

MEMORANDUM OF UNDERSTANDING

between

THE NEW YORK CITY DEPARTMENT OF SMALL BUSINESS SERVICES

and

THE NEW YORK CITY SCHOOL CONSTRUCTION AUTHORITY

This **MEMORANDUM OF UNDERSTANDING** (hereinafter referred to as an "MOU"), dated October 2nd, 2013 is made by and between the **CITY OF NEW YORK** acting through its **DEPARTMENT OF SMALL BUSINESS SERVICES** ("SBS") with offices located at 110 William Street, New York, New York 10038 and the **NEW YORK CITY SCHOOL CONSTRUCTION AUTHORITY** ("SCA"), with offices located at 30-30 Thomson Avenue, Long Island City, New York, 11101 (the SBS and the SCA hereinafter referred to as "Parties").

WHEREAS, SBS, pursuant to Title 66, Chapter 11, Subchapter B of the Rules of the City of New York ("M/WBE Rules"), is authorized to certify Minority- and Women-Owned Business Enterprises ("M/WBEs") for participation in the New York City (the "City") procurement process; and

WHEREAS, SCA, pursuant to Article 8, Title 6, Section 1743 of the Public Authorities Law and pursuant to the "Guidelines for Minority and Women Business Enterprise Certification" set forth in Sections 9601.1 through 9606.8 of Title 21 of New York's Compilation of Codes, Rules and Regulations, administers an M/WBE certification program which is designed to assist the growth and development of businesses owned and controlled by women and minorities; and

WHEREAS, SBS and SCA are mutually recognized parties that currently operate M/WBE programs which are similarly designed to assist in the growth and development of businesses owned and controlled by women and minorities through certification, technical assistance and contracting opportunities; and

WHEREAS, the Parties desire to enter into a MOU to expand and promote the pool of qualified M/WBEs City procurement opportunities, expedite and ease the M/WBE Certification Application process through enhanced procedures, and create an active forum for sharing ideas and techniques for improving each Party's respective M/WBE Programs based on interagency collaboration, the sharing of information and the leveraging of technological benefits associated with SCA's current Online M/WBE Certification Application;

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the Parties agree as follows:

ARTICLE 1

TERM

The Parties shall cooperate under this MOU from the date of full execution thereof until the MOU is terminated by one or both Parties as per Article 5 below.

ARTICLE 2
SCOPE OF MOU: GENERAL APPLICABILITY

- A. This MOU shall apply to those applicant firms that meet the eligibility criteria for M/WBE certification as determined by the SCA and SBS and as set forth in their respective governing documents.
- B. Firms Certified by SCA. SBS will afford enhanced “fast track” review of eligible firms currently certified by the SCA pursuant to its “Guidelines for Minority and Women Business Enterprise Certification.”
- C. Firms Certified by SBS. SCA will continue to afford reciprocal M/WBE certification to all firms certified by SBS pursuant to SBS’ M/WBE Rules.

ARTICLE 3
SCA RESPONSIBILITIES

- A. SCA agrees to modify its Online M/WBE Certification Application (“Online Application”) to include language:
 - 1. Asking applicant firms whether they would like to be considered for certification pursuant to SBS’ M/WBE Program; and
 - 2. Informing interested applicant firms that, if they elect to be considered for certification by SBS, they must authorize SCA’s release of the information contained in its Online Application to SBS for the purpose of determining eligibility for certification pursuant to SBS’ M/WBE Rules. If a firm does not make the election for SBS consideration, there will be no exchange of information with regard to that applicant.
 - 3. SCA agrees to implement functionality in its Online Application that enables interested applicant firms to affirmatively authorize SCA to release the above-referenced information to SBS for certification eligibility purposes.
- B. SCA agrees to include a statement in its Online Application, marketing and/or informational material directing firms to the City’s Vendor Enrollment Application and information pertaining to Vendor registration with the City and obtaining a NYC-FMS Vendor Number (www.nyc.gov/selltonyc).
- C. Data Transfers/Information Sharing
 - 1. SCA agrees to use a monthly electronic data exchange process to provide SBS with M/WBE certification information for SCA-certified firms provided that such firms:
 - a. Have affirmatively indicated on the Online Application an interest in being considered for M/WBE Certification by SBS; and
 - b. Have affirmatively authorized the SCA to release to SBS information contained in its Online Applications in order for SBS to determine certification eligibility pursuant to the M/WBE Rules.

2. SCA and SBS agree to provide the other party with information pertaining to SBS and SCA-certified firms through a monthly electronic data exchange in accordance with the "2010 SBS-SCA Data Exchange Specification" Guidelines and any modifications to those Guidelines during the Term.
3. The Parties acknowledge that when an interested applicant is denied M/WBE Certification by SCA or SBS, neither agency will share the information contained in the submitted M/WBE certification applications without the express written permission of the individual applicant firms.

ARTICLE 4
SBS RESPONSIBILITIES

- A. SBS agrees to review expeditiously the list of interested SCA-certified applicants included in SCA's monthly electronic data transfer (including the completed M/WBE Certification Applications submitted to the SCA and provided to SBS) to determine eligibility for certification pursuant to SBS' M/WBE Rules.
- B. The Parties acknowledge that SBS may request additional information directly from interested applicants who have affirmatively indicated an interest in being considered for M/WBE Certification by SBS.
- C. SBS agrees to provide written notification of M/WBE certification determinations to applicants seeking certification pursuant to SBS' MWBE Rules and provide periodic notice to SCA of the such certification determinations.

ARTICLE 5
TERMINATION AND MODIFICATION

- A. This MOU may be terminated by SBS or SCA at any time upon written notification to the other Party.
- B. This MOU may only be amended by the written consent of both SBS and SCA.

ARTICLE 6
ADDITIONAL PROVISIONS PERTAINING TO M/WBE CERTIFICATION/MISCELLANEOUS

- A. The Parties agree not to sell any list of the other Party's certified M/WBE firms that it receives to third parties, except as required by law or court order.
- B. The Parties shall endeavor to promote each other's objectives and the M/WBE Certification review processes, set forth in this MOU, at M/WBE outreach events and conferences, as appropriate, within the SBS' Certifying Market Area, as defined by SBS MWBE Rules.
- C. This MOU shall apply only to firms that are newly certified by the SCA or SBS after the effective date of this MOU.
- D. M/WBE Certification for all applicants certified by SBS as an M/WBE pursuant to the processes set forth in this MOU terminates upon expiration of the firm's underlying SCA

M/WBE certification or three (3) years following the SBS M/WBE certification date, whichever occurs sooner.

- E. The Parties acknowledge that the expedited M/WBE certification application review process described in this MOU does not apply to interested applicant firms that have previously applied for M/WBE Certification with SBS or whose M/WBE Certification Applications are currently under review by SBS. In addition, interested applicant firms can only utilize this expedited certification review one (1) time. Once the M/WBE certification status of a firm initially certified by SBS pursuant to the expedited review process expires, a completed Standard SBS M/WBE Certification Application must be submitted to SBS for review pursuant to Title 66, Chapter 11, Subchapter B of the Rules of the City of New York if such firm is interested in maintaining its M/WBE status with the agency.
- F. The Parties acknowledge that an applicant's failure to become certified with either SCA or SBS may or may not preclude a business entity from eligibility for M/WBE Certification with the other Party. Applicants retain the right to submit separate SCA and SBS M/WBE Certification Applications to the agencies.
- G. The Parties shall notify each other of any decision to revoke a firm's certification where a firm has been certified by both Parties through the processes set forth in this MOU.
- H. Each of the Parties shall notify each other of any decision to deny certification to a firm seeking certification through their respective processes. The parties expressly recognize that because SBS and SCA have similar, but separate programs, receipt by an Applicant of a denial letter from either SBS or SCA does not preclude the Applicant from applying for certification from the other Party.
- I. The Parties shall notify each of other any changes to the statutes, regulations, forms or procedures governing, authorizing and/or regulating their respective M/WBE Programs and the processes set forth in this MOU.
- J. SBS and SCA shall develop and promote an ongoing relationship between their respective staffs in order to improve and maintain effective communication between the agencies.
- K. SBS and SCA shall collaborate on developing and improving the M/WBE Certification process and assist business enterprises in completing the M/WBE Certification process.
- L. All notices required by this MOU shall be sent to the other Party at the following address:

To SBS:

Anne Rascon,
Deputy Commissioner, Division of Financial & Economic Opportunity
New York City Department of Small Business Services
110 William Street, 7th Floor
New York, New York 10038

To SCA:


Suzanne Veira, Senior Director Business Development
NYC School Construction Authority
30-30 Thomson Avenue
Long Island City, New York, 11101.

- M. If any provision contained in this MOU is held to be unenforceable by a court of law or equity, this MOU will be construed as if such provision did not exist and the non-enforceability of such provision will not be held to render any other provision or provisions of this MOU unenforceable.
- N. This MOU contains all the terms and conditions agreed upon by the Parties, and no other agreement, oral or otherwise, regarding the subject matter of this MOU shall be deemed to exist or to bind either of the parties, nor to vary any of its terms.
- O. Neither Party will be deemed to be in violation of this MOU if it is prevented from performing any of its obligations hereunder due to strikes, failure of public transportation, civil or military authority, act of public enemy, accidents, fires, explosions, or acts of God, including, without limitation, earthquakes, floods, winds, or storms. In such an event the intervening cause must not be through the fault of the Party asserting such an excuse, and the excused Party is obligated to promptly perform in accordance with the terms of the MOU after the intervening cause ceases.
- P. Neither Party shall assign, transfer, or delegate any rights, obligations or duties under this MOU without the prior written consent of the other Party. Such prior written approval will not be unreasonably withheld, delayed, or conditioned.
- Q. Nothing in this MOU shall prevent the Parties from implementing or utilizing new monitoring and compliance software. The Parties reserve the right to modify, or terminate this MOU, as necessary, in accordance herewith, in order to implement or utilize the monitoring and compliance software for each Party's respective M/WBE Program.
- R. The Parties hereto represent and warrant that the person executing this MOU on behalf of each Party has full power and authority to enter into this MOU and that the Parties are authorized by law to perform the services set forth in the MOU.

IN WITNESS WHEREOF, this MOU shall be effective as of the date first above written.


By:

**NEW YORK CITY DEPARTMENT OF
SMALL BUSINESS SERVICES**


**Andrew Schwartz
First Deputy Commissioner**

By:

**NEW YORK CITY
SCHOOL CONSTRUCTION AUTHORITY**


**Lorraine Grillo
President**