

EXHIBIT A
ORDINANCE 838-91
(4 PAGES)

ORD. 838-91 Repealing Ordinance No. 803-88, which declared the City of Toledo's Commitment to a Goal Oriented Minority Business Enterprise Program for contractors and subcontractors participating in the City of Toledo's construction projects and suppliers of goods, materials and services, and enacting a new Ordinance which declares the City of Toledo commitment to a goal oriented Minority Business Enterprise Program for contractors and subcontractors participating in the City of Toledo's construction projects, HUD assisted construction projects, and suppliers of goods and services; and declaring an emergency.

WHEREAS, the Council of the City of Toledo by Resolution No. 90-71, adopted March 29, 1971, declared its commitment to affirmative action programs as promulgated by United States Department of Housing and Urban Development; and

WHEREAS, on June 26, 1973, the City of Toledo enacted Ordinance No. 527-73 stating its commitment to an Affirmative Action Program which declared, among other things, that any and all City assisted contractors and subcontractors, shall vigorously pursue an Affirmative Action course to insure equality of opportunity in the Internal Affairs of City government, as well as in their relations with the public, including those persons and organizations doing business with the City of Toledo; and

WHEREAS, Ordinance No. 527-73 also requires that the City of Toledo institute whatever affirmative measures and administrative programs or procedures as are required to remedy all effects of present and past discriminating patterns and practices and institute whatever positive actions are necessary to guarantee equal employment and equal opportunity for all people; and

WHEREAS, Ordinance No. 527-73 establishes the policy of the City of Toledo that those persons and organizations doing business with the City of Toledo as prime or subcontractor for goods and services, shall also initiate affirmative action programs designed to conform with, complement and support the policies stated in said ordinance and

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that all such affirmative action programs as required by said ordinance shall be submitted to the City Manager for his review and retention; and

WHEREAS, by Ordinance No. 664-78 the Council of the City of Toledo authorized the City Manager to make application for an Urban Development Action Grant (UDAG) from HUD and enter into an agreement which stated in its preamble that previous affirmative action plans had been ineffective in remedying past employment discrimination against minorities in the construction industry and requiring under the UDAG Grant that the City would affirmatively seek and require minority contracting and subcontracting at minimum levels of thirteen (13%) percent of the dollar value of the contracts; and

WHEREAS, the City Manager of the City of Toledo issued Administrative Policy No. 17 stating among other things that those persons and organizations doing business with the City of Toledo as a prime or subcontractor for goods and services shall adhere to or initiate affirmative action programs designed to conform with, complement and support the policies stated therein and such affirmative action programs as required shall be submitted to the appropriate City office for review and retention; and

WHEREAS, the City of Toledo in all of its bid specifications sets forth its "Equal Employment Opportunity Policy" including the statement that the City will encourage opportunities for immediate participation of competent MBE's in work performed involving the usage of City, State and Federal monies; and

WHEREAS, the goal oriented approach to MBE participation undertaken by the City of Toledo as required for participation in the Ten Mile Creek Project under the Federal Public Works Employment Act as well as HUD programmatic ventures resulted in MBE participation of thirteen (13%) percent and twenty-four (24%) percent respectively, in contrast to the 12.3% MBE participation in non-goal oriented projects of the City's Service and Utilities Departments' construction projects for 1981 and 1982; and

WHEREAS, HUD has requested that in order to further strengthen the minority participation activities of the City of Toledo and provide additional contracting and subcontracting activities for minority contractors, that the City, under a goal oriented program, seek a minimal minority participation level of 21% of the dollar value of all HUD assisted construction projects; NOW, THEREFORE,

Be it ordained by the Council of the City of Toledo:

SECTION 1. That Ordinance No. 803-88, which reads as follows:

1. That the City Manager be and he is hereby authorized and directed to strengthen the Minority Business Enterprise (MBE) Program of the City by affirmatively seeking Minority Business Enterprise contractors and subcontractors in the City of Toledo's construction contracts under a goal oriented program in an effort to meet and/or exceed the current 12.3% Minority Business Enterprise participation level in overall City funded construction project.

2. That the City Manager be and he is hereby authorized and directed to strengthen the Minority Business Enterprise (MBE) Program of the City by affirmatively seeking Minority Business Enterprise Suppliers for City-funded purchases of goods, materials, supplies and services, including purchases of Two Thousand Five Hundred and 00/100 Dollars (\$2,500.00) or less which are not subject to the formal competitive bidding process, under a goal oriented program in an effort to meet and/or exceed an approximate goal of four (4%) percent (including a one (1%) percent increase each year for a three (3) year period) Minority Business Enterprise participation level in overall

City-funded purchases of goods, materials, supplies and services.

3. That the Office of Affirmative Action and Contract Compliance, specifically the Contract Compliance Component, of the City of Toledo shall:

- a. oversee the implementation of this Ordinance;
- b. establish procedures and guidelines for the implementation of this Ordinance;
- c. determine which business entities are minority business enterprise/contractors (subcontractors) or suppliers, as defined herein, and issue a certificate to any business entity which meets the definition of a minority business enterprise/contractors (subcontractors) or suppliers;
- d. determine which minority business enterprise/contractors (subcontractors) or suppliers are eligible for certification pursuant to this Ordinance;
- e. consider department requests for adjustments of goals in particular instances, provided that the Office of Affirmative Action and Contract Compliance, specifically the Contract Compliance Component reports to City Council and the City Manager each time it acts upon such requests and submits to City Council and the City Manager on a quarterly basis, recommendations for changes of the goals;
- f. determine that portion of the dollar amount of a minority/non-minority joint venture which may be attributed toward a department's percentage goals;
- g. review annually minority contracting problems and make recommendations, to City Council and the City Manager, that INCREASE minority business enterprise/contractors (subcontractors) or suppliers participation with the City of Toledo;
- h. submit a report, at least semi-annually, to City Council and the City Manager, which reviews and highlights the performance of the City departments and agencies in complying with this Ordinance. Such report shall: state the degree or extent to which each City department has met the goals of this Ordinance and identify departments which have failed to comply with the provisions of this Ordinance, summarize its general activities during the reporting period, and include a copy of the roster of certified MBEs/contractors (subcontractors) or suppliers.

4. That each agency or department of the City of Toledo shall, unless otherwise determined by the Office of Affirmative Action and Contract Compliance,

- a. award its construction contracts consistent with the provisions of this Ordinance;
- b. award its procurement of goods, materials, supplies and services, other than construction, consistent with the provisions of this Ordinance;
- c. require each prime contractor responding to the bid solicitation on a project or contract involving City funds, in whole or in part, to include the following documents or information within its bid package:
 1. the name, address and proposed subcontract amount on each certified MBE it intends to use on the project, and
 2. a certification on the front of its bid envelope as to the dollar amount of MBE participation for which a letter of intent has been issued and the relationship between that amount and the total amount of the contractor's bid expressed in the form of a percentage.
- d. provide quarterly reports to the City Manager and to the Office of Affirmative Action and Contract Compliance specifying with respect to the provisions of this Ordinance:
 1. the means by which it intends to meet the goals established by this Ordinance;

2. the dollar percentage and dollar volume of all contracts and subcontracts it had let during the semi-annual period which were let to minority business enterprises/contractors (subcontractors) or suppliers;

3. the degree or extent to which the department has met the goals established in this Ordinance and an explanation of any of the departments' past and current activities in trying to meet these goals.

5. That for purposes of this Ordinance the term:

A. "minority" means Blacks, Hispanics, American Indians and Asians;

B. "minority business enterprise" means any type of business entity (i.e. individual, association, partnership, joint venture or corporation) (1) of which more than fifty (50%) percent of the business (i.e. voting shares, corporate stock or interest) is held by individuals who are members of a minority as defined herein, and (2) of which control of the day-to-day business affairs of the enterprise is exercised by members of a minority, as defined herein, and (3) of which more than fifty (50%) percent of the net profits or loss attributed to the business accrues to members of a minority, as defined herein, and (4) which has a physical location for its business as opposed to a post office box only.

C. "department" means any department, board, agency or other instrumentality of the City of Toledo responsible for awarding contracts subject to the provisions of this Ordinance.

be and the same is hereby repealed.

SECTION 2. That a new Ordinance be and the same is hereby enacted to read as follows:

1. That the City Manager be and he is hereby authorized and directed to strengthen the Minority Business Enterprise (MBE) Program of the City by affirmatively seeking the participation of MBE contractors and subcontractors in the City of Toledo's construction contracts under a goal oriented program in an effort to meet and/or exceed a level of 12.3% Minority Business Enterprise participation in overall City funded construction projects and in an effort to meet and/or exceed a level of 21% Minority Business Enterprise participation in overall HUD assisted construction projects.

2. That the City Manager be and he is hereby authorized and directed to strengthen the Minority Business Enterprise (MBE) Program of the City by affirmatively seeking Minority Business Enterprise Suppliers for City-funded purchases of goods, materials, supplies and services, including purchases of Two Thousand Five Hundred and 00/100 Dollars (\$2,500.00) or less which are not subject to the formal competitive bidding process, under a goal oriented program in an effort to meet and/or exceed an approximate goal of four (4%) percent (including a one (1%) percent increase each year for a three (3) year period) Minority Business Enterprise participation level in overall City-funded purchases of goods, materials, supplies and services.

3. That the Office of Affirmative Action and Contract Compliance, specifically the Contract Compliance Component, of the City of Toledo shall:

a. oversee the implementation of this Ordinance;

b. establish procedures and guidelines for the implementation of this Ordinance;

c. determine which business entities are minority business enterprise/contractors (subcontractors) or suppliers, as defined herein, and issue a certificate to any business entity which meets the definition of a minority business enterprise/contractors (subcontractors) or suppliers;

d. determine which minority business enterprise/contractors (subcontractors) or suppliers are eligible for certification pursuant to this Ordinance;

e. consider department requests for adjustments of goals in particular instances, provided that the Office of Affirmative Action and Contract Compliance, specifically the Contract Compliance Component reports to City Council and the City Manager each time it acts upon such requests and submits to City Council and the City Manager on a quarterly basis, recommendations for changes of the goals;

f. determine that portion of the dollar amount of a minority/non-minority joint venture which may be attributed toward a department's percentage goals;

g. review annually minority contracting problems and make recommendations, to City Council and the City Manager, that INCREASE minority business enterprise/contractors (subcontractors) or suppliers participation with the City of Toledo;

h. submit a report, at least semi-annually, to City Council and the City Manager, which reviews and highlights the performance of the City departments and agencies in complying with this Ordinance. Such report shall: state the degree or extent to which each City department has met the goals of this Ordinance and identify departments which have failed to comply with the provisions of this Ordinance, summarize its general activities during the reporting period, and include a copy of the roster of certified MBEs/contractors (subcontractors) or suppliers.

4. That each agency or department of the City of Toledo shall, unless otherwise determined by the Office of Affirmative Action and Contract Compliance,

a. award its construction contracts consistent with the provisions of this Ordinance;

b. award its procurement of goods, materials, supplies and services, other than construction, consistent with the provisions of this Ordinance;

c. require each prime contractor responding to the bid solicitation on a project or contract involving City funds, in whole or in part, to include the following documents or information within its bid package:

1. the name, address and proposed subcontract amount on each certified MBE it intends to use on the project, and

2. a certification on the front of its bid envelope as to the dollar amount of MBE participation for which a letter of intent has been issued and the relationship between that amount and the total amount of the contractor's bid expressed in the form of a percentage.

d. provide quarterly reports to the City Manager and to the Office of Affirmative Action and Contract Compliance specifying with respect to the provisions of this Ordinance:

1. the means by which it intends to meet the goals established by this Ordinance;

2. the dollar percentage and dollar volume of all contracts and subcontracts it has let during the semi-annual period which were let to minority business enterprises/contractors (subcontractors) or suppliers;

3. the degree or extent to which the department has met the goals established in this Ordinance and an explanation of any of the departments' past and current activities in trying to meet these goals.

5. That for purposes of this Ordinance the term:

A. "minority" means Blacks, Hispanics, American Indians and Asians;

B. "minority business enterprise" means all type of business entity (i.e. individual, association, partnership, joint venture or corporation) (1) of which more than fifty (50%)

percent of the business (i.e. voting shares, corporate stock or interest) is held by individuals who are members of a minority as defined herein, and (2) of which control of the day-to-day business affairs of the enterprise is exercised by members of a minority, as defined herein, and (3) of which more than fifty (50%) percent of the net profits or loss attributed to the business accrues to members of a minority, as defined herein, and (4) which has a physical location for its business as opposed to a post office box only.

C. "department" means any department, board, agency or other instrumentality of the City of Toledo responsible for awarding contracts subject to the provisions of this Ordinance.

SECTION 3. That this Ordinance hereby is declared to be an emergency measure and shall be in force and effect

from and after its passage. The reason for the emergency lies in the fact that same is necessary for the immediate preservation of the public peace, health, safety, and property and for the further reason that this Ordinance must be immediately effective in order to provide the legislative sanction required for the pursuit of the City's minority business enterprise participation goals.

Vote on emergency clause: yeas 8, nays 0.

Passed: October 29, 1991, as an emergency measure: yeas 8, nays 0.

JOHN MCHUGH
Mayor

Attest: LARRY J. BREWER
Clerk of Council