

THE CITY OF MILWAUKEE REQUEST FOR PROPOSALS

Public Outreach, Education, & Promotion Campaign to Increase Recycling in the City of Milwaukee

Proposals shall be submitted no later than 11:00 AM
Central Time on Wednesday, September 12, 2007 to:

Mr. Preston Cole
Environmental Services Superintendent
Operations Division
Department of Public Works
841 North Broadway, Room 619
Milwaukee, WI 53202

Proposals shall be evaluated on the basis of the criteria
outlined in this request for proposals. These criteria will
serve as the basis for ranking all submitted proposals.

The Department of Public Works reserves the right to reject
any and all proposals and to choose to decline to award a
contract. The City will bear no responsibility for costs
incurred by respondents in preparation of their proposals.

For further information regarding this request for proposals
contact Mr. Rick Meyers, (Sanitation Section) at (414) 286-
2334.

PROJECT DESIGNATION

City of Milwaukee - Department of Public Works
Public Outreach, Education, & Promotion (O, E, & P) Campaign to Increase Recycling in
the City of Milwaukee

ISSUING OFFICE

This request for proposals (RFP) is issued in the name of the City of Milwaukee - Department of Public Works. The point of contact for this proposal and contract officers' representative for subsequent activities under this project is Mr. Preston Cole, Environmental Services Superintendent. For questions regarding proposal procedures, contact Mr. Rick Meyers (Sanitation Section) at (414) 286-2334.

PROJECT MANAGEMENT

The Sanitation Section is responsible for overall management of this project including monitoring progress and performance, accepting and reviewing reports from the consultant, authorizing the consultant to proceed, and serving as the liaison with appropriate public agencies and non-governmental groups.

PROJECT TARGET AUDIENCE

The target audience of this project includes all residents of the City of Milwaukee for overall promotion of recycling with special emphasis for areas of lower recycling participation as shown on the attached map labeled "Attachment A." Furthermore, the expectation is that the target audience will be segmented according to demographic, geographic, and recycler versus non-recycler characteristics.

I. Purpose and Description of Services

The purpose of this RFP is to solicit proposals from vendors with the resources, experience and abilities to provide an array of professional services, including behavioral and social marketing, research, communications, public relations, and advertising that will promote participation in the City of Milwaukee's residential recycling program, leading to an increase in recyclables collected by the City. Mayor Tom Barrett has endorsed the Milwaukee Green Team's recommendation to "increase citywide recycling rates and participation." The recommendation further states that, "A citywide effort to increase recycling participation is needed with an emphasis on low compliance neighborhoods." With this project the City aims to increase recycling from those who are not actively participating as well as to reinforce recycling behavior in those who already actively participate.

The services requested in this RFP are for the Department of Public Works Environmental Services Sanitation Section and will be referred to as "the City" in this

RFP. Proposers may partner with other organizations as needed, but one firm must be the lead proposer.

The City requires a social marketing approach for this project in order to affect residents' actual recycling behavior and not simply their awareness of recycling. The City has chosen a measurable, results-based goal of increasing the tonnage of recyclables collected by 15% over the year 2006, and is looking for the following services:

- **Identify segments within the target population according to demographic, geographic, and recycler versus non-recycler categories.**
- **Research target audience segments in terms of their perceptions about recycling and other characteristics that are relative to designing promotional activities**
- **Develop tools and strategies highly relevant to target audience segments to increase participation in recycling**
- **Implement tools and strategies to promote recycling and work with the City to evaluate their effectiveness**

It is intended that once the target audience has been segmented by various characteristics, efforts will be made to uncover the barriers and motivations of each of these segmented groups relative to participating in the City's recycling program. Analysis of the research results should then drive the development and implementation of recycling promotional activities for different target audiences. Activities may include media campaigns, promotional materials, educational programs, and behavior change strategies.

Communication pieces should be vivid, personalized, and persuasive, and they should emphasize the losses that occur (and benefits not realized) as a result of not recycling as much as possible. Promotional campaign components can include, but are not limited to, any of the following: TV advertising, radio advertising, outdoor advertising, public relations, school presentations, news media, and website development. The City expects this project to develop new broadcast and print materials to replace old ones that have run their course and possibly a new or revised recycling logo, animated characters, and a slogan that is creative and effective in terms of compelling people to recycle. Proposers are encouraged to develop, test through research, and carry out innovative and non-traditional approaches to communicate the recycling message, particularly to residents in the special emphasis area.

The contract between the City and the successful proposer will be for a one year period. The City retains the option to extend the contract for up to two (2) additional one-year periods. The amount of the renewal options will be based on the availability of funds.

II. History & Background

Among the City's responsibilities under state statutes that went into effect in 1995 are to provide a curbside recycling program to serve single family through four-unit households and to provide on-going recycling education. The City of Milwaukee began providing curbside recycling to some residents in 1989, with a full city-wide program put in place starting in 1995. The City's collection tonnage increased annually from 1989 through

1997 at which point it peaked at 33,112 tons. In the following nine years, the recycling tonnage steadily declined each year, decreasing over that time period by 24% to its 2006 total of 25,300 tons. By contrast, landfilled tonnage increased slightly over the same time period.

The last major coordinated recycling promotional campaign, involving vivid educational materials, public service announcements, short videos for classroom use, and other advertising was conducted over ten years ago and most of the materials are outdated. Since then most of the education and promotion budget has been spent on smaller scale campaigns and on producing recycling informational flyers and mailings. In 2005, there was a promotional campaign that involved displaying short recycling promos on buses through Milwaukee County Transit System's closed circuit televisions. Recent efforts such as these have not reversed the trend of declining recycling tonnages collected.

One of the impediments to higher recycling levels has been the low participation rate of neighborhoods in the special emphasis area. Although recycling is mandated by state law and City ordinance, participation in the City's recycling program in the special emphasis area is not as prevalent as it is in other areas of the City. For example, the average pounds recycled per household was 51 pounds in 2006, while the average for the rest of the city was 305 pounds per household. There are about 30,000 households that the City services within the special emphasis area and about 160,000 households serviced throughout the rest of the city. The special emphasis area in the central city is an area of low owner occupancy and therefore tends to be a more highly transient area and average incomes tend to be lower than the rest of the city. Although residents here may generate less newsprint and magazines to recycle and may commonly take their aluminum to scrap yards, the City believes there still exists a real opportunity to increase recyclables collected from its residents in this area. In an effort to improve recycling in this area, the City designed and submitted a winning grant proposal to the U.S. Environmental Protection Agency to test various methods of using personal contact in recycling outreach efforts to residents. This project will begin in the fall of 2007 and will be conducted within the special emphasis area. The City is also currently part of another grant project team that is studying the impact of door to door recycling outreach conducted by youth. Both of these projects use a scientific method with control groups and will yield quality information that may be useful to aid the design of and increase the effectiveness of the campaign that will result from this RFP.

Throughout most of the city, 95-gallon carts are used to collect recyclables from residents on a monthly basis. Ninety percent of the special emphasis area is serviced with weekly collection of 18-gallon bins. The smaller bins tend to work better in alleys and allow for easier monitoring of contamination, which was found to be a serious problem when carts initially were used in some of these areas. In June of 2007 the City converted about 1,200 households from bins to carts and may convert more in future years. The contract resulting from this RFP may include assistance educating residents affected by such a change in their recycling service. The City uses split rear packer trucks with 60% of the collection capacity for paper fibers and 40% for recyclable containers. The papers accepted include newsprint and ad inserts, magazines & catalogs, home & office paper,

junk mail, paperboard (e.g., cereal boxes), beverage pack carriers, phone books, and corrugated cardboard. The recyclable containers accepted include #1 and #2 plastics, all colors of glass jars and bottles, aluminum and steel cans. Materials are received at the City's Materials Recovery Facility which is operated by a private recycling company on contract with the City. The recycling company processes the recyclables and markets them. The City pays a processing fee per ton and receives a share of the revenue from the sale of the materials. Revenue shares received by the City have consistently exceeded the processing fees paid to the private recycler. Recycling saves the City and its residents money both through recycling revenues and through avoided landfill disposal fees.

The City of Milwaukee is a member and active participant in the Wisconsin Be SMART Coalition, which is a partnership of local communities, state agencies, non-profit and environmental organizations, and businesses dedicated to reducing waste and fostering sustainability in Wisconsin. The City partners with other communities through the Coalition on waste reduction and recycling education and other projects. The City expects the selected proposer to leverage the resources of the Coalition and to ensure cohesion between Coalition and City of Milwaukee efforts.

III. The City's Recycling Goals and Objectives

Since recycling conserves natural resources and landfill space, supports jobs in sustainable industries and saves money, thus minimizing waste disposal costs for residents, the City of Milwaukee desires to increase the quantity of material recycled. The City's goal is to increase the tons of recyclables collected through the City's residential recycling program by 15% or greater. Increasing the recycling tonnage collected by 15% over the year 2006 level would mean increasing the annual recycling tonnage to about 29,095 tons. In addition to the city-wide increase, the City also has as a goal to increase participation and tons of recyclables collected in the special emphasis area by 30% or greater. It is intended that this recycling promotional campaign will provide clear messages to the public, customized to segmented target audiences, and delivered via effective means in order to change behavior and increase recycling. Through this project the City also aims to develop recycling promotional materials that are versatile enough to serve promotional needs into the future regardless of potential operational changes within the recycling program.

IV. Proposal Requirements and Information

A. Key Action Dates – Tentative Schedule

<u>Event</u>	<u>Date</u>
RFP available to prospective proposers	8/07/07
Pre-proposal meeting	8/23/07
Written question submission deadline	8/24/07
Response to written questions	8/28/07
Final date for proposal submission	9/12/07

Oral presentations	10/04/07
Notice of Intent to Award	10/08/07
Proposed project start date	11/1/07

B. Pre-Proposal Meeting and Written Questions

1. A pre-proposal meeting will be held prior to the proposal due date. The meeting will be on Thursday, August 23, in Room 501 of the Zeidler Municipal Building, 841 North Broadway, at 1:30 PM. Attendance at the meeting is strongly recommended but not mandatory. The purpose of the pre-proposal meeting is to clarify the contents of the RFP and provide an opportunity to discuss pertinent background information. If there are major modifications or changes to the RFP as a result of the conference, the City may issue an addendum to the original RFP. Any and all addenda to the RFP will become part of the final contract. All proposers receiving the initial RFP will be sent any addenda.
2. Proposers needing clarification of the requirements of the RFP must submit questions in writing only. Questions submitted orally will not be considered. All questions must be received by email by no later than 12:00 noon on the deadline date listed above. Questions submitted after this date and time will not be considered. Address written questions to:

Rick Meyers
 Recycling Manager
 Email: rick.meyers@milwaukee.gov

On August 28, 2007, all of these questions and their responses will be transmitted to all parties who attended the pre-proposal meeting. The source of each question will not be indicated. The questions and responses will also be available upon request to any entity that did not attend the pre-proposal meeting. (Contact Rick Meyers, as above.)

C. Work Plan Requirements

The proposer shall develop a work plan or schedule for task completion. Identify each major task, necessary subtask, and/or specific milestones by which progress can be measured and payments made.

1. Scope of Work

Scope of Work describes the nature of a hypothetical work plan that must be completed on behalf of the City. For the purpose of this work plan, the maximum amount available annually is \$150,000 to include the development and production of materials and implementation of the promotional tools and strategies. For all services listed in this Scope of Work, the proposer must show the costs on a cost proposal sheet. The proposer should describe year one activities and costs in

detail and describe its approach to year two and three more generally, with the understanding that the research results will largely determine the specific activities and costs.

The City is looking for a full-service communications and social marketing agency that can work with City staff to raise awareness of, educate the public about, and promote participation in the City's residential recycling program. In addition to providing high-quality advertising and public relations, proposers must demonstrate a proven ability to develop campaigns that will result in an actual increase in the collection and recycling of recyclables in the City's program.

To prove its ability to provide the array of services necessary to meet the City's needs stated above, the proposer must describe methods, strategies and approaches for completing the hypothetical work plan. Sufficient detail must be given to effectively illustrate the work plan, which should include examples of past projects indicating the use of results-based planning, marketing research and development of appropriate responses to research, creativity, competency, ability to meet deadlines, ability to develop effective partnerships, managerial experience, and past performance. Furthermore, the proposer must detail how it will measure and demonstrate the performance/success of its work plan.

2. Hypothetical Work Plan

Each proposer shall describe its intended approach to the O, E, & P campaign for the first year and for each of the potential two additional years. Under the contract, the City may request projects similar to those described below. However, their listing below is not meant to imply that these projects will be implemented as actual projects under the contract; they are hypothetical for the purpose of this exercise. Again, the research will dictate activity priorities.

Purpose: To increase recyclables collected in the City's residential recycling program by raising awareness and promoting recycling behavior through vivid and persuasive messages, and to portray recycling as a community norm and a desirable and positive social behavior.

Provide a hypothetical work plan utilizing the following outreach components to raise the recycling rate in Milwaukee.

- a) **Advertising:** The proposer is required to demonstrate the ability to develop print and broadcast advertising that will support the work plan, negotiate discounted rates, and secure and place paid and in-kind advertising in a variety of media.
- b) **Public Relations:** The proposer is required to present and show the ability to implement media relations and public affairs programs.

- c) **Promotional Materials:** The proposer is required to demonstrate the ability to create materials that may include but are not limited to brochures, videos, audios (such as public service announcements), print pieces, and newsletters to support the City's recycling programs. These items should be vivid, personalized when possible, and persuasive.
- d) **Milwaukee Recycles Web Site:** The proposer is required to demonstrate the ability to update, augment (or replace) and advance the effectiveness of the <http://www.mpw.net/Pages/MilwaukeeRecycles.htm> web site that promotes and informs residents about the recycling program. The City desires increased navigability and continuity and integration with the existing DPW Operations Division site, <http://www.mpw.net/Pages/Operations.html>.
- e) **Performance Measures:** The proposer is required to detail how work plan effectiveness will be measured. Specifically, the City is looking for proposers to demonstrate the difference between "output" versus "outcome" measures as they apply to the recycling knowledge and recycling participation of Milwaukee residents.
- f) **Miscellaneous:** The budget must include all materials necessary to complete designated assignments (travel costs, communications, postage/shipping, misc.). Proposer shall provide to the City a quarterly narrative and statistical report on its activities and accomplishments as well as a monthly progress report. Proposer shall estimate travel expenses. Travel and per diem expenses must not exceed rates authorized for regular City employees. This cost information is to be submitted as part of the budget.
- g) **Cost Effectiveness:** The proposer is required to demonstrate the steps the proposer will take to fully leverage the City's efforts and funds, as well as those of the Wisconsin Be SMART Coalition. This may include but is not limited to the use of partnerships, in-kind services, and pro-bono services by the proposer, its subcontractors, and/or its existing clients.

3. Project Personnel

List all personnel who will be working on the project and their titles and job descriptions. In addition, the proposal shall indicate the technical and professional qualifications of those key persons and shall include resumes attached as appendices. A list of at least three references with names and telephone numbers for whom each member of the consultant team has provided similar services as described in this RFP should be included. Narrative descriptions of similar projects may be included in the appendices attached to the proposal.

D. Cost Sheet Format and Requirements

The Hypothetical Work Plan should be broken down in an outline format in conjunction with a cost proposal sheet. The total costs of all tasks and milestones must not exceed \$150,000 annually. This includes all costs for creation, production, and implementation.

E. Proposal Format

The written portion of the proposal shall be submitted on letter size paper, double-sided, with one-inch margins on all pages of written text. Exhibits may be of any size, but folded to the size of the written portion of the proposal. Items to be included in the proposal shall be placed in the same order as described above, with the exception of any additional materials, which shall be contained in appendices. Appendices shall be attached to the end of the proposal.

F. Submission of Proposal

The consultant shall submit five (5) complete copies of the formal proposal. This material must be received in the office of Environmental Services, at the following address, no later than 11:00 AM, Central Time on the date indicated in the Project Schedule.

Preston Cole
Environmental Services Superintendent
Operations Division
Department of Public Works
841 North Broadway, Room 619
Milwaukee, WI 53202

Packages containing the proposal material shall be plainly marked on the outside in the following manner: "Proposal for Public Outreach, Education & Promotion Campaign to Increase Recycling in the City of Milwaukee." Proposal materials submitted prior to the aforementioned deadline will become property of the City of Milwaukee and will not be returned. Envelopes or packages containing proposal material received after the deadline will be returned unopened.

G. Additional Conditions

1. The Department of Public Works reserves the right to accept or reject any or all proposals.
2. Neither the City of Milwaukee nor the Department of Public Works are liable for any costs incurred in responding to this RFP, in connection with any discussions or correspondence required for clarification of any subject contained in this RFP, or in the attendance of consultants at any pre-award conference.

V. Evaluation Process & Selection Procedures

A. Evaluation of written proposals

All written proposals submitted in response to this RFP will first be evaluated and scored based on the criteria listed on the *Proposal Evaluation Criteria* score sheet shown on

page 11. The top scoring proposals in this phase will be considered eligible for the oral presentation stage.

B. Evaluation of oral presentations

A minimum of the top three scorers will be invited by the Committee to give oral presentations and to respond to questions. Each proposer invited shall attend with a maximum of four representatives, one of which shall be the proposed project manager. The presentations will be made at the City's Municipal Building, 841 North Broadway. The City will determine the exact order of presentations and each consultant will be notified prior to the presentation date and time. Oral presentation evaluations will be based upon the criteria listed on the *Oral Presentations* score sheet on page 12.

C. Award

Following review of the formal written proposals and the oral presentations, a single proposer will be selected to perform the work. The City likely will select the top scoring proposal based on the evaluation sheets, but retains the right to select any of the top three scoring proposals at the discretion of the proposal review team. Upon such selection, the proposers will be notified in writing of the decision by the Department of Public Works.

Within five (5) days after notification, negotiations will commence with the selected proposer. If successful negotiations are not completed within a reasonable time period, negotiations will commence with the second choice proposer, and continue in this order. Once a contract is in place, all firms that submitted a proposal will be notified.

Notwithstanding anything herein to the contrary, the Department of Public Works reserves the sole and exclusive right to reject any and all proposals. The Selection Committee reserves the right to reconsider the direction for the project if no suitable candidates are identified through this competition.

FOR DEPARTMENT USE ONLY

Bid/Proposal: _____
Evaluated By: _____
Date: _____

PROPOSAL EVALUATION CRITERIA

All proposals compliant with the minimum qualification of this RFP will be evaluated and scored for their degree of responsiveness for each of the following components.

	<i>Max. Points/Score</i>
1. EXPERIENCE/DEMONSTRATED RESULTS OF FIRM AND PERSONNEL Quality of experience in previous relevant projects. Ability to conduct research and implement marketing, advertising, media relations, social marketing, and public affairs programs. Ability to carry out all aspects of the project. Quality and experience of personnel, including subcontractors, assigned to this project.	30 _____
2. SCOPE OF WORK Effectiveness and suitability of marketing research approach to identify market segments and determine their motivations and perceived barriers relative to recycling. Quality, creativity, and well-justified, demonstrable effectiveness of hypothetical programs in SCOPE OF WORK and likelihood of achieving campaign objectives.	70 _____
3. WORKLOAD AND RESOURCE COORDINATION Reasonableness of hypothetical work plan with regard to scheduling of project and workload distribution.	10 _____
4. MEASUREABILITY OF OUTCOMES Ability to assess success of proposed project and reasonableness of proposed performance measures. Ability to develop meaningful, relevant, and achievable performance measures which demonstrate a clear and significant link between Scope of Work and increased recycling.	20 _____
5. COST EFFECTIVENESS Value of overall project. Costs are within the allotted budget and the project leverages budget to gain maximum reach and effectiveness. Ability to leverage client's status as a public agency engaged in meaningful environmental work to encourage maximum assistance from partners and media.	50 _____
6. PREFERENCE POINTS FOR EBE PARTICIPATION (See Attachment B for information on EBE.) EBE participation can earn points according to the scale below: 0 – 17% _____ 0 points 18 – 25% _____ 10 points 26 – 50% _____ 15 points 51 – 100% _____ 20 points	20 _____
<i>SUBTOTAL POINTS</i>	200 _____

FOR DEPARTMENT USE ONLY

Bid/Proposal: _____
Evaluated By: _____
Date: _____

ORAL PRESENTATIONS

The evaluation committee will select at a minimum the top three (3) scoring qualified proposers (and their proposed subcontractors if requested) for oral presentations. This oral presentation will allow finalists to demonstrate their understanding of the project objectives and to articulate their capability to meet or exceed the requirements of this RFP.

The evaluation committee will host the oral presentation at the City’s Municipal Building, 841 N Broadway, Milwaukee, but reserves the right to make other arrangements if necessary.

If the finalist cannot meet on the designated oral presentation date, the evaluation committee reserves the right to disqualify the finalist as nonresponsive.

The following criteria will be used for scoring the oral presentation.

	<i>Max. Points/Score</i>
7. Quality and completeness of answers to questions regarding the proposed work plan. Professionalism of personnel assigned to the account.	40 _____
8. Proposer’s ability to integrate its ideas into the Department’s overall business objectives and operations and that of its partners.	25 _____
9. Ability to provide effective creative flexibility within changing budget structures.	15 _____
10. Evidence of quality of proposed strategies and creative samples from previous work.	20 _____
<i>ORAL PRESENTATION SUBTOTAL POINTS</i>	100 _____
<i>WRITTEN PROPOSAL SUBTOTAL POINTS</i>	200 _____
<u>TOTAL POINTS</u>	300 _____

VI. Title to Materials

All materials produced under this contract shall become and/or shall remain the property of the City. The City may utilize such material in any manner or purpose as it desires without the further permission, approval or compensation to the Consultant. The Consultant shall not use or publish any materials produced under the contract without the written permission of the Commissioner of Public Works.

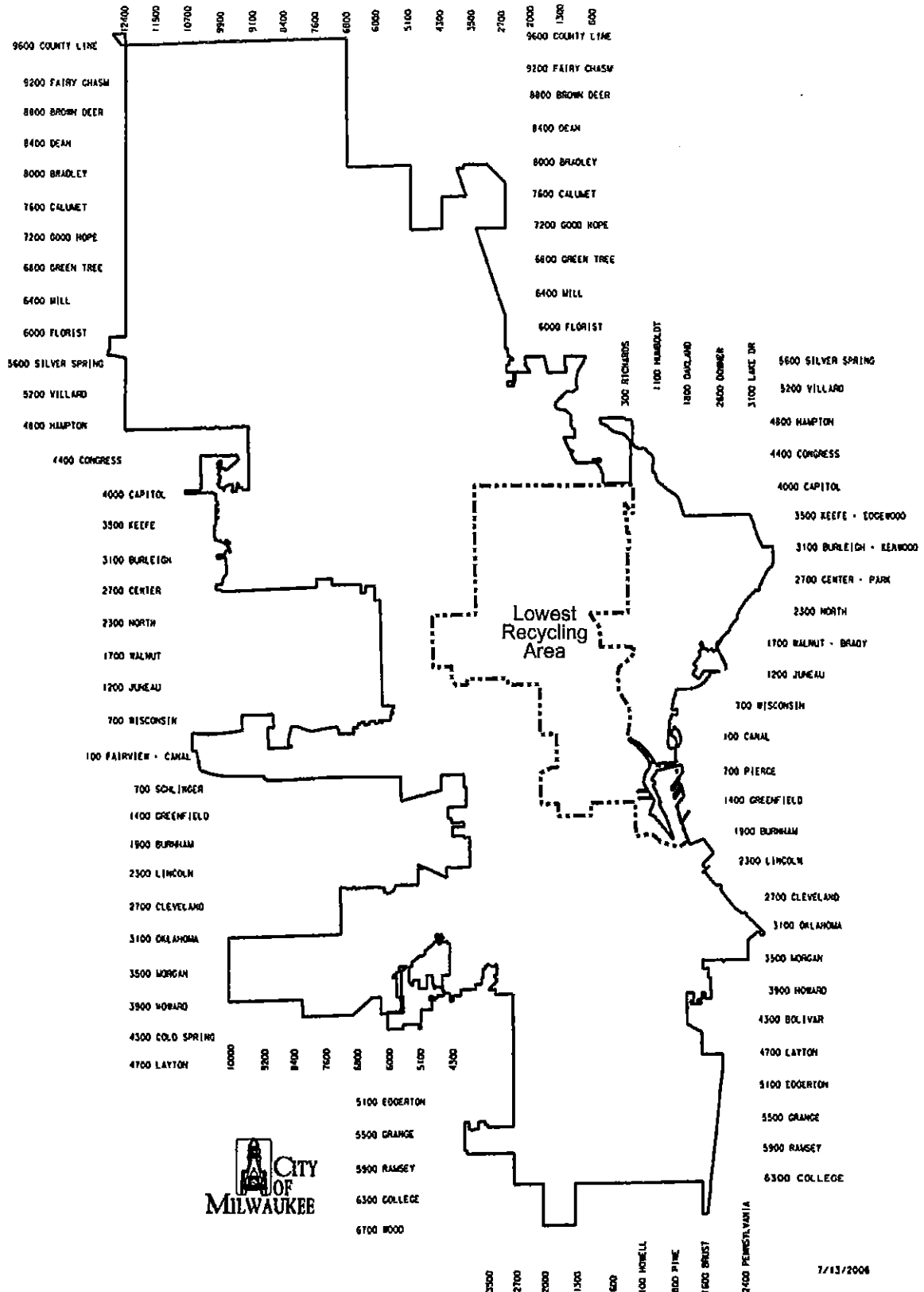
VII. Type of Contract and Payment

The consultant and the City shall enter into a "not to exceed cost" contract. The contract will be of the standard form for professional services for the Department of Public Works. A sample copy of the standard contract form is attached hereto and incorporated herein by reference as "Attachment C". The contract will be for one year with an option to renew for two additional one-year periods.

Payments to the consultant for services will be based on invoices submitted monthly by the consultant showing labor hours, labor costs, overhead and other expenses. Invoices shall be accompanied by a monthly progress report reflecting the status of the public O, E & P campaign relative to the scope of work and project time schedule. Invoices will be reviewed and approved by the Environmental Services Superintendent. Approved invoices will be paid within 60 days of receipt. A five percent (5%) retainage will be paid upon satisfactory completion of the entire contract.

Attachment A: Special Emphasis Area

Map of City of Milwaukee



Attachment B: EBE Information

The City has established for itself an overall goal of 18% EBE participation for Public Works contracts. This Request for Proposal does not specify a percentage of mandatory EBE participation. However, the City strongly encourages the proposer to use certified emerging businesses for any supplementary services attendant to the goods or services provided hereunder. Use of Emerging Business Enterprise firms whenever possible throughout the course of this engagement for such supplementary service is strongly encouraged by the City but is not a requirement for submitting a proposal. Further information about the EBE program can be obtained from the Emerging Business Enterprise Office Located in room 601, 200 East Wells Street, Milwaukee, WI 53202, Phone 414-286-5552 or on the web www.milwaukee.gov/ebe

Attachment C: Sample Contract

CONTRACT NO.

PROFESSIONAL SERVICES CONTRACT
BETWEEN
THE CITY OF MILWAUKEE
AND

THIS CONTRACT is made and entered into this _____ day of _____, 2005, by and between the City of Milwaukee, a Municipal Corporation organized under the laws of the State of Wisconsin, *the City*, and Making the Grade, Inc., a Corporation organized under the laws of the State of Wisconsin, *the Consultant*.

WHEREAS, ...

WHEREAS, ...

NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement and other good and valuable consideration, the City of Milwaukee and the Consultant promise and agree as follows:

ARTICLE I
Retention of Services

The City hereby agrees to engage the Consultant and the Consultant hereby agrees to personally perform, as an Independent Consultant and not as an employee of the City, the services hereinafter set forth, all in accordance with the terms and conditions of this Agreement, the RFP (*Exhibit I*), the Scope of Work (*Exhibit II*), the Consultant's Proposal dated ,(*Exhibit III*) and the Consultant's Negotiated Proposal dated ... (*Exhibit IV*), collectively, the *Contract Documents*.

ARTICLE II
Term of Agreement and Early Termination

2.1 Term of Agreement: The Term of Agreement shall commence on the date hereof, and shall end on In addition to all other remedies inuring to the City should this Agreement not be completed by the dates specified in this Section 2.1, in accordance with all the terms, requirements and conditions set forth in the Contract Documents, the Consultant shall continue to be obligated thereafter to fulfill the Consultant's responsibility to complete the scope of services and to execute any necessary amendments to this Agreement.

2.2 Option to Renew: The City, at its sole option, may extend the term of this Agreement for an additional one (1) year period. Such option shall be exercised by the City by delivering written notice to the Consultant no later than ten (10) days prior to the expiration of the term set forth in Section 2.1 above.

Attachment C: Sample Contract

2.3 Termination for Cause: If, through any cause, the Consultant shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or if the Consultant shall violate any of the covenants, agreements, or stipulations of this Agreement, the City shall thereupon have the right to terminate this Agreement by giving written notice to the Consultant of such termination and specifying the effective date, at least ten (10) days before the effective date of such termination. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, reports or other materials related to the services performed by the Consultant under this Agreement for which compensation has been made or may be agreed to be made shall, at the option of the City, become the property of the City. Notwithstanding the foregoing, the Consultant shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of this Agreement by the Consultant, and the City may withhold any payments to the Consultant for the purpose of setoff until such time as the exact amount of the damages due to the City from the Consultant is determined.

2.4 Termination for Convenience: The City may terminate this Agreement at any time and for any reason by giving written notice to the Consultant of such termination and specifying the effective date, at least seven (7) days before the effective date of such termination. If this Agreement is terminated by the City pursuant to this Section 2.4, the Consultant will be paid an amount which bears the same ratio to the total compensation as the services actually and satisfactorily performed bear to the total services of the Consultant covered by this Agreement, less payments for such services as were previously made. The value of the services rendered and delivered by the Consultant will be determined by the City.

ARTICLE III **Scope of Services**

The Consultant is required to perform, do and carryout, in a satisfactory, timely and professional manner, the services set forth in the Contract Documents. The Consultant is required to furnish all services and labor necessary as indicated herein, including without limitation, materials, equipment, supplies and incidentals. The scope of services to be performed hereunder shall include, without limitation, those services set forth in *Exhibit II* attached hereto. The City may, from time-to-time, request the Consultant to perform additional services which are not set forth in the Contract Documents. In the event that such a request is made, the performance of such services shall be subject to the terms, conditions and contingencies set forth in this Agreement.

ARTICLE IV **Standards of Performance**

The Consultant agrees that the performance of the services, pursuant to the terms, conditions and agreements of this Agreement shall be performed in a manner consistent with the degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances providing like services. The Consultant agrees to abide by all Federal, State and Local laws, regulations and ordinances, and all provisions of this Agreement.

Attachment C: Sample Contract

ARTICLE V

Compensation and Terms of Payment

5.1 Compensation: The Consultant will be compensated by the City for the services provided under this Agreement on a time and expense basis subject to the terms, conditions and contingencies set forth herein.

5.2 Not to Exceed: Notwithstanding the foregoing Section 5.1, total compensation to the Consultant under this Agreement shall not exceed \$... as per *Exhibit IV*.

5.3 Invoicing and Payments: Payments to the Consultant for services will be based on invoices submitted monthly by the Consultant showing the labor hours and hourly labor costs for the work items listed (*Exhibit II*). These invoices must be itemized by work order or contract number as furnished by the Commissioner of Public Works or his designee and show the current cost and the accumulated total payments to date. Invoices shall be reviewed and approved by the Commissioner of Public Works or his designee. The final five percent (5%) of the contract amount shall be retained. The final payment of the balance due the Consultant for the completed services shall be made upon completion and acceptance by the City of the services performed by the Consultant under this Agreement. All payments made under this Agreement shall be subject to the City's *Prompt Payment Policy* set forth in Section 5.4 (below).

5.4 Prompt Payment Policy The City, as a matter of policy, shall strive to pay all timely and properly completed invoices within thirty (30) days of submission. Payment to the Consultant will be deemed timely if the payment is mailed, delivered or transferred within sixty (60) days after receipt of a properly completed and undisputed invoice or receipt and acceptance of the service under this Agreement, whichever is later. If the City does not make payment by the sixtieth (60th) calendar day, the City shall pay simple interest beginning with the thirty-first (31st) calendar day at the rate of one percent (1%) per month, unless the City disputes the amount of the invoice.

5.5 Additional Fringe or Employee Benefits The Consultant shall not receive nor be eligible for, any fringe benefits or any other benefits to which City employees are entitled to, or are receiving.

5.6 Taxes, Social Security, Insurance and Government Reporting Personal income tax payments, social security contributions, insurance and all other governmental reporting and contributions required as a consequence of the Consultant receiving payment under this Agreement shall be the sole responsibility of the Consultant.

5.7 Withholding of Salaries If, in the performance of this Agreement, there is an underpayment of salaries by the Consultant or by any subcontractor thereunder, the City shall withhold from the Consultant, out of payments due to it, an amount sufficient to pay employees underpaid the difference between the salaries required hereby to be paid and the salaries actually paid such employees for the total number of hours worked. The amounts withheld shall be disbursed by the City for and on account of the Consultant or subcontractor, if any, to the respective employees to whom they are due.

Attachment C: Sample Contract

ARTICLE VI

Personnel, Qualifications and Subcontracting

6.1 Required Personnel The Consultant represents that it has or will secure at its own expense all personnel required to perform the services set forth in the Contract Documents. These personnel shall not be employees of, or have any contractual relationship to, the City.

6.2 Fully Qualified The Consultant represents that all personnel engaged in the performance of the services set forth in the Contract Documents shall be fully qualified and shall be authorized or permitted under State and Local law to perform the services.

6.3 Subcontracting None of the services to be performed under the Contract Documents shall be subcontracted without the written approval of the City. If any of the services are subcontracted, the performance of such services shall be specified by written contract and shall be subject to each provision of this Agreement. The Consultant shall be as fully responsible to the City for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by it, as it is for acts and omissions of persons directly employed by it.

ARTICLE VII

Indemnification and Defense of Suits

In case any action in court, claim, or proceeding before an administrative agency is brought against the City, or any of its officers, agents or employees, for the failure, omission or neglect of the Consultant, in whole or in part, to perform any of the covenants, acts, matters or things by this Agreement undertaken, or for injury or damage caused by the negligence of the Consultant, its officers, agents and employees, the Consultant shall defend, indemnify and save harmless the City and its officers, agents and employees from all losses, damages, costs, expenses, judgments or decrees arising out of such action. Provided however, that in no event shall the Consultant's total liability for loss (indemnity or defense) exceed Consultant's prorata share of all fault causing any injury or loss. The City shall tender the defense of any claim or action at law or in equity to the Consultant or the Consultant's insurer, and upon such tender, it shall be the duty of the Consultant or the Consultant's insurer to defend such claim or action without cost or expense to the City or its officers, agents or employees. The Consultant shall be solely responsible for the conduct and performance of the services required under the terms and conditions of this Agreement and for the results therefrom. Nothing in this Article VII shall be construed to impose liability on the Consultant for the negligence of the City, or of its officers, agents or employees, in the performance of this Agreement.

ARTICLE VIII

Insurance

The Consultant shall be solely responsible to meet the Consultant's insurance needs as required by the City, including public and professional liability and property damage, during the term of this Agreement or any extension thereof. A Certificate of Insurance shall be provided to the City as evidence thereof naming the City as an additional insured for public liability and property damage, and providing for a thirty (30) day notice to the City prior to termination or cancellation of the policy. The City reserves the right to require review and approval of the actual policy of insurance before it executes this Agreement. The minimum

Attachment C: Sample Contract

limits of insurance required by the City under this Agreement are set forth in *Exhibit I*, attached hereto.

Attachment C: Sample Contract

ARTICLE IX Conflicts of Interest

9.1 The City – Governing Body No officer, employee or agent of the City who exercises any functions or responsibilities in connection with the carrying out of any services or requirements to which this Agreement pertains, shall have any personal interest, direct or indirect, in this Agreement. No member of the Governing Body of the locality and no other public official of such locality who exercises any functions or responsibilities in the review or approval of the carrying out of this Agreement, shall have any personal interest, direct or indirect, in this Agreement.

9.2 Consultant The Consultant covenants that it presently has no interest, and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. The Consultant further covenants that in the performance of this Agreement, no person having any conflicting interest shall be employed. An interest on the part of the Consultant or its employee must be disclosed to the City.

ARTICLE X Non-Discrimination and Equal Employment

10.1 Discrimination The Consultant agrees not to willfully refuse to employ, to discharge or to discriminate against any person otherwise qualified because of race, color, religion, sex, sexual orientation, age, disability, national origin or ancestry, lawful source of income, marital status, creed or familial status; not to discriminate for the same reasons in regard to tenure, terms or conditions of employment; not to deny promotion or increase in compensation solely for these reasons; not to adopt or enforce any rule or employment policy which discriminates between employees on account of race, color, religion, sex, sexual orientation, age, disability, national origin or ancestry, lawful source of income, marital status, creed or familial status; not to seek such information as to any employee as a condition of employment; not to penalize any employee or discriminate in the selection of personnel for training solely on the basis of race, color, religion, sex, sexual orientation, age, disability, national origin or ancestry, lawful source of income, marital status, creed or familial status.

10.2 Subcontracts The Consultant shall include or cause to be included in each subcontract covering any of the services to be performed under this Agreement, a provision similar to the above paragraph, together with a clause requiring such insertion in further subcontracts that may in turn be made.

ARTICLE XI Addresses and Notices

Unless otherwise provided in the Agreement, any notice, communication, request, reply or advice (herein severally and collectively, for convenience called *notice*) herein provided or permitted to be given, made or accepted by one party to the other must be in writing and may be given or be served by depositing the same in the United States mail, postage-paid and certified and addressed to the party to be notified, with return receipt requested. Notice deposited in the mail in the manner described above shall be conclusively deemed to be effective, unless otherwise stated in this Agreement, from and after the expiration of three (3) days after it is deposited. Notice given in any other manner should be effective only if and when

Attachment C: Sample Contract

received by the party to be notified. For the purpose of notice, the address of the parties shall be as follows:

If to the City: Name
Title
City of Milwaukee
Frank P. Zeidler Municipal Building
841 North Broadway
Room 701
Milwaukee, WI 53202

If to the Consultant:

ARTICLE XII **Records, Audits and Confidentiality**

12.1 Access to Records The Consultant shall maintain books, records, documents and other evidence directly pertinent to performance under this Agreement in accordance with accepted applicable professional practices. The City, or any of its duly authorized representatives, shall have access to such books, records, documents, papers or any records of the Consultant which are directly pertinent to this Agreement for the purpose of making audits, examinations, excerpts and transcriptions.

12.2 Public Records Law The City and the Consultant shall comply with the Public Records Law of Wisconsin and the Consultant will assist the City in conforming to the law. Except as otherwise authorized, those records shall be maintained for a period of seven (7) years after receipt of the final payment under this Agreement.

ARTICLE XIII **Emerging Business Enterprise (EBE) Program**

13.1 Policy and Goal In accordance with *Chapter 360* of the *Milwaukee Code of Ordinances*, Emerging Business Enterprise requirement, it is the City's policy to accomplish Emerging Business Enterprise (EBE) participation in all contracting activities in the City's Department of Public Works. The City has established for itself an overall goal of eighteen percent (18%) EBE participation for Public Works contracts. In an effort to meet these overall goals, the Commissioner of Public Works, as Contracting Officer for the City, expects the Consultant to use its best efforts to enable the EBE to be considered fairly as subcontractors and material suppliers under all Public Works contracts. The goal for this Agreement is EBE participation.

13.2 Forms and Reports The Consultant shall prepare and submit accurate and timely EBE utilization forms and reports to the City. The reports shall include, but not be limited to, *Project Participation* (EBE Form A), *Monthly Utilization* (EBE Form D), and *EBE Subcontractor Payment Certification* (Form E), forms as directed. Failure to submit the required forms and reports to the City may result in disqualification of future bids, delay of payments or other

Attachment C: Sample Contract

appropriate sanctions. Final contract payments will not be made until final *EBE Utilization Reports* and *EBE Subcontractor Payment Certification* forms are on file with the City.

13.3 Compliance Reviews During the performance of this Agreement, the Commissioner reserves the right to conduct compliance reviews. If the Consultant is not in compliance with the specifications, the Commissioner will notify the Consultant in writing of the corrective action that will bring the Consultant into compliance. If the Consultant fails or refuses to take corrective action as directed, the Commissioner may take one or more of the following actions: (i) Terminate or cancel this Agreement, in whole or in part; (ii) Remove the Consultant from the list of qualified firms and refuse to accept future proposals for a period not to exceed three (3) years; or (iii) Impose other appropriate sanctions.

ARTICLE XIV Additional Provisions

14.1 Captions The captions appearing at the first of each numbered section of this Agreement are inserted and included solely for convenience, but shall never be considered or given any effect in construing this Agreement or the duties, obligations or liabilities of the respective parties hereto, or in ascertaining intent if any questions of intent should arise.

14.2 Severability The provisions of this Agreement are severable. If any provision or part of this Agreement or the application thereof to any person or circumstance shall be held by a court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such provision or part thereof to other persons or circumstances shall not be affected thereby.

14.3 Entire Agreement This Agreement and the exhibits attached hereto, constitute the entire Agreement between the parties hereto relating to the subject matter hereof, and all prior Agreements, correspondence, discussions and understandings of the parties (whether oral or written) are merged herein and made a part thereof, it being the intention of the parties hereto that this Agreement shall serve as the complete and exclusive statement of their agreement together.

14.4 No Additional Waiver Implied The failure of any party to insist in any one or more instance upon performance of any of the terms, covenants or conditions of this Agreement shall not be construed as a waiver or relinquishment of the future performance of any such term, covenant or condition by any other party hereto, but the obligation of such other party with respect to such future performances shall continue in full force and effect.

14.5 Amendment This Agreement shall be amended only by formal written supplementary amendment. No oral amendment of this Agreement shall be given any effect. All amendments to this Agreement shall be in writing executed by both parties.

14.6 Applicable Law and Venue This Agreement, and all questions arising in connection herewith, shall be governed by and construed in accordance with the internal laws of the State of Wisconsin. Venue for any action arising out of, or in any way related to this Agreement, shall be exclusively in the City of Milwaukee for matters arising under State law and in Federal District Court for matters arising under federal jurisdiction.

Attachment C: Sample Contract

14.7 Independent Consultant In performing its obligations under this Agreement, the Consultant shall act as an Independent Consultant solely for its own account and not as an agent, representative or employee of the City.

14.8 Assignment This Agreement shall be binding on the heirs, successors and assigns of each party hereto. The employment by the City of the Consultant to perform the services set forth in this Agreement is a personal contract and the Consultant shall not assign, sublet or transfer the Consultant's interest or obligations under the provisions of this Agreement without the prior written consent of the City. Nothing herein shall be construed as creating any personal liability on the part of any officer or agents of the City.

14.9 Counterparts This Agreement may be executed in one (1) or more counterparts; all of which shall be considered but one (1) and the same Agreement, and shall become effective when one (1) or more counterparts have been signed by each of the parties and delivered to the other party.

14.10 Conflicts In the event of conflicts between provisions of the base contract and/or the provisions of any of the contract exhibits, the various documents shall govern in the following order:

Attachment C: Sample Contract

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day, month and year set forth above.

MAKING THE GRADE, INC.

By: _____

Its: _____

Date: _____

CITY OF MILWAUKEE

By: _____
Commissioner of Public Works

Date: _____

COUNTERSIGNED

By: _____
Comptroller

Date: _____

CITY ATTORNEY

Examined and approved as to content
this _____ day of _____ 2005

Assistant City Attorney

CITY ATTORNEY

Examined and approved as to content
this _____ day of _____ 2005

1047-2005-1199v4