,000**

(Revised 03/2011)

The General Conditions are terms and conditions that the City expects all of its contractors to meet. The Contractor agrees to be bound by these requirements.

1 **City's Rights**

The City reserves the right to cancel the Contract without penalty, if circumstances arise which prevent the City from completing the project.

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2 **Interest of Members of City**

The Contractor agrees that it has complied with Minnesota Statutes, Section 471.87 and Chapter 3, Section 22 of the City Charter. Therefore unless authorized in Chapter 15 of the City's Code of Ordinances, no member of the governing body, officer, employee or agent of the City shall have any interest, financial or otherwise, direct or indirect, in the Contract.

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3 **Equal Opportunity Statement**

Contractor agrees to comply with the provisions of all applicable federal, state and City of Minneapolis statutes, ordinances and regulations pertaining to civil rights and nondiscrimination including, without limitation, Minnesota Statutes, Section 181.59 and Chapter 363A, and Minneapolis Code of Ordinances, Chapter 139, incorporated herein by reference.

4 **Non-Discrimination**

The Contractor will not discriminate against any employee or applicant for employment because of race, color, creed, religion, ancestry, sex, national origin, affection preference, disability, age, marital status or status with regard to public assistance or as a disabled veteran or veteran of the Vietnam era. Such prohibition against discrimination shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeship.

If required by the City, the Contractor shall agree to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the City, setting forth this nondiscrimination clause. In addition, the Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, religion, ancestry, sex, national origin, affectional preference, disability, age, marital status or status with regard to public assistance or status as disabled veteran or veteran of the Vietnam eras, 1991 Gulf and current Afghanistan and Iraq wars, and comply in all other aspects with the requirements of the Minneapolis Code of Ordinances, Chapter 139.

5 **Disability Compliance Requirements**

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All Contractors hired by the City of Minneapolis are required to abide by the regulations of the U.S. Americans with Disabilities Act of 1990 (ADA) which prohibits discrimination against individuals with disabilities. The Contractor will not discriminate against any employee or applicant for employment because of their disability and will take affirmative action to ensure that all employment practices are free from such discrimination. Such employment practices include but are not limited to the following: hiring, promotion, demotion, transfer, recruitment or recruitment advertising, layoff, discharge, compensation and fringe benefits, classification, referral and training. The ADA also requires Contractors associated with the City to provide qualified applicants and employees with disabilities with reasonable accommodation that does not impose undue hardship. Contractors also agree to post in a conspicuous place, accessible to employees and applicants, notices of their policy on non-discrimination. The above requirements also apply to the Minnesota Human Rights Act, Minnesota Statutes Chapter 363A.

In the event of the Contractor's noncompliance with the non-discrimination clauses of this Contract, this Contract may be canceled, terminated, or suspended, in whole or part, and the Contractor may be declared ineligible by the Minneapolis City Council from any further participation in city contracts in addition to other remedies as provided by law.

6 **Insurance**

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Insurance secured by the Contractor shall be issued by insurance companies acceptable to the City and admitted in Minnesota. The insurance specified may be in a policy or policies of insurance, primary or excess. Such insurance shall be in force on the date of execution of the Contract and shall remain continuously in force for the duration of the Contract. The Contractor and its sub-contractors shall secure and maintain the following insurance:

- a) **Workers Compensation** insurance that meets the statutory obligations with Coverage B- Employers Liability limits of at least \$100,000 each accident, \$500,000 disease - policy limit and \$100,000 disease each employee.
- b) **Commercial General Liability** insurance with limits of at least \$2,000,000 general aggregate, \$2,000,000 products - completed operations \$2,000,000 personal and advertising injury, \$100,000 each occurrence fire damage and \$10,000 medical expense any one person. The policy shall be on an "occurrence" basis, shall include contractual liability coverage and the City shall be named an additional insured.
- c) **Commercial Automobile Liability** insurance covering all owned, non-owned and hired automobiles with limits of at least \$500,000 per accident.
- d) **Professional Liability** Insurance or Errors & Omissions insurance providing coverage for 1) the claims that arise from the errors or omissions of the Contractor or its sub-contractors and 2) the negligence or failure to render a professional service by the Contractor or its sub-contractors. The insurance policy should provide coverage in the amount of \$2,000,000 each occurrence and \$2,000,000 annual aggregate. The insurance policy must provide the protection stated for two years after completion of the work.

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- e) **Computer Security and Privacy Liability** insurance for the duration of this agreement providing coverage for, but not limited to, Technology and Internet Errors & Omissions, Security and Privacy Liability, and Electronic Media Liability. Insurance will cover claims that arise from the disclosure of private information from files but not limited to: 1) the errors or omissions of the Contractor, its employees or Sub-contractors and 2) penetration of the Contractor's electronic data network, "firewall" or other security devices by hackers or others. The insurance policy should provide minimum coverage in the amount of \$1,000,000 per occurrence and \$2,000,000 annual aggregate. If written on a Claims-Made basis, the policy must provide an extended reporting period and have a retroactive date that on or before the date of this contract or the date Contractor commences work, whichever is earlier.

Acceptance of the insurance by the City shall not relieve, limit or decrease the liability of the Contractor. Any policy deductibles or retention shall be the responsibility of the Contractor. The Contractor shall control any special or unusual hazards and be responsible for any damages that result from those hazards. The City does not represent that the insurance requirements are sufficient to protect the Contractor's interest or provide adequate coverage. Evidence of coverage is to be provided on a City-approved Insurance Certificate. A thirty (30) day written notice is required if the policy is canceled, not renewed or materially changed. The Contractor shall require any of its subcontractors, if sub-contracting is allowable under this Contract, to comply with these provisions.

**7 Hold Harmless**

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The Contractor agrees to defend, indemnify and hold harmless the City, its officers and employees, from any liabilities, claims, damages, costs, judgments, and expenses, including reasonable attorney's fees, resulting directly or indirectly from any negligent act or omission of the Contractor, its employees, its agents, or employees of subcontractors, in the performance of the work or services provided by or through this Contract or by reason of the failure of the Contractor to fully perform, in any respect, any of its obligations under this Contract. If a Contractor is a self-insured agency of the State of Minnesota, the terms and conditions of Minnesota Statutes, section 3.732 et seq. shall apply with respect to liability bonding, insurance and liability limits. The provisions of Minnesota Statutes, Chapter 466 shall apply to other political subdivisions of the State of Minnesota.

**8 Assignment or Transfer of Interest**

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The Contractor shall not assign any interest in the Contract, and shall not transfer any interest in the same either by assignment or novation without the prior written approval of the City, provided, however, that claims for money due or to income due to the Contractor may be assigned to a bank, trust company or other financial institution, or to a Trustee in Bankruptcy without such approval. Notice to any such assignment or transfer shall be furnished to the City. The Contractor shall not subcontract any services under this Contract without prior written approval of the City Department Contract Manager designated herein.

**9 Subcontracting**

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The Contractor shall provide written notice to the City and obtain the City's authorization to sub-contract any work or services to be provided to the City pursuant to this Contract. As required by Minnesota Statutes, Section 471.425, the Contractor shall pay all certified small subcontractors for subcontractor's undisputed, completed work, within ten (10) days after the Contractor has received payment from the City.

**10 General Compliance**

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The Contractor agrees to comply with all applicable Federal, State and local laws and regulations governing funds provided under this Contract.

**11 Performance Monitoring**

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The City will monitor the performance of the Contractor against goals and performance standards required herein. Substandard performance as determined by the City will constitute non-compliance with this Contract. If action to correct such substandard performance is not taken by the Contractor within a reasonable period of time after being notified by the City, Contract termination procedures will be initiated. All work submitted by Contractor shall be subject to the approval and acceptance by the City Department Contract Manager designated herein. The City Department Contract Manager designated herein shall review each portion of the work when certified as complete and submitted by the Contractor and shall inform the Contractor of any apparent deficiencies, defects, or incomplete work, at any stage of the project.

**12 Independent Contractor**

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Nothing contained in this Contract is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the parties. The Contractor shall at all times remain an independent contractor with respect to the work and/or services to be performed under this Contract. Any and all employees of Contractor or other persons engaged in the performance of any work or services required by Contractor under this Contract shall be considered employees or sub-contractors of the Contractor only and not of the City; and any and all claims that might arise, including Worker's Compensation claims under the Worker's Compensation Act of the State of Minnesota or any other state, on behalf of said employees or other persons while so engaged in any of the work or services to be rendered or provided herein, shall be the sole obligation and responsibility of Contractor.

**13 Accounting Standards**

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The Contractor agrees to maintain the necessary source documentation and enforce sufficient internal controls as dictated by generally accepted accounting practices (GAAP) to properly account for expenses incurred under this Contract.

**14 Retention of Records**

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The Contractor shall retain all records pertinent to expenditures incurred under this Contract for a period of six years after the resolution of all audit findings, with the exception that such records shall be kept for a period of ten years after both the terms of a monitoring Contract have been fulfilled and all audit findings have been resolved for abatement programs. Records for non-expendable property acquired with funds under this Contract shall be retained for six years after final disposition of such property.

**15 Data Practices**

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The Contractor agrees to comply with the Minnesota Government Data Practices Act and all other applicable state and federal laws relating to data privacy or confidentiality. The Contractor must immediately report to the City any requests from third parties for information relating to this Contract. The City agrees to promptly respond to inquiries from the Contractor concerning data requests. The Contractor agrees to hold the City, its officers, and employees harmless from any claims resulting from the Contractor's unlawful disclosure or use of data protected under state and federal laws.

**16 Inspection of Records**

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All Contractor records with respect to any matters covered by this Contract shall be made available to the City or its designees at any time during normal business hours, as often as the City deems necessary, to audit, examine, and make excerpts or transcripts of all relevant data.

**17 Living Wage Ordinance**

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The Contractor may be required to comply with the "Minneapolis Living Wage and Responsible Public Spending Ordinance", (<http://www.ci.minneapolis.mn.us/procurement/Ch38LivingWage.pdf>) Chapter 38 of the City's Code of Ordinances (the "Ordinance"). Unless otherwise exempt from the Ordinance as provided in Section 38.40 (c), any City contract for services valued at \$100,000 or more or any City financial assistance or subsidy valued at \$100,000 or more will be subject to the Ordinance's requirement that the Contractor and its sub-contractors pay their employees a "living wage" as defined and provided for in the Ordinance.

**18 Applicable Law**

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The laws of the State of Minnesota shall govern all interpretations of this Contract, and the appropriate venue and jurisdiction for any litigation which may arise hereunder will be in those courts located within the County of Hennepin, State of Minnesota, regardless of the place of business, residence or incorporation of the Contractor.

**19 Conflict and Priority**

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In the event that a conflict is found between provisions in this Contract, the Contractor's Proposal or the City's Request for Proposals, the provisions in the

following rank order shall take precedence: 1) Contract; 2) Proposal; and last 3) Request for Proposals (only for Contracts awarded using RFP).

**20 Travel**

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If travel by the Contractor is allowable and approved for this Contract, then Contractor travel expenses must be reimbursed in accordance with the [Contractor Travel Reimbursement Conditions](#), available from the City.

**21 Billboard Advertising**

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City Code of Ordinance 544.120 prohibits the use of City and City-derived funds to pay for billboard advertising as a part of a City project or undertaking.

**22 Conflict of Interest/Code of Ethics**

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By signing this Contract, the Contractor agrees that it will not represent any other party or other client which may create a conflict of interest in its representation with the City. If the Contractor is unclear if a conflict of interest exists, the Contractor will immediately contact the City representative identified as the Contract Manager in this Contract and ask for an interpretation.

In so far as it relates to its relationship with the City created by this Contract, the Contractor agrees to comply with the City's Code of Ethics, as codified at Minneapolis Code of Ordinances, Title 2, Chapter 15. Contractor certifies that to the best of its knowledge all City employees and officers participating in this Contract have also complied with Title 2, Chapter 15 of that Ordinance as it related to their relationships between the City and the Contractor created by this Contract. Compliance with the Code of Ethics by the Contractor will be in its potential role as an "interested person," "lobbyist," or "lobbyist principal" and not as a "local official" or "local employee" (except to the extent that a Contractor representative or member of its board of directors is already a City official or employee). It is agreed by the Parties that any violation of the Code of Ethics constitutes grounds for the City to void this Contract. All questions relative to this section shall be referred to the City and shall be promptly answered.

**23 Termination**

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The City may cancel this Contract for any reason without cause upon thirty (30) days written notice. Both the City and the contractor may terminate this Contract if either party fails to fulfill its obligations under the Contract in a proper and timely manner, or otherwise violates the terms of this Contract. The non-defaulting party shall have the right to terminate this Contract, if the default has not been cured after ten (10) days written notice has been provided. If termination shall be without cause, the City shall pay Contractor all compensation earned to the date of termination. If the termination shall be for breach of this Contract by Contractor, the City shall pay Contractor all

compensation earned prior to the date of termination minus any damages and costs incurred by the City as a result of the breach. If the Contract is canceled or terminated, all finished or unfinished documents, data, studies, surveys, maps, models, photographs, reports or other materials prepared by the Contractor under this Contract shall, at the option of the City, become the property of the City, and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents or materials prior to the termination.

Notwithstanding the above, the Contractor shall not be relieved of liability to the City for damages sustained by the City as a result of any breach of this Contract by the Contractor. The City may, in such event, withhold payments due to the Contractor for the purpose of set-off until such time as the exact amount of damages due to the City is determined. The rights or remedies provided for herein shall not limit the City, in case of any default by the Contractor, from asserting any other right or remedy allowed by law, equity, or by statute.

**24 Ownership of Materials**

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All finished or unfinished documents, data, studies, surveys, maps, models, photographs, reports or other materials resulting from this Contract shall become the property of the City upon final approval of the final report or upon request by the City at any time before then. The City may use, extend, or enlarge any document produced under this Contract without the consent, permission of, or further compensation to the Contractor.

**25 Intellectual Property**

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City owns all rights, title, and interest in all of the intellectual property rights, including copyrights, patents, trade secrets, trademarks, and service marks in any "Work" created, in progress, produced or completed and paid by this Contract. Work covered includes inventions, improvements, discoveries, databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, or other media.

All Work under this Contract will be the exclusive property of the City and will be surrendered to the City immediately upon completion, expiration, or cancellation of this Contract. The Contractor represents and warrants that the Work does not and will not infringe upon any intellectual property rights of other persons or entities.

This section is modified when the Contractor is providing services from a proprietary system for which the Contractor has proprietary rights.

Each party acknowledges and agrees that each party is the sole and exclusive owner of all right, title, and interest in and to its services, products, software, source and object code, specifications, designs, techniques, concepts, improvements, discoveries and inventions including all intellectual property rights thereto, including without limitations any modifications, improvements, or derivative works thereof, created prior to, or independently, during the term of this Contract. This contract does not affect the ownership of each party's pre-existing, intellectual property. Each party further acknowledges that it acquires no rights under this Contract to the other party's pre-existing intellectual property, other than any limited right explicitly granted in this Contract.

## **26 Equal Benefits Ordinance**

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Minneapolis Code of Ordinances, Section 18.200, relating to equal benefits for domestic partners, applies to each contractor and subcontractor with 21 or more employees that enters into a "contract", as defined by the ordinance that exceeds \$100,000. The categories to which the ordinance applies are personal services; the sale or purchase of supplies, materials, equipment or the rental thereof; and the construction, alteration, repair or maintenance of personal property. The categories to which the ordinance does not apply include real property and development contracts.

Please be aware that if a "contract", as defined by the ordinance, initially does not exceed \$100,000, but is later modified so the Contract does exceed \$100,000, the ordinance will then apply to the Contract. A complete text of the ordinance is available at:

[http://www.ci.minneapolis.mn.us/procurement/docs/equal\\_benefits\\_ordinance.pdf](http://www.ci.minneapolis.mn.us/procurement/docs/equal_benefits_ordinance.pdf).

It is the Contractor's and subcontractor's responsibility to review and understand the requirements and applicability of this ordinance.

## **27 Cardholder Data and Security Standards**

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Should the Contractor collect revenue on behalf of the City through the acceptance of credit cards offered by cardholders to pay for services offered under the terms of this Contract, then Contractor represents and acknowledges that the Contractor will comply with Payment Card Industry (PCI) regulatory standards including the Data Security Standards (DSS). Contractor represents that it will protect cardholder data. Contractor will be annually certified as a PCI compliant service provider and agrees to provide evidence of said certification to the City upon request. Contractor agrees at reasonable times to provide to the City or to its assigns, the audit rights contained in item 15 hereof for all physical locations, systems or networks that process credit cards on behalf of the City. Contractor also agrees to provide written notice to the City of any breach of a system owned, operated or maintained by the Contractor that contains cardholder data or information.

## **28 Small & Underutilized Business Program (SUBP) Requirements**

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Contractor must comply with the Small & Underutilized Business Program (SUBP), as detailed in Chapter 423 of the Minneapolis Code of Ordinances. The SUBP Ordinance applies to any construction/development project in excess of one hundred thousand dollars (\$100,000) and any contract for the provision of goods and services in excess of fifty thousand dollars (\$50,000). Should the contractor find an opportunity to contract with other business concerns to complete portions of the task solicited, we ask that they would entertain contracts with businesses owned by women or minority persons.