MEMORANDUM

TO: Community Investment and Infrastructure Commissioners

FROM: Tiffany Bohee
Executive Director

SUBJECT: Authorizing a Personal Services Contract with Jones Hall, a Professional Law Corporation, for Bond Counsel Services in an amount not to exceed $105,000 related to proposed Mission Bay South bond sales, pursuant to the Mission Bay South Owner Participation Agreement

Authorizing a Personal Services Contract with Public Financial Management ("PFM") for financial advisory services in an amount not to exceed $92,000 related to a proposed Mission Bay South bond sales, pursuant to the Mission Bay South Owner Participation Agreement

EXECUTIVE SUMMARY

The Mission Bay developer has requested, under Section 6 of the Financing Plan to the Mission Bay South Owner Participation ("OPA"), that the Successor Agency to the San Francisco Redevelopment Agency ("Agency") issue Tax Allocation Debt for the costs of Infrastructure in the Mission Bay South Project Area. In addition, the Mission Bay South Affordable Housing Program requires the issuance of Tax Allocation Debt under the OPA affordable housing obligations. To accomplish these bond financings, the Agency needs the services of specialized outside consultants and legal counsel, as provided for under the OPA.

On July 10, 2013 the City Attorney’s Office issued a Request for Proposals for Bond Counsel services for its proposed general obligation bond and, additionally, for the Agency’s proposed bond issue.

At the submission deadline, July 16, 2013, six firms responded to the invitation with respect to the Agency’s bond issue. These responses were forwarded to the Agency for evaluation. A panel was convened to evaluate the responses and, after due consideration, selected Jones Hall.

On July 26, 2013, the Successor Agency issued a Request for Proposals ("RFP") for Financial Advisory services in support of the proposed issuance of bonds to finance infrastructure in Mission Bay South and a second bond series to finance Mission Bay South low and moderate income housing.

At the submission deadline of August 2, 2013, five firms had responded. A panel was convened which, after review of the proposals, unanimously selected Public Finance Management ("PFM") as the firm best able to help to assist with the transaction. The same panel also selected
Lofton and Jennings as Disclosure Counsel, but the contract for these services will be considered for approval at a later date.

Entering into contracts with Jones Hall and PFM is in furtherance of the following enforceable obligations: 1) the Mission Bay South Owner Participation Agreement ("OPA"), which includes the Mission Bay South Financing Plan, between the Mission Bay Developer and the Agency and 2) the Mission Bay South Tax Increment Allocation Pledge Agreement between the Agency and the City, to which the Mission Bay Developer has agreed and consented.

Compensation for services under each of these contracts will be paid from bond proceeds deposited, at the closing of the bond sale, into a Cost of Issuance account within the Trust set up under the Bond Indenture and will be contingent upon the closing of the bond sale(s).

*Staff recommends authorization of a professional service contract with Jones Hall effective until such time as the financings are complete for a total contract amount not to exceed $105,000, including expenses.*

*Staff further recommends authorization of a professional services contract with Public Financial Management, Inc. effective until such time as the financings are complete for a total Contract amount not to exceed $92,000 to serve as the Agency's financial advisor for the two bond series.*

**DISCUSSION**

**Request for Proposals Issuance**

**Bond Counsel**

The City Attorney’s Office combined the Successor Agency’s RFP for Bond and Disclosure Counsel with a concurrent RFP for a City General Obligation Bond, on July 10, 2013 issuing the RFPs on July 10, 2013. On July 12, 2013, a supplement to the Successor Agency RFP was sent out to clarify that the Agency would be making the selection, rather than the City Attorney’s Office.

The proposals for Bond Counsel and Disclosure Counsel were due by July 16, 2012. Five firms responded to the RFP pertaining to the Agency’s bond issuance: Jones Hall, Lofton & Jennings, Polsinelli, Goodwin Proctor, Schiff Hardin, Kutak Rock and Alex Chiu.

**Financial Advisor**

On July 26, 2013, the Successor Agency to the San Francisco Redevelopment Agency ("Agency") issued a Request for Proposals ("RFP") for Financial Advisory services in support of the proposed issuance of tax exempt bonds to finance infrastructure in Mission Bay South and a second taxable bond series to finance Mission Bay South low and moderate income housing.

**Selection and Vendor Recommendation**

**Bond Counsel**
An evaluation panel was convened comprised of Deputy Director Levenson, and Deputy Director Morales and Senior Financial Analyst Daigle. After due consideration the panel unanimously chose Jones Hall because of its knowledge and experience in bond financings after the dissolution of redevelopment agencies and its experience in working on prior Agency bond financings. The panel also selected Lofton and Jennings as Disclosure Counsel but the contract for these services will be approved at a later date.

Financial Advisor

At the submission deadline of August 2, 2013, five firms had responded. A panel comprised of Sr. Financial Analyst Daigle and Project Manager Reilly, convened and after review unanimously selected Public Finance Management (“PFM”) as the firm best able to help to assist with the transaction. PFM stood out due to its extensive experience with the redevelopment finance, deep understanding of the Successor Agency’s credit and projects, knowledge of the post dissolution bond financing issues, depth and qualifications of staff, and broad experience with large issuers of tax allocation bonds.

Contract Scope, Term and Costs

Bond Counsel

Contractor will perform services, issue opinions regarding the legality and tax exempt status of the bonds and all other services customary in the practice of the Bond Counsel role. Counsel will be compensated on a transaction basis contingent upon the closing of the bond sale(s) as follows: a) non-housing tax exempt bonds: $67,500; b) housing taxable bonds: $35,000; and c) expenses not to exceed $2500. The total amount of the contract shall not exceed $105,000.

Financial Advisor

Contractor will perform all advisory and support services customary to the role of Financial Advisor in a negotiated bond sale as detailed in Scope of Services attachment of the Personal Services Contract (Attachment A to this memo). Contractor will be compensated on a transaction basis contingent upon the closing of the bond sale(s) as follows: If the tax-exempt Mission Bay South Bonds are issued separately, the fee will be $47,000 plus minimal expenses for that transaction; if the taxable housing bonds are issued separately, the fee will be $42,000 plus minimal expenses for that transaction; if the bonds sales are conducted within a week of each other, the fee will be $59,000 for both.

Enforceable Obligation

Under the Redevelopment Dissolution Law Successor Agencies only have the authority to enter into new contracts in compliance with enforceable obligation that existed prior to June 28, 2011 and in accordance with Health and Safety Code 341773 (a). The Agency has determined that the proposed Personal Services Contract complies with an existing enforceable obligation, as follow:

1. The Owner Participation Agreement for Mission Bay South is an enforceable obligation of the Agency. The OPA includes a Tax Increment Allocation Pledge Agreement and a Financing Agreement which governs the disposition of Mission Bay South tax increment
and establishes the Successor Agency’s obligation to finance infrastructure improvements and low and moderate income housing in the Mission Bay South project area.

2. Payments associated with these Contracts are contingent upon the sale of the bonds and payable only from the respective Cost of Issuance Account(s) within the Bond Trust that will be established and be funded with bond proceeds at the closing of the bond sale(s).

CALIFORNIA ENVIRONMENTAL QUALITY ACT

Authorization of the contract is not a project, as defined by the California Environmental Quality Act (“CEQA”) in CEQA Guidelines Section 15378(b) (5), because the action will allow for the provision of administrative support, outreach and information services to the CAC, will not change conditions in the Shipyard, will not independently result in a physical change in the environment and is not subject to environmental review under CEQA.

(Originated by John Daigle, Sr Financial Analyst)

Tiffany Bohac
Executive Director

Attachment A:   Personal Services Contract with Public Financial Management, Inc
SUCCESSOR AGENCY TO THE SAN FRANCISCO REDEVELOPMENT AGENCY

PERSONAL SERVICES CONTRACT

This PERSONAL SERVICES CONTRACT ("Contract") is entered into as of September 11, 2013 (the "Effective Date") by and between the OFFICE OF COMMUNITY INVESTMENT AND INFRASTRUCTURE AS SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO, a public body, corporate and politic (the "Successor Agency"), and PUBLIC FINANCIAL MANAGEMENT, INC., a Pennsylvania corporation ("Contractor").

RECITALS

This Contract is made with reference to the following facts and circumstances:

A. The Successor Agency plans to issue two series of bonds (the Bonds) pursuant to the Mission Bay South OPA, Financing Agreement and Tax Increment Allocation Agreement. One series of bonds is planned to reimburse or fund infrastructure constructed in the Mission Bay South Project Area. The other series will fund low and moderate income housing in Mission Bay South Project Area.

B. To complete the bond sale, it is necessary to retain the expert services of a Financial Advisor to ensure a successful transaction.

C. Selection of contractors must be in accordance with the Successor Agency’s Purchasing Policy, as last amended on November 15, 2011 (the "Policy").

D. Staff issued an RFP to the City Controller’s panel of financial advisors and prior to the date and time due, received written proposals from the following four financial advisory firms: (1) Public Financial Management, Inc. ("PFM"), (2) Kitahata & Company, (3) CSG Advisors, (4) KNN Public Finance, and (5) Feldman Rolapp.

E. Although several proposals were very good, PFM stood out in the primary criteria: understanding of the Successor Agency’s credit and operating environment, staff depth and qualifications, tax allocation bond experience, knowledge of the post-dissolution legal environment and experience with large issuers of tax allocation bonds.

F. Under Redevelopment Dissolution Law, successor agencies have the authority to enter into new contracts to conduct the work of winding down the redevelopment agency in accordance with Health and Safety Code Section 34177.3(b), which states that: “Successor agencies may create enforceable obligations to conduct the work of winding down the redevelopment agency, including hiring staff, acquiring necessary professional administrative services and legal counsel, and procuring insurance.” The Successor Agency has determined that the Contractor’s work is necessary to the performance of Enforceable Obligations
regarding the financing of infrastructure and low and moderate income housing in the Mission Bay Project Areas as allowed under Redevelopment Dissolution Law as amended by AB1484.

NOW, THEREFORE, the Successor Agency and the Contractor agree as follows:

1. **SCOPE OF SERVICES**

   Contractor shall provide the services and deliverables described in Attachment A, "Scope of Services." Should the opportunity for issuing refunding bonds for currently outstanding bonds arise during the course of the Mission Bay financings, the Successor Agency may seek an amendment to this Contract from the Commission on Community Investment and Infrastructure to (1) extend the Scope of Services, and (2) increase the Contractor’s compensation in order to allow the Contractor to assist in such refunding.

2. **TIME OF COMPLETION**

   A. **Term.** The term of this Contract shall begin on the Effective Date and end on the earlier of December 31, 2014 or upon termination by either party as provided by the Contract; provided, however, that the insurance and indemnity provisions in this Contract shall continue to remain in effect according to their terms.

   B. **Notice to Proceed.** The Contractor’s work described in the Scope of Services will commence on the date set forth in the Successor Agency’s Notice to Proceed. The schedule for completing the work in the Scope of Services will be determined when the Notice to Proceed is issued.

3. **COMPENSATION AND METHOD OF PAYMENT**

   A. **Compensation.** The maximum amount payable under this Contract is Ninety-Two Thousand Dollars ($92,000). Compensation shall be based upon the mutually agreed upon Scope of Services and Attachment B, "Budget," and as provided in this Section 3. All expenses of Contractor are intended to be covered by the compensation paid to Contractor pursuant to the Contract, and no additional expenses of Contractor shall be reimbursed separately.

   B. **Method of Payment.** Contractor will be paid with bond proceeds directly from the "Cost of Issuance” Account created under the Bond Trust Indenture(s).

   C. **Taxes.** No payroll or employment taxes of any kind will be withheld or paid by Successor Agency on behalf of Contractor. Successor Agency will not treat Contractor as an employee with respect to the Contract services for any purpose, including federal and state tax purposes. Contractor understands and agrees that it is Contractor’s responsibility to pay all taxes required by law, including self-employment social security tax. Successor Agency will issue an IRS 1099 Form, or other appropriate tax-reporting document, to Contractor for the Contract services.
D. **Benefits.** Contractor will not be eligible for, and will not participate in, any health, pension, or other benefit of Successor Agency which exists solely for the benefit of Successor Agency employees during the Contract Term.

4. **NO PERSONAL LIABILITY**

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

5. **ASSIGNMENT OF CONTRACT**

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

6. **INTENTIONALLY OMITTED - “TERMS AND CONDITIONS-CDBG FUNDED CONTRACTS”**

7. **NON-FEDERAL LABOR STANDARDS**

Contractor agrees that any employees performing work or services for Contractor 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. Contractor further agrees that the inclusion of the above provisions in this Contract shall not be construed to relieve Contractor or any subcontractor from the pertinent requirements of any applicable Federal labor standards provisions; and Contractor also agrees 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.

8a. **INDEMNIFICATION**

Contractor shall defend, hold harmless and indemnify the Successor Agency, the City and County of San Francisco and their respective commissioners, members, officers, agents and employees of and from all claims, loss, damage, injury, actions, causes of action and liability of every kind, nature and description directly or indirectly arising out of or connected with Contractor's alleged negligence or willful misconduct in the performance of this Contract and any of Contractor's operation or activities related thereto, excluding the willful misconduct or the gross negligence of the person or entity seeking to be defended, indemnified or held
harmless. If the Contractor maintains additional coverage and/or higher limits than the minimums shown in this Article 8, the Successor Agency requires and shall be entitled to the additional coverage and/or the higher limits maintained by the Contractor. This section does not apply to contracts for construction design services provided by a design professional, as defined in California Civil Code Section 2782.8.

8b. **INDEMNIFICATION BY DESIGN PROFESSIONALS**

This section applies to any design professional as defined in California Civil Code Section 2782.8 who is or will provide construction design services ("Design Professional") as part of, collateral to, or affecting this Agreement with the Contractor. Each Design Professional who will provide construction design services shall defend, hold harmless and indemnify the Successor Agency, the City and County of San Francisco and their respective commissioners, members, officers, agents and employees of and from all claims, loss, damage, injury, actions, causes of action and liability of every kind, nature and description directly or indirectly that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Design Professional. It is expressly agreed and understood that the duty of indemnification pursuant to this section, including the duty to defend, is to be interpreted broadly, to the greatest extent permitted by law, including but not limited to California Civil Code Section 2782.8.

9. **INDEPENDENT CONTRACTOR**

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

10. **INSURANCE**

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

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

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

1. General Liability: $1,000,000 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 Contractor has employees).

4. Professional Liability Insurance: $1,000,000 per claim and in the annual aggregate. If the Contractor's Professional Liability Insurance is “claims made” coverage, these minimum limits shall be maintained by the Contractor for no less than 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 Successor Agency. At the option of the Successor Agency, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects to the Successor Agency, the City and County of San Francisco and their respective commissioners, members, officers, agents and employees; or Contractor shall provide a financial guarantee satisfactory to the Successor Agency 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 San Francisco Redevelopment Agency, the City and County of San Francisco and their respective commissioners, members, officers, agents and employees" and Developer are to be covered as additional insureds as respects: liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the Contractor; and liability arising out of work or operations performed by or on behalf of the Contractor.

(2) For any claims related to this Contract, the Contractor's insurance coverage must be primary insurance as respects to the Successor Agency, the City and County of San Francisco and their respective commissioners, members, officers, agents, and employees, and Developer. Any insurance or self-insurance maintained by the Successor Agency, the City and County of San Francisco and their respective commissioners, members, officers, agents or employees shall be in excess of Contractor's insurance and shall not contribute with it.

(3) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Successor Agency, the City and County of San Francisco and their respective commissioners, members, officers, agents or employees and Developer.

(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 Successor Agency.

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 Successor Agency's Risk Manager.

G. Verification of Coverage. Contractor must furnish the Successor Agency 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 Successor Agency. All certificates and endorsements are to be received and approved by the Successor Agency before work commences. The Successor Agency reserves the right to require complete, certified copies of all required insurance policies, including endorsements demonstrating the coverage required by these specifications at any time.
H. **Subcontractors.** Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all the requirements stated herein.

11. **RECORDS, REPORTS AND AUDITS**

A. **Records**

(1) Records shall be established and maintained in accordance with Successor Agency requirements, and U.S. Department of Housing and Urban Development ("HUD") requirements if the Contract is funded with HUD Community Development Block Grant ("CDBG") funds, with respect to all matters covered by this Contract. Except as otherwise authorized by the Successor Agency, such records shall be maintained for a period of four years from the date of the termination of the Contract; except that records that are the subject of audit findings shall be retained for four years or until such audit findings have been resolved, whichever is later.

(2) All costs shall be supported by properly executed payrolls, time records, invoices, contracts, vouchers or other official documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders or other accounting documents pertaining in whole or in part to this Contract shall be clearly identified and readily accessible.

B. **Reports and Information**

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

C. **Audits and Inspections**

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

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

13. **CONTRACTOR’S DUTY OF LOYALTY**

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

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

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

15. CONFIDENTIALITY/PROPERTY OF SUCCESSOR AGENCY

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

16. COMPLIANCE WITH CALIFORNIA GOVERNMENT CODE

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

17. NONDISCRIMINATION AND EQUAL BENEFITS

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

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

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

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

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

18. COMPLIANCE WITH SMALL BUSINESS ENTERPRISE PROGRAM

The Successor Agency 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 Successor Agency 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 Attachment D, "SBE Agreement"). Contractor shall make good faith efforts to achieve the goals of the SBE Program, which are 50% SBE participation for professional, personal services, and construction contracts. SBEs must be certified with the Successor Agency. If Contractor intends to utilize subcontractors/subconsultants in the provision of services, it must consult with the Successor Agency’s Contract Compliance Division and comply with all the provisions of the Small Business Enterprise Agreement.

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

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

20. TERMINATION

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

21. MISCELLANEOUS PROVISIONS

A. Notices

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

If to the Successor Agency: Successor Agency to the San Francisco Redevelopment Agency
One South Van Ness Avenue, Fifth Floor
San Francisco, CA 94103
Attention: Executive Director

1.20.12 version
If to Contractor: Public Financial Management, Inc.
50 California Street, Suite 2300
San Francisco, CA 94111
Attention: Robert Gamble

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

B. **Time of Performance**

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

   (2) All performance and cure periods expire at 5 p.m., San Francisco, California time, on the applicable date.

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

C. **Successors and Assigns**

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

D. **Modification, Waiver and Amendment**

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

E. ** Entire Contract**

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

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

G. **Governing Law**

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

H. **Headings**

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

I. **Attorneys’ Fees**

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

J. **Authority**

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

K. **Designated Representative**

The initial designated representative for the Successor Agency for this Contract is John Daigle, and the Successor Agency representative’s phone number is (415) 749-2471. The initial Contractor designated representative for this Contract is Robert Gamble, and the Contractor’s designated representative’s phone number is (415) 982-5544.
IN WITNESS WHEREOF the Successor Agency and Contractor have executed this Contract as of the date first above written.

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

By:  
Tiffany Bohee  
Executive Director

PUBLIC FINANCIAL MANAGEMENT, INC., a California corporation

By:  
Robert Gamble  
Managing Director

Federal Tax Identification No.  

ATTACHMENTS

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

Contractor shall, for and in consideration of the Compensation set forth in Section 5 hereof and on the terms and conditions provided therein, perform the services set forth below.

Appointment of Contractor The Successor Agency engages and appoints Contractor to perform financial advisory services in connection with the Financing(s), and Contractor accepts such engagement and appointment, upon the terms and conditions set forth in the Agreement. Contractor shall perform the Services required hereunder in an efficient and professional manner, in accordance with the terms hereof and to the reasonable satisfaction of the Successor Agency. Except to the extent, if any, specifically provided herein or specifically authorized in writing by the Successor Agency, Contractor shall have no right or authority, express or implied, to commit or otherwise obligate the City in any manner whatsoever.

Contractor shall make available for consultation and conference with the Successor Agency, its officials, its attorneys and its Bond Counsel and Disclosure Counsel at times and places mutually agreed upon, such personnel of Contractor as are qualified to advise on all matters relating to the financing and any other financial advisory services within the scope of this Agreement.

At the Successor Agency’s request, contractor shall attend working group meetings of those involved in the financing and such other meetings. Contractor shall also attend meetings of the Successor Agency’s Oversight Board and Commission, meetings with the rating agencies and such other meetings as the Successor Agency may determine are necessary or appropriate.

Contractor shall advise the Successor Agency regarding the structure of the Financing, the terms of the Bonds, timing of the Bond sale or sales, the par amount to be offered, the maturity schedule of the Bonds, call features if deemed appropriate, maintenance of reserves or funded interest, permissible number and spread of interest coupons, good faith check, terms of delivery, and similar technical matters, and any other matters which may assist the Successor Agency in obtaining the lowest practical interest costs and the widest interest for the purchase of the Bonds.

Contractor will independently review all documents distributed to them by the Successor Agency, Bond Counsel or Disclosure Counsel for completeness and compliance with customary bond practices. Furthermore, Contractor will cooperate with any Bond Counsel employed by the City in determining any financial specifications as may be required in any legal document relating to the issuance and sale of the Bonds, review such documents, and perform other services customarily performed by Contractors in connections with similar financings.

At times reasonably in advance of the proposed sale of the Bonds, Contractor will consult and advise the Successor Agency concerning advertising, information to prospective bidders and buyers, the provision of information to financial journals, municipal bond insurers and investment rating services, and similar measures designed to stimulate and broaden interest in the Bonds. After and in accordance with such consultation, contractor will contact underwriters, institutional investors, financial publications, municipal bond insurers and rating services to the extent that such contacts are deemed beneficial to the interest of the Successor Agency.
At the Successor Agency's request, Contractor shall procure, on the city's behalf and through bid process, such other professional services as may be required (such as trustee, financial printer, verifications Successor Agency, etc.) to assist the Successor Agency in successfully completing the Financing. At the Successor Agency's request and in coordination with the Successor Agency and its attorneys, Contractor shall prepare materials and information pertaining to the Financing for rating agency and/or bond insurer review.

Contractor shall participate with the Successor Agency in the pre-pricing and pricing process, reviewing the structure and pricing proposed by the underwriter in these negotiated sales, comparing the proposed pricing scales to the most pertinent recent sales of similar bonds, reviewing the final pricing, recommending acceptance as appropriate and preparing a pricing book after the sale to document the market conditions, comparable bond sales, bond structure and other details of the transaction.

2. Reports

Contractor shall submit written reports as requested by the Successor Agency. Format for the content of such reports shall be determined by the Successor Agency. The timely submission of all reports is a necessary and material term and condition of this Agreement. The reports, including any copies, shall be submitted on recycled paper and printed on double-sided pages to the maximum extent possible.

3. Successor Agency Liaison

In performing the services provided for in the Agreement, Contractor's primary liaison with the Successor Agency will be John Daigle, Sr. Financial Analyst.
ATTACHMENT B: BUDGET

Compensation shall be based upon the "Scope of Services" (Attachment A) and Section 3 of this Contract. Contractor will be compensated on a transaction basis contingent upon the closing of the bond sale(s) as follows: If the tax-exempt Mission Bay South Bonds are issued separately, the fee will be $47,000 plus minimal expenses for that transaction; if the taxable housing bonds are issued separately, the fee will be $42,000 plus minimal expenses for that transaction; if the bonds sales are conducted within a week of each other, the fee will be $59,000 for both.
ATTACHMENT C: NONDISCRIMINATION IN CONTRACTS AND BENEFITS

Instructions

A. What is the Nondiscrimination in Contracts Policy?
The Successor Agency to the San Francisco Redevelopment Agency’s Nondiscrimination in Contracts Policy (Policy) requires companies or organizations providing products or services to, or leasing a real property from, the Successor Agency to agree not to discriminate against groups who are protected from discrimination under the Policy, and to include a similar provision in subcontracts and other agreements. Those provisions are the subjects of this form. The Policy is posted on the Web at: www.ci.sf.ca.us/sfra.

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

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

C. What are the groups protected from discrimination under the Policy?
You may not discriminate against:
- your employees
- an applicant for employment
- any employee of the Successor Agency or the City and County of San Francisco
- a member of the public having contact with you.

D. What are prohibited types of discrimination?
You may not discriminate against the specified groups for the following reasons (see Question 1a on the declaration form).
- Race
- creed
- ancestry
- age
- sexual orientation
- marital status
- disability
- color
- religion
- national origin
- sex
- gender identity
- domestic partner status
- AIDS/HIV status

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

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

F. Nondiscrimination in benefits for spouses and domestic partners

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

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

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

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

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

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

H. Attachments
If you provide equal benefits, as indicated by your answers to Question 2c on the Declaration form, YOU MUST ATTACH DOCUMENTATION TO THIS FORM, unless such documentation does not exist. See item 3, “Documentation for Nondiscrimination in Benefits.” If documentation does not exist, attach an explanation (e.g., some of your policies are unwritten).
I. If your answers change
If, after you submit the Declaration, your company/organization's nondiscrimination policy or benefits change such that the information you provided to the Successor Agency is no longer accurate, you must advise the Successor Agency promptly by submitting a new Declaration.
1. Nondiscrimination—Protected Classes
   a. Is it your company/organization’s policy that you will not discriminate against your employees, applicants for employment, employees of the Successor Agency to the San Francisco Redevelopment Agency (Successor Agency) or City and County of San Francisco (City), or members of the public for the following reasons:
      - race
      - color
      - creed
      - religion
      - ancestry
      - national origin
      - age
      - sex
      - sexual orientation
      - gender identity
      - marital status
      - domestic partner status
      - disability
      - AIDS or HIV status

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

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

2. Nondiscrimination—Equal Benefits (Question 2 does not apply to subcontracts or subcontractors)
   a. Do you provide, or offer access to, any benefits to employees with spouses or to spouses of employees?

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

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

   c. If “yes,” please indicate which ones. This list is not intended to be exhaustive. Please list any other benefits you provide (even if the employer does not pay for them).
<table>
<thead>
<tr>
<th>Benefit</th>
<th>Yes, for Spouses</th>
<th>Yes, for Partners</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Medical (health, dental, vision)</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>Pension</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>Bereavement</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>Family leave</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>Parental leave</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>Employee assistance programs</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>Relocation and travel</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>Company discounts, facilities, events</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>Credit union</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>Child care</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>Other</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>Other</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
</tbody>
</table>

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

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

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

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

Executed this _____ day of ________________, 20___, at ____________________________, ________________.

(City) (State)

Name of Company/Organization: ____________________________

Doing Business As (DBA): ___________________________________

Also Known As (AKA): _____________________________________

General Address: __________________________________________

(For General Correspondence) ________________________________

Remittance Address: _________________________________________

(If different from above address) ________________________________

Name of Signatory: ____________________________ Title: __________________________

Signature: ________________________________________________

Phone Number: ____________________________ Federal Tax ID Number: __________________________

Approximate number of employees in the U.S.: _______ Vendor Number: __________________________

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

THIS FORM MUST BE RETURNED WITH THE ORIGINAL SIGNATURE

Please return this form to: Successor Agency to the San Francisco Redevelopment Agency, One South Van Ness Avenue, 5th Floor, San Francisco, CA 94103.
ATTACHMENT D: 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%

A. Trainee Hiring Goal. In addition to the goals set forth above in Section III, there is a trainee hiring goal for architects, designers and other professional services consultants as follows:

<table>
<thead>
<tr>
<th>Trainees</th>
<th>Design Professional Fees</th>
</tr>
</thead>
<tbody>
<tr>
<td>0</td>
<td>$0 – $99,000</td>
</tr>
<tr>
<td>1</td>
<td>$100,000 – $249,999</td>
</tr>
<tr>
<td>2</td>
<td>$250,000 – $499,999</td>
</tr>
<tr>
<td>3</td>
<td>$500,000 – $999,999</td>
</tr>
<tr>
<td>4</td>
<td>$1,000,000 – $1,499,999</td>
</tr>
<tr>
<td>5</td>
<td>$1,500,000 – $1,999,999</td>
</tr>
<tr>
<td>6</td>
<td>$2,000,000 – $4,999,999</td>
</tr>
<tr>
<td>7</td>
<td>$5,000,000 – $7,999,999</td>
</tr>
<tr>
<td>8</td>
<td>$8,000,000 – or more</td>
</tr>
</tbody>
</table>

IV. 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.

V. **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.

VI. **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 that have 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 Policy (as defined in Section VII below).

VII. **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.

VIII. **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. The calculation of a concern's size includes the employees or receipts of all affiliates.

**Agency-Assisted Contract** means, as applicable, the Development and Disposition Agreement ("DDA"), Land Disposition Agreement ("LDA"), Lease, Loan and Grant Agreements, personal services contracts and other similar contracts, and Operations 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.

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 XII, as well as those persons and entities who are subject to a default award provided that all of the requirements in Section XII.L have been met.

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.

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), Federal Office Building, Hunters Point Shipyard, Mission Bay (North), Mission Bay (South), Rincon Point/South Beach, South of Market, Transbay Terminal, Yerba Buena Center and Visitacion Valley.

**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: (a) construction--$14,000,000; (b) professional or personal services--$2,000,000 and (c) suppliers--$7,000,000; and is (or is in the process of being) certified by the Agency as a SBE and meets the other certification criteria described in the SBE application.

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). 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).

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.

IX. 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.

X. 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 ten (10) 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 subcontract 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.
XI. **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
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 disagree 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.

XII. **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 fails 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 XII.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

XIII. **AGREEMENT EXECUTION**

**Note:** If you are seeking Agency certification as a SBE, you should fill out the "Application for SBE Certification". If you are already an Agency certified SBE, you should execute the "SBE Eligibility Statement".
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 E: MINIMUM COMPENSATION POLICY (MCP) DECLARATION

What the Policy does. The Redevelopment Agency of the City and County of San Francisco adopted the Minimum Compensation Policy (MCP), which became effective on September 25, 2001; the Successor Agency to the Redevelopment Agency ("Agency") continues to enforce the MCP. The MCP requires contractors and subcontractors to provide the following to their employees covered by the MCP on Agency contracts and subcontracts for services: For Commercial Business MCP the wage rate is $12.43. For Nonprofit MCP the wage rate is $11.03; 12 days' paid vacation per year (or cash equivalent); 10 days off without pay per year.

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

Effect on Agency 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, the Agency 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 the Agency.

What this form does. If you can assure the Agency now that, beginning with the first Agency 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, this will help the Agency's contracting process. The Agency realizes that it may not be possible to make this assurance now.

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

For more information, the complete text of the MCP is available from the Agency's Contract Compliance Department by calling (415) 749-2400.

Routing. Return this form to: Contract Compliance Department, San Francisco Redevelopment Agency, 1 South Van Ness, Fifth Floor, San Francisco, CA 94103.

Declaration

Effective with the first Agency 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
What the Ordinance does. The Successor Agency to the San Francisco 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 the Successor Agency, contractors and subcontractors that enter into leases with the Successor Agency, and parties providing services to tenants and sub-tenants on Successor Agency property to choose between offering health plan benefits to their employees or making payments to the Successor Agency or directly to their employees.

Specifically, contractors can either: (1) offer the employee minimum standard health plan benefits approved by the Oversight Board (2) pay the Successor Agency $3.75 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 $120 in any week) and the Successor Agency will appropriate the money for staffing and other resources to provide medical care for the uninsured, or (3) participate in a health benefits program developed by the Successor Agency.

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

Effect on Successor Agency 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, the Successor Agency can award a contract to that contractor only if the contract is exempt under the HCAP, or if the contract has received waiver; from the Successor Agency.

What this form does. If you can assure the Successor Agency now that, beginning with the first Successor Agency'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, this will help the Successor Agency contracting process. The Successor Agency realizes that it may not be possible to make this assurance now. If you cannot make this assurance now, please do not return this form.

For more information, (1) see the complete text of the HCAP, available from the Successor Agency’s Contract Compliance Department at: (415) 749-2400.

Routing. Return this form to: Contact Compliance Department, Successor Agency to the San Francisco Redevelopment Agency, 1 South Van Ness Avenue, Fifth Floor, San Francisco, CA 94103.

Declaration

Effective with the first Successor Agency 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