

108-0042017-002

Meeting of June 20, 2017

INFORMATIONAL MEMORANDUM

TO: Community Investment and Infrastructure Commissioners

FROM: Nadia Sesay, Interim Executive Director

SUBJECT: To advise the Commission of staff's intention to issue a Request for Proposals for landscape maintenance and related services for Community Facilities District No. 1; Rincon- Point South Beach Redevelopment Project Area

EXECUTIVE SUMMARY

The purpose of this informational memorandum is to advise the Commission of staff's intention to issue a Request for Proposals ("RFP") from California-licensed landscape contractors to provide landscape maintenance and related services to the Mello-Roos Community Facilities District No. 1 ("CFD 1" or District") in the Rincon Point-South Beach Redevelopment Project Area. OCII acts as manager of the District on behalf of the District property owners.

Assuming no objections from the Commission, staff intends to issue the RFP on June 21, 2017. Staff anticipates returning to the Commission with a recommended Contractor in September 2017. Any new contract will be subject to Commission approval and compliance with state law. A copy of the RFP, which includes the contractor selection timeline, is attached (See Attachment 1).

DISCUSSION

District Background

Pursuant to the Mello-Roos Community Facilities Act of 1982, CFD 1 was established in 1988 by the former San Francisco Redevelopment Agency to fund construction and maintenance of certain public improvements (streetscape improvements) in the South Beach sub-area of the Rincon Point-South Beach Redevelopment Project Area. OCII acts as manager of the District on behalf of the District property owners.

The streetscape improvements in the District include approximately 455 street trees, 12,100 square feet of lawn cover, 2,400 square feet of ground cover, 866 square feet of shrubs, 500 square feet of annuals, 15,400 square feet of irrigation and lighting systems, 41,000 square feet of litter and weed control area, 41 bollards, nine benches, three small plazas, and a stairway connecting Delancey and Bryant Streets. The landscape and maintenance services are funded by the CFD tax revenues.

Proposed Request for Proposals

OCII is currently contracted with Forster & Kroeger Landscape Maintenance, Inc. ("Forster & Kroeger") for landscape maintenance services which include: Tree, lawn, groundcover, and shrub maintenance, irrigation and lighting systems, litter and weed control, bollard maintenance,

Edwin M. Lee
MAYOR

Nadia Sesay
INTERIM
EXECUTIVE DIRECTOR

Marilyn Mondejar
CHAIR

Miguel Bustos
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paver/cobble maintenance, street furniture, and Graffiti removal. The contract with Forster & Kroeger expires on August 15, 2017. Staff intends to maintain the current contract on a month-to-month basis following the expiration date in order to allow time for the completion of the RFP selection and contract negotiation process. In accordance with the Successor Agency's Purchasing Policy and Procedures, OCII staff has prepared the RFP to select a contractor to continue these services. The RFP's timeline is presented in the table below:

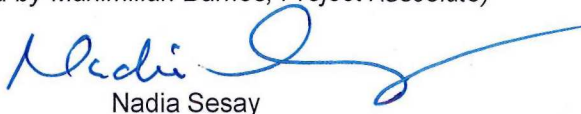
RFP available at OCII's office and on the Successor Agency's website http://sfocii.org/	4:00 p.m. Wednesday, June 21, 2017
Pre-Submittal Meeting and Site Tour Meet in front of SB40 Restaurant on the Embarcadero	10:00 a.m. Wednesday, June 28, 2017
Deadline for questions and requests for additional information	4:00 p.m. Tuesday, July 11, 2017
Proposals Due One South Van Ness Avenue, 5 th Floor	4:00 p.m. Tuesday, July 25, 2017
Applicant Interviews One South Van Ness Avenue, 5 th Floor	Thursday, August 10 2017*
OCII Commission consideration	Tuesday September 19, 2017*
*Dates subject to change	

The RFP will be advertised via the following mediums: 1) OCII's website, 2) the City's "Bids and Contracts" section of their website, and 3) local publications of general circulation reaching San Francisco's many diverse populations. Extensive notification of the RFP will be provided to contractors, including Small Business Enterprises and minority- and woman-owned contractors. Additionally, RFP announcements will be mailed to landscape maintenance firms registered as SBEs with both OCII and the City.

Upon Commission authorization, the selected contractor will enter into a personal services contract with the Successor Agency for a three-year term, with one three-year extension option, at the Executive Director's discretion.

If the Commission does not object, staff will proceed with the RFP issuance and selection process outlined above.

(Originated by Maximilian Barnes, Project Associate)



Nadia Sesay
Interim Executive Director

Attachment 1: Proposed RFP



OFFICE OF COMMUNITY INVESTMENT AND INFRASTRUCTURE

***SUCCESSOR AGENCY TO THE SAN FRANCISCO
REDEVELOPMENT AGENCY***

Request for Proposals

***Community Facilities District No. 1 –
Landscape Maintenance and Related Services***

***Rincon Point South Beach
Redevelopment Project Area***

***RFP Available
Wednesday, June 21, 2017***

***Pre-Submittal Meeting & Site Tour
Wednesday June 28, 2017 10:00 AM***

***Deadline for Submission
Tuesday, July 25, 2017 4:00 PM***

***Issued by:
OCII
1 South Van Ness Avenue, Fifth Floor
San Francisco, CA 94103***

***Contact: Maximilian Barnes
Email: maximilian.barnes@sfgov.org
Phone: 415-749-2553***



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CFD 1 LANDSCAPE MAINTENANCE RFP

I. SUMMARY

The Office of Community Investment and Infrastructure (“OCII”), in its capacity as the Community Facilities District No. 1 (“CFD 1”), is requesting proposals from experienced California licensed landscape contractors who possess a Class C-27 license or equivalent to provide landscape maintenance and other related services for the maintenance of the CFD 1 area, which includes four public plazas and associated landscaping and streetscape improvements.

All respondents to this RFP must submit a proposed monthly job cost estimate, a proposal to provide services, and an annual operating budget. Contracted services will be paid on a monthly basis. OCII will enter into a Personal Services Contract (“Contract”) with the selected Contractor to provide landscape and related services described in Attachment #10, Scope of Services. The initial term of the Contract is anticipated to be three years with an OCII option to extend the Contract for one additional three-year term, for a total Contract term not to exceed six years. The selected Contractor will begin providing the services described in this RFP once the Commission on Community Investment and Infrastructure approves the public services contract (PSC) on Tuesday, September 19, 2017.

OCII staff will recommend an applicant for the Commission on Community Investment and Infrastructure’s consideration of a Personal Services Contract following staff’s evaluation of the proposals received and, if deemed necessary, oral interviews. Staff’s recommendation will be based on the applicant’s demonstrated successful experience on relevant and comparable projects and on the proposed budget. This opportunity is open to all businesses, both for-profit and non-profit. Applicants are advised that OCII is committed to vigorous equal opportunity employment.

II. IMPORTANT DATES AND SUBMISSION PROCESS

A. Important Dates

RFP available and posted on sfocii.org	4:00 p.m., Wednesday, (June 21, 2017)
Pre-submission meeting and Site Tour. Meet in front of 800 Embarcadero (South Beach Cafe) on the Embarcadero at Townsend	10:00 a.m., Wednesday, (June 28, 2017)
Deadline for questions and requests for	4:00 p.m., Tuesday, (July 11, 2017)

additional information	
Submission deadline for Proposals at OCII One South Van Ness Avenue, 5 th Floor	4:00 p.m., Tuesday, (July 25, 2017)
Applicant interviews One South Van Ness Avenue, 5 th Floor	Thursday, (August 10, 2017)*
OCII Commission consideration of Contractor selection and Personal Services Contract	Tuesday, (September 19, 2017)*

*Dates subject to change

B. Pre-Submission Meeting

OCII staff will lead a pre-submission tour of the areas covered by the Contract, explain the proposed work to be performed and provide an opportunity to ask questions. Potential contractors and OCII staff will meet in front of the South Beach Café at the corner of Townsend Street and the Embarcadero, San Francisco, California, on **Wednesday, June 28, 2017 at 10:00 a.m.** Although attendance is not mandatory, it is highly recommended.

C. Questions and Requests for Additional Information

Please submit all questions and information requests to the attention of the contact person listed on the cover page of this RFP. All questions and requests for additional information regarding this RFP must be received in writing by OCII (via messenger, mail, or e-mail) – on or before – **4:00pm on Monday July 25, 2017**. Questions received after the deadline may not be answered. All responses and additional information will be distributed to all registered RFP holders. OCII reserves the right, in its sole discretion, to determine the timing and content of the response, if any, to all questions and requests for additional information. In addition, OCII may respond via messenger, fax, or e-mail.

D. Registration

Although it is not necessary to register to receive a copy of the RFP or to submit a proposal, it is strongly recommended as it will permit OCII to provide notification of addenda information and responses to inquiries. Only registered RFP holders will receive notification of addendums and any additional information distributed prior to the RFP submission date. However, addenda and other updates to the RFP will be posted online at <http://www.sfocii.org>.

E. Submittal Deadline on Tuesday, July 25, 2017

OCII staff will collect and timestamp all submittals. One hard-copy original plus six (6) copies, and one CD or flashdrive with a complete electronic copy, of the submittal must be received by OCII staff at OCII offices no later than:

Tuesday, July 25th 2017 at 4:00 p.m.

**Office of Community Investment and Infrastructure
One South Van Ness Avenue, Fifth Floor
San Francisco, California 94103
Attention: Maximilian Barnes**

III. BACKGROUND

Community Facilities District No. 1 was established in 1988 by San Francisco Redevelopment Agency Resolutions No. 186-88 through 191-88 pursuant to the Mello-Roos Community Facilities Act of 1982. The District was established to fund construction and maintenance of certain improvements in the South Beach sub-area of the Rincon Point-South Beach Redevelopment Project Area including maintenance of all streetscape improvements. OCII acts as manager of the District on behalf of the District property owners.

The maintenance area of the District (Map 1) consists of landscape and streetscape improvements in the public right-of-way and the four plazas: the Townsend Plaza (Map 2), First Plaza (Map 3), Brannan/Beale Plaza (Map 4) and Bryant Steps and Plaza (Map 5). The District includes approximately 455 street trees, 12,100 square feet of lawn cover, 2,400 square feet of ground cover, 866 square feet of shrubs, 500 square feet of annuals, 15,400 square feet of irrigation and lighting systems, 41,000 square feet of litter and weed control area, 41 bollards and nine benches. A distinguishing feature of the District's landscape design is the decorative sidewalk pavers and cobblestones installed in tree wells.

Areas identified by OCII as requiring special attention and care during the course of the upcoming contract are:

- Solving soil settlement problems throughout the District which are causing the sidewalk pavers to sink or buckle creating safety hazards for pedestrians.
- Cutting back tree roots and installing root barriers between tree wells and pavers.
- All of the trees in the District require an annual pruning and/or thinning of canopy.
- Bollard maintenance and replacement caused by damage from vehicular traffic.

OCII staff seeks a landscape contractor with the training, education and experience to assess conditions such as those outlined above and to undertake the appropriate course of action to remedy them.

IV. SCOPE OF SERVICES

A. Scope of Services

The Scope of Services, general requirements and work to be done are detailed in Attachment #10, Scope of Services. The Scope of Services will be incorporated into a Personal Services Contract, an example of which is shown in Attachment #7. The Contracting team must be able to comply with OCII's policies, including, but not limited to, nondiscrimination, equal benefits, minimum compensation, healthcare accountability, small business enterprise requirements, and insurance.

V. SELECTION PROCESS AND CRITERIA

A. Selection Process

- a) Submissions of Statements of Proposals by applicants wishing to be considered by OCII to provide these services will be accepted at OCII's offices until as described above under Section II (E).
- b) Submissions must be complete as referenced about under Section II (E). No submissions received by facsimile or electronic mail will be considered. OCII staff will evaluate all submissions for completeness and minimum qualifications. Applicants may use the Submission Checklist (**Attachment #9**) as an aid in preparing proposals. Please note that the Checklist is merely an aid. Each Applicant is solely responsible for ensuring that all information requested in Section VI. Submission Requirements is submitted even if it does not appear on the Checklist.
- c) OCII staff will contact references.
- d) OCII may perform site inspections at any time during the selection process, with or without notice to potential Contractors, of properties identified in the Statement of proposals as examples of Contractor's and/or subcontractors' experience.
- e) All or some of the applicants who have submitted complete and responsive Statements of Proposals may be interviewed. Interviews are scheduled to be held on Thursday, August 10, 2017. ***This date is subject to change.*** All applicants should advise OCII staff of availability on this day. Interviews will be held at OCII's offices located at One South Van Ness Avenue on the fifth floor.
- f) Further written material regarding proposals or submittals may be requested prior to or following interviews.
- g) OCII staff will make a recommendation to the OCII Commission based on evaluation of the Statements of Proposals, interviews (if held), and reference checks. First consideration will be given in awarding contracts in the following order: (1) Project Area Small Business Enterprises ("SBEs"), (2) Local SBEs (outside an OCII Project or Survey Area, but within San Francisco), and (3) all

other SBEs (outside of San Francisco). Non-local SBEs would be used to satisfy participation goals only if Project Area SBEs or Local SBEs are not available, qualified, or if their bids or fees are significantly higher than those of non-local SBEs.

- h) The OCII Commission will approve the selection of the successful applicant.

B. Selection Criteria

OCII will make the selection of the Contractor based on the following factors:

- a) Experience, qualifications, and approach of the Contractor in providing landscape maintenance services in an effort to complete the subject scope of services.
- b) Overall expertise regarding the specific tasks in the scope of services. Tree management is under the control and supervision of persons who have the necessary professional credentials and expertise to qualify as an urban forester or arborist. Must have the capabilities to conform to the tree maintenance standards and requirements of the City's Urban Forestry Ordinance (Exhibit A) and the latest/current edition of the "Pruning Standards for Trees, City and County of San Francisco" (Exhibit B);
- c) Minimum of five (5) years recent landscape maintenance experience;
- d) Ability to comply with the OCII's policies, including but not limited to nondiscrimination, equal benefits, minimum compensation, healthcare accountability, small business enterprise requirements and insurance;
- e) The proposed staffing and budget for providing the requested services;
- f) Ability and experience interacting courteously and professionally with the public and other organizations and agencies;
- g) Demonstrated ability to work effectively with diverse populations;
- h) Ability to work well in high-pressure environments, meet deadlines and prioritize capital improvements;
- i) Reasonableness of proposed fees for providing the scope of services.

VI. SUBMISSION REQUIREMENTS

A. Submission of Proposal

The Proposal must contain all of the following information:

- a) A description of qualifications and any areas of specialty and professional capabilities.
- b) A resume that lists and provides detailed descriptions of work performed in the last five (5) years, of a similar or related nature to the subject scope of services, providing the client name and contact information for each.

- c) A statement by the Contractor indicating that the firm has read and agrees to comply with the OCII's Indemnification and Insurance requirements and can comply with the conditions of the Personal Services Contract in **Attachment #7**.
- d) A signed Small Business Enterprise Agreement (**Attachment #1**).
- e) A signed Declaration of Nondiscrimination in Contracts and Benefits (**Attachment #2**).
- f) A signed Minimum Compensation Policy Declaration (**Attachment #3**).
- g) A signed Health Care Accountability Declaration (**Attachment #4**).
- h) Complete responses to all Disclosure Questions (**Attachment #5**).
- i) A signed Statement of Compliance with OCII Policies & Certification of Applicant (**Attachment #6**).
- j) A completed RFP Registration Form (**Attachment #8**).
- k) Proposal to Provide Services
- l) Proposed staffing and budgets including the following line items: Personal Services, Materials & Supplies, subcontractors (if applicable), Insurance, and Overhead.

An original and six (6) copies, and one (1) CD or flash drive containing a PDF copy of the Proposal and all required submission elements must be received at OCII's office no later than **4:00 p.m. Tuesday, July 25, 2017**. Deliver proposals marked "RPSB Landscape Maintenance RFP" to the attention of:

Maximilian Barnes
Project Associate
 Office of Community Investment and Infrastructure
 1 South Van Ness Avenue, Fifth Floor
 San Francisco, CA 94103
 Telephone: **415-749-2553**
 E-mail: **maximilian.barnes@sfgov.org**

A submission checklist is provided as **Attachment #9** to ensure that the applicant's submittal is complete. Incomplete submittals will not be considered. Please use this sheet when completing your submittal.

OCII will disqualify from consideration any Statements of Qualifications received with insufficient copies or lacking all or part of any required submission element.

Hand delivery is advised. Submissions delivered by facsimile or electronic mail will not be considered. Applicants may submit a Statement of Proposal at any time prior to the submission deadline.

VII. AGREEMENT TO COMPLY WITH OCII POLICIES

Each applicant shall acknowledge receipt and understanding of the following OCII contracting requirements and policies and state its ability and willingness to comply with each of them:

A. 1. Small Business Enterprise Program

OCII has adopted a Small Business Enterprise (“SBE”) Program, which provides first consideration in awarding contracts in the following order: (1) Project Area SBEs, (2) Local SBEs (outside an OCII project or survey area, but within San Francisco), and (3) all other SBEs (outside of San Francisco). Non-local SBEs should be used to satisfy participation goals only if Project Area SBEs or Local SBEs are not available, qualified, or if their bids or fees are significantly higher than those of non-local SBEs. **(See SBE Agreement, Attachment #1.1)** The Contractor must make good faith efforts to achieve the goals of the SBE Program, which are 50% SBE participation for professional, personal services, and construction contracts. This goal also applies to OCII when it is contracting directly for goods and services. SBEs must be certified with OCII. Further information on the criteria for determining eligibility is located in **Attachment #1.1**. For any questions, please contact Maria Pecot, of OCII’s Contract Compliance Department, at (415) 749-2400.

A. 2. Prevailing Wage Provisions (Labor Standards)

OCII has adopted Labor Standards that require the payment of prevailing wages for all work performed in the construction, alteration, demolition, installation, repair, or maintenance of public facilities regardless of funding source. As applicable, Contractor (including subcontractors regardless of tier) shall comply with California Labor Code 1770 et seq. and OCII’s Labor Standards. (See Prevailing Wage Provisions (Labor Standards), **Attachment #1.2**.)

Furthermore, Contractor’s attention is directed to Labor Code 1725.5 which requires contractors and subcontractors to register with the Department of Industrial Relations in order to bid and perform public works. Contractor is advised that portions of this contract may be considered public works pursuant to Labor Code 1720.

B. Applicant’s Duty of Loyalty

Applicant for itself and its subcontractors, if any, agrees to abide by OCII’s duty of loyalty, which appears at Section IX.H. (Prohibited Activities of Present and Former Employees, Commissioners and Consultants) of OCII’s Personnel Policy and which states in part the following: “Unless approved in advance in writing by OCII, no present or former employee, Commissioner or consultant of OCII shall knowingly act for anyone other than OCII in connection with any particular matter in which OCII is a party, or has a direct and substantial interest, and in which he or she participated personally and substantially as an OCII employee, Commissioner or consultant whether through decisions, recommendations, advice, investigation or otherwise. Violation of this section by a present employee, consultant or Commissioner may, in the case of an employee or consultant, be grounds for discharge or termination of the consultant contract, and in the case of a Commissioner, be

considered misconduct in office pursuant of California Health and Safety Code Section 33115.”

C. Limitations on Contributions

Through execution of this Agreement, Applicant acknowledges that it is familiar with section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with OCII for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) the Mayor or members of the Board of Supervisors, (2) a candidate for Mayor or Board of Supervisors, or (3) a committee controlled by such office holder or candidate, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Applicant acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Applicant further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Applicant’s board of directors; Applicant's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Applicant; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Applicant. Additionally, Applicant acknowledges that Applicant must inform each of the persons described in the preceding sentence of the prohibitions contained in section 1.126.

Finally, Applicant agrees to provide to OCII the names of each member of Applicant's board of directors; Applicant's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Applicant; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Applicant.

D. Nondiscrimination in Contracts and Benefits

The Applicant shall complete and submit Attachment #2, the Declaration of Nondiscrimination in Contracts and Benefits. OCII 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. For further information, see instructions contained in Attachment #2 or contact Maria Pecot with OCII’s Contract Compliance Department at (415) 749-2400.

E. Minimum Compensation Policy and Health Care Accountability Policy

OCII has adopted a Minimum Compensation Policy (“MCP”) for all contractors under personal services contracts that require the payment of a minimum level of compensation to employees (**Attachment #3**). In addition, the Health Care Accountability Policy (“HCAP”) requires that contractors 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 #4**).

The applicant shall either submit a completed MCP Declaration Form and HCAP Declaration Form or state its intent to comply with these OCII policies.

F. Insurance

The selected applicant must procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the work under the OCII contract by the contractor, its agents, representatives, employees or subcontractors. If the selected applicant maintains additional coverages and/or higher limits than the minimums shown below, OCII requires it be entitled to the additional coverage and/or higher limits maintained by the selected applicant.

Unless otherwise approved by OCII, the selected applicant must maintain insurance with an insurance company that has an A.M. Best rating of A:VII with the following coverages and limits:

- **General Liability:** \$2,000,000 per occurrence for bodily injury, personal injury and property damage. If insurance with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project or the general aggregate limit shall be twice the required occurrence limit. General Liability Additional Insured Endorsement must be submitted with the Certificates of Insurance.
- **Automobile Liability:** \$1,000,000 per accident for bodily injury and property damage. Additional Insured Endorsement required
- **Workers' Compensation and Employers Liability:** Workers' Compensation limits as required by the State of California and Employer's Liability limits of \$1,000,000 for bodily injury by accident and \$1,000,000 per person and in the annual aggregate for bodily injury by disease;

The insurance requirements may be modified by the OCII's Risk Manager in his/her sole discretion.

G. Indemnity

The selected applicant shall defend, hold harmless and indemnify the Office of Community Investment and Infrastructure, the City and County of San Francisco, and the San Francisco Port Commission, 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 the performance of OCII contract and any of the contractor's 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.

H. Disclosure Questions

Each Contractor and every subcontractor shall complete **Attachment #5**, Disclosure Questions, and submit the completed form as part of its Statement of Proposal.

I. Certification of Applicant

The selected applicant shall certify under penalty of perjury under the laws of the State of California that all the information provided in the Statement of Proposal is true and correct (**Attachment #6**).

VIII. ADDITIONAL TERMS AND CONDITIONS

A. Personal Services Contract

The selected applicant will be required to enter into a Personal Services Contract with OCII (**Attachment #7**). The contractor will be required to comply with all of the provisions of the personal services contract, including, but not limited to, OCII's policies and provisions regarding indemnification, insurance, small business enterprise requirements, and non-discrimination in employee benefits and hiring.

B. Contractor Expenses

Applicants responding to this RFP do so at their own expense. OCII will not consider any contractor costs related to this RFP or to negotiating a Personal Services Contract as reimbursable or as eligible costs under the contract. Should an actual or potential proposer object on any grounds to any provision or requirement of this RFP, that person or entity must, not more than ten calendar days after this RFP is issued, provide written notice to OCII setting forth with specificity the grounds for the objection. The failure of a potential proposer to object as set forth above shall constitute a complete and irrevocable waiver of any such objection.

C. OCII Right to Modify or Suspend RFP

OCII, through its Executive Director, reserves the right at any time and from time to time, and for its own convenience, in its sole and absolute discretion, to modify or suspend any and all aspects of the selection process, including, but not limited to this RFP, and all or any portion of the contractor selection process in or subsequent to the RFP; to obtain further information from any contractor, to waive any defects as to form or content of the RFP or any other step in the selection process; to reject any and all responses submitted; to reissue the RFP; procure the desired services by any other means or not proceed in procuring the services; to negotiate with any, all, or none of the respondents to this RFP as to fees, scope of services, or any other aspect of the RFP or services; to negotiate and modify any and all terms of an agreement; and to accept or reject any applicant for entry into a Personal Services Contract.

D. Claims Against OCII

Each applicant by responding to this RFP, waives any claim, liability or expense whatsoever against OCII and its respective officers, commissioners, employees and agents by reason of any or all of the following: any aspect of this RFP, the selection process or any part thereof, any informalities or defects in the selection process, the failure to enter into any agreement, any statements, representations, acts or omissions of OCII, 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.

E. Term of Proposal

Submission of a proposal signifies that the proposed services and prices are valid for 120 calendar days.

IX. ATTACHMENTS

- Attachment #1.1: Small Business Enterprise Agreement
- Attachment #1.2: Prevailing Wage Provisions (Labor Standards)
- Attachment #2: Declaration of Nondiscrimination in Contracts and Benefits and Instructions
- Attachment #3: Minimum Compensation Policy Declaration
- Attachment #4: Health Care Accountability Policy Declaration
- Attachment #5: Disclosure Questions
- Attachment #6: Statement of Compliance with OCII Policies & Certification of Applicant
- Attachment #7: Form of Personal Services Contract
- Attachment #8: RFP Registration Form
- Attachment #9: Submission Checklist Sheet
- Attachment #10: Scope of Services including CFD1 Map Descriptions
- Map 1: Rincon Point-South Beach Redevelopment Project Area Map
- Map 2: Townsend Plaza Map
- Map 3: First Plaza

Map 4:	Brannan/Beale Plaza
Map 5:	Bryant Steps and Plaza
Exhibit A:	Urban Forestry Ordinance
Exhibit B:	Pruning Standards for Trees, City and County of San Francisco

ATTACHMENT #1

SMALL BUSINESS ENTERPRISE AGREEMENT

The company or entity executing this Small Business Enterprise Agreement, by and through its duly authorized representative, hereby agrees to use good faith efforts to comply with all of the following:

I. PURPOSE. The purpose of entering into this Small Business Enterprise Program agreement (“**SBE Program**”) is to establish a set of Small Business Enterprise (“SBE”) participation goals and good faith efforts designed to ensure that monies are spent in a manner which provides SBEs with an opportunity to compete for and participate in contracts by or at the behest of the Successor Agency to the San Francisco Redevelopment Agency (“**Agency**”) and/or the Agency-Assisted Contractor. A genuine effort will be made to give First Consideration to Project Area SBEs and San Francisco-based SBEs before looking outside of San Francisco.

II. APPLICATION. The SBE Program applies to all Contractors and their subcontractors seeking work on Agency-Assisted Projects on or after November 17, 2004 and any Amendment to a Pre-existing Contract.

III. GOALS. The Agency’s SBE Participation Goals are:

CONSTRUCTION	50%
PROFESSIONAL SERVICES	50%
SUPPLIERS	50%

IV. TRAINEE HIRING GOAL. In addition to the goals set forth above in Section III, there is a trainee hiring goal for all design professionals (architects, engineers, planners, and environmental consultants) on contracts or subcontracts over \$100,000. The trainee hiring goal requires architects, engineers and other design professionals only to hire qualified San Francisco residents as trainees. The trainee hiring goal is based upon the total amount of the design professional’s contract as follows:

<u>Trainees</u>	<u>Design Professional Fees</u>
0	\$ 0 – \$99,000
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

A. Procedures For Trainee Hires

1. Compliance with the Trainee Hiring Goal

Design professionals will be deemed in compliance with this Agreement by meeting or exceeding the trainee hiring goal or by take the following steps in good faith towards compliance.

2. **Execution and Incorporation of this Agreement to Sub-agreements**

The Agency-Assisted Contractor shall execute this Agreement and shall incorporate by reference or attach this Agreement to its contract(s) with the architects, engineers and other design professionals. Thus, each design professional (regardless of tier) will be obligated to comply with the terms of this Agreement. The Agency-Assisted Contractor and/or the design professionals shall retain the executed Agreements and make them available to the Agency Compliance Officer upon request.

3. **Contact Educational Institutions**

Each design professional shall call the City and County of San Francisco Office of Economic and Workforce Development (OEWD) 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 or OEWD 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 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) or OEWD may require the design professionals to send a confirming letter or complete its form(s). Each design professional is required to timely provide all of the information requested by the OEWD or educational institution(s) in order to get the referrals.

4. **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 be discussed with the design professional during the initial phone request. The design professional is required to follow the process set by the educational institution(s) in order to get the referrals.

5. **Action by Design Professionals When Referrals Available**

The design professional shall 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 strongly encourages the design professional to hire a qualified San Francisco resident referred by the educational institution(s). The design professional shall notify the educational institution in writing of the hiring decision.

6. **Action by Design Professionals When Referrals Unavailable**

If after contacting two or more educational institutions the design professional is informed that no 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 Agreement, 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 Section IV and submit a copy of its file to the Agency Compliance Officer upon request.

7. **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 educational institution(s) after this additional five (5) business day period has run, then the design professional has fulfilled its obligation under this Section IV, 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 Agreement and submit a copy of its file to the Agency Compliance Officer upon request.

8. Termination of Trainee for Cause

If at any time during the Term, it becomes necessary to terminate for cause a trainee who was hired under this Agreement and the design professional has not met the minimum duration requirements under this policy, then the design professional shall hire a new trainee by following the process set forth above.

B. Reporting Requirements For Trainee Hires

1. Reporting

Upon completion of the Term of the Agreement or the term of the design professional's contract with the Agency-Assisted Contractor, whichever is less, the design professional (i.e. Employer) shall fax or email a report to the Agency Compliance Officer stating in detail: (1) the names of the San Francisco resident(s) interviewed for trainee positions; (2) the date(s) of each interview; (3) the reasons for not hiring the San Francisco resident(s) interviewed; (4) the name, address, gender and racial/ethnic background of the successful candidate for the trainee position; and (5) the number of San Francisco residents hired as trainees.

2. Report on Terminations

In the event a 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); and (4) whether the design professional replaced the trainee(s).

V. TERM. The obligations of the Agency-Assisted Contractor and/or Contractor(s) with respect to SBE Program shall remain in effect until completion of all work to be performed by the Agency-Assisted Contractor in connection with the original construction of the site and any tenant improvements on the site performed by or at the behest of the Agency-Assisted Contractor unless another term is specified in the Agency-Assisted Contract or Contract.

VI. FIRST CONSIDERATION. First consideration will be given by the Agency or Agency-Assisted Contractor in awarding contracts in the following order: (1) Project Area SBEs, (2) San Francisco-based SBEs (outside an Agency Project or Survey Area, but within San Francisco), and (3) Non-San Francisco-based SBEs. Non-San Francisco-based SBEs should be used to satisfy participation goals only if Project Area SBEs or San Francisco-based SBEs are not available, qualified, or if their bids or fees are significantly higher than those of non-San Francisco-based SBEs.

VII. ASSOCIATIONS AND JOINT VENTURES (JV). OCII will recognize JVs and Associations between non-SBE firms and SBE firms where the SBE partner performs at least 35% of the work defined in the JV or Association agreement, and receives at least 35% (or a proportionate share, whichever is higher) of the dollars to be earned by the JV or Association. Under this arrangement, OCII will deem the JV or Association to be an SBE for the purposes of meeting the SBE goal. Due to the technical nature of the disciplines and the various standards of each industry, OCII will not require a standardized agreement. However, each JV and Association agreement must be in writing and contain, at a minimum, the following terms:

- Define the management of the agreement between the parties;
- Define the technical and managerial responsibilities of each party;
- Define the scope of work to be performed by each party, and where possible identify the percentage and break-down of scope of work for each party;
- Identify any additional subcontractors or consultants that will perform the work under the agreement;
- Define the schedule, duration, and deliverable of the agreement;
- Detail the fee schedule, fee breakdown, or division of compensation;
- Specify insurance requirements and/or if each party shall maintain its own insurance;
- Specify how additional work or changes in scope shall be negotiated or determined and which party shall be responsible for notifying OCII of the changes;
- Specify how claims and disputes will be resolved.

A copy of the JV or Association agreement must be provided to OCII for approval in order for the JV or Association to be recognized.

VIII. CERTIFICATION. The Agency no longer certifies SBEs but instead relies on the information provided in other public entities' business certifications to establish eligibility for the Agency's program. Only businesses certified by the Agency as SBEs whose certification has not expired and economically disadvantaged businesses that meet the Agency's SBE Certification Criteria will be counted toward meeting the participation goals. The SBE Certification Criteria are set forth in the SBE Policy.

IX. INCORPORATION. Each contract between the Agency, Agency-Assisted Contractor or Contractor on the one hand, and any subcontractor on the other hand, shall physically incorporate as an attachment or exhibit and make binding on the parties to that contract, a true and correct copy of this SBE Agreement.

X. DEFINITIONS. Capitalized terms not otherwise specifically defined in this SBE Agreement have the meaning set forth in the Agency's SBE Policy adopted on November 16, 2004 and amended on July 21, 2009 ("**Policy**") or as defined in the Agency-Assisted Contract or Contract. In the event of a conflict in the meaning of a defined term, the SBE Policy shall govern over the Agency-Assisted Contract or Contract which in turn shall govern over this SBE Agreement.

Affiliates means an affiliation with another business concern is based on the power to control, whether exercised or not. Such factors as common ownership, common management and identity of interest (often found in members of the same family), among others, are indicators of affiliation. Power to control exists when a party or parties have 50 percent or more ownership. It may also exist with considerably less than 50 percent ownership by contractual arrangement or when one or more parties own a large share compared to other parties. Affiliated business concerns need not be in the same line of business.

Agency-Assisted Contract means, as applicable, the Development and Disposition Agreement (“DDA”), Land Disposition Agreement (“LDA”), Lease, Loan and Grant Agreements, and other similar contracts, and agreement that the Agency executed with for-profit or non-profit entities.

Agency-Assisted Contractor means any person(s), firm, partnership, corporation, or combination thereof, who is negotiating or has executed an Agency-Assisted Contract.

Agency Contract means personal services contracts, purchase requisitions, and other similar contracts and operations agreements that the Agency executes with for-profit or non-profit entities.

Amendment to a Pre-existing Contract means a material change to the terms of any contract, the term of which has not expired on or before the date that this Small Business Enterprise Policy (“SBE Policy”) takes effect, but shall not include amendments to decrease the scope of work or decrease the amount to be paid under a contract.

Annual Receipts means “total income” (or in the case of a sole proprietorship, “gross income”) plus “cost of goods sold” as these terms are defined and reported on Internal Revenue Service tax return forms. The term does not include net capital gains or losses; taxes collected for and remitted to a taxing authority if included in gross or total income, such as sales or other taxes collected from customers and excluding taxes levied on the concern or its employees; proceeds from transactions between a concern and its domestic or foreign affiliates; and amounts collected for another by a travel agent, real estate agent, advertising agent, conference management service provider, freight forwarder or customs broker. For size determination purposes, the only exclusions from receipts are those specifically provided for in this paragraph. All other items, such as subcontractor costs, reimbursements for purchases a contractor makes at a customer's request, and employee-based costs such as payroll taxes, may not be excluded from receipts. Receipts are averaged over a concern's latest three (3) completed fiscal years to determine its average annual receipts. If a concern has not been in business for three (3) years, the average weekly revenue for the number of weeks the concern has been in business is multiplied by 52 to determine its average annual receipts.

Arbitration Party means all persons and entities who attend the arbitration hearing pursuant to Section XIII, as well as those persons and entities who are subject to a default award provided that all of the requirements in Section XIII.L. have been met.

Association means an agreement between two parties established for the purpose of completing a specific task or project. The associate agreement shall provide the SBE associate a significant project management role and the SBE associate shall be recognized in marketing and collateral material. The Association shall be distinguished from traditional subcontracting arrangements via a written Association agreement that defines the management of the agreement, technical and managerial responsibilities of the parties, and defined scopes and percentages of work to be performed by each party with its own resources and labor force. Unlike the more formal Joint Venture, an Association does not require formation of a new business enterprise between the parties. The Associate agreement shall contain, at a minimum, provisions required by Section VII and be subject to OCII approval.

Commercially Useful Function means that the business is directly responsible for providing the materials, equipment, supplies or services in the City and County of San Francisco (“City”) as required by the solicitation or request for quotes, bids or proposals. Businesses that engage in the business of providing brokerage, referral or temporary employment services shall not be deemed to perform a “commercially useful function” unless the brokerage, referral or temporary employment services are required and sought by the Agency.

Contract means any agreement between the Agency and a person(s), firm, partnership, corporation, or combination thereof, to provide or procure labor, supplies or services to, for, or on behalf of the Agency.

Contractor means any person(s), firm, partnership, corporation, or combination thereof, who is negotiating or has executed a Contract.

Joint Venture means an entity established between two parties for the purposes of completing a venture or project. The Joint Venture agreement typically creates a separate business entity and requires acquisition of additional insurance for the newly created joint business entity. The Joint Venture agreement shall contain, at a minimum, provisions required by Section VII and be subject to OCII approval.

Non-San Francisco-based Small Business Enterprise means a SBE that has fixed offices located outside the geographical boundaries of the City.

Office” or “Offices means a fixed and established place(s) where work is performed of a clerical, administrative, professional or production nature directly pertinent to the business being certified. A temporary location or movable property or one that was established to oversee a project such as a construction project office does not qualify as an “office” under this SBE Policy. Work space provided in exchange for services (in lieu of monetary rent) does not constitute an “office.” The office is not required to be the headquarters for the business but it must be capable of providing all the services to operate the business for which SBE certification is sought. An arrangement for the right to use office space on an “as needed” basis where there is no office exclusively reserved for the business does not qualify as an office. The prospective SBE must submit a rental agreement for the office space, rent receipt or cancelled checks for rent payments. If the office space is owned by the prospective SBE, the business must submit property tax or a deed documenting ownership of the office.

Project Area Small Business Enterprise means a business that meets the above-definition of Small Business Enterprise and that: (a) has fixed offices located within the geographical boundaries of a Redevelopment Project or Survey Area where a commercially useful function is performed; (b) is listed in the Permits and License Tax Paid File with a Project Area or Survey Area business street address; (c) possesses a current Business Tax Registration Certificate at the time of the application for certification as a SBE; (d) has been located and doing business in a Project Area or Survey Area for at least six months preceding its application for certification as a SBE; and (e) has a Project Area or Survey Area office in which business is transacted that is appropriately equipped for the type of business for which the enterprise seeks certification as a SBE. Post office box numbers of residential addresses alone shall not suffice to establish a firms’ location in a Project Area or Survey Area.

Project Area means an area of San Francisco that meets the requirements under Community Redevelopment Law, Health and Safety Code Section 33320.1. These areas currently include the Bayview Industrial Triangle, Bayview Hunters Point (Area B), Hunters Point Shipyard, Mission Bay (North), Mission Bay (South), Rincon Point/South Beach, South of Market, and Transbay.

San Francisco-based Small Business Enterprise means a SBE that: (a) has fixed offices located within the geographical boundaries of the City where a commercially useful function is performed; (b) is listed in the Permits and License Tax Paid File with a San Francisco business street address; (c) possesses a current Business Tax Registration Certificate at the time of the application for certification as a SBE; (d) has been located and doing business in the City for at least six months preceding its application for certification as a SBE; and (e) has a San Francisco office in which business is transacted that is appropriately equipped for the type of business for which the enterprise seeks certification as a

SBE. Post office box numbers or residential addresses alone shall not suffice to establish a firm's status as local.

Small Business Enterprise (SBE) means an economically disadvantaged business that: is an independent and continuing business for profit; performs a commercially useful function; is owned and controlled by persons residing in the United States or its territories; has average gross annual receipts in the three years immediately preceding its application for certification as a SBE that do not exceed the following limits:

Industry	OCH SBE Size Standard
Construction Contractors	\$20,000,000
Specialty Construction Contractors	\$14,000,000
Suppliers (goods/materials/ equipment and general services)	\$10,000,000
Professional Services	\$2,500,000
Trucking	\$3,500,000

In addition, an economically disadvantaged business shall meet the other certification criteria described in Exhibit I of the SBE Policy in order to be considered an SBE by the Agency.

In order to determine whether or not a firm meets the above economic size definitions, the Agency will use the firm's three most recent business tax returns (i.e., 1040 with Schedule C for Sole Proprietorships, 1065s with K-1s for Partnerships, and 1120s for Corporations) to calculate the firm's three year average annual gross receipts. In addition, the calculation of a firm's size shall include the receipts of all affiliates.

Once a business reaches the 3-year average size threshold for the applicable industry the business ceases to be economically disadvantaged, it is not an eligible SBE and it will not be counted towards meeting SBE contracting requirements (or goals).

Specialty Construction Contractor means a contractor licensed by the Contractors State License Board under the "C" classification license pursuant to California Business and Professions Code Section 7058.

Survey Area means an area of San Francisco that meets the requirements of the Community Redevelopment Law, Health and Safety Code Section 33310. These areas currently include the Bayview Hunters Point Redevelopment Survey Area C.

XI. GOOD FAITH EFFORTS TO MEET SBE GOALS Compliance with the following steps will be the basis for determining if the Agency-Assisted Contractor and/or Consultant has made good faith efforts to meet the goals for SBEs:

A. Outreach. Not less than 30 days prior to the opening of bids or the selection of contractors, the Agency-Assisted Contractor or Contractor shall:

1. **Advertise.** Advertise for SBEs interested in competing for the contract, in general circulation media, trade association publications, including timely use of the ***Bid and Contract Opportunities*** newsletter published by the City and County of San Francisco Purchasing Department and

media focused specifically on SBE businesses such as the *Small Business Exchange*, of the opportunity to submit bids or proposals and to attend a pre-bid meeting to learn about contracting opportunities.

2. **Request List of SBEs.** Request from the Agency's Contract Compliance Department a list of all known SBEs in the pertinent field(s), particularly those in the Project and Survey Areas and provide written notice to all of them of the opportunity to bid for contracts and to attend a pre-bid or pre-solicitation meeting to learn about contracting opportunities.

B. Pre-Solicitation Meeting. For construction contracts estimated to cost \$5,000 or more, hold a pre-bid meeting for all interested contractors not less than 15 days prior to the opening of bids or the selection of contractors for the purpose answering questions about the selection process and the specifications and requirements. Representatives of the Contract Compliance Department will also participate.

C. Follow-up. Follow up initial solicitations of interest by contacting the SBEs to determine with certainty whether the enterprises are interested in performing specific items involved in work.

D. Subdivide Work. Divide, to the greatest extent feasible, the contract work into small units to facilitate SBE participation, including, where feasible, offering items of the contract work which the Contractor would normally perform itself.

E. Provide Timely and Complete Information. The Agency-Assisted Contractor or Contractor shall provide SBEs with complete, adequate and ongoing information about the plans, specifications and requirements of construction work, service work and material supply work. This paragraph does not require the Agency-Assisted Contractor or Contractor to give SBEs any information not provided to other contractors. This paragraph does require the Agency Assisted Contractor and Contractor to answer carefully and completely all reasonable questions asked by SBEs and to undertake every good faith effort to ensure that SBEs understand the nature and the scope of the work.

F. Good Faith Negotiations. Negotiate with SBEs in good faith and demonstrate that SBEs were not rejected as unqualified without sound reasons based on a thorough investigation of their capacities.

G. Bid Shopping Prohibited. Prohibit the shopping of the bids. Where the Agency-Assisted Contractor or Contractor learns that bid shopping has occurred, it shall treat such bid shopping as a material breach of contract.

H. Other Assistance. Assist SBEs in their efforts to obtain bonds, lines of credit and insurance. (Note that the Agency has a Surety Bond Program that may assist SBEs in obtaining necessary bonding.) The Agency-Assisted Contractor or Contractor(s) shall require no more stringent bond or insurance standards of SBEs than required of other business enterprises.

I. Delivery Scheduling. Establish delivery schedules which encourage participation of SBEs.

J. Utilize SBEs as Lower Tier Subcontractors. The Agency-Assisted Contractor and its Contractor(s) shall encourage and assist higher tier subcontractors in undertaking good faith efforts to utilize SBEs as lower tier subcontractors.

K. Maximize Outreach Resources. Use the services of SBE associations, federal, state and local SBE assistance offices and other organizations that provide assistance in the recruitment and

placement of SBEs, including the Small Business Administration and the Business Development Agency of the Department of Commerce. However, only SBEs certified by the Agency shall count towards meeting the participation goal.

L. Replacement of SBE. If during the term of this SBE Agreement, it becomes necessary to replace any subcontractor or supplier, the Agency's Contract Compliance Specialist should be notified prior to replacement due to the failure or inability of the subcontractor or supplier to perform the required services or timely delivery the required supplies, then First Consideration should be given to a certified SBE, if available, as a replacement.

XII. ADDITIONAL PROVISIONS

A. No Retaliation. No employee shall be discharged or in any other manner discriminated against by the Agency-Assisted Contractor or Contractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or relating to enforcement of this Agreement.

B. 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) in the performance of an Agency-Assisted Contract or Contract. The Agency-Assisted Contractor or Contractor will ensure that applicants are employed, and that employees are treated during employment, 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 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.

C. Compliance with Prompt Payment Statute. Construction contracts and subcontracts awarded for \$5,000 or more shall contain the following provision:

“Amounts for work performed by a subcontractor shall be paid within seven (7) days of receipt of funds by the contractor, pursuant to California Business and Professions Code Section 7108.5 *et seq.* Failure to include this provision in a subcontractor or failure to comply with this provision shall constitute an event of default which would permit the Agency to exercise any and all remedies available to it under contract, at law or in equity.”

In addition to and not in contradiction to the Prompt Payment Statute (California Business and Professions Code Section 7108.5 *et seq.*), if a dispute arises which would allow a Contractor to withhold payment to a subcontractor due to a dispute, the Contractor shall only withhold that amount which directly relates to the dispute and shall promptly pay the remaining undisputed amount, if any.

D. Submission Of Electronic Certified Payrolls. For any Agency-Assisted Contract which requires the submission of certified payroll reports, the requirements of Section VII of the Agency's Small Business Enterprise Policy shall apply. Please see the Small Business Enterprise Policy for more details.

XIII. PROCEDURES

A. Notice to Agency. The Agency-Assisted Contractor or Contractor(s) shall provide the Agency with the following information within 10 days of awarding a contract or selecting subconsultant:

1. the nature of the contract, e.g. type and scope of work to be performed;
2. the dollar amount of the contract;
3. the name, address, license number, gender and ethnicity of the person to whom the contract was awarded; And
4. SBE status of each subcontractor or subconsultant.

B. Affidavit. If the Agency-Assisted Contractor or Contractor(s) contend that the contract has been awarded to a SBE, the Agency-Assisted Contractor or Contractor(s) shall, at the same time also submit to the Agency a SBE Application for Certification and its accompanying Affidavit completed by the SBE owner. However, a SBE that was previously certified by the Agency shall submit only the short SBE Eligibility Statement.

C. Good Faith Documentation. If the 50% SBE Participation Goals are not met in each category (Construction, Professional Services and Suppliers), the Agency-Assisted Contractor or Contractor(s) shall meet and confer with the Agency at a date and time set by the Agency. If the issue of the Agency-Assisted Contractor's or Contractor's good faith efforts is not resolved at this meeting, the Agency-Assisted Contractor or Contractor shall submit to the Agency within five (5) days, a declaration under penalty of perjury containing the following documentation with respect to the good faith efforts ("**Submission**"):

1. A report showing the responses, rejections, proposals and bids (including the amount of the bid) received from SBEs, including the date each response, proposal or bid was received. This report shall indicate the action taken by the Agency-Assisted Contractor or Contractor(s) in response to each proposal or bid received from SBEs, including the reasons(s) for any rejections.

2. A report showing the date that the bid was received, the amount bid by and the amount to be paid (if different) to the non-SBE contractor that was selected. If the non-SBE contractor who was selected submitted more than one bid, the amount of each bid and the date that each bid was received shall be shown in the report. If the bidder asserts that there were reasons other than the respective amounts bid for not awarding the contract to an SBE, the report shall also contain an explanation of these reasons.

3. Documentation of advertising for and contacts with SBEs, contractor associations or development centers, or any other agency which disseminates bid and contract information to small business enterprises.

4. Copies of initial and follow-up correspondence with SBEs, contractor associations and other agencies, which assist SBEs.

5. A description of the assistance provided SBE firms relative to obtaining and explaining plans, specifications and contract requirements.

6. A description of the assistance provided to SBEs with respect to bonding, lines of credit, etc.

7. A description of efforts to negotiate or a statement of the reasons for not negotiating with SBEs.
8. A description of any divisions of work undertaken to facilitate SBE participation.
9. Documentation of efforts undertaken to encourage subcontractors to obtain small business enterprise participation at a lower tier.
10. A report which shows for each private project and each public project (without a SBE program) undertaken by the bidder in the preceding 12 months, the total dollar amount of the contract and the percentage of the contract dollars awarded to SBEs and the percentage of contract dollars awarded to non-SBEs.
11. Documentation of any other efforts undertaken to encourage participation by small business enterprises.

D. Presumption of Good Faith Efforts. If the Agency-Assisted Contractor or Contractor(s) achieves the Participation Goals, it will not be required to submit Good Faith Effort documentation.

E. Waiver. Any of the SBE requirements may be waived if the Agency determines that a specific requirement is not relevant to the particular situation at issue, that SBEs were not available, or that SBEs were charging an unreasonable price.

F. SBE Determination. The Agency shall exercise its reasonable judgment in determining whether a business, whose name is submitted by the Agency-Assisted Contractor or Contractor(s) as a SBE, is owned and controlled by a SBE. A firm's appearance in any of the Agency's current directories will be considered by the Agency as prima facie evidence that the firm is a SBE. Where the Agency-Assisted Contractor or Contractor(s) makes a submission the Agency shall make a determination, as to whether or not a business which the Agency-Assisted Contractor or Contractor(s) claims is a SBE is in fact owned and controlled by San Francisco-based SBEs. If the Agency determines that the business is not a SBE, the Agency shall give the Agency-Assisted Contractor or Contractor a Notice of Non-Qualification and provide the Agency-Assisted Contractor or Contractor with a reasonable period (not to exceed 20 days) in which to meet with the Agency and if necessary make a Submission, concerning its good faith efforts. If the Agency-Assisted Contractor or Contractor disagrees with the Agency's Notice of Non-Qualification, the Agency-Assisted Contractor or Contractor may request arbitration pursuant to Section XIII.

G. Agency Investigation. Where the Agency-Assisted Contractor or Contractor makes a Submission and, as a result, the Agency has cause to believe that the Agency-Assisted Contractor or Contractor has failed to undertake good faith efforts, the Agency shall conduct an investigation, and after affording the Agency-Assisted Contractor or Contractor notice and an opportunity to be heard, shall recommend such remedies and sanctions as it deems necessary to correct any alleged violation(s). The Agency shall give the Agency-Assisted Contractor or Contractor a written Notice of Non-Compliance setting forth its findings and recommendations. If the Agency-Assisted Contractor or Contractor disagrees with the findings and recommendations of the Agency as set forth in the Notice of Non-Compliance, the Agency-Assisted Contractor or Contractor may request arbitration pursuant to this SBE Agreement.

XIV. ARBITRATION OF DISPUTES.

A. Arbitration by AAA. Any dispute regarding this SBE Agreement shall be determined by arbitration through the American Arbitration Association, San Francisco, California office ("AAA") in accordance with the Commercial Rules of the AAA then applicable, but subject to the further revisions thereof. The arbitration shall take place in the City and County of San Francisco.

B. Demand for Arbitration. Where the Agency-Assisted Contractor or Contractor disagrees with the Agency's Notice of Non-Qualification or Notice of Non-Compliance, **the Agency-Assisted Contractor or Contractor shall have seven (7) business days, in which to file a Demand for Arbitration**, unless otherwise stipulated by the parties. The Demand for Arbitration shall contain at a minimum: (1) a cover letter demanding arbitration under this provision and identifying any entities believed to be involved in the dispute; (2) a copy of the Notice of Non-Qualification or Notice of Non-Compliance; and (3) any written response to the Notice of Non-Qualification or Notice of Non-Compliance. If the Agency-Assisted Contractor and Contractor fail to file a timely Demand for Arbitration, the Agency-Assisted Contractor and Contractor shall be deemed to have accepted and to be bound by the finding of Non-Qualification or the findings and recommendations contained in the Notice of Non-Compliance.

C. Parties' Participation. The Agency and all persons or entities who have a contractual relationship affected by the dispute shall be made an Arbitration Party. 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 person or entity as an Arbitration Party, provided however, that the Agency-Assisted Contractor or Contractor made an initial timely Demand for Arbitration pursuant to Section XIII.B. above.

D. Agency Request to AAA. Within seven (7) business days after service of a Demand for Arbitration, the Agency shall transmit to AAA a copy of the Demand for Arbitration, the Notice of Non-Qualification or Notice of Non-Compliance, and any written response thereto from the affected party. 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 parties to the arbitration 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) days from the receipt of the panel, AAA shall appoint the arbitrator. A condition to the selection of any arbitrator shall be that person's agreement to render a decision within ninety (90) days from the arbitrator's fulfillment of the disclosure requirements set forth in California Code of Civil Procedure Section 1281.9.

F. Setting of Arbitration Hearing. A hearing shall be held within ninety (90) days of the date of the filing of the Request, 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.

H. Burden of Proof. The burden of proof with respect to SBE status and/or Good Faith Efforts shall be on the Agency-Assisted Contractor and/or Contractor. The burden of proof as to all other alleged breaches by the Agency-Assisted Contractor and/or Contractor shall be on the Agency.

I. California Law Applies. Except where expressly stated to the contrary in this SBE Agreement, California law, including the California Arbitration Act, Code of Civil Procedure §§ 1280 through 1294.2, shall govern all arbitration proceedings.

J. 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.

2. Require any Arbitration Party to refrain from entering into new contracts related to work covered by the Agency-Assisted Contract or this SBE Agreement, or from granting extensions or other modifications to existing contracts related to services covered by the Agency-Assisted Contract or this SBE Agreement, other than those minor modifications or extensions necessary to enable compliance with this SBE 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 party to the arbitration to comply with any of the SBE Program requirements in the Agency-Assisted Contract or this SBE 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 SBE Agreement unless the breaching party has failed to cure after being provided 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 the Agency 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.

K. Arbitrator's Decision. The arbitrator shall make his or her award within twenty (20) days after the date that the hearing is completed; 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.

L. 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) said 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.

M. Arbitrator Lacks Power to Modify. Except as otherwise provided, the arbitrator shall

have no power to add to, subtract from, disregard, modify or otherwise alter the terms of the Agency-Assisted Contract, this SBE Agreement or any other agreement between the Agency, the Agency-Assisted Contractor or Contractor or to negotiate new agreements or provisions between the parties.

N. 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 non-prevailing Arbitration Party(ies) shall pay the arbitrator's fees and related costs of arbitration (or reimburse the Arbitration Parties that advanced such arbitration fees and costs). 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.

O. Exculpatory Clause. Agency-Assisted Contractor or Contractor (regardless of tier) expressly waive any and all claims against the Agency for damages, direct or indirect, including, without limitation, claims relative to the commencement, continuance and completion of construction and/or providing professional and consulting services ("the Work"). Agency-Assisted Contractor or Contractor (regardless of tier) acknowledge and agree that the procedures set forth herein for dealing with alleged breaches or failure to comply with the obligations and requirements of this SBE Agreement are reasonable and have been anticipated by the parties in securing financing, in inviting, submitting and receiving bids and proposals for the planning, design and construction of the improvements and in determining the times for commencement and completion of the planning, design and construction and/or for providing consulting, professional or personal services.

P. Severability. The provisions of this SBE Agreement are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this SBE Agreement or the invalidity of the application thereof to any person or circumstance shall not affect the validity of the remainder of this SBE Agreement or the validity of their application to other persons or circumstances.

Q. Arbitration Notice: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS SUCH RIGHTS ARE SPECIFICALLY INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION TO NEUTRAL ARBITRATION.

Agency

Agency-Assisted Contractor

XV. AGREEMENT EXECUTION

I, hereby certify that I have authority to execute this SBE Agreement on behalf of the business, organization or entity listed below and that it will use good faith efforts to comply with the Agency's 50% SBE Participation Goals. I declare under penalty of perjury under the laws of the State of California that the above statement is true and correct.

Signature

Date

Print Your Name

Title

Company Name and Phone Number

PREVAILING WAGE PROVISIONS
(LABOR STANDARDS)

1. **Applicability.** These Prevailing Wage Provisions (hereinafter referred to as "Labor Standards") apply to any and all contracts for construction, alteration, demolition, installation, repair, or maintenance of public facilities or improvements.
2. **All Contracts and Subcontracts for construction and construction-related improvements shall contain the Labor Standards.**
 - (a) All specifications relating to the construction of the improvements shall contain these Labor Standards and the Contractor shall have the responsibility to assure that all contracts and subcontracts, regardless of tier, incorporate by reference the specifications containing these Labor Standards. If for any reason said Labor Standards are not included, the Labor Standards shall nevertheless apply. The Contractor shall supply the Agency with true copies of each contract relating to the construction of the improvements showing the specifications that contain these Labor Standards promptly after due and complete execution thereof and before any work under such contract commences. Failure to do shall be a violation of these Labor Standards.
3. **Definitions.** The following definitions shall apply for purposes of this Attachment 1.2:
 - (a) "Contractor" is the Contractor if permitted by law to act as a contractor, the general contractor, and any contractor as well as any subcontractor of any tier subcontractor having a contract or subcontract that exceeds \$10,000, and who employs Laborers, Mechanics, working foremen, and security guards to perform the construction on all or any part of the improvements.
 - (b) "Laborers" and "Mechanics" are all persons providing labor to perform the construction, including working foremen and security guards.
 - (c) "Working foreman" is a person who, in addition to performing supervisory duties, performs the work of a Laborer or Mechanic during at least 20 percent of the work week.
4. **Prevailing Wage.**
 - (a) All Laborers and Mechanics employed in the construction of the improvements will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by §5) the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at the time of payment computed at rates not less than those contained in the General Prevailing Wage Determination (hereinafter referred to as the "Wage Determination") made by the Director of Industrial Relations pursuant to California Labor Code Part 7, Chapter 1, Article 2, sections 1770, 1773 and

1773.1, regardless of any contractual relationship which may be alleged to exist between the Contractor and such Laborers and Mechanics. A copy of the applicable Wage Determination is on file in the offices of the Agency.

All Laborers and Mechanics shall be paid the appropriate wage rate and fringe benefits for the classification of work actually performed, without regard to skill. Laborers or Mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein provided that the Contractor's payroll records accurately set forth the time spent in each classification in which work is performed.

- (b) Whenever the wage rate prescribed in the Wage Determination for a class of Laborers or Mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit in the manner as stated therein i.e. the vacation plan, the health benefit program, the pension plan and the apprenticeship program, or shall pay an hourly cash equivalent thereof.
- (c) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any Laborer or Mechanic the amount of any costs reasonably anticipated in providing benefits under a plan or program of a type expressly listed in the Wage Determination, provided that the Executive Director of the Agency has found, upon the written request of the Contractor, made through the Contractor that the intent of the Labor Standards has been met. Records of such costs shall be maintained in the manner set forth in subsection (a) of §8. The Executive Director of the Agency may require the Contractor to set aside in a separate interest bearing account with a member of the Federal Deposit Insurance Corporation, assets for the meeting of obligations under the plan or program referred to above in subsection (b) of this §4. The interest shall be accumulated and shall be paid as determined by the Agency acting at its sole discretion.
- (d) Regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

5. **Permissible Payroll Deductions.** The following payroll deductions are permissible deductions. Any others require the approval of the Agency's Executive Director.

- (a) Any withholding made in compliance with the requirements of Federal, State or local income tax laws, and the Federal social security tax.
- (b) Any repayment of sums previously advanced to the employee as a bona fide prepayment of wages when such prepayment is made without discount or interest. A "bona fide prepayment of wages" is considered to have been made only when case or its equivalent has been advanced to the employee in such

ATTACHMENT #1.2

manner as to give him or her complete freedom of disposition of the advanced funds.

- (c) Any garnishment, unless it is in favor of the Contractor (or any affiliated person or entity), or when collusion or collaboration exists.
- (d) Any contribution on behalf of the employee, to funds established by the Contractor, representatives of employees or both, for the purpose of providing from principal, income or both, medical or hospital care, pensions or annuities on retirement, death benefits, compensation for injuries, illness, accidents, sickness or disability, or for insurance to provide any of the foregoing, or unemployment benefits, vacation pay, savings accounts or similar payments for the benefit of employees, their families and dependents provided, however, that the following standards are met:
 - 1. The deduction is not otherwise prohibited by law; and
 - 2. It is either:
 - a. Voluntarily consented to by the employee in writing and in advance of the period in which the work is to be done and such consent is not a condition either for obtaining or for the continuation of employment, or
 - b. Provided for in a bona fide collective bargaining agreement between the Contractor and representatives of its employees; and
 - 3. No profit or other benefit is otherwise obtained, directly or indirectly, by the Contractor (or any affiliated person or entity) in the form of commission, dividend or otherwise; and
 - 4. The deduction shall serve the convenience and interest of the employee.
- (e) Any authorized purchase of United States Savings Bonds for the employee.
- (f) Any voluntarily authorized repayment of loans from or the purchase of shares in credit unions organized and operated in accordance with Federal and State credit union statutes.
- (g) Any contribution voluntarily authorized by the employee for the American Red Cross, United Way and similar charitable organizations.
- (h) Any payment of regular union initiation fees and membership dues, but not including fines or special assessments provided, that a collective bargaining agreement between the Contractor and representatives of its employees

provides for such payment and the deductions are not otherwise prohibited by law.

6. **Apprentices and Trainees.** Apprentices and trainees will be permitted to work at less than the Mechanic's rate for the work they perform when they are employed pursuant to and are individually registered in an apprenticeship or trainee program approved by the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training ("BAT") or with the California Department of Industrial Relations, Division of Apprenticeship Standards ("DAS") or if a person is employed in his or her first 90 days of probationary employment as an apprentice or trainee in such a program, who is not individually registered in the program, but who has been certified by BAT or DAS to be eligible for probationary employment. Any employee listed on a payroll at an apprentice or trainee wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate for a Mechanic. Every apprentice or trainee must be paid at not less than the rate specified in the registered program for the employee's level of progress, expressed as a percentage of a Mechanic's hourly rate as specified in the Wage Determination. Apprentices or trainees shall be paid fringe benefits in accordance with the provisions of the respective program. If the program does not specify fringe benefits, employees must be paid the full amount of fringe benefits listed in the Wage Determination.
7. **Overtime.** No Contractor contracting for any part of the construction of the improvements which may require or involve the employment of Laborers or Mechanics shall require or permit any such Laborer or Mechanic in any workweek in which he or she is employed on such construction to work in excess of eight hours in any calendar day or in excess of 40 hours in such workweek unless such Laborer or Mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of eight hours in any calendar day or in excess of 40 hours in such workweek, whichever is greater.
8. **Payrolls and Basic Records.**
 - (a) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of its construction of the improvements and preserved for a period of one year thereafter for all Laborers and Mechanics it employed in the construction of the improvements. Such records shall contain the name, address and social security number of each employee, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for fringe benefits or cash equivalents thereof), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the wages of any Laborer or Mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program, the Contractor shall maintain records which show the costs anticipated or the actual costs incurred in providing such benefits and that the plan or program has been communicated in writing to the Laborers or Mechanics affected. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of

ATTACHMENT #1.2

apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage prescribed in the applicable programs or the Wage Determination.

- (b) 1. The Contractor shall submit to the Agency on each Wednesday at noon a copy of the payrolls for the week preceding the previous week in which any construction of the improvements was performed. The payrolls submitted shall set out accurately and completely all of the information required by the Agency's Optional Form, an initial supply of which may be obtained from the Agency. The Contractor if a prime contractor or the Contractor acting as the Contractor is responsible for the submission of copies of certified payrolls by all subcontractors; otherwise each Contractor shall timely submit such payrolls.
 - 2. Each weekly payroll shall be accompanied by the Statement of Compliance that accompanies the Agency's Optional Form and properly executed by the Contractor or his or her agent, who pays or supervises the payment of the employees.
 - (c) The Contractor shall make the records required under this §8 available for inspection or copying by authorized representatives of the Agency, and shall permit such representatives to interview employees during working hours on the job. On request the Executive Director of the Agency shall advise the Contractor of the identity of such authorized representatives.
9. **Occupational Safety and Health.** No Laborer or Mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous to his or her safety and health as determined under construction safety and health standards promulgated by Cal-OSHA or if Cal-OSHA is terminated, then by the federal OSHA.
10. **Equal Opportunity Program.** The utilization of apprentices, trainees, Laborers and Mechanics under this part shall be in conformity with the Agency's equal opportunity program set forth in Attachments 1-4.
11. **Nondiscrimination Against Employees for Complaints.** No Laborer or Mechanic to whom the wage, salary or other Labor Standards of this Agreement are applicable shall be discharged or in any other manner discriminated against by the Contractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or relating to these Labor Standards.
12. **Posting of Notice to Employees.** A copy of the Wage Determination referred to in subsection (a) of §4 together with a copy of a "Notice to Employees," in the form appearing on the last page of these Labor Standards, shall be given to the Contractor at the close of escrow. The Notice to Employees and the Wage Determination shall both be posted and maintained by the Contractor in a prominent place readily accessible to all

applicants and employees performing construction of the improvements before construction commences. If such Notice and Wage Determination is not so posted or maintained, the Agency may do so.

13. Violation and Remedies.

- (a) Liability to Employee for Unpaid Wages. The Contractor shall be liable to the employee for unpaid wages, overtime wages and benefits in violation of these Labor Standards.
- (b) Stop Work--Contract Terms, Records and Payrolls. If there is a violation of these Labor Standards by reason of the failure of any contract or subcontract for the construction of the improvements to contain the Labor Standards as required by §2 ("Non-Conforming Contract"); or by reason of any failure to submit the payrolls or make records available as required by §8 ("Non-Complying Contractor"), the Executive Director of the Agency may, after written notice to the Contractor with a copy to the Contractor involved and failure to cure the violation within five working days after the date of such notice, stop the construction work under the Non-Conforming Contract or of the Non-Complying Contractor until the Non-Conforming Contract or the Non-Complying Contractor comes into compliance.
- (c) Stop Work and Other Violations. For any violation of these Labor Standards the Executive Director of the Agency may give written notice to the Contractor, with a copy to the Contractor involved, which notice shall state the claimed violation and the amount of money, if any, involved in the violation. Within five working days from the date of said notice, the Contractor shall advise the Agency in writing whether or not the violation is disputed by the Contractor and a statement of reasons in support of such dispute (the "Notice of Dispute"). In addition to the foregoing, the Contractor, upon receipt of the notice of claimed violation from the Agency, shall with respect to any amount stated in the Agency notice withhold payment to the Contractor of the amount stated multiplied by 45 working days and shall with the Notice of Dispute, also advise the Agency that the moneys are being or will be withheld. If the Contractor fails to timely give a Notice of Dispute to the Agency or to advise of the withhold, then the Executive Director of the Agency may stop the construction of the improvements under the applicable contract or by the involved Contractor until such Notice of Dispute and written withhold advice has been received.

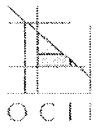
Upon receipt of the Notice of Dispute and withhold advice, any stop work which the Executive Director has ordered shall be lifted, but the Contractor shall continue to withhold the moneys until the dispute has been resolved either by agreement, or failing agreement, by arbitration as is provided in §14.

- (d) Withholding Certificates of Completion. The Agency may withhold any or all certificates of completion of the improvements provided for in this Agreement, for any violations of these Labor Standards until such violation has been cured.
- (e) General Remedies. In addition to all of the rights and remedies herein contained, but subject to arbitration, except as hereinafter provided, the Agency shall have all rights in law or equity to enforce these Labor Standards including, but not limited to, a prohibitory or mandatory injunction. Provided, however, the stop work remedy of the Agency provided above in subsection (b) and (c) is not subject to arbitration.

14. Arbitration of Disputes.

- (a) Any dispute regarding these Labor Standards shall be determined by arbitration through the American Arbitration Association, San Francisco, California office ("AAA") in accordance with the Commercial Rules of the AAA then applicable, but subject to the further provisions thereof.
- (b) The Agency and all persons or entities who have a contractual relationship affected by the dispute shall be made a party to the arbitration. Any such person or entity not made a party in the demand for arbitration may intervene as a party and in turn may name any such person or entity as a party.
- (c) The arbitration shall take place in the City and County of San Francisco.
- (d) Arbitration may be demanded by the Agency, the Contractor or the Contractor.
- (e) With the demand for arbitration, there must be enclosed a copy of these Labor Standards, and a copy of the demand must be mailed to the Agency and the Contractor, or as appropriate to one or the other if the Contractor or the Agency is demanding arbitration. If the demand does not include the Labor Standards they are nevertheless deemed a part of the demand. With the demand if made by the Agency or within a reasonable time thereafter if not made by the Agency, the Agency shall transmit to the AAA a copy of the Wage Determination (referred to in §4) and copies of all notices sent or received by the Agency pursuant to §13. Such material shall be made part of the arbitration record.
- (f) One arbitrator shall arbitrate the dispute. The arbitrator shall be selected from the panel of arbitrators of the AAA by the parties to the arbitration in accordance with the AAA rules. The parties shall act diligently in this regard. If the parties fail to select an arbitrator, within seven (7) days from the receipt of the panel, the AAA shall appoint the arbitrator. A condition to the selection of any arbitrator shall be that person's agreement to render a decision within 30 days from appointment.

- (g) Any party to the arbitration whether the party participates in the arbitration or not shall be bound by the decision of the arbitrator whose decision shall be final and binding on all of the parties and any and all rights of appeal from the decision are waived except a claim that the arbitrator's decision violates an applicable statute or regulation. The decision of the arbitrator shall be rendered on or before 30 days from appointment. The arbitrator shall schedule hearings as necessary to meet this 30 day decision requirement and the parties to the arbitration, whether they appear or not, shall be bound by such scheduling.
 - (h) Any party to the arbitration may take any and all steps permitted by law to enforce the arbitrator's decision and if the arbitrator's decision requires the payment of money the Contractor shall make the required payments and the Contractor shall pay the Contractor from money withheld.
 - (i) Costs and Expenses. Each party shall bear its own costs and expenses of the arbitration and the costs of the arbitration shall be shared equally among the parties.
15. **Non-liability of the Agency.** The Contractor and each Contractor acknowledge and agree that the procedures hereinafter set forth for dealing with violations of these Labor Standards are reasonable and have been anticipated by the parties in securing financing, in inviting, submitting and receiving bids for the construction of the improvements, in determining the time for commencement and completion of construction and in proceeding with construction work. Accordingly the Contractor, and any Contractor, by proceeding with construction expressly waives and is deemed to have waived any and all claims against the Agency for damages, direct or indirect, arising out of these Labor Standards and their enforcement and including but not limited to claims relative to stop work orders, and the commencement, continuance or completion of construction.



OFFICE OF COMMUNITY INVESTMENT AND INFRASTRUCTURE (OCII)
(SUCCESSOR TO THE SAN FRANCISCO REDEVELOPMENT AGENCY)
DECLARATION FORM
Nondiscrimination in Contracts and Benefits

Section A

Is your company/organization currently certified by the City and County of San Francisco in compliance with Administrative Code 12B Equal Benefits Ordinance and will your company/organization ensure nondiscrimination in contracts and benefits pursuant to 12B on OCII contracts? If yes, please indicate below, skip Section B, and execute the Declaration in Section C. If no, please skip Section A and complete Sections B and C.

- ☐ My company/organization is certified and compliant with the 12B Equal Benefits Ordinance of the City and County of San Francisco and there has been no change in our 12B Declaration since certification. My company/organization agrees to ensure nondiscrimination in contracts and benefits pursuant to 12B on OCII contracts. (Please check box to affirm, if applicable)

Section B**1. Nondiscrimination—Protected Classes**

- a. Is it your company/organization's policy that you will not discriminate against your employees, applicants for employment, employees of the Office of Community Investment and Infrastructure (successor to the San Francisco Redevelopment Agency) (Agency), or City and County of San Francisco (City), or members of the public for the following reasons:

- | | | |
|---------------------------|------------------------------|-----------------------------|
| • Race | ☐ Yes | ☐ No |
| • color | ☐ Yes | ☐ No |
| • Creed | ☐ Yes | ☐ No |
| • Religion | ☐ Yes | ☐ No |
| • ancestry | ☐ Yes | ☐ No |
| • national origin | ☐ Yes | ☐ No |
| • Age | ☐ Yes | ☐ No |
| • sex | ☐ Yes | ☐ No |
| • sexual orientation | ☐ Yes | ☐ No |
| • gender identity | ☐ Yes | ☐ No |
| • marital status | ☐ Yes | ☐ No |
| • domestic partner status | ☐ Yes | ☐ No |
| • Disability | ☐ Yes | ☐ No |
| • AIDS or HIV status | ☐ Yes | ☐ No |

- b. Do you agree to insert a similar nondiscrimination provision in any subcontract you enter into for the performance of a substantial portion of the contract that you have with the Agency or the City?

☐ Yes ☐ No

If you answered "no" to any part of Question 1a or 1b, the Agency or the City cannot do business with you.

2. Nondiscrimination—Equal Benefits (Question 2 does not apply to subcontracts or subcontractors)

- a. Do you provide, or offer access to, any benefits to employees with spouses or to spouses of employees?

☐ Yes ☐ No

- b. Do you provide, or offer access to, any benefits to employees with domestic partners (Partners) or to domestic partners of employees?

☐ Yes ☐ No

If you answered "no" to both Questions 2a and 2b, skip 2c and 2d, and sign, date and return this form. If you answered "yes" to Question 2a or 2b, continue to 2c.

- c. If "yes," please indicate which ones. This list is not intended to be exhaustive. Please list any other benefits you provide (even if the employer does not pay for them).

ATTACHMENT #2

Benefit	Yes, for Spouses	Yes, for Partners	No
• Medical (health, dental, vision)	☐	☐	☐
• Pension	☐	☐	☐
• Bereavement	☐	☐	☐
• Family leave	☐	☐	☐
• Parental leave	☐	☐	☐
• Employee assistance programs	☐	☐	☐
• Relocation and travel	☐	☐	☐
• Company discounts, facilities, events	☐	☐	☐
• Credit union	☐	☐	☐
• Child care	☐	☐	☐
• Other _____	☐	☐	☐
• Other _____	☐	☐	☐

- d. If you answered "yes" to Question 2a or 2b, and in 2c indicated that you do not provide equal benefits, you may still comply with the Policy if you have taken all reasonable measures to end discrimination in benefits, have been unable to do so, and now provide employees with a cash equivalent.

- (1) Have you taken all reasonable measures? ☐ Yes ☐ No
- (2) Do you provide a cash equivalent? ☐ Yes ☐ No

3. Documentation for Nondiscrimination in Benefits (Questions 2c and 2d only)

If you answered "yes" to any part of Question 2c or Question 2d, you must attach to this form those provisions of insurance policies, personnel policies, or other documents you have which verify your compliance with Question 2c or Question 2d. Please include the policy sections that list the benefits for which you indicated "yes" in Question 2c. If documentation does not exist, attach an explanation, e.g., some of your personnel policies are unwritten. If you answered "yes" to Question 2d(1) complete and attach form SFRA/CC-103, "Nondiscrimination in Benefits—Reasonable Measures Affidavit," which is available from the Agency. You need not document your "yes" answer to Question 1a or Question 1b.

Section C

I declare (or certify) under penalty of perjury that the foregoing is true and correct, and that I am authorized to bind this entity contractually.

Executed this _____ day of _____, 20____, at _____, _____ (City) _____ (State).

Name of Company/Organization: _____

Doing Business As (DBA): _____

Also Known As (AKA): _____

General Address: _____

Remittance Address (if different from above): _____

Name of Signatory: _____ Title: _____

(Please Print)

Signature: _____

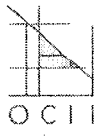
Phone Number: _____ Federal Tax Identification Number: _____

Approximate number of employees in the U.S.: _____ Vendor Number: _____ (if known)

- ☐ Check here if your address has changed.
- ☐ Check here if your organization is a non-profit.
- ☐ Check here if your organization is a governmental entity.

THIS FORM MUST BE RETURNED WITH THE ORIGINAL SIGNATURE

Please return this form to: Office of Community Investment and Infrastructure (successor to the San Francisco Redevelopment Agency), One South Van Ness Avenue, 5th Floor, San Francisco, CA 94103

 OFFICE OF COMMUNITY INVESTMENT AND INFRASTRUCTURE	OFFICE OF COMMUNITY INVESTMENT AND INFRASTRUCTURE INSTRUCTIONS FOR DECLARATION FORM Nondiscrimination in Contracts and Benefits
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A. What is the Nondiscrimination in Contracts Policy?

The Office of Community Investment and Infrastructure (successor agency to the San Francisco Redevelopment Agency) (“Agency”) has adopted a Nondiscrimination in Contracts Policy (“Policy”) which requires companies or organizations providing products or services to, or leasing a real property from, the Agency to agree not to discriminate against groups who are protected from discrimination under the Policy, and to include a similar provision in subcontracts and other agreements. Those provisions are the subjects of this form. The Policy is posted on the Web at: <http://sfocii.org/policies-and-procedures>.

If you do not comply with the Policy, the Agency cannot do business with you, except under certain very limited circumstances.

B. What Agency contracts are covered by the Policy?

- Contracts or purchase orders where the Agency purchases products, services or construction with contractors/vendors whose total amount of business with the Agency exceeds a cumulative amount of \$5,000 in a 12-month period.
- Leases of property owned by the Agency for a term of 30 days or more. In these cases, the Agency is the landlord. The Policy also applies to leases for a term of 30 days or more where the Agency is the tenant.

C. What are the groups protected from discrimination under the Policy?

You may not discriminate against:

- your employees
- an applicant for employment
- any employee of the Agency or the City and County of San Francisco
- a member of the public having contact with you.

D. What are prohibited types of discrimination?

You may not discriminate against the specified groups for the following reasons (see Question 1a on the declaration form).

- | | |
|----------------------|---------------------------|
| • race | • color |
| • creed | • religion |
| • ancestry | • national origin |
| • age | • sex |
| • sexual orientation | • gender identity |
| • marital status | • domestic partner status |
| • disability | • AIDS/HIV status |

In the provision of benefits, you also may not discriminate between employees with spouses and employees with domestic partners, or between the spouses and domestic partners of employees, subject to the conditions listed in F.2 below.

E. How are subcontracts affected?

For any subcontract, sublease, or other subordinate agreement you enter into which is related to a contract you have with the Agency, you must include a nondiscrimination provision (See Question 1b on the Declaration Form). The subcontracting provision need not include nondiscrimination in benefits as part of the nondiscrimination requirements. If you’re unsure whether a contract qualifies as a subcontract, contact the Agency division administering your contract with the Agency. “Subcontract” also includes any subcontract of your subcontractor for performance of 10% or more of the subcontract.

INSTRUCTIONS FOR DECLARATION FORM
Nondiscrimination in Contracts and Benefits

F. Nondiscrimination in benefits for spouses and domestic partners

1. Who are domestic partners?

If your employee and another person are currently registered as domestic partners with a state, county or city that authorizes such registration, then those two people are domestic partners. It doesn't matter where the domestic partners now live or whether they are a same-sex couple or an opposite sex couple. A company/organization may also institute its own domestic partnership registry (contact the Agency for more information).

2. What is nondiscrimination in benefits?

You must provide the same benefits to employees with spouses and employees with domestic partners, and to spouses and domestic partners of employees, subject to the following qualifications (See Question 2c on the Declaration Form).

- If your cost of providing a benefit for an employee with a domestic partner exceeds that of providing it for an employee with a spouse, or vice versa, you may require the employee to pay the excess cost.
- If you are unable to provide the same benefits, despite taking all reasonable measures to do so, you must provide the employee with a cash equivalent. This qualification is intended to address situations where your benefits provider will not provide equal benefits and you are unable to find an alternative source or state or federal law prohibit the provision of equal benefits. (See Question 2d on the Declaration form).
- The Policy does not require any benefits be offered to spouses or domestic partners. It does require, however, that whatever benefits are offered to spouses be offered equally to domestic partners, and vice versa.

3. Examples of benefits

The law is intended to apply to all benefits offered to employees with spouses and employees with domestic partners. A sample list appears in Question 2c on the Declaration Form.

G. Form required

Complete the Declaration Form to tell the Agency whether you comply with the Policy. All parties to a Joint Venture must submit separate Declarations.

Please submit an original of the Declaration Form and keep a copy for your records. If an Agency division should ask you to complete the form again, you may submit a copy of the form you originally submitted (if the information has not changed), unless you are advised otherwise.

H. Attachments

If you provide equal benefits, as indicated by your answers to Question 2c on the Declaration form, **YOU MUST ATTACH DOCUMENTATION TO THIS FORM**, unless such documentation does not exist. See item 3, "Documentation for Nondiscrimination in Benefits." If documentation does not exist, attach an explanation (e.g., some of your policies are unwritten).

I. If your answers change

If, after you submit the Declaration, your company/organization's nondiscrimination policy or benefits change such that the information you provided to the Agency is no longer accurate, you must advise the Agency promptly by submitting a new Declaration.

MINIMUM COMPENSATION POLICY (MCP) DECLARATION

What the Policy does. The Office of Community Investment and Infrastructure (OCII) (Successor Agency to the San Francisco Redevelopment Agency) adopted the Minimum Compensation Policy (MCP), which became effective on September 25, 2001. The MCP requires contractors and subcontractors to provide the following to their employees covered by the MCP on OCII contracts and subcontracts for services: for Commercial Business MCP the wage rate is \$13.64 per hour effective January 1, 2017; for Nonprofit MCP the wage rate is \$13.00 per hour effective July 1, 2016. The Minimum Compensation rate is adjusted on January 1 each year. In addition, the San Francisco minimum wage will increase to \$14.00 on July 1, 2017. All contractors (both for-profit and non-profit) in San Francisco will need to comply with the minimum wage of July 1, 2017. Furthermore, 12 paid days off per year (or cash equivalent) and 10 days off without pay per year shall be offered.

The OCII may require contractors to submit reports on the number of employees affected by the MCP.

Effect on OCII contracting. For contracts and amendments signed on or after September 25, 2001, the MCP will have the following effect:

- in each contract, the contractor will agree to abide by the MCP and to provide its employees the minimum benefits the MCP requires, and to require its subcontractors subject to the MCP to do the same.
- if a contractor does not provide the MCP minimum benefits, OCII can award a contract to that contractor only if the contract is exempt under the MCP, or if the contract has received a waiver from OCII.

What this form does. Your signed declaration will help OCII's contracting practice. Sign this form if you can assure OCII that, beginning with the first OCII contract or amendment you receive after September 25, 2001 and until further notice, you will provide the minimum benefit levels specified in the MCP to your covered employees, and will ensure that your subcontractors also subject to the MCP do the same.

If you cannot make this assurance now, please do not return this form.

For more information, please see the complete text of the MCP, available from the OCII's Contract Compliance Department at (415) 749-2400 or <http://sfocii.org/policies-and-procedures>.

Routing. Return this form to: Contract Compliance Department, Office of Community Investment and Infrastructure (Successor to the San Francisco Redevelopment Agency), 1 South Van Ness, Fifth Floor, San Francisco, CA 94103.

Declaration

Effective with the first OCII contract or amendment this company receives on or after September 25, 2001, this company will provide the minimum benefit levels specified in the MCP to our covered employees, and will ensure that our subcontractors also subject to the MCP do the same, until further notice. This company will give such notice as soon as possible.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Signature

Date

Print Name

Company Name

Phone

HEALTH CARE ACCOUNTABILITY POLICY (HCAP) DECLARATION

What the Policy does. The Office of Community Investment and Infrastructure ("OCII") (as Successor Agency to the Redevelopment Agency) adopted the San Francisco Health Care Accountability Policy (the "HCAP"), which became effective on September 25, 2001. The HCAP requires contractors and subcontractors that provide services to OCII, contractors and subcontractors that enter into leases with OCII, and parties providing services to tenants and sub-tenants on OCII property to choose between offering health plan benefits to their employees or making payments to OCII or directly to their employees.

Specifically, contractors can either: (1) offer the employee minimum standard health plan benefits approved by the OCII Commission; (2) pay OCII \$4.65 per hour for each hour the employee works on the covered contract or subcontract or on property covered by a lease (but not to exceed \$186 in any week) and OCII will appropriate the money for staffing and other resources to provide medical care for the uninsured (rates and amounts effective July 1, 2016 and subject to annual change).

The OCII may require contractors to submit reports on the number of employees affected by the HCAP.

Effect on OCII contracting. For contracts and amendments signed on or after September 25, 2001, the HCAP will have the following effect:

- in each contract, the contractor will agree to abide by the HCAP and to provide its employees the minimum benefits the HCAP requires, and to require its subcontractors to do the same.
- if a contractor does not provide the HCAP's minimum benefits, OCII can award a contract to that contractor **only if** the contract is exempt under the HCAP, or if the contract has received a waiver from OCII.

What this form does. Your signed declaration will help OCII's contracting practice. Sign this form if you can assure OCII that, beginning with the first OCII's contract or amendment you receive after September 25, 2001 and until further notice, you will provide the minimum benefit levels specified in the HCAP to your covered employees, and will ensure that your subcontractors also subject to the HCAP do the same.

If you cannot make this assurance now, please do not return this form.

For more information, please see the complete text of the HCAP, available from the OCII's Contract Compliance Department at: (415) 749-2400.

Routing. Return this form to: Contract Compliance Department, Office of Community Investment and Infrastructure (Successor to the San Francisco Redevelopment Agency), 1 South Van Ness Avenue, Fifth Floor, San Francisco, CA 94103.

Declaration

Effective with the first OCII contract or amendment this company receives on or after September 25, 2001, this company will provide the minimum benefit levels specified in the HCAP to our covered employees, and will ensure that our subcontractors also subject to the HCAP do the same, until further notice. This company will give such notice as soon as possible.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Signature

Date

Print Name

Company Name

Phone

DISCLOSURE QUESTIONS

Instructions: Please respond completely to each question listed below using the space provided. Use a separate sheet of paper, if necessary. Please state “No” or “None” when appropriate. Do not leave a question blank or state “N/A”. If the applicant¹ is an individual, then the information relative to that individual should be disclosed. If the applicant is a group or joint venture, then information relative to each member of the group or entities that comprise the joint venture should be disclosed. If the applicant is a corporation, then the information relative to the corporation should be disclosed.

1. Has applicant ever defaulted on a loan or other financial obligation? This includes all affiliate corporations and partnerships in which applicant is a general partner. If so, please describe the circumstances including dates and current status.

Answer: _____

2. Are there any prior or pending legal proceedings, actions, convictions or judgments that have been filed against applicant or its wholly owned subsidiaries, or any prior or pending arbitrations or mediations. If so, provide dates the complaints were filed and the present status of the litigation or the status of the arbitrations or mediations.

Answer: _____

3. Are there any prior or pending administrative complaint/hearing against, or any debarment or suspension of, or other administrative determination by any federal, state or local government entity relating to applicant, against any of applicant’s affiliated corporations, partnerships in which applicant is a general partner, or other business entity. If so, please describe the circumstances including dates, agency or body conducting the investigation or inquiry and the current status.

Answer: _____

4. Has applicant or its wholly owned subsidiaries ever filed for bankruptcy. Please include dates and jurisdiction of filing, the reason, and current status.

Answer: _____

¹ For the purposes of this RFQ, the term “applicant” shall mean and refer to the respondent to this RFQ regardless of legal form. Thus applicant applies to individuals, sole proprietorships, joint ventures, unincorporated associations, partnerships, LLCs, LLPs, corporations (whether for profit, nonprofit, California or out of state) and any other entity legally entitled to do business in the State of California.

5. Describe any business, property, gifts, loans, investments or other financial relationships applicant, its individual principals, corporation, LLC, LLP or any of applicant's affiliated corporations or partnerships in which applicant is a general partner, or other business entity, with any member of the Agency Commission or his/her immediate family which are financial interest as defined by Section 87103 of the Fair Political Practices Act.²

Answer: _____

Applicant(s) hereby certify under penalty of perjury under the laws of the State of California that all information provided in the Disclosure Questionnaire is true and correct.

Date: _____ Signed: _____

² In summary Government Code Section 87100 requires any public officials participating in making decisions to refrain from using their official position to influence a governmental decision in which they know or has reason to know they have a financial interest. Section 87103 defines a financial interest as one that has a material, financial effect on the official or a member of their immediate family as follows: business interest – over \$2,000; real property interest – over \$2,000; other source of income within 12 months before the decision – over \$500; gift or intermediary for donor of gift within 12 months - \$250; business entity in which the official is a director, officer, partner, trustee, employee or holds a position of management. See Government Code Section 87103 for the complete definition.

ATTACHMENT #6

**STATEMENT OF COMPLIANCE WITH AGENCY POLICIES
& CERTIFICATION OF APPLICANT**

Applicant(s) _____ agrees to comply with all of the Agency's policies, including but not limited to insurance and indemnification requirements found in this RFP.

Applicant(s) hereby certifies that is in good standing with federal, state, and local regulatory bodies, and is authorized to conduct business and provide the goods and/or services requested in this RFP.

The undersign hereby certifies under penalty of perjury under the laws of the State of California that the foregoing statements and all information provided in Applicant's proposal in response to this RFP are true and correct.

Date: _____

Signed: _____

Print Name: _____

Title: _____

OFFICE OF COMMUNITY INVESTMENT AND INFRASTRUCTURE/
SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY AND
COUNTY OF SAN FRANCISCO

PERSONAL SERVICES CONTRACT

This PERSONAL SERVICES CONTRACT ("Contract") is entered into as of [effective date] by and between the OFFICE OF COMMUNITY INVESTMENT AND INFRASTRUCTURE/SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO, a public body, corporate and politic ("OCII"), and [CONTRACTOR NAME], [**"a California corporation" or "a sole proprietorship"**] ("Contractor").

RECITALS

- A.
- B.
- C.
- D.
- E.

NOW, THEREFORE, OCII and the Contractor agree as follows:

1. SCOPE OF SERVICES

Contractor shall provide the services described on **Attachment A**, "Scope of Services".

2. TIME OF COMPLETION

[**One or an appropriate combination of the following will be used**]

The term of this Contract shall begin on [starting date] and end on [Contract ending date].

Contractor's Schedule of Performance is set forth on Attachment " ".

Contractor will begin work within ____ days after receipt of an OCII Notice to Proceed.

Time for completion for this Contract will be ____ days after receipt of an OCII Notice to Proceed to the Contractor.

3. COMPENSATION AND METHOD OF PAYMENT

A. Compensation. For example: "The maximum amount payable under this Contract is Twenty-Five Thousand Dollars (\$25,000.00). Payment shall be made according to the schedule and terms described on Attachment __, "Payment Schedule". All expenses of Contractor are included in the amounts payable pursuant to **Attachment B**, "Budget", and no expenses shall be reimbursed separately. Contractor will submit monthly billing invoices to OCII. The invoices shall include the billing amount, total hours invoiced, hourly billing rate, description of services rendered, supporting documentation and Contractor's signature. OCII staff will review and approve these invoices for payment."

B. Taxes. No payroll or employment taxes of any kind will be withheld or paid by OCII on behalf of Contractor. OCII will not treat Contractor as an employee with respect to the Contract services for any purpose, including federal and state tax purposes. Contractor understands and agrees that it is Contractor's responsibility to pay all taxes required by law, including self-employment social security tax. OCII will issue an IRS 1099 Form, or other appropriate tax-reporting document, to Contractor for the Contract services.

C. Benefits. Contractor will not be eligible for, and will not participate in, any health, pension, or other benefit of OCII which exists solely for the benefit of OCII employees during the Contract Term.

4. NO PERSONAL LIABILITY

No member, official or employee of OCII shall be liable personally to Contractor or any successor in interest in the event of any default or breach by OCII or for any amount which may become due to Contractor or any successor or on any obligation under the terms of this Contract.

5. ASSIGNMENT OF CONTRACT

Contractor shall not assign this Contract, or any part thereof, without the prior express written consent of OCII.

6. TERMS AND CONDITIONS-CDBG FUNDED CONTRACTS

This Contract is funded in whole or in part with CDBG funds and all CDBG requirements apply, including, but not limited to Section 3 Clause (see below). The Contractor must comply with the policies, guidelines and requirements of OMB Circulars No. A-122, A-133 and the portions of A-100 or the related CDBG provisions required by 24 CFR 570.502(b). Contractor is responsible for assuring compliance with the circulars as they may be amended from time to time. If the Contractor is subject to the single audit requirement by virtue of the dollar amount of the Contract, or Contractor's total amount of CDBG funded contracts during the term of this Contract, Contractor must provide OCII with such an audit when it is submitted to MOCI, or other applicable recipient entity.

SECTION 3 CLAUSE

Section 3 Clause (12 U.S.C. 1701u) (24 CFR Part 135)

A. The work to be performed under this Contract is on a project assisted under a program providing direct Federal financial assistance from the U.S. Department of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that, to the greatest extent feasible, opportunities for training and employment be given to lower income residents of the area of the Section 3 covered project, and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in the area of the Section 3 covered project.

B. The parties to this Contract will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of the Department of Housing and Urban Development set forth in 24 CFR Part 135, and all applicable rules and orders of the Department of Housing and Urban Development issued thereunder prior to the execution of this Contract. The parties to this Contract certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.

C. The Contractor will send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers' representative of its commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

D. The Contractor will include this Section 3 clause in every subcontract for work in connection with the project and will, at the direction of the applicant for or recipient of Federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the Secretary of the Department of Housing and Urban Development, 24 CFR Part 135. The Contractor will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR Part 135 and will not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

E. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR Part 135, and all applicable rules and orders of the Department of Housing and Urban Development issued thereunder prior to the execution of the Contract, shall be a condition of the Federal financial assistance provided under this Contract and shall be binding upon Contractor, its successors and assigns. Failure to fulfill these requirements shall subject the Contractor, its subcontractors, successors and assigns to those sanctions specified by 24 CFR Part 135.

7. NON-FEDERAL LABOR STANDARDS

Contractor agrees that any employees performing work or services for Contractor shall be subject to the State and local laws governing prevailing wage rates, hours and working conditions, and benefits applicable to similar work or services performed in San Francisco. Contractor further agrees that the inclusion of the above provision in this Contract shall not be construed to relieve Contractor or any subcontractor from the pertinent requirements of any applicable Federal labor standards provision. Where minimum rates of pay required under State or local law are higher than the minimum rates of pay required by or set forth in applicable Federal labor standards, said State or local minimum rates shall be the applicable minimum rates of pay for such classifications.

8a. INDEMNIFICATION

To the fullest extent allowable by law, Contractor shall hold harmless, defend at its own expense and indemnify OCII, the City and County of San Francisco and their respective commissioners, members, officers, agents and employees against any and all liability, claims, losses, damages or expenses, including reasonable attorney's fees, arising directly or indirectly from all acts or omissions to act of contractor or its officers, agents or employees in rendering services under this contract; excluding, however, such liability, claims, losses, damages or expenses arising from Agency's gross negligence or willful acts and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Contractor, its officers, agents or employees. In addition to Contractor's obligation to indemnify Agency, Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend Agency from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Contractor by Agency and continues at all times thereafter. This section does not apply to contracts for construction design services provided by a design professional, as defined in California Civil Code Section 2782.8.

8b. INDEMNIFICATION BY DESIGN PROFESSIONALS

This section applies to any design professional as defined in California Civil Code Section 2782.8 who is or will provide construction design services ("Design Professional") as part of, collateral to, or affecting this Agreement with the Contractor. Each Design Professional who will provide construction design services shall hold harmless, defend at his or her own expense and indemnify OCII, 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, including reasonable attorney's fees, directly or indirectly that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Design Professional. It is expressly agreed and understood that the duty of indemnification pursuant to this section, including the duty to defend, is to be interpreted broadly, to the greatest extent permitted by law, including but not limited to California Civil Code Section 2782.8.

9. INDEPENDENT CONTRACTOR

Contractor hereby declares that it is engaged in an independent business and agrees to perform its services as an independent contractor and not as the agent or employee of OCII. Contractor has and hereby retains the right to exercise full control and supervision of the services and work to be provided under this Contract and full control over the employment, direction, compensation and discharge of all persons assisting it in the performance of the services and work hereunder. Contractor agrees to be solely responsible for all matters relating to payment of employees, including, but not limited to, compliance with all federal, state and local payroll tax and withholding requirements, workers' compensation requirements and all regulations governing such matters. Contractor agrees to be solely responsible for its own acts and those of its subordinates and employees during the term of the Contract.

10. INSURANCE

A. Contractor must procure and maintain for the duration of the Contract, including any extensions, insurance against claims for injuries to person or damages to property which may arise from or in connection with the performance of the work under this Contract by the Contractor, its agents, representatives, employees or subcontractors. If the Contractor maintains additional coverages and/or higher limits than the minimums shown in this Article 10, OCII requires and shall be entitled to the additional coverage and/or the higher limits maintained by the Contractor.

B. Minimum Scope of Insurance. Coverage must be at least as broad as:

- (1) Insurance Services Office Commercial General Liability coverage (occurrence form CG 00 01).
- (2) Insurance Services Office Automobile Liability coverage, code 1 (form number CA 00 01- any auto).
- (3) Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.
- (4) Professional Liability Insurance appropriate to the Contractor's profession covering all negligent acts, errors and omissions.

C. Minimum Limits of Insurance. Contractor must maintain limits no less than:

- (1) General Liability:
 - a. For contracts not involving demolition or construction, or during phases of contracts prior to demolition or construction: \$2,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form

with a general aggregate limit is used, either the general aggregate limit must apply separately to this project/location or the general aggregate limit must be twice the required occurrence limit (\$4,000,000). Applicable Umbrella or Excess Liability limits may be used to meet the terms of this paragraph.

- b. For contracts involving demolition or construction or during phases involving demolition or construction: \$5,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit must apply separately to this project/location or the general aggregate limit must be twice the required occurrence limit (\$10,000,000). Applicable Umbrella or Excess Liability limits may be used to meet the terms of this paragraph.

(2) Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.

(3) Workers' Compensation and Employer's Liability: Workers' Compensation limits as required by the State of California and Employer's Liability limits of \$1,000,000 for bodily injury by accident and \$1,000,000 per person and in the annual aggregate for bodily injury by disease. (Required only if Contractor has employees).

(4) Professional Liability Insurance: \$2,000,000 per claim and in the annual aggregate. If the Contractor's Professional Liability Insurance is "claims made" coverage, these minimum limits shall be maintained by the Contractor for no less than five (5) years beyond completion of the Scope of Services.

D. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by OCII. At the option of OCII, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects to OCII, the City and County of San Francisco and their respective commissioners, members, officers, agents and employees; or Contractor shall provide a financial guarantee satisfactory to OCII guaranteeing payment of losses and related investigations, claim administration and defense expenses.

E. Other Insurance Provisions. The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

- (1) The "Office of Community Investment and Infrastructure/Successor Agency to the Redevelopment Agency of the City and County of San Francisco, the City and County of San Francisco and their respective commissioners, members, officers, agents and employees" are to be covered as additional insureds as respects: liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the

Contractor; and liability arising out of work or operations performed by or on behalf of the Contractor.

- (2) For any claims related to this Contract, the Contractor's insurance coverage must be primary insurance as respects to OCII, the City and County of San Francisco and their respective commissioners, members, officers, agents, and employees. Any insurance or self-insurance maintained by OCII, the City and County of San Francisco and their respective commissioners, members, officers, agents or employees shall be in excess of Contractor's insurance and shall not contribute with it.
- (3) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to OCII, the City and County of San Francisco and their respective commissioners, members, officers, agents or employees.
- (4) Each insurance policy required by this clause must be endorsed to state that coverage will not be suspended, voided, canceled by either party, or reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to OCII.
- (5) Contractor hereby grants to OCII a waiver of any right to subrogation which any insurer of said Contractor may acquire against OCII by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not OCII has received a waiver of subrogation endorsement from the insurer.
- (6) If any of the required policies provide coverage on a claims-made basis:
 - a. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
 - b. Insurance must be maintained and evidence of insurance must be provided for at least five years after completion of the contract of work.
 - c. 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 years after completion of contract work.

F. Acceptability of Insurers. Insurance is to be placed with insurers with a current A. M. Best's rating of no less than A:VII, unless otherwise approved by OCII's Risk Manager.

G. Verification of Coverage. Contractor must furnish OCII with certificates of insurance and with original endorsements evidencing coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements may be on forms provided by OCII. All certificates and endorsements are to be received and approved by OCII before work commences. OCII reserves the right to require complete, certified copies of all required insurance policies, including endorsements demonstrating the coverage required by these specifications at any time.

H. Subcontractors. Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all the requirements stated herein.

11. RECORDS, REPORTS AND AUDITS

A. Records

- (1) Records shall be established and maintained in accordance with Agency requirements, and U.S. Department of Housing and Urban Development ("HUD") requirements if the Contract is funded with HUD Community Development Block Grant ("CDBG") funds, with respect to all matters covered by this Contract. Except as otherwise authorized by OCII, such records shall be maintained for a period of four years from the date of the termination of the Contract; except that records that are the subject of audit findings shall be retained for four years or until such audit findings have been resolved, whichever is later.
- (2) All costs shall be supported by properly executed payrolls, time records, invoices, contracts, vouchers or other official documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders or other accounting documents pertaining in whole or in part to this Contract shall be clearly identified and readily accessible.

B. Reports and Information

At such times and in such forms as OCII, the City and County of San Francisco or HUD, if the Contract is funded with CDBG funds, may require, there shall be furnished to OCII or its designated representative such statements, records, reports, data and information as OCII, the City and County of San Francisco or HUD may request pertaining to matters covered by this Contract.

C. Audits and Inspections

At any time during normal business hours and as often as OCII, the City and County of San Francisco or HUD, and/or the Comptroller General of the United States, if the Contract is funded with CDBG funds, may deem necessary, there shall be made available to OCII or its representatives for examination all records with respect to all matters covered by this Contract and Contractor will permit OCII, the City and County of San Francisco, HUD and/or the Comptroller General of the United States to audit, examine and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Contract.

12. CONFLICTS

Except for approved eligible administrative or personnel costs, no employee, agent, contractor, officer or official of OCII who exercises any functions or responsibilities with respect to this Contract or who is in a position to participate in a decision making process or gain inside information with regard to it, shall obtain a personal or financial interest in or benefit from any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for himself or herself or for those with whom they have family or business ties, during his or her tenure or for two years thereafter. The term "Contractor" also includes the employees, officers (including board members), agents and subcontractors of a Contractor under this Contract. In order to carry out the purposes of this Section, Contractor shall incorporate, or cause to be incorporated, in all contracts and subcontracts relating to activities pursuant to this Contract, a provision similar to that of this Section.

13. CONTRACTOR'S DUTY OF LOYALTY

Contractor for itself and subcontractors, if any, agrees to abide by OCII's duty of loyalty, which appears at Section IX.H. (Prohibited Activities of Present and Former Employees, Commissioners and Consultants) of OCII's Personnel Policy and which states in part the following: "Unless approved in advance in writing by OCII, no present or former employee, Commissioner or consultant of OCII shall knowingly act for anyone other than OCII in connection with any particular matter in which OCII is a party, or has a direct and substantial interest, and in which he or she participated personally and substantially as an Agency employee, Commissioner or consultant whether through decisions, recommendations, advice, investigation or otherwise. Violation of this section by a present employee, consultant or Commissioner may, in the case of an employee or consultant, be grounds for discharge or termination of the consultant contract, and in the case of a Commissioner, be considered misconduct in office pursuant of California Health and Safety Code Section 33115."

14. LIMITATIONS ON CONTRIBUTIONS

Through execution of this Agreement, Contractor acknowledges that it is familiar with section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits

any person who contracts with OCII for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) the Mayor or members of the Board of Supervisors, (2) a candidate for Mayor or Board of Supervisors, or (3) a committee controlled by such office holder or candidate, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Contractor acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Contractor further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Additionally, Contractor acknowledges that Contractor must inform each of the persons described in the preceding sentence of the prohibitions contained in section 1.126.

Finally, Contractor agrees to provide to OCII the names of each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Contractor; any subcontractor listed in the bid or contract; and any committee that is not sponsored or controlled by Contractor.

15. CONFIDENTIALITY/PROPERTY OF AGENCY

All of the reports, information, data or other materials prepared or assembled by Contractor under this Contract, including Contractor's opinions and conclusions based upon such items, are confidential. Contractor agrees that such reports, information, opinions or conclusions shall not be made available to or discussed with any individual or organization, including the news media, without the prior written approval of OCII. Unless otherwise stated in the Scope of Services, all such reports, information, data or other materials and work product shall become the property of OCII.

16. COMPLIANCE WITH CALIFORNIA GOVERNMENT CODE

It is understood and agreed that Contractor shall comply with California Government Code Section 7550. California Government Code Section 7550 provides in part that when the total cost for work performed for a local agency by nonemployees of such agency exceeds \$5,000.00, any document or written report prepared in whole or in part by nonemployees for such agency shall contain, in a separate section, the numbers and dollar amount of all contracts and subcontracts relating to the preparation of such document or written report.

17. NONDISCRIMINATION AND EQUAL BENEFITS

A. 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) in the performance of this Contract. Contractor will ensure that applicants are employed, and that employees are treated during employment, 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 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 to clients or the general public.

B. Contractor will, in all solicitations or advertisements for employees placed by it or on its behalf, state it is an equal opportunity employer.

C. Contractor will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this Contract so that such provisions will be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

D. Contractor agrees not to discriminate in the provision of benefits between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, and shall comply fully with all provisions of OCII's Nondiscrimination in Contracts Policy ("Policy"), adopted by Agency Resolution No. 175-97, as such Policy may be amended from time to time.

E. Contractor shall provide all services to the public under this Contract in facilities that are accessible to persons with disabilities as required by state and federal law and execute **Attachment C** "Nondiscrimination in Contracts and Benefits Form".

18. COMPLIANCE WITH SMALL BUSINESS ENTERPRISE PROGRAM

OCII implements a Small Business Enterprises ("SBE") Program that was adopted by Agency Resolution No. 43-2015 and that requires consideration in awarding contracts in the following order: 1) Project Area SBEs, 2) San Francisco-based SBEs (outside an Agency Project Area), and 3) All other SBEs. Non San Francisco-based SBEs should be used to satisfy participation goals only if Project Area SBEs or San Francisco-based SBEs are not available, qualified, or if their bids or fees are significantly higher than those of non San Francisco-based SBEs (see **Attachment D** "SBE Agreement").

Under the SBE Program, the Contractor, in awarding subcontracts, must make good faith efforts to achieve SBE participation of 50 % for professional, personal services, and construction contracts; provided, however, that this goal may vary depending on the extent of subcontracting opportunities under OCII contract and the availability of SBE subcontractors capable of providing goods or services required by the contract; and provided further, that OCII has the sole discretion to modify the 50 % SBE participation goal consistent with the SBE Program, as specified in the SBE Agreement.

OCII relies on the information that a business may have provided to qualify under another public entities' business certification program in determining whether that business qualifies as an SBE under OCII's SBE Program. Those other programs include: City and County of San Francisco Local Disadvantaged Business Enterprises (LBE) certification, *information available at* - <http://sfgsa.org/index.aspx?page=5364>; and State of California – Small Business Enterprises certification – <http://www.dgs.ca.gov/pd/Programs/OSDS/GetCertified.aspx>. OCII retains the discretion, however, to determine if the information provided for those other programs meets SBE eligibility under OCII's SBE Program.

19. COMPLIANCE WITH MINIMUM COMPENSATION POLICY AND HEALTH CARE ACCOUNTABILITY POLICY

Contractor agrees, as of the date of this Contract and during the term of this Contract, to comply with the provisions of OCII's Minimum Compensation Policy and Health Care Accountability Policy (the "Policies"), adopted by Agency Resolution 168-2001, as such policies may be amended from time to time (See **Attachment E** "Minimum Compensation Policy" and **Attachment F** "Health Care Accountability Policy"). Such compliance includes providing all "Covered Employees," as defined under Section 2.7 of the Policies, a minimum level of compensation and offering health plan benefits to such employees or to make payments to the City and County of San Francisco's Department of Public Health, or to participate in a health benefits program developed by the City and County of San Francisco's Director of Health.

20. TERMINATION

OCII may terminate this Contract at any time without cause upon written Notice of Termination to the Contractor; provided, however, that in the event of such termination, OCII shall compensate the Contractor for work completed to the satisfaction of OCII as of the date of such notice or the date of termination specified in and directed by such notice.

21. MISCELLANEOUS PROVISIONS

A. Notices

All notices, demands, consents or approvals required under this Contract shall be in writing and shall be deemed given when delivered personally or by facsimile transmission or three (3) business days after being deposited in the U.S. Mail, first class postage prepaid, return receipt requested, addressed as follows:

If to OCII:	Office of Community Investment and Infrastructure/Successor Agency to the San Francisco Redevelopment Agency One South Van Ness Avenue, Fifth Floor San Francisco, CA 94103 Attention: Executive Director
-------------	---

If to Contractor: **[name]**
 [mailing address]
 Attention: **[contact]**

or to such other addresses as the parties may designate by notice as set forth above.

B. Time of Performance

- (1) Time is of the essence in the performance of all the terms and conditions of this Contract.
- (2) All performance and cure periods expire at 5 p.m., San Francisco, California time, on the applicable date.
- (3) A performance or cure date which otherwise would be a Saturday, Sunday or Agency holiday shall be extended to the next Agency working day.

C. Successors and Assigns

This Contract shall be binding upon and inure to the benefit of the successors and assigns of OCII and the Contractor. Where the term "Contractor" or "Agency" is used in this Contract, it shall mean and include their respective successors and assigns; provided, however, that OCII shall have no obligation under this Contract to, nor shall any benefit of this Contract accrue to, any unapproved successor or assign of Contractor where Agency approval of a successor or assign is required by this Contract.

D. Modification, Waiver and Amendment

Any modification, waiver or amendment of any of the provisions of this Contract must be in writing and signed by both OCII and Contractor.

E. Entire Contract

This Contract represents the complete agreement between the parties as to the matters described herein, and there are no oral understandings between Contractor and OCII affecting this Contract not set forth herein. This Contract supersedes all previous negotiations, arrangements, agreements and understandings between Contractor and OCII with respect to the subject matter hereof.

F. Severability

If any provision of this Contract shall be determined to be illegal or unenforceable, such determination shall not affect any other provision and all such other provisions shall remain in full force and effect.

G. Governing Law

This Contract shall be governed by the laws of the State of California. It is the responsibility of Contractor to be informed of local, state and federal laws and requirements applicable to this Contract and to perform all work in compliance with those laws and requirements.

H. Headings

Titles of parts or sections of this Contract are inserted for convenience only and shall be disregarded in construing or interpreting its provisions.

I. Attorneys' Fees

In any action or proceeding arising out of this Contract, the prevailing party shall be entitled to reasonable attorneys' fees and costs.

J. Authority

The undersigned represents and warrants that he or she has full power and authority to enter into this Contract and to bind the Contractor in accordance with its terms.

K. Designated Representative

The initial designated representative for OCII for this Contract is _____, OCII representative's phone number is _____. The initial Contractor designated representative for this Contract is _____, the Contractor's designated representative's phone number is _____.

IN WITNESS WHEREOF OCII and Contractor have executed this Contract as of the date first above written.

[CONTRACTOR] [**“a California corporation” or “a sole proprietorship”**]

By: _____
[Signatory]
[Title]
Federal Tax Identification No. _____

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

By: _____
Executive Director,

APPROVED AS TO FORM:

By: _____
Agency General Counsel

[**The following is to be included if the contract is to be approved by the Commission**]

Authorized by Resolution No. _____, adopted _____.

ATTACHMENTS

- Attachment A: Scope of Services
- Attachment B: Budget
- Attachment C: Nondiscrimination in Contracts and Benefits Form
- Attachment D: Small Business Enterprise Agreement
- Attachment E: Minimum Compensation Policy Declaration
- Attachment F: Health Care Accountability Policy Declaration

Form of Personal Services Contract

ATTACHMENT #8

RFQ/RFP REGISTRATION FORM

Community Facilities District No. 1 – Landscape Maintenance and Related Services

Name of Organization:

Address:

Contact Person:

Phone:

Fax:

E-mail:

SUBMISSION CHECKLIST SHEET

The **[Statement of Qualifications/Proposal]** must contain all of the following information:

The Proposal must contain all of the following information:

- a) A description of qualifications and any areas of specialty and professional capabilities.
- b) A resume that lists and provides detailed descriptions of work performed in the last five (5) years, of a similar or related nature to the subject scope of services, providing the client name and contact information for each.
- c) A statement by the Contractor indicating that the firm has read and agrees to comply with the OCII's Indemnification and Insurance requirements and can comply with the conditions of the Personal Services Contract in **Attachment #7**.
- d) A signed Small Business Enterprise Agreement (**Attachment #1**).
- e) A signed Declaration of Nondiscrimination in Contracts and Benefits (**Attachment #2**).
- f) A signed Minimum Compensation Policy Declaration (**Attachment #3**).
- g) A signed Health Care Accountability Declaration (**Attachment #4**).
- h) Complete responses to all Disclosure Questions (**Attachment #5**).
- i) A signed Statement of Compliance with OCII Policies & Certification of Applicant (**Attachment #6**).
- j) A completed RFP Registration Form (**Attachment #8**).
- k) Proposal to Provide Services
- l) Proposed staffing and budgets including the following line items: Personal Services, Materials & Supplies, subcontractors (if applicable), Insurance, and Overhead.

ATTACHMENT #10

SCOPE OF SERVICES

1. GENERAL REQUIREMENTS

All improvements and plantings are to be maintained in at least as good a condition as at the start of the Contract. Good horticultural practices shall be applied to the rejuvenation of plantings that are failing to thrive. Contractor is required to report promptly those items of maintenance or repair beyond its direct responsibility. In addition, Contractor agrees to comply with and provide the following:

- a. **City Standards:** All of the work of this Contract shall conform to the standards and requirements of the San Francisco Bureau of Urban Forestry unless specifically described otherwise in these specifications. See Exhibit A, Urban Forestry Ordinance.
- b. **Inspection:** All of the work of this Contract shall be done in consultation with and to the satisfaction of the Office of Community Investment and Infrastructure (OCII). The contractor shall advise the Agency immediately of any necessary repair or replacement of landscape items.

Problems identified during inspections shall be corrected by the contractor in a timely manner.

- c. **Planting Replacement:** Any plantings which die or decline due to actions or neglect by the contractor shall be replaced by the contractor with plantings of the same species, size, quality and quantity as the original at the Contractor's sole expense.
- d. **Maintenance Schedule:** Within 45 days after execution of the Contract, the contractor shall submit an annual maintenance schedule covering all of the work of the Contract by specific locations and an annual tree pruning/thinning schedule. Maintenance and pruning shall be in accordance with the Tree Pruning Guidelines and American National Standards Institute (ANSI Z1331.1 & ANSI A300) protocols. Work on the Contractor shall conform to the approved schedule.
- e. **Response:** The Contractor shall make available an office phone number and phone numbers of representatives directly in charge of irrigation and maintenance.
- f. **Equipment, Materials and Supplies:** Except as specifically provided otherwise, it is the Contractor's responsibility to furnish all equipment, materials and supplies needed to perform the services in this Scope of Services. Water is

supplied through quick-coupler valves at the plaza locations. Contractor is to furnish and pay for water and water trucks for watering street trees.

2. COMMUNITY FACILITIES DISTRICT NO.1- GEOGRAPHIC AREA

The geographic area included in the Scope of Services for Community Facilities District No. 1 ("CFD No. 1") includes four plazas, containing 95 trees, 12,000 square feet of lawn, 2,400 square feet of ground cover, 8,666 square feet of shrubbery, 500 square feet of annuals, 41,000 square feet of litter and weed control, 15,400 square feet of irrigation and lighting systems, 360 street trees, 41 bollards and nine benches. (All quantities listed are approximate only. No adjustment will be made in contract price if the actual square footage differs.)

Townsend Plaza (Map 1)

Townsend Plaza is located between Townsend Street and The Embarcadero in front of the South Beach Marina Apartment.

First Plaza (Map 2)

First Plaza is bounded by the Embarcadero and the South Beach Marina Apartment's property line running between the edge of the South Beach Marina Apartments entrances, the back of the curb of the Delancey Street (First Street) cul-de-sac, and to the edge of the Delancey Street Foundation entrance.

Brannan/Beale Plaza (Map 3)

Brannan/Beale Plaza is bounded by Brannan Street, The Embarcadero, the Beale Street cul-de-sac and the back of the sidewalk along the Bayside Village Apartments.

Bryant Plaza and Steps (Map 4)

Bryant Plaza and Steps are located at the corner of Delancey Street (First Street) and Bryant Street.

Street Tree Maintenance (Map 5)

The street trees in the service area are along one or both sides of all or some of the following streets:

- Townsend Street between Second and The Embarcadero;
- Colin P. Kelly Jr. Street between Townsend and Brannan;
- Delancey Street (First Street) between First Plaza and Bryant;
- Brannan Street between Delancey Street (First Street) and The Embarcadero;
- Federal Street between Rincon and Delancey Street (First Street);
- Bryant Lane between Delancey Street (First Street) and Beale; and
- Beale Street between Brannan/Beale Plaza and Bryant.

3. TECHNICAL PROVISIONS

a. Tree Maintenance

- (1) General. The work consists of maintaining in a vigorous and healthy state all trees designated within the Contract area and controlling litter and weeds in the pavers around them. The contractor shall provide all materials, labor, and equipment necessary to ensure continued healthy growth throughout the Contract period. The Scope of Work includes cutting back roots and installing root barriers between tree well and pavers as needed, watering, disease and insect control, pruning, thinning, fertilizing, weed control, litter control and maintenance of tree stakes and ties, straightening of tree guards and leveling of tree well covers, raking and replenishment of pea gravel.
- (2) Watering. Watering of plaza trees shall be by existing irrigation systems. The contractor shall be responsible for supplemental watering by deep probe as needed. Watering of street trees not serviced by the irrigation system shall be by deep probe by water truck as needed and a minimum of six times during the dry season.
- (3) Fertilizer. All trees shall be fertilized at a rate and frequency determined by manufacturer's specifications and soil analysis shall be undertaken by contractor at least twice a year.
- (4) Integrated Pest Management. Based on weekly inspections, any diseases or pests discovered shall be controlled by approved methods under the direction of a licensed Agricultural Pest Control Operator. Contractor shall select control strategies that are effective, long lasting but least disruptive to the environment. Only the least-toxic chemical controls should be used, and only as a last resort.
- (5) Weeding. Areas at the base of trees and in the surrounding pavers shall be kept free of weeds by hand weeding or chemical controls under the direction of a licensed Agricultural Pest Control Operator.
- (6) Stakes and Ties. Stakes and ties shall be inspected weekly and repaired, replaced, removed or adjusted as needed.
- (7) Pruning. All trees shall be pruned as needed but not less than at least once a year in December or January to create and maintain an attractive, strong, healthy, and hazard-free branching structure. Pruning shall include removal of suckers. All pruned material shall be properly disposed of off-site by a certified environmental recycling compost operation.

b. **Lawn Maintenance**

- (1) General. Lawn maintenance shall consist of all those items necessary to maintain existing lawn areas in a healthy condition. The contractor shall furnish all necessary materials, supplies and labor to ensure this condition. Contractor shall be responsible for watering, mowing, trimming, fertilizing, weed control, disease and pest control and maintenance of the irrigation system.
- (2) Mowing. The grass shall be kept to a maximum height of two inches by mowing **at least** once a week during the growing season (April-October) and as needed at other times during the year. At each mowing, Contractor shall inspect lawn for any needed weed, disease or pest control and for necessary adjustment of the irrigation system.
- (3) Watering. The Contractor is responsible for periodic and regular watering of the lawn area by use of the existing irrigation systems. The rates of application and frequencies shall be determined and adjusted by the contractor in accordance with plant growth needs. Excessive watering shall not be permitted.
- (4) Fertilizer. The Contractor shall apply standard lawn fertilizer at a rate and frequency determined by manufacturer's specifications and soil analysis, at least four times a year preferably once each quarter.
- (5) Litter Control. At each mowing, the Contractor shall remove all litter, including plant clippings and trash, accumulated in, around, and on the lawn areas. This litter shall be disposed of properly outside the Contract area at contractor's expense.
- (6) Weed Control. The Contractor shall maintain the lawns reasonably free of broad leaf weeds and noxious grasses by hand weeding or chemical controls under the direction of a licensed Agricultural Pest Control Operator.
- (7) Disease and Pest Control. The Contractor shall apply appropriate disease and pest control measures as needed to maintain the vigorous growth of the lawns, under the direction of a licensed Agricultural Pest Control Operator.
- (8) Trimming. Grass along paved areas, curbs, groundcover areas and around trees shall be trimmed or edged each time the lawn is mowed.
- (9) Thatching/Aerations. Lawn shall be thatched at least once a year, prior to fertilizing and aerated as needed to maintain healthy growth but not less than once a year and not to exceed four times a year.

c. **Groundcover Maintenance**

- (1) General. Groundcover maintenance shall consist of all items listed under lawn maintenance, excepting mowing and thatching.
- (2) Cutting. At least twice a year, all groundcover shall be trimmed or cut back to a height which will re-invigorate growth and maintain a neat appearance.
- (3) Cultivation. Groundcover areas shall be lightly cultivated at least twice a year, prior to fertilizing. Cultivation shall be done so as not to damage the roots of the groundcover.

d. **Shrub Maintenance**

- (1) General. Shrub maintenance shall consist of all items listed under tree maintenance, except staking and pruning.
- (2) Trimming. Shrubs shall be trimmed as necessary to maintain vigorous growth and a neat appearance at least four times a year.

e. **Annuals**

- (1) General. Maintenance of annuals shall consist of all items necessary to install appropriate seasonal annuals and maintain them in a vigorous and attractive state. Watering, fertilizing, litter control, weed, disease and pest control and cultivating shall be as described under "Groundcover Maintenance" above.
- (2) Installation. The Contractor shall purchase and install appropriate seasonal annuals from flats or larger sized plants, rotating at least twice yearly. The choice of annuals must be approved by Agency staff.
- (3) Trimming. Annuals shall be trimmed, including the removal of all dead flowers and foliage, as necessary, to maintain vigorous growth and a neat appearance.

f. **Irrigation and Lighting Systems**

- (1) General. It is the Contractor's responsibility to maintain existing irrigation and lighting systems in an operating condition. Unless contractor possesses the appropriate license, contractor shall have a licensed electrical contractor perform electrical work. Contractor shall provide all necessary manpower, equipment and service to maintain these systems including fuse ballast and bulb replacements for lighting systems.

- (2) Plumbing Repairs. The Contractor shall insure the integrity of the plumbing for the irrigation systems. Included shall be the adjustment of sprinkler heads to proper effective height and coverage. Replacement of sprinkler heads, underground piping, and other items damaged by the Contractor's operation shall be at the contractor's expense. The Contractor's responsibility shall extend from the street meter (but not including the meter) to the furthest sprinkler head. Repairs shall be made by a qualified plumber. The Contractor shall promptly report any damage to the system to Agency staff. All damage shall be repaired immediately.

g. General Litter, Weed Control and Maintenance

The Contractor shall remove and dispose of all litter and debris and shall control weeds in the plaza areas, tree wells, and "bump outs." ("Bump outs" are the areas between the widened curb and the standard concrete sidewalk that generally contain street trees, bollards and granite pavers.) The tree wells and bump outs which are included are those which contain trees maintained under this Contract.

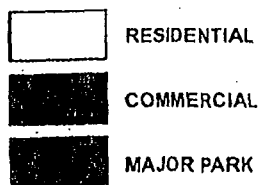
The Contractor shall remove graffiti in a timely manner. Lens covers on the bollards will be cleaned, repaired and painted as needed. Contractor will inspect pavement for lifted, separated, cracked or damaged paving. Street benches shall be cleaned and treated with a preservative twice a year and the wrought iron armrest repainted as needed.

h. Repairs and Other

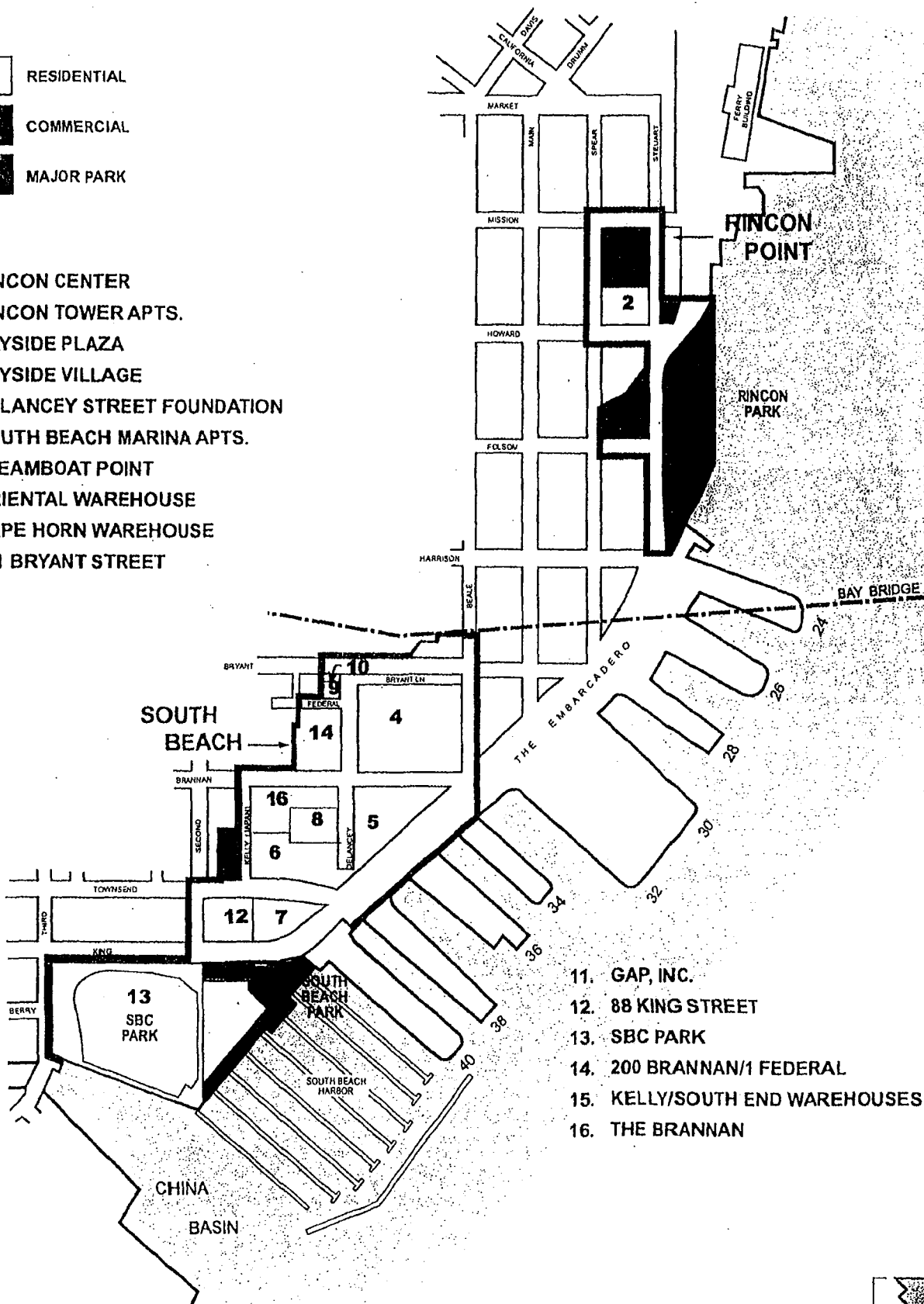
Extra work not included in the Contract is to be done only upon written direction by Agency staff.

i. Reporting

Uneven or cracked sidewalks and like items which are not the direct responsibility of the Contractor to repair, shall be reported promptly to Agency staff who may authorize repair as extra work under "Repairs and Other."



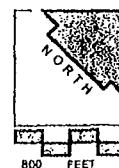
1. RINCON CENTER
2. RINCON TOWER APTS.
3. BAYSIDE PLAZA
4. BAYSIDE VILLAGE
5. DELANCEY STREET FOUNDATION
6. SOUTH BEACH MARINA APTS.
7. STEAMBOAT POINT
8. ORIENTAL WAREHOUSE
9. CAPE HORN WAREHOUSE
10. 301 BRYANT STREET

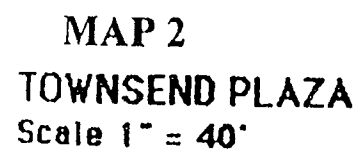


11. GAP, INC.
12. 88 KING STREET
13. SBC PARK
14. 200 BRANNAN/1 FEDERAL
15. KELLY/SOUTH END WAREHOUSES
16. THE BRANNAN

RINCON POINT - SOUTH BEACH
 SAN FRANCISCO REDEVELOPMENT AGENCY • PD/DH:2/01

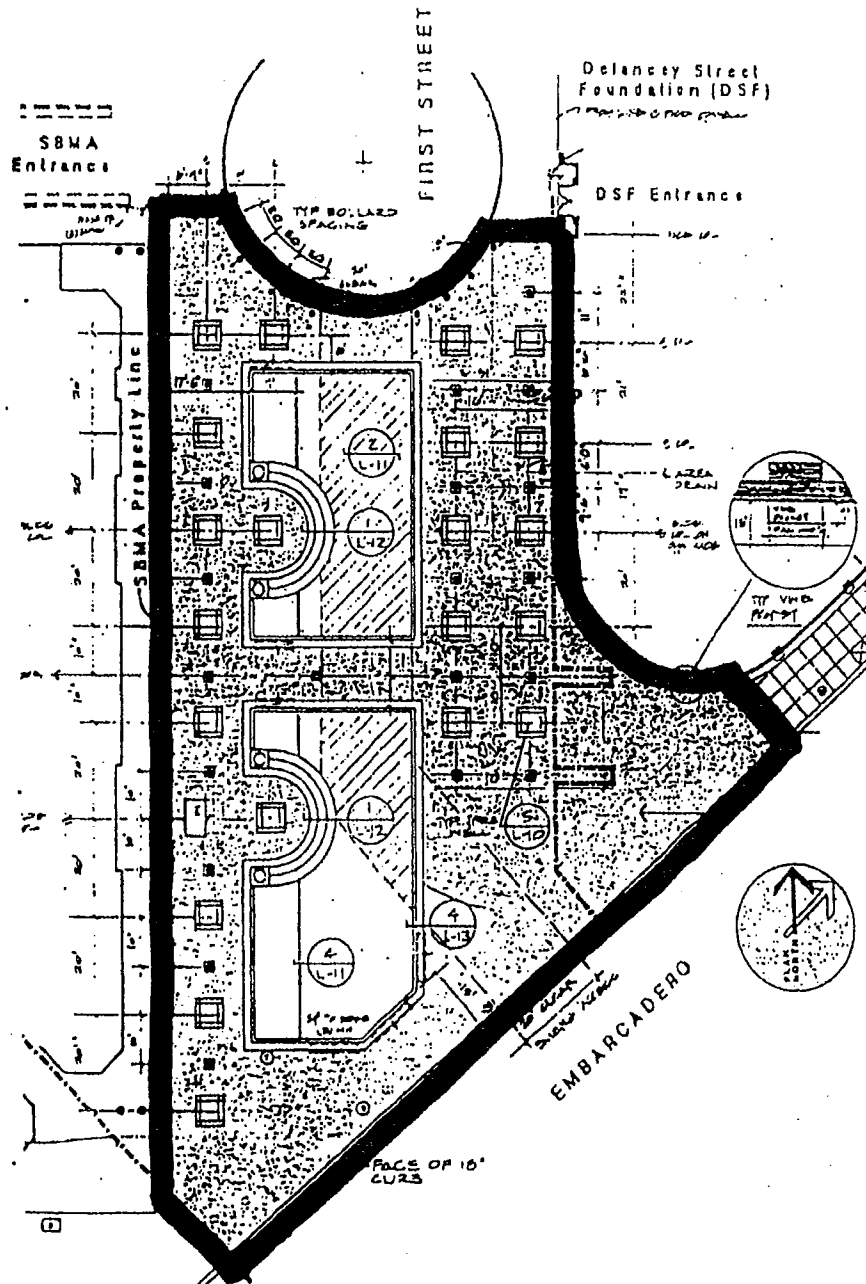
MAP 1



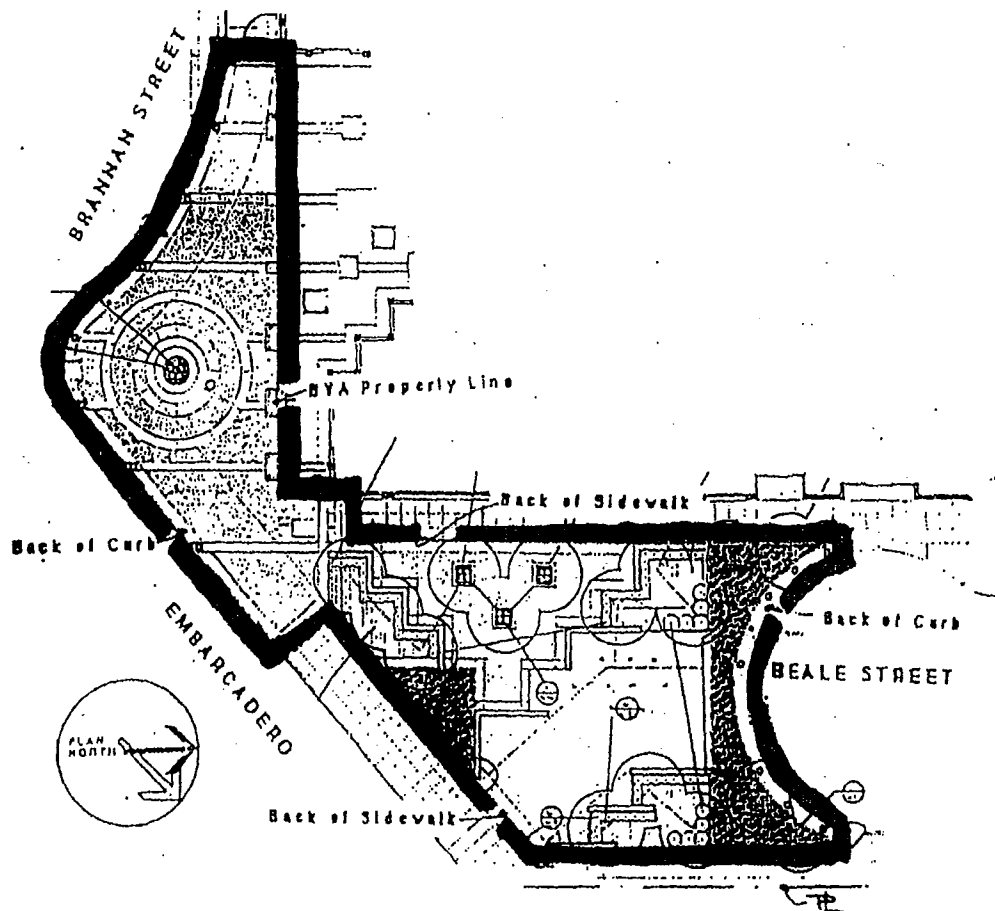


TOWNSEND PLAZA

Scale 1" = 40'

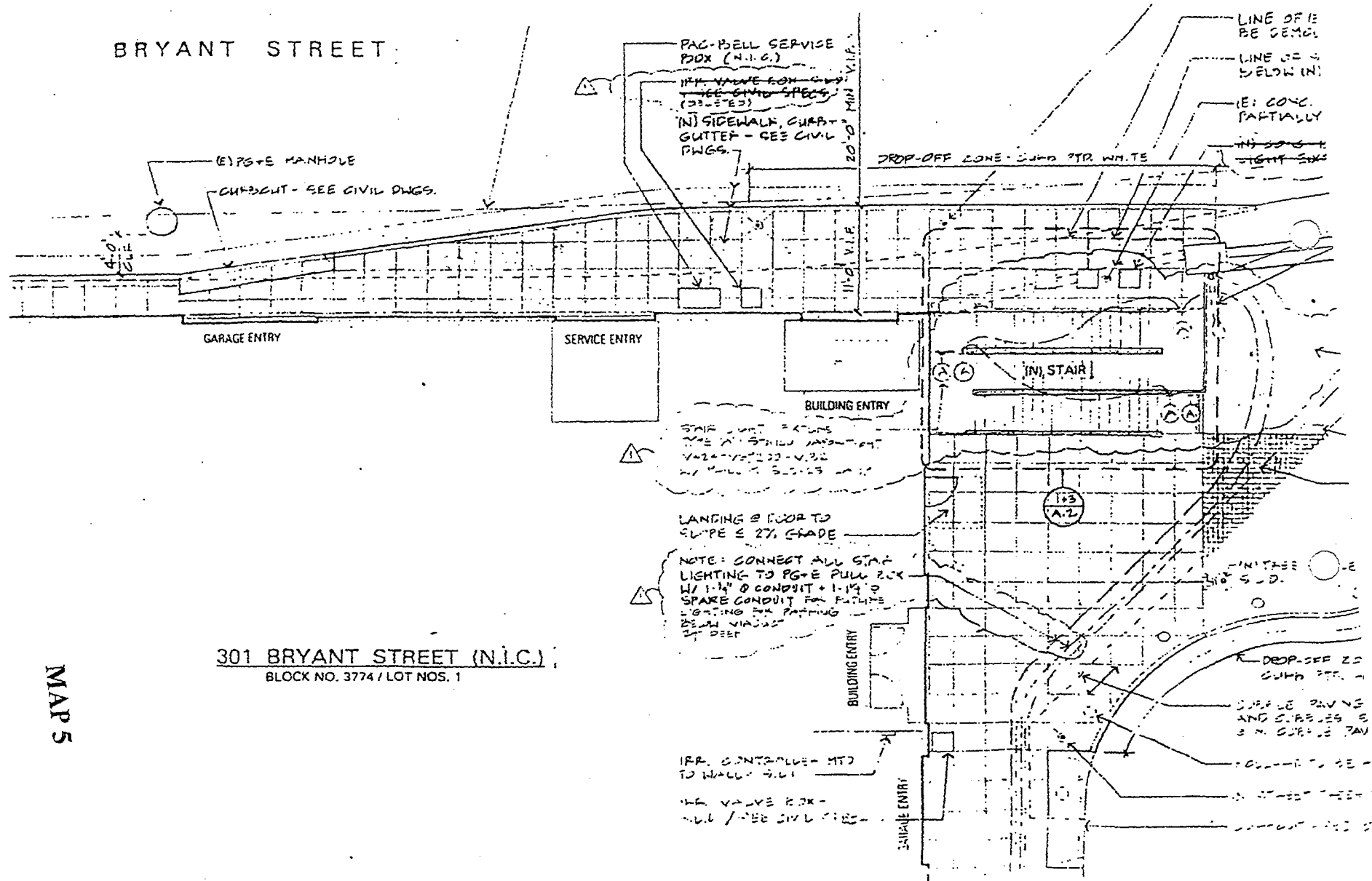


MAP 3
FIRST PLAZA
Scale 1" = 40'



MAP 4
BRANNAN/BEALE PLAZA
Scale 1" = 40'

BRYANT STREET



301 BRYANT STREET (N.I.C.)
BLOCK NO. 3774 / LOT NOS. 1

MAP 5

Bryant Street Apartments & Plaza
Bryant & First
(Delaney)

**ARTICLE 16:
URBAN FORESTRY ORDINANCE**

- Sec. 800. Title.
- Sec. 801. Purpose.
- Sec. 802. Definitions.
- Sec. 802.1. Additional definitions.
- Sec. 803. Urban Forestry Council; Additional Powers and Duties.
- Sec. 804. Jurisdiction.
- Sec. 805. Responsibility for Maintenance of Street Trees.
- Sec. 806. Planting and Removal of Street Trees.
- Sec. 807. Department of Public Works Urban Forestry Program; Powers and Duties.
- Sec. 808. Protection of Trees and Landscape Material.
- Sec. 809. Hazard Trees; Abatement.
- Sec. 810. Landmark Trees.
- Sec. 810A. Significant Trees.
- Sec. 810B. Sidewalk Landscape Permits.
- Sec. 811. Penalties for Violation of Ordinance.
- Sec. 812. Enforcement of Ordinance; Designated Employees.
- Sec. 813. Urban Forest Management Plan.
- Sec. 814. Severability.

SEC. 800. TITLE.

This ordinance shall be known as the San Francisco Urban Forestry Ordinance.

(Added by Ord. 165-95, App. 5/19/95)

SEC. 801. PURPOSE.

The San Francisco Urban Forestry Ordinance is enacted to further the following public purposes:

- (a) To realize the optimum public benefits of trees on the City's streets and public places, including favorable modification of microclimates, abatement of air and noise pollution, reduction of soil erosion and runoff, enhancement of the visual environment, and promotion of community pride;
- (b) To integrate street planting and maintenance with other urban elements and amenities, including but not limited to utilities, vehicular and pedestrian traffic, and enhancement of views and solar access;
- (c) To promote efficient, cost effective management of the City's urban forest by coordinating public and private efforts within a comprehensive and professional management system;

- (d) To reduce the public hazard, nuisance, and expense occasioned by improper tree selection, planting, and maintenance;
- (e) To provide for the creation of an equitable, sustained, and reliable means of funding urban-forest management throughout the City;
- (f) To create and maintain a unified urban-forest resource, enhancing the City's overall character and sense of place.
- (g) To recognize that trees are an essential part of the City's aesthetic environment and that the removal of important trees should be addressed through appropriate public participation and dialogue, including the California Environmental Quality Act (Public Resources Code Sections 21000 et seq.).
- (h) To recognize that green spaces are vital to San Francisco's quality of life as they provide a range of environmental benefits and bring beauty to our neighborhoods and commercial districts.
- (i) To ensure that landscaping in sidewalk areas is properly constructed and maintained in order to maximize environmental benefits, protect public safety, and limit conflicts with infrastructure.

(Added by Ord. 165-95, App. 5/19/95; amended by Ord. 17-06, File No. 051458, App. 1/20/2006; Ord. 121-06, File No. 060142, App. 6/14/2006)

SEC. 802. DEFINITIONS.

Unless the context specifically indicates otherwise,

"Administrative cost" shall mean 20 percent of the Department's actual replacement cost, or a minimum of \$100, whichever is greater.

"City" shall mean the City and County of San Francisco.

"Community Boards" of San Francisco shall mean the neighborhood mediation/dispute settlement service established under the auspices of The Community Board Program, Inc.

"Department" shall mean the Department of Public Works of the City.

"Director" shall mean the Director of Public Works or the Director's designee, which shall include the Urban Forester or other departmental staff.

"Ex officio" shall mean a current employee of any City department, or California or federal agency whose appointment to the Urban Forestry Council has been approved by the Director of the Department of the Environment.

"Hazard tree" shall mean any tree that poses an imminent hazard to person or property. The Director may determine that a tree is a hazard if it or any part of it: (1) appears dead, dangerous, or likely to fall, even after proper maintenance activities are performed to eliminate dead or dangerous parts; (2) obstructs or damages a street, sidewalk, or other existing structure; (3) harbors a serious disease or infestation threatening the health of other trees; (4) interferes with vehicular or pedestrian traffic; or (5) poses any other significant hazard or potential hazard, as determined by the Director; provided, however, that feasible measures have been applied to abate any such hazard, such as applicable Maintenance activities as defined in this Section 802. The Director's determination shall be in writing.

"Injure" or "injury" shall mean any act which harms or damages a tree, including but not limited to impact, cutting, carving, painting, transplanting, or knocking over, and includes but is not limited to the following: injurious attachment of any rope, wire, nail, advertising poster, or other contrivance to any tree subject to the provisions of this Article 16; intentionally or negligently allowing any gaseous, liquid, or solid substance that is harmful to a tree to come into contact with a tree; setting fire or intentionally or negligently permitting any fire to burn when such fire or the heat therefrom will injure any part of any tree; pruning which in and of itself will kill or cause a tree to decline; or severing of all or part of a tree.

"In-lieu fee" shall mean a fee deposited into the Adopt-A-Tree Fund and imposed by the Director. The in-lieu fee shall be equal to the replacement value of a tree(s) to be removed or trees that have been destroyed or as otherwise specified in Section 811. In the case of trees required to be planted by Section 805 or 806, yet excused by the Director through a waiver or modification, the In-lieu fee shall be equal to the City's cost to plant and water a tree for three years. The minimum In-lieu fee shall be \$1,489.00. Beginning with fiscal year 2007-2008, this fee shall be reviewed and adjusted each year in accordance with the procedures set forth in Public Works Code Section 2.1.2.

"Interested San Francisco organization" shall mean a San Francisco organization or individual that has made a written request to the

Department for notification of proposed tree removals in a specified area(s) or neighborhood(s).

"Landmark Tree" shall mean a tree so designated pursuant to Section 810 of this Article 16.

"Landscape Material" shall mean any tree, shrub, groundcover or other plant.

"Maintenance" shall mean those actions necessary to promote the life, growth, health, or beauty of a tree. Maintenance includes both routine and major activities. "Routine Maintenance" shall include adequate watering to ensure the tree's growth and sustainability; weed control; removal of tree-well trash; staking; fertilizing; routine adjustment and timely removal of stakes, ties, tree guards, and tree grates; bracing; and sidewalk repairs related to the tree's growth or root system pursuant to Section 706 of this Code. "Major Maintenance" shall include structural pruning as necessary to maintain public safety and to sustain the health, safety, and natural growth habit of the tree; pest and disease-management procedures as needed and in a manner consistent with public health and ecological diversity; replacement of dead or damaged trees. Pruning practices shall be in compliance with International Society of Arboriculture Best Management Practices and ANSI Pruning Standards, whichever is more protective of tree preservation.

"Median Strip" shall mean the dividing area in the public way between opposing lanes of vehicular traffic.

"Notice" shall mean written notice by personal delivery or by mailing, either by letter or postal card, postage prepaid to the last known address as the same appears on the City's most recent assessment rolls.

"Person" shall mean any individual, firm, partnership, association, corporation, company, or organization of any kind.

"Planting" shall mean putting or setting into the ground or into a container to grow and irrigating until self-sufficient.

"Removal" shall mean any intentional or negligent moving, carrying away, elimination or taking away of part or all of a tree.

"Replacement Value" shall mean the actual cost to the Department of replacing a tree or landscape material removed or destroyed with a comparable size and species of tree or with comparable landscape material. Certain trees or landscape material, because of their size, species or historical significance, cannot be replaced from available nursery stock. In such case, "replacement value" shall be determined pursuant to the valuation formula adopted by the International Society of Arboriculture, as amended from time to time, plus the Department's actual costs to replace the tree. "Replacement value" shall include the Department's administrative costs.

"Sidewalk" shall mean the area between the curbing and the abutting private property lot line, whether paved or unpaved, as legislated by the Board of Supervisors and as reflected in the Department's official maps.

"Significant Tree" shall mean a tree so defined in Section 810A of this Article.

"Street" shall mean the vehicular travel-way portion of any public street, avenue, boulevard, lane, road, parkway, freeway, or other public way.

"Street Tree" shall mean any tree growing within the public right-of-way, including unimproved public streets and sidewalks, and any tree growing on land under the jurisdiction of the Department.

"Tree" shall mean any large perennial plant having a woody trunk(s), branches, and leaves. Trees also shall include palm trees.

"Urban Forest" shall mean all trees on public streets and right-of-ways within the borders of the City and County of San Francisco, any trees growing on land subject to the jurisdiction of the Department, and any other trees subject to the provisions of this Article 16.

"Urban Forestry Council" shall mean the Urban Forestry Council as established under the Environment Code Chapter 12.

(Added by Ord. 165-95, App. 5/19/95; amended by Ord. 294-98, File No. 98-0991, Eff. 11/2/98; Ord. 17-06, File No. 051458, App. 1/20/2006; Ord. 193-06, File No. 060778, App. 7/21/2006; Ord. [119-15](#), File No. 150221, App. 7/15/2015, Eff. 8/14/2015)

SEC. 802.1. ADDITIONAL DEFINITIONS.

Unless the context specifically indicates otherwise.

(a) "Climate appropriate" means plants, shrubs, ground covers, or tree species that meet at least one of the following conditions:

(1) The species has a water use ranking of "low" or "very low" in Region 1 (North-Central Coast) as established in the California Department of Water Resources 2000 publication "Water Use Classification of Landscape Species" or subsequent editions as it may be updated;

(2) The species has a water use ranking of "no water", "little water", or "little to moderate water" in the climate zone for the

planting location as established in the Sunset Western Garden Book, Eighth Edition, published by Oxmoor House on February 1, 2007 or subsequent editions as it may be updated;

(3) The plantings are part of an engineered stormwater management feature approved by the General Manager of the Public Utilities Commission pursuant to the San Francisco Stormwater Design Guidelines established by the Public Utilities Commission;

(4) The Department of Public Works, the Recreation and Park Department, or the General Manager of the Public Utilities Commission has determined that the species, when watered for sufficient plant health and appearance, is low water use based on the agency's experience with the species, and the agency has added the species to the Low Water Use and Climate Appropriate Plant List maintained by the General Manager of the Public Utilities Commission;

(5) The species appears on the San Francisco Street Tree Species List established by the Department of Public Works Bureau of Urban Forestry;

(6) The planting is part of a species test approved by the Department of Public Works or the Recreation and Park Department; or

(7) The species has been permitted at the site by the Department of Public Works or the General Manager of the Public Utilities Commission based on wet soil conditions stemming from proximity to naturally occurring water features such as a high water table, springs, ponds, lakes, creeks, and wetlands.

(Added by Ord. 84-10, File No. 091453, App. 4/22/2010)

SEC. 803. URBAN FORESTRY COUNCIL; ADDITIONAL POWERS AND DUTIES.

(a) The Urban Forestry Council shall serve in an advisory capacity to the Director or his designee on matters relating to this Article and to tree management in the City. The responsibilities of the Urban Forestry Council may include but shall not be limited to the following:

(1) Studying the problems and determining the needs of the City concerning its street tree planting and maintenance programs, and advising the Director in this regard;

(2) Preparing for the Director an annual report detailing the state of the urban forest;

(3) Recommending to the Director appropriate species of trees to be planted on City streets or other areas under the Department's jurisdiction;

(4) Working with the Community Boards of San Francisco in developing guidelines, standards, and procedures for the mediation of conflicts between property owners over the protection of views, solar access, planting/removal of trees, and other tree-related issues;

(5) Working with the Director concerning the maintenance of an Urban Forestry Management Plan;

(6) Developing and recommending for Board of Supervisors' adoption uniform criteria for designating "landmark" trees and uniform criteria, rules, and procedures for the removal of "landmark" trees pursuant to Section 810;

(7) Making recommendations to the Director on appeals of applications for tree removal;

(8) Recommending to the Director information to be distributed to the public concerning the selection, planting, and maintenance of trees throughout the City; and

(9) Recommending to the Director desirable City tree programs and activities, including legislation and funding mechanisms.

(b) The Urban Forestry Council shall perform such other duties assigned to it under the Municipal Codes.

(Added by Ord. 165-95, App. 5/19/95; amended by Ord. 17-06, File No. 051458, App. 1/20/2006)

SEC. 804. JURISDICTION.

(a) Department's Jurisdiction. The Department shall have jurisdiction over the planning, planting, maintenance, and removal of trees in any street or other public right-of-way as defined in Section 244 of this Code; over any landscape material in any street median, center strip, or other landscaped portion of a public right-of-way; over trees and other landscape material in other public spaces under the jurisdiction of the Department; over hazard trees on private property as specified in Section 809 and 810A of this Article; over landmark trees as specified in Section 810; and over significant trees as specified in Section 810A.

SEC. 805. RESPONSIBILITY FOR MAINTENANCE OF STREET TREES.

(a) Responsibilities of Property Owners.

(1) Except as specified in Subsections 805(c) and (d) below, it shall be the duty of owners of lots or portions of lots immediately abutting on, fronting on or adjacent to any Street Tree to maintain such Street Tree. This duty shall include both Routine and Major maintenance of the Street Tree. It shall be the responsibility of all public agencies, including City, State and federal agencies, to maintain Street Trees abutting on such public agency's property in accordance with this Section 805. In addition, and in accordance with Section 706 of this Code, abutting property owners shall be responsible for the care and maintenance of the Sidewalk and sidewalk areas adjacent to any Street Tree.

(2) Any person who suffers injury or property damage as a legal result of the failure of the owner to so maintain a Street Tree, Sidewalk and sidewalk areas shall have a cause of action for such injury or property damage against such property owner. In addition to its rights under Section 706 of this Code, the City shall have a cause of action for indemnity against such property owner for any damages the City may be required to pay as satisfaction of any judgment or settlement of any claim that results from injury to persons or property as a legal result of the failure of the owner to maintain a Street Tree in accordance with this Section 805.

(3) The Department shall have available to interested persons, upon request, public pruning standards to ensure that Street Trees receive proper care.

(b) Permit Required for Major Maintenance of Street Trees Adjacent to General Advertising Signs.

(1) The Department shall require a permit to perform Major Maintenance, as defined in Section 802, on any Street Tree within 150 feet of any portion of a general advertising sign, as defined in Planning Code Section 602.7. The Department shall issue such permit only to the owners of lots or portions of lots immediately abutting on, fronting on or adjacent to any such Street Tree unless the subject Tree is under the Maintenance responsibility of the Department, in which case the Department may perform the Major Maintenance itself.

(2) Any permit for Major Maintenance of Street Trees specified in Section 805(b)(1) shall include a condition that the Maintenance work be conducted under the direct supervision of a certified arborist in accordance with this Article 16 and other standards that the Department adopts.

(3) The fee for a permit for Major Maintenance of a Street Tree(s) specified in Section 805(b)(1) shall be \$300.00. This fee is subject to the fee adjustment provisions of Section 2.1.2 and additional fee provisions of Section 2.1.3.

(c) **Responsibilities of the Department.** The Department may, at the Director's discretion, determine to undertake the regular Routine and/or Major Maintenance of certain Street Trees or corridors of Street Trees to promote consistency in the Maintenance of Trees or in the public interest. Where the Department determines to undertake such regular Maintenance of Street Trees, the Director shall specify in writing by Departmental Order those Trees or corridors of Trees for which it has undertaken Maintenance responsibility and shall specify in writing whether the Department will be responsible for Routine or Major Maintenance, or both. Such determinations by the Department shall be readily accessible to property owners and members of the public. Where the Department has undertaken certain Maintenance responsibility for Street Trees in writing, the abutting property owner shall be relieved of responsibility for such Street Tree Maintenance.

Where the Department assumes Maintenance responsibilities after the effective date of this Article 16, it shall send written notice of that fact to the abutting property owner.

(d) Street Tree Establishment and Replacement of Dead Street Trees.

(1) **Establishment of Street Trees.** The establishment period for newly planted Street Trees shall be three years from the date of Planting. If the Street Tree is not adequately established at the end of this period, the Director shall treat this as an Injury to the Tree, as defined in Section 802, and may seek penalties for violation, as set forth in Section 811. The Director may establish rules, regulations, or any other form of written guidelines concerning standards for proper care and Maintenance during the establishment period.

(2) **Replacement of Dead Street Trees.** The permittee or agency responsible for a Street Tree shall replace a dead Street Tree within six months of the demise or Removal of the Tree. Removal of a dead Street Tree and Planting of a replacement Street Tree shall be subject to all requirements set forth in this Article 16 for Removal and Planting. The Director is authorized to waive this replacement requirement and may place conditions on any such waiver, which may include, but is not limited to, replacement Planting

at an alternate location or payment of the In-lieu fee. Any such waiver shall be in writing.

(e) Department Inventory and Publication of Street Tree Responsibilities.

(1) The Department shall use its best efforts to maintain an inventory of all Trees under its jurisdiction.

(2) As of the effective date of this Article 16, the Department shall continue to maintain Street Trees listed in its database as Department-maintained Trees. Such information shall be made available to the public upon request.

(3) Within 120 days of the effective date of this Article 16, the Department shall publish in a newspaper of general circulation in the City a list of all Trees or corridors of Trees maintained by the Department.

(f) Department Relinquishment of Street Tree Maintenance.

(1) The Director may, in his or her discretion, determine to relinquish Tree Maintenance responsibilities for certain Trees or corridors of Trees. Prior to such relinquishment, the Director shall post the affected Trees and send Notice to abutting property owners of the Department's intent to relinquish Maintenance responsibilities on a date certain. Within 10 days of the posting and mailing of such Notice, any affected property owner may object in writing to such relinquishment. At the written request of any person, the Director shall hold a hearing prior to relinquishing Maintenance responsibility for a particular Tree or corridor of Trees. The Director's decision on such relinquishment shall be final and nonappealable.

(2) Prior to relinquishing Maintenance responsibilities, the Department shall perform all necessary Major Maintenance. As of the date designated by the Director, all Tree Maintenance shall be the responsibility of the abutting property owner.

(Added by Ord. 165-95, App. 5/19/95; amended by Ord. 84-10, File No. 091453, App. 4/22/2010; Ord. 119-15, File No. 150221, App. 7/15/2015, Eff. 8/14/2015)

SEC. 806. PLANTING AND REMOVAL OF STREET TREES.

(a) Planting and Removal by the Department.

(1) **Planting.** The Department may determine to plant a new climate appropriate Tree(s) in a Sidewalk or public right-of-way. When the Department determines to plant a new Street Tree(s), the Department will undertake Maintenance responsibility for such new Street Tree and shall send a courtesy Notice to the abutting property owner prior to Planting such new Tree. Any objections to the proposed work must be submitted to the Director in writing and postmarked within 30 days after Notice by the Director. The Director shall consider such objections and may hold a hearing, in the Director's discretion. The Director's decision on the matter shall be final and nonappealable.

(2) **Removal of Street Trees.** No Street Tree shall be cut down or removed by the Department unless:

(A) The Department gives 30 days' prior written Notice to the owner of the property abutting the affected Tree; and

(B) Thirty days prior to the Removal date, the Department notifies all Interested San Francisco organizations and, to the extent practical, all owners and occupants of properties that are on or across from the block face where the affected Tree is located. In addition, 30 days prior to the Removal date, the Department shall post a notice on the affected Tree.

(3) Appeal of Tree Removal.

(A) If within 30 days after the giving of Notice for Street Tree Removal, as specified in Subsection (a)(2), or if within 15 days after the giving of notice for Removal of a hazard Street Tree, as specified in Subsection (a)(4), any Person files with the Department written objections to the Removal, the Director shall hold a hearing to consider public testimony concerning the proposed Tree Removal. Written Notice of the date, time, and place of the hearing shall be posted on the affected Tree, provided in a newspaper of general circulation, and sent to the objecting party, the owner of the property abutting the affected Tree, and all Interested San Francisco organizations, not less than seven days prior thereto.

(B) The Director shall issue his or her written decision and order on the objections after the public hearing specified above.

(C) The Director's decision shall be final and appealable to the Board of Appeals.

(4) Removal of Hazard Street Trees.

(A) No hazard Street Tree shall be cut down or removed by the Department unless:

(i) The Department gives 15 days' prior written Notice to the owner of the property abutting the affected Tree; and

set forth in this Subsection (d).

(1) **Applicability.** This Subsection shall apply to development projects that involve any of the following:

- (A) the construction of a new building;
- (B) the addition of a dwelling unit;
- (C) the addition of a new curb-cut;
- (D) the addition of a garage; and/or
- (E) a net addition to an existing building of 500 gross square feet or more.

(2) **Number of Trees Required.** The Director shall require one Street Tree for each 20 feet of Street frontage of the property containing the development project, with any remaining fraction of 10 feet or more of frontage requiring an additional Tree. Any existing Street Trees located within the public right-of-way along such property that have been protected during construction and that the Director does not recommend for Removal, shall count toward meeting the requirement.

(3) **Standards for Required Trees.** New Street Trees that the Director requires to be planted under this Subsection shall:

- (A) be planted within the public right-of-way adjacent to the property containing the development project;
- (B) be of a species suitable for the site conditions;
- (C) be a minimum of 24-inch box size;
- (D) have a minimum 1 1/4-inch caliper, measured at 6-inches above ground;
- (E) be planted no higher than the adjacent Sidewalk and provide a below-grade environment with nutrient-rich soils, free from overly-compacted soils, and generally conducive to Tree root development; and
- (F) be watered, maintained, and replaced if necessary by the property owner, in accordance with this Article 16, and be in compliance with applicable water use requirements of Administrative Code Chapter 63.

(4) **Waivers and Modifications.** The Director may waive or modify the number of and/or standards for Street Trees required pursuant to this Subsection only as described below:

(A) The Director, in his or her sole discretion, may waive or modify the requirements of this subsection when inadequate Sidewalk width or interference with driveways, sub-sidewalk basements, or other pre-existing surface, sub-surface, or above-grade features render installation of the required Street Tree(s) in the required fashion impossible, impractical, and/or unsafe. For each required Street Tree that the Director waives, the applicant, at his or her choosing, shall either (i) pay an In-lieu fee pursuant to Section 802 or (ii) to fulfill all or a portion of the requirement, provide alternative landscaping, including but not limited to Sidewalk landscaping, in amount comparable to or greater than the number of Street Trees waived; or

(B) Only in those extraordinary and unusual circumstances where an applicant successfully demonstrates that an overriding City policy renders the Planting of the required Street Tree(s) inappropriate and both the Director and the Director of Planning concur, the Director may waive one or more required Street Trees. For each required Street Tree that the Director waives, the Director, in his or her sole discretion, shall require that the applicant either (i) pay an In-lieu fee pursuant to Section 802 or (ii) fulfill all or a portion of the requirement by providing alternative landscaping, including but not limited to Sidewalk landscaping, in amount comparable to or greater than the number of Street Trees waived.

(Added by Ord. 165-95, App. 5/19/95; amended by Ord. 294-98, File No. 98-0991, Eff. 11/2/98; Ord. 17-06, File No. 051458, App. 1/20/2006; Ord. 193-06, File No. 060778, App. 7/21/2006; Ord. 166-09, File No. 090722, Ap. 7/21/2009; Ord. 84-10, File No. 091453, App. 4/22/2010; Ord. 119-15, File No. 150221, App. 7/15/2015, Eff. 8/14/2015)

SEC. 807. DEPARTMENT OF PUBLIC WORKS URBAN FORESTRY PROGRAM; POWERS AND DUTIES.

(a) **Arterial Planting Program.** The Department shall continue its program of appropriate street tree planting along major traffic routes and commercial streets throughout the City.

(b) **Neighborhood Planting Program.** The Department shall continue to encourage and support neighborhood planting programs. Support may include, but need not be limited to, provision of trees and materials, sidewalk cutting and removal, planting labor, technical advice, and organizational assistance. The Department is hereby authorized to donate such funds, materials and labor to neighborhood

(ii) Fifteen days prior to the Removal date, the Department notifies all Interested San Francisco organizations and, to the extent practical, owners and occupants of properties that are on or across the block face where the affected Tree is located. In addition, 15 days prior to the Removal date, the Department shall post a notice on the affected Tree.

(B) Hazard Street Tree shall have the same meaning as Hazard Tree in Section 802 except that a hazard Street Tree is located within the public right-of-way.

(5) **Emergency Removal.** In the case of manifest danger and immediate necessity, as determined by the Director, the Department may remove any Street Tree immediately. After such emergency Removal, the Department shall provide Notice of the necessity for such action to the owner of the property abutting the affected Tree, all Interested San Francisco organizations and, to the extent practical, all owners and occupants of properties that are on or across from the block face where the affected Tree was removed.

(b) Planting and Removal by Persons Other Than the Department.

(1) **Planting and Removal Permits.** It shall be unlawful for any person to plant or to remove any Street Tree without a valid permit for such work issued by the Department. All permits for the Planting or Removal of Street Trees issued by the Director for residential properties shall be recorded on the Report of Residential Building Records in accordance with Section 351 of the Housing Code. All work associated with a Street Tree permit must be completed within six months of issuance, unless an extension has been granted by the Department.

(2) **Planting.** An abutting property owner who desires a permit to plant a Street Tree shall apply to the Department on the designated form. If approved by the Director, the Department shall issue a permit to plant the specified climate appropriate species of Tree(s) to the applicant. There shall be no administrative fee imposed for a permit to plant a Street Tree unrelated to property development. The Director's decision on a Street Tree planting permit shall be final and appealable to the Board of Appeals.

(3) Removal.

(A) An abutting property owner who desires a permit to remove a Street Tree shall apply to the Department on the designated form. The Department may grant or deny the permit in accordance with the following procedures and requirements. If the Department grants a Tree removal permit, it shall require that a Street Tree or Trees of equivalent replacement value to the one removed be planted in the place of the removed Tree or impose an in-lieu fee unless it makes written findings detailing the basis for waiving or modifying this requirement.

(i) The fee for a permit to remove 1-3 Street Trees shall be \$607.00 when the permit is requested to allow for development or construction; the fee for a permit to remove 1-3 Street Trees shall be \$300.00 when the permit is requested to remove a hazard or a diseased Tree or to prevent damage to the sidewalk; the fee for a permit to remove 4-9 Street Trees shall be \$808.00; and the fee to remove 10 or more Street Trees shall be \$1,214.00.

(ii) **Additional Fees.** The Director, in his or her discretion, may require an applicant or permittee to pay additional fees as set forth in Section 2.1.3.

(iii) **Fee Review and Adjustment.** Beginning with fiscal year 2010-2011, the fees that are established herein shall be reviewed and adjusted each year in accordance with the procedures set forth in Public Works Code Section 2.1.2.

(B) Thirty days prior to the Removal date, the Department shall give Notice to all Interested San Francisco organizations and, to the extent practicable, the owners and occupants of properties that are on or across from the block face or adjacent to where the affected Tree is located. In addition, 30 days prior to the Removal date, the Department shall post a notice on the affected Tree. If within 30 days after the giving of such notice any person files with the Department written objections to the Removal, the Director shall hold a hearing prior to removing the Tree. Written notice of the date, time, and place of the hearing shall be posted on the affected Tree and sent to the objecting party and all Interested San Francisco organizations not less than seven days prior thereto.

(C) The Director shall issue his or her written decision and order on the objections after the public hearing specified above.

(D) The Director's decision shall be final and appealable to the Board of Appeals.

(c) **Planting and Removal by City Agencies, Commissions, or Other Departments.** If a City agency, commission, or department other than the Department of Public Works desires to plant or remove a Street Tree, such agency, commission, or department shall be subject to the provisions of Subsection (b); provided, however, that for purposes of Street Tree Removal, the notice and procedures for Director's hearings set forth in Subsections (a)(2) and (a)(3) shall apply.

(d) **Required Street Trees for Development Projects.** The Director shall require Street Trees for the development projects as

planting programs as are deemed by the Director to be in the public interest and in the interest of the promotion of the urban forest.

(c) **Public Education.** The Department shall undertake an on-going program of public outreach and education in order to promote public understanding of the City's urban forest and public adherence to the standards and procedures established under this Article.

(d) **Authority over Site Development Plans.**

(1) The Department shall have the authority to review and comment on site development plan applications received by the City's Central Permit Bureau that pertain to the planting, alteration, or removal of street trees. The Department shall also have the authority to review and comment on site development plan applications that pertain to the alteration or removal of landmark trees designated pursuant to Section 810(a) of this Article and significant trees pursuant to Section 810A of this Article. Protection of such trees during construction shall be required in accordance with Section 808(c) of this Article. Removal of such trees shall be subject to the applicable rules and procedures for removal set forth in Section 806, 810, or 810A of this Article.

(2) If the Zoning Administrator modifies or waives the requirements of Planning Code Section 138.1 pursuant to Planning Code Section 138.1(c)(1)(iii), the Department shall impose an in-lieu fee of the property owner so excused. Further, if a property owner is required to plant a street tree pursuant to Planning Code Section 138.1, the Department shall require that the property owner maintain such tree or replace any such tree that subsequently dies or is removed by any person, or pay an in-lieu fee. The Department shall follow the requirements set forth herein for tree replacement or payment of an in-lieu fee unless it makes written findings detailing the basis for waiving said requirements.

(e) **Adopt-A-Tree Fund.** Pursuant to Section 10.117-77 of the Administrative Code, the Department shall maintain an Adopt-A-Tree Fund to enhance the urban forestry program.

(f) **In-Lieu Planting Program.** The Department shall develop and implement an In-Lieu Planting Program to offset the loss of street trees, significant trees, and landmark trees due to removal, destruction, or death. The In-Lieu Planting Program shall also compensate for the loss of trees required to be planted by Section 138.1 of the Planning Code, yet excused by the Zoning Administrator pursuant to Planning Code Section 138.1(c)(1)(iii). The Department shall impose an in-lieu fee in accordance with a fee schedule adopted by the Director where a street tree is destroyed, removed or is excused from planting where otherwise required by Planning Code Section 138.1. The Department also shall assess an in-lieu fee or such other penalty as set forth in Section 811 as mitigation for violation of the requirements of this Article. The Department shall follow the requirements set forth herein for payment of an in-lieu fee unless it makes written findings detailing the basis for waiving said requirements. As set forth in Section 811, in lieu fees shall be deposited in the Adopt-A-Tree Fund.

(g) **Tree Adoption Program.** The Department shall develop and implement a tree adoption program to allow persons to donate money for the purpose of tree planting and maintenance. Money donated to the City and County for the purpose of tree planting and maintenance shall be deposited into the Adopt-A-Tree Fund.

(Added by Ord. 165-95, App. 5/19/95; amended by Ord. 17-06, File No. 051458, App. 1/20/2006; Ord. 84-10, File No. 091453, App. 4/22/2010; Ord. 310-10, File No. 101194, App. 12/16/2010)

SEC. 808. PROTECTION OF TREES AND LANDSCAPE MATERIAL.

(a) **Injury to or Destruction of Trees Prohibited.** It shall be unlawful for any person to intentionally, maliciously, or through gross negligence Injure or destroy a Street Tree, any Tree on City property, a Significant Tree, or a Landmark Tree. Removal of a Tree under City order or Removal in accordance with a permit issued pursuant to Section 806, 810, or 810A of this Article 16 is exempt from this prohibition.

(b) **Injury to or Destruction of Landscape Materials Prohibited.** It shall be unlawful for any person to intentionally, maliciously or through gross negligence Injure or destroy any Landscape Material in any Street median, center strip, or other landscaped portion of a public right-of-way under the City's jurisdiction, except as authorized by the Department.

(c) **Construction Work: Protection of Trees Required.**

(1) It shall be unlawful for any person to engage in any construction work on private or public property without first taking steps to protect Street Trees, Significant Trees, and Landmark Trees from damage, including damage caused by soil compaction or contamination, excavation, or placement of concrete or other pavement or foundation material. If excavation, construction, or Street work is planned within the dripline of a Significant Tree, a Landmark Tree, or a Tree on any Street or other publicly owned property said Tree(s) shall be adequately protected. If any construction work results in the Injury or damage to such Trees, the responsible party(ies) may be subject to the penalties set forth in Section 811 of this Article.

(2) Prior to Department of Building Inspection issuance of a building permit or site permit, the applicant for a project that may damage one or more Street Trees, Significant Trees, and/or Landmark Trees shall submit a Tree protection plan to the Director for review and approval.

(3) Prior to issuance of a Public Works permit for excavation, construction, or Street work that will occur within the dripline of a Significant Tree, a Landmark Tree, or a Tree on any Street or other publicly owned property, the applicant shall submit a Tree protection plan to the Director for review and approval.

(4) If the Public Utilities Commission or Municipal Transportation Agency plans to perform any excavation, construction, or Street work within the drip line of a Significant Tree, a Landmark Tree, or a Tree on any Street or other publicly owned property, said department shall submit a Tree protection plan to the Director for informational purposes only.

(5) The Tree protection plan referenced above in Subsection (2)-(4) shall be prepared by a certified arborist.

(6) The Director shall charge a fee of \$151.00 for review and approval of a Tree protection plan. This fee is subject to the fee adjustment provisions of Section 2.1.2 and additional fee provisions of Section 2.1.3.

(7) An applicant's or permittee's failure to obtain a Director approved Tree protection plan pursuant to Subsections (2) or (3) above, shall be deemed in violation of the subject permit. The Director may enforce such a violation under the terms of the relevant Public Works permit, including a requirement that all work stop until the applicant or permittee complies with this Section. In the case of a Department of Building Inspection building or site permit, the Director shall request the Director of Building Inspection to initiate an enforcement action under the Building Code, including a requirement that all work stop until the applicant or permittee complies with this Section.

(Added by Ord. 165-95, App. 5/19/95; amended by Ord. 17-06, File No. 051458, App. 1/20/2006; Ord. 119-15, File No. 150221, App. 7/15/2015, Eff. 8/14/2015)

SEC. 809. HAZARD TREES; ABATEMENT.

(a) **Notice to Property Owner(s).** Upon a finding by the Director that a tree on private property or a street tree for which a property owner is responsible is a "hazard tree" as defined herein, the Director shall provide notice to the property owner(s) which describes the condition creating the hazard, the actions required to be taken to abate the hazard, and the date by which compliance must be completed. Required action may include replacement or removal of the tree in accordance with applicable requirements and procedures provided in this Article for removal of the subject tree. In cases of extreme danger, as determined by the Director, the Director may require immediate compliance.

(b) **Director of Public Works To Abate Hazard if Owner Fails To Do So.** If the responsible property owner does not undertake in a timely manner the abatement action, as required by said notice, the Director may perform necessary work to abate the hazard. The cost of such abatement, including labor, equipment, materials, inspection services, and administrative costs, shall be an obligation owing by the responsible property owner(s) to the City.

(c) **Method of Enforcement and Collection of Lien.** The Department shall send notice of assessment of costs to the responsible property owner. Such notice shall include a statement that payment is due within 60 days of the mailing date of the notice. If a responsible property owner fails timely to remit payment, the Department shall send a second notice of payment due. Such second notice shall include a statement that failure timely to remit payment in full to the City within 30 days of the mailing of the second notice shall cause the Director to institute lien proceedings pursuant to Sections 706.4-706.7 of this Code. Enforcement and collection of liens for costs associated with hazard tree abatement shall be in accordance with Sections 706.4-706.7 of this Code, except that all monies received in payment of such liens, with the exception of enforcement costs, shall be credited to the Adopt-A-Tree Fund.

(Added by Ord. 165-95, App. 5/19/95; amended by Ord. 17-06, File No. 051458, App. 1/20/2006)

SEC. 810. LANDMARK TREES.

(a) **Designation Criteria.** The Board of Supervisors in Resolution No. 440-06, Clerk of the Board of Supervisors File No. 060487, adopted uniform criteria for the designation of landmark trees, which included consideration of the age, size, shape, species, location, historical association, visual quality, and other contribution to the City's character, as set forth Section 810(f)(4)(A)-(E) below. This designation criteria, which may be amended from time to time, shall apply to all trees within the territorial limits of the City and County of San Francisco.

(b) **Designation Process.**

(1) **Nominations.** A tree may be nominated for designation as a landmark tree by any of the following parties: (i) the property owner whose property contains the subject tree by a written request to the Urban Forestry Council; (ii) the Board of Supervisors, Planning Commission, or Landmarks Preservation Advisory Board by adoption of a resolution of intent to nominate a tree for landmark status; or (iii) the director of any City agency or department by filing a nomination letter with the Urban Forestry Council. Each tree nominated for landmark tree status shall be the subject of a separate individual nomination.

(2) **Content of Nominations.** Nominations shall be made in writing to the Urban Forestry Council and shall include the basis for the nomination, which may address one or more of the adopted designation criteria, including the factors listed below in Section 810(f)(4)(A)-(E) below; the lot, assessor's block, and street address of the subject property; one or more pictures of the tree; and any other information that the nominating property owner or entity believes would be pertinent to the nomination.

(3) **Urban Forestry Council Hearing and Determination.** The Urban Forestry Council shall hold a public hearing on a completed nomination request, and shall determine whether the tree qualifies as a landmark tree pursuant to the adopted designation criteria. After the conclusion of the public hearing, the Urban Forestry Council shall adopt written findings that specify the basis for its decision to approve or reject the nomination and shall forward these findings to the applicant for the nomination and the affected property owner. If the Urban Forestry Council determines that the subject tree meets the adopted designation criteria, it shall forward said decision to the Director, as to a tree on private property, or to the subject City agency, commission or department, as to a tree on City-owned property. If the Urban Forestry Council rejects the nomination, the Council shall not accept a new request for the subject tree for three years from the date of its decision. If the Urban Forestry Council determines that a tree qualifies as a landmark tree, its written findings on the nomination, along with any recommendations of relevant City agencies, commissions or departments, shall be forwarded to the Board of Supervisors for its consideration pursuant to Section 810(b)(4) of this Article. If the Urban Forestry Council fails to forward said findings to the Board of Supervisors within 120 days of the Urban Forestry Council's receipt of the nomination request, the Board of Supervisors may, in its discretion, schedule a public hearing on the nomination, in which event, the failure of the Urban Forestry Council to forward said findings within the 120 day period shall constitute its approval of the nomination.

(A) If the nominated tree is on private or public property, the Council shall provide mailed notice of the hearing to the subject property owner and all property owners adjoining the subject property where the tree is located at least seven (7) days prior to its hearing. The Council, in its discretion, also may provide delivered notice of the hearing to residents adjoining the subject property, posted notice, or both.

(B) If the subject property exceeds one (1) acre in size, the Council shall provide posted notice in lieu of the mailed notice. Such notice shall be posted on at least two locations on each block face(s) tangent to the subject property at least seven (7) days prior to its hearing.

(C) If the Council either delivers or posts notice in accordance with these provisions, staff assigned to this task shall sign an affidavit, accompanied with any supporting material, stating when and where the notice was delivered or posted.

(4) **Designation.** Upon the recommendation of the Urban Forestry Council, the Board of Supervisors, by ordinance, may designate as a "landmark tree" any tree within the territorial limits of the City and County of San Francisco that meets the adopted designation criteria, or may rescind such designations. If the Urban Forestry Council does not issue findings in a timely manner pursuant to Subsection (b)(3), the Board of Supervisors shall adopt its own findings as part of the designation of a landmark tree.

(c) **Landmark Tree Designation Recorded Notice and Official Book.** Upon Board of Supervisors designation of a landmark tree, the Department or affected agency shall record a notice on the subject property concerning the landmark tree. The Department also shall record the landmark tree designation in an official book entitled Landmark Trees. If the landmark tree is a street tree under the maintenance responsibility of the Department, the Department shall record the landmark tree designation in a separate section of the Landmark Tree book that is reserved for those landmark trees under the maintenance responsibility of the Department. The Department shall maintain this book for public review and update it on a regular basis with the assistance of affected agencies.

(d) **Temporary Designation of Landmark Tree Status.**

(1) At the time a member of the Board of Supervisors introduces a resolution of intent to initiate a nomination and submits to the Clerk of the Board of Supervisors the information required for a landmark tree nomination request as set forth in Section 810(b)(2), the subject tree shall be temporarily designated as a landmark tree ("temporary designation") and be subject to the provisions governing landmark trees set forth herein while proceedings are pending on the landmark tree designation. At the time the Planning Commission or Landmarks Preservation Advisory Board adopts a resolution of intent to initiate a nomination, temporary designation of the subject tree shall occur. If the Director of the Department or the director of any other City agency, commission or department initiates landmark tree designation, temporary designation shall occur when the Urban Forestry Council adopts a resolution determining that the subject tree qualifies for landmark tree status. In addition, the Director of the Department shall have the authority to issue an emergency order that temporarily designates a tree on private property or on any property under the jurisdiction of the Department to

prevent the immediate removal of a tree. Upon initiation of a nomination pursuant to this Section, the entity initiating nomination shall immediately inform the Director who shall immediately cause a notice to be provided to the relevant department or private property owner informing them of the special permit and approval requirements pursuant to Section 810(f).

(2) If 215 days have elapsed from the date of temporary designation and final action on landmark tree designation has not been completed, the temporary designation status for the subject tree shall expire unless the Board of Supervisors adopts a resolution to extend the temporary designation. Such extension shall not exceed 90 additional days.

(3) Although the subject tree ultimately may be designated as a landmark tree sometime after expiration of temporary designation status, once the temporary designation has expired or is rejected as set forth below in Subsection (5), the affected tree shall not be subject to a new temporary designation for at least two years from the date of temporary designation.

(4) The 215-day term of temporary designation or any additional term, if extended through Board of Supervisors action pursuant to this Section, shall automatically be extended 30 additional days from the date the Mayor either signs the ordinance designating the subject tree as a landmark tree or the 10th day after the Clerk of the Board refers said ordinance to the Mayor and the ordinance is not signed or vetoed.

(5) If the Board of Supervisors rejects a resolution of intent to initiate nomination of a tree or the Urban Forestry Council rejects a nomination under subsection (b)(3), the temporary designation shall automatically terminate.

(e) **Zoning Administrator.** The Zoning Administrator shall be required to identify designated landmark tree(s) on proposed development or construction sites and to notify the Urban Forestry Council and the Department or affected City agency, commission or department. The Zoning Administrator and the Department or such other City Agency, commission or department with jurisdiction, shall be required to impose measures to protect such landmark trees on a construction site against damage to trunk, roots, and branches in accordance with Section 808(c) of this Article. Removal of such trees shall be subject to the rules and procedures for removal of landmark trees provided in this Section.

(f) Removal Criteria and Procedures.

(1) **Removal Criteria.** The Urban Forestry Council shall develop and recommend for adoption by the Board of Supervisors uniform criteria, rules, and procedures governing determinations to remove landmark trees. Removal criteria shall require consideration and written findings on all of the factors related to the landmark tree as set forth in Section 810(g)(4), below, and shall not authorize the removal of a landmark tree unless the it constitutes a hazard tree pursuant to Section 802(o). Public notice, in accordance with the requirements of Section 806(a)(2), and a hearing shall be required.

(2) **Removal on Private Property; Special Permit Required.** A property owner who desires a permit to remove a landmark tree shall apply to the Department on the designated form. Such application must be accompanied by an administrative fee in accordance with a fee schedule adopted by the Director. Except in the case of manifest danger and immediate necessity, landmark trees on private property shall be removed only after the Director's determination and issuance of a permit, following a public hearing. If the Director determines that removal of a landmark tree is necessary or permissible in accordance with the adopted removal criteria, the Director may impose such reasonable conditions on the permit for removal as he or she deems necessary to compensate for the loss of the tree, including but not limited to the replacement value of the tree, administrative costs, and contribution to the Adopt-A-Tree Fund. The Director's determination shall be final and appealable to the Board of Appeals. Any person seeking permission to remove a landmark tree must pay all costs related to the permit process and public hearings. Pending adoption of criteria for removal of landmark trees, the Department shall rely on the general criteria set forth in Section 810(f)(4)(A)-(F).

(3) **Removal on City-owned Property; Special Approval Required.** Removal of a landmark tree(s) on City property under the jurisdiction of any City agency, commission, or department shall be subject to the criteria, rules, and procedures adopted by the Board of Supervisors pursuant to Section 810(f)(1), above, including the process for public notice and a hearing prior to removal of the tree. After following said criteria, rules, and procedures, the subject City agency, commission, or department shall make its decision on removal of a landmark tree(s). Such decision is final and nonappealable. Pending the Board of Supervisor's adoption of the criteria, rules, and procedures pursuant to Section 810(f)(1), the agency, commission, or department shall follow the general criteria of Subsection (f)(4)(A)-(F) and similar rules and procedures for removal of street trees as set forth in Section 806(c) and for removal of hazard trees as set forth in this Section 806(a)(4). This Subsection shall not supercede the Charter jurisdiction that has been granted to any City agency, commission, or department.

(4) **Required Findings.** As part of any determination that authorizes removal of any landmark tree, the City entity making such determination shall, in addition to the adopted removal criteria, consider and make written findings on each of the following factors related to the tree:

(A) Size, age, and species;

(B) Visual characteristics, including the tree's form and whether it is a prominent landscape feature;

(C) Cultural or historic characteristics, including whether the tree has significant ethnic appreciation or historical association or whether the tree was part of a historic planting program that defines neighborhood character;

(D) Ecological characteristics, including whether the tree provides important wildlife habitat, is part of a group of interdependent trees, provides erosion control, or acts as a wind or sound barrier;

(E) Locational characteristics, including whether the tree is in a high traffic area or low tree density area, provides shade or other benefits to multiple properties, and is visually accessible from the public right-of-way; and

(F) One or more criteria that qualify the tree as a hazard tree pursuant to Section 802(o).

(5) **Emergency Removal on Private Property.** In the case of manifest danger and immediate necessity, as determined by the Director, the Director may remove or require the responsible owner(s) to remove a landmark tree immediately. After such emergency removal, the Director shall provide written notice of the necessity for such action to the Board of Supervisors and the Urban Forestry Council and shall also provide such notice to all interested San Francisco organizations and, to the extent practical, to the owners and occupants of properties that are on or across from the block face where the affected tree was removed. If the Department incurs any costs related to an emergency removal, said costs, including labor, equipment, materials, inspection services, and administrative costs, shall be an obligation owing by the responsible owner(s) to the City. Removal of a landmark tree pursuant to this Subsection is not subject to Section 810(f)(4) above.

(6) **Emergency Removal on City-owned Property.** In the case of manifest danger and immediate necessity, as determined by the director or general manager of the subject agency, commission, or department, the subject agency, commission, or department may remove a landmark tree within its jurisdiction immediately. After such emergency removal, the subject agency, department, or commission shall provide written notice of the necessity of such action to the Board of Supervisors, Urban Forestry Council and Department of Public Works and shall also provide such notice to all interested San Francisco organization and, to the extent practical, the owners and occupants of properties that are on or across from the block face where the affected tree was removed. Removal of a landmark tree pursuant to this Subsection is not subject to Section 810(f)(4) above.

(g) If a landmark tree(s) has been designated as part of a local historic district or landmark under Article 10 of the Planning Code, removal of such tree shall be subject to the procedures set forth in the Planning Code Article 10 in addition to the requirements of Subsection 810(f) above. In the case of a conflict between Section 810(f) and the Article 10 designation, the more restrictive provisions shall apply.

(Added by Ord. 165-95, App. 5/19/95; amended by Ord. 17-06, File No. 051458, App. 1/20/2006; amended by Ord. 52-08, File No. 071672, App. 3/31/2008)

SEC. 810A. SIGNIFICANT TREES.

(a) **Definition.** For purposes of this Section, a significant tree shall be a tree: (1) on property under the jurisdiction of the Department of Public Works or (2) on privately owned-property with any portion of its trunk within 10 feet of the public right-of-way, and (3) that satisfies at least one of the following criteria: (a) a diameter at breast height (DBH) in excess of twelve (12) inches, (b) a height in excess of twenty (20) feet, or (c) a canopy in excess of fifteen (15) feet. The Director may deem a significant tree a hazard tree if such tree satisfies the provisions of Section 802(o). A landmark tree shall not be treated as a significant tree even if the landmark tree meets one or more of the abovementioned criteria. A landmark tree shall be governed by the provisions of Section 810.

(b) Removal; Requirements.

(1) Removal of a significant tree(s) on privately-owned property shall be subject to the rules and procedures governing permits for removal of street trees as set forth in Section 806(b).

(2) Removal of a significant tree(s) that are the responsibility of the Department shall be subject to the rules and procedures governing permit for Departmental removal of street trees as set forth in Section 806(a).

(3) If the Director determines that a significant tree is a hazard tree, this Article's provisions applicable to removal of a hazard tree shall apply.

(4) **Emergency Removal.** In the case of manifest danger and immediate necessity, as determined by the Director in writing, the Director may remove or require the responsible owner(s) to remove a significant tree immediately. After such emergency removal, the Department shall provide written notice to all interested San Francisco organizations and, to the extent practical, owners and occupants of properties that are on or across from the block face where the affected tree was removed of the necessity for such action. If the

Department incurs any costs related to an emergency removal, said costs, including labor, equipment, materials, inspection services, and administrative costs, shall be an obligation owing by the responsible owner(s) to the City. Removal of a significant tree pursuant to this Subsection is not subject to Subsection (c) below.

(c) As part of the Director's determination to authorize removal of a significant tree, the Director shall consider the following factors related to the tree;

- (1) Size, age, and species;
- (2) Visual and aesthetic characteristics, including the tree's form and whether it is a prominent landscape feature or part of a streetscape;
- (3) Cultural or historic characteristics, including whether the tree has significant ethnic appreciation or historical association or whether the tree was part of a historic planting program that defines neighborhood character;
- (4) Ecological characteristics, including whether the tree provides important wildlife habitat, is part of a group of interdependent trees, provides erosion control, or acts as a wind or sound barrier;
- (5) Locational characteristics, including whether the tree is in a high traffic area or low tree density area, or provides shade or other public benefits;
- (6) Whether the tree constitutes a hazard tree as set forth in Section 802(o); and
- (7) Whether the tree has been maintained as set forth in Section 802(l).

(d) **Zoning Administrator.** The Zoning Administrator shall be required to identify significant tree(s) on proposed development or construction sites and to notify the Department. The Zoning Administrator and the Department shall be required to impose measures to protect such significant trees on a construction site against damage to trunk, roots, and branches in accordance with Section 808(c) of this Article. Removal of such trees shall be subject to the rules and procedures for removal of significant trees provided in this Section.

(Added by Ord. 17-06, File No. 051458, App. 1/20/2006)

SEC. 810B. SIDEWALK LANDSCAPE PERMITS.

(a) **Permit for Installation or Removal of Sidewalk Landscaping.** Permits to install or remove sidewalk landscaping shall be subject to the rules and procedures applicable to planting and removal of street trees under Section 806(b).

(b) **Permit Decision.**

(1) The Director of the Department, in his or her discretion, may approve, conditionally approve, or disapprove the requested permit. When issuing permits, the Director may impose any conditions consistent with the public health, safety, welfare, and convenience, including, but not limited to, appropriate time, place, and manner restrictions and considerations to minimize neighborhood impacts.

(2) All sidewalk landscape permits are revocable at the will of the Director. In addition, when, in the judgment of the Director of Public Works, the public interest or convenience will be served by the removal of the dirt, debris, materials and equipment or any portion thereof from the sidewalk space, the Director shall modify, condition, or revoke the permit accordingly.

(c) **Fees.** The fee for a sidewalk landscape permit is \$215.00. If two, three, or four applicants on the same block submit a joint application for a sidewalk landscape permit, the fee is \$185.00 for each applicant. If five or more applicants on the same block submit a joint application for a sidewalk landscape permit, the fee is \$160.00 for each applicant. Fees for removal of sidewalk landscaping shall be the same as the fee charged for permits to remove street trees.

(1) **Fee Review and Adjustment.** Beginning with fiscal year 2007-2008, the fees that are established herein shall be reviewed and adjusted each year, in accordance with the procedures set forth in Section 2.1.2.

(d) **Minimum Accessibility Requirements.**

(1) In no case shall the new sidewalk-landscape result in an unobstructed sidewalk width of less than 48 inches or increase the cross-slope of the portion of the sidewalk designated as an accessible path-of-travel.

(2) For each curbside parking space (approximately 20 feet of curb length), the design shall include a minimum 48-inch wide accessible curbside parking path that is perpendicular and connects the curb to the sidewalk path of travel. This path shall be: (i)

located at the approximate centerline of each curbside parking space; (ii) made of concrete, pavers, or brick; and (iii) set on a firm base.

(e) The permit holder shall be responsible for maintaining the sidewalk-landscape area in a condition that is safe to pedestrians and vehicular traffic and free of litter and unsightly weeds. The permit holder also shall be responsible to maintain the health of plants with appropriate pruning, watering, and other care.

(f) **Waiver of Requirements.** The Director, in his or her discretion, may waive any of the substantive requirements for a sidewalk landscape permit. The Director may issue a waiver only after holding a public hearing on the waiver request and issuing a written decision concerning whether the waiver will be granted, conditionally granted, or denied. When issuing such waivers, the Director may impose any conditions consistent with the public health, safety, welfare, and convenience.

(g) **Regulations.** In addition to the requirements set forth in this Section, the Director, after a public hearing, may adopt such orders, policies, regulations, rules, or standard plans and specifications as he or she deems necessary in order to preserve and maintain the public health, safety, welfare, and convenience. Such orders, policies, regulations, or rules may include, but are not limited to, permit application materials, planting guidelines, planting locations, materials, key design dimensions for planting areas, site conditions, replanting, landscape design modifications, and accessibility of sidewalks and streets. When such orders, policies, regulations or rules will affect the operations and enforcement of the Department of Parking and Traffic or the Municipal Railway, the Director shall consult with and provide an opportunity to comment to the General Manager of the Municipal Transportation Agency prior to adoption of such orders, policies, regulations, or rules.

(Added by Ord. 121-06, File No. 060142, App. 6/14/2006)

SEC. 811. PENALTIES FOR VIOLATION OF ORDINANCE.

(a) **Criminal Penalties.** Violation of any of the provisions of Sections 805(b), 806, 808, 810(f)(1), 810A(b), and 810B of this Article 16 shall be chargeable as an infraction or a misdemeanor. Every violation determined to be an infraction is punishable by a fine of \$200 for a first violation and \$400 for each additional violation within one year. Every violation determined to be a misdemeanor is punishable by a fine not exceeding \$1,000 and/or imprisonment in the County Jail for a period not to exceed six months, for each offense.

(b) Civil Penalties and Fees.

(1) The Director may call upon the City Attorney to maintain an action for injunction to restrain or summary abatement to cause the correction or abatement of the violation of this Article 16, and for assessment and recovery of a civil penalty and reasonable attorney's fees for such violation.

(2) Any person who violates this Article 16 may be liable for a civil penalty, not to exceed \$500 for each day such violation is committed or permitted to continue, which penalty shall be assessed and recovered in a civil action brought in the name of the people of the City by the City Attorney in any court of competent jurisdiction. In assessing the amount of the civil penalty, the court may consider any one or more of the relevant circumstances presented by any of the parties to the case, including, but not limited to, the following: the nature and seriousness of the misconduct, the number of violations, the persistence of the misconduct, the length of time over which the misconduct occurred; and the willfulness of the defendant's misconduct. The City Attorney also may seek recovery of the attorneys' fees and costs incurred in bringing a civil action pursuant to this Section.

(c) Administrative Penalties.

(1) In addition to the penalties set forth in Subsections (a) and (b) above, the Director may require any person who removes, injures, or destroys a Tree in violation of the provisions of this Article 16 to pay a sum of money equal to the Tree's Replacement value or the diminishment of the Tree's value as set forth in the current edition of the Guide for Plant Appraisal (Council of Tree and Landscape Appraisers). Further, in addition to the penalties set forth in Subsections (a) and (b) above, the Director may require any person who removes, fails to maintain, injures, or destroys sidewalk landscaping or the associated design improvements in violation of the provisions of Section 810B to pay a sum of money equal to the Replacement value of the affected Landscape Material and associated design improvements or the diminishment of the value of the Landscape Material as set forth in the current edition of the Guide for Plant Appraisal (Council of Tree and Landscape Appraisers). In no case shall the administrative penalty be less than \$500 per violation. When one or more additional violations occur within one year of the first violation, the Director may assess a responsible party double the Tree's Replacement value or the diminishment of the Tree's value. Depending on the nature and seriousness of the misconduct, including unpermitted removal of or damage to a Landmark or Significant Tree; the unpermitted removal of or damage to Sidewalk landscaping installed pursuant to a permit issued under Section 810B; the number of violations; the persistence of the misconduct; the length of time over which the misconduct occurred; or the willfulness of the defendant's misconduct, the Director may

assess additional penalties in excess of the amounts specified above. In addition to the administrative penalty assessed pursuant to this Section, the Director may assess enforcement costs to cover the reasonable costs incurred in enforcing the administrative penalty, including reasonable attorneys' fees. Any and all amounts paid or collected pursuant to this subsection, with the exception of enforcement costs, shall be deposited into the Adopt-A-Tree Fund.

(2) Notwithstanding the monetary limitation specified above in this Subsection (c), if a responsible party performs Major Maintenance on a Street Tree subject to the provisions of Section 805(b) without a permit or injures, destroys, or removes such a Tree, the Department may assess a penalty of up to \$10,000 per violation in addition to the other remedies specified above.

(3) The Department shall send Notice of the assessment of administrative penalties to the responsible party. Such Notice shall include a statement that payment is due within 60 days of the mailing date of the Notice. If a responsible property owner fails timely to remit payment, the Department shall send a second Notice of payment due. Such second Notice shall include a statement that failure timely to remit payment in full to the City within 30 days of the mailing of the second Notice shall cause the Director to institute lien proceedings pursuant to Sections 706.4-706.7 of this Code. Enforcement and collection of liens for costs associated with Hazard Tree abatement shall be in accordance with Sections 706.4-706.7 of this Code, except that all monies received in payment of such liens with the exception of enforcement costs, shall be credited to the Adopt-a-Tree Fund.

(Added by Ord. 165-95, App. 5/19/95; amended by Ord. 294-98, File No. 98-0991, Eff. 11/2/98; Ord. 17-06, File No. 051458, App. 1/20/2006; Ord. 121-06, File No. 060142, App. 6/14/2006; Ord. [119-15](#), File No. 150221, App. 7/15/2015, Eff. 8/14/2015)

SEC. 812. ENFORCEMENT OF ORDINANCE; DESIGNATED EMPLOYEES.

The classes of employees of the City set forth below shall have the duty of enforcing the provisions of this Article 16 including, but not limited to, the unauthorized removal, Injury or destruction of Street Trees, Significant Trees, or Landmark Trees:

Classification No.	Class Title
3422	Park Section Supervisor
0922	Urban Forester (Manager I)
3434	Arborist Technician
3436	Arborist Technician Supervisor I
3435	Urban Forestry Inspector
5170	Superintendent, Street Environmental Services
0932	Assistant Superintendent, Urban Forestry (Manager IV)
7281	Street Cleaning Supervisor II
0941	Superintendent, Urban Forestry (Manager VI)

(Added by Ord. 165-95, App. 5/19/95; amended by Ord. 121-06, File No. 060142, App. 6/14/2006; Ord. 310-10, File No. 101194, App. 12/16/2010; Ord. [119-15](#), File No. 150221, App. 7/15/2015, Eff. 8/14/2015)

SEC. 813. URBAN FOREST MANAGEMENT PLAN.

The Department shall use its best efforts to ensure that activities of the Department are guided by the Urban Forest Management Plan entitled "The Trees of San Francisco" and adopted on April 16, 1991. The Department shall update and improve the Urban Forest Management Plan as necessary.

(Added by Ord. 165-95, App. 5/19/95)

SEC. 814. SEVERABILITY.

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Article or any part thereof is for any reason held to be invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Article or any part thereof. The Board of Supervisors hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared invalid or ineffective.

(Added by Ord. 165-95, App. 5/19/95)

PRUNING STANDARDS FOR TREES
CITY AND COUNTY OF SAN FRANCISCO
 JUNE 27, 2006

Pruning can either help or hurt trees. When appropriate practices are used, pruning can provide significant benefits. When inappropriate practices are used, significant harm can follow. For the long-term health and structural stability of trees in San Francisco, it is critical that pruning practices conform to professional standards established by the tree care industry.

This document identifies basic standards for tree pruning in the City and County of San Francisco. These standards apply to all those working on public trees¹, including City of San Francisco employees and managers, private contractors, property owners, and residents.

Foundation for the Standards

The City of San Francisco recognizes the most current editions of the following benchmark standards for tree pruning (see References):

1. American National Standards Institute (ANSI) A300 Pruning Standards
2. ANSI Z133.1 Safety Standards
3. ISA Best Management Practices: Tree Pruning

City arborists, managers, related personnel and contractors should obtain copies of the above publications and apply the standards and guidelines when engaged in pruning operations in San Francisco. Copies of these documents can be obtained from the International Society of Arboriculture (see Resources). Occupational health and safety standards in the workplace shall be observed at all times.

For street trees, Article 16 of the San Francisco Public Works Code establishes responsibilities regarding planting, maintenance (including pruning), and removal. Tree damage caused by inappropriate pruning is addressed as follows: "Any person who removes, damages, or destroys a tree in violation of Article 16 shall pay a sum of money equal to the diminishment of the tree's value" (Section 811b).

A. Pruning Needs, Objectives, and Plans

In San Francisco, there is a great diversity of trees, including conifer, broadleaf evergreen, and deciduous species. For each species, there exists substantial variation in

¹ "Public trees" shall mean all trees located on public property and in the public right-of-way.

age, size, condition, and structure of individual trees. This species diversity and tree variability creates challenges with regard to tree care practices, and in particular for pruning. Pruning needs can vary substantially depending on these factors: some trees will need little or no pruning, while others will need substantial pruning. In addition, some trees need to be pruned to improve structure, while others may need branches removed to manage pest problems or provide clearance from overhead utility lines.

To ensure that pruning is appropriate for the species and tree/site conditions, it is important to have a clear understanding of the specific needs of the tree and the objectives for pruning. Pruning objectives include the following:

- Improve structural strength and reduce failure potential (including dead branch removal)
- Prevent or mitigate a pest problem
- Improve aesthetic characteristics
- Provide clearance for pedestrians, vehicles, and structures
- Improve safety and security for residents and visitors
- Repair structural damage from wind loading
- Reduce maintenance costs (i.e., when applied to young trees)
- Influence flowering and fruiting of some species

***Standard 1:** For commercial contractors, a written plan of work shall be prepared that clearly identifies the tree species, location, need for pruning, pruning objectives, pruning specifications, and the scope of pruning. A checklist format can be used. Where multiple reasons for pruning exist, they should be prioritized from highest to lowest. A separate plan is needed for each tree. For groups of trees of the same species with similar pruning needs, one plan will suffice.*

For all city departments and agencies, work plans shall be developed either for individual trees or for groups of trees, such as trees along streets, in parks, or on the grounds of public buildings. Plans shall include species, location, need for pruning, pruning objectives, pruning specifications, and the scope of pruning. Pruning plans shall be specific for the species to be pruned.

Work plans shall be available at work sites during pruning operations.

B. Pruning Practices

1. PRUNING CUTS

Pruning is a wounding process that causes some level of injury to trees. It is important to make pruning cuts that minimize injury or the potential for injury. For instance, cuts should be made on branches in a manner that ensures rapid and complete wound closure, thus reducing the potential for decay. Information on appropriate branch removal practices and the size and location of cuts is found in *ANSI A300 Part 1 (Pruning)* and *Best Management Practices: Tree Pruning* (see References).

Note that flush cuts increase the potential for decay and reduce the formation of callus tissue above and below the wound (woundwood). In some cases, flush cuts can stimulate vigorous but incomplete callus development. Conversely, leaving branch stubs prevents wound closure and increases the potential for decay. These types of pruning cuts should be avoided.

Standard 2: *All pruning cuts shall conform to ANSI A300 standards (Part 1: Pruning). Do not make flush cuts or leave branch stubs.*

2. AMOUNT OF PRUNING

Removal of live branches and associated leaf area can have a negative impact on the health of trees. When relatively large amounts of leaf area are removed, the capacity of a tree to produce energy for growth and pest resistance is diminished. Pruning should be limited to that amount needed to accomplish the pruning objective. In some cases, it may be best to complete pruning over a two- or three-year period rather than do all that is needed in one year.

In addition, excessive pruning or overthinning stimulates watersprout development in many species. Watersprouts are usually weakly attached and prone to breaking at the point of attachment. Crown density can increase substantially due to watersprout production, resulting in a loss of tree form and reduction in light penetration. Also, excessive pruning can lead to sunburn injury to bark tissue of branches and the trunk.

Standard 3: *Not more than 25% of the crown shall be removed within an annual growing season. The percentage of foliage removed shall be adjusted according to age, health, and species considerations. Stressed trees are less tolerant of pruning and leaf area removal should be minimal. In cases where more than 25% of the crown needs to be removed, such as to reduce the potential for structural failure, a qualified arborist² shall make an assessment of the amount of pruning needed to abate the hazard. When possible, such pruning should be scheduled over a two- or three-year period. Pruning should be minimal on species prone to watersprout development. For such species, pruning during the summer months may reduce the potential for watersprout development (see Standard 4). For species susceptible to sunburn injury, pruning shall not expose bark tissue of the trunk and scaffold branches to sunlight levels that lead to injury.*

3. WHEN TO PRUNE

² “Qualified arborist” shall mean arboriculture professionals with any one of the following certifications or credentials: ISA Certified Arborist, ISA Board Certified Master Arborist, ASCA Registered Consulting Arborist, and individuals holding a college degree (4-year) in Arboriculture, Urban Forestry, or closely-related discipline, with 3 years of documented field experience in urban tree care.

In San Francisco, the time of year to prune can vary depending on pruning needs, objectives, and species. Generally, trees can be pruned throughout the year, but the following times need to be avoided: 1) when leaves are forming or falling, and 2) when pest problems may result from pruning (e.g., insect infestation or disease infection). In addition, care should be taken to avoid pruning tree parts when birds (or other wildlife species) are actively nesting.

***Standard 4.** Generally, pruning can be done throughout the year. For some trees, however, certain periods or seasons need to be avoided. For species susceptible to particular insect or disease problems, avoid pruning at times of the year when the problem will be exacerbated (e.g., do not prune pines during the spring and summer months in order to minimize the potential for bark beetle infestations). For trees with a notable flowering trait, avoid pruning prior to or during flowering periods (unless flowers cause allergic reactions). Pruning to remove dead, diseased, or broken branches can be done at any time of year. Pruning during the summer months can be used as a strategy to reduce watersprout development in certain species.*

For deciduous species, do not prune during bud swell, bud break, or leaf expansion in the spring. Do not prune from the time leaves begin to turn color in the fall through the leaf drop period. Do not prune during times of the year that may initiate or exacerbate a pest problem (e.g., do not prune elms during the summer months to avoid Dutch elm disease infection and transmission).

*Broadleaf-evergreen species (such as *Eucalyptus* spp., *Ficus* spp., *Acacia* spp., and *Myoporum* spp.,) can be pruned throughout the year. Avoid pruning during periods that stimulate substantial watersprout development. For species prone to foliar diseases, avoid pruning at times when disease-susceptible new growth can be stimulated by pruning.*

*For conifers, pruning during the winter months (November through February) is generally recommended. Do not prune during periods of needle formation and enlargement (except for specialty-pruned conifers that are pruned during growth periods to create a bona fide horticultural form). For species susceptible to bark beetle infestations (e.g., *Pinus* spp.), do not prune when beetles are active (typically March through October in San Francisco).*

4. WOUND TREATMENTS

Over the years, wound dressings and paints have been used to treat or cover pruning wounds. Dressings are no longer recommended, however, because there is no scientific evidence to indicate that these treatments reduce decay or accelerate wound closure. In addition, some dressings may cause tree injury. Until scientific studies find clear benefits to using these materials, pruning wound treatments are viewed as being unnecessary.

Standard 5. *Pruning wound treatments (dressings and paints) shall not be used.*

5. PRUNING AND CLIMBING EQUIPMENT (pruners, saws, and spikes)

To promote callus development and wound closure, it is important to make clean pruning cuts. Bark surrounding the cut should not be torn, shredded, stripped away, or otherwise separated from the wood. This can be accomplished by using pruning equipment that is sharp and sized appropriately for the job. Clean, well-maintained equipment (blades, chains, bars, and air/fuel filters) produces cleaner cuts with less effort, improves worker safety, and reduces the potential for the spread of pathogens.

In addition, injury to bark tissue can occur from the use of climbing spikes (gaffs, climbing spurs) and tie ropes. Resulting wounds can lead to localized bark death and wood decay, and can serve as entry courts for insects and pathogens. Wounds from ropes can be reduced by the use of friction savers at the tie point.

Standard 6. *Pruning equipment shall be sharp and sized appropriately for the pruning cut. Avoid the use of any pruning and climbing equipment that may cause damage to bark tissue. Spikes (climbing spurs) shall not be used for climbing trees unless the tree is being removed, or when limbs are more than throwline-distance apart and there is no other means of climbing the tree. Pruning tools shall be treated with a disinfectant (such as Lysol) when pruning trees infected with a pathogen that may be transmitted (on tools) from one tree to another of the same species, such as elms (*Ulmus spp.*). Disinfectants should be used before and after pruning individual trees.*

C. Pruning Mature Trees

1. PRUNING TYPES

As noted in section A, trees are pruned to achieve various objectives. To meet the objective(s) identified for a mature tree, several different types of pruning can be employed: cleaning, thinning, raising, reduction, and restoration. Each of these pruning types is described in the following publications: *ANSI A300 Standards* and *Best Management Practices: Tree Pruning* (see References). It is important to be familiar with each type to develop a plan of work for pruning a mature tree.

Since these pruning types are used to achieve specific objectives, it is also important to select the appropriate type to match the objective. For example, if the height or spread of a tree needs to be reduced to improve structural strength, then crown reduction pruning should be selected. Or, if the density of the crown needs to be reduced for pest management purposes, then branch removal pruning (thinning) should be selected.

The City of San Francisco requires tree clearances for the following situations: pedestrians on sidewalks, foliage obstructing streetlights and signals, and vehicles on

roadways. Street trees should be pruned to maintain a 14-foot vertical clearance over curbing, and 8-foot clearance over sidewalks. To avoid excessive pruning to achieve these clearance requirements, pruning should be initiated when the tree is young, and continued through maturity. Pruning over several seasons to achieve these results is preferable to single-season pruning. In certain cases, such as to abate safety hazards, pruning may be needed that exceeds standards for canopy removal in a season (see *Standard 3*). In such cases, pruning shall be conducted under the supervision of a qualified arborist.

Standard 7: In San Francisco, all those engaged in tree pruning operations shall be familiar with each of the pruning types. Selection of the pruning type(s) shall be based on pruning objectives (see Standard 1). Refer to publications cited in section C1 for descriptions of pruning types. Clearance pruning that does not comply with Standards 3 and 4 shall be conducted only under the supervision of a qualified arborist (see footnote 1).

2. TOPPING AND HEADING CUTS

Topping is the reduction of a tree's size using heading cuts that shorten limbs or branches back to a predetermined crown limit. Topping is not an acceptable pruning practice (see *ANSI A300 Standards*).

Heading is defined as cutting a currently growing or one-year-old shoot back to a bud, or cutting an older branch or stem back to a stub in order to meet a defined structural objective, or cutting an older branch or stem back to a lateral branch (see *ANSI A300 Standards*).

When pruning mature trees, heading cuts should be avoided for the following reasons:

- Vigorous shoots can be stimulated to grow just below the heading cut. Typically, these shoots are weakly attached, poorly tapered, and have a high failure potential.
- Wood decay can develop in the cut branch or stem. Often, decay extends well into the branch or stem and reduces its structural strength. This increases failure potential.
- The tree's natural form can be lost in many cases, particularly when relatively large diameter cuts are made.

In very limited cases, heading cuts may be appropriate for mature trees, such as:

- To reduce tree height or branch end weights. Note: This approach should be employed **only** in cases where there is a high risk of structural failure and thinning cuts (reduction cuts) cannot be used. Also, follow-up pruning to minimize risk associated with weakly-attached shoots will be needed.
- To achieve a specialty tree form using the pruning technique called "pollarding". Pollarding uses heading cuts to shorten branches to a predetermined length when the tree is young. Thereafter, it requires the removal of all of the current season's

growth that forms near the cut branch ends. Eventually, tissues at the end of the branch develop to form enlarged and rounded structures, referred to as “knuckles”. Pollarding is typically reserved for certain deciduous species, such as London plane (*Platanus x acerifolia*) and elm (*Ulmus spp.*). Generally, pollarding is not recommended because it requires a high level of maintenance (annual pruning) and tree benefits are reduced by the annual reduction of canopy size. Pollarding is not appropriate for conifers and broadleaf evergreen species.

***Standard 8:** Heading cuts shall not be used when pruning mature trees, except in very limited cases. Whenever possible, use reduction cuts to reduce height and branch removal cuts (thinning cuts) to reduce branch end weights. When reduction and branch removal cuts are not possible (such as when interior lateral branches are not present) and tree hazard potential is high, then heading cuts may be needed, but their use should be minimized. The practice of pollarding shall be limited in application to London plane tree (*Platanus x acerifolia*) and elm (*Ulmus spp.*), and only when initiated on young trees (i.e., not after they reach a juvenile or mature stage).*

3. STRESSED TREES

Old, unhealthy, and stressed trees require special pruning consideration. Such trees do not tolerate the loss of leaf area as well as more vigorous trees: they take longer to recover from pruning, and their capacity to respond to pests and other injuries can be impaired. Removal of live branches and associated leaf area should be minimized or avoided. Generally, pruning should be limited to the removal of dead branches and significant structural defects.

***Standard 9:** For old, unhealthy, and stressed trees, pruning should be limited to the removal of dead branches and structural defects. Removal of live branches should be avoided or minimized.*

4. UTILITY PRUNING

Pruning trees to maintain clearance from high voltage distribution lines is a requirement for the local utility (Pacific Gas and Electric, PG&E). This is a highly specialized area of pruning that requires extensive training in safe work practices and appropriate pruning techniques. Guidelines providing detailed information regarding appropriate pruning practices for utility line clearance (such as lateral or directional pruning) are given in the Utility Pruning section of the *ANSI A300 Pruning Standards* (see References).

***Standard 10:** Utility pruning requires extensive training in safe work practices and specialized pruning techniques. Prior to pruning trees for line clearance, all workers shall have documented training that meets utility and tree industry standards. Pruning practices shall follow guidelines described in ANSI A300 Pruning Standards (see*

References). A plan of work that incorporates these practices shall be developed prior to pruning.

D. Pruning Young and Juvenile Trees

Multiple benefits can be achieved by pruning trees during their formative years. These include:

- The establishment of strong structure with a commensurate reduction in failure potential as the tree matures.
- Reduction of long-term maintenance costs.
- Enhancement of tree longevity and extension of long-term environmental and social benefits.

Young trees need to have a strong, well-established central leader, strong branch attachments, adequate spacing/distribution of scaffold branches, and temporary branches retained both between scaffolds and below the lowest scaffold. Although these structural characteristics should be established as soon as possible, training of young trees is an ongoing process for most species.

***Standard 11:** Trees should be structurally pruned when they are young. Follow guidelines in: Training Young Trees for Structure and Form (see References). Young trees will need follow-up pruning, preferably three times in the first five years, and then periodically as they develop through the juvenile phase into maturity.*

E. Palm Pruning

Several species of palms are planted in San Francisco's urban forest. Being monocots, these trees have a different anatomy and form than conifer, broadleaf evergreen, or deciduous species. As a result, they require special care, particularly in regard to pruning. Generally, only dead fronds (palm leaves) should be removed. The removal of live fronds should be limited to those that are broken or severely chlorotic. Fronds should be removed carefully to avoid damage to living tissue. To avoid transmitting disease-causing organisms on pruning tools, it is important to disinfect tools before and after pruning individual trees. Although this applies to many palm species, it is particularly important for Canary Island date palm (*Phoenix canariensis*) to avoid the spread of Fusarium wilt (*Fusarium oxysporum* f. sp. *canariensis*).

***Standard 12:** Palm pruning should be limited to the removal of dead, broken, and strongly chlorotic fronds. Live, healthy fronds should not be removed. Fronds should be severed close to the petiole base without damaging living trunk tissue. Palm fruit, flowers, and loose petiole bases should be removed if deemed to be a safety risk. A disinfectant (such as Clorox or rubbing alcohol) shall be used on pruning tools before and after pruning individual trees. Climbing spikes or spurs shall not be used to climb palms for pruning.*

F. Root Pruning

In urban settings, trees may require root pruning, typically to address conflicts with infrastructure elements (sidewalks and curbs). Since this practice results in the loss of roots, both tree health and structural stability are affected. As a result, it is critical to be fully aware of practices used to minimize root-pruning impacts. Keep in mind that certain trees should not be root pruned, such as trees in poor condition or trees that are leaning. In addition, some species do not respond well to root pruning, such as pepper tree (*Schinus spp.*), tulip tree (*Liriodendron tulipifera*), camphor (*Cinnamomum camphora*), Chinese evergreen elm (*Ulmus parvifolia*), and callery pear (*Pyrus calleryana*).

To minimize root-pruning impacts, a tree assessment should be conducted prior to pruning. Both tree and site conditions need to be evaluated to determine the potential for injury and structural stability loss. Following the assessment, a plan should be developed that identifies the maximum allowable size of roots to be cut, allowable proximity to the trunk for cuts, time of year when root cutting is allowable, and the most suitable method for making cuts. Both the assessment and plan should be completed by a qualified arborist. For more information on root pruning, review the following publication: *Reducing Infrastructure Damage by Tree Roots: A Compendium of Strategies* (see References).

Standard 13. Root pruning should be considered only when other options for correcting a conflict between roots and infrastructure are deemed not practical. For trees requiring root pruning, a tree assessment shall be conducted and a root-pruning plan shall be developed by a qualified arborist (see footnote 1). Avoid root pruning during times of the year when wind loads on trees are greatest, such as during the winter months. Crown pruning prior to or following root pruning shall be done only in cases where the potential for structural failure may increase substantially because of root pruning.

References

ANSI A300 (Part 1)-2001 Pruning: Tree Care Operations - Tree, Shrub and Other Woody Plant Maintenance - Standard Practices (revision and redesignation of ANSI A300-1995, includes supplements). American National Standards Institute, Washington, DC.

ANSI Z133.1-2006. Standards for Arboricultural Operations: Safety Requirements. American National Standards Institute, Washington, DC.

Best Management Practices: Tree Pruning. 2002. Gilman, E. and S. Lilly. International Society of Arboriculture. Champaign, IL.

Reducing Infrastructure Damage by Tree Roots: A Compendium of Strategies. Costello, L. and K. S. Jones. 2003. Western Chapter of the International Society of Arboriculture. Cohasset, CA.

Training Young Trees for Structure and Form. Costello, L.R. 2001. Arborist News 10(2): 25-31.

Resources

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