

COWBOYS COMPLEX FAIR SHARE AGREEMENT

THIS COWBOYS COMPLEX FAIR SHARE AGREEMENT (this "Agreement") is entered into as of September 30, 2004 by and between the CITY OF ARLINGTON, TEXAS, a duly incorporated home rule city of the State of Texas (the "City"), and THE DALLAS COWBOYS FOOTBALL CLUB, L.L.C., a Texas Limited Liability Company (the "Cowboys").

WHEREAS, the City and the Cowboys entered into a Master Agreement Regarding Cowboys Complex Development Project (the "Master Agreement") on the 17th day of August, 2004, for the construction and operation of an NFL stadium (the "Cowboys Complex") in the City;

WHEREAS, as part of the Master Agreement, the City and the Cowboys have agreed to support the creation of a M/WBE Policy and Program for the hiring of minority and women-owned business enterprises, which are (1) to provide minorities and women equal opportunity for participating in the construction, procurement and professional services opportunities and (2) to provide procedures for monitoring compliance with minority and women-owned business enterprises participation goals in construction, procurement and professional services opportunities;

WHEREAS, the Cowboys, as the party designated in the Master Agreement to develop the Cowboys Complex, have agreed to and in connection with the design, development and construction of the Cowboys Complex to (a) comply with the terms of the proposed M/WBE Policy and Program, including the reporting requirements thereunder; (b) contractually obligate the general contractor, consultants and third-party contractors to use good faith efforts as defined by the City and interpreted in Section 49 of The Code of Federal Regulations (which is attached as Exhibit A) to comply with the terms of the M/WBE Policy and Program, including reporting requirements hereunder; and (c) to the degree reasonably possible, utilize minority and women contractors and consultants with offices located first in the city of Arlington, then Tarrant and Dallas Counties, and then the state of Texas;

WHEREAS, the Cowboys will encourage utilization of joint ventures and other strategic alliances to achieve minority participation in all prime roles including, but not limited to the following areas, architectural services, general contracting, purchases and other services provided to this project;

WHEREAS, this Agreement represents the strict commitment of the parties to include minority and women business enterprises in all aspects of the design, procurement, development and construction of the Cowboys Complex such as the above-mentioned areas and the following:

Preliminary tasks: conceptual engineering, insurance, land acquisition, environmental abatement and assessment;

Construction: includes new construction, demolition, paving, fencing, excavation, grading, plumbing, painting, electrical work, plastering, carpentry, roofing and sheet metal work, structural and rebar steel erection, and glazing, and all other phases of construction;

Professional Services: architectural, engineering, financing, land surveying, accounting, auditing, medical, legal, janitorial, marketing, title work, insurance, purchasing, temporary staffing, telecommunications, technical and installation support, real estate, landscaping, and landscape management;

Materials, Supplies and Equipment: fuel, office supplies, and furniture;

Other Items: security guards, parking lot attendants, independent porters, and all other miscellaneous procurement opportunities; and

WHEREAS, all M/WBE firms must have a M/WBE Certificate that has been issued by the North Central Texas Regional Certification Agency (NCTRCA), the North Texas Women's Business Council (NTWBC), the Texas Department of Transportation (TXDOT), highway division or a similar certifying agency acceptable to the City;

WHEREAS, the Cowboys will perform reasonable due diligence to ensure that all M/WBE firms are owned and operated by minorities or women. Particular attention will be paid if company ownership has been changed within the past two years, if an M/WBE firm appears to perform as a conduit without performing any work, and if a joint venture with a non-M/WBE firm has been entered into;

WHEREAS, the Cowboys will use reasonable due diligence to coordinate the creation of subcontracting opportunities in sizes suitable for M/WBEs in order to develop the capacity of local minority firms; and

WHEREAS, the parties agree that the Cowboys shall use all reasonable due diligence to implement the M/WBE Policy and Program. The Cowboys will provide the City with \$100,000 per year to retain a person or firm to serve as an independent contractor ("M/WBE Coordinator"), reasonably acceptable to the Cowboys to assist the Cowboys in the implementation, monitoring and due diligence efforts required to achieve the desired results of this Agreement. The selected person or firm shall serve in this capacity beginning January 1, 2005 and ending upon the grand opening of the stadium to the public. The person or firm shall be provided comparable office space along with other construction personnel at the Cowboys Complex so long as such is maintained by the Cowboys at the job site. The general responsibilities for M/WBE Coordinator are generally described on attached Exhibit "B"; and

NOW, THEREFORE, BE IT RESOLVED, that the Cowboys, and any other entity appointed, selected, designated or involved by the Cowboys in the design, development, procurement and construction of the Cowboys Complex, do hereby agree to create a program of involvement for minority and women enterprises; it is further

RESOLVED, that the Cowboys shall enhance opportunities for minorities and women through implementing such measures that enhance the participation of minority and women-owned businesses for the entirety and duration of the Master Agreement and the Project Development Agreement (as defined in the Master Agreement); it is further

RESOLVED, that the Cowboys agree that their executive officer charged with the responsibility of directing the M/WBE Policy and Program shall have equal status as other members of the Cowboys executive staff. The executive officer shall have sufficient authority, staff and resources to carry out the proper development and implementation of the M/WBE Policy and Program. As part of its mission, the Cowboys shall issue a public

report to the governing body of the City on a quarterly basis documenting the involvement of minorities and women in the design, development, procurement and construction of the Cowboys Complex; it is further

RESOLVED, that notwithstanding any provisions herein to the contrary, the Cowboys, as a show of their commitment to inclusion, commit to keep in place throughout the entirety and duration of the Master Agreement and the Project Development Agreement (but in no event does this commitment bind any successor owners, assigns, or tenants) a program which will provide for ethnic minority participation goals in the following categories. These goals, intended as minimums and not maximums, are as follows:

<u>Category</u>	<u>Goal</u>
Construction	25.00%
Architectural & Engineering	25.00%
Other Professional	37.00%
Other Services	24.00%
Goods	18.00%

In an effort to maximize the goals of this agreement, a weighted scale of achieving that goal will be determined as follows:

<u>Category</u>	
Arlington Based M/WBE Firms	100%
Tarrant & Dallas County M/WBE Firms	90%
Texas M/WBE Firms	80%
Non-Texas Based M/WBE Firms	60%

An entity shall be considered under the control of the Cowboys if any principal owner or employee of the Cowboys holds a minimum 51% ownership interest in such entity, or otherwise have the right to direct operations or set policy of such entity; it is further

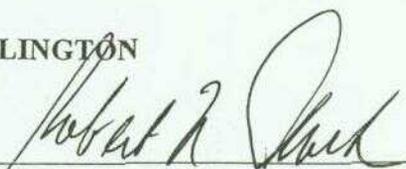
RESOLVED, that upon passage of the November 2, 2004 referendum, the Cowboys shall put in place a process to effectuate the intent embodied herein. As part of this process, the Cowboys shall work with interested community groups in developing and implementing a plan of inclusion; and it is further

RESOLVED, that the undertaking and commitments set forth in these resolutions do not constitute as a part, and shall not be deemed to modify, amend or abrogate, any provision of the Master Agreement or any related agreement between the City and the Cowboys.

Signed this _____ day of _____, 2004

CITY OF ARLINGTON

By: _____


Robert N. Cluck, M.D.
Mayor, City of Arlington

ATTEST:


Barbara G. Heptig
City Secretary, City of Arlington

**DALLAS COWBOYS FOOTBALL CLUB,
L.L.C.**

By: _____

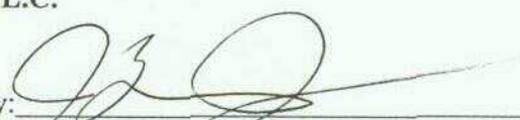

J. Stephen Jones, Executive Vice President/
Chief Operating Officer

EXHIBIT “A”

Appendix to Section 23.45 – Guidance Concerning Good Faith Efforts

To determine whether a competitor that has failed to meet MBE contract goals may receive the contract, the recipient must decide whether the efforts the competitor made to obtain MBE participation were “good faith efforts” to meet the goals. Efforts that are merely *pro forma* are not good faith efforts to meet the goals. Efforts to obtain MBE participation are not good faith efforts to meet the goals, even if they are sincerely motivated. If, given all relevant circumstances, they could not reasonably be expected to produce a level of MBE participation sufficient to meet the goals. In order to award a contract to a competitor that has failed to meet MBE contract goals, the recipient must determine that the competitor’s efforts were those that, given all relevant circumstances, a competitor actively and aggressively seeking to meet the goals would make.

To assist recipients in making the required judgment, the Department has prepared a list of the kinds of efforts that contractors may make in obtaining MBE participation. It is not intended to be a mandatory checklist; the Department does not require recipients to insist that a contractor do any one, or any particular combination, of the things on the list. Nor is the list intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases. In determining whether a contractor has made good faith efforts, it will usually be important for a recipient to look not only at the different kinds of efforts that the contractor has made, but also the quality and intensity of these efforts.

The Department offers the following list of kinds of efforts that recipients may consider:

- (1) Whether the contractor appended in pre-solicitation or pre-bid meetings that were scheduled by the recipient to inform MBEs of contracting and subcontracting opportunities.
- (2) Whether the contractor advertised in general circulation, trade association, and minority-focus media concerning the subcontracting opportunities.
- (3) Whether the contractor provided written notice to a reasonable number of specific MBEs that their interest in the contract was being solicited, in sufficient time to allow the MBEs to participate effectively.
- (4) Whether the contractor followed up initial solicitations of interest by contacting MBEs to determine whether the MBEs were interested.
- (5) Whether the contractor selected portions of the work to be performed by MBEs in order to increase the likelihood of meeting the MBE goals (including where appropriate, breaking down contracts into economically feasible units to facilitate MBE participation).
- (6) Whether the contractor provided interested MBEs with adequate information about the plans, specifications and requirements of the contract.
- (7) Whether the contractor negotiated in good faith with interested MBEs, not rejecting MBEs as unqualified without sound reason based on a thorough investigation of their capabilities;
- (8) Whether the contractor made efforts to assist interested MBEs in obtaining bonding, lines of credit, or insurance required by the recipients or contractors; and
- (9) Whether the contractor effectively used the services of available minority community organizations, minority contractors’ groups, local, state and Federal minority business assistance offices, and other organizations that provide assistance in the recruitment and placement of MBEs.

EXHIBIT "B"

General Responsibilities for M/WBE Coordinator

The coordinator will assist the Cowboys and the City with the following:

1. Develop advertising for interested businesses in this project.
2. Assist in the certification of interested firms.
3. Identify the qualified firms and verify billings.
4. Provide technical assistance that will help firms with the necessary bonding and insurance capabilities.
5. Prepare quarterly reports due under this Agreement.
6. Provide minority source prospect lists from Tarrant and Dallas Counties.
7. Provide minority source prospect lists of Arlington based companies.
8. Assist in the development of web page links to the NCTRCA to facilitate M/WBE contractor applications.
9. Facilitate the use of city owned meeting space for all networking sessions, pre-bid meetings and minority workshops.
10. Such other responsibilities as are reasonably requested by the Cowboys in furtherance of a M/WBE program to facilitate the effective development of the Cowboys Complex.