

RESOLUTION NO. 26-2011

Adopted March 15, 2011

AUTHORIZING THE BAYVIEW HUNTERS POINT REVOLVING LOAN PROGRAM AND THE ALLOCATION OF FUNDING IN THE AMOUNT OF \$1,000,000 TO PROVIDE LOANS TO BUSINESS AND PROPERTY OWNERS ON THIRD STREET; BAYVIEW HUNTERS POINT REDEVELOPMENT PROJECT AREA

BASIS FOR RESOLUTION

1. In furtherance of the objectives of the California Community Redevelopment Law (Health and Safety Code Section 33000 et seq.), the Redevelopment Agency of the City and County of San Francisco (the "Agency") undertakes programs for the reconstruction and rehabilitation of blighted areas in the City and County of San Francisco (the "City").
2. On May 16, 2006, by Ordinance No. 113-06, the City's Board of Supervisors adopted the Bayview Hunters Point Redevelopment Project Area in order to undertake a variety of projects and activities to alleviate blighting conditions. The Bayview Hunters Point Redevelopment Plan (the "Plan") became effective on September 19, 2006.
3. Under the Plan, the Agency is to development economic programs to assist with the development of key catalyst commercial sites, the provision of small business improvement assistance, and the growth of commercial retail along Third Street.
4. The goal of the proposed Bayview Hunters Point Revolving Loan Program is to attract new businesses and revitalizing existing businesses as part of the Agency's economic development efforts along the Third Street Corridor.
5. It is therefore appropriate and consistent with the Agency's economic development program for the Bayview Hunters Point Redevelopment Project Area to create the loan program, generally as described in the workshop memorandum presented to the Redevelopment Agency Commission on March 1, 2011 and recommended in the memorandum considered by the Redevelopment Agency Commission on March 15, 2011.
6. Agency authorization of the proposed Bayview Hunters Point Project Area Loan Program would facilitate façade and tenant improvements of existing buildings, design assistance, and business development assistance that would not have a significant effect on the environment and is exempt from the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines Sections 15061(b)(3), 15262, and 15301(a).

RESOLUTION

ACCORDINGLY, IT IS RESOLVED by the Redevelopment Agency of the City and County of San Francisco that:

1. The Bayview Hunters Point Revolving Loan Program for business and property owners along Third Street in the Bayview Hunters Point Redevelopment Project Area, attached is hereby adopted;
2. The Agency allocates the total amount of \$1,000,000 to fund such program subject to appropriations and the availability of funds; and
3. The Executive Director is authorized to administer such program and execute loan documents consistent with the loan program, in a form to be approved by Agency General Counsel.

APPROVED AS TO FORM:



for James B. Morales 3/9/11
Agency General Counsel

Attachment 1: Bayview Hunters Point Revolving Loan Program

SAN FRANCISCO REDEVELOPMENT AGENCY
Bayview Hunters Point Revolving Loan Program

I. Loan Program Purpose

The goal of the Bayview Hunters Point Revolving Loan Program (“Loan Program”) is to attract new businesses to, and to strengthen existing businesses along, the Third Street corridor to create a viable commercial core for Bayview Hunters Point by providing retail services, jobs, and economic stimulants. Given the current low levels of private investment on the corridor, Agency funds are necessary to leverage private funds, stimulate property owner investment in tenant spaces, and nurture the economic development cycle. An improved business climate would attract a larger consumer base with higher disposable incomes to infuse the Third Street corridor with economic growth. New businesses can then serve to attract other new businesses to the area and attract more customers to assist all businesses on the street.

The Loan Program provides flexible-term loans to property owners and tenants to attract experienced entrepreneurs to establish new businesses on the Third Street corridor of Bayview Hunters Point (“BVHP”), with particular initial focus on the Town Center Activity Node, to promote commercial vitality of the area and improve economic activity. It is designed to stimulate private investment in improvements that contribute to the overall economic strength of the corridor. Through the Loan Program, the Agency aims to achieve the economic development goals and objectives of the Bayview Hunters Point Redevelopment Plan (the “Plan”), including the elimination of blight.

The Loan Program complements the existing SF Shines façade and tenant improvement grant program, which provides grants of up to \$75,000 for tenant improvements in BVHP. Project financing up to \$75,000 shall be reviewed and awarded through the SF Shines Façade and Tenant Improvement Program. The SF Shines program is a matching grant program administered by the Office of Economic and Workforce Development and funded in BVHP by the Agency. The BVHP Loan Program is set to provide loans from \$75,001 to \$250,000 to experienced entrepreneurs to start new businesses on the Third Street corridor.

II. Program Goals

- ❖ Provide loan funds to healthy and expanding businesses to create new businesses in central Third Street corridor that can provide construction/permanent jobs for BVHP residents.
- ❖ Use public funds to stimulate private investment to revitalize Third Street corridor, with particular focus on the Town Center Activity Node.
- ❖ Create attractive and inviting retail/commercial areas to draw residents/visitors to generate foot traffic along Third Street.
- ❖ Expand the tax-base of the area to increase the tax increment for further public/private investments.

III. Loan Criteria

1. Eligible Applicants

- a. Owner(s) of commercial property who meets all of the following:
- (i) Owns a retail/commercial property located along the Third Street corridor in Bayview Hunters Point;
 - (ii) Wants to start a new business or has an agreement with, or is in exclusive negotiations with, an identified tenant or operator who desires to start a new business on the Third Street corridor and can meet the requirements of the BVHP Loan Program. The tenant must meet the requirements specified under Section III(1)(b) below;
 - (iii) Has a plan of action to move forward quickly to establish the new business(es); and
 - (iv) Has evidence of financial capacity to provide required equity.
- b. Tenant or prospective tenant of a commercial space located along the Third Street corridor who has, or will provide, all of the following:
- (i) A letter of intent to lease or an executed lease for a minimum three (3) year term for identified retail or commercial space for the proposed new business;
 - (ii) Proof of (a) having an existing business averaging \$300,000 in net annual sales or (b) having at least (3) three years of operating experience and a business similar to the one being proposed;
 - (iii) Written business and financial plans; and
 - (iv) Evidence of financial capacity to provide required start-up equity and a reasonable amount for working capital.
- c. Preference for types of borrowers and businesses

In addition to eligibility of borrowers, preference will be given to proposals that could accomplish one or more of the objectives described in **Attachment A, Preference Criteria**

2. Eligible Uses of Agency Loan Funds

- a. Construction of owner/tenant's improvements including fixtures (design costs to be funded with borrower's start up equity) for retail or commercial business providing goods and/or services for BVHP residents and visitors.

Tenant improvements (“TI”) is defined under this BVHP Loan Program to mean those structural changes, typically to retail, office, or industrial property, to accommodate the specific needs of an owner’s or tenant’s business, and can include moving interior walls or partitions, floor coverings, shelves, windows, air conditioning, lightening, fire protection, security, etc. Who bears what portion of TI costs should be negotiated between the landlord and tenant, and should be documented in the lease agreement.

- b. Construction of tenant’s improvements including fixtures (design costs to be funded with borrower’s start up equity).

IV. Basic Loan Terms

The BVHP Loan Program offers loans at between 1% to 6% interest, the principal and interest of which may be forgiven in some cases for owners or landlords or tenants meeting negotiated performance schedule set forth in the loan agreement. Use of loan funds is restricted to improvements that a landlord, or an owner or tenant will make for a new business to begin operations along the Third Street corridor in BVHP. A minimum of twenty-five percent (25%) of the total start-up cost and working capital reserve is required to be invested in the transaction as equity. Loans will require collateral. The Agency reserves the right to structure loans with lesser security requirements and forgive loan amounts incrementally over the loan term for borrowers meeting their performance schedule.

A summary of the Basic Loan Terms is provided in the below Table:

Basic Loan Terms	
Funding Amounts:	\$75,001 to \$250,000
Property Type:	Landlord/tenant improvements in retail/commercial properties.
Lease Terms:	3 to 5 years (unless business owned by property owner)
Interest Rate:	1% to 6% fixed for loan term;
Amortization:	Up to 25 years
Repayment:	Fixed monthly payment.
Liability:	Borrower’s liability in terms of making the loan a recourse or non-recourse loan will be negotiated based on the structure of the transaction.

Collateral or Security requirements:	Loan agreement, promissory note, a security agreement and trust deed. UCC-1, UCC-2.
Subordination	A request for subordination of the Agency security instrument will be considered on case-by-case basis.
Underwriting:	Real estate and business feasibility analyses, personal and business credit and risk analysis, and a Loan Committee Review.

A description of other requirements of the loan program is provided in **Attachment B, Loan Covenants.**

V. Loan Application Process

This process consists of three phases:

1. Phase I

To apply for a TI loan, the applicant must first attend a pre-application meeting with the designated Agency Community and Economic Development staff to assess the suitability of its proposal for the BVHP Loan Program. The applicant should come prepared to describe and discuss its proposed new business, the proposed location, basic lease terms, basic layout of the premises, preliminary financing plan, and an implementation timeline. The Agency will determine if the proposal merits moving it to Phase II described below. The main purpose of Phase I is to save the applicant and the Agency cost and time of submitting a full application without knowing if funding is still available and if the proposal fits the BVHP Loan Program.

2. Phase II

Phase II consists of the submission of a formal loan application and the evaluation of the submitted application. It involves considerable cost and time because the applicant will be required to submit all of the information required in the Agency's Notice of Funding Availability ("NOFA") for the BVHP Loan Program. The NOFA will be issued periodically to indicate availability of funds and the specific objectives the Agency wants to achieve with the loan funds. All respondents to the NOFA will be required to submit, at a minimum, the information listed in **Attachment C, BVHP Loan Application Checklist**. The submission of the loan application is complete when all required information has been submitted including all uses and sources of funds for both start-up costs and initial business operations (working capital).

The evaluation of the application will be conducted by the Agency using the underwriting process described below in Section VI, Underwriting Process. The result of Agency staff's evaluation will be submitted to the Agency's BVHP Loan Committee (the "Loan Committee") for its recommendation to the Agency Commission approval. The Loan Committee will be comprised of the Agency CED Deputy Executive Director, Agency Deputy Director of Housing, Director

of Community Development, Mayor's Office of Housing, Treasurer, BVHP Project Area Committee, and a Community Financing Partner, a loan officer from a bank location in BVHP.

3. Phase III

Phase III consists of drafting the applicable loan documents, having the documents signed by the borrower(s), and taking the proposed loan documents to the Agency Commission for consideration. Prior to going before the Agency Commission, the proposed loan terms will be presented to the BVHP Project Area Committee (the "PAC") for its information and expression of support. The PAC is charged with advising the Agency on policy and spending decisions that utilize tax increment generated within the Project Area. The PAC may ask applicants for a presentation to learn more about the business proposal and the applicant's loan request.

VI. Agency's Staff's Underwriting Process (evaluation of loan request)

1. Underwriting Review

The underwriting review for the requested loan includes analyses of (1) the real estate component of the transaction, (2) the business operation component of the proposed transaction, (3) the Borrower's capacity, (4) market and financial feasibility of the proposed business, and (5) compliance with the Plan. Underwriting will require an evaluation of the following:

- The feasibility of the real estate component, including:
 - Existing encumbrances, forbearances, and subordination issues
 - Estimated cost of the proposed improvements
 - Review of the related lease terms, including landlord's allowance for TI, type of rent proposed given the level of landlord's TI allowance, and shell condition of the space being leased
 - Sources and uses of funds for the completion of the TI.
 - Proposed implementation timeline
- The feasibility of the proposed business operation, credit analysis of the Borrower and its principals with respect to the "5 Cs": cash flow, management and financial capacity, credit, collateral, and character, plus the likelihood of success of the new business at the proposed location, relevant industry benchmarks, the identified customers, rates of return, breakeven point, etc.
- Market analysis to determine the demand/supply issues related to the proposed business and the proposed marketing plan to attained the projected demand; and

2. Risk Assessment

If necessary, the Agency will do the following to assess its exposure to risk in

making the requested loan including:

- Determining the nature and sufficiency of pledged collateral
- Determining the impact on the Agency's ability to protect its interest before granting a subordination if required as a funding condition by other lenders.
- Determining the appropriate "exit Strategies for the Agency regarding the proposed loan.

3. Underwriting Standards

The need for deviation from private commercial lending institutions underwriting standards:

The BVHP Loan Program underwriting process must take into consideration that commercial lending institutions underwrite loans to reduce risk, limit their exposure to financial loss, and to meet the interests of the secondary mortgage market. However, a salient aspect of the Agency's mission is to invest in neighborhoods and corridors that the private investment community overlooks because of real or perceived increased risk of investment. The Agency is committed to economic development in BVHP, and is therefore prepared to shoulder larger risk for a promising new business enterprise than might be deemed infeasible by the private lending market.

4. Loan Evaluation

Staff's evaluation to the Loan Committee should include a summary of the underwriting review and a justification for making the loan. The justification should include answers to the following questions:

- **Is the proposed location appropriate?** Agency investments are currently focused on revitalizing Third Street, the major commercial spine of the Bayview Hunters Point. The proposed new business should be located on or directly adjacent to Third Street, with additional emphasis placed on projects within the Town Center Activity Node.
- **What are the community benefits for making the loan?** Clearly express what the community benefits are.
- **What would the Agency loan provide the business in terms of viability and capacity?** Describe how the loan would make the business viable and increase its capacity. What is the leverage factor for the Agency expressed in outside dollars to Agency's dollar?
- **Does the TI provide significant positive physical change over the existing condition?** Describe how the TI provides beneficial physical change over the existing conditions. Does it contribute any specific, obvious exterior physical improvement to the Third Street corridor? Does

it comply with all applicable design guidelines?

- **Would the TI complement the existing/proposed physical/business investments in the corridor?** Describe how the proposed TI is compatible with other public improvements and businesses on the Third Street corridor.
- **Does the proposal meet the goals/objectives of the BVHP Loan Program as stated in the applicable NOFA?** Describe how the proposal meets the specific goals/objectives stated in the NOFA.
- **What are the metrics of the loan proposal?** While there are a number of metrics that can be extracted from the underwriting review of a loan application, the Agency will give emphasis to **“Preference Score”** of the particular loan application. The Preference Score is a measure of where the proposal is on the Agency’s preference scale to approve it, the lowest on the preference scale is 1 and the highest, 5. The highest score represents a proposal that meet most of all Agency requirements in terms of experience, financial capacity, equity contribution, strength of business plan and the number of jobs to be created. The Metrics Table provided as Exhibit 1 to **Attachment B, Underwriting Criteria**, should be used to determine the Preference Score of the loan proposal.

Please refer to **Attachment B, Underwriting Criteria**, for more detailed underwriting criteria.

VII. Agreement to comply with Agency Policies

All borrowers and projects under this BVHP Loan Program must comply with the Agency’s BVHP Employment and Contracting Policy:

The Agency has adopted the BVHP Employment and Contracting Policy (“ECP”), requires all borrowers and their projects to enter into an ECP agreement with the Agency agreeing to provide employment opportunities for lower-income BVHP residents and San Francisco residents in the areas of construction, professional services, and permanent jobs. Borrowers will be required, under their loan agreements to: (A) achieve ECP goals that include (i) Construction Workforce Hiring and (ii) Permanent/Temporary Workforce Hiring; and (B) comply with the following Agency policies: (i) Small Business Enterprise Program Policy; (ii) Nondiscrimination in Contracts and Equal Benefit Policy; (iii) Minimum Compensation Policy (“MCP”); (iv) Health Care Accountability Policy (“HCAP”), and (v) Agency Prevailing Wage Policy (Labor Standards). Borrowers are also required to agree to incorporate by reference or to attach, the ECP to their contracts with their respective general contractors for their tenant improvement projects. The borrowers and their contractors are to retain their respective executed ECP agreements and make them available to the Agency Compliance Officer upon request. The form of the ECP agreement the borrower will be require to execute is attached as **Exhibit E, Form of Bayview Hunters Point Employment and Contracting Agreement**.

5. Nondiscrimination in Contracts and Benefits
The Agency has established a policy prohibiting discrimination in contracting, which includes a prohibition on discrimination in providing benefits between employees with spouses and employees with domestic partners. The borrower will be required to complete **Attachment F**. Entities that have received certification from the San Francisco Human Rights Commission regarding their compliance with the Equal Benefits Ordinance of the City and County of San Francisco may be deemed in compliance with the Agency's policy. For further information, contact the Agency's Contract Compliance Division at 415-749-2425.
6. Minimum Compensation Policy and Health Care Accountability Policy
The Agency has adopted a Minimum Compensation Policy ("MCP") that requires all borrowers with loan agreements with the Agency pay a minimum level of compensation to their employees (**Attachment G**). In addition, the Health Care Accountability Policy ("HCAP") requires that borrowers offer certain health plan benefits to their employees or participate in a health benefits program developed by the City's Department of Public Health, or make a payment in lieu of such benefits to the City's Department of Public Health (**Attachment G**).

VIII **Insurance and Indemnification Requirements**

Borrower must procure and maintain, or cause its Contractor to procure and maintain, for the duration of the contract, insurance against claims for injuries to persons or damages to the Property which may arise from or in connection with the performance of work related to this Agreement by the Borrower, its agents, representatives, employees or contractors.

1. Minimum Scope and Limit of Insurance.

Coverage shall be at least as broad as:

- A. **Commercial General Liability (CGL):** Insurance Services Office (ISO) Form CG 00 01, including products and completed operations, with limits no less than \$1,000,000 per occurrence for bodily injury, property damage, and personal & advertising injury. If a general aggregate limit applies, either the general aggregate limit will apply separately to this project or the general aggregate limit must be twice the required occurrence limit.
- B. **Automobile Liability:** ISO Form Number CA 00 01 covering any auto (Code 1), or if Contractor has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limits no less than \$1,000,000 per accident for bodily injury and property damage.
- C. **Workers' Compensation:** Insurance as required by the State of California, with Statutory Limits, and **Employer's Liability Insurance** with limit of no less than \$1,000,000 per accident for bodily injury or disease.

D. **Builder's Risk** (Course of Construction) insurance covering all risks of loss less policy exclusions, with limits equal to the completed value of the project and no coinsurance penalty provisions. Contractor may submit evidence of Builder's Risk insurance in the form of Course of Construction coverage. Such coverage shall name the Agency as a loss payee as their interest may appear.

If the project does not involve new or major reconstruction, at the option of the Agency, an Installation Floater may be acceptable. For such projects, a Property Installation Floater shall be obtained that provides for the improvement, remodel, modification, alteration, conversion or adjustment to existing buildings, structures, processes, machinery and equipment. The Property Installation Floater shall provide property damage coverage for any building, structure, machinery or equipment damaged, impaired, broken, or destroyed during the performance of the Work, including during transit, installation, and testing at the Project site.

E. **Professional Liability:** Contractors Pollution Liability and/or Asbestos Pollution Liability and/or Errors & Omissions insurance applicable to the work being performed, covering negligent acts, errors and omissions. Borrower must require that professionals who perform work related to the Contract have liability insurance appropriate to their profession, with limit no less than \$1,000,000 per occurrence or claim, \$2,000,000 policy aggregate. (If applicable –Borrower must provide the Agency with copies of insurance certificates showing such coverage.)

By initialing here, the Borrower certifies that it _____ has or _____ has not hired professionals that require Professional Liability insurance.

2. **Deductibles and Self-Insured Retentions**

Any deductibles or self-insured retentions must be declared to and approved by the Agency's Risk Manager. At the option of the Agency's Risk Manager, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions, or the Contractor shall provide a financial guarantee satisfactory to the Agency's Risk Manager guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

3. **Other Insurance Provisions.**

The insurance policies are to contain, or be endorsed to contain, the following provisions:

A. **Additional Insured Status:** The General Liability, Automobile Liability, Contractors Pollution Liability, and/or Asbestos Pollution policies (as applicable) are to contain, or be endorsed to contain, the following provisions: The San Francisco Redevelopment Agency, the City and County of San Francisco and their respective officers, agents, employees and Commissioners are to be covered as additional insureds with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the Borrower; and with respect to liability arising out of work or operations performed by or on behalf of the Borrower including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Borrower's insurance (at least as broad as ISO Form CG 20 10, 11 85 or both CG 20 10 and CG 20 37 forms if later revisions used).

B. Primary Coverage: For any claims related to this Loan, the Borrower's and Contractor's insurance coverage must be primary insurance with respect to the "San Francisco Redevelopment Agency, the City and County of San Francisco and their respective Commissioners, officers, agents, and employees." Any insurance or self-insurance maintained by the Agency, the City and County of San Francisco and their respective Commissioners, officers, agents or employees must be in excess of Borrower's insurance and must not contribute with it.

C. Notice of Cancellation: Each insurance policy required by this clause must be endorsed to state that coverage must not be suspended, voided, canceled by either party, or reduced in coverage or in limits, except after thirty (30) days' prior written notice (10 days for non-payment) has been provided to the Agency.

D. Transportation Pollution Liability insurance: For contracts involving the removal of Hazardous Materials, the Automobile Liability policy shall be endorsed to include Transportation Pollution Liability insurance, covering materials to be transported by Contractor pursuant to the contract. This coverage may also be provided on the Contractors Pollution Liability policy.

E. Claims Made Policies (General Liability, Professional Liability or Pollution /Asbestos) If any of the required policies provide claims-made coverage:

1. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work.
2. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Contractor must purchase "extended reporting" coverage for a minimum of five (5) years after completion of work.
3. A copy of the claims reporting requirements must be submitted to the Agency for review.
4. If the services involve lead-based paint or asbestos identification / remediation, the Contractors Pollution Liability shall not contain lead-based paint or asbestos exclusions. If the services involve mold identification / remediation, the Contractors Pollution Liability shall not contain a mold exclusion and the definition of "Pollution" shall include microbial matter including mold.

F. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of no less than A:VII unless otherwise acceptable to the Agency.

G. Verification of Coverage. Borrower must furnish the Agency with original certificates of insurance and with amendatory endorsements or copies of the applicable insurance language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the Agency before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Borrower's obligation to provide them. The Agency reserves the right to require complete certified copies of all required insurance policies, including endorsements required by these specifications at any time.

H. **Subcontractors:** Borrower shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein.

I **Special Risks or Circumstances:** Agency reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

2. Indemnity

All borrowers under the BVHP Loan Program will be required to defend, hold harmless and indemnify the Agency, the City and County of San Francisco and their respective commissioners, members, officers, agents and employees of and from all claims, loss, damage, injury, actions, causes of action and liability of every kind, nature and description directly or indirectly arising out of or connected with their performance under the their loan agreements with the Agency and any of the borrowers' operations or activities related thereto, excluding the willful misconduct or the gross negligence of the person or entity seeking to be defended, indemnified or held harmless.

VIII. Additional Terms and Conditions

1. Loan Agreement

Each borrower will be required to enter into a loan agreement and related documents with the Agency. Each borrower will be required to comply with all of the provisions of the loan document, including, but not limited to, the Agency's policies and provisions regarding indemnification, insurance, and the BVHP Employment and Contracting Policy.

2. Loan Applicant or Borrower Expenses

Applicants responding to this BVHP Loan Program NOFA do so at their own expense. The Agency will not consider any applicant's or borrower's costs related to applying for a loan or to negotiating the loan documents as reimbursable or as eligible costs under the loan document.

3. Agency Right to Modify or Suspend the BVHP Loan Program

The Agency's Executive Director or his/her designee shall have the authority to execute loans that are in compliance with the Loan Program. The Executive Director is also authorized to waive, in his/her sole discretion, any condition, obligation or requirement under this Loan Program, if the strict enforcement of the condition, obligation or requirement would cause undue hardship on the Borrower or would be inconsistent with the goals and objectives of the Loan Program. The foregoing notwithstanding, the Executive Director may not increase the Loan Amount, extend the Term or waive the indemnification or security obligations without the Agency Commission's express authorization.

4. Claims against the Agency

Each applicant responding to any NOFA issued under the BVHP Loan Agreement, waives any claim, liability or expense whatsoever against the Agency and its respective officers, commissioners, employees and agents by reason of any

or all of the following: any aspect of this BVHP Loan Program or its related NOFA, the loan review process or any part thereof, any informalities or defects in the loan process, the failure to enter into any agreement, any statements, representations, acts or omissions of the Agency, the exercise of any discretion set forth or concerning any of the foregoing, and any other matters arising out of all or any of the foregoing.

Attachments:

- A: Preference Criteria**
- B: Underwriting Criteria**
- C: BVHP Loan Application Checklist**
- D Loan Covenants**
- E Form of Bayview Hunters Point Employment and Contracting Agreement**
- F. Nondiscrimination and Contract and Benefits**
- G. Minimum Compensation Declaration**
- H. Health Care Accountability Declaration**
- I. Insurance Requirements**

Attachment A Preference Criteria

In addition to the underwriting criteria, preference will be given to proposals that aim to accomplish the goals and objectives of the BVHP Revolving Loan Program. For example, proposals will be given preference if they demonstrate ability to:

1. Add to the mix of existing businesses on the Third Street Corridor, especially if the proposed business is on the list of preferred businesses as defined by the Agency and the Third Street Corridor Project. The list will be provided in the Notice of Funding Availability or NOFA the Agency plans to issue from time-to-time to invite applicants to submit proposals.
2. Leverage Agency funds with contribution from private and/or public sources for 25% or more of the startup costs.
3. Significantly improve the physical condition, both interior and exterior, of the space for the new business.
4. Contribute the necessary resources required for the success of the new business.
5. Attract customers from within and outside of BVHP to increase foot traffic along the Third Street Corridor.
6. Assure continuous business operations on-site for the term of the loan.
7. Provide internships or training programs for BVHP youth and young adults

Ineligible Businesses

The following businesses are not eligible for a loan under this program:

1. Wholesale businesses, except discount offerings to the general public;
2. Unlawful or unlicensed businesses;
3. Uses that have led to recurrent problems of public safety and welfare or that contribute to conditions of blight as defined by Community Redevelopment Law.

Attachment B Underwriting Criteria

Tenant Improvement Loans

Property owners and business owners in leased space are eligible for loans under the BVHP Loan Program. However, business owners should have at least three (3) years of operating experience and a lease with a term of at least three years. In all cases, the property owner must approve the proposed improvements. . Tenant improvement loans will not exceed 100% of the total collateral value. Collateral may include:

- Real estate
- Business assets, such as machinery and equipment
- Cash in the form of a certificate of deposit or interest bearing escrow account
- Bank issued letter of credit

Business Capacity and Credit Review

The following criteria take into account the need to ensure the success of proposed businesses where possible.

- 1) Equity: Each application will be reviewed to determine the feasibility of the business based on its business plan, market/competition research, credit/financial strength of the applicant, and ability to service debt. The applicant must provide at least 25% of the total project cost, but a greater owner contribution will be a positive factor indicating the applicant's commitment. Equity must be represented by the owner's monetary funds, not sweat equity.
- 2) Collateral: Loans will not exceed 100% of total collateral value, which may include:
 - Real estate
 - Business assets, such as machinery and equipment
 - Cash in the form of a certificate of deposit or interest bearing escrow account
 - Bank issued letter of credit
 - Other properties
 - Guarantor(s) – may be required to increase collateral
- 3) Cash Flow: The projected business cash flow should exceed reasonable operating expenses, reserves and the proposed total debt service for all loans funding the TI.
- 4) Credit History: A current credit report on an existing business and a personal credit report on any principals are required. Applicant should have a credit history demonstrating prior debt repayment and all derogatory credit must be satisfied and sufficiently explained. There may not be a bankruptcy or outstanding tax liens within a two-year period.
- 5) Management Experience: Applicant must be able to exhibit at least three years of relevant experience in managing a business or have relevant experience in the field in which the new business would be started.

- 6) Feasible Business Plan: A business plan must be submitted, including a description of the company, the industry, the product or service, knowledge of the competition, knowledge of the market, sales projections, management structure, key operational processes, financial projections, type and amount of non-forgivable and/or forgivable loan requested, and purpose of funds.
- 7) Financial Statements: For existing businesses, two years of historical financial statements and business income tax returns, as well as an updated personal financial statement along with personal income tax returns, are required. For new businesses (in business less than two years), the most recent business tax return and financial statement, two years of personal tax returns, and a current personal financial statement are required. The Agency may also require additional documentation, such as bank statements.
- 8) Project Pro Forma: Applicants must provide pro forma profit and loss (income) statements and balance sheets, including assumptions (for a minimum of ten (10) years).
- 9) Business Underwriting Metric: The applicant and its proposal should also be evaluated to determine its location on the Agency's preference scale described in Section VI(5) of the BVHP Loan Program. The score is a measure of how the applicant and its proposal meet the BVHP Loan Program requirements in terms of business operation experience, financial capacity, equity contribution, strength of business plan and the number of jobs the proposed business will create. The lowest on the preference scale is 1 and the highest, 5. The Metrics Table to be used to compute the Preference Score is provided as Exhibit 1 to this **Underwriting Criteria** attachment.

Exhibit 1
Metrics Table
(Underwriting Criteria, Attachment B to the BVHP Loan Program)

Business Underwriting Metric								
Score	Business Operation Experience	Assigned Score	Owner Equity Contribution	Assigned Score	Business Plan Strength - Market Viability	Assigned Score	Local Jobs Created	Assigned Score
5	5 years plus		More than 40% of Total Project Cost		Strong		10 plus	
4	3 to 5 years		31% to 40% of Total Project Cost		Good		7 to 9	
3	2 to 3 years		21% to 30% of Total Project Cost		Average		4 to 6	
2	1 to 2 years		11% to 20% of Total Project Cost		Questionable		1 to 3	
1	Start-up		0% to 10% of Total Project Cost		Weak		40	
Assigned Weight	30%		30%		30%		10%	
							Weighted Score	
<p>An Example: A borrower with 2.5-year business operation experience proposes 40% equity contribution; the strength of its business is considered average, and only 5 jobs are projected to be created. Its Preference Score will be calculated based on the above Metrics Table as shown below:</p>								
	2 to 3 years Experience	3	40% Equity Contribution	4	Business Plan Strength	3	Local Jobs Created	3
<p>Weighted Score: $(3 \times 0.35) + (4 \times 0.35) + (3 \times 0.20) + (3 \times 0.10) = 3.35$</p>								

Attachment C
BVHP Loan Application Checklist

1. The Request: Describe in a cover letter the nature of the request, including a timeline for when funds are needed and the purpose of the funds.
2. Tenant or Borrower: Provide the full name of tenant(s) or borrower(s), including Also Known As (“AKA”) and Doing Business As (“DBA”) as needed.
3. Address: Provide the mailing and property addresses of tenant(s) or borrower(s).
4. Nature of Business: Describe the tenant’s or borrower’s business, including a statement indicating whether this is a primary or secondary business.
5. Principal Officers: List all officers, principals or owners of the business, including the percent of ownership. A description of the type of ownership structure (i.e., sole proprietor, partnership, L.L.C., corporation, etc.).
6. Other Business Locations: Indicate the location(s) of the tenant’s or borrower’s other related businesses and describe in sufficient detail the relationship between these other businesses and the business needing the requested tenant improvement funds.
7. Tax Identification Numbers: Indicate the tenant’s or borrower’s tax identification number.
8. Source of Loan Repayment: List all sources of repayment of the proposed Agency loan in detail.
9. Requested Terms of Repayment: Indicate the requested terms of repayment (i.e., interest only, principal and interest, accrued, percentage and accrued, etc.). By requesting this information, the Agency is not agreeing to the proposed terms.
10. Loan Security: Describe the proposed loan collateral and disclose existing liens affecting proposed collateral.

11. Guarantor(s): Identify any proposed loan guarantor – if applicable
12. Current Tenant's or Borrower's Commitments & Outstanding: List all financial commitments and outstanding of the tenant(s) or borrower(s), including contingent liabilities.
13. Financial Statements: Provide two sets of financial statements (not bound or stapled) in a separate sealed envelope marked "confidential." Financial statements must include at least the following information:
- (a) Two copies of a current (not more than one year old) audited or reviewed or compiled financial statements with third-party testaments to assets and liabilities disclosed in the statements. The financial statements will be treated as confidential by the Agency.
 - (b) Letter(s) or statements from lending or investment institutions (not more than three months old) that demonstrate the existence of liquid assets or suitable unencumbered lines of operating credit to fund working capital and operation reserves.
 - (c) Copies of the tenant's or borrower's two most recent federal tax returns. These federal tax returns will be treated confidentially by the Agency.
- In the event that the tenant or borrower is a newly created corporation, partnership, L.L.C., L.L.P. or other business entity, submit the above financial information for the individual principals or owners of the tenant or borrower.
14. Financial Capacity Statement:
- (a) Indicate the source(s) and amount(s) of available equity (including working capital) specifically earmarked for the proposed new business.
 - (b) Describe tenant's or borrower's ability to raise additional equity or working capital and sources for such additional funds.
 - (c) Describe tenant's or borrower's current relationships with lenders and ability to obtain necessary additional funding for the proposed business.

(d) Provide documents that support the past performance and creditworthiness of tenant or borrower.

(e) Disclose whether tenant or borrower or any of its principals has filed or been the subject of a bankruptcy proceeding or had a loan or credit line declared in default within the past seven years.

15. Sources and Uses of Funds: Provide a table showing all sources and uses of funds required to open for business, including: costs for tenant improvements; furniture, fixtures and equipment (“FFE”); working capital; operation reserve; etc.
16. Financial Projections: Provide operating projections in the form of a 10-year pro forma that includes a detailed description of all assumptions. Include revenue and sales projections, operating expenses, loan repayments (debt service), profit, etc.
17. Borrower History: Provide a short narrative discussing the history of the tenant or borrower, when the business was founded or established, locations of businesses, affiliations, etc.
18. Industry Profile/Outlook: Provide a brief overview of the industry/market segment occupied by the tenant or borrower. Indicate trends or information supporting the viability of the market segment for the proposed business.
19. Strengths of Management: Describe the management team of the business and any recent management changes. Describe the background and experience of the management team’s principals.
20. State of Proposed Lease: Provide comments on the status of the proposed lease, the anticipated date when tenant or borrower will take possession of the space, etc. Submit the lease if it is executed.

Agency Reservation:

The Agency reserves the right to require additional information or documentation that it deems necessary to determine whether or not to grant tenant’s or borrower’s request for tenant improvement funding.

Disclaimer:

Neither the Agency’s acceptance of the information described above, nor its subsequent analysis, review and discussion with any person submitting a request for tenant improvements funding constitutes a commitment to make a loan or grant of funds.

Attachment D

Loan Covenants

Property and business owners will be subject to the following requirements.

1. Pay prevailing wages for all construction loans.
2. Hire an accountant, or a bookkeeper, to keep business records for producing business reports.
3. Submit to the Agency, when required, periodic financial statements or at a minimum profit and loss statements (P&LS) and cashflow statements.
4. Recruit from local employment agencies
5. Submit Certified Payroll for construction loans above \$10,000.
6. Secure bids or quotes from the Agency's list of contractors, which includes certified Local Small Business Enterprises (SBE's).
7. Attend pre-construction meeting with the Agency's Contract Compliance Division.
8. Comply with Minimum Compensation Policy and Health Care Accountability Policy (for businesses with twenty or more employees).
9. Submit evidence of insurance and indemnification satisfactory to the Agency.

In addition, to achieve the community objectives of the program, the loan recipients must:

1. Maintain retail spaces in leasable condition;
2. Keep the sidewalk in front of property clean and clear of litter and graffiti at all times;

As conditions to loan closing applicants must: (a) join the BVHP Merchants Association; and (b) correct or begin to correct any code violations cited in the building or leasehold area (if the applicant is the property owner or operator of the activities giving rise to the violations).

Tenant Improvement Performance Covenants

In order to prevent exorbitant rent increases as a result of the tenant improvement program, property owners are required to control rent at the CPI for the first five years after securing a tenant, and thereafter at increments not to exceed prevailing commercial rents in the Area's (currently \$1.50 to \$2.50 per square foot) for the following 10 years.

Attachment E
Form of BVHP Employment and Contracting Agreement

This Employment and Contracting Agreement (“**Agreement**”) is entered into as of [redacted], 2011, between the Redevelopment Agency of the City and County of San Francisco, a public body, corporate and politic (the “**Agency**”), and [name of Project Sponsor], a [type of company: LLC, nonprofit, etc.] (“**Project Sponsor**”). Terms used herein have the meaning given them when first used or as set forth in Section IV.

RECITALS

A. The Board of Supervisors of the City and County of San Francisco (“**Board of Supervisors**”) adopted and approved the Bayview Hunters Point Redevelopment Plan (which amended and renamed the Hunters Point Redevelopment Plan) by Ordinance No. 113-06 on May 23, 2006. The ordinance was signed by the Mayor on June 1, 2006 (the “**Redevelopment Plan**”).

B. The Redevelopment Plan requires the Agency to adopt and implement programs for the Project Area that meet or exceed City policies regarding workforce development, contracting opportunities, and equal opportunity, particularly for economically-disadvantaged Bayview Hunters Point residents and businesses. In accordance with the Redevelopment Plan, the Agency Commission on December 4, 2007 by Resolution No. 127-2007 adopted the Employment and Contracting Policy for the Bayview Hunters Point Redevelopment Project Area.

C. As required by the Board of Supervisors, the Agency and Planning entered into a delegation agreement as of September 19, 2006 (the “**Delegation Agreement**”). Per the Delegation Agreement, Planning shall not approve a Significant Project in the Project Area unless the Project Sponsor has entered into an Employment and Contracting Agreement with the Agency. Ongoing compliance with such agreements shall become a condition of the building permit.

D. The purpose of entering into this Agreements is to establish a set of local hiring goals, local contracting goals and compliance with other Agency Equal Opportunity Policies, as applicable, designed to ensure: (i) training and employment opportunities for BVHP Residents and then San Francisco Residents in the areas of construction, professional services, and permanent jobs by private developers engaged in development in the Project Area; and (ii) vigorous equal opportunity and diversity in employment in the construction, rehabilitation and development of Private Significant Projects.

E. This Agreement is designed to meet or exceed the requirements of the City’s Administrative Code Chapter 83 (First Source policy) and CityBuild Program. Thus, entering into and complying with the terms of this Employment and Contracting Agreement will satisfy the requirements of the City’s First Source Policy. This Agreement is also intended to satisfy the requirements of Health and Safety Code Section 33422.3 which states that for any contract over

\$100,000, the Agency may set specific percentages by craft or trade for the employment of available project area residents.

F. The Project Sponsor desires to [describe project: new construction, rehab, housing, commercial, number of units, sq. footage, etc.] located at [list address] (the "Project") which is in the Project Area. The Project is a Private Significant Project under the Employment and Contracting Policy.

G. As required by the Delegation Agreement and as a condition of the building permit, the Agency and the Project Sponsor desire to enter into this Agreement.

NOW, THEREFORE, each of the parties, in consideration of the mutual promises herein, do hereby covenant and agree as follows:

I. Project Sponsor's Participation

The Project Sponsor is required to use good faith efforts to comply with the Employment and Contracting Goals. In addition, the Project Sponsor has voluntarily agreed to participate in the following Agency Equal Opportunity Programs checked below. These voluntarily agreed to Equal Opportunity Programs are incorporated into this Agreement by reference and thereby become mandatory obligations on the Project Sponsor.

Employment and Contracting Policy Goals (Mandatory)

- Construction Workforce Hiring Goal
- Trainee Hiring Goal for Design Professionals
- Permanent / Temporary Workforce Hiring Goal

Agency Equal Opportunity Programs (Mandatory)

- Small Business Enterprise Program
- Nondiscrimination in Contracts and Equal Benefits Policy
- Minimum Compensation Policy
- Health Care Accountability Policy
- Prevailing Wage Provisions (Labor Standards)

Project Sponsor Initials

For Construction Workforce – From the date of the Agreement until **two (2) years** thereafter or the expiration of the building permit (including any extensions), whichever is later.

For Trainee Hiring – From the date of the Agreement until **two (2) years** thereafter or the expiration of the building permit (including any extensions), whichever is later.

For Permanent / Temporary Workforce – From the date of the temporary certificate of occupancy for the Project until () years thereafter.

(Note: The Permanent / Temporary Workforce Term may be up to ten (10) years and shall be determined through good faith negotiations between the Project Sponsor and the Agency based upon the nature of the Project and the anticipated number of permanent and/or temporary positions created by the Project.)

IV. Definitions

A. Agency Compliance Officer means the Agency's Contract Compliance Specialist assigned to oversee the Project Sponsor's compliance with the requirements of the Employment and Contracting Agreement.

B. Agreement means this Employment and Contracting Agreement, including any Attachments.

C. Arbitration Parties means the Agency, Project Sponsor, Contractors, Employers, Design Professionals and all persons who attend the arbitration hearing pursuant to Section X, as well as those persons who are subject to a default award provided that all of the requirements in Section X (K) have been met.

D. BVHP Resident means (for the purposes of this Agreement only) any person who resides in the BVHP Project Area or within the 94124 zip code as it was defined on December 4, 2007, the effective date of the Employment and Contracting Policy.

E. CBO means any community based organization that provides training, education and referral services to BVHP Residents, including but not limited to:

Young Community Developers, Inc., 1715 Yosemite Avenue, San Francisco, CA 94124, (415) 822-3491;

Mission Hiring Hall, 3042 – 16th Street, San Francisco, CA 94103, (415) 626-1919 (Construction jobs only);

South of Market Employment Center, 288 – 7th Street, San Francisco, CA 94103, (415) 865-2105 (Permanent Jobs only) and

Ella Hill Hutch Community Center, 1050 McAllister Street, San Francisco, CA 94115,

(415) 921-6276

F. City means the City and County of San Francisco.

G. Commercial Project means (for purposes of this Agreement only): (1) any building permit application for a commercial activity over 25,000 square feet in floor area and involving new construction, an addition, or alteration which results in over \$2,000,000 in improvements as stated on the City's building permit application (including any tenant improvements covered by said building permit); or (2) any application which requires discretionary action by the City's Planning Commission relating to a commercial activity over 25,000 square feet including, but not limited to conditional use project authorization under San Francisco Planning Code section 309, and office development under San Francisco Planning Code Sections 320, et seq.

H. Contractor means any person(s), firm, partnership, corporation (whether for profit or nonprofit), or combination thereof, who is a general contractor, subcontractor (regardless of tier) or consultant working on: (i) an Agency Action Project, (ii) a Significant Project in the Project Area, or (iii) a development project when the Project Sponsor has voluntarily subscribed to the Employment and Contracting Policy.

I. Delegation Agreement means the delegation agreement between the Agency and Planning dated September 19, 2006 as such agreement may be amended from time to time.

J. Design Professional means any architect, engineer, planner, environmental consultant or other design professional working on the Project with a contract over \$100,000.

K. Employer means any person(s), firm, partnership, corporation (whether for profit or nonprofit), or combination thereof, who owns or operates a retail or commercial business which is part of: (i) an Agency Action Project, (ii) a Significant Project in the Project Area or (iii) a development project when the Project Sponsor has voluntarily subscribed to the Employment and Contracting Policy.

L. First Consideration means that a Project Sponsor, Contractor, Employer and/or Design Professional shall give first consideration to qualified BVHP Residents and then to San Francisco residents for hiring opportunities in the areas of construction workforce, permanent / temporary workforce and trainee hires prior to offering the hiring opportunity to other applicants.

M. Housing Project means (for purposes of this Agreement only) new construction, an addition, a conversion, or substantial rehabilitation that results in the creation or addition of ten or more residential units.

N. PAC means the Bayview Hunters Point Project Area Committee.

O. Planning means the Planning Department and/or the Planning Commission of the City and County of San Francisco.

P. Position means a permanent / temporary position not related to construction or construction trades.

Q. Project Area means the Bayview Hunters Point Project Areas as delineated in the Bayview Hunters Point Redevelopment Plan, adopted June 1, 2006 and recorded June 23, 2006, (Document Number 2006I199495) as it may be amended from time to time.

R. Project Sponsor means the developer of commercial space or new housing units defined herein as a Significant Project in the Project Area.

S. San Francisco Resident means any person who resides in the City and County of San Francisco.

T. Significant Project means (for purposes of this Agreement only) a Commercial Project or Housing Project in the Project Area.

V. Procedures for Construction Workforce Hires and Reporting Requirements

A. Compliance with the Policy. The Project Sponsor agrees and will require each Contractor (which includes subcontractors regardless of tier) to use good faith efforts to employ 50% of its construction workforce, by trade and by hours, from qualified BVHP Residents or San Francisco Residents with First Consideration to BVHP Residents. The Project Sponsor and Contractors will be deemed in compliance with the Employment and Contracting Policy by meeting or exceeding the goal or by taking the steps set forth in this Section in good faith towards compliance.

B. Incorporating Agreement into Contracts. The Project Sponsor shall incorporate by reference or attach this Agreement to its contract with the general contractor. The Project Sponsor shall cause the general contractor to do the same in its contracts with its subcontractors. The contract with the general contractors may omit Sections VI & VII as inapplicable to Contractors. Each Contractor will be obligated to comply with the terms of the Agreement (except Section VI & VII). The Project Sponsor and/or Contractors shall retain the executed Agreements and make them available to the Agency Compliance Officer upon request.

C. Submission of Labor Force Projections and Other Data. The Project Sponsor shall cause the general contractor to submit, to the extent available, labor force projections to the Compliance Officer within two (2) weeks of award.

D. Submit Subcontractor Information Form. The Project Sponsor shall cause the general contractor to submit to the Agency Compliance Officer the Subcontractor Information Forms, twenty-four (24) hours prior to the preconstruction meeting. The Subcontractor Information Forms are available from the Agency Compliance Officer upon request.

E. Preconstruction Meeting. The Project Sponsor shall cause the general contractor to hold a preconstruction meeting which shall be attended by the Agency Compliance Officer, the CBO assigned to the Project, all prime contractor(s) and all subcontractor(s). The

preconstruction meeting shall be scheduled between two (2) days and thirty (30) days prior to the start of construction at a time and place convenient to all attendees. The purpose of the meeting is to discuss: the hiring goals, workforce composition, role of the CBOs, worker referral process, certified payroll reporting, procedure for termination and replacement of workers covered by this Agreement and to explore any anticipated problems in complying with this Agreement. All questions regarding how this Agreement applies to the Project Sponsor, general contractor, subcontractors and consultants should be answered at this meeting. Failure to hold or attend at least one (1) preconstruction meeting will be a breach of this Agreement that may result in the Agency ordering a suspension of work on the Project until the breach has been cured. Suspension under this Section is not subject to arbitration.

F. Submit Construction Worker Request Form. For the Term of this Agreement, each time the Project Sponsor or Contractor seeks to hire workers for the construction or rehabilitation of improvements on the Project, they must first submit, by fax, email or hand delivery, an executed construction worker request form to the CBO. Preferably this request will be submitted at least two (2) business days before the workers are needed. However, requests with less than two (2) business days notice will be accepted. The construction worker request form will indicate generally: the number of workers needed, duration needed, required skills or trade and date/time to report. The construction worker request form is available from the CBO or Agency Compliance Officer upon request.

G. Response from CBO. The Agency shall require the CBO to respond, in writing, via fax, by email or by hand delivery to each request for construction workers. The response shall state that the CBO was able to satisfy the request in full, in part or was unable to satisfy the request. The Agency shall require the CBO to look to their own referral lists, as well as confer with other CBOs and CityBuild in an attempt to find qualified BVHP Residents and San Francisco Residents. If the CBO is able to satisfy the request in full or in part, it shall direct the qualified BVHP Resident(s) or San Francisco Resident(s) to report to the Contractor on the date and time indicated in the request. If the CBO is unable to satisfy the request, then the CBO shall send a fax or email stating that no qualified BVHP Residents or San Francisco Residents are currently available.

H. Action by Contractor When Referrals Available. The Project Sponsor or Contractor whose request has been satisfied in full or in part shall make the final determination of whether the BVHP Residents or San Francisco Residents are qualified for the positions and the ultimate hiring decision. The Agency and the Project Sponsor shall strongly encourage the Contractor to hire the qualified BVHP Residents or San Francisco Residents referred by the CBO. However, if the Contractor finds the BVHP Residents or San Francisco Residents are not qualified, then the Contractor shall send the BVHP Residents or San Francisco Residents back to the CBO. Before the close of business on the same day, the Contractor shall fax or email a statement addressed to the CBO stating in detail the reason(s) the BVHP Residents or San Francisco Residents were not qualified or the reason(s) for not hiring the BVHP Residents or San Francisco Residents. The Agency shall require the CBO to, within one (1) business day of receipt of the fax or email, send new qualified BVHP Residents or San Francisco Residents that

meet the legitimate qualifications set by the Contractor or alternatively, send a fax or email stating that no qualified BVHP Residents or San Francisco Residents are currently available.

I. Action by Contractor When Referrals Unavailable. If a Contractor receives a response from the CBO stating that no qualified BVHP Residents or San Francisco Residents are currently available, then the Contractor may hire the number of construction workers requested from the CBO, using its own recruiting methods, giving First Consideration to BVHP Residents and then San Francisco Residents. Any additional construction workforce hires (including the replacement of any terminated workers) must comply with this Agreement, unless the Contractor has already met or exceeded the goal. The Project Sponsor shall require the Contractor keep a copy of the responses it receives from the CBO as proof of compliance and submit a copy of each response received to the Agency Compliance Officer upon request.

J. Action by Contractor When No Response From CBO. If a Contractor has not received a response to its construction worker request from the CBO within two (2) business days, then the Contractor should immediately advise the Agency Compliance Officer by phone, fax or email. The Agency Compliance Officer or his/her designee shall cause a response to be sent to the Contractor within two (2) business days of being notified. If the Contractor does not receive a response from the CBO within four (4) business days (the original two (2) business days plus the additional two (2) business days), then the Contractor may hire the number of construction workers requested from the CBO, using its own recruiting methods, giving First Consideration to BVHP Residents and then San Francisco Residents. Any additional construction workforce hires (including the replacement of any terminated workers) must comply with this Agreement, unless the Contractor has already met or exceeded the goal. The Project Sponsor shall require the Contractor keep a copy of the responses it receives from the CBO as proof of compliance and submit a copy of each response received to the Agency Compliance Officer upon request. This Agreement is intended to provide qualified BVHP and San Francisco Residents with employment opportunities without causing undue delay in hiring needed construction workers.

K. Action by Contractor When No Response From Union. The Contractor should immediately advise the Agency Compliance Officer by phone, fax or email when the Contractor has sent a qualified BVHP Resident or San Francisco Resident to a union hall for referral in accordance with a collective bargaining agreement and the union did not refer the qualified BVHP or San Francisco Resident back for employment or when the union referral process impedes the Contractor's ability to meet its obligations under this Agreement. Conflicts between this Agreement and any collective bargaining agreements will be resolved pursuant to Section XI (D).

L. Hiring Apprentices. A Contractor may meet part of the Construction Workforce Goal by hiring apprentices. However, hiring an apprentice does not satisfy or waive the trainee hiring obligation, if any, for Design Professionals. Unless otherwise permitted by law, apprentices must be trained pursuant to training programs approved by the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training or the California Department of Industrial Relations, Division of Apprenticeship Standards. Credit towards compliance will only be given for paid apprentices actually working on the Project. No

credit is available for apprentices while receiving class room training. Under no circumstances shall the ratio of apprentices to journeymen in a particular trade or craft exceed 1:5.

M. Termination and Replacement of Referrals. If at any time it becomes necessary to terminate for cause a construction worker who was hired pursuant to this Agreement, the Contractor shall notify the CBO in writing via fax or email and submit a report of termination pursuant to Section V(Q). If the Contractor intends to fill the vacant position, then the Contractor shall follow the process set forth in this Agreement beginning at Section V(F).

N. Submission of Certified Payroll Reports. The Project Sponsor shall require each Contractor to submit to the Agency a certified payroll report for the preceding work week on each of its employees. The Project Sponsor is ultimately responsible for the submission of these reports by the Contractors, regardless of tier. The certified payroll report is due to the Agency by noon each Wednesday. To facilitate compliance, the Agency uses the online LCP Tracker system (www.lcptracker.com) for submission of certified payroll reports. This system is available at no cost to the Contractor and LCP Tracker is compatible with most major computer payroll systems. Training and educational materials for LCP Tracker are available at no cost online and through the Agency Compliance Officer. Project Sponsors shall require Contractors to report certified payroll using the LCP Tracker system at www.lcptracker.com. However, a waiver shall be granted pursuant to Section XI (J) to allow any Contractor who do not have a computer, online access or who use a computer payroll system that is incompatible with LCP Tracker to submit certified payroll reports in paper form.

O. Contents of Certified Payroll Reports. If certified payroll records are submitted via the LCP Tracker system, then the required data points are already listed. If certified payroll records are submitted in paper form, the Project Sponsor shall require that the Contractor organize the records in an easily understandable format and contain **all** of the following information for each worker: name, address, telephone number, residency (Bayview Hunters Point, another redevelopment project area, San Francisco or other), last four (4) digits of the worker's Social Security number¹, construction trade (see codes in Section V(U)), classification (e.g., mechanic, apprentice, trainee, helper or laborer), dates of change in status, daily and weekly number of hours worked, hourly wage rates (including rates of contributions for fringe benefits or cash equivalents thereof), deductions made and actual wages paid. To the degree that the Contractor's existing certified payroll records satisfy these requirements, the Contractor shall not be required to maintain separate records.

P. Additional Information. In order to prevent unlawful discrimination in the selection, hiring and termination of workers on the basis of race, ethnicity, gender or any other basis prohibited by law and to identify and correct such unlawful practices, the Agency will collect and the Project Sponsor shall require all Contractors to provide information on the gender and ethnicity (see codes in Section V(U)) of each construction worker and apprentice. If an identifiable pattern of apparent discrimination is revealed by this additional information, it will

¹ Note: The Project Sponsor is required to provide complete Social Security numbers upon Agency request. This information will remain confidential.

be treated as a breach of this Agreement and may be addressed as set forth in Section IX, Event of Default and Remedies and/or Section X, Arbitration of Disputes.

Q. Report on Terminations. In the event a BVHP Resident or San Francisco Resident hired pursuant to this Agreement is terminated for cause, the Project Sponsor shall cause the responsible Contractor to fax or email a termination report to the CBO, with a copy to the Agency Compliance Officer, within two (2) days, stating in detail: (1) the name of the worker(s) terminated; (2) his/her job title and duties; (3) the reasons and circumstances leading to the termination(s); (4) whether the Contractor replaced the construction worker(s); and (5) whether the replacement worker(s) are BVHP Resident(s) or San Francisco Resident(s).

R. Inspection of Records. The Project Sponsor and each Contractor shall make the records required under this Agreement available for inspection or copying by authorized representatives of the Agency. The Project Sponsor shall permit and require all Contractors to permit Agency representatives to interview construction workers and apprentices during working hours on the job.

S. Failure to Submit Reports. It is the Project Sponsor's responsibility to ensure that all Contractors timely submit accurate certified payroll reports. If a Contractor fails or refuses to provide the reports as required, it will be treated as a breach of this Agreement and may be addressed as set forth in Section IX, Event of Default and Remedies and/or Section X, Arbitration of Disputes.

T. Submission of Good Faith Effort Documentation. If the Contractor's good faith efforts are at issue, the Project Sponsor shall cause the Contractor to provide the Agency with documentation of the Contractor's good faith efforts to comply with the Employment and Contracting Policy and this Agreement. The Project Sponsor shall cause the Contractor to maintain for the duration of the Term, a current file of the names, addresses and telephone numbers of each BVHP Resident or San Francisco Resident applicant referral whether self referral, union referral or CBO referral and what action was taken with respect to each such individual.

U. Coding Certified Payrolls. The Project Sponsor shall require each Contractor to include, on the weekly payroll submissions, the code designating each construction worker's and apprentice's craft, gender, ethnicity and project area in accordance with the following tables:

CRAFT CODE	DESCRIPTION	CRAFT CODE	DESCRIPTION
1	Electrician	21	Tile (Ceramic)Setter
2	Iron Worker	23	Elevator Constructor
3	Sheet Metal Worker	24	Cement Mason
4	Asbestos Worker/ Heat & Frost Insulator	25	Laborer or Allied Worker
5	Plumber, Pipe or Steamfitter	26	Glazier & Glassmaker
6	Refrigeration	27	Painter, Paperhanger, Taper

7	Boilermaker	28	Sign Installer
8	Sprinkler Fitter	29	Scrapper
9	Brick, Caulk, Marble, Point, Terrazzo	32	Low Voltage Electrician
10	Hod Carrier	33	Towboat Operator-Marine Engineer
11	Terrazzo Finisher	34	Towboat Deckhand-Inland Boat worker
12	Plasterer	35	Owner/Operator - Truck
13	Lather	36	Owner/Operator - Heavy Equipment
14	Carpenter or Drywall Hanger	37	Upholsterer
15	Mill Worker or Cabinetmaker	38	Teamster, Construction
16	Millwright	39	Janitor
17	Roofer	40	Environmental Control System Installer
18	Pile Driver	41	Window Cleaner
19	Surveyor/Operating Engineer	89	Security Guard
20	Tile (Ceramic)/Marble Finisher		

ETHNICITY CODE	DESCRIPTION
B	African American
L	Latino
I	American Indian
C	Caucasian/White
A	Asian
PI	Pacific Islander
F	Female (all females regardless of ethnicity)

PROJECT CODE	AREA	DESCRIPTION
BIT		Bayview Industrial Triangle
BVHP		Bayview Hunters Point
HPSY		Hunters Point Shipyard
IB		India Basin Industrial Park
GG		Golden Gateway
MBN		Mission Bay (North)
MBS		Mission Bay (South)
MM		Mid-Market
RPSB		Rincon Point/South Beach

SF	San Francisco (not in any redevelopment project areas)
SOM	South of Market
TB	Transbay
VV	Visitacion Valley
WA	Western Addition Area A-2
YBC	Yerba Buena Center

VI. Procedures For Trainee Hires and Reporting Requirements

A. Compliance with the Policy. For architects, engineers and other Design Professionals only, there is a trainee hiring goal as set forth in Section II (C) above. The Project Sponsor and Design Professionals will be deemed in compliance with the Employment and Contracting Policy by meeting or exceeding the trainee hiring goal or by taking the steps set forth in this Section in good faith towards compliance.

B. Incorporating Agreement into Contracts. The Project Sponsor shall incorporate by reference or attach this Agreement to its contract with each Design Professional. Contracts with Design Professional may omit Sections V & VII as inapplicable to Design Professionals. The Project Sponsor shall cause the Design Professionals to do the same in their contracts with their subconsultants, if any. Thus, each Design Professional will be obligated to comply with the terms of the Agreement (except Sections V & VII). The Project Sponsor and/or the Design Professionals shall retain the executed Agreements and make them available to the Agency Compliance Officer upon request.

C. Contact Educational Institutions. The Agency works with the City, as well as educational institutional within the City, to provide a pool of student referrals to assist Design Professionals in meeting the trainee hiring goal. Within thirty (30) days of execution of the Agreement, the Agency Compliance Officer shall contact each Design Professional hired by the Project Sponsor and provide him/her with the name, address and telephone number of a point of contact at the City, **City College or other educational institutions in the Bay Area** who have a current list of students who are BVHP Residents or San Francisco Residents and who are available for hire as trainees. The Project Sponsor shall require each Design Professional to call the City or educational institution(s) and request referrals for the required trainee positions. The request will indicate generally: (1) the number of trainees sought; (2) the required skills set (keeping in mind that these are trainee positions); (3) a brief description of job duties; (4) the duration of the trainee period; and (5) any other information that would be helpful or necessary for the educational institution to make the referral. The minimum duration of assignment is part-time for one semester. However, Design Professionals are strongly encouraged to offer longer trainee employment periods to allow for a more meaningful learning experience. (For example, a half-time or full-time assignment over the summer.) Although the initial contact shall be made by phone, the educational institution(s) may require the Design Professionals to send a confirming letter or fill out a form which the educational institution will provide. The Project Sponsor shall require each Design Professional to timely provide all of the information requested by the City and/or educational institution(s) in order to get the trainee referrals.

D. Response from Educational Institutions. Each educational institution may have a different way of referring applicants, such as: sending resumes directly to the Design Professional; having the applicant contact the Design Professional by phone; require Design Professionals to conduct on-campus interviews; or some other method. The timing and method of the response will normally have been discussed between the Design Professional and the educational institution(s) during the initial phone request. The Project Sponsor shall require the Design Professional to follow the process set by the City and/or educational institution(s) in order to get the trainee referrals.

E. Action by Design Professionals When Referrals Available. The Project Sponsor shall require the Design Professional to give First Consideration to BVHP Residents and then to San Francisco Residents referred by the educational institution(s). The Project Sponsor shall require the Design Professional to interview each applicant prior to making the decision to hire or not to hire. The Design Professional shall make the final determination whether the applicant is qualified for the trainee position and the ultimate hiring decision. The Agency and the Project Sponsor shall strongly encourage the Design Professional to hire a qualified BVHP Resident or San Francisco Resident referred by the educational institution(s). The Project Sponsor shall require the Design Professional to notify each BVHP Resident and San Francisco Resident interviewed and the CBO in writing of the hiring decision.

F. Action by Design Professionals When Referrals Unavailable. If after contacting the City and all of the educational institutions provided by the Agency Compliance Officer, the Design Professional is informed that no qualified BVHP residents or San Francisco Residents are currently available, then the Design Professional should wait thirty (30) days and contact the educational institutions a second time to inquire whether qualified San Francisco Residents are currently available for hire as trainees. If no qualified San Francisco Residents are currently available after the second request, then the Design Professional has fulfilled its obligation under this Section VI, provided that the Design Professional has acted in good faith. The Design Professional must retain its file on all of the steps it took to comply with this Agreement and submit a copy of its file to the Agency Compliance Officer upon request.

G. Action by Design Professional When No Response from Educational Institutions. If a Design Professional has not received a response to its request for referrals from any of the educational institutions within five (5) business days after the Design Professional has fully complied with the procedures, if any, set by the educational institution(s) for obtaining referrals; then the Design Professional should immediately advise the Agency Compliance Officer by phone, fax or email. The Agency Compliance Officer or his/her designee shall cause the educational institution(s) to respond to the Design Professional within five (5) business days of the Agency Compliance Officer being notified. If the Design Professional still has not received a response from the City or the educational institution(s) after this additional five (5) business day period has run, then the Design Professional has fulfilled its obligation under this Section VI, provided that the Design Professional has acted in good faith. Each Design Professional must retain its file on all of the steps it took to comply with this policy and submit a copy of its file to the Agency Compliance Officer upon request.

H. Termination of Trainee for Cause. If at any time during the Term, it becomes necessary to terminate for cause a trainee who was hired pursuant to this Agreement and the Design Professional has not met the minimum duration requirements under this Agreement, then the Design Professional shall hire a new trainee by following the process set forth in Section VI(C) above.

I. Annual Reporting. Annually, during the Term of the Agreement or the term of the Design Professional's contract with the Project Sponsor, whichever is less, the Design Professional shall fax or email a report to the Agency Compliance Officer stating in detail: (1) the names of the BVHP Resident(s) or San Francisco Resident(s) interviewed in the past year for trainee positions; (2) the date(s) of each interview; (3) the reasons for not hiring the BVHP Residents or San Francisco Residents interviewed; (4) the name, address, gender and racial/ethnic background of the successful candidate for the trainee position; (5) whether the successful candidate is a BVHP or San Francisco Resident; (6) the maximum number of trainees the Design Professional has had within the last calendar year; and (7) the number of BVHP Residents and San Francisco Residents hired within the last calendar year.

J. Report on Terminations. In the event a BVHP Resident or San Francisco Resident hired pursuant to this Agreement is terminated for cause, the responsible Design Professional shall within five (5) days fax or email a termination report to the Agency Compliance Officer stating in detail: (1) the name of the trainee(s) terminated; (2) his/her job title and duties; (3) the reasons and circumstances leading to the termination(s); (4) whether the Design Professional replaced the trainee(s); and (5) whether the new trainee(s) are BVHP Resident(s) or San Francisco Resident(s).

VII. Permanent / Temporary Workforce Hires

A. Compliance with the Policy. The Project Sponsor agrees and will require each Employer to use good faith efforts to employ 50% of its permanent / temporary workforce from qualified BVHP Residents or San Francisco Residents with First Consideration to BVHP Residents. Project Sponsors and Employers will be deemed in compliance with the Employment and Contracting Policy by meeting or exceeding the goal or by taking the steps set forth in this Section in good faith towards compliance.

B. Incorporating Agreement into Contracts. The Project Sponsor shall incorporate by reference or attach this Agreement to its lease, purchase and sale agreement or contract with the Employer. The lease, purchase and sale agreement or contract with the Employer may omit Sections V & VI as inapplicable to Employers. The Project Sponsor shall cause the Employer to do the same in its subleases, purchase and sale agreements or contracts with its subtenants or subsequent purchasers. Thus, each Employer will be obligated to comply with the terms of the Agreement (except Section V & VI). The Project Sponsor and/or the Employers shall retain the executed Agreements and make them available to the Agency Compliance Officer upon request.

C. Terms of Permanent / Temporary Workforce Hiring Obligation. The Project Sponsor agrees that the following terms shall apply to this Agreement as it pertains to the Permanent / Temporary Workforce hiring obligation:

Term of the Permanent / Temporary Workforce Hiring Obligation Agreement:
_____ years

Number of Positions anticipated:

Job Titles:

Job Duties:

Minimum Prior Experience Required:

Outreach and Recruiting:

Reporting _____ to _____ Agency:

Other:

D. Additional Information. In order to prevent unlawful discrimination in the selection, hiring and termination of employees on the basis of race, ethnicity, gender or any other basis prohibited by law and to identify and correct such unlawful practices, the Agency will collect and the Project Sponsor shall require all Employers to provide information on the gender and ethnicity of each permanent / temporary employee. If an identifiable pattern of apparent discrimination is revealed by this additional information, it will be treated as a breach of this Agreement and may be addressed as set forth in Section IX, Event of Default and Remedies and/or Section X, Arbitration of Disputes.

E. Report on Terminations. In the event a BVHP Resident or San Francisco Resident hired pursuant to this Agreement is terminated for cause, the Employer shall fax or email a termination report to the Agency Compliance Officer, within two (2) days, stating in detail: (1) the name of the worker(s) terminated; (2) his/her job title and duties; (3) the reasons and circumstances leading to the termination(s); (4) whether the Contractor replaced the construction worker(s); and (5) whether the replacement worker(s) are BVHP Resident(s) or San Francisco Resident(s).

F. Inspection of Records. The Employer shall make the records required under this Agreement available for inspection or copying by authorized representatives of the Agency. The Project Sponsor shall permit and require all Employers to permit Agency representatives to interview permanent / temporary employees during working hours on the job.

G. Failure to Submit Reports. If an Employer fails or refuses to provide the reports as required, it will be treated as a breach of this Agreement and may be addressed as set forth in Section IX, Event of Default and Remedies and/or Section X, Arbitration of Disputes.

VIII. **Compliance with Agency's Equal Opportunity Program**

The Project Sponsor is required to comply with the Agency Equal Opportunity Programs listed in this Section VIII when checked and initialed in Section I above:

A. **Small Business Enterprise Program.**

1. The Project Sponsor hereby agrees for itself and for its Contractors, Employers and Design Professionals to execute and comply with the terms of the Small Business Enterprise ("SBE") Agreement attached as Attachment 1 to this Agreement and incorporated herein by reference.

2. The Project Sponsor shall require its Contractors, Employers and Design Professionals to make good faith efforts to achieve the goal of 50% SBE participation in professional / personal services, and construction contracts. The SBE Program provides for first consideration in awarding subcontracts and sub-consulting opportunities to Agency certified local small business enterprises in the following order of priority: (1) Project Area SBEs, (2) Local SBEs (outside an Agency project or survey area, but within San Francisco), and (3) all other SBEs (outside of San Francisco).

3. The SBE Program sets a local contracting goal and thus is different from the Employment and Contracting Policy which sets a local hiring goal. If there is a conflict between the terms of this Agreement and the SBE Agreement, this Agreement shall control.

4. Breach of the SBE Agreement will constitute a breach of this Agreement. The Agency's Compliance Officer will ensure compliance with the terms of the SBE Agreement.

B. **Nondiscrimination in Contracts and Equal Benefits Policy.**

1. The Project Sponsor hereby agrees to comply with the terms of the Nondiscrimination in Contracts and Equal Benefits Policy incorporated herein by reference and to execute the Nondiscrimination in Contracts Declaration Form attached as Attachment 2 to this Agreement.

2. The Nondiscrimination in Contracts and Equal Benefits Policy prohibits discrimination in contracting and includes a prohibition on discrimination in providing benefits between employees with spouses and employees with domestic partners. This policy requires the Project Sponsor to agree not to discriminate against or segregate any person, or group of persons, on account of race, color, religion, creed, national origin or ancestry, sex, gender identity, age, marital or domestic partner status, sexual orientation or disability (including HIV or AIDS status). This policy also requires that employee benefits be equally available to domestic partners as they are to spouses.

3. Breach of the Nondiscrimination in Contracts and Equal Benefits Policy will constitute a breach of this Agreement. The Agency's Compliance Officer will ensure compliance with the terms of the SBE Agreement.

C. Minimum Compensation Policy.

1. The Project Sponsor hereby agrees to comply with the terms of the Minimum Compensation Policy incorporated herein by reference and to execute the Minimum Compensation Policy Declaration Form attached as Attachment 3 to this Agreement.

2. The Minimum Compensation Policy requires the Project Sponsor to agree that all "Covered Employees," (as defined in the Minimum Compensation Policy), receive a minimum level of compensation.

3. Breach of the Minimum Compensation Policy will constitute a breach of this Agreement. The Agency's Compliance Officer will ensure compliance with the terms of the Minimum Compensation Policy.

D. Health Care Accountability Policy.

1. The Project Sponsor hereby agrees to comply with the terms of the Health Care Accountability Policy incorporated herein by reference and to execute the Health Care Accountability Policy Declaration Form attached as Attachment 4 to this Agreement.

2. The Health Care Accountability Policy requires the Project Sponsor to agree to offer health plan benefits to all "Covered Employees" (as defined in the Health Care Accountability Policy), or to make payments to the City's Department of Public Health, or to participate in a health benefits program developed by the City's Director of Health. Breach of the Health Care Accountability Policy will constitute a breach of this Agreement. The Agency's Compliance Officer will ensure compliance with the terms of the Health Care Accountability Policy.

E. Agency's Prevailing Wage Policy.

1. The Project Sponsor hereby agrees to comply with the terms of the Agency's Prevailing Wage Policy (Labor Standards) incorporated herein by reference and attached as Attachment 5 to this Agreement.

2. The Agency's Prevailing Wage Policy references the State of California's Labor Standards and the prevailing wage, benefits, eligibility, etc. are all calculated using the State's standards. However, the Agency's Prevailing Wage Policy does not include the exemptions listed in California Labor Code Sections 1720(c) and 1720(d).

3. Breach of the Agency's Prevailing Wage Policy will constitute a breach of this Agreement. The Agency's Compliance Officer will ensure compliance with the terms of the Agency's Prevailing Wage Policy.

IX. Event of Default and Remedies

A. The occurrence of any one of the following events or circumstances will constitute an event of default (“**Event of Default**”) by the Project Sponsor if not cured within the specified cure period or if no cure period is specified within thirty (30) days of the occurrence of the breach:

1. The Project Sponsor, Contractor, Employer or Design Professional is in breach of any material term of this Employment and Contracting Agreement, including any Attachments.

2. The Project Sponsor fails to require any Contractor, Employer or Design Professional to comply with any material term of this Employment and Contracting Agreement.

3. The Project Sponsor, Contractor, Employer or Design Professional is in breach of any material term under the Agency’s Equal Opportunity Program, but only if the Project Sponsor has consented to be subject such policies as indicated in Section I above.

4. The Project Sponsor fails to require any Contractor, Employer or Design Professional to comply with any material term of the Agency’s Equal Opportunity Program, but only if the Project Sponsor has consented to be subject such policies as indicated in Section I above.

B. It is expressly agreed and understood that the Project Sponsor is responsible for its own compliance, as well as the compliance of all Contractors (regardless of tier), Employers and Design Professionals on the Project.

C. In the Event of Default, the Agency has the right to declare the Project Sponsor in default and to exercise any or all of its remedies under this Agreement, at law or in equity, including but not limited to:

1. The Agency may negotiate with the Project Sponsor in an attempt to resolve the dispute informally.

2. The Agency may request that Planning and/or the City suspend or revoke the building permit for the Project until the breach is cured to the satisfaction of the Agency.

3. The Agency may seek a court order for specific performance of the terms of this Agreement, including Attachments from a court of competent jurisdiction.

4. The Agency may demand arbitration pursuant to Section X.

D. The Agency’s remedies are cumulative and the election of one remedy does not prohibit the election of any other remedy.

X. ARBITRATION OF DISPUTES

A. Arbitration by AAA. Any dispute involving the alleged breach or enforcement of this Agreement, including but not limited to disputes over qualification of referrals; whether termination was for good cause; and whether the Project Sponsor, Contractor, Employer or Design Professional has complied with this Agreement in good faith shall be submitted to arbitration. The arbitration shall be submitted to the American Arbitration Association, San Francisco, California office (“AAA”) which will use the Commercial Rules of the AAA then applicable, but subject to the further revisions herein. If there is a conflict between the Commercial Rules of the AAA and the arbitration provisions in this Agreement, this Agreement shall govern. The arbitration shall take place in the City and County of San Francisco.

B. Demand for Arbitration. The party seeking arbitration shall make a written demand for arbitration (“**Demand for Arbitration**”). The Demand for Arbitration shall contain at a minimum: (1) a cover letter demanding arbitration under this provision and identifying the entities believed to be involved in the dispute; (2) a copy of the notice of default, if any, sent from one party to the other; and (3) any written response to the notice of default.

C. Parties’ Participation. The Agency, Project Sponsor, Contractor, Employer and Design Professional directly affected by the dispute shall be made Arbitration Parties. Any such person or entity not made an Arbitration Party in the Demand for Arbitration may intervene as an Arbitration Party and in turn may name any other such directly affected person or entity as an Arbitration Party.

D. Agency Request to AAA. Within seven (7) business days after service or receipt of a Demand for Arbitration, the Agency shall transmit to AAA (with a copy to all Arbitration Parties) the Demand for Arbitration and any written response thereto from the Project Sponsor, Contractor, Employer and/or Design Professional. Such material shall be made part of the arbitration record.

E. Selection of Arbitrator. One arbitrator shall arbitrate the dispute. The arbitrator shall be selected from the panel of arbitrators from AAA by the Arbitration Parties in accordance with the AAA rules. The parties shall act diligently in this regard. If the Arbitration Parties fail to agree on an arbitrator within seven (7) business days from the receipt of the panel, AAA shall appoint the arbitrator. A condition to the selection of any arbitrator shall be the arbitrator’s agreement to: (i) submit to all Arbitration Parties the disclosure statement required under California Code of Civil Procedure Section 1281.9; and (ii) render a decision within thirty (30) days from the date of the conclusion of the arbitration hearing.

F. Setting of Arbitration Hearing. A hearing shall be held within ninety (90) days of the date of the filing of the Demand for Arbitration with AAA, unless otherwise agreed by the parties. The arbitrator shall set the date, time and place for the arbitration hearing(s) within the prescribed time periods by giving notice by hand delivery or first class mail to each Arbitration Party.

G. Discovery. In arbitration proceedings hereunder, discovery shall be permitted in accordance with Code of Civil Procedure §1283.05 as it may be amended from time to time.

H. California Law Applies. California law, including the California Arbitration Act, Code of Civil Procedure §§ 1280 through 1294.2, shall govern all arbitration proceedings pursuant to this Agreement.

I. Arbitration Remedies and Sanctions. The arbitrator may impose only the remedies and sanctions set forth below:

1. Order specific, reasonable actions and procedures, in the form of a temporary restraining order, preliminary injunction or permanent injunction, to mitigate the effects of the non-compliance and/or to bring any non-compliant Arbitration Party into compliance with this Agreement.

2. Require any Arbitration Party to refrain from entering into new contracts related to work covered by this Agreement, or from granting extensions or other modifications to existing contracts related to services covered by this Agreement, other than those minor modifications or extensions necessary to enable compliance with this Agreement.

3. Direct any Arbitration Party to cancel, terminate, suspend or cause to be cancelled, terminated or suspended, any contract or portion(s) thereof for failure of any Arbitration Party to comply with any of the requirements in this Agreement. Contracts may be continued upon the condition that a program for future compliance is approved by the Agency.

4. If any Arbitration Party is found to be in willful breach of its obligations hereunder, the arbitrator may impose a monetary sanction not to exceed Fifty Thousand Dollars (\$50,000.00) or ten percent (10%) of the base amount of the breaching party's contract, whichever is less, for each such willful breach; provided that, in determining the amount of any monetary sanction to be assessed, the arbitrator shall consider the financial capacity of the breaching party. No monetary sanction shall be imposed pursuant to this paragraph for the first willful breach of this Agreement unless the breaching party has failed to cure after being provided written notice and a reasonable opportunity to cure. Monetary sanctions may be imposed for subsequent willful breaches by any Arbitration Party whether or not the breach is subsequently cured. For purposes of this paragraph, "willful breach" means a knowing and intentional breach.

5. Direct any Arbitration Party to produce and provide to any other Arbitration Party any records, data or reports which are necessary to determine if a violation has occurred and/or to monitor the performance of any Arbitration Party.

J. Arbitrator's Decision. The arbitrator will normally make his or her award within twenty (20) days after the date that the hearing is completed but in no event past thirty (30) days from the conclusion of the arbitration hearing; provided that where a temporary restraining order is sought, the arbitrator shall make his or her award not later than twenty-four (24) hours after the hearing on the motion. The arbitrator shall send the decision by certified or registered mail to each Arbitration Party.

K. Default Award; No Requirement to Seek an Order Compelling Arbitration. The arbitrator may enter a default award against any person or entity who fails to appear at the hearing, provided that: (1) the person or entity received actual notice of the hearing; and (2) the complaining party has a proof of service for the absent person or entity. In order to obtain a default award, the complaining party need not first seek or obtain an order to arbitrate the controversy pursuant to Code of Civil Procedure §1281.2.

L. Arbitrator Lacks Power to Modify. Except as expressly provided in this Section X, the arbitrator shall have no power to add to, subtract from, disregard, modify or otherwise alter the terms of this Agreement or to negotiate new agreements or provisions between the parties.

M. Jurisdiction/Entry of Judgment. The inquiry of the arbitrator shall be restricted to the particular controversy which gave rise to the Demand for Arbitration. A decision of the arbitrator issued hereunder shall be final and binding upon all Arbitration Parties. The prevailing Arbitration Party (ies) shall be entitled to reimbursement for the arbitrator's fees and related costs of arbitration. Each Arbitration Party shall pay its own attorneys' fees, provided, however, that attorneys' fees may be awarded to the prevailing party if the arbitrator finds that the arbitration action was instituted, litigated, or defended in bad faith. Judgment upon the arbitrator's decision may be entered in any court of competent jurisdiction.

XI. General Provisions

A. Designate a Point of Contact. The Project Sponsor shall designate (and shall require each Contractor, Employer and Design Professional to designate) a responsible representative, manager or agent to monitor all employment-related activity under this Agreement and to be the primary point of contact for issues arising under this Agreement.

B. No Retaliation. The Project Sponsor warrants (and shall require each Contractor, Employer and Design Professional to warrant) that no person hired pursuant to this Agreement shall be discharged or in any other manner discriminated against because such person has filed any complaint or instituted or caused to be instituted any proceeding under or relating to enforcement of this Agreement.

C. No Discrimination. There shall be no discrimination against or segregation of any person, or group of persons, on account of race, color, religion, creed, national origin or ancestry, sex, gender identity, age, marital or domestic partner status, sexual orientation or disability (including HIV or AIDS status). The Project Sponsor, Contractors, Employers and Design Professionals will ensure that applicants are employed, and that persons are treated during any employment action, without regard to their race, color, religion, creed, national origin or ancestry, sex, gender identity, age, marital or domestic partner status, sexual orientation or disability (including HIV or AIDS status) or other protected class status. Such employment action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; selection for training, including apprenticeship; and provision of any services or accommodations.

D. Collective Bargaining Exclusion. Notwithstanding anything to the contrary in this Agreement, if a provision of this Agreement conflicts with an existing labor agreement or collective bargaining agreement to which a Project Sponsor, Contractor, Employer or Design Professional is a party, the labor agreement or collective bargaining agreement shall prevail. Nothing in this Agreement shall be interpreted to interfere with or prohibit existing labor agreements or collective bargaining agreements. However, the Project Sponsor, Contractor, Employer or Design Professional will still be obligated to provide workforce needs information to the CBO prior to hiring and the Project Sponsor, Contractor, Employer or Design Professional will be obligated to make good faith efforts to comply with the requirements of this Agreement that do not conflict with the collective bargaining agreement.

E. No Conflict with State or Federal Law. This Agreement is to be implemented in a manner that does not conflict with applicable federal or state laws.

F. Existing Workforce. Nothing in this Agreement shall be interpreted in a manner that would require termination of the Project Sponsor's, Contractor's, Employer's or Design Professional's existing workers and employees.

G. Use of Debarred Entities Prohibited. Neither the Project Sponsor, Contractor, Employer or Design Professional shall enter into any subcontract with any person or firm that the Project Sponsor, Contractor, Employer or Design Professional knows or should have known is debarred from federal, state or local government contracts.

H. Incorporation. The Project Sponsor shall ensure that whenever the Project Sponsor, Contractor, Employer and/or Design Professional subcontracts a portion of the work, it shall incorporate by reference or attach to the contract verbatim and make binding on each subcontractor the provisions of this Agreement. That subcontractor shall then be deemed a Contractor, Employer and/or Design Professional (as applicable) for the purposes of this Agreement and shall be subject to all of the requirements hereto.

I. Severability. If any part or provision of this Agreement or the application thereof to any person or circumstance is held to be invalid, then the remainder of this Agreement, including the application of such part or provision to other persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, the provisions of this Agreement are severable.

J. Waiver. The Agency's Executive Director may waive any requirement or obligation under this Agreement, if he/she determines for good cause shown that a specific requirement is not relevant to the particular situation, would cause undue hardship, or that an alternative approach would better meet the goals of this Agreement. Any waiver by the Agency's Executive Director must be in writing to be effective.

K. Authority to Execute Agreement and Bind Project Sponsor. The Project Sponsor warrants that the person executing this Agreement on its behalf has the authority to execute the Agreement and to bind the Project Sponsor to the terms contained herein.

IN WITNESS WHEREOF the Agency and the Project Sponsor have executed this Employment and Contracting Agreement as of the date first above written.

PROJECT SPONSOR

[Name of Company]

By: _____

Its: _____

AGENCY

REDEVELOPMENT AGENCY OF THE
CITY AND COUNTY OF SAN FRANCISCO,
a public body, corporate and politic

By: _____

Amy Lee
Deputy Executive Director,
Finance and Administration

APPROVED AS TO FORM:

By: _____

James B. Morales
Agency General Counsel

Attachment A Preference Criteria

In addition to the underwriting criteria, preference will be given to proposals that aim to accomplish the goals and objectives of the BVHP Revolving Loan Program. For example, proposals will be given preference if they demonstrate ability to:

1. Add to the mix of existing businesses on the Third Street Corridor, especially if the proposed business is on the list of preferred businesses as defined by the Agency and the Third Street Corridor Project. The list will be provided in the Notice of Funding Availability or NOFA the Agency plans to issue from time-to-time to invite applicants to submit proposals.
2. Leverage Agency funds with contribution from private and/or public sources for 25% or more of the startup costs.
3. Significantly improve the physical condition, both interior and exterior, of the space for the new business.
4. Contribute the necessary resources required for the success of the new business.
5. Attract customers from within and outside of BVHP to increase foot traffic along the Third Street Corridor.
6. Assure continuous business operations on-site for the term of the loan.
7. Provide internships or training programs for BVHP youth and young adults

Ineligible Businesses

The following businesses are not eligible for a loan under this program:

1. Wholesale businesses, except discount offerings to the general public;
2. Unlawful or unlicensed businesses;
3. Uses that have led to recurrent problems of public safety and welfare or that contribute to conditions of blight as defined by Community Redevelopment Law.

- 6) Feasible Business Plan: A business plan must be submitted, including a description of the company, the industry, the product or service, knowledge of the competition, knowledge of the market, sales projections, management structure, key operational processes, financial projections, type and amount of non-forgivable and/or forgivable loan requested, and purpose of funds.
- 7) Financial Statements: For existing businesses, two years of historical financial statements and business income tax returns, as well as an updated personal financial statement along with personal income tax returns, are required. For new businesses (in business less than two years), the most recent business tax return and financial statement, two years of personal tax returns, and a current personal financial statement are required. The Agency may also require additional documentation, such as bank statements.
- 8) Project Pro Forma: Applicants must provide pro forma profit and loss (income) statements and balance sheets, including assumptions (for a minimum of ten (10) years).
- 9) Business Underwriting Metric: The applicant and its proposal should also be evaluated to determine its location on the Agency's preference scale described in Section VI(5) of the BVHP Loan Program. The score is a measure of how the applicant and its proposal meet the BVHP Loan Program requirements in terms of business operation experience, financial capacity, equity contribution, strength of business plan and the number of jobs the proposed business will create. The lowest on the preference scale is 1 and the highest, 5. The Metrics Table to be used to compute the Preference Score is provided as Exhibit 1 to this **Underwriting Criteria** attachment.

**Exhibit 1
Metrics Table
(Underwriting Criteria, Attachment B to the BVHP Loan Program)**

Business Underwriting Metric								
Score	Business Operation Experience	Assigned Score	Owner Equity Contribution	Assigned Score	Business Plan Strength - Market Viability	Assigned Score	Local Jobs Created	Assigned Score
5	5 years plus		More than 40% of Total Project Cost		Strong		10 plus	
4	3 to 5 years		31% to 40% of Total Project Cost		Good		7 to 9	
3	2 to 3 years		21% to 30% of Total Project Cost		Average		4 to 6	
2	1 to 2 years		11% to 20% of Total Project Cost		Questionable		1 to 3	
1	Start-up		0% to 10% of Total Project Cost		Weak		40	
Assigned Weight	30%		30%		30%		10%	
								Weighted Score
An Example: A borrower with 2.5-year business operation experience proposes 40% equity contribution; the strength of its business is considered average, and only 5 jobs are projected to be created. Its Preference Score will be calculated based on the above Metrics Table as shown below:								
	2 to 3 years Experience	3	40% Equity Contribution	4	Business Plan Strength	3	Local Jobs Created	3
Weighted Score: (3 x 0.35) + (4 x 0.35) + (3 x 0.20) + (3 x 0.10) = 3.35								

Attachment C
BVHP Loan Application Checklist

1. The Request: Describe in a cover letter the nature of the request, including a timeline for when funds are needed and the purpose of the funds.
2. Tenant or Borrower: Provide the full name of tenant(s) or borrower(s), including Also Known As (“AKA”) and Doing Business As (“DBA”) as needed.
3. Address: Provide the mailing and property addresses of tenant(s) or borrower(s).
4. Nature of Business: Describe the tenant’s or borrower’s business, including a statement indicating whether this is a primary or secondary business.
5. Principal Officers: List all officers, principals or owners of the business, including the percent of ownership. A description of the type of ownership structure (i.e., sole proprietor, partnership, L.L.C., corporation, etc.).
6. Other Business Locations: Indicate the location(s) of the tenant’s or borrower’s other related businesses and describe in sufficient detail the relationship between these other businesses and the business needing the requested tenant improvement funds.
7. Tax Identification Numbers: Indicate the tenant’s or borrower’s tax identification number.
8. Source of Loan Repayment: List all sources of repayment of the proposed Agency loan in detail.
9. Requested Terms of Repayment: Indicate the requested terms of repayment (i.e., interest only, principal and interest, accrued, percentage and accrued, etc.). By requesting this information, the Agency is not agreeing to the proposed terms.
10. Loan Security: Describe the proposed loan collateral and disclose existing liens affecting proposed collateral.

11. Guarantor(s): Identify any proposed loan guarantor – if applicable
12. Current Tenant's or Borrower's Commitments & Outstanding: List all financial commitments and outstanding of the tenant(s) or borrower(s), including contingent liabilities.
13. Financial Statements: Provide two sets of financial statements (not bound or stapled) in a separate sealed envelope marked "confidential." Financial statements must include at least the following information:
- (a) Two copies of a current (not more than one year old) audited or reviewed or compiled financial statements with third-party testaments to assets and liabilities disclosed in the statements. The financial statements will be treated as confidential by the Agency.
 - (b) Letter(s) or statements from lending or investment institutions (not more than three months old) that demonstrate the existence of liquid assets or suitable unencumbered lines of operating credit to fund working capital and operation reserves.
 - (c) Copies of the tenant's or borrower's two most recent federal tax returns. These federal tax returns will be treated confidentially by the Agency.
- In the event that the tenant or borrower is a newly created corporation, partnership, L.L.C., L.L.P. or other business entity, submit the above financial information for the individual principals or owners of the tenant or borrower.
14. Financial Capacity Statement:
- (a) Indicate the source(s) and amount(s) of available equity (including working capital) specifically earmarked for the proposed new business.
 - (b) Describe tenant's or borrower's ability to raise additional equity or working capital and sources for such additional funds.
 - (c) Describe tenant's or borrower's current relationships with lenders and ability to obtain necessary additional funding for the proposed business.

(d) Provide documents that support the past performance and creditworthiness of tenant or borrower.

(e) Disclose whether tenant or borrower or any of its principals has filed or been the subject of a bankruptcy proceeding or had a loan or credit line declared in default within the past seven years.

15. Sources and Uses of Funds: Provide a table showing all sources and uses of funds required to open for business, including: costs for tenant improvements; furniture, fixtures and equipment (“FFE”); working capital; operation reserve; etc.
16. Financial Projections: Provide operating projections in the form of a 10-year pro forma that includes a detailed description of all assumptions. Include revenue and sales projections, operating expenses, loan repayments (debt service), profit, etc.
17. Borrower History: Provide a short narrative discussing the history of the tenant or borrower, when the business was founded or established, locations of businesses, affiliations, etc.
18. Industry Profile/Outlook: Provide a brief overview of the industry/market segment occupied by the tenant or borrower. Indicate trends or information supporting the viability of the market segment for the proposed business.
19. Strengths of Management: Describe the management team of the business and any recent management changes. Describe the background and experience of the management team’s principals.
20. State of Proposed Lease: Provide comments on the status of the proposed lease, the anticipated date when tenant or borrower will take possession of the space, etc. Submit the lease if it is executed.

Agency Reservation:

The Agency reserves the right to require additional information or documentation that it deems necessary to determine whether or not to grant tenant’s or borrower’s request for tenant improvement funding.

Disclaimer:

Neither the Agency’s acceptance of the information described above, nor its subsequent analysis, review and discussion with any person submitting a request for tenant improvements funding constitutes a commitment to make a loan or grant of funds.

Attachment D

Loan Covenants

Property and business owners will be subject to the following requirements.

1. Pay prevailing wages for all construction loans.
2. Hire an accountant, or a bookkeeper, to keep business records for producing business reports.
3. Submit to the Agency, when required, periodic financial statements or at a minimum profit and loss statements (P&LS) and cashflow statements.
4. Recruit from local employment agencies
5. Submit Certified Payroll for construction loans above \$10,000.
6. Secure bids or quotes from the Agency's list of contractors, which includes certified Local Small Business Enterprises (SBE's).
7. Attend pre-construction meeting with the Agency's Contract Compliance Division.
8. Comply with Minimum Compensation Policy and Health Care Accountability Policy (for businesses with twenty or more employees).
9. Submit evidence of insurance and indemnification satisfactory to the Agency.

In addition, to achieve the community objectives of the program, the loan recipients must:

1. Maintain retail spaces in leasable condition;
2. Keep the sidewalk in front of property clean and clear of litter and graffiti at all times;

As conditions to loan closing applicants must: (a) join the BVHP Merchants Association; and (b) correct or begin to correct any code violations cited in the building or leasehold area (if the applicant is the property owner or operator of the activities giving rise to the violations).

Tenant Improvement Performance Covenants

In order to prevent exorbitant rent increases as a result of the tenant improvement program, property owners are required to control rent at the CPI for the first five years after securing a tenant, and thereafter at increments not to exceed prevailing commercial rents in the Area's (currently \$1.50 to \$2.50 per square foot) for the following 10 years.

Attachment E
Form of BVHP Employment and Contracting Agreement

This Employment and Contracting Agreement (“**Agreement**”) is entered into as of [redacted], 2011, between the Redevelopment Agency of the City and County of San Francisco, a public body, corporate and politic (the “**Agency**”), and [name of Project Sponsor], a [type of company: LLC, nonprofit, etc.] (“**Project Sponsor**”). Terms used herein have the meaning given them when first used or as set forth in Section IV.

RECITALS

A. The Board of Supervisors of the City and County of San Francisco (“**Board of Supervisors**”) adopted and approved the Bayview Hunters Point Redevelopment Plan (which amended and renamed the Hunters Point Redevelopment Plan) by Ordinance No. 113-06 on May 23, 2006. The ordinance was signed by the Mayor on June 1, 2006 (the “**Redevelopment Plan**”).

B. The Redevelopment Plan requires the Agency to adopt and implement programs for the Project Area that meet or exceed City policies regarding workforce development, contracting opportunities, and equal opportunity, particularly for economically-disadvantaged Bayview Hunters Point residents and businesses. In accordance with the Redevelopment Plan, the Agency Commission on December 4, 2007 by Resolution No. 127-2007 adopted the Employment and Contracting Policy for the Bayview Hunters Point Redevelopment Project Area.

C. As required by the Board of Supervisors, the Agency and Planning entered into a delegation agreement as of September 19, 2006 (the “**Delegation Agreement**”). Per the Delegation Agreement, Planning shall not approve a Significant Project in the Project Area unless the Project Sponsor has entered into an Employment and Contracting Agreement with the Agency. Ongoing compliance with such agreements shall become a condition of the building permit.

D. The purpose of entering into this Agreements is to establish a set of local hiring goals, local contracting goals and compliance with other Agency Equal Opportunity Policies, as applicable, designed to ensure: (i) training and employment opportunities for BVHP Residents and then San Francisco Residents in the areas of construction, professional services, and permanent jobs by private developers engaged in development in the Project Area; and (ii) vigorous equal opportunity and diversity in employment in the construction, rehabilitation and development of Private Significant Projects.

E. This Agreement is designed to meet or exceed the requirements of the City’s Administrative Code Chapter 83 (First Source policy) and CityBuild Program. Thus, entering into and complying with the terms of this Employment and Contracting Agreement will satisfy the requirements of the City’s First Source Policy. This Agreement is also intended to satisfy the requirements of Health and Safety Code Section 33422.3 which states that for any contract over

\$100,000, the Agency may set specific percentages by craft or trade for the employment of available project area residents.

F. The Project Sponsor desires to [describe project: new construction, rehab, housing, commercial, number of units, sq. footage, etc.] located at [list address] (the "Project") which is in the Project Area. The Project is a Private Significant Project under the Employment and Contracting Policy.

G. As required by the Delegation Agreement and as a condition of the building permit, the Agency and the Project Sponsor desire to enter into this Agreement.

NOW, THEREFORE, each of the parties, in consideration of the mutual promises herein, do hereby covenant and agree as follows:

I. Project Sponsor's Participation

The Project Sponsor is required to use good faith efforts to comply with the Employment and Contracting Goals. In addition, the Project Sponsor has voluntarily agreed to participate in the following Agency Equal Opportunity Programs checked below. These voluntarily agreed to Equal Opportunity Programs are incorporated into this Agreement by reference and thereby become mandatory obligations on the Project Sponsor.

Employment and Contracting Policy Goals (Mandatory)

- Construction Workforce Hiring Goal
- Trainee Hiring Goal for Design Professionals
- Permanent / Temporary Workforce Hiring Goal

Agency Equal Opportunity Programs (Mandatory)

- Small Business Enterprise Program
- Nondiscrimination in Contracts and Equal Benefits Policy
- Minimum Compensation Policy
- Health Care Accountability Policy
- Prevailing Wage Provisions (Labor Standards)

Project Sponsor Initials

II. Hiring Goals

A. Construction Workforce Hiring Goal. The Project Sponsor shall require all Contractors, regardless of tier, to achieve a goal of **fifty percent (50%)** of construction workforce hires by trade and by hours be qualified BVHP Residents or San Francisco Residents with First Consideration to BVHP Residents. This goal is expressed as a percentage of each Contractor's total hours of employment and training by trade on the Project. The good faith procedures for meeting the construction workforce goal is set forth in Section V.

B. Permanent / Temporary Workforce Goal. The Project Sponsor shall require all Employers to achieve a goal of **fifty percent (50%)** of permanent / temporary workforce hires be qualified BVHP Residents or San Francisco Residents with First Consideration given to BVHP Residents. The good faith procedures for meeting the permanent / temporary workforce goal is set forth in Section VII.

C. Trainee Goal. The Project Sponsor shall require all Design Professionals (architects, engineers, planners, environmental consultants, etc.) with contracts over \$100,000, to hire qualified BVHP Residents or San Francisco Residents with First Consideration given to BVHP Residents as trainees. The trainee hiring goal for Design Professionals is based upon the total amount of the Design Professional's contract as follows:

<u>Trainee Goal</u>	<u>Design Professional Fees</u>
0	\$ 0 - \$ 99,999
1	\$ 100,000 - \$ 249,999
2	\$ 250,000 - \$ 499,999
3	\$ 500,000 - \$ 999,999
4	\$1,000,000 - \$1,499,999
5	\$1,500,000 - \$1,999,999
6	\$2,000,000 - \$4,999,999
7	\$5,000,000 - \$7,999,999
8	\$8,000,000 - or more

The good faith procedure for meeting the trainee hiring goal is set forth in Section VI.

D. Incorporating Goals into Contracts. Each contract between the Project Sponsor and any Contractor, Employer or Design Professional shall incorporate by reference or physically attach and make binding on the parties the goals contained in this Section II. Contractor, Employer or Design Professional shall incorporate these goals into their subcontracts, if any.

III. Term

The term of this Agreement (“**Term**”) shall be as follows:

For Construction Workforce – From the date of the Agreement until **two (2) years** thereafter or the expiration of the building permit (including any extensions), whichever is later.

For Trainee Hiring – From the date of the Agreement until **two (2) years** thereafter or the expiration of the building permit (including any extensions), whichever is later.

For Permanent / Temporary Workforce – From the date of the temporary certificate of occupancy for the Project until () years thereafter.

(Note: The Permanent / Temporary Workforce Term may be up to ten (10) years and shall be determined through good faith negotiations between the Project Sponsor and the Agency based upon the nature of the Project and the anticipated number of permanent and/or temporary positions created by the Project.)

IV. Definitions

A. Agency Compliance Officer means the Agency's Contract Compliance Specialist assigned to oversee the Project Sponsor's compliance with the requirements of the Employment and Contracting Agreement.

B. Agreement means this Employment and Contracting Agreement, including any Attachments.

C. Arbitration Parties means the Agency, Project Sponsor, Contractors, Employers, Design Professionals and all persons who attend the arbitration hearing pursuant to Section X, as well as those persons who are subject to a default award provided that all of the requirements in Section X (K) have been met.

D. BVHP Resident means (for the purposes of this Agreement only) any person who resides in the BVHP Project Area or within the 94124 zip code as it was defined on December 4, 2007, the effective date of the Employment and Contracting Policy.

E. CBO means any community based organization that provides training, education and referral services to BVHP Residents, including but not limited to:

Young Community Developers, Inc., 1715 Yosemite Avenue, San Francisco, CA 94124, (415) 822-3491;

Mission Hiring Hall, 3042 – 16th Street, San Francisco, CA 94103, (415) 626-1919 (Construction jobs only);

South of Market Employment Center, 288 – 7th Street, San Francisco, CA 94103, (415) 865-2105 (Permanent Jobs only) and

Ella Hill Hutch Community Center, 1050 McAllister Street, San Francisco, CA 94115,

(415) 921-6276

F. City means the City and County of San Francisco.

G. Commercial Project means (for purposes of this Agreement only): (1) any building permit application for a commercial activity over 25,000 square feet in floor area and involving new construction, an addition, or alteration which results in over \$2,000,000 in improvements as stated on the City's building permit application (including any tenant improvements covered by said building permit); or (2) any application which requires discretionary action by the City's Planning Commission relating to a commercial activity over 25,000 square feet including, but not limited to conditional use project authorization under San Francisco Planning Code section 309, and office development under San Francisco Planning Code Sections 320, et seq.

H. Contractor means any person(s), firm, partnership, corporation (whether for profit or nonprofit), or combination thereof, who is a general contractor, subcontractor (regardless of tier) or consultant working on: (i) an Agency Action Project, (ii) a Significant Project in the Project Area, or (iii) a development project when the Project Sponsor has voluntarily subscribed to the Employment and Contracting Policy.

I. Delegation Agreement means the delegation agreement between the Agency and Planning dated September 19, 2006 as such agreement may be amended from time to time.

J. Design Professional means any architect, engineer, planner, environmental consultant or other design professional working on the Project with a contract over \$100,000.

K. Employer means any person(s), firm, partnership, corporation (whether for profit or nonprofit), or combination thereof, who owns or operates a retail or commercial business which is part of: (i) an Agency Action Project, (ii) a Significant Project in the Project Area or (iii) a development project when the Project Sponsor has voluntarily subscribed to the Employment and Contracting Policy.

L. First Consideration means that a Project Sponsor, Contractor, Employer and/or Design Professional shall give first consideration to qualified BVHP Residents and then to San Francisco residents for hiring opportunities in the areas of construction workforce, permanent / temporary workforce and trainee hires prior to offering the hiring opportunity to other applicants.

M. Housing Project means (for purposes of this Agreement only) new construction, an addition, a conversion, or substantial rehabilitation that results in the creation or addition of ten or more residential units.

N. PAC means the Bayview Hunters Point Project Area Committee.

O. Planning means the Planning Department and/or the Planning Commission of the City and County of San Francisco.

P. Position means a permanent / temporary position not related to construction or construction trades.

Q. Project Area means the Bayview Hunters Point Project Areas as delineated in the Bayview Hunters Point Redevelopment Plan, adopted June 1, 2006 and recorded June 23, 2006, (Document Number 2006I199495) as it may be amended from time to time.

R. Project Sponsor means the developer of commercial space or new housing units defined herein as a Significant Project in the Project Area.

S. San Francisco Resident means any person who resides in the City and County of San Francisco.

T. Significant Project means (for purposes of this Agreement only) a Commercial Project or Housing Project in the Project Area.

V. Procedures for Construction Workforce Hires and Reporting Requirements

A. Compliance with the Policy. The Project Sponsor agrees and will require each Contractor (which includes subcontractors regardless of tier) to use good faith efforts to employ 50% of its construction workforce, by trade and by hours, from qualified BVHP Residents or San Francisco Residents with First Consideration to BVHP Residents. The Project Sponsor and Contractors will be deemed in compliance with the Employment and Contracting Policy by meeting or exceeding the goal or by taking the steps set forth in this Section in good faith towards compliance.

B. Incorporating Agreement into Contracts. The Project Sponsor shall incorporate by reference or attach this Agreement to its contract with the general contractor. The Project Sponsor shall cause the general contractor to do the same in its contracts with its subcontractors. The contract with the general contractors may omit Sections VI & VII as inapplicable to Contractors. Each Contractor will be obligated to comply with the terms of the Agreement (except Section VI & VII). The Project Sponsor and/or Contractors shall retain the executed Agreements and make them available to the Agency Compliance Officer upon request.

C. Submission of Labor Force Projections and Other Data. The Project Sponsor shall cause the general contractor to submit, to the extent available, labor force projections to the Compliance Officer within two (2) weeks of award.

D. Submit Subcontractor Information Form. The Project Sponsor shall cause the general contractor to submit to the Agency Compliance Officer the Subcontractor Information Forms, twenty-four (24) hours prior to the preconstruction meeting. The Subcontractor Information Forms are available from the Agency Compliance Officer upon request.

E. Preconstruction Meeting. The Project Sponsor shall cause the general contractor to hold a preconstruction meeting which shall be attended by the Agency Compliance Officer, the CBO assigned to the Project, all prime contractor(s) and all subcontractor(s). The

preconstruction meeting shall be scheduled between two (2) days and thirty (30) days prior to the start of construction at a time and place convenient to all attendees. The purpose of the meeting is to discuss: the hiring goals, workforce composition, role of the CBOs, worker referral process, certified payroll reporting, procedure for termination and replacement of workers covered by this Agreement and to explore any anticipated problems in complying with this Agreement. All questions regarding how this Agreement applies to the Project Sponsor, general contractor, subcontractors and consultants should be answered at this meeting. Failure to hold or attend at least one (1) preconstruction meeting will be a breach of this Agreement that may result in the Agency ordering a suspension of work on the Project until the breach has been cured. Suspension under this Section is not subject to arbitration.

F. Submit Construction Worker Request Form. For the Term of this Agreement, each time the Project Sponsor or Contractor seeks to hire workers for the construction or rehabilitation of improvements on the Project, they must first submit, by fax, email or hand delivery, an executed construction worker request form to the CBO. Preferably this request will be submitted at least two (2) business days before the workers are needed. However, requests with less than two (2) business days notice will be accepted. The construction worker request form will indicate generally: the number of workers needed, duration needed, required skills or trade and date/time to report. The construction worker request form is available from the CBO or Agency Compliance Officer upon request.

G. Response from CBO. The Agency shall require the CBO to respond, in writing, via fax, by email or by hand delivery to each request for construction workers. The response shall state that the CBO was able to satisfy the request in full, in part or was unable to satisfy the request. The Agency shall require the CBO to look to their own referral lists, as well as confer with other CBOs and CityBuild in an attempt to find qualified BVHP Residents and San Francisco Residents. If the CBO is able to satisfy the request in full or in part, it shall direct the qualified BVHP Resident(s) or San Francisco Resident(s) to report to the Contractor on the date and time indicated in the request. If the CBO is unable to satisfy the request, then the CBO shall send a fax or email stating that no qualified BVHP Residents or San Francisco Residents are currently available.

H. Action by Contractor When Referrals Available. The Project Sponsor or Contractor whose request has been satisfied in full or in part shall make the final determination of whether the BVHP Residents or San Francisco Residents are qualified for the positions and the ultimate hiring decision. The Agency and the Project Sponsor shall strongly encourage the Contractor to hire the qualified BVHP Residents or San Francisco Residents referred by the CBO. However, if the Contractor finds the BVHP Residents or San Francisco Residents are not qualified, then the Contractor shall send the BVHP Residents or San Francisco Residents back to the CBO. Before the close of business on the same day, the Contractor shall fax or email a statement addressed to the CBO stating in detail the reason(s) the BVHP Residents or San Francisco Residents were not qualified or the reason(s) for not hiring the BVHP Residents or San Francisco Residents. The Agency shall require the CBO to, within one (1) business day of receipt of the fax or email, send new qualified BVHP Residents or San Francisco Residents that

meet the legitimate qualifications set by the Contractor or alternatively, send a fax or email stating that no qualified BVHP Residents or San Francisco Residents are currently available.

I. Action by Contractor When Referrals Unavailable. If a Contractor receives a response from the CBO stating that no qualified BVHP Residents or San Francisco Residents are currently available, then the Contractor may hire the number of construction workers requested from the CBO, using its own recruiting methods, giving First Consideration to BVHP Residents and then San Francisco Residents. Any additional construction workforce hires (including the replacement of any terminated workers) must comply with this Agreement, unless the Contractor has already met or exceeded the goal. The Project Sponsor shall require the Contractor keep a copy of the responses it receives from the CBO as proof of compliance and submit a copy of each response received to the Agency Compliance Officer upon request.

J. Action by Contractor When No Response From CBO. If a Contractor has not received a response to its construction worker request from the CBO within two (2) business days, then the Contractor should immediately advise the Agency Compliance Officer by phone, fax or email. The Agency Compliance Officer or his/her designee shall cause a response to be sent to the Contractor within two (2) business days of being notified. If the Contractor does not receive a response from the CBO within four (4) business days (the original two (2) business days plus the additional two (2) business days), then the Contractor may hire the number of construction workers requested from the CBO, using its own recruiting methods, giving First Consideration to BVHP Residents and then San Francisco Residents. Any additional construction workforce hires (including the replacement of any terminated workers) must comply with this Agreement, unless the Contractor has already met or exceeded the goal. The Project Sponsor shall require the Contractor keep a copy of the responses it receives from the CBO as proof of compliance and submit a copy of each response received to the Agency Compliance Officer upon request. This Agreement is intended to provide qualified BVHP and San Francisco Residents with employment opportunities without causing undue delay in hiring needed construction workers.

K. Action by Contractor When No Response From Union. The Contractor should immediately advise the Agency Compliance Officer by phone, fax or email when the Contractor has sent a qualified BVHP Resident or San Francisco Resident to a union hall for referral in accordance with a collective bargaining agreement and the union did not refer the qualified BVHP or San Francisco Resident back for employment or when the union referral process impedes the Contractor's ability to meet its obligations under this Agreement. Conflicts between this Agreement and any collective bargaining agreements will be resolved pursuant to Section XI (D).

L. Hiring Apprentices. A Contractor may meet part of the Construction Workforce Goal by hiring apprentices. However, hiring an apprentice does not satisfy or waive the trainee hiring obligation, if any, for Design Professionals. Unless otherwise permitted by law, apprentices must be trained pursuant to training programs approved by the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training or the California Department of Industrial Relations, Division of Apprenticeship Standards. Credit towards compliance will only be given for paid apprentices actually working on the Project. No

credit is available for apprentices while receiving class room training. Under no circumstances shall the ratio of apprentices to journeymen in a particular trade or craft exceed 1:5.

M. Termination and Replacement of Referrals. If at any time it becomes necessary to terminate for cause a construction worker who was hired pursuant to this Agreement, the Contractor shall notify the CBO in writing via fax or email and submit a report of termination pursuant to Section V(Q). If the Contractor intends to fill the vacant position, then the Contractor shall follow the process set forth in this Agreement beginning at Section V(F).

N. Submission of Certified Payroll Reports. The Project Sponsor shall require each Contractor to submit to the Agency a certified payroll report for the preceding work week on each of its employees. The Project Sponsor is ultimately responsible for the submission of these reports by the Contractors, regardless of tier. The certified payroll report is due to the Agency by noon each Wednesday. To facilitate compliance, the Agency uses the online LCP Tracker system (www.lcptracker.com) for submission of certified payroll reports. This system is available at no cost to the Contractor and LCP Tracker is compatible with most major computer payroll systems. Training and educational materials for LCP Tracker are available at no cost online and through the Agency Compliance Officer. Project Sponsors shall require Contractors to report certified payroll using the LCP Tracker system at www.lcptracker.com. However, a waiver shall be granted pursuant to Section XI (J) to allow any Contractor who do not have a computer, online access or who use a computer payroll system that is incompatible with LCP Tracker to submit certified payroll reports in paper form.

O. Contents of Certified Payroll Reports. If certified payroll records are submitted via the LCP Tracker system, then the required data points are already listed. If certified payroll records are submitted in paper form, the Project Sponsor shall require that the Contractor organize the records in an easily understandable format and contain **all** of the following information for each worker: name, address, telephone number, residency (Bayview Hunters Point, another redevelopment project area, San Francisco or other), last four (4) digits of the worker's Social Security number¹, construction trade (see codes in Section V(U)), classification (e.g., mechanic, apprentice, trainee, helper or laborer), dates of change in status, daily and weekly number of hours worked, hourly wage rates (including rates of contributions for fringe benefits or cash equivalents thereof), deductions made and actual wages paid. To the degree that the Contractor's existing certified payroll records satisfy these requirements, the Contractor shall not be required to maintain separate records.

P. Additional Information. In order to prevent unlawful discrimination in the selection, hiring and termination of workers on the basis of race, ethnicity, gender or any other basis prohibited by law and to identify and correct such unlawful practices, the Agency will collect and the Project Sponsor shall require all Contractors to provide information on the gender and ethnicity (see codes in Section V(U)) of each construction worker and apprentice. If an identifiable pattern of apparent discrimination is revealed by this additional information, it will

¹ Note: The Project Sponsor is required to provide complete Social Security numbers upon Agency request. This information will remain confidential.

be treated as a breach of this Agreement and may be addressed as set forth in Section IX, Event of Default and Remedies and/or Section X, Arbitration of Disputes.

Q. Report on Terminations. In the event a BVHP Resident or San Francisco Resident hired pursuant to this Agreement is terminated for cause, the Project Sponsor shall cause the responsible Contractor to fax or email a termination report to the CBO, with a copy to the Agency Compliance Officer, within two (2) days, stating in detail: (1) the name of the worker(s) terminated; (2) his/her job title and duties; (3) the reasons and circumstances leading to the termination(s); (4) whether the Contractor replaced the construction worker(s); and (5) whether the replacement worker(s) are BVHP Resident(s) or San Francisco Resident(s).

R. Inspection of Records. The Project Sponsor and each Contractor shall make the records required under this Agreement available for inspection or copying by authorized representatives of the Agency. The Project Sponsor shall permit and require all Contractors to permit Agency representatives to interview construction workers and apprentices during working hours on the job.

S. Failure to Submit Reports. It is the Project Sponsor's responsibility to ensure that all Contractors timely submit accurate certified payroll reports. If a Contractor fails or refuses to provide the reports as required, it will be treated as a breach of this Agreement and may be addressed as set forth in Section IX, Event of Default and Remedies and/or Section X, Arbitration of Disputes.

T. Submission of Good Faith Effort Documentation. If the Contractor's good faith efforts are at issue, the Project Sponsor shall cause the Contractor to provide the Agency with documentation of the Contractor's good faith efforts to comply with the Employment and Contracting Policy and this Agreement. The Project Sponsor shall cause the Contractor to maintain for the duration of the Term, a current file of the names, addresses and telephone numbers of each BVHP Resident or San Francisco Resident applicant referral whether self referral, union referral or CBO referral and what action was taken with respect to each such individual.

U. Coding Certified Payrolls. The Project Sponsor shall require each Contractor to include, on the weekly payroll submissions, the code designating each construction worker's and apprentice's craft, gender, ethnicity and project area in accordance with the following tables:

CRAFT CODE	DESCRIPTION	CRAFT CODE	DESCRIPTION
1	Electrician	21	Tile (Ceramic)Setter
2	Iron Worker	23	Elevator Constructor
3	Sheet Metal Worker	24	Cement Mason
4	Asbestos Worker/ Heat & Frost Insulator	25	Laborer or Allied Worker
5	Plumber, Pipe or Steamfitter	26	Glazier & Glassmaker
6	Refrigeration	27	Painter, Paperhanger, Taper

7	Boilermaker	28	Sign Installer
8	Sprinkler Fitter	29	Scrapper
9	Brick, Caulk, Marble, Point, Terrazzo	32	Low Voltage Electrician
10	Hod Carrier	33	Towboat Operator-Marine Engineer
11	Terrazzo Finisher	34	Towboat Deckhand-Inland Boat worker
12	Plasterer	35	Owner/Operator - Truck
13	Lather	36	Owner/Operator - Heavy Equipment
14	Carpenter or Drywall Hanger	37	Upholsterer
15	Mill Worker or Cabinetmaker	38	Teamster, Construction
16	Millwright	39	Janitor
17	Roofer	40	Environmental Control System Installer
18	Pile Driver	41	Window Cleaner
19	Surveyor/Operating Engineer	89	Security Guard
20	Tile (Ceramic)/Marble Finisher		

ETHNICITY CODE	DESCRIPTION
B	African American
L	Latino
I	American Indian
C	Caucasian/White
A	Asian
PI	Pacific Islander
F	Female (all females regardless of ethnicity)

PROJECT CODE	AREA	DESCRIPTION
BIT		Bayview Industrial Triangle
BVHP		Bayview Hunters Point
HPSY		Hunters Point Shipyard
IB		India Basin Industrial Park
GG		Golden Gateway
MBN		Mission Bay (North)
MBS		Mission Bay (South)
MM		Mid-Market
RPSB		Rincon Point/South Beach

SF	San Francisco (not in any redevelopment project areas)
SOM	South of Market
TB	Transbay
VV	Visitacion Valley
WA	Western Addition Area A-2
YBC	Yerba Buena Center

VI. Procedures For Trainee Hires and Reporting Requirements

A. Compliance with the Policy. For architects, engineers and other Design Professionals only, there is a trainee hiring goal as set forth in Section II (C) above. The Project Sponsor and Design Professionals will be deemed in compliance with the Employment and Contracting Policy by meeting or exceeding the trainee hiring goal or by taking the steps set forth in this Section in good faith towards compliance.

B. Incorporating Agreement into Contracts. The Project Sponsor shall incorporate by reference or attach this Agreement to its contract with each Design Professional. Contracts with Design Professional may omit Sections V & VII as inapplicable to Design Professionals. The Project Sponsor shall cause the Design Professionals to do the same in their contracts with their subconsultants, if any. Thus, each Design Professional will be obligated to comply with the terms of the Agreement (except Sections V & VII). The Project Sponsor and/or the Design Professionals shall retain the executed Agreements and make them available to the Agency Compliance Officer upon request.

C. Contact Educational Institutions. The Agency works with the City, as well as educational institutional within the City, to provide a pool of student referrals to assist Design Professionals in meeting the trainee hiring goal. Within thirty (30) days of execution of the Agreement, the Agency Compliance Officer shall contact each Design Professional hired by the Project Sponsor and provide him/her with the name, address and telephone number of a point of contact at the City, **City College or other educational institutions in the Bay Area** who have a current list of students who are BVHP Residents or San Francisco Residents and who are available for hire as trainees. The Project Sponsor shall require each Design Professional to call the City or educational institution(s) and request referrals for the required trainee positions. The request will indicate generally: (1) the number of trainees sought; (2) the required skills set (keeping in mind that these are trainee positions); (3) a brief description of job duties; (4) the duration of the trainee period; and (5) any other information that would be helpful or necessary for the educational institution to make the referral. The minimum duration of assignment is part-time for one semester. However, Design Professionals are strongly encouraged to offer longer trainee employment periods to allow for a more meaningful learning experience. (For example, a half-time or full-time assignment over the summer.) Although the initial contact shall be made by phone, the educational institution(s) may require the Design Professionals to send a confirming letter or fill out a form which the educational institution will provide. The Project Sponsor shall require each Design Professional to timely provide all of the information requested by the City and/or educational institution(s) in order to get the trainee referrals.

D. Response from Educational Institutions. Each educational institution may have a different way of referring applicants, such as: sending resumes directly to the Design Professional; having the applicant contact the Design Professional by phone; require Design Professionals to conduct on-campus interviews; or some other method. The timing and method of the response will normally have been discussed between the Design Professional and the educational institution(s) during the initial phone request. The Project Sponsor shall require the Design Professional to follow the process set by the City and/or educational institution(s) in order to get the trainee referrals.

E. Action by Design Professionals When Referrals Available. The Project Sponsor shall require the Design Professional to give First Consideration to BVHP Residents and then to San Francisco Residents referred by the educational institution(s). The Project Sponsor shall require the Design Professional to interview each applicant prior to making the decision to hire or not to hire. The Design Professional shall make the final determination whether the applicant is qualified for the trainee position and the ultimate hiring decision. The Agency and the Project Sponsor shall strongly encourage the Design Professional to hire a qualified BVHP Resident or San Francisco Resident referred by the educational institution(s). The Project Sponsor shall require the Design Professional to notify each BVHP Resident and San Francisco Resident interviewed and the CBO in writing of the hiring decision.

F. Action by Design Professionals When Referrals Unavailable. If after contacting the City and all of the educational institutions provided by the Agency Compliance Officer, the Design Professional is informed that no qualified BVHP residents or San Francisco Residents are currently available, then the Design Professional should wait thirty (30) days and contact the educational institutions a second time to inquire whether qualified San Francisco Residents are currently available for hire as trainees. If no qualified San Francisco Residents are currently available after the second request, then the Design Professional has fulfilled its obligation under this Section VI, provided that the Design Professional has acted in good faith. The Design Professional must retain its file on all of the steps it took to comply with this Agreement and submit a copy of its file to the Agency Compliance Officer upon request.

G. Action by Design Professional When No Response from Educational Institutions. If a Design Professional has not received a response to its request for referrals from any of the educational institutions within five (5) business days after the Design Professional has fully complied with the procedures, if any, set by the educational institution(s) for obtaining referrals; then the Design Professional should immediately advise the Agency Compliance Officer by phone, fax or email. The Agency Compliance Officer or his/her designee shall cause the educational institution(s) to respond to the Design Professional within five (5) business days of the Agency Compliance Officer being notified. If the Design Professional still has not received a response from the City or the educational institution(s) after this additional five (5) business day period has run, then the Design Professional has fulfilled its obligation under this Section VI, provided that the Design Professional has acted in good faith. Each Design Professional must retain its file on all of the steps it took to comply with this policy and submit a copy of its file to the Agency Compliance Officer upon request.

H. Termination of Trainee for Cause. If at any time during the Term, it becomes necessary to terminate for cause a trainee who was hired pursuant to this Agreement and the Design Professional has not met the minimum duration requirements under this Agreement, then the Design Professional shall hire a new trainee by following the process set forth in Section VI(C) above.

I. Annual Reporting. Annually, during the Term of the Agreement or the term of the Design Professional's contract with the Project Sponsor, whichever is less, the Design Professional shall fax or email a report to the Agency Compliance Officer stating in detail: (1) the names of the BVHP Resident(s) or San Francisco Resident(s) interviewed in the past year for trainee positions; (2) the date(s) of each interview; (3) the reasons for not hiring the BVHP Residents or San Francisco Residents interviewed; (4) the name, address, gender and racial/ethnic background of the successful candidate for the trainee position; (5) whether the successful candidate is a BVHP or San Francisco Resident; (6) the maximum number of trainees the Design Professional has had within the last calendar year; and (7) the number of BVHP Residents and San Francisco Residents hired within the last calendar year.

J. Report on Terminations. In the event a BVHP Resident or San Francisco Resident hired pursuant to this Agreement is terminated for cause, the responsible Design Professional shall within five (5) days fax or email a termination report to the Agency Compliance Officer stating in detail: (1) the name of the trainee(s) terminated; (2) his/her job title and duties; (3) the reasons and circumstances leading to the termination(s); (4) whether the Design Professional replaced the trainee(s); and (5) whether the new trainee(s) are BVHP Resident(s) or San Francisco Resident(s).

VII. Permanent / Temporary Workforce Hires

A. Compliance with the Policy. The Project Sponsor agrees and will require each Employer to use good faith efforts to employ 50% of its permanent / temporary workforce from qualified BVHP Residents or San Francisco Residents with First Consideration to BVHP Residents. Project Sponsors and Employers will be deemed in compliance with the Employment and Contracting Policy by meeting or exceeding the goal or by taking the steps set forth in this Section in good faith towards compliance.

B. Incorporating Agreement into Contracts. The Project Sponsor shall incorporate by reference or attach this Agreement to its lease, purchase and sale agreement or contract with the Employer. The lease, purchase and sale agreement or contract with the Employer may omit Sections V & VI as inapplicable to Employers. The Project Sponsor shall cause the Employer to do the same in its subleases, purchase and sale agreements or contracts with its subtenants or subsequent purchasers. Thus, each Employer will be obligated to comply with the terms of the Agreement (except Section V & VI). The Project Sponsor and/or the Employers shall retain the executed Agreements and make them available to the Agency Compliance Officer upon request.

C. Terms of Permanent / Temporary Workforce Hiring Obligation. The Project Sponsor agrees that the following terms shall apply to this Agreement as it pertains to the Permanent / Temporary Workforce hiring obligation:

Term of the Permanent / Temporary Workforce Hiring Obligation Agreement:
_____ years

Number of Positions anticipated:

Job Titles:

Job Duties:

Minimum Prior Experience Required:

Outreach and Recruiting:

Reporting _____ to _____ Agency:

Other:

D. Additional Information. In order to prevent unlawful discrimination in the selection, hiring and termination of employees on the basis of race, ethnicity, gender or any other basis prohibited by law and to identify and correct such unlawful practices, the Agency will collect and the Project Sponsor shall require all Employers to provide information on the gender and ethnicity of each permanent / temporary employee. If an identifiable pattern of apparent discrimination is revealed by this additional information, it will be treated as a breach of this Agreement and may be addressed as set forth in Section IX, Event of Default and Remedies and/or Section X, Arbitration of Disputes.

E. Report on Terminations. In the event a BVHP Resident or San Francisco Resident hired pursuant to this Agreement is terminated for cause, the Employer shall fax or email a termination report to the Agency Compliance Officer, within two (2) days, stating in detail: (1) the name of the worker(s) terminated; (2) his/her job title and duties; (3) the reasons and circumstances leading to the termination(s); (4) whether the Contractor replaced the construction worker(s); and (5) whether the replacement worker(s) are BVHP Resident(s) or San Francisco Resident(s).

F. Inspection of Records. The Employer shall make the records required under this Agreement available for inspection or copying by authorized representatives of the Agency. The Project Sponsor shall permit and require all Employers to permit Agency representatives to interview permanent / temporary employees during working hours on the job.

G. Failure to Submit Reports. If an Employer fails or refuses to provide the reports as required, it will be treated as a breach of this Agreement and may be addressed as set forth in Section IX, Event of Default and Remedies and/or Section X, Arbitration of Disputes.

VIII. **Compliance with Agency's Equal Opportunity Program**

The Project Sponsor is required to comply with the Agency Equal Opportunity Programs listed in this Section VIII when checked and initialed in Section I above:

A. **Small Business Enterprise Program.**

1. The Project Sponsor hereby agrees for itself and for its Contractors, Employers and Design Professionals to execute and comply with the terms of the Small Business Enterprise ("SBE") Agreement attached as Attachment 1 to this Agreement and incorporated herein by reference.

2. The Project Sponsor shall require its Contractors, Employers and Design Professionals to make good faith efforts to achieve the goal of 50% SBE participation in professional / personal services, and construction contracts. The SBE Program provides for first consideration in awarding subcontracts and sub-consulting opportunities to Agency certified local small business enterprises in the following order of priority: (1) Project Area SBEs, (2) Local SBEs (outside an Agency project or survey area, but within San Francisco), and (3) all other SBEs (outside of San Francisco).

3. The SBE Program sets a local contracting goal and thus is different from the Employment and Contracting Policy which sets a local hiring goal. If there is a conflict between the terms of this Agreement and the SBE Agreement, this Agreement shall control.

4. Breach of the SBE Agreement will constitute a breach of this Agreement. The Agency's Compliance Officer will ensure compliance with the terms of the SBE Agreement.

B. **Nondiscrimination in Contracts and Equal Benefits Policy.**

1. The Project Sponsor hereby agrees to comply with the terms of the Nondiscrimination in Contracts and Equal Benefits Policy incorporated herein by reference and to execute the Nondiscrimination in Contracts Declaration Form attached as Attachment 2 to this Agreement.

2. The Nondiscrimination in Contracts and Equal Benefits Policy prohibits discrimination in contracting and includes a prohibition on discrimination in providing benefits between employees with spouses and employees with domestic partners. This policy requires the Project Sponsor to agree not to discriminate against or segregate any person, or group of persons, on account of race, color, religion, creed, national origin or ancestry, sex, gender identity, age, marital or domestic partner status, sexual orientation or disability (including HIV or AIDS status). This policy also requires that employee benefits be equally available to domestic partners as they are to spouses.

3. Breach of the Nondiscrimination in Contracts and Equal Benefits Policy will constitute a breach of this Agreement. The Agency's Compliance Officer will ensure compliance with the terms of the SBE Agreement.

C. Minimum Compensation Policy.

1. The Project Sponsor hereby agrees to comply with the terms of the Minimum Compensation Policy incorporated herein by reference and to execute the Minimum Compensation Policy Declaration Form attached as Attachment 3 to this Agreement.

2. The Minimum Compensation Policy requires the Project Sponsor to agree that all "Covered Employees," (as defined in the Minimum Compensation Policy), receive a minimum level of compensation.

3. Breach of the Minimum Compensation Policy will constitute a breach of this Agreement. The Agency's Compliance Officer will ensure compliance with the terms of the Minimum Compensation Policy.

D. Health Care Accountability Policy.

1. The Project Sponsor hereby agrees to comply with the terms of the Health Care Accountability Policy incorporated herein by reference and to execute the Health Care Accountability Policy Declaration Form attached as Attachment 4 to this Agreement.

2. The Health Care Accountability Policy requires the Project Sponsor to agree to offer health plan benefits to all "Covered Employees" (as defined in the Health Care Accountability Policy), or to make payments to the City's Department of Public Health, or to participate in a health benefits program developed by the City's Director of Health. Breach of the Health Care Accountability Policy will constitute a breach of this Agreement. The Agency's Compliance Officer will ensure compliance with the terms of the Health Care Accountability Policy.

E. Agency's Prevailing Wage Policy.

1. The Project Sponsor hereby agrees to comply with the terms of the Agency's Prevailing Wage Policy (Labor Standards) incorporated herein by reference and attached as Attachment 5 to this Agreement.

2. The Agency's Prevailing Wage Policy references the State of California's Labor Standards and the prevailing wage, benefits, eligibility, etc. are all calculated using the State's standards. However, the Agency's Prevailing Wage Policy does not include the exemptions listed in California Labor Code Sections 1720(c) and 1720(d).

3. Breach of the Agency's Prevailing Wage Policy will constitute a breach of this Agreement. The Agency's Compliance Officer will ensure compliance with the terms of the Agency's Prevailing Wage Policy.

IX. Event of Default and Remedies

A. The occurrence of any one of the following events or circumstances will constitute an event of default (“**Event of Default**”) by the Project Sponsor if not cured within the specified cure period or if no cure period is specified within thirty (30) days of the occurrence of the breach:

1. The Project Sponsor, Contractor, Employer or Design Professional is in breach of any material term of this Employment and Contracting Agreement, including any Attachments.

2. The Project Sponsor fails to require any Contractor, Employer or Design Professional to comply with any material term of this Employment and Contracting Agreement.

3. The Project Sponsor, Contractor, Employer or Design Professional is in breach of any material term under the Agency’s Equal Opportunity Program, but only if the Project Sponsor has consented to be subject such policies as indicated in Section I above.

4. The Project Sponsor fails to require any Contractor, Employer or Design Professional to comply with any material term of the Agency’s Equal Opportunity Program, but only if the Project Sponsor has consented to be subject such policies as indicated in Section I above.

B. It is expressly agreed and understood that the Project Sponsor is responsible for its own compliance, as well as the compliance of all Contractors (regardless of tier), Employers and Design Professionals on the Project.

C. In the Event of Default, the Agency has the right to declare the Project Sponsor in default and to exercise any or all of its remedies under this Agreement, at law or in equity, including but not limited to:

1. The Agency may negotiate with the Project Sponsor in an attempt to resolve the dispute informally.

2. The Agency may request that Planning and/or the City suspend or revoke the building permit for the Project until the breach is cured to the satisfaction of the Agency.

3. The Agency may seek a court order for specific performance of the terms of this Agreement, including Attachments from a court of competent jurisdiction.

4. The Agency may demand arbitration pursuant to Section X.

D. The Agency’s remedies are cumulative and the election of one remedy does not prohibit the election of any other remedy.

X. ARBITRATION OF DISPUTES

A. Arbitration by AAA. Any dispute involving the alleged breach or enforcement of this Agreement, including but not limited to disputes over qualification of referrals; whether termination was for good cause; and whether the Project Sponsor, Contractor, Employer or Design Professional has complied with this Agreement in good faith shall be submitted to arbitration. The arbitration shall be submitted to the American Arbitration Association, San Francisco, California office (“AAA”) which will use the Commercial Rules of the AAA then applicable, but subject to the further revisions herein. If there is a conflict between the Commercial Rules of the AAA and the arbitration provisions in this Agreement, this Agreement shall govern. The arbitration shall take place in the City and County of San Francisco.

B. Demand for Arbitration. The party seeking arbitration shall make a written demand for arbitration (“**Demand for Arbitration**”). The Demand for Arbitration shall contain at a minimum: (1) a cover letter demanding arbitration under this provision and identifying the entities believed to be involved in the dispute; (2) a copy of the notice of default, if any, sent from one party to the other; and (3) any written response to the notice of default.

C. Parties’ Participation. The Agency, Project Sponsor, Contractor, Employer and Design Professional directly affected by the dispute shall be made Arbitration Parties. Any such person or entity not made an Arbitration Party in the Demand for Arbitration may intervene as an Arbitration Party and in turn may name any other such directly affected person or entity as an Arbitration Party.

D. Agency Request to AAA. Within seven (7) business days after service or receipt of a Demand for Arbitration, the Agency shall transmit to AAA (with a copy to all Arbitration Parties) the Demand for Arbitration and any written response thereto from the Project Sponsor, Contractor, Employer and/or Design Professional. Such material shall be made part of the arbitration record.

E. Selection of Arbitrator. One arbitrator shall arbitrate the dispute. The arbitrator shall be selected from the panel of arbitrators from AAA by the Arbitration Parties in accordance with the AAA rules. The parties shall act diligently in this regard. If the Arbitration Parties fail to agree on an arbitrator within seven (7) business days from the receipt of the panel, AAA shall appoint the arbitrator. A condition to the selection of any arbitrator shall be the arbitrator’s agreement to: (i) submit to all Arbitration Parties the disclosure statement required under California Code of Civil Procedure Section 1281.9; and (ii) render a decision within thirty (30) days from the date of the conclusion of the arbitration hearing.

F. Setting of Arbitration Hearing. A hearing shall be held within ninety (90) days of the date of the filing of the Demand for Arbitration with AAA, unless otherwise agreed by the parties. The arbitrator shall set the date, time and place for the arbitration hearing(s) within the prescribed time periods by giving notice by hand delivery or first class mail to each Arbitration Party.

G. Discovery. In arbitration proceedings hereunder, discovery shall be permitted in accordance with Code of Civil Procedure §1283.05 as it may be amended from time to time.

H. California Law Applies. California law, including the California Arbitration Act, Code of Civil Procedure §§ 1280 through 1294.2, shall govern all arbitration proceedings pursuant to this Agreement.

I. Arbitration Remedies and Sanctions. The arbitrator may impose only the remedies and sanctions set forth below:

1. Order specific, reasonable actions and procedures, in the form of a temporary restraining order, preliminary injunction or permanent injunction, to mitigate the effects of the non-compliance and/or to bring any non-compliant Arbitration Party into compliance with this Agreement.

2. Require any Arbitration Party to refrain from entering into new contracts related to work covered by this Agreement, or from granting extensions or other modifications to existing contracts related to services covered by this Agreement, other than those minor modifications or extensions necessary to enable compliance with this Agreement.

3. Direct any Arbitration Party to cancel, terminate, suspend or cause to be cancelled, terminated or suspended, any contract or portion(s) thereof for failure of any Arbitration Party to comply with any of the requirements in this Agreement. Contracts may be continued upon the condition that a program for future compliance is approved by the Agency.

4. If any Arbitration Party is found to be in willful breach of its obligations hereunder, the arbitrator may impose a monetary sanction not to exceed Fifty Thousand Dollars (\$50,000.00) or ten percent (10%) of the base amount of the breaching party's contract, whichever is less, for each such willful breach; provided that, in determining the amount of any monetary sanction to be assessed, the arbitrator shall consider the financial capacity of the breaching party. No monetary sanction shall be imposed pursuant to this paragraph for the first willful breach of this Agreement unless the breaching party has failed to cure after being provided written notice and a reasonable opportunity to cure. Monetary sanctions may be imposed for subsequent willful breaches by any Arbitration Party whether or not the breach is subsequently cured. For purposes of this paragraph, "willful breach" means a knowing and intentional breach.

5. Direct any Arbitration Party to produce and provide to any other Arbitration Party any records, data or reports which are necessary to determine if a violation has occurred and/or to monitor the performance of any Arbitration Party.

J. Arbitrator's Decision. The arbitrator will normally make his or her award within twenty (20) days after the date that the hearing is completed but in no event past thirty (30) days from the conclusion of the arbitration hearing; provided that where a temporary restraining order is sought, the arbitrator shall make his or her award not later than twenty-four (24) hours after the hearing on the motion. The arbitrator shall send the decision by certified or registered mail to each Arbitration Party.

K. Default Award; No Requirement to Seek an Order Compelling Arbitration. The arbitrator may enter a default award against any person or entity who fails to appear at the hearing, provided that: (1) the person or entity received actual notice of the hearing; and (2) the complaining party has a proof of service for the absent person or entity. In order to obtain a default award, the complaining party need not first seek or obtain an order to arbitrate the controversy pursuant to Code of Civil Procedure §1281.2.

L. Arbitrator Lacks Power to Modify. Except as expressly provided in this Section X, the arbitrator shall have no power to add to, subtract from, disregard, modify or otherwise alter the terms of this Agreement or to negotiate new agreements or provisions between the parties.

M. Jurisdiction/Entry of Judgment. The inquiry of the arbitrator shall be restricted to the particular controversy which gave rise to the Demand for Arbitration. A decision of the arbitrator issued hereunder shall be final and binding upon all Arbitration Parties. The prevailing Arbitration Party (ies) shall be entitled to reimbursement for the arbitrator's fees and related costs of arbitration. Each Arbitration Party shall pay its own attorneys' fees, provided, however, that attorneys' fees may be awarded to the prevailing party if the arbitrator finds that the arbitration action was instituted, litigated, or defended in bad faith. Judgment upon the arbitrator's decision may be entered in any court of competent jurisdiction.

XI. General Provisions

A. Designate a Point of Contact. The Project Sponsor shall designate (and shall require each Contractor, Employer and Design Professional to designate) a responsible representative, manager or agent to monitor all employment-related activity under this Agreement and to be the primary point of contact for issues arising under this Agreement.

B. No Retaliation. The Project Sponsor warrants (and shall require each Contractor, Employer and Design Professional to warrant) that no person hired pursuant to this Agreement shall be discharged or in any other manner discriminated against because such person has filed any complaint or instituted or caused to be instituted any proceeding under or relating to enforcement of this Agreement.

C. No Discrimination. There shall be no discrimination against or segregation of any person, or group of persons, on account of race, color, religion, creed, national origin or ancestry, sex, gender identity, age, marital or domestic partner status, sexual orientation or disability (including HIV or AIDS status). The Project Sponsor, Contractors, Employers and Design Professionals will ensure that applicants are employed, and that persons are treated during any employment action, without regard to their race, color, religion, creed, national origin or ancestry, sex, gender identity, age, marital or domestic partner status, sexual orientation or disability (including HIV or AIDS status) or other protected class status. Such employment action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; selection for training, including apprenticeship; and provision of any services or accommodations.

D. Collective Bargaining Exclusion. Notwithstanding anything to the contrary in this Agreement, if a provision of this Agreement conflicts with an existing labor agreement or collective bargaining agreement to which a Project Sponsor, Contractor, Employer or Design Professional is a party, the labor agreement or collective bargaining agreement shall prevail. Nothing in this Agreement shall be interpreted to interfere with or prohibit existing labor agreements or collective bargaining agreements. However, the Project Sponsor, Contractor, Employer or Design Professional will still be obligated to provide workforce needs information to the CBO prior to hiring and the Project Sponsor, Contractor, Employer or Design Professional will be obligated to make good faith efforts to comply with the requirements of this Agreement that do not conflict with the collective bargaining agreement.

E. No Conflict with State or Federal Law. This Agreement is to be implemented in a manner that does not conflict with applicable federal or state laws.

F. Existing Workforce. Nothing in this Agreement shall be interpreted in a manner that would require termination of the Project Sponsor's, Contractor's, Employer's or Design Professional's existing workers and employees.

G. Use of Debarred Entities Prohibited. Neither the Project Sponsor, Contractor, Employer or Design Professional shall enter into any subcontract with any person or firm that the Project Sponsor, Contractor, Employer or Design Professional knows or should have known is debarred from federal, state or local government contracts.

H. Incorporation. The Project Sponsor shall ensure that whenever the Project Sponsor, Contractor, Employer and/or Design Professional subcontracts a portion of the work, it shall incorporate by reference or attach to the contract verbatim and make binding on each subcontractor the provisions of this Agreement. That subcontractor shall then be deemed a Contractor, Employer and/or Design Professional (as applicable) for the purposes of this Agreement and shall be subject to all of the requirements hereto.

I. Severability. If any part or provision of this Agreement or the application thereof to any person or circumstance is held to be invalid, then the remainder of this Agreement, including the application of such part or provision to other persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, the provisions of this Agreement are severable.

J. Waiver. The Agency's Executive Director may waive any requirement or obligation under this Agreement, if he/she determines for good cause shown that a specific requirement is not relevant to the particular situation, would cause undue hardship, or that an alternative approach would better meet the goals of this Agreement. Any waiver by the Agency's Executive Director must be in writing to be effective.

K. Authority to Execute Agreement and Bind Project Sponsor. The Project Sponsor warrants that the person executing this Agreement on its behalf has the authority to execute the Agreement and to bind the Project Sponsor to the terms contained herein.

IN WITNESS WHEREOF the Agency and the Project Sponsor have executed this Employment and Contracting Agreement as of the date first above written.

PROJECT SPONSOR

[Name of Company _____]

AGENCY

REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO, a public body, corporate and politic

By: _____

By: _____

Amy Lee
Deputy Executive Director,
Finance and Administration

Its: _____

APPROVED AS TO FORM:

By: _____

James B. Morales
Agency General Counsel