

COMMISSION ON COMMUNITY INVESTMENT AND INFRASTRUCTURE

RESOLUTION NO. 38-2016

AUTHORIZING A LEGAL SERVICES CONTRACT WITH JONES HALL, A PROFESSIONAL LAW CORPORATION, FOR BOND COUNSEL SERVICES IN AN AMOUNT NOT TO EXCEED \$207,000 RELATED TO THE ISSUANCE OF SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO TAXABLE AND TAX-EXEMPT TAX ALLOCATION REVENUE BONDS AND REFUNDING REVENUE BONDS IN MULTIPLE SERIES; MULTIPLE PROJECT AREAS

- WHEREAS, Subject to Commission, Oversight Board and Department of Finance approval, OCII is planning to issue approximately \$23 million taxable tax allocation revenue bonds to provide new money for construction of low and moderate income housing (“Housing Bond”), approximately \$37 million in tax-exempt tax allocation revenue bonds to fund Transbay infrastructure (“Transbay Bond”) and one series of approximately \$90 million taxable tax allocation refunding revenue bonds (“Taxable Refunding Bond”), (together the “Bonds”); and,
- WHEREAS, Section IX.C.5 of OCII’s purchasing policy authorizes OCII staff to select a Contractor from a City panel that was established using the City’s competitive selection process, to the same extent that OCII staff may select a Contractor from an OCII panel authorized under the Purchasing policy; and,
- WHEREAS, On February 25, 2016 OCII staff issued to the City’s bond/disclosure counsel panel, established pursuant to a City RFP issued June 19, 2014 and effective through August 2016, a Request for Proposals (“RFP”) for bond counsel and/or disclosure counsel services for the above described transactions; and,
- WHEREAS, Of the nine firms responding to the RFP by the submission deadline, March 15, 2016 six proposed to provide bond counsel services; and,
- WHEREAS, An OCII panel reviewed the proposals according to objective scoring criteria and determined that Jones Hall was the most qualified respondent; and,
- WHEREAS, The OCII panel recommends entering into a professional services contract (“Contract”) with Jones Hall for bond counsel services related to the issuance of the Bonds in an amount not to exceed \$207,000 comprising: \$45,000 for the \$23 million Housing Bond; \$55,000 for the \$90 million Taxable Refunding Bond, \$65,000 for the \$37 million Transbay Bond, \$9,000 for expenses and a \$33,000 contingency allowance; and,
- WHEREAS, The adoption of SB107 authorized OCII to issue bonds to provide funding for the construction of certain low and moderate income housing to satisfy obligations

under specified agreements and to fund infrastructure construction in the Transbay project area, California Health and Safety Code Section 34177.7(a)(1); and,

WHEREAS, Payments under this Contract will be provided from the proceeds of any bond issuance; and,

WHEREAS, A copy of the Contract is on file with the Secretary of the Commission; and,

WHEREAS, Authorization of the Contract with Jones Hall is not a project, as defined by the California Environmental Quality Act (“CEQA”) in CEQA Guidelines Section 15378(b)(5), will not independently result in a physical change in the environment, and is not subject to environmental review under CEQA; now, therefore, be it

RESOLVED, That the Commission approves, and authorizes the Executive Director to execute a Legal Services Contract with Jones Hall, a professional law corporation, for Bond Counsel services related to the proposed issuance of the Bonds in the form of the Contract on file with the Secretary of the Commission for an amount not to exceed \$207,000; and, be it further

RESOLVED, The Commission authorizes the Executive Director of OCII to take such actions as may be necessary or appropriate, to effectuate the purpose or intent of this resolution.

I hereby certify that the foregoing resolution was adopted by the Commission at its meeting of August 2, 2016.

Commission Secretary

LEGAL SERVICES CONTRACT SUMMARY (BOND COUNSEL)

NAME OF COUNSEL'S LAW FIRM: JONES HALL, A PROFESSIONAL LAW CORPORATION

LEAD ATTORNEY: Steve Melikian, Esq.

Address: 475 Sansome St., 17th Floor, San Francisco, CA 94111

Telephone: 415-391-5780

Cell Telephone: N/A

Facsimile: 415-391-5784

Effective Date of Contract: August 3, 2016

Title of Financings: Successor to the Redevelopment Agency of the City and County of San Francisco: 1) Taxable Tax Allocation Revenue Bonds Series 2016 (San Francisco Redevelopment Projects); 2) Tax Allocation Revenue Bonds Series 2017 (Transbay Project Area); 3) Taxable Tax Allocation Refunding Revenue bonds Series 2017

Contract Not To Exceed Amount: \$207,000

OCII REPRESENTATIVE: John Daigle/ James B. Morales

Telephone: 415-749-2471/ 415-749-2454

Cell Telephone: N/A

Facsimile: 415-749-2575

**SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY
LEGAL SERVICES CONTRACT
(Public Finance/Bond Counsel)**

This LEGAL SERVICES CONTRACT (“Contract”) dated as of August 3, 2016 by and between the SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO, a public body, corporate and politic (“OCII” or the “Agency”), and JONES HALL, a Professional Law Corporation (“Counsel”).

WHEREAS, pursuant to the OCII’s proposed issuance of approximately: \$23,000,000 2016 Taxable Tax Allocation Revenue Bonds, \$37,000,000 Tax-Exempt Tax Allocation Revenue Bonds and \$90,000,000 Taxable Tax Allocation Refunding Revenue Bonds to refund outstanding taxable revenue bonds (together, the “Bonds”); OCII has selected Counsel as bond counsel to the OCII for the Bonds and authorized the OCII’s Executive Director to execute and deliver an agreement with Counsel for its services related to the Bonds;

WHEREAS, Counsel is one of the law firms listed in the pool of qualified bond counsel that the City Attorney has selected; and

WHEREAS, Section IX, C, 5 of the OCII Purchasing Policy provides that the staff may select a contractor from a City panel that was established using the City’s competitive selection process; and

WHEREAS, On February 25, 2016 OCII staff issued to the City’s bond/disclosure counsel panel, established pursuant to a City RFP issued June 19, 2014 and effective through August 2016, a Request for Proposals (“RFP”) for bond counsel and/or disclosure counsel services for the above described transactions; and,

WHEREAS, Counsel is ready, willing and able to provide the legal services contemplated by this Contract;

WHEREAS, This Contract creates an on-going attorney-client relationship between Counsel and the OCII. The attorney-client relationship shall remain in place at all times from the effective date of this Contract until such time as either party provides written notice of its intent to terminate the attorney-client relationship. The attorney-client relationship will remain in place continuously under this Contract until such notice is provided, regardless of whether Counsel is actively performing legal work for the OCII;

Accordingly, for and in consideration of the mutual promises and undertakings hereinafter set forth and for other good and valuable considerations, the receipt and adequacy of which are hereby acknowledged, the OCII and Counsel agree as follows:

1. DEFINITIONS

For the purpose of this Contract, certain capitalized terms are defined as follows:

“Agency” means the Successor Agency to the Redevelopment Agency of the City and County of San Francisco (sometimes referred to as the Successor Agency), a public entity established pursuant to the Community Redevelopment Law of the State of California, as

amended by Assembly Bill No. 1X 26 (Chapter 5, Statutes of 2011-12, First Extraordinary Session) and Assembly Bill No. 1484 (Chapter 26, Statutes of 2011-12, Regular Session), and whose members are the members of the Successor Agency Commission, which was established pursuant to Ordinance No. 215-12 (Oct. 4, 2012). Unless otherwise indicated, whenever this Contract refers to an act that the OCII may or must take, such reference includes the OCII's Executive Director and designees, acting on behalf of the OCII.

"Agency Representative" is the OCII Executive Director or his or her designee described in the preamble to this Contract.

"Bonds" mean the bonds to be issued or refunded by the Agency in the Financing which is the subject of this Contract.

"Compensation" shall mean the compensation payable to Counsel for the Services, subject to the terms and conditions hereof, as provided in Section 5 hereof and the Fee Schedule.

"Contract" shall mean this Contract, as it may be amended from time to time in accordance with its terms.

"Counsel" shall mean the law firm identified in the preamble to this Contract.

"Effective Date" shall have the meaning given in Section 4 hereof.

"Fee Schedule" means the breakdown of fees and reimbursable amounts payable to Counsel as Compensation for the Services hereunder, including the guaranteed maximum costs of this Contract, attached hereto as Exhibit A.

"Financing" means the Bonds or other financing-related transaction contemplated by this Contract.

"OCII" means "Agency" as defined in this section.

"OCII Representative" means "Agency Representative as defined in this section.

"Official Statement" means either the official statement or other disclosure document for the Bonds prepared in accordance with SEC Rule 15c2-12 and other applicable law.

"Services" means the services to be performed by Counsel pursuant to this Contract, including, but not limited to, the scope of services described in Section 2 below.

"Tax Code" shall mean the United States Internal Revenue Code of 1986, as amended.

"Term" means the term of this Contract specified in Section 3 hereof.

2. CONTRACT SERVICES AND PERSONNEL

2.1 APPOINTMENT OF COUNSEL. The OCII engages and appoints Counsel to perform legal services in connection with the Financing and Counsel accepts such engagement and appointment, upon the terms and conditions set forth in this Contract. Counsel also agrees to

provide the Services required hereunder in an efficient and professional manner, to the reasonable satisfaction of the OCII Representative identified in the Contract Summary. Except to the extent, if any, specifically provided herein or specifically authorized in writing by the OCII Representative, Counsel shall have no right or authority, express or implied, to commit or otherwise obligate the OCII in any manner whatsoever.

2.2 SERVICE PROVIDERS. Counsel shall make available such attorneys and other personnel as are qualified to advise and provide services on matters relating to the Financing, as described in this Contract. Counsel also agrees that Contract services shall be provided by competent attorneys and other personnel with appropriate levels of experience for the performance of such tasks, who are employed by Counsel; provided, however, that particular services may be subcontracted with the prior written approval of the OCII Representative. Counsel agrees to utilize the following principal personnel as providers of Contract services:

Steve Melikian
Lead Counsel

Dave Walton
Tax Attorney

Scott Ferguson, Chris Lynch, Juan Galvan
Attorneys

Other Personnel

Any change in the lead attorney requires the OCII Representative's prior written approval. Staffing decisions required to be taken by Counsel in an emergency for which prior written approval of the OCII Representative required hereunder is not feasible shall be limited to such emergency situation only, taken by Counsel in a reasonable manner and require immediate follow-up discussions with the OCII Representative.

2.3. GENERAL SERVICES.

(a) Participation in the Financing. Counsel shall cooperate with the OCII's staff, financial consultants, underwriters and other Financing team participants in planning the structure and terms of the Financing, advise the OCII regarding the preparation of an Official Statement and other written disclosures relating to the Bonds, and perform other services customarily performed by bond counsel in connection with similar financings. Counsel shall also attend or otherwise participate in working group meetings and telephone conferences of those involved in the Financing, and such other meetings as the OCII may determine necessary or appropriate. Counsel shall respond to questions during public hearings related to the proposed financings before the OCII Commission and Oversight Board and during review by the California Department of Finance.

(b) Other Services. Any other services in connection with the Financing requested by the OCII Representative but only within the scope of the services customarily provided by bond counsel in connection with similar financings.

(c) Invoices. Prior to the Closing, Counsel shall provide the OCII Representative with an invoice for the services provided and costs advanced to the OCII, pursuant to this Contract a copy of which shall also be included in the bond transcript.

(d) Post-Closing Services. Following the closing of the Financing, Counsel shall provide routine consultation to the OCII, as reasonably requested by the OCII, on matters related to the Bonds and the Financing. Counsel shall not be responsible for providing the legal services required for compliance with rebate requirements or continuing annual disclosure under SEC Rule 15c2-12; however, Counsel shall cooperate with the OCII and the OCII's Disclosure Counsel, if any, to the extent reasonably necessary to achieve such compliance.

(e) Attorney-Client Privilege

Counsel acknowledges that it has no authority to waive the attorney-client privilege on behalf of the OCII and agrees to conduct its activities relating to this matter in such a manner as to maintain the confidentiality of communication between Counsel and the OCII (including the OCII Representative and any OCII official or employee). Counsel further agrees not to waive the attorney-client privilege with respect to documents or communications obtained or conducted in connection with this matter without the express written consent of the OCII.

2.4 ADDITIONAL SERVICES. Counsel shall provide legal services pertaining to the Financing on the terms and conditions provided therein, by serving as Bond Counsel, as designated below in either 2.4.

2.4.1 Bond Counsel Services

(a) Disclosure Documents. After conducting its independent due diligence review, as appropriate, Counsel will prepare or assist the OCII's Disclosure Counsel in the preparation of the Official Statement and the resolution of disclosure issues relating to the Bonds.

(b) Other Documents Necessary for the Financing. Counsel shall prepare and/or review the various documents relating to the authorization, issuance, sale and delivery of the Bonds, including, but not limited to, (i) the ordinances and resolutions authorizing and approving the sale and issuance of the Bonds and related documents prescribing the terms, form, security, and other provisions relating thereto, (ii) any and all other resolutions or ordinances adopted in connection with the Financing, (iii) the notices of intention to sell relating to the Bonds and the official notices of sale of the Bonds, (iv) the purchase contracts, if any, (v) the preliminary and final Official Statements, other than the OCII's financial statements contained therein, and (vi) other agreements and documents in connection with the Financing. All legal documents prepared by Counsel and the opinions required hereunder shall be submitted to the OCII Representative for approval as to form prior to execution.

(c) Opinions. After conducting its own independent due diligence review, Counsel shall render the following opinions with respect to the Bonds, in such form and subject to such exceptions, qualifications and limitations as are typically used in legal opinions for similar financings and are reasonably acceptable to the OCII Representative:

(1) Tax Opinions. If the interest on the Bonds meets the standards for exemption from taxation, Counsel shall prepare or cause to be prepared an unqualified opinion to the OCII and other parties involved in the Financing that interest on the Bonds is excluded from gross income for federal income tax purposes under Section 103 of the Tax Code and is exempt from California personal income taxes; and if applicable, such interest on the Bonds is not a specific preference item for purposes of the federal individual or corporate alternative minimum taxes under the Tax Code.

(2) Supplemental Opinions. Counsel shall also provide to the OCII and the initial purchasers of the Bonds, an unqualified supplemental opinion, as may be requested by the OCII or by the initial purchasers of the Bonds, including but not limited to the following: (a) the statements relating to the Bonds contained in the Official Statement are accurate, insofar as such statements purport to summarize certain provisions of the Bonds, documents and continuing annual disclosure relating to the Bonds; and (b) the Bonds are exempt from the registration requirements of the Securities Act of 1933, as amended.

(3) OCII Representative Opinion. In cooperation with the OCII Representative, draft an opinion for execution by the OCII Representative or designee, substantially to the effect that, based upon the participation of the OCII Representative or designee in the transaction and except for any financial, engineering or statistical data or forecasts, numbers, estimates, charts, projections, assumptions or expressions of opinion: (a) no information came to the attention of the OCII Representative or designee that caused the OCII Representative or designee to believe that, as of the date of the Official Statement and as of the date of the closing of the Bonds, the Official Statement contains any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein, (b) in light of the circumstances under which it was made, the Official Statement is not misleading in any material respect; and (c) the sale of the Bonds and delivery of the Official Statement have been duly authorized and approved by the OCII.

(d) Transcript Preparation. Prepare and provide to the OCII and other Financing participants a bond transcript and closing memorandum in both PDF and printed form, in the number requested by the OCII Representative. The transcript shall also include a copy of Counsel's invoice for services provided pursuant to this Contract.

2.4.2 Co-Bond Counsel or Disclosure Counsel Services. [Intentionally Omitted]

2.5 EXCLUDED SERVICES. The Services contemplated by this Contract do not include the following:

2.5.1 Representation of the OCII or any other party to the Financing in any ruling request to the Internal Revenue Service or other administrative proceeding involving the Bonds, including, but limited to, any validation action or other litigation (except as expressly provided with respect to the indemnification herein or as otherwise provided in this Contract);

2.5.2 Ensuring compliance with any state blue sky laws; and

2.5.3 Services in connection with rebate compliance or continuing disclosure, except as otherwise specifically provided herein.

3. TERM

The term of this Contract shall begin on the Effective Date and end on the completion of services, unless terminated earlier by either party as provided in this Contract; provided, however, that the insurance and indemnity provisions in this Contract shall continue to remain in effect according to their terms.

4. EFFECTIVE DATE

Subject to full execution hereof, this Contract shall be deemed effective as of the date first written above, which is the date on which this Contract was executed by the OCII.

5. COMPENSATION AND BILLING RATES

5.1 FEES; PAYMENT CONTINGENT ON SUCCESSFUL COMPLETION OF FINANCING. As full recompense for all of the Services rendered by Counsel under this Contract, the OCII shall pay to Counsel the Compensation set forth in the Fee Schedule attached hereto as Exhibit A, subject to the terms and conditions hereof. The attached Fee Schedule may be amended from time to time, with the written approval of the parties hereto, in connection with the issuance and sale of future series of the Bonds. The Fee Schedule sets forth a breakdown of the fees and reimbursable amounts payable hereunder, and the guaranteed maximum cost of this Contract to the OCII. Notwithstanding anything to the contrary herein, the Compensation of Counsel is contingent upon the successful issuance and sale of the Bonds or Financing and upon the OCII Representative's reasonable determination that the services have been satisfactorily rendered in accordance with this Contract. Compensation shall be payable within a reasonable time after the closing of the sale of the Bonds or the Financing.

5.2 GUARANTEED MAXIMUM COSTS; OCII'S OBLIGATIONS LIMITED TO CERTIFICATION AMOUNT. The OCII's obligation hereunder shall not at any time exceed the amount approved by the OCII for the purpose and period stated in such approval.

5.3 GRATUITOUS SERVICES. The OCII and its employees and officers are not authorized to request Counsel to perform services beyond the scope of the services agreed upon in this Contract, unless the Contract is amended in writing and approved by the parties. The OCII is not required to reimburse Counsel for services that are provided by Counsel that are beyond the scope of the services agreed upon in this Contract and which were not approved by a written amendment to this Contract having been lawfully executed by the OCII.

5.4 APPROVAL REQUIRED FOR ADDITIONAL FUNDING. The OCII and its employees and officers are not authorized to offer or promise Counsel additional funding for this Contract that would exceed the amount authorized pursuant to this Contract for Counsel's performance hereunder. Additional funding for this Contract in excess of such approved amount shall require lawful approval and certification by the OCII.

6. METHOD OF PAYMENT

6.1 INVOICES. As a condition to payment of any Compensation, Counsel must furnish an invoice prior to the Bond closing in a form reasonably acceptable to the OCII Representative. Prior to the sale of the Bonds, Counsel shall submit an invoice to the OCII Representative identifying in reasonable detail the work performed and the corresponding amount of time spent by each individual, with the hourly billing rates, together with such additional supporting information as the OCII Representative may reasonably require. OCII Representative shall review and approve invoices forthwith to permit payment at closing.

6.2 PAYMENT CONTINGENT ON OCII REPRESENTATIVE APPROVAL OF INVOICES AND ON SUCCESSFUL CLOSING. All charges incurred under this Contract shall be due and payable only upon (1) approval by the OCII Representative of an invoice for work performed in accordance with this Contract and (2) the successful completion of the sale of the Bonds and closing of the Financing. Counsel assumes the risk of non-payment in the event the Bonds are not sold or the Financing does not close prior to the expiration of this Contract, for any reason, including, but not limited to, the OCII's determination in its sole and absolute discretion not to proceed with the Financing.

6.3 TAXES. Payment of any taxes, including possessory interest taxes and California sales and use taxes, levied upon this Contract or the Services delivered pursuant hereto, shall be the obligation of Counsel. No payroll or employment taxes of any kind will be withheld or paid by OCII on behalf of Counsel or any of Counsel's employees. OCII will not treat Counsel or any of Counsel's employees as an employee with respect to the Contract services for any purpose, including federal and state tax purposes. Counsel understands and agrees that it is Counsel'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 Counsel for the Contract services.

6.4 BENEFITS. Counsel and its employees 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.

6.5 INVOICE DOCUMENTATION. All costs and services described in Counsel's invoice 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.

7. INTENTIONALLY OMITTED.

8. SUBMITTING FALSE CLAIMS; MONETARY PENALTIES

Pursuant to Government Code Section 12650 et seq., Counsel acknowledges and agrees that it shall be liable to the OCII for submission of a false claim to the OCII for three times the amount of damages which the OCII sustains because of the false claim. A contractor, subcontractor or consultant who submits a false claim shall also be liable to the OCII for the costs, including attorneys' fees, of a civil action brought to recover any of those penalties or damages, and may be liable to the OCII for a civil penalty of up to \$10,000 for each false claim. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the

OCII if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the OCII a false claim or request for payment or approval; (b) knowingly makes, uses or causes to be made or used a false record or statement to get a false claim paid or approved by the OCII; (c) conspires to defraud the OCII by getting a false claim allowed to be paid by the OCII; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the OCII; or (e) is a beneficiary of an inadvertent submission of a false claim to the OCII, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the OCII within a reasonable time after discovery of the false claim.

9. INSURANCE

9.1 COVERAGE.

A. Counsel 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 Counsel, its agents, representatives, employees or subcontractors.

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 Counsel's profession covering all negligent acts, errors and omissions.

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

- (1) General Liability: \$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.
- (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 Counsel has employees).

(4) Professional Liability Insurance: \$2,000,000 per claim and in the annual aggregate. If Counsel's Professional Liability Insurance is "claims made" coverage, these minimum limits shall be maintained by Counsel for no less than three (3) 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 the OCII. At the option of the OCII, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects to the OCII, the City and County of San Francisco and their respective commissioners, members, officers, agents and employees; or Counsel shall provide a financial guarantee satisfactory to the 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 "Successor Agency to the Redevelopment Agency of the City and County of San Francisco, and its 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 Counsel; and liability arising out of work or operations performed by or on behalf of the Counsel.

(2) For any claims related to this Contract, the Contractor's insurance coverage must be primary insurance as respects to the Agency and its commissioners, members, officers, agents, and employees. Any insurance or self-insurance maintained by the Agency and its 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 the OCII, and its 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 the OCII.

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 the OCII's Risk Manager.

G. Verification of Coverage. Counsel must furnish the 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 the OCII. The 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. Counsel 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.

10. TERMINATION

10.1 Termination For Cause. The OCII shall have the right to terminate this Contract after written notice to Counsel and after the expiration of any cure period provided for below, upon the occurrence of any of the following events of default:

10.1.1 Failure of such Counsel to perform any covenant or obligation set forth in this Contract or any other agreement with the OCII.

10.1.2 An attempt by Counsel to assign, delegate or subcontract without the OCII's consent as provided herein.

10.1.3 Failure by Counsel to maintain insurance as required hereunder. Filing by or against Counsel of any petition in bankruptcy, any assignment by Counsel for the benefit of creditors, the levy of a writ of attachment or execution against any of Counsel's property or the appointment of a receiver for Counsel or any of Counsel's property.

10.1.4 Unauthorized or excessive billing by Counsel. Except as provided in Sections 10.1.2 and 10.1.3 above or as otherwise provided in this Contract, Counsel shall not be in default hereunder unless Counsel shall fail to correct such failure to perform for a period of ten (10) days after written notice given by the OCII to Counsel identifying the default. Notwithstanding the foregoing, if a default cannot be cured within such ten-day period, Counsel shall not be in default hereunder if and for so long as Counsel shall, (1) diligently and in good faith, have commenced to remedy the default within such ten-day period, (2) subsequently prosecute to completion with diligence and continuity the remedying of default, (3) complete the remedy of such default within a reasonable time, not in excess of ninety (90) days, to the OCII's satisfaction. For assignments, delegations or subcontracts described in Section 10.1.2 above, there shall be no required allowance of a period to cure such action. For lapses in insurance coverage described in Section 10.1.3 above, Counsel shall be required to give notice of such lapse to OCII as soon as is practicable and shall have seven (7) days from the first date of such lapse to obtain replacement insurance meeting the requirements of this Contract, notwithstanding any other provisions of this paragraph. In the case of a notice of default to Contract, no work within the scope of this Contract will be continued or undertaken by Counsel after the date of receipt of the notice, without the express consent of the OCII.

10.2 Termination Without Cause. The OCII may terminate this Contract for the OCII's convenience and without cause at any time by giving Counsel ten (10) days' written notice of such termination.

10.3 Effective Date of Termination. Termination under Section 10.1 above shall be effective after the expiration of any applicable cure or notice periods and upon OCII's

notification of Counsel that it is exercising its right to terminate for cause, except as otherwise expressly provided herein. Termination under Section 10.2 above shall be effective upon the expiration of the 10 days' written notice described therein. Upon such termination, all rights, powers, privileges and authority granted to Counsel under this Contract shall cease: Counsel shall, however, continue to be subject to the indemnification and Professional Liability Insurance requirements of this Contract which are intended to survive Termination or completion of the services contemplated by this Contract.

10.4 Non-Exclusive Remedies. The OCII's right to terminate this Contract under this Article 10 is not its exclusive remedy but is in addition to all other remedies provided to it by law, in equity, or under the provisions of this Contract.

10.5 Duties Upon Termination. Upon termination of this Contract, Counsel shall provide the OCII with copies of all documents in its possession belonging to the OCII. In the event this Contract is terminated prior to the closing of the Financing, Counsel further agrees to do all other things reasonably necessary to cause an orderly transition of services for the Financing without detriment to the rights of the OCII.

11. INDEMNIFICATION

(a) Bond Counsel shall indemnify and hold harmless the OCII, the City and County of San Francisco, and their respective officers, employees, agents and members of their boards and commissions (each an "indemnified party") from and against any and all losses, claims, demands, damages, liabilities, actions, judgments and awards (collectively, "Claims") sustained by an indemnified party that are determined in a final, binding judgment against Bond Counsel by a court of competent jurisdiction to have proximately resulted from professional negligence of Bond Counsel in connection with its performance of legal services under this Agreement. Nothing in this Section 11 shall obligate Bond Counsel to pay or reimburse an indemnified party for any damages, legal costs or expenses incurred, including attorneys' fees, unless Bond Counsel is adjudicated liable for such damages, legal costs or expenses incurred, including attorneys' fees, in such a final judgment. In no event shall Bond Counsel's liability under this Agreement exceed the policy limits of its available Professional Liability Insurance maintained pursuant to Section (9.1)(c)(4) with respect to any Claims. Although Bond Counsel has agreed to indemnify the City, the officers, employees and agents of the OCII and the City and members of the OCII's and the City's boards and commissioners under this Section 11, the OCII and Bond Counsel expressly agree that Bond Counsel has no attorney-client relationship with any individual or entity other than the OCII with respect to the matter covered in this Agreement.

(b) Promptly after receipt by an indemnified party of written notice of the filing of any Claim or the commencement of any action on any Claim, the indemnified party shall, if a claim in respect thereof is to be made against Bond Counsel under this Section 11, notify Bond Counsel in writing of the filing or commencement thereof; but the omission to so notify Bond Counsel shall not relieve Bond Counsel from any liability which it may have to such indemnified party otherwise than under this Section 11. In case any such claim or action shall be brought against an indemnified party and the indemnified party shall notify Bond Counsel of the filing or commencement thereof, Bond Counsel shall be entitled to participate therein and, to the extent that it wishes in its sole discretion, to assume the defense thereof, with counsel reasonably acceptable to the indemnified party, and to pay the costs or expenses incurred, including attorneys' fees. After timely written notice from Bond Counsel to the indemnified party of its election to so assume the defense thereof, the indemnified party shall waive any right to claim liability of Bond Counsel for any legal or other expenses subsequently incurred by such indemnified party in connection with the defense thereof, so long as Bond Counsel continues to diligently pursue such defense. However, if Bond Counsel assumes the defense pursuant to this Section 11, any indemnified party shall have the right to select separate counsel to assert legal defenses that may be different from or additional to those available to Bond Counsel and otherwise participate in the defense of such action on behalf of the indemnified party. In such event the indemnified party shall bear the fees and expenses of such separate counsel for the indemnified party in defending such claim or action without any contribution or reimbursement by Bond Counsel. Nothing in this Section shall limit any of the OCII's rights or remedies under this Agreement or at law or in equity. The indemnity agreements contained in this Section shall survive the termination, expiration or cancellation of this Agreement.

12. CONFLICTS OF INTEREST

12.1 Through its execution of this Contract, Counsel acknowledges that it is familiar with Section 87100 *et seq.* of the California Government Code, the Political Reform Act, and its implementing regulations ("PRA"), certifies that it does not know of any facts that constitute a violation of the PRA, and will provide written disclosure of any actual or potential violation of the PRA.

12.2 APPLICABILITY TO SUBCONTRACTORS. For the purpose of these requirements, Counsel also includes the subcontractors of Counsel under this Contract. In order to carry out the purposes of this Section, Counsel shall incorporate, or cause to be incorporated, in all subcontracts relating to activities pursuant to this Contract, a provision similar to that of this Article 12 in all subcontracts for goods or services executed in connection with this Contract and to require such subcontractors to comply with such requirements.

12.3 OCII'S CONFLICT OF INTEREST CODE. The OCII's Conflict of Interest Code requires employee classifications designated therein (collectively the "Designated Employees") to provide disclosures of certain financial interests pursuant to the California Political Reform Act. A "Consultant" (as hereafter defined) is deemed to be a Designated Employee who must also provide the disclosures required by the OCII's Conflict of Interest Code. "Consultant" means any natural person who provides under contract, information, advice, recommendation or counsel to the OCII; provided, however, that "Consultant" shall not include a person who: (a) conducts research and arrives at conclusions with respect to his or her rendition of information, advice, recommendation or counsel independent of the control and direction of the OCII or of any OCII official, other than normal contract monitoring; and (b) possesses no

authority with respect to any OCII decision beyond the rendition of information, advice, recommendation or counsel.” Counsel agrees to comply with the disclosure requirements of the OCII’s Conflict of Interest Code if Counsel believes that it is a “Consultant” or if the OCII notifies Counsel of Counsel’s status as a “Consultant.”

12.4 FAILURE TO DISCLOSE. If Counsel fails to provide any disclosure required by this Article 12, Counsel agrees that the OCII may withhold payment of any funds claimed by Counsel pursuant to this Contract until Counsel has submitted all such disclosures to the OCII.

12.5 OCII PERSONNEL CONFLICTS. Except for approved eligible administrative or personnel costs, no employee, agent, contractor, officer or official of the 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.

12.6 RULES OF PROFESSIONAL CONDUCT. Counsel certifies by its execution of this Contract that it has disclosed in advance any actual or potential conflict of interest that exists under the California Rules of Professional Conduct to the OCII. Counsel further agrees to notify the OCII Representative in writing in advance of any actual or potential conflict that may arise after execution of this Contract so that the OCII’s Executive Director may determine whether to exercise a waiver of such conflict of interest. The OCII agrees that any potential or actual conflict under the California Rules of Professional Conduct previously waived by the OCII shall also apply to this Contract.

13. COUNSEL’S DUTY OF LOYALTY

Counsel agrees, for itself and its subcontractors, if any, to abide by the OCII’s duty of loyalty, which appears at Section IX.H. (Prohibited Activities of Present and Former Employees, Commissioners and Consultants) of the OCII’s Personnel Policy and which states in part as follows:

“Unless approved in advance in writing by the Agency, no present or former employee, Commissioner or consultant of the Agency shall knowingly act for anyone other than the Agency in connection with any particular matter in which the Agency 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 Contract, Counsel acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code (“Section 1.126”), which prohibits any person who contracts with the 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. Counsel 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. Counsel further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Counsel's board of directors; Counsel's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Counsel; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Counsel. Additionally, Counsel acknowledges that Counsel must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126.

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

15. NOTICES

All notices, demands, consents or approvals required under this Contract shall be in writing and shall be deemed given when delivered personally, when received 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 the OCII: Office of Community Investment and Infrastructure
 1 South Van Ness Avenue, 5th Floor
 San Francisco, CA 94103
 Attention: Executive Director

If to Counsel: At the address set forth on the Contract Summary.

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

16. NO PERSONAL LIABILITY

No member, official or employee of the OCII shall be liable personally to Counsel or any successor in interest in the event of any default or breach by the OCII or for any amount which

may become due to Counsel or any successor or on any obligation under the terms of this Contract.

17. ASSIGNMENT OF CONTRACT

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

18. NON-FEDERAL LABOR STANDARDS

Counsel agrees that any employees performing work or services for Counsel shall be paid not less than the prevailing wage rate and shall be subject to the same hours and working conditions and shall receive the same benefits provided for similar work or services performed in San Francisco. Counsel further agrees that the inclusion of the above provisions in this Contract shall not be construed to relieve Counsel or any subcontractor from the pertinent requirements of any applicable Federal labor standards provisions; and, provided, further, that the limitations, if any, in these non-Federal labor standards provisions upon hours per day, per week, or per month which the employees engaged on the work covered by this Contract may be required to work thereon shall not be exceeded. 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.

19. INDEPENDENT CONTRACTOR

Counsel hereby declares that it is engaged in an independent business and agrees to perform its services as an independent contractor and attorney in fact for the OCII, not as an agent or an employee of the OCII. Counsel 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. Counsel 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. Counsel agrees to be solely responsible for its own acts and those of its subordinates and employees during the term of this Contract.

20. RECORDS, REPORTS AND AUDITS

20.1 SUPPLEMENTAL RECORDS. The final documents contained in the Bond Transcript, other Financing records shall be maintained for a period at least equal to the longest term of any of the Bonds plus ten (10) years; provided, however, that records that are the subject of audit findings shall be retained for four (4) years or until such audit findings have been resolved, whichever is later.

20.2 REPORTS AND INFORMATION. At such times and in such forms as the OCII may require, there shall be furnished to the OCII or its designated representative such statements, records, reports, data and information as the OCII reasonably may request pertaining to matters covered by this Contract.

20.3 AUDITS AND INSPECTIONS. At any time during normal business hours and as often as the OCII may deem necessary, there shall be made available to the OCII or its representatives for examination all records with respect to all matters covered by this Contract. Counsel will permit the OCII to audit, examine and make excerpts or transcripts from such records, and to make copies of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Contract.

21. CONFIDENTIALITY

All of the reports, information, data or other materials prepared or assembled by Counsel under this Contract, including Counsel's opinions and conclusions based upon such items, are confidential. Counsel 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 the 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 the OCII.

22. NONDISCRIMINATION AND EQUAL BENEFITS

22.1 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. Counsel 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.

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

22.3. Counsel 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.

22.4 Counsel 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 the OCII's Nondiscrimination in Contracts Policy ("Policy"), adopted by OCII Resolution No. 175-97, as such Policy may be amended from time to time.

22.5. Counsel 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.

22.6 Counsel agrees to comply fully with all provisions of the OCII's Nondiscrimination in Contracts Policy ("Policy"), adopted by Agency Resolution No. 175-97, as such Policy may be amended from time to time. The City and County of San Francisco has certified Counsel (Vendor No. 50810) as being in compliance with Chapter 12B of the San Francisco Administrative Code (the "Equal Benefits Ordinance"). See list of certified vendors, available at <http://sfgsa.org/index.aspx?page=6128>. Accordingly, the OCII deems this certification under the Equal Benefits Ordinance as compliance with the Policy.

23. EQUAL EMPLOYMENT OPPORTUNITY

23.1 Counsel acknowledges that the OCII is committed to promoting employment opportunities for women and minorities and to diversity in the workplace. Accordingly, Counsel agrees that its employment program will include recruiting from a broad and diverse pool of applicants (consistent with the firm's size and hiring needs), including but not limited to recruitment and consideration of minority and woman law students and attorneys.

23.2 Counsel agrees to establish and maintain a written policy on diversity, equal opportunity hiring and retention and nondiscrimination which encourages diversity and prohibits discrimination; to have an established and clear internal process for receiving and responding to complaints of discrimination; and to designate one or more persons as responsible within the firm for general issues related to achieving a diverse workplace, recruiting, retention and training.

24. COMPLIANCE WITH THE OCII'S MINIMUM COMPENSATION POLICY AND HEALTH CARE ACCOUNTABILITY POLICIES

Counsel agrees, as of the date of this Contract and during the term of this Contract, to comply with the OCII's Minimum Compensation Policy and Health Care Accountability Policy (see "Minimum Compensation Policy", Exhibit I and "Health Care Accountability Policy," Exhibit J, collectively the "Policies"), adopted by Agency Resolution 168-2001, as such Policies may be amended from time to time. 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.

25. JOINT VENTURE/CO-COUNSEL PROVISION

25.1 Counsel acknowledges that the OCII is committed to promoting contracting opportunities for small businesses, including women and minority owned law firms. Accordingly, the OCII may request Counsel to enter into joint venture or co-counsel relationships to represent the OCII. Counsel agrees to consider such requests in good faith and to attempt to negotiate such relationships unless conflicts or other reasonable impediments prohibit it.

25.2 If this Contract is or becomes part of a joint venture or co-Bond Counsel arrangement, then the OCII shall designate Lead Counsel and the working relationship and allocation of responsibility desired by the OCII. It is expected that Lead Counsel and additional

Counsel will consult and cooperate with the other and each will defer to the other in each's area of expertise and responsibility.

26. COMPLIANCE WITH SMALL BUSINESS ENTERPRISE PROGRAM

If Counsel intends to utilize subcontractors and/or sub consultants in the provision of Contract services, it must consult with the OCII's Contract Compliance Division and comply with all the provisions of the Small Business Enterprise Agreement. The 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 "Small Business Enterprise Agreement," Exhibit H.) SBEs must be certified by the OCII or other governmental entity under a program comparable to the SBE Program.

27. MISCELLANEOUS PROVISIONS

27.1 TIME OF PERFORMANCE

(a) Time is of the essence in the performance of all the terms and conditions of this Contract.

(b) All performance and cure periods expire at 5:00 P.M., San Francisco, California time, on the applicable date.

(c) A performance or cure date which otherwise would be a Saturday, Sunday or OCII holiday shall be extended to the next OCII working day.

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

27.3 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 the OCII and Counsel.

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

27.5 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.

27.6 GOVERNING LAW. This Contract shall be governed by the laws of the State of California. It is the responsibility of the Counsel 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.

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

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

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

27.10 EXHIBITS. This Contract includes the following Exhibits:

<u>Exhibit A:</u>	Fee Schedule
<u>Exhibit B:</u>	Intentionally Omitted
<u>Exhibit C:</u>	Intentionally Omitted
<u>Exhibit D:</u>	Intentionally Omitted
<u>Exhibit E:</u>	Intentionally Omitted
<u>Exhibit F:</u>	Intentionally Omitted
<u>Exhibit G:</u>	Intentionally Omitted
<u>Exhibit H:</u>	Small Business Enterprise Agreement
<u>Exhibit I:</u>	Minimum Compensation Policy
<u>Exhibit J:</u>	Health Care Accountability Policy

IN WITNESS WHEREOF, the OCII and Counsel have executed this Contract as follows.

Authorized by Resolution No.

OCII:

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

By: _____

COUNSEL:

JONES HALL, A PROFESSIONAL LAW
CORPORATION

By: _____

Its: _____

Dated: _____

Exhibit A

Counsel fees for services rendered under this contract will be calculated based on following fee schedule:

- \$45,000 for up to \$23 million taxable tax allocation revenue bonds to fund affordable housing city-wide; and,
- \$65,000 for up to \$37 million in tax-exempt tax allocation revenue bonds to fund infrastructure in the Transbay Project Area; and,
- \$55,000 for up to \$90 million in taxable tax allocation refunding revenue bonds.
- \$9,000 for actual out-of-pocket expenses not to exceed \$3,000 per bond series.
- \$33,000 for a contingency allowance to be authorized at the Executive Directors discretion to allow for a circumstance driven change in scope during the course of this contract.

Total compensation will not exceed \$207,000.

All fees and expenses are payable contingent upon the successful sale, issuance and delivery of the respective proposed Bonds.

ATTACHMENT H: 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	OCII 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

Attachment I

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 \$13.34 per hour effective January 1, 2016; for Nonprofit MCP the wage rate is \$12.25 per hour effective May 1, 2015 and \$13.00 per hour effective July 1, 2016. The Minimum Compensation rate is adjusted on January 1 each year. In addition, 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://www.sfocii.org/index.aspx?page=126>.

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

Attachment J

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 \$4.50 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 \$180 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, 2015 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: Contact 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