

COMMISSION ON COMMUNITY INVESTMENT AND INFRASTRUCTURE

RESOLUTION NO. 12-2019

Adopted July 16, 2019

AUTHORIZING A MEMORANDUM OF UNDERSTANDING WITH THE SAN FRANCISCO OFFICE OF ECONOMIC AND WORKFORCE DEVELOPMENT TO PROVIDE WORKFORCE COMPLIANCE SERVICES TO THE OFFICE OF COMMUNITY INVESTMENT AND INFRASTRUCTURE SUBJECT TO ANNUAL APPROPRIATION OF FUNDS

WHEREAS, Prior to its dissolution, the Redevelopment Agency of the City and County of San Francisco (“Redevelopment Agency”) implemented numerous redevelopment plans under the California Community Redevelopment Law, Cal. Health & Safety Code §§ 33000 *et seq.* (“CRL”) and entered into enforceable obligations for development consistent with these plans. Mission Bay North Owner Participation Agreement (“OPA”) (1998); Mission Bay South OPA (1998); Disposition and Development Agreement (“DDA”) for Hunters Point Shipyard (“HPS”) Phase 1 (2003), DDA for Candlestick Point-HPS Phase 2 (2010), and Transbay Implementation Agreement (2006) (“Major Approved Development Projects); and,

WHEREAS, On February 1, 2012, state law dissolved the Redevelopment Agency and established successor agencies to fulfill the remaining enforceable obligations of former redevelopment agencies. Cal. Health & Safety Code §§ 34170 *et seq.* (“Redevelopment Dissolution Law”); and,

WHEREAS, The Board of Supervisors of the City and County of San Francisco (“Board of Supervisors”) delegated its authority, under Redevelopment Dissolution Law, as the Successor Agency to the Redevelopment Agency to the Office of Community Investment and Infrastructure (“OCII”) and authorized the Commission on Community Investment and Infrastructure (“Commission”) to act in place of the former Redevelopment Agency Commission to implement and approve contracts for the Major Approved Development Projects and Retained Housing Obligations and to “take any action that the Redevelopment Dissolution Law requires or authorizes on behalf of the Successor Agency and any other action that the Commission deems appropriate consistent with the Redevelopment Dissolution Law to comply with such obligations, including . . . authorizing additional obligations in furtherance of enforceable obligations. . . .” Ordinance No. 215-12 (Oct. 4, 2012); and,

WHEREAS, The Redevelopment Agency required in its disposition and development agreements, owner participation agreements, and other contracts for the Major Approved Development Projects that developers and contractors use good faith efforts to meet trainee hiring goals and employ local residents as a certain percentage of its construction workforce hires. See e.g. CP-HPS Phase 2 DDA, Section 14.2.1 and Exhibit X-A and X-B (applying an amended Bayview Hunters

Point Employment and Contracting Policy (“BVHP ECP”) and requiring good faith efforts to hire trainees and employ 50 percent of construction workforce hires by trade and by hours from the Bayview Hunters Point (“BVHP”), surrounding areas, and San Francisco with first consideration to BVHP residents); Letter re HPS Phase 1 DDA (establishing that HPS DDA Phase 1 will comply with the BVHP ECP, as revised by Exhibit X-B of the CP-HPS Phase 2 DDA); and the Mission Bay South and North OPAs, Attachment H and Schedule 1 (Construction Work Force) (establishing (i) a professional consultant trainee hiring obligation, and (ii) a construction hiring goal of 50 percent of total hours worked in each trade for participation by San Francisco residents) (collectively, the “Good Faith Local Hiring Requirements”); and,

WHEREAS, The Redevelopment Agency imposed the Good Faith Local Hiring Requirements on a contract-by-contract basis, but established a consistent practice of measuring good faith compliance; and,

WHEREAS, The City and County of San Francisco (“City”) has adopted a hiring program for local residents in publicly funded projects and authorized the San Francisco Office of Economic and Workforce Development (“OEWD”) to implement the program. San Francisco Administrative Code Chapter 83 (“First Source Hiring Program”). The objective of the program is to connect economically disadvantaged residents with entry-level jobs (including trainee opportunities) that are generated by the City’s investment in contracts or public works; or by business activity that requires approval by the City’s Planning Department or permits by the Department of Building Inspection; and,

WHEREAS, The City has adopted and authorized OEWD to enforce hiring goals for local residents in certain public works projects. San Francisco Administrative Code § 6.22 (g) (“Mandatory Local Hiring Policy”). These goals are mandatory and currently require a participation level of 30 percent of all project work hours within each trade performed by local residents, with no less than 15 percent of all project work hours within each trade performed by disadvantaged workers. Moreover, at least 50 percent of the project work hours performed by apprentices within each trade shall be performed by local residents, with no less than 25 percent of project work hours performed by apprentices within each trade to be performed by disadvantaged workers; and,

WHEREAS, The Redevelopment Dissolution Law provides, among other things, that successor agencies may enter into new contracts “in compliance with an enforceable obligation that existed prior to June 28, 2011” and “may create enforceable obligations to conduct the work of winding down the redevelopment agency,” which includes work to fulfill enforceable obligations, Cal. Health & Safety Code § 34177.3 (a) & (b); and,

WHEREAS, OCII has continuing obligations to review and approve development projects required under the pre-dissolution enforceable obligations and to ensure compliance with the Good Faith Local Hiring Requirements; and,

WHEREAS, OEWD provides workforce training and job placement services to San Francisco residents interested in pursuing a career in the hospitality, technology, and construction industries, among others, and also assists contractors that have been awarded projects in San Francisco with fulfilling their local hiring obligations (“Workforce Compliance Services”); and,

WHEREAS, OCII desires to enter into a Memorandum of Understanding with the Workforce Compliance Services of OEWD (“MOU”) to assist it in enforcing and monitoring contractors’ compliance with the Good Faith Local Hiring Requirements for its Major Approved Development Projects, and other enforceable obligations; and,

WHEREAS, OCII will fund the MOU through developer reimbursement of actual billed hours and through other available funds, subject to the approval of expenditures on the Recognized Obligation Payment Schedules (“ROPS”) that OCII submits to the Oversight Board and the California Department of Finance (“DOF”) and subject to the fiscal year budgets approved by the Commission and San Francisco Board of Supervisors; and,

WHEREAS, OCII’s Executive Director is authorized to approve the annual expenditures required under the MOU each year, subject to ROPS approval and annual appropriation in OCII’s fiscal year budgets; now, therefore be it

RESOLVED, That the Commission authorizes the Executive Director to enter into the Memorandum of Understanding with the San Francisco Office of Economic and Workforce Development, substantially in the form that is attached to this Resolution, to provide workforce compliance services that are authorized under the Major Approved Development Projects, Retained Housing Obligation, and other Enforceable Obligations, as defined in the Successor Agency Ordinance and Dissolution Law; and, be it further

RESOLVED, That the Commission authorizes the Executive Director to approve the funding for annual services authorized under the MOU, subject to annual appropriation under the ROPS and fiscal year budgets.

I hereby certify that the foregoing resolution was adopted by the Commission at its meeting of July 16, 2019.



Commission Secretary

Attachment: Memorandum of Understanding with the San Francisco Office of Economic and Workforce Development (“OEWD”), including Exhibits A-E

July 16, 2019

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE OFFICE OF COMMUNITY INVESTMENT AND INFRASTRUCTURE (“OCII”),
AS THE SUCCESSOR AGENCY TO THE SAN FRANCISCO
REDEVELOPMENT AGENCY,
AND
SAN FRANCISCO OFFICE OF ECONOMIC AND WORKFORCE DEVELOPMENT
 (“OEWD”)
FOR WORKFORCE COMPLIANCE SERVICES**

This Memorandum of Understanding ("MOU"), dated as of __, 2019, is entered into by and between the City and County of San Francisco ("City"), acting by and through the Office of Economic and Workforce Development (“OEWD”), and the Successor Agency to the Redevelopment Agency of the City and County of San Francisco, hereafter referred to as the Office of Community Investment and Infrastructure ("OCII", and together with OEWD, the “Parties”).

RECITALS

WHEREAS, prior to its dissolution, the Redevelopment Agency of the City and County of San Francisco (“Redevelopment Agency”) implemented numerous redevelopment plans under the California Community Redevelopment Law, Cal. Health & Safety Code §§ 33000 et seq. (“CRL”) and entered into contracts and other obligations for development consistent with these plans. See e.g. the Mission Bay North Owner Participation Agreement (“OPA”) (1998), available at <https://sfocii.org/mission-bay-north-owner-participation-agreement>, the Mission Bay South OPA (1998), available at <https://sfocii.org/south-opa>, the Disposition and Development Agreement (“DDA”) for Hunters Point Shipyard (“HPS”) Phase 1 (2003), available at <https://sfocii.org/project-documents-and-resource-library>, the DDA for Candlestick Point-HPS Phase 2 DDA (2010), available at <https://sfocii.org/candlestick-point-hunters-point-shipyard-phase-2-project-documents>, and the Transbay Implementation Agreement (2006), available at <https://sfocii.org/transbay> (collectively, the “Major Approved Development Projects” or “Enforceable Obligations”); and

WHEREAS, the Major Approved Development Projects include obligations that OCII fund and develop affordable housing projects (the "Retained Housing Obligations"); and

WHEREAS, under the CRL, the Redevelopment Agency had the authority to specify in contracts for redevelopment projects that “project area residents, if available, shall be employed for a specified percentage of each craft or type of workmen [sic] needed to execute the contract or work.” Cal. Health & Safety Code § 33422.3; and

WHEREAS, the Redevelopment Agency required in its disposition and development agreements, owner participation agreements, and other contracts for the Major Approved Development Projects that developers and contractors take steps in good faith towards meeting

trainee hire goals for design professionals and use good faith efforts to employ local residents as a certain percentage of its construction workforce hires. *See e.g.* CP-HPS Phase 2 DDA, Section 14.2.1 and Exhibit X-A and X-B, *attached as Exhibit A* (applying an amended Bayview Hunters Point Employment and Contracting Policy (“BVHP ECP”) and requiring good faith efforts to hire trainees and employ 50 percent of construction workforce hires by trade and by hours from the Bayview Hunters Point (“BVHP”) and San Francisco; Letter re HPS Phase 1 DDA, *attached as Exhibit B* (establishing that HPS DDA Phase 1 will comply with the BVHP ECP, as revised by Exhibit X-B of the CP-HPS Phase 2 DDA); and the Mission Bay South and North OPAs, Attachment H and Schedule 1 (Construction Work Force), *attached as Exhibit C* (establishing (i) a professional consultant trainee hiring obligation, and (ii) a construction hiring goal of 50 percent of total hours worked in each trade for participation by San Francisco residents) (collectively, the “Good Faith Local Hiring Requirements”); and

WHEREAS, the Redevelopment Agency implemented the Good Faith Local Hiring Requirements on a contract-by-contract basis and established a consistent practice of measuring good faith compliance, which is described in Exhibit X-A of the CP-HPS Phase 2 DDA; in the “Construction Workforce Hire Policy,” *attached as Exhibit D*; and in the “Trainee Hiring Program,” *attached as Exhibit E*; and

WHEREAS, the City has adopted hiring programs for local residents in publicly funded projects and large construction projects. San Francisco Administrative Code Chapter 6 § 6.22 (g) (“Mandatory Local Hiring Policy”) and San Francisco Administrative Code Chapter 83 (“First Source Hiring Program”); and

WHEREAS, state law dissolved the Redevelopment Agency on February 1, 2012 and established successor agencies to fulfill the remaining enforceable obligations of former redevelopment agencies. Cal. Health & Safety Code §§ 34170 et seq. (“Redevelopment Dissolution Law”). In particular, state law requires successor agencies to fulfill enforceable obligations that the former redevelopment agencies had entered into prior to June 28, 2011 (“Enforceable Obligations”); and

WHEREAS, the Board of Supervisors, in its capacity as governing body of the Successor Agency, approved Ordinance No. 215-12 (Oct. 4, 2012) to implement Redevelopment Dissolution Law and established the Successor Agency Commission to which it delegated, among other things, the authority to “implement, modify, enforce and complete the surviving redevelopment projects, including, without limitation, the Major Approved Development Projects, the Retained Housing Obligations, and all other enforceable obligations” (the “Successor Agency Ordinance”); and

WHEREAS, OCII is a public entity separate from the City and County of San Francisco (“City”), has assumed the remaining rights and obligations of the former Redevelopment Agency, and has “succeed[ed] to the organizational status of the former redevelopment agency” with the authority “to complete any work related to an approved enforceable obligation,” Cal. Health & Safety Code § 34173 (g); and

WHEREAS, the Redevelopment Dissolution Law provides, among other things, that successor agencies may enter into new contracts “in compliance with an enforceable obligation that existed prior to June 28, 2011.” Cal. Health & Safety Code § 34177.3 (a); and

WHEREAS, OCII has continuing obligations to review and approve development projects required under the Enforceable Obligations and to ensure compliance with the Good Faith Local Hiring Requirements; and

WHEREAS, OEWD provides workforce training and job placement services to San Francisco residents interested in pursuing a career in the hospitality, technology, and construction industries, among others, and also assists contractors that have been awarded projects in San Francisco with fulfilling their local hiring obligations (“Workforce Compliance Services”); and

WHEREAS, OCII desires to use the Workforce Compliance Services of OEWD to implement the Good Faith Local Hiring Requirements for its Major Approved Development Projects, Retained Housing Obligation, and other Enforceable Obligations; and

WHEREAS, OCII will fund the MOU through developer reimbursement of actual billed hours and through other available funds, subject to the approval of expenditures on the Recognized Obligation Payment Schedules (“ROPS”) that OCII submits to the Oversight Board and the California Department of Finance (“DOF”) and subject to the fiscal year budgets approved by the Commission and San Francisco Board of Supervisors.

Now, THEREFORE, OCII and the OEWD agree as follows:

1. Scope of MOU. This MOU defines the working relationship between the Parties for Workforce Compliance Services in accordance with the implementation of the Major Approved Development Projects, Retained Housing Obligation, and other Enforceable Obligations, as defined in the Successor Agency Ordinance and Redevelopment Dissolution Law.
2. Workforce Compliance Services.
 - a. For Major Approved Development Projects, Retained Housing Obligations, and other Enforceable Obligations, as defined above, excluding the Hunters Point Shipyard Phase 1 DDA and the Candlestick-Hunters Point Shipyard Phase 2 DDA, OEWD will provide the Workforce Compliance Services that are described as the responsibilities of the Compliance Officer, OEWD, and/or CityBuild in the Construction Workforce Hire Policy, attached as Exhibit D, and the Trainee Hiring Program, attached as Exhibit E to this MOU.
 - b. For the Hunters Point Shipyard Phase 1 DDA and the Candlestick-Hunters Point Shipyard Phase 2 DDA, OEWD will provide the Workforce Compliance Services that are described as the responsibilities of the Compliance Officer and CityBuild in Sections VII and VIII of the BVHP ECP, as amended by Exhibit X-B of the Phase 2 DDA, attached as Exhibit A to this MOU.

- c. Alternatively, OEWD will provide Workforce Compliance Services similar to those under (i) the City's First Source Hiring Program for trainee hiring obligations, and (ii) the Mandatory Local Hiring Policy for construction workforce compliance for those Major Approved Development Projects and Enforceable Obligations in which OCII does not apply the Good Faith Local Hiring Requirements. In those cases, OCII will cooperatively work with OEWD to establish appropriate procedures and standards.

3. Fiscal Services.

- a. OEWD Services for Budget Planning and ROPS Preparation. OEWD shall work collaboratively with OCII to establish the budget and anticipated expenditures for Workforce Compliance Services in the ROPS. OEWD will assist with preparation of the annual budget, including assisting with the analysis of prior year expenditures, and providing staffing cost estimates pursuant to this MOU. OCII will include the cost of OEWD's services in OCII's annual budget and ROPS as needed.
- b. Subject to ROPS and Annual Budget Authority. Amounts available are subject to OCII receiving sufficient expenditure authority in its annual budget approved by the Board of Supervisors and in its expenditure authorizations approved by the California Department of Finance. OCII will notify OEWD immediately of any deficiencies in these budget authorizations.
- c. Changes in Budget. Unless OCII and OEWD agree by written amendment to this MOU, the budget for services to be provided under this MOU shall be determined annually as part of each agency's annual budgeting process and expenditures shall not exceed the amounts established in each agency's respective budgets.
- d. Unbudgeted Expenditures. OCII will not reimburse OEWD for unbudgeted expenditures and services incurred without prior written approval.
- e. Budget Shortfalls. OEWD will notify OCII as soon as possible if the amounts approved in the annual budgeting process described in Section 3.c. are insufficient to provide the agreed-upon services.

4. Term.

The term of this MOU shall begin on the date it is signed by all of the parties below and shall end on the earlier of (i) termination by either party pursuant to Section 9 of this MOU; (ii) the date when the parties enter into an agreement which, by its terms, terminates this MOU; or (iii) the date when all Major Approved Development Projects and Retained Housing Obligations have been completed.

5. Assigned Staff to OCII.

OEWD will assign sufficient staff to perform the Workforce Compliance Services described in Section 2.

6. Documentation Verifying Actual Costs of Direct Services.

- a. OEWD will document its personnel costs for services provided under this MOU in the following way:
- i. Hourly rate = salary + mandatory fringe benefits. Actual labor charges submitted as part of OEWD's billing must be supported by a City LDR or similar payroll report to verify the actual cost of employee salary and fringe benefits. Labor charges submitted must not be based on estimated FTE, a budgeted amount, or a percentage allocation.
 - ii. Hours worked on OCII tasks.
 - iii. Classification number of position and title.
 - iv. Tasks performed.

7. Billing Procedures.

- a. OEWD shall submit an invoice to OCII on a quarterly basis within 30 days of the end of the quarter (April 30 for Q1, July 31 for Q2, October 31 for Q3 and January 31 for Q4) not to exceed the budgeted amount for the fiscal year. The invoice shall describe the services provided by project, and include sufficient information to determine the methodology used to determine the invoiced amounts. OEWD shall submit one invoice per project, as directed by OCII.
- b. OEWD costs in implementing this MOU on the Candlestick Point - Hunters Point Shipyard Phase 2 Project shall be deemed "Agency Costs" under the Candlestick Point – Hunters Point Shipyard Phase 2 Interagency Cooperative Agreement ("ICA"). The ICA further requires that such Agency Costs be invoiced to the Agency within six (6) months of the date such costs are incurred. Any costs that are not invoiced to the Agency within twelve (12) months from the date incurred shall not be recoverable, and therefore will not be paid.
- c. Subject to funding and expenditure authority availability established in the ROPS, OCII will pay invoices or notify OEWD of any questions regarding the invoice within 30 days of receipt. When funding for work is premised upon reimbursement received by OCII from a third party (e.g. a developer), OCII reserves the right to delay payment to OEWD until the third party reimbursement has been received.

8. Reporting.

OEWD shall produce workforce compliance reports, as requested and as needed by OCII, including but not limited to monthly, quarterly, semiannual and annual reports on the status of workforce compliance for projects identified under Section 1.

9. Amendments or Termination.

This MOU may be amended by mutual agreement of both parties. This MOU may be terminated by either party with 30 days notice, subject to OCII payment of applicable costs incurred through the termination date.

This MOU has been entered into on the date(s) below.

Office of Community Investment and Infrastructure
Nadia Sesay, Executive Director

Date

Office of Economic and Workforce Development
Joshua Arce, Director of Workforce Development

Date

Authorized by Commission on Community Investment and Infrastructure
Resolution No. ____
Adopted on _____

MOU Exhibits

- Exhibit A CP-HPS Phase 2 DDA, Section 14.2.1 and Exhibit X-A and X-B
- Exhibit B Letter re HPS Phase 1 DDA
- Exhibit C Mission Bay South and North OPAs, Attachment H and Schedule 1
- Exhibit D Construction Workforce Hire Policy
- Exhibit E Trainee Hiring Program

EXHIBIT A

CP-HPS Phase 2 DDA, Section 14.2.1 and

Exhibit X-A (Bayview Hunters Point Employment and Contracting Policy) and

Exhibit X-B

14. Community and Public Benefits; Agency Policies; Relocation.

* * *

14.2 Agency Policies. Developer, the Agency and each Vertical Developer shall at all times comply with the applicable provisions of the following rules, regulations and official policies of the Agency that are applicable to and govern the overall design, construction, fees, use or other aspect of development of the Project Site, each of which may, subject to the restrictions set forth in the Redevelopment Plans as in effect on the Effective Date, be revised from time to time by the Agency upon notice thereof to Developer and any affected Vertical Developer (such policies, as so revised from time to time, the “Agency Policies”):

14.2.1 the Bayview Hunters Point Employment and Contracting Policy (adopted by Resolution No. 127-2007, Dec. 4, 2007) attached as Exhibit X-A, as revised by the revisions and interpretations attached as Exhibit X-B (collectively, the “**BVHP ECP**”); provided that, notwithstanding anything in this DDA or the Plan Documents to the contrary, (A) if the City changes its local hiring or first source hiring policies City-wide to require local hire mandates instead of “good faith efforts” to meet hiring goals, then the Parties agree that (i) the Agency Commission shall have the right to make conforming changes to the BVHP ECP without the Approval of Developer or any Vertical Developer, (ii) such changes do not and shall not be deemed to conflict with the development permitted by the Redevelopment Plans, the Plan Documents or this DDA and (iii) such changes shall not be subject to the restrictions set forth in the Redevelopment Plans regarding New City Regulations or New Construction Requirements (each as defined in the Redevelopment Plans), and (B) nothing in this Section 14.2.1 would require the Agency or the Developer to make or impose changes to the BVHP ECP that would violate the terms of a then-existing project labor agreement;

14.2.2 the Small Business Enterprise Policy (adopted by Resolution No. 82-2009, July 27, 2009) attached as Exhibit Y (the “**SBE Policy**”);

14.2.3 the Nondiscrimination in Contracts and Equal Benefits Policy (adopted by Resolution No. 175-1997, Sep. 9, 1997) attached as Exhibit Z;

* * *

EXHIBIT X-A

Redevelopment Agency of the
City and County of San Francisco

**BAYVIEW HUNTERS POINT
EMPLOYMENT AND CONTRACTING POLICY**

Adopted December 4, 2007

Resolution No. 127-2007

TABLE OF CONTENTS

I.	PURPOSE	1
A.	PURPOSE	1
II.	HIRING GOALS	2
A.	CONSTRUCTION WORKFORCE HIRING GOAL	2
B.	PERMANENT / TEMPORARY WORKFORCE GOAL.....	2
C.	TRAINEE GOALS	2
III.	DEFINITIONS	2
IV.	APPLICATION OF POLICY BY PROJECT TYPE	4
A.	AGENCY ACTION PROJECTS	4
B.	PRIVATE SIGNIFICANT PROJECTS.....	5
C.	CITYBUILD AND PUBLIC IMPROVEMENTS.....	6
D.	SMALL PRIVATE PROJECTS.....	6
V.	TERM	7
VI.	APPLICABLE COMMUNITY REDEVELOPMENT LAWS	7
VII.	CONSTRUCTION WORKFORCE HIRES	8
A.	PROCEDURES FOR CONSTRUCTION WORKFORCE HIRES.....	8
1.	COMPLIANCE WITH THE POLICY.....	8
2.	EXECUTE EMPLOYMENT AND CONTRACTING AGREEMENT	8
3.	SUBMISSION OF LABOR FORCE PROJECTIONS AND OTHER DATA.....	9
4.	SUBMIT SUBCONTRACTOR INFORMATION FORM	9
5.	PRECONSTRUCTION MEETING.....	9
6.	SUBMIT CONSTRUCTION WORKER REQUEST FORM	9
7.	RESPONSE FROM CBO	9
8.	ACTION BY CONTRACTOR WHEN REFERRALS AVAILABLE	10
9.	ACTION BY CONTRACTOR WHEN REFERRALS UNAVAILABLE	10
10.	ACTION BY CONTRACTOR WHEN NO RESPONSE FROM CBO	10
11.	ACTION BY CONTRACTOR WHEN NO RESPONSE FROM UNION	11
12.	HIRING APPRENTICES.....	11
13.	TERMINATION AND REPLACEMENT OF REFERRALS	11
B.	REPORTING REQUIREMENTS FOR CONSTRUCTION WORKFORCE	11
1.	SUBMISSION OF CERTIFIED PAYROLL REPORTS	11
2.	CONTENTS OF CERTIFIED PAYROLL REPORTS	12

- 3. ADDITIONAL INFORMATION 12
- 4. REPORT ON TERMINATIONS 12
- 5. INSPECTION OF RECORDS 12
- 6. FAILURE TO SUBMIT REPORTS 12
- 7. SUBMISSION OF GOOD FAITH EFFORT DOCUMENTATION 13
- 8. CODING CERTIFIED PAYROLLS..... 13
- VIII. TRAINEE HIRES 14**
 - A. PROCEDURES FOR TRAINEE HIRES 14
 - 1. COMPLIANCE WITH THE POLICY..... 14
 - 2. EXECUTE EMPLOYMENT AND CONTRACTING AGREEMENT 14
 - 3. CONTACT EDUCATIONAL INSTITUTIONS..... 15
 - 4. RESPONSE FROM EDUCATIONAL INSTITUTIONS 15
 - 5. ACTION BY DESIGN PROFESSIONALS WHEN REFERRALS AVAILABLE 15
 - 6. ACTION BY DESIGN PROFESSIONALS WHEN REFERRALS UNAVAILABLE..... 15
 - 7. ACTION BY DESIGN PROFESSIONAL WHEN NO RESPONSE FROM EDUCATIONAL INSTITUTIONS..... 16
 - 8. TERMINATION OF TRAINEE FOR CAUSE 16
 - B. REPORTING REQUIREMENTS FOR TRAINEE HIRES 16
 - 1. ANNUAL REPORTING 16
 - 2. REPORT ON TERMINATIONS 16
- IX. PERMANENT / TEMPORARY WORKFORCE POLICY 17**
 - A. PERMANENT / TEMPORARY WORKFORCE HIRES 17
 - 1. POLICY STATEMENT 17
 - 2. COMPLIANCE WITH THE POLICY..... 17
 - 3. NEGOTIATE AND EXECUTE EMPLOYMENT AND CONTRACTING AGREEMENT 17
 - 4. REVIEW OF PERMANENT / TEMPORARY WORKFORCE POLICY 17
- X. AGENCY EQUAL OPPORTUNITY PROGRAM 18**
 - A. COMPLIANCE WITH AGENCY’S EQUAL OPPORTUNITY PROGRAM..... 18
 - 1. SMALL BUSINESS ENTERPRISE PROGRAM 18
 - 2. NONDISCRIMINATION IN CONTRACTS AND EQUAL BENEFITS POLICY 18
 - 3. MINIMUM COMPENSATION POLICY AND HEALTH CARE ACCOUNTABILITY POLICIES..... 18
 - 4. AGENCY’S PREVAILING WAGE POLICY..... 19
- XI. EMPLOYMENT AND CONTRACTING POLICY - ADDITIONAL PROVISIONS.... 19**
 - 1. DESIGNATE A POINT OF CONTACT..... 19
 - 2. NO RETALIATION..... 19
 - 3. NO DISCRIMINATION..... 19

4.	COLLECTIVE BARGAINING EXCLUSION	20
5.	NO CONFLICT WITH STATE OR FEDERAL LAW	20
6.	EXISTING WORKFORCE	20
7.	USE OF DEBARRED ENTITIES PROHIBITED	20
8.	INCORPORATION	20
9.	SEVERABILITY	20
10.	WAIVER	20
XII.	ARBITRATION OF DISPUTES	21
1.	ARBITRATION BY AAA	21
2.	DEMAND FOR ARBITRATION	21
3.	PARTIES' PARTICIPATION.....	21
4.	AGENCY REQUEST TO AAA	21
5.	SELECTION OF ARBITRATOR	21
6.	SETTING OF ARBITRATION HEARING	22
7.	DISCOVERY	22
8.	CALIFORNIA LAW APPLIES	22
9.	ARBITRATION REMEDIES AND SANCTIONS	22
10.	ARBITRATOR'S DECISION.....	23
11.	DEFAULT AWARD; NO REQUIREMENT TO SEEK AN ORDER COMPELLING ARBITRATION	23
12.	ARBITRATOR LACKS POWER TO MODIFY	23
13.	JURISDICTION/ENTRY OF JUDGMENT	23

I. PURPOSE

A. Purpose

1. Pursuant to California Community Redevelopment Law (“**CRL**”) and consistent with long standing practice, the San Francisco Redevelopment Agency (“**Agency**”) hereby adopts this Employment and Contracting Policy to ensure training and employment opportunities for lower-income residents in the Bayview Hunters Point (“**BVHP**”) Redevelopment Project Area, including residents in the 94124 zip code, subject to the criteria set forth below.

2. In adopting the BVHP Redevelopment Plan, the Agency and the City and County of San Francisco (“**City**”) have made a commitment to vigorous equal opportunity and diversity in employment. Thus, the Agency has proposed programs to encourage local hiring and contracting by the private sector engaged in development in the Project Area.

3. This BVHP Employment and Contracting Policy is designed to ensure that Agency Action Projects and private Significant Projects (which do not receive Agency assistance), provide employment opportunities for lower-income BVHP Residents and San Francisco Residents in the areas of construction, professional services, and permanent jobs. This Policy will supplement and not supplant the existing Agency employment and contracting policies found in the Agency’s Equal Opportunity Program and the Agency Purchasing Policy, which are briefly summarized in Section X. The Employment and Contracting Policy seeks to provide economic benefits to existing BVHP Residents and San Francisco Residents from redevelopment activities within the Project Area. BVHP Residents have disproportionately lower income levels. As part of this policy, residents will be referred by the CBOs (defined below) that serve San Francisco lower-income residents. Therefore, the BVHP residential preference fulfills the purpose of providing economic opportunity to lower-income residents.

4. This Employment and Contracting Policy meets or exceeds the requirements of the City of San Francisco’s Administrative Code Chapter 83 (First Source policy) and CityBuild Program. Thus, entering into and complying with the terms of an Employment and Contracting Policy Agreement will satisfy the requirements of the City’s First Source Policy. It is also intended to satisfy the requirements of Health and Safety Code Section 33422.3 which states that for any contract over \$100,000, the Agency may set specific percentages by craft or trade for the employment of available project area residents.

5. The Agency is committed to facilitating Project Sponsor, Contractor and Employer access to and the hiring of qualified BVHP and San Francisco Residents. To further this goal, the Agency will continue to contract with CBOs to provide education and referral programs and services which will allow BVHP and San Francisco Residents to be considered for employment.

6. The Agency and the Planning Department of the City and County of San Francisco (“**Planning**”) entered into a delegation agreement as of September 19, 2006 (the “**Delegation Agreement**”). Per the Delegation Agreement, Planning shall not approve a Significant Project in the Project Area unless the Project Sponsor has entered into an Employment and Contracting Agreement(s) with the Agency. Ongoing compliance with such Agreements(s) shall become a condition of the permit.

7. This Employment and Contracting Policy shall be effective on or after December 4, 2007 (“**Effective Date**”).

8. The Agency and the PAC shall review the effectiveness of the new Employment and Contracting Policy after one (1) year of implementation.

II. HIRING GOALS

A. Construction Workforce Hiring Goal

1. The Employment and Contracting Policy has a goal that **fifty percent (50%)** of construction workforce hires for each trade be qualified BVHP Residents and then San Francisco Residents with First Consideration to BVHP Residents. This goal is expressed as a percentage of each Contractor’s total hours of employment and training by trade on the project. The procedure for meeting the construction workforce goal is set forth in Section VII.

B. Permanent / Temporary Workforce Goal

1. The Employment and Contracting Policy has a goal that **fifty percent (50%)** of permanent / temporary workforce hires be qualified BVHP Residents and then San Francisco Residents with First Consideration given to BVHP Residents. The procedure for meeting the permanent / temporary workforce goal is set forth in Section IX.

C. Trainee Goals

1. The Employment and Contracting Policy requires that all design professionals (architects, engineers, planners, and environmental consultants) on contracts over \$100,000, hire qualified BVHP Residents and then San Francisco Residents with First Consideration given to BVHP Residents as trainees. The trainee hiring goal for architects, engineers and other design professionals is based upon the total amount of the design professional’s contract as follows:

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

2. The procedure for meeting the trainee hiring goal is set forth in Section VIII.

III. DEFINITIONS

1. Agency-Action Project means, as applicable, the Agency’s funding (including conduit bond financing), acquisition, disposition, or development of property through a Development and Disposition Agreement (“**DDA**”), Owner Participation Agreement (“**OPA**”), loan agreement, grant agreement or other transactional and/or funding documents between a Project Sponsor and the Agency, provided however, that the Agency’s Model Block Program is excluded from this definition, as it will contain its own local hiring and contracting requirements.

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

3. **Agreement** means an Employment and Contracting Agreement entered into between the Agency and the Project Sponsor pursuant to this Employment and Contracting Policy.

4. **Arbitration Parties** means the Agency, Project Sponsor, Contractors, Employers and all persons who attend the arbitration hearing pursuant to Section XII, as well as those persons and Project Sponsors who are subject to a default award provided that all of the requirements in Section XII (11) have been met.

5. **BVHP Resident** means, for the purposes of this Employment and Contracting Policy only, any person who resides in the BVHP Project Area or within the 94124 zip code as it is defined on the Effective Date.

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

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

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

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

Ella Hill Hutch Community Center, 1050 McAllister Street, San Francisco, CA 94115,
(415) 921-6276

7. **City** means the City and County of San Francisco.

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

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

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

11. **Employer** means any person(s), firm, partnership, corporation (whether for profit or nonprofit), or combination thereof, who owns or operates a retail or commercial business which is part of: (i) an Agency Action Project, (ii) a Significant Project in the Project Area, or (iii) a

development project when the Project Sponsor has voluntarily subscribed to this Employment and Contracting Policy.

12. **Employment and Contracting Agreement or (“Agreement”)** means the written agreement entered into between the Project Sponsor and the Agency which details the particular requirements the Project Sponsor must meet in order to be in compliance with this Employment and Contracting Policy.

13. **First Consideration** means that a Project Sponsor, Contractor and/or Employer shall give first consideration to qualified BVHP Residents in accordance with Section VII.A. (6) - (8) of this Employment and Contracting Policy and then to San Francisco residents for hiring opportunities in the areas of construction workforce, permanent / temporary workforce and trainee hires prior to offering the hiring opportunity to other applicants.

14. **Housing Project** means (for purposes of this Employment and Contracting Policy only) new construction, an addition, a conversion, or substantial rehabilitation that results in the creation or addition of ten or more residential units.

15. **PAC** means the Bayview Hunters Point Project Area Committee.

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

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

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

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

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

21. **Significant Project** means, for purposes of this Employment and Contracting Policy only, a Commercial Project or Housing Project as defined in this Employment and Contracting Policy.

IV. APPLICATION OF POLICY BY PROJECT TYPE ¹

A. **Agency Action Projects**

1. The Employment and Contracting Policy is mandatory for Agency Action Projects. Agency Action Projects will require the Project Sponsor to execute an Employment and Contracting Agreement with the Agency as a condition of approval. The construction workforce goal, permanent / temporary workforce goal and the trainee hiring goal for professional services contracts all apply to this type of project.

¹ Page 24 contains a BVHP Employment and Contracting Policy Matrix which also gives an overview of the application of the policy by project type.

2. Additionally, the Agency's Small Business Enterprise ("**SBE**") Program, as amended from time to time, will apply when Project Sponsors on Agency Action Projects contracts for professional / personal services related to the project, such as planning studies, building and/or landscape design, economic or feasibility studies, community outreach services, printing or graphic production. The SBE participation goal is a good faith effort that 50% of the subcontracting opportunities go to Agency certified SBEs with First Consideration given to SBEs within the Project Area.

3. In addition to the local hiring and small business contracting programs listed above, Project Sponsors will be **required to comply** with the Agency's Equal Opportunity Program which include:

- o Nondiscrimination in Contracts and Equal Benefits Policy
- o Minimum Compensation Policy
- o Health Care Accountability Policy
- o Agency Prevailing Wage Policy (Labor Standards)

4. The Agency's Equal Opportunity Program is described briefly in Section X.

5. The requirements of the Employment and Contracting Policy and the Agency's Equal Opportunity Policies will be incorporated into an Agreement. The Agency's Executive Director will review and approve the Agreement on behalf of the Agency. Adherence to the Agreement shall be monitored by the Agency's Contract Compliance Division. Agency staff shall periodically report to the BVHP PAC and the Agency Commission on the compliance status of Agency Action Projects.

B. Private Significant Projects

1. The Employment and Contracting Policy is mandatory for private Significant Projects (not requiring Agency assistance) in the Project Area that exceed the following thresholds:

- **Housing Projects:** new construction, an addition, a conversion, or substantial rehabilitation that results in the creation or addition of ten or more residential units ;
or
- **Commercial Projects:** (1) any building permit application for a commercial activity over 25,000 square feet in floor area and involving new construction, an addition, or alteration which results in over \$2,000,000 in improvements as stated on the City's building permit application (including any tenant improvements covered by said building permit); or (2) any application which requires discretionary action by the City's Planning Commission relating to a commercial activity over 25,000 square feet including, but not limited to conditional use project authorization under San Francisco Planning Code section 309, and office development under San Francisco Planning Code Sections 320, et seq.

2. Private Significant Projects shall be entitled by Planning as set forth in the Delegation Agreement and will require the Project Sponsor to execute an Employment and Contracting Agreement with the Agency as a condition of approval. The construction workforce

goal, permanent / temporary workforce goal and the trainee hiring goal for professional services contracts all apply to this type of project.

3. In addition to the hiring program, Project Sponsors will be encouraged to subscribe **voluntarily** to the Agency's Equal Opportunity Program which include:

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

4. The Agency's Equal Opportunity Program is described briefly in Section X.

5. The mandatory programs and the programs which the Project Sponsor has voluntarily subscribed to, if any, will be incorporated into an Agreement and at that point become mandatory. The Agency's Executive Director will review and approve the Agreement on behalf of the Agency. Adherence to the Agreement shall be monitored by the Agency's Contract Compliance Division. Agency staff shall periodically report to the BVHP PAC and the Agency Commission on the compliance status of private Significant Projects.

C. CityBuild and Public Improvements

1. While not part of the Employment and Contracting Policy, the CityBuild workforce initiative applies to all public infrastructure and other public improvements projects that the City funds in the Project Area. CityBuild is an initiative of the Mayor's Office of Economic and Workforce Development, in partnership with other City departments, that utilizes City-sponsored construction as a vehicle to deliver training and employment opportunities to San Francisco residents. When the Agency is providing additional funding for a City funded public project, Agency staff shall work with CityBuild and the lead City department to consider implementation of elements of the Agency Employment and Contracting Policy as well as the Equal Opportunity Program.

2. The purpose of CityBuild is to ensure equal employment opportunities for San Francisco residents of all backgrounds and genders in construction workforce activities provided under City-sponsored construction projects. CityBuild establishes a goal of 50% participation for San Francisco residents in each trade for total hours worked on a project. CityBuild creates a single, responsible and accountable entity, Mayor's Office of Economic and Workforce Development, to direct construction employment and training efforts across projects and departments and develops trained, committed men and women to become the construction workforce of the future.

3. The Agency's Equal Opportunity Program is described briefly in Section X.

D. Small Private Projects

1. The Employment and Contracting Policy does not mandate local hiring or contracting for purely private projects that fall below the threshold of Significant Projects.

However, Project Sponsors will be encouraged to subscribe **voluntarily** to the following Agency's Equal Opportunity Programs and other policies which include:

- BVHP Employment and Contracting Policy
 - Small Business Enterprise Policy
 - Nondiscrimination in Contracts and Equal Benefits Policy
 - Minimum Compensation Policy
 - Health Care Accountability Policy
 - Agency Prevailing Wage Policy (Labor Standards)
2. The Agency's Equal Opportunity Program is described briefly in Section X.

V. TERM

1. The term for meeting the obligations under the Employment and Contracting Policy ("**Term**") shall be as follows:

For Construction Workforce – From the date of the Employment and Contracting Agreement until two (2) years thereafter or the expiration of the building permit for the project, whichever is later.

For Trainee Hiring – From the date of the Employment and Contracting Agreement until two (2) years thereafter or the expiration of the building permit for the project, whichever is later.

For Permanent / Temporary Workforce – Up to ten (10) years from the date of the temporary certificate of occupancy per building , as determined through good faith negotiations between the Project Sponsor and the Agency based upon the anticipated number of permanent and/or temporary positions created by the Project.

VI. APPLICABLE COMMUNITY REDEVELOPMENT LAWS

1. The Employment and Contracting Policy is designed to further the objectives of the Community Redevelopment Law that redevelopment project areas support local businesses and lower-income BVHP Residents in the revitalization efforts of the Agency. Specifically, the Community Redevelopment law (which is codified in the California Health and Safety Code) states:

33422.1. Preference in Awarding Contracts to Local Businesses.

To the greatest extent feasible, contracts for work to be performed in connection with any redevelopment project shall be awarded to business concerns which are located in, or owned in the substantial part by persons residing in, the project area.

33422.3. Agency Specification of Workmen to be Lower-Income Project Area Residents for Certain Contracts.

To insure training and employment opportunities for lower-income project area residents, the agency may specify in the call for bids for any contract over one hundred thousand dollars (\$100,000) for work to be performed in connection with any redevelopment project that project area

residents, if available, shall be employed for a specified percentage of each craft or type of workmen needed to execute the contract or work.

33423. Prevailing Wage Rates Required.

Before awarding any contract for such work to be done in a project, the agency shall ascertain the general prevailing rate of per diem wages in the locality in which the work is to be performed, for each craft or type of workman needed to execute the contract or work, and shall specify in the call for bids for the contract and in the contract such rate and the general prevailing rate for regular holiday and overtime work in the locality, for each craft or type of workman needed to execute the contract.

33424. Payment of Prevailing Wages.

The contractor to whom the contract is awarded and any subcontractor under him shall pay not less than the specified prevailing rate of wages to all workmen employed in the execution of the contract.

33425. Penalty for Noncompliance with Prevailing Wages.

As a penalty to the agency which awarded the contract, the contractor shall forfeit ten dollars (\$10) for each calendar day or portion thereof for each workman paid less than the stipulated prevailing rates for any public work done under the contract by him or by any subcontractor under him. A stipulation to this effect shall be included in the contract.

33426. Record of Wages.

Each contractor and subcontractor shall keep an accurate record showing the name, occupation, and actual per diem wages paid to each workman employed by him in connection with the work. The record shall be kept open at all reasonable hours to the inspection of the agency.

VII. CONSTRUCTION WORKFORCE HIRES²

A. Procedures For Construction Workforce Hires

1. Compliance with the Policy

The Project Sponsor agrees and will require each Contractor and all subcontractors to use its good faith efforts to employ 50% of its construction workforce hires by trade and by hours from qualified BVHP Residents and then San Francisco Residents with First Consideration to BVHP Residents. Project Sponsors and Contractors will be deemed in compliance with this Employment and Contracting Policy by meeting or exceeding the goal or by taking the following steps in good faith towards compliance.

2. Execute Employment and Contracting Agreement

The Project Sponsor shall execute an Agreement which details the requirements of the Employment and Contracting Policy, as well as the Agency's Equal Opportunity Program, if

² The same procedure for construction workforce hires applies to all Project Sponsors regardless of whether the project is an Agency Action, private Significant Project, or small Private Project when the Project Sponsor has voluntarily subscribed to the Employment and Contracting Policy.

applicable. The Project Sponsor shall incorporate by reference or attach the Agreement to its contract with the general contractor. The general contractor shall do the same in its contracts with its subcontractors. Thus, each Contractor will be obligated to comply with the terms of the Agreement. The Project Sponsor and/or Contractors shall retain the executed Agreements and make them available to the Agency Compliance Officer upon request.

3. **Submission of Labor Force Projections and Other Data**

The general contractor shall submit, to the extent available, labor force projections to the Compliance Officer within two (2) weeks of award.

4. **Submit Subcontractor Information Form**

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

5. **Preconstruction Meeting**

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

6. **Submit Construction Worker Request Form**

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

7. **Response from CBO**

The CBO shall respond, in writing, via fax, email or hand delivery to each request for construction workers. The response shall state that the CBO was able to satisfy the request in full, in part or was unable to satisfy the request. The CBOs shall look to their own referral lists, as well as confer with other CBOs and CityBuild in an attempt to find qualified BVHP Residents and San

Francisco Residents. If the CBO is able to satisfy the request in full or in part, it shall direct the qualified BVHP Resident(s) or San Francisco Resident(s) to report to the Contractor on the date and time indicated in the request. If the CBO is unable to satisfy the request, then the CBO shall send a fax or email stating that no qualified BVHP Residents or San Francisco Residents are currently available.

8. **Action by Contractor When Referrals Available**

The Project Sponsor or Contractor whose request has been satisfied in full or in part shall make the final determination of whether the BVHP Residents or San Francisco Residents are qualified for the positions and the ultimate hiring decision. The Agency strongly encourages the Contractor to hire the qualified BVHP Residents or San Francisco Residents referred by the CBO. However, if the Contractor finds the BVHP Residents or San Francisco Residents are not qualified, then the Contractor shall send the BVHP Residents or San Francisco Residents back to the CBO. Before the close of business on the same day, the Contractor shall fax or email a statement addressed to the CBO stating in detail the reason(s) the BVHP Residents or San Francisco Residents were not qualified or the reason(s) for not hiring the BVHP Residents or San Francisco Residents. The CBO shall, within one (1) business day of receipt of the fax or email, send new qualified BVHP Residents or San Francisco Residents that meet the legitimate qualifications set by the Contractor or alternatively, send a fax or email stating that no qualified BVHP Residents or San Francisco Residents are currently available.

9. **Action by Contractor When Referrals Unavailable**

If a Contractor receives a response from the CBO stating that no qualified BVHP Residents or San Francisco Residents are currently available, then the Contractor may hire the number of construction workers requested from the CBO, using its own recruiting methods, giving first consideration to BVHP Residents and then San Francisco Residents. Any additional new construction workforce hires (including the replacement of any terminated workers) must comply with this Employment and Contracting Policy, unless the Contractor has already met or exceeded the goal. The Contractor must keep a copy of the response it receives from the CBO as proof of compliance and submit a copy of each response received to the Agency Compliance Officer upon request.

10. **Action by Contractor When No Response From CBO**

If a Contractor has not received a response to its construction worker request from the CBO within two (2) business days, then the Contractor should immediately advise the Agency Compliance Officer by phone, fax or email. The Agency Compliance Officer or his/her designee shall cause a response to be sent to the Contractor within two (2) business days of being notified. If the Contractor does not receive a response from the CBO within four (4) business days (the original two (2) business days plus the additional two (2) business days), then the Contractor may hire the number of construction workers requested from the CBO, using its own recruiting methods, giving first consideration to BVHP Residents and then San Francisco Residents. Any construction workforce hires (including the replacement of any terminated workers) must comply with this Employment and Contracting Policy, unless the Contractor has already met or exceeded the goal. The Contractor must keep a copy of the response it receives from the CBO as proof of compliance and submit a copy of each response received to the Agency Compliance Officer upon request. This Employment and Contracting Policy is intended to provide qualified BVHP and San Francisco

Residents with employment opportunities without causing undue delay in hiring needed construction workers.

11. **Action by Contractor When No Response From Union**

The Contractor should immediately advise the Agency Compliance Officer by phone, fax or email when the Contractor has sent a qualified BVHP Resident or San Francisco Resident to a union hall for referral in accordance with a collective bargaining agreement and the union did not refer the qualified BVHP or San Francisco Resident back for employment or when the union referral process impedes the Contractor's ability to meet its obligations under this policy. Conflicts between this Employment and Contracting Policy and any collective bargaining agreements will be resolved pursuant to Section XI (4).

12. **Hiring Apprentices**

A Contractor may meet part of the Construction Workforce Goal by hiring apprentices. However, hiring an apprentice does not satisfy or waive the trainee hiring obligation, if any, for design professionals. Unless otherwise permitted by law, apprentices must be trained pursuant to training programs approved by the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training or the California Department of Industrial Relations, Division of Apprenticeship Standards. Credit towards compliance will only be given for paid apprentices actually working on the project. No credit is available for apprentices while receiving class room training. Under no circumstances shall the ratio of apprentices to journeymen in a particular trade or craft exceed 1:5.

13. **Termination and Replacement of Referrals**

If at any time it becomes necessary to terminate for cause a construction worker who was hired under this Employment and Contracting Policy, the Contractor shall notify the CBO in writing via fax or email and submit a report of termination pursuant to Section VII (B)(4). If the Contractor intends to fill the vacant position, then the Contractor shall follow the process set forth in this Employment and Contracting Policy beginning at Section VII (A)(6).

B. Reporting Requirements For Construction Workforce

1. **Submission of Certified Payroll Reports**

Each Contractor subject to this Employment and Contracting Policy shall submit to the Agency a certified payroll report for the preceding work week on each of its employees. The Project Sponsor is ultimately responsible for the submission of these reports by the Contractors. The certified payroll report is due to the Agency by noon each Wednesday. To facilitate compliance, the Agency uses the online LCP Tracker system (www.lcptracker.com) for submission of certified payroll reports. This system is available at no cost to the Contractor and LCP Tracker is compatible with all major computer payroll systems. Training and educational materials for LCP Tracker are available at no cost online and through the Compliance Officer. Contractors are required to report certified payroll using the LCP Tracker system at www.lcptracker.com. However, a waiver shall be granted pursuant to Section XI (10) to any Contractors who do not have a computer, online access or who use a computer payroll system that is incompatible with LCP Tracker.

2. **Contents of Certified Payroll Reports**

If certified payroll records are submitted via the LCP Tracker system, the required data points are already listed. If certified payroll records are submitted in paper form, the records shall be organized in an easily understandable format and contain **all** the following information: the name, address, telephone number, residency (Bayview Hunters Point, another redevelopment project area, San Francisco or other), last four (4) digits of the worker's Social Security number³, gender, ethnicity (see codes in Section VII (B)(8)), construction trade (see codes in Section VII (B)(8)), classification (e.g., mechanic, apprentice, trainee, helper or laborer), union affiliation (if any), dates of changes in status, daily and weekly number of hours worked, hourly wage rates (including rates of contributions for costs anticipated for fringe benefits or cash equivalents thereof), deductions made and actual wages paid. The foregoing notwithstanding, the reporting of hourly wage rates, deductions and actual wages paid are not required for Significant Projects unless the Project Sponsor has voluntarily subscribed to the Agency's Prevailing Wage Policy or the payment of prevailing wages is otherwise required by law. To the degree that existing certified payroll records satisfy these requirements, the Contractor shall not be required to maintain separate records.

3. **Additional Information**

In order to prevent unlawful discrimination in the selection, hiring and termination of employees on the basis of race, ethnicity, gender or any other basis prohibited by law and to identify and correct such unlawful practices, the Agency will monitor and collect information on the ethnicity and gender of each construction worker and apprentice. If an identifiable pattern of apparent discrimination is revealed by this additional information, it will be treated as a breach of this Employment and Contracting Policy and may be addressed as set forth in Section XII, Arbitration of Disputes.

4. **Report on Terminations**

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

5. **Inspection of Records**

The Project Sponsor and each Contractor shall make the records required under this Employment and Contracting Policy available for inspection or copying by authorized representatives of the Agency, and shall permit such representatives to interview construction workers and apprentices during working hours on the job.

6. **Failure to Submit Reports**

³ Note: The Project Sponsor is required to provide complete Social Security numbers upon the request of the Agency.

If a Contractor fails or refuses to provide the reports as required it will be treated as a breach of this Employment and Contracting Policy and may be addressed as set forth in Section XII, Arbitration of Disputes.

7. Submission of Good Faith Effort Documentation

If the Project Sponsor’s or Contractor’s good faith efforts are at issue, the Contractor shall provide the Agency with the documentation of its efforts to comply with this Employment and Contracting Policy and the Agreement. The Project Sponsor or Contractor must maintain for the duration of the Term, a current file of the names, addresses and telephone numbers of each BVHP Resident or San Francisco Resident applicant referral whether self referral, union referral or CBO referral and what action was taken with respect to each such individual.

8. Coding Certified Payrolls

Each Contractor shall include, on the weekly payroll submissions, the code designating each construction worker’s and apprentice’s craft, skill level, protected class status and domicile in accordance with the following tables:

CRAFT CODE	DESCRIPTION	CRAFT CODE	DESCRIPTION
1	Electrician	22	Carpet, Linoleum and Vinyl Tile Layer
2	Iron Worker	23	Elevator Constructor
3	Sheet Metal Worker	24	Cement Mason
4	Asbestos Worker/ Heat & Frost Insulator	25	Laborer or Allied Worker
5	Plumber, Pipe or Steamfitter	26	Glazier & Glassmaker
6	Refrigeration	27	Painter, Paperhanger, Taper
7	Boilermaker	28	Sign Installer
8	Sprinkler Fitter	29	Scrapper
9	Brick, Caulk, Marble, Point, Terrazzo		
10	Hod Carrier		
11	Terrazzo Finisher	32	Low Voltage Electrician
12	Plasterer	33	Towboat Operator-Marine Engineer
13	Lather	34	Towboat Deckhand-Inland Boat worker
14	Carpenter or Drywall Hanger	35	Owner/Operator - Truck
15	Mill Worker or Cabinetmaker	36	Owner/Operator - Heavy Equipment
16	Millwright	37	Upholsterer
17	Roofer	38	Teamster, Construction
18	Pile Driver	39	Janitor
19	Surveyor/Operating Engineer	40	Environmental Control System Installer
20	Tile (Ceramic)/Marble Finisher	41	Window Cleaner
21	Tile (Ceramic)Setter	89	Security Guard

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

PROJECT AREA CODE	DESCRIPTION
BIT	Bayview Industrial Triangle
BVHP	Bayview Hunters Point
HPSY	Hunters Point Shipyard
IB	India Basin Industrial Park
GG	Golden Gateway
MBN	Mission Bay (North)
MBS	Mission Bay (South)
MM	Mid-Market
RPSB	Rincon Point/South Beach
SF	San Francisco (not in any redevelopment project areas)
SOM	South of Market
TB	Transbay
VV	Visitacion Valley
WA	Western Addition Area A-2
YBC	Yerba Buena Center

VIII. TRAINEE HIRES⁴

A. Procedures For Trainee Hires

1. Compliance with the Policy

For architects, engineers and other design professionals only, there is a trainee hiring goal as set forth in Section II (C) above. These design professionals will be deemed in compliance with this Employment and Contracting Policy by meeting or exceeding the trainee hiring goal or by take the following steps in good faith towards compliance.

2. Execute Employment and Contracting Agreement

The Project Sponsor shall execute an Agreement which details the requirements of the Employment and Contracting Policy, as well as the Agency’s Equal Opportunity Program, if applicable. The Project Sponsor shall incorporate by reference or attach the Agreement to its contract with the architects, engineers and other design professionals. Thus, each design professional will be obligated to comply with the terms of the Agreement. The Project Sponsor

⁴ The same procedure for trainee hires applies to all design professionals regardless of whether the project is an Agency Action, private Significant Project, or small Private Project when the Project Sponsor has voluntarily subscribed to the Employment and Contracting Policy.

and/or the design professionals shall retain the executed Agreements and make them available to the Agency Compliance Officer upon request.

3. **Contact Educational Institutions**

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

4. **Response from Educational Institutions**

Each educational institution may have a different way of referring applicants, such as: sending resumes directly to the design professional; having the applicant contact the design professional by phone; require design professionals to conduct on-campus interviews; or some other method. The timing and method of the response will normally have be discussed with the design professional during the initial phone request. The design professional is required to follow the process set by the educational institution(s) in order to get the referrals.

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

The design professional shall give First Consideration to BVHP Residents and then to San Francisco Residents referred by the educational institution(s). The design professional shall interview each applicant prior to making the decision to hire or not to hire. The design professional shall make the final determination whether the applicant is qualified for the trainee position and the ultimate hiring decision. The Agency strongly encourages the design professional to hire a qualified BVHP Resident or San Francisco Resident referred by the educational institution(s). The design professional shall notify each BVHP Resident and San Francisco Resident interviewed and the CBO in writing of the hiring decision.

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

If after contacting all of the educational institutions provided by the Agency Compliance Officer, the design professional is informed that no qualified BVHP residents or San Francisco Residents are currently available, then the design professional should wait thirty (30) days and contact the educational institutions a second time to inquire whether qualified San Francisco

Residents are currently available for hire as trainees. If no qualified San Francisco Residents are currently available after the second request, then the design professional has fulfilled its obligation under this Section VIII, provided that the design professional has acted in good faith. The design professional must retain its file on all of the steps it took to comply with this policy and submit a copy of its file to the Agency Compliance Officer upon request.

7. **Action by Design Professional When No Response From Educational Institutions**

If a design professional has not received a response to its request for referrals from any of the educational institutions within five (5) business days after the design professional has fully complied with the procedures, if any, set by the educational institution(s) for obtaining referrals; then the design professional should immediately advise the Agency Compliance Officer by phone, fax or email. The Agency Compliance Officer or his/her designee shall cause the educational institution(s) to respond to the design professional within five (5) business days of the Agency Compliance Officer being notified. If the design professional still has not received a response from the educational institution(s) after this additional five (5) business day period has run, then the design professional has fulfilled its obligation under this Section VIII, provided that the design professional has acted in good faith. Each design professional must retain its file on all of the steps it took to comply with this policy and submit a copy of its file to the Agency Compliance Officer upon request.

8. **Termination of Trainee for Cause**

If at any time during the Term, it becomes necessary to terminate for cause a trainee who was hired under this Employment and Contracting Policy and the design professional has not met the minimum duration requirements under this policy, then the design professional shall hire a new trainee by following the process set forth in Section VIII(A)(3) above.

B. Reporting Requirements For Trainee Hires

1. **Annual Reporting**

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

2. **Report on Terminations**

In the event a BVHP Resident or San Francisco Resident hired pursuant to this Employment and Contracting Policy is terminated for cause, the responsible design professional shall within five (5) days fax or email a termination report to the Agency Compliance Officer stating in detail: (1) the name of the trainee(s) terminated; (2) his/her job title and duties; (3) the reasons and

circumstances leading to the termination(s); (4) whether the design professional replaced the trainee(s); and (5) whether the new trainee(s) are BVHP Resident(s) or San Francisco Resident(s).

IX. PERMANENT / TEMPORARY WORKFORCE POLICY⁵

A. Permanent / Temporary Workforce Hires

1. Policy Statement

Due to the wide variety of development, both public and private, that occurs in the City and is anticipated to occur in the Project Area as redevelopment commences, it is difficult to develop a single hiring requirement or procedure that is appropriate in all situations. The Agency seeks to ensure that BVHP Residents have the opportunity to share in the permanent and temporary jobs that come from redevelopment in the Project Area. At the same time, the Agency seeks to assist Employers in meeting workforce demands for Significant Projects within the Project Area. The Agency has adopted a flexible approach to achieve these goals. The Employment and Contracting Policy sets an overall goal of 50% for permanent / temporary workforce hires but allows flexibility to tailor the remaining key terms of the Agreement to fit the specific project.

2. Compliance with the Policy

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

3. Negotiate and Execute Employment and Contracting Agreement

The Project Sponsor shall negotiate in good faith with the Agency's Contract Compliance staff to reach agreement on: (a) the Term of the Agreement; (b) the job titles or type of positions subject to this hiring obligation; (c) procedures for fulfilling the hiring obligation or meeting the good faith efforts; and (d) reporting requirements. These negotiations will be based upon the anticipated number of permanent and/or temporary positions created by the project. The executed Agreement will set forth the mutually agreed upon details, as well as the requirements of the Agency's Equal Opportunity Program, if applicable. The Project Sponsor shall incorporate by reference or attach the Agreement to its contract with the Employer. The Project Sponsor and/or Employer shall retain the executed Agreement and make it available to the Agency Compliance Officer upon request.

4. Review of Permanent / Temporary Workforce Policy

Working with the PAC, the CBOs and the City's workforce development systems, the Agency will review the Permanent / Temporary Workforce Policy and will revise the procedures

⁵ The same procedure for permanent / temporary workforce hires applies to all Project Sponsors regardless of whether the project is an Agency Action, private Significant Project, or small Private Project when the Project Sponsor has voluntarily subscribed to the Employment and Contracting Policy.

and goals as necessary to ensure that BVHP and San Francisco Residents are given First Consideration for these job opportunities.

X. AGENCY EQUAL OPPORTUNITY PROGRAM

A. Compliance with Agency's Equal Opportunity Program

Compliance with some or all of the Agency's Equal Opportunity Program may be mandatory or voluntary depending on whether the development is an Agency Action Project, private Significant Project, CityBuild / public improvement project or a small Private Project. The components of the Agency's Equal Opportunity Program are described briefly below for reference. The full policies and procedures associated with these programs are available from the Agency's Contract Compliance Division.

1. Small Business Enterprise Program

The Agency's Small Business Enterprise ("SBE") Program was adopted by Agency Resolution No. 133-2004 on November 16, 2004, as part of the Agency's Interim Purchasing Policy and Procedures, and may be amended from time to time. The SBE Program provides for first consideration in awarding subcontracts and sub-consulting opportunities to Agency certified local small business enterprises. The SBE Program is designed to help ensure that SBEs have a fair opportunity to compete for and participate in contracts related to Agency- Action Projects and other projects that are subject to the SBE Program. SBEs are divided into three groups: (1) Project Area SBEs, (2) Local SBEs (outside an Agency project or survey area, but within San Francisco), and (3) all other SBEs (outside of San Francisco). If subject to the SBE Program, the Project Sponsor and its Contractors and Employers must make good faith efforts to achieve the goal of 50% SBE participation for professional / personal services, and construction contracts. The SBE Program sets a contracting goal and thus is different from the Employment and Contracting Policy which sets hiring goals. The Project Sponsor's obligations under the SBE Program will be incorporated into a SBE Agreement ("**SBE Agreement**"). The Agency Executive Director will review and approve the SBE Agreement on behalf of the Agency. The Agency's Compliance Officer will ensure compliance with the requirements and will report periodically to the BVHP PAC and the Agency Commission on compliance matters.

2. Nondiscrimination in Contracts and Equal Benefits Policy

The Agency's Nondiscrimination in Contracts and Equal Benefits Policy was adopted by Agency Resolution No. 175-97 on September 9, 1997 and may be amended from time to time. The Nondiscrimination in Contracts and Equal Benefits Policy prohibits discrimination in contracting and which includes a prohibition on discrimination in providing benefits between employees with spouses and employees with domestic partners. This policy requires the Project Sponsor to agree not to discriminate against or segregate any person, or group of persons, on account of race, color, religion, creed, national origin or ancestry, sex, gender identity, age, marital or domestic partner status, sexual orientation or disability (including HIV or AIDS status). This policy also requires that employee benefits be equally available to domestic partners as they are to spouses.

3. Minimum Compensation Policy and Health Care Accountability Policies

The Agency's Minimum Compensation Policy ("MCP") and Health Care Accountability Policy ("HCAP") were adopted by Agency Resolution 168-2001 on September 25, 2001 and may be amended from time to time. MCP requires that all "Covered Employees," as defined therein, receive a minimum level of compensation. HCAP requires offering health plan benefits to Covered 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.

4. Agency's Prevailing Wage Policy

The Agency's Prevailing Wage Policy (Labor Standards) was adopted by Agency Resolution No. 327-85 on November 12, 1985 and may be amended from time to time. The Agency's Prevailing Wage Policy applies to projects: (i) covered under Labor Code Section 1720 *et seq.*, (ii) that are Agency-Action Projects) or (iii) for which the Project Sponsor has voluntarily subscribed to this requirement. The Agency's Prevailing Wage Policy references the State's Labor Standards and the prevailing wage, benefits, eligibility, etc. are all calculated using the State's standards. In many instances, both the California Labor Code and the Agency's Prevailing Wage Policy will apply.

XI. EMPLOYMENT AND CONTRACTING POLICY - ADDITIONAL PROVISIONS

Project Sponsors, Contractors and Employers that are subject to this Employment and Contracting Policy (including those who have voluntarily subscribed to this policy) are subject to the following additional provisions.

1. Designate a Point of Contact

Each Project Sponsor, Contractor and Employer shall designate a responsible representative, manager or agent to monitor all employment-related activity under this Employment and Contracting Policy and to be the primary point of contact for issues arising under this policy.

2. No Retaliation

No person hired pursuant to this policy shall be discharged or in any other manner discriminated against by the Project Sponsor, Contractor or Employer because such person has filed any complaint or instituted or caused to be instituted any proceeding under or relating to enforcement of this Employment and Contracting Policy.

3. No Discrimination

There shall be no discrimination against or segregation of any person, or group of persons, on account of race, color, religion, creed, national origin or ancestry, sex, gender identity, age, marital or domestic partner status, sexual orientation or disability (including HIV or AIDS status). The Project Sponsor, Contractors and Employers will ensure that applicants are employed, and that persons 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.

4. **Collective Bargaining Exclusion**

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

5. **No Conflict with State or Federal Law**

This Employment and Contracting Policy is to be implemented in a manner that does not conflict with applicable federal or state laws.

6. **Existing Workforce**

Nothing in this Employment and Contracting Policy shall be interpreted in a manner that would require termination of the Project Sponsor's, Contractor's or Employer's existing workers and employees.

7. **Use of Debarred Entities Prohibited**

Neither the Project Sponsor, Contractor nor Employer shall enter into any subcontract with any person or firm that the Project Sponsor, Contractor or Employer knows or should have known is debarred from federal, state or local government contracts.

8. **Incorporation**

Whenever the Project Sponsor, Contractor or Employer subcontracts a portion of the work, it shall set forth verbatim and make binding on each subcontractor the provisions of this Employment and Contracting Policy. That subcontract shall then be deemed a Contractor or Employer for the purposes of this Employment and Contracting Policy and shall be subject to all of the requirements hereto.

9. **Severability**

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

10. **Waiver**

Any of the Employment and Contracting Policy requirements may be waived by the Agency's Executive Director, if he/she determines for good cause shown that a specific requirement

is not relevant to the particular situation, would cause undue hardship, or that an alternative approach would better meet the goals of the Employment and Contracting Policy.

XII. ARBITRATION OF DISPUTES

1. Arbitration by AAA

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

2. Demand for Arbitration

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

3. Parties’ Participation

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

4. Agency Request to AAA

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

5. Selection of Arbitrator

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

6. **Setting of Arbitration Hearing**

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

7. **Discovery**

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

8. **California Law Applies**

California law, including the California Arbitration Act, Code of Civil Procedure §§ 1280 through 1294.2, shall govern all arbitration proceedings in any Employment and Contracting Agreement.

9. **Arbitration Remedies and Sanctions**

The arbitrator may impose only the remedies and sanctions set forth below:

- a. Order specific, reasonable actions and procedures, in the form of a temporary restraining order, preliminary injunction or permanent injunction, to mitigate the effects of the non-compliance and/or to bring any non-compliant Arbitration Party into compliance with the Employment and Contracting Policy Agreement.
- b. Require any Arbitration Party to refrain from entering into new contracts related to work covered by the Employment and Contracting Policy Agreement, or from granting extensions or other modifications to existing contracts related to services covered by the Employment and Contracting Policy Agreement, other than those minor modifications or extensions necessary to enable compliance with the Employment and Contracting Policy Agreement.
- c. Direct any Arbitration Party to cancel, terminate, suspend or cause to be cancelled, terminated or suspended, any contract or portion(s) thereof for failure of any Arbitration Party to comply with any of the requirements in the Employment and Contracting Policy Agreement. Contracts may be continued upon the condition that a program for future compliance is approved by the Agency.
- d. 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 the Employment and Contracting Policy Agreement unless the breaching party has failed to cure after being provided written notice and a reasonable opportunity to cure. Monetary sanctions may be imposed for subsequent willful breaches by any Arbitration Party

whether or not the breach is subsequently cured. For purposes of this paragraph, "willful breach" means a knowing and intentional breach.

e. 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.

10. **Arbitrator's Decision**

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

11. **Default Award; No Requirement to Seek an Order Compelling Arbitration**

The arbitrator may enter a default award against any person or entity who fails to appear at the hearing, provided that: (1) the person or entity received actual notice of the hearing; and (2) the complaining party has a proof of service for the absent person or entity. In order to obtain a default award, the complaining party need not first seek or obtain an order to arbitrate the controversy pursuant to Code of Civil Procedure §1281.2.

12. **Arbitrator Lacks Power to Modify**

Except as expressly provided above in this Section XII, the arbitrator shall have no power to add to, subtract from, disregard, modify or otherwise alter the terms of the Employment and Contracting Policy Agreement or to negotiate new agreements or provisions between the parties.

13. **Jurisdiction/Entry of Judgment**

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

BVHP EMPLOYMENT AND CONTRACTING POLICY MATRIX

	Agency-Action Projects	Private Significant Projects	CityBuild & Public Improvements	Small Private Projects
BVHP Employment and Contracting Policy	Mandatory ⁶	Mandatory	Voluntary but Encouraged	Voluntary but Encouraged
Small Business Enterprise Policy	Mandatory	Voluntary but Encouraged ⁷	Voluntary but Encouraged	Voluntary but Encouraged
Nondiscrimination and Equal Benefits Policy	Mandatory	Voluntary but Encouraged	Voluntary but Encouraged	Voluntary but Encouraged
Minimum Compensation Policy	Mandatory	Voluntary but Encouraged	Voluntary but Encouraged	Voluntary but Encouraged
Healthcare Accountability Policy	Mandatory	Voluntary but Encouraged	Voluntary but Encouraged	Voluntary but Encouraged
Agency’s Prevailing Wage Policy	Mandatory	Voluntary but Encouraged	Voluntary but Encouraged ⁸	Voluntary but Encouraged

⁶ Mandatory means that the Project Sponsor **is required** to comply with the Agency’s policy. However, each Agency policy has its own threshold and compliance requirements. For example, the Agency’s Minimum Compensation Policy (“MCP”) will apply to all Agency-Action projects but MCP has no compliance requirements for Project Sponsors with less than 25 employees.

⁷ Voluntary but Encouraged means that the Project Sponsor **is not required** to comply with the Agency’s policy as a condition to developing the project. However, the Agency’s Contract Compliance Department will encourage the Project Sponsor to subscribe voluntarily to these Agency policies. If the Project Sponsor voluntarily agrees to comply with one or more Agency’s policies, then those policies will be added as a condition to the building permit and at that point will become mandatory.

⁸ Public Improvements and public/private project receiving City funds are subject to the State of California’s prevailing wage requirements per California Labor Code Section 1720 *et seq.*

EXHIBIT X-B

Revisions to and Interpretations of BVHP ECP for the Project

1. Revisions and Interpretations. Unless otherwise Approved by Developer and the Agency Director, each in their respective sole and absolute discretion, the following revisions and interpretations to the BVHP ECP shall apply to the DDA:

1.1 References to the PAC shall be changed to the CAC with respect to the application of the BVHP ECP to the Shipyard Site.

1.2 The application of the fifty percent (50%) hiring goals in Section II, A.1. and B.1., Section VII.A.1. and Section IX.A.2. and the trainee goals in Section II.C.1. shall be changed so that they apply to "qualified BVHP Residents, then residents of the 94134 and 94107 zip code areas, then residents of other existing San Francisco redevelopment project areas, and then San Francisco Residents with First Consideration to BVHP Residents." Any other references in the BVHP ECP to "first consideration to BVHP Residents and then San Francisco Residents" shall be changed to "first consideration to BVHP Residents, then residents of the 94134 and 94107 zip code areas, then residents of other existing San Francisco redevelopment project areas, and then San Francisco Residents."

1.3 The definition of "Employer" in Section III.11 is deleted and replaced with the following: Employer means any person(s), firm, partnership, corporation, government agency, (whether for profit or nonprofit), or combination thereof, who owns or operates a retail or commercial business with twenty (20) or more employees that conduct the majority of their duties at the Project Site, and shall include retailers, service providers, office workers, property managers, parks and open space managers, and others.

1.4 The definition of "First Consideration" in Section III.13 is deleted and replaced with the following: "First Consideration means that a Project Sponsor, Contractor and/or Employer shall give first consideration to qualified BVHP Residents in accordance with Section VII.A. (6) - (8) of this Employment and Contracting Policy, then to residents of the 94134 and 94107 zip code areas, then residents of other existing San Francisco redevelopment project areas, and then to San Francisco residents for hiring opportunities in the areas of construction workforce, permanent / temporary workforce and trainee hires before offering the hiring opportunity to other applicants."

1.5 All references to "BVHP Residents and San Francisco Residents" and "BVHP Residents or San Francisco Residents," in Sections VII, VIII and IX shall be changed to refer to "BVHP Residents, residents of the 94134 and 94107 zip code areas, residents of other existing San Francisco redevelopment projects, and/or San Francisco Residents."

1.6 The definition of "CBO" (community-based organization) in Section III. 6 is deleted and replaced with the following: "CBO means an Agency identified workforce referral entity."

1.7 The definition of "Contractor" in Section III. 9 is deleted and replaced with the following: "Contractor means any person(s), firm, partnership, corporation (whether for profit or nonprofit), or combination thereof, who is a general contractor, subcontractor (regardless of tier) or consultant working on: any part of the Project, including all Infrastructure and Vertical Improvements, and all interior tenant improvements. Contractors shall include, without limitation, all architects, engineers and other design professionals."

1.8 The definition of "Project Sponsor" in Section III.19. is deleted and replaced with the following: "Project Sponsor means Developer, a Transferee or a Vertical Developer, as applicable."

1.9 All aspects of the Project shall be deemed to be either an Agency Action Project subject to Section IV.A (Agency Action Projects) or a City Build and Public Improvement subject to Section IV.C (CityBuild and Public Improvements), as applicable. Each Project Sponsor shall enter into a Employment and Contracting Agreement on or before Commencement of the Infrastructure or Vertical Improvement, as applicable.

1.10 All references to the "LCP Tracker system" in Section VII.B.1 are replaced with "the PRS".

1.11 A new definition is inserted, as follows: "PRS means a web-based software used to collect, verify and manage prevailing wage certified payrolls and related labor compliance documentation."

1.12 Worker request forms under Section VII.A.6 shall be submitted via the PRS.

EXHIBIT B

Letter re HPS Phase 1 DDA

**Office of Community
Investment and Infrastructure**
(Successor to the San Francisco
Redevelopment Agency)

One South Van Ness Avenue
San Francisco, CA 94103
415.749.2400



EDWIN M. LEE, Mayor

Christine Johnson, Chair
Mara Rosales, Vice-Chair
Theodore Ellington
Marilyn Mondejar
Darshan Singh
Tiffany Bohee, Executive Director

450-043.13.295

VIA ELECTRONIC AND OVERNIGHT MAIL

September 9, 2013
HPS Development Co., LP
c/o Lennar Urban
One California Street, Suite 2700
San Francisco, California 94111
Attn: Kofi Bonner

Re: Phase 1 of the Hunters Point Shipyard – Bayview Hunters Point Employment and Contracting Policy

Mr. Bonner:

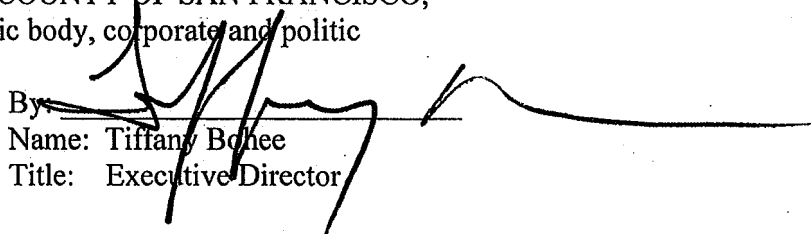
Reference is made to that certain Disposition and Development Agreement Hunters Point Shipyard Phase 1, dated as of December 2, 2003 (as amended, the "DDA"). Capitalized terms used but not otherwise defined herein have the meanings given to them in the DDA.

Under the DDA, Developer is obligated to comply with the Agency's Equal Opportunity Program (Attachment 24, Exhibit A). Consistent with Shipyard Phase 2 and the Vertical DDAs for Phase 1, we write this letter to confirm that the Bayview Hunters Point Employment and Contracting Policy attached hereto as Exhibit A-1, as revised in Exhibit A-2 (collectively, the "BVHP ECP"), replace DDA Attachment 24, Exhibit A. Accordingly, in all remaining work under the DDA, Developer is obligated to comply with the BVHP ECP.

Please confirm receipt of this letter and provide your confirmation of the foregoing in the space provided below.

Best Regards,

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

By: 
Name: Tiffany Bohee
Title: Executive Director

MOU EXHIBIT B

cc:

Paul Hastings LLP
55 Second Street, 24th Floor
San Francisco, California 94105
Attn: Charles V. Thornton, Esq.

Attn: David A. Hamsher, Esq.

Successor Agency to the San Francisco
Redevelopment Agency
One South Van Ness, 5th Floor
San Francisco, California 94103
Attn: General Counsel
Reference: Hunters Point Shipyard Phase 1
Project


ACKNOWLEDGED AND AGREED:

DEVELOPER:

HPS Development Co., LP,
a Delaware limited partnership
By: CP/HPS Development Co., LLC
a Delaware limited liability company,
its General Partner

By: _____

Name: Kofi Bonner

Title: President

EXHIBIT A-1

Bayview Hunters Point Employment and Contracting Policy

[See Exhibit A: X-A]

EXHIBIT A-2

Revisions to and Interpretations of BVHP ECP for the Project

1. Revisions and Interpretations. Unless otherwise approved by Developer and the Agency Director, each in their respective sole and absolute discretion, the following revisions and interpretations to the BVHP ECP shall apply to the Agreement:

1.1 References to the PAC shall be changed to the CAC.

1.2 The definition of "Employer" in Section III.11 is deleted and replaced with the following: Employer means any person(s), firm, partnership, corporation, government agency, (whether for profit or nonprofit), or combination thereof, who owns or operates a retail or commercial business with twenty (20) or more employees that conduct the majority of their duties at the Project Site, and shall include retailers, service providers, office workers, property managers, parks and open space managers, and others.

1.3 The definition of "First Consideration" in Section III.13 is deleted and replaced with the following: "First Consideration means that a Project Sponsor, Contractor and/or Employer shall give first consideration to qualified BVHP Residents in accordance with Section VII.A. (6) - (8) of this Employment and Contracting Policy, then to residents of the 94134 and 94107 zip code areas, then residents of other existing San Francisco redevelopment project areas, and then to San Francisco residents for hiring opportunities in the areas of construction workforce, permanent / temporary workforce and trainee hires before offering the hiring opportunity to other applicants."

1.4 The definition of "Contractor" in Section III. 9 is deleted and replaced with the following: "Contractor means any person(s), firm, partnership, corporation (whether for profit or nonprofit), or combination thereof, who is a general contractor, subcontractor (regardless of tier) or consultant working on any part of the Project. Contractors shall include, without limitation, architects, engineers and other design professionals."

1.5 The definition of "Project Sponsor" in Section III.19. is deleted and replaced with the following: "Project Sponsor means Developer."

1.6 All aspects of the Project shall be deemed to be either an Agency Action Project subject to Section IV.A (Agency Action Projects) or a CityBuild and Public Improvement subject to Section IV.C (CityBuild and Public Improvements), as applicable. Upon the Agency's request, each Project Sponsor shall enter into an Employment and Contracting Agreement.

1.7 All references to the "LCP Tracker system" in Section VII.B.1 are replaced with "the PRS".

1.8 A new definition is inserted, as follows: "PRS means a web-based software used to collect, verify and manage prevailing wage certified payrolls and related labor compliance documentation."

1.9 Worker request forms under Section VII.A.6 shall be submitted via the PRS.

EXHIBIT C

Mission Bay South Owner Participation Agreement (OPA) Attachment H and Schedule 1

(Mission Bay North OPA has the same provisions)

ATTACHMENT H

MISSION BAY SOUTH PROGRAM IN DIVERSITY/ECONOMIC DEVELOPMENT PROGRAM

This Attachment sets forth the Owner's voluntary Program in Diversity/Economic Development Program obligations and requirements of the Mission Bay South Owner Participation Agreement ("South OPA").

The Owner agrees to the following:

- I. **PURPOSES.** The Agency and the Owner agree that the purposes of this Attachment and its accompanying Schedules and Exhibits are to ensure the following with respect to the Owner Improvements:
 - A. That the Owner's Consultants and Contractors provide equal opportunities to and do not discriminate against Minority Group Persons, women, or business enterprises Owned by Minority Group Persons or women.
 - B. That the Owner's Contractors and Consultants make good faith efforts to recruit, employ and contract with qualified individuals and businesses which are part of the work force and business community in San Francisco and the Bay Area.
 - C. That employment, contracting and business participation opportunities be provided to residents of the City and County of San Francisco, including women, Minorities and Economically Disadvantaged Individuals.

- II. **DEFINITIONS.** The following definitions apply to this Attachment and its accompanying Schedules. Initially capitalized terms unless separately defined in this Attachment H have the meaning and content set forth in this South OPA.
 - A. "Consultant" means a person or business which is a party to a Professional Services Contract in excess of \$10,000 for the design or construction of the Owner Improvements.
 - B. "Contract" means any agreement in excess of \$10,000 between the Owner, its Contractors and a person to provide or procure labor, materials or services for the construction of the Owner Improvements, including a purchase order that requires installation of materials. A "Contract" does not include a loan transaction. Agreements with suppliers are covered by this Attachment H only to the extent that the supplies are part of a Contract or Professional Services Contract for construction of the Owner Improvements.

- C. "Contractor" means the Owner's general contractor, all prime contractors and all subcontractors (regardless of tier) having a Contract or subcontract in excess of \$10,000 and who employ persons in a Trade for construction of the Owner Improvements.
- D. "Controlled", for the purposes of determining whether a business is an MBE or a WBE, means that the Minority Group Person(s), the woman or a combination of Minority Group Persons and women, as the context requires, shall (1) possess legal authority and power to manage business assets, good will and daily operations of the business; and (2) actively and continuously exercise such authority and power in determining the policies and directing the operations of the business.
- E. "Covered Area" means the City and County of San Francisco.
- F. "Economically Disadvantaged" means that once a business reaches the three-year average size gross income threshold for the applicable industry the business ceases to be economically disadvantaged, it is not an eligible M/WBE and it will not be counted towards meeting M/WBE goals, except that (i) if an M/WBE was Economically Disadvantaged at the date of execution of a Contract or Personal Services Contract, it shall be counted fully toward meeting M/WBE goals for the work covered by the Contract or Person Services Contract, notwithstanding that the M/WBE may have subsequently reached the threshold, and (ii) the Agency may, at its sole discretion, determine that an M/WBE shall be deemed eligible notwithstanding the fact that it exceeds the threshold at the execution of the Contract or Personal Services Contract.

<u>Industry</u>	<u>Gross Income</u>
Consultants	\$ 2,000,000
Contractors	\$14,000,000
Suppliers	\$ 2,000,000

- G. "Economically Disadvantaged Individual" means a person who is either (i) designated as economically disadvantaged by the City as an individual who is at risk of relying upon, or returning to, public assistance or (ii) eligible for services under the Joint Partnership Act, 29 U.S.C. §1503 as determined by the Private Industry Council.
- H. "Entry Level Position" shall mean a non-managerial position that requires either (i) no education above a high school or certified equivalency; or (ii) less than one year of training or specific preparation, and shall include temporary and permanent jobs.
- I. "First Consideration" means non-Local M/WBEs should be used to satisfy participation goals only if an Owner or its Contractors or Consultants reasonably

determine that Local M/WBEs are not qualified based on the requirements of the Owner, Contractor or Consultant as described in the applicable bid documents, requests for proposals or similar documentation or if their bids or fees are significantly higher than those of non-Local M/WBEs.

- J. “Job Classification” means individual job or job title such as cement mason, plumber, etc.
- K. “Local” M/WBE means an Economically Disadvantaged, independent and continuing business that: (a) has fixed offices located within the geographic boundaries of the Covered Area; (b) is listed in the Permits and License Tax Paid File with a San Francisco Business Street address; and (c) possesses a current Business Tax Registration Certificate. Post office box numbers or residential addresses alone shall not suffice to establish a firm’s status as local.
- L. “Minority” or “Minority Group Person” means:
 - 1. American Indian (any person having origins in the indigenous peoples of South America including Alaskan Natives, Aleuts and Eskimos and who are enrolled members of federally recognized tribes);
 - 2. Asian (any person of Chinese, Japanese, Korean, Pacific Islander, Samoan, Filipino, Asian-Indian or south East Asian origins);
 - 3. Black (any person having origins in any of the black racial groups of Africa); or
 - 4. Latino (any person of Spanish culture with origins in Mexico or other Spanish speaking countries in Central or South America or the Caribbean Islands).
- M. “Minority-Owned Business Enterprise” or “MBE” means an Economically Disadvantaged, independent, continuing and for-profit business, which performs a commercially useful function, and is Owned and Controlled by one or more Minority Group Persons residing in the United States or its territories.
- N. “Minority/Woman-Owned Business Enterprise” or “M/WBE” means an Economically Disadvantaged, independent, continuing and for-profit business, which performs a commercially useful function, and is Owned and Controlled by one or more Minority Group Persons and women residing in the United States or its territories.
- O. “Owned”, for purposes of determining if a business is an MBE or a WBE, means that the Minority Group Persons or women as the context requires, possess an ownership interest of at least 51 percent of the business, possess incidents of

ownership, such as an interest in profit and loss, equal at least to the required ownership interest percentage, and contribute capital, equipment and expertise to the business equal to at least the required ownership percentage.

- P. “Owner” has the meaning set forth in this South OPA, except that the term shall include only those Transferees who take title to or enter into a ground lease with respect to a property and shall exclude other Transferees including all other lessees and sublessees. Where this term is used with respect to obligations and requirements that are calculated or imposed on a Project basis or, at an Owner’s election, on a Major Phase basis as opposed to a South Plan Area basis, “Owner” means the individual owner who proposes to construct or cause to be constructed the Owner Improvements for such Project or Major Phase. For purposes of Schedule 3 only, “Owner” shall refer to each individual owner who has entered into a Contract.
- Q. “Owner Improvements” has the meaning set forth in this South OPA.
- R. “Professional Services Contract” means any agreement in excess of \$10,000 between the Owner, its Consultants and a person for the procurement of architect/engineer or other Consultant services for planning and design of the Owner Improvements. This term does not encompass planning activities and feasibility studies related to the initial overall entitlements for the South Plan Area.
- S. “San Francisco Resident” in the case of a new hire shall mean an individual who has lived in San Francisco for at least one week prior to submitting his/her initial application for employment to work on the Owner Improvements. In the case of a person employed by the Owner or its Contractor or Consultant prior to assignment to the Owner Improvements, this term shall mean a person who has lived in San Francisco for at least six months prior to the date he/she applied for a transfer to a position at the Owner Improvements or the date he/she was assigned to work on the Owner Improvements, whichever is earlier; or a person who establishes, to the satisfaction of the Agency, that he/she lived in San Francisco prior to applying for or being considered for a position with the Owner, Contractor or Consultant.
- T. “Trade” means all skilled construction trades, laborers and security guards.
- U. “Woman-Owned Business Enterprise” or “WBE” means an Economically Disadvantaged, independent, continuing and for-profit business, which performs a commercially useful function, and is Owned and Controlled by one or more women residing in the United States or its territories.

III. **AREAS COVERED.** The diversity, equal opportunity and economic development obligations and requirements established herein cover:

- A. The Contractor's construction work force for the Owner Improvements. These obligations and requirements are set forth in Schedule 1 attached hereto and incorporated herein by reference.
- B. Minority and Woman-Owned Business Enterprises. These obligations and requirements are set forth in Schedule 2 attached hereto and incorporated herein by reference.
- C. Prevailing Wage Provisions. These obligations and requirements are set forth in Schedule 3 attached hereto and incorporated herein by reference.
- D. Job Training, Referral, Hiring and Economic Development Program. These obligations and requirements are set forth in Schedule 4 attached hereto and incorporated herein by reference.

IV. **OBLIGATION TO INCORPORATE IN OTHER CONTRACTS.** Each Contract between an Owner and a Consultant or Contractor shall physically incorporate and make binding on the parties to the Contract Articles VI, VII, and VIII of this Attachment H and Schedules 1-4 hereto, as applicable.

V. **OWNER'S REPRESENTATIVE.** Each Owner will assign an individual as the contact person for information about this program and economic and entrepreneurial opportunities anticipated in the South Plan Area.

VI. **OWNER'S PROFESSIONAL SERVICES CONSULTANTS.**

A. **Participation Goals.** The Agency has made a finding that discrimination has occurred against businesses owned by women and Minority Group Persons. Accordingly, each Owner and all Consultants with a Professional Services Contract shall make good faith efforts as set forth in Article III of Schedule 2 to achieve the following goals, which have been designed to correct the effects of past discrimination:

MBE	20 percent
WBE	18 percent

Only firms certified as MBEs, WBEs or M/WBEs in accordance with Article IV of Schedule 2 to this Attachment H will be counted toward meeting the above participation goals.

B. **Applicability of Goals.** These goals will apply to all Professional Services Contracts. Specialty professional services, such as design services related to specialized research and development facilities, shall be excluded by the Agency from this Attachment H if an Owner or Consultant establishes to the reasonable satisfaction of the Agency that M/WBEs are not available or qualified based on

the requirements of the Owner or Consultant as described in the applicable bid documents, requests for proposals or similar documentation, to perform such services. This exclusion is intended to apply only in highly specialized areas such as certain research and development facilities engineering and planning activities, including but not limited to biotechnology/laboratory design, biotechnology/laboratory code consulting and radiation shielding design for which the pool of qualified firms may be very limited.

- C. Calculation of Goals. M/WBE participation shall be calculated as a percentage of the total dollar value of each Professional Services Contract entered into between an Owner or its Consultants and a person for the performance of Consultant services for the planning and design of the Owner Improvements, with the exception of specialty services excluded pursuant to Article VI.B. For purposes of determining compliance with this Article VI, calculations shall be made separately for each individual Project, as defined in Article 1.62 of the South OPA. Prior to issuance of a Certificate of Completion for a Project as described in Article 3.6 of the South OPA, the Owner shall submit to Agency staff a report documenting the Owner's compliance for the Project with the applicable provisions of this Attachment H, including the goals contained in Articles VI and VII.

At an Owner's election, compliance with the goals of this Article VI may be calculated on a Major Phase basis in lieu of on a Project basis, provided that such Owner has the authority to construct or cause to be constructed the Owner Improvements for the entire Major Phase.

- D. First Consideration to Local M/WBEs. Each Owner and all Consultants shall give First Consideration to Local M/WBEs and comply with the good faith effort steps set forth in Article III of Schedule 2 to ensure that Minority-Owned and Woman-Owned Business Enterprises have an equal opportunity to compete for and participate in Professional Services Contracts. The prime contractors are responsible for ensuring that each of their subcontractors meets these requirements.

Consultants are expected to employ Job-Training-Partnership-Act-eligible trainees for each Contract or Professional Services Contract through a program under which the employer may receive tax credits as follows:

<u>Trainees</u>	<u>Consulting Fees</u>
0	\$ 0 - 249,999
1	250,000 - 399,999
2	400,000 - 599,999
3	600,000 - 999,999
4	1,000,000 - 1,999,999
5	2,000,000 or more

VII. OWNER'S CONSTRUCTION CONTRACTS.

- A. Participation Goals. The Agency has made a finding that discrimination has occurred against construction firms owned by women and Minority Group Persons. Accordingly, each Owner and all Contractors with Contracts shall make good faith efforts to achieve the following goals, which have been designed to correct the effects of past discrimination:

MBE	31 percent
WBE	10 percent

Only firms certified as MBEs, WBEs or M/WBEs in accordance with Article IV of Schedule 2 to this Attachment H will be counted toward meeting the above participation goals. Certain specialty professional services and specialty materials are anticipated to be required for design and construction of the Owner Improvements. Such specialty services and materials shall be excluded from this Attachment H by the Agency if the Owner or its Contractor establishes to the reasonable satisfaction of the Agency that M/WBEs are not available or qualified based on the requirements of the Owner or Contractor as described in the applicable bid documents, requests for proposals or similar documentation to perform such services or that the specialty goods are not available through an M/WBE or are available through an M/WBE only at a significantly higher price than through a non-M/WBE. This exclusion is intended to apply primarily in highly specialized areas such as certain research and development facilities construction activities, including but not limited to specialty industrial piping, air control laboratory equipment and laboratory casework for which the pool of qualified firms may be very limited.

- B. First Consideration to Local M/WBEs. Each Owner and all Contractors shall give First Consideration to Local M/WBEs and comply with the good faith effort steps set forth in Article III of Schedule 2 to ensure that Minority-Owned and Woman-Owned Business Enterprises have an equal opportunity to compete for and participate in Contracts for the construction of the Owner Improvements performed by or at the behest of the Owner. This obligation covers all construction Contracts and subcontracts for construction of the Owner Improvements. The prime contractors are responsible for ensuring that each of their subcontractors meet these requirements.
- C. Calculation of Goals. M/WBE participation shall be calculated as a percentage of the total dollar value of each Contract entered into between an Owner or its Contractors and a person for services on construction of the Owner Improvements, with the exception of specialty services excluded pursuant to Article VI.B. For purposes of determining compliance with this Article VII, the

determination shall be made separately for each individual Project, or, at an Owner's election, on a Major Phase basis, as described in Article VI.C.

VIII. ARBITRATION OF DISPUTES.

- A. Arbitration Procedures. Arbitration, as provided for in this Attachment H, shall be the exclusive procedure for resolving any dispute concerning the interpretation, implementation or alleged breach of this Attachment or its Schedules, except that any dispute regarding Schedule 3 shall be governed by the arbitration provisions of Schedule 3, Article 1.14, and the remedies provisions contained in Article 1.13. Obtaining a final judgment through arbitration as provided in this Attachment H shall be a condition precedent to the ability of either party to file a request for judicial relief based upon this Program. Provided that the aggrieved party has first followed the procedures for notice, cure and consultation contained in Article 12.1 (a)-(b) of this South OPA, such party may then initiate a request for arbitration proceedings pursuant to this Attachment H by providing to the other party(ies) by hand delivery a Demand for Arbitration ("Demand"). The party requesting the proceeding ("Initiating Party") shall include in the Demand a list of two (2) arbitrators. Each arbitrator shall be a retired California or federal judge whom the Initiating Party considers to be competent and qualified to act and resolve the dispute. Within five (5) business days after receipt of the list submitted by the Initiating Party, the other party shall then chose one (1) of the arbitrators from such list, and that arbitrator shall actually resolve the dispute hereunder. If, however, the other party rejects both of the arbitrators named on said list, then, within five (5) business days after notice of such rejection, the other party shall submit to the Initiating Party its own list of two (2) arbitrators meeting the same qualifications and criteria required in the initial Demand. Within five (5) business days after receipt of the list submitted by the other party, the Initiating Party shall then chose one (1) of the arbitrators from such list, and that arbitrator shall act as the arbitrator hereunder. Each party must confirm that each arbitrator on its list is available to hear the matter before providing the list to the other party. Once the arbitrator is selected, the Initiating Party shall initiate arbitration proceedings by filing a Request for Arbitration ("Request") with said arbitrator. The date of the filing of the Request shall be the "Request Date."

If the Initiating Party rejects both of the names on the list provided by the other party, either party may petition the Superior Court of San Francisco to appoint an arbitrator in accordance with California Code of Civil Procedure Section 1281.6. The arbitrator so selected shall act as arbitrator and resolve the dispute as provided herein.

Where the Owner, Contractor or Consultant is the complaining party, the Request shall be served on the Agency. Where the Agency is the complaining party, the Request shall be served on the Owner, Contractor or Consultant, as applicable. Where the Request is served on a Contractor or Consultant, a copy must also be

served for informational purposes on the Owner. The Request shall be filed and served either by hand delivery or by registered or certified mail. The Request shall identify other entities involved in the dispute, if any (e.g., Owner's Contractor or Consultant), and state the exact nature of the dispute and the relief sought. If the complaining party seeks a temporary restraining order and/or a preliminary injunction, the Request shall so state in the caption of the Request.

- B. Setting of Arbitration Hearing; Other Time Periods. A hearing shall be held within thirty (30) days after the Request Date unless otherwise agreed by the parties or ordered by the arbitrator upon a showing of good cause; provided, that if the complaining party seeks a temporary restraining order, the hearing on the motion for a temporary restraining order shall be heard not later than two (2) business days after the Request Date, and provided further, if a party seeks a preliminary injunction, such motion shall be heard on 15 days' notice. The arbitrator shall set the date, time and place for the arbitration hearing(s) within the proscribed time periods by giving notice by hand delivery to the Agency and the Owner, Contractor or Consultant; except, where a temporary restraining order is sought, the arbitrator may give notice of the hearing date, time and place to the Agency and the Owner, Contractor or Consultant by telephone.

The following time periods set forth in the Code of Civil Procedure shall be shortened as follows: Section 1288 -- four (4) years to 90 days, and 100 days to 30 days; Section 1288.2 -- 100 days to 30 days.

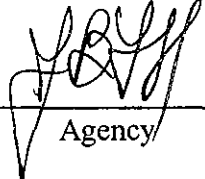
- C. Discovery. There shall be no right to conduct discovery in connection with the arbitration proceeding unless authorized by the arbitrator.
- D. Arbitrator's Decision. The arbitrator shall be required to determine all issues in accordance with existing case law and the statutory laws of the United States and the State of California. The arbitrator shall make his/her award within fourteen (14) days after the date that the hearing is completed; provided that where a temporary restraining order is sought, the arbitrator shall make his/her award not later than 24 hours after the hearing on the motion. The arbitrator shall send the decision by certified or registered mail to the Agency and the Owner, and the Contractor or Consultant, where applicable.
- E. Default Award; No Requirement to Seek an Order Compelling Arbitration. The arbitrator may enter a default award against any party who fails to appear at the hearing; provided said party received actual notice of the hearing. 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.
- F. Arbitrator Lack of 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 this Attachment H, or any other agreement between the Agency and the Owner, or to negotiate new agreements or provisions between the parties.

- G. Jurisdiction/Entry of Judgment. The inquiry of the arbitrator shall be restricted to the particular controversy which gave rise to the request for arbitration. A decision of the arbitrator issued hereunder shall be final and binding upon the Agency and the Owner, Contractor or Consultant unless one of the parties files a written request for judicial relief with a court of competent jurisdiction with respect to any claims pursuant to this Attachment H within fifteen (15) working days after the issuance of the arbitrator's decision. If such a claim is timely filed, the petitioning party shall be entitled to de novo judicial review. The losing party in arbitration shall pay the arbitrator's fees and related costs of arbitration. Each party shall pay its own attorneys' fees provided that fees may be awarded to the prevailing party if the arbitrator finds that the Request was frivolous or that the arbitration action was otherwise instituted or litigated in bad faith. Judgment upon the arbitrator's decision may be entered in any court of competent jurisdiction.
- H. California Law Applies. California law, including the California Arbitration Act, Code of Civil Procedure §§ 1280 through 1294.2, shall govern all arbitration proceedings, except as provided otherwise herein.
- I. Exculpatory Clause. The Owner expressly waives any and all claims against the Agency for damages, direct or indirect, arising under this Attachment H, including, but not limited to claims relative to the commencement, continuance and completion of construction. The Owner acknowledges and agrees that the procedures set forth herein for dealing with alleged breaches or failure to comply with the obligations and requirements of this Attachment H are reasonable and have been anticipated by the parties.
- J. Designation of Agent for Service. Not later than five (5) days after the date of execution of this South OPA, the Owner shall designate a person or business as its agent for service of a Request and all notices provided for herein.
- K. 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 THOSE 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



Owner

- IX. **REMEDIES.** In the event of any default or breach of this Attachment H, only the remedies set forth in this Article IX may be awarded either by an arbitrator or a court of competent jurisdiction, as applicable. Where obligations and requirements are calculated or imposed on a Project basis or, at an Owner's election, on a Major Phase basis, remedies may be applied only on a Project or Major Phase basis, as applicable. The exclusive allowable remedies are as follows:
- A. Order specific, reasonable actions and procedures, in the form of a temporary restraining order, preliminary injunction or permanent injunction, to bring the Owner, Contractor or Consultant into compliance.
 - B. Direct that the Owner, Contractor or Consultant produce and provide to the Agency any records, data or reports which are reasonably necessary to determine if a violation has occurred and/or to monitor the performance of the Owner, Contractor or Consultant.
 - C. Order the payment of money only with respect to any amounts determined due and payable under Article I.A of Schedule 4.
- X. **THIRD PARTY BENEFICIARIES.** This Attachment H is intended for the benefit of the parties to this South OPA and where applicable pursuant to Article VIII only, for Consultants and Contractors, and shall not be deemed to confer any benefits or right of enforcement upon any other parties.
- XI. **TERM.** The term of this Attachment H shall commence upon the effective date of this South OPA and continue until the earlier of (i) expiration of the Mission Bay South Redevelopment Plan or (ii) termination of the South OPA pursuant to Article 12 thereto. With the exception of Schedule 3, the obligation of each Owner and its Contractors and Consultants with respect to a Project or, where applicable, a Major Phase, shall remain in effect until the issuance by the Agency of a Certificate or Certificates of Completion for such Project, Major Phase pursuant to Article 3.6 of the South OPA. The obligation of an

Owner with respect to Schedule 3 shall remain in effect for each Contract until the work covered by the Contract is complete.

- XII. **ADJUSTMENTS.** Because construction of Owner Improvements to which this program applies may not occur for many years after execution of the South OPA and it is anticipated that the period of buildout may be lengthy, if the Agency's standard diversity program generally applicable to other redevelopment projects is revised to increase the dollar limit for Economically Disadvantaged businesses or the dollar triggers for consultant trainee obligations, then those revisions shall be deemed incorporated herein. If the Agency's standard M/WBE or work force participation goals generally applicable to other redevelopment projects are revised either upward or downward based on updated Croson studies, then those revisions shall be deemed incorporated herein.

ATTACHMENT H

SCHEDULE 1

CONSTRUCTION WORK FORCE

I. WORK FORCE GOALS.

- A. The goals set forth below are expressed as a percentage of each Contractor's total hours of employment and training by Trade. The goals represent the level of Minority and women utilization each Contractor should reasonably be able to achieve in each construction Trade in which it has employees directly involved in construction of the Owner Improvements. Each Owner will require each Contractor to use good faith efforts as defined in Article III herein to employ Minority Group Persons and women to perform construction work on the Owner Improvements at a level at least consistent with said goals.
- B. Goals
1. Goal for Minority group participation in each Trade: 25.6 percent (current Office of Federal Contract Compliance Programs, hereinafter "OFCCP" goal) of the total hours worked in the Trade.
 2. Goal for women participation in each Trade: 6.9 percent (current OFCCP goal) of the total hours worked in the Trade.
 3. Goal for San Francisco Resident participation in each Trade: 50 percent of the total hours worked in the Trade.
- C. If a conflict arises, achieving the ethnic and gender goals shall take precedence over achieving the residency goal set forth in Article I.B.3.
- D. Calculation of Goals. Minority and women participation shall be calculated as a percentage of the total hours worked in each Trade on the construction of the Owner Improvements. For purposes of determining compliance with this Schedule 1, including the percentage goals in Article I.B, the calculation shall be made in connection with each individual Project or, at an Owner's election, on a Major Phase basis, as described in Attachment H, Article VI.C.
- E. Each Contractor is individually required to comply with its obligations under this Schedule 1, and to make a good faith effort to achieve each goal in each Trade in which it has employees employed in construction of the Owner Improvements. The overall good faith performance by other Contractors toward a goal does not

excuse any covered Contractor's failure to make good faith efforts to achieve the goals.

- F. The Contractor shall not use the goals or diversity standards to discriminate against any person because of race, color, national origin, religion, gender, sexual orientation or age.
- G. In order for the non-working training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Unless otherwise permitted by law, trainees must be trained pursuant to training programs approved by the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training ("BAT") or the California Department of Industrial Relations, Division of Apprenticeship Standards ("DAS").

II. **INCORPORATION.** Whenever an Owner or any Contractor subcontracts a portion of the work on construction of the Owner Improvements involving any construction Trade, it shall set forth verbatim and make binding on each subcontractor which has a Contract the applicable provisions of Attachment H of this South OPA and this Schedule 1, including the applicable goals for Minority Group Persons and women participation in each Trade.

III. **DIVERSITY PROGRAM COMPONENTS.**

- A. Each Contractor shall make good faith efforts as defined in this Article III.A to ensure equal employment opportunity ("EEO") related to construction of the Owner Improvements. A Contractor's good faith efforts constitute the standard by which compliance will be measured and compliance with the following shall constitute good faith efforts:
 - 1. Ensure and maintain a working environment free of harassment, intimidation, and coercion. The Contractor shall ensure that all forepersons, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment with specific attention given to Minority Group Persons or women.
 - 2. Provide written notification to Community-based organizations with experience in the administration of diversity programs such as: Chinese for Affirmative Action, Ella Hill Hutch Community Center, Mission Hiring Hall, South of Market Employment Center and Young Community Developers and any other organizations identified for the Contractor by

the Agency when the Contractor has employment opportunities available, and maintain a record of the organizations' responses.

3. Maintain a current file of the names, addresses and telephone numbers of each Minority, women or resident applicant and each Minority, women and resident referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union, or if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.
4. Provide immediate written notification to the Agency when the Contractor has information that the union referral process has impeded the Contractor's efforts to meet its obligations.
5. Participate in existing training programs which expressly include Minority Group Persons and women, including apprenticeship, trainee and upgrading programs relevant to the Contractor's employment needs, especially those funded or approved by the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training ("BAT") or the California Department of Industrial Relations, Division of Apprenticeship Standards ("DAS"). The Contractor shall provide notice of these programs to the sources compiled under Article III.A.2 above.
6. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report or similar communication; by review of the policy with all management personnel and with all Minority and women employees at least once a year, either as part of the employee evaluation process or otherwise; and by posting the company EEO policy on bulletin boards accessible to all employees performing construction of the Owner Improvements.
7. Review, prior to beginning work on the Owner Improvements and at least annually thereafter, the Contractor's EEO policy and diversity obligations under this South OPA and this Schedule 1 with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with on-site supervisory personnel such as superintendents and general forepersons, etc. A written record shall be made and maintained

identifying the time and place of these meetings, persons attending, subject matter discussed and disposition of the subject matter. The Agency's compliance staff shall be advised of and may attend these meetings.

8. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including Minority and women news media, and providing written notification to and discussing the Contractor's EEO policy with other contractors and subcontractors with whom the Contractor does business.
 9. Direct its recruitment efforts, both oral and written, to Local Minority, women and community organizations, to schools with Minority and women students and to Minority and women recruitment and training organizations serving the Contractor's recruitment area and employment needs.
 10. Encourage present Minority and women employees to recruit other Minority Group Persons and women and, where reasonable, provide after school, summer and vacation employment on non-construction activities to Minority and women youth.
 11. Conduct, at least annually, as part of the employee evaluation process or otherwise, an inventory and evaluation of Minority and women personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, such opportunities.
 12. Ensure that seniority practices, Job Classifications, work assignments and other personnel practices do not have a discriminatory effect by monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations hereunder are being carried out.
 13. Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the genders.
 14. Conduct a review, at least annually, as part of the employee evaluation process or otherwise, of all supervisors' adherence to and performance under Contractor's EEO policies and diversity obligations.
- B. Contractors may participate in voluntary associations which assist in fulfilling one or more of their diversity obligations under Article III.A.1-14. The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the Contractor is a member and participant, may be

asserted as fulfilling any one or more of these obligations provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of Minority Group Persons and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's Minority and women work force composition, makes a good faith effort to meet its individual goals, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

IV. ADDITIONAL PROVISIONS.

- A. A Contractor shall not enter into any subcontract with any person or firm who the Contractor knows is debarred from government contracts pursuant to Executive Order 11246.
- B. No employee to whom the diversity provisions of this Schedule 1 are applicable shall be discharged or in any other manner discriminated against by the Contractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or relating to Attachment H of this South OPA.
- C. Each Contractor shall designate a responsible official to monitor all employment-related activity to ensure that the Contractor's EEO policy is being carried out.
- D. The failure by a union with which the Contractor has a collective bargaining agreement to refer either Minority Group Persons or women shall not exclude the Contractor's obligations under this Schedule 1.

V. DOCUMENTATION AND RECORDS.

- A. Submission of certified payrolls to the Agency. Each Contractor shall submit through the general contractor to the Agency by noon on the first Wednesday of each month a report providing the information contained in the Agency's Optional Form of payroll report for the previous month on each of its employees. Each prime contractor is responsible for the submission of this report by each of its subcontractors.
- B. Instructions for coding certified payrolls. In addition to maintaining the information required by Article V.C, each Contractor shall include, on the weekly payroll submissions, the code designating each employee's craft, skill level, protected class status and domicile in accordance with the following table:

<u>CRAFT CODE</u>	<u>DESCRIPTION</u>	<u>CRAFT CODE</u>	<u>DESCRIPTION</u>
1	Electrical	22	Carpet, Linoleum, Vinyl Tile

<u>CRAFT CODE</u>	<u>DESCRIPTION</u>	<u>CRAFT CODE</u>	<u>DESCRIPTION</u>
2	Iron Worker	22	Layer
3	Sheet Metal Work	23	Elevator Constructor
4	Asbestos Wrkr/Heat & Frost Insulator	24	Cement Mason
5	Plumber, Pipe or Steamfitter	25	Laborer or Allied Worker
7	Boilermaker	26	Glazier & Glassmaker
8	Sprinkler Fitter	27	Painter, Paperhanger, Taper
9	Brick, Caulk, Marble Point, Terrazzo	28	Sign Install
10	Hod Carrier	29	Scrapper
11	Terrazzo Finisher	30	Awning Installer
12	Plasterer	31	Drapery Hanger
13	Lather	32	Low Voltage Electrician
14	Carpenter or Drywall Hanger	33	Towboat Operator-Marine Engineer
15	Mill Worker or Cabinetmaker	34	Towboat Deckhand-Inland Boatworker
16	Millwright	35	Owner/Operator - Truck
17	Roofer	36	Owner/Operator - Heavy Equipment
18	Pile Driver	37	Upholsterer
19	Surveyor/Operating Engineer	38	Teamster, Construction
20	Tile (Ceramic) Marble Fnshr		
21	Tile (Ceramic) Setter		

<u>CODE</u>	<u>DESCRIPTION</u>	<u>CODE</u>	<u>DESCRIPTION</u>
D	San Francisco-Domiciled	B	Black/African American
S	Latino/Hispanic	C	Caucasian/White
O	Asian/Pacific Islander	I	American Indian
		W	Women

C. Required records. For each employee, the Contractor's payroll or similar record shall contain the name, address, whether an employee lives in the Covered Area, telephone numbers, construction Trade, classification, union affiliation (if any), employee identification number, social security number, gender, race, status (e.g., mechanic, apprentice, trainee, helper or laborer), dates of changes in status, hourly wage rates (including rates of contributions for costs anticipated for fringe benefits or cash equivalent thereof), daily and weekly number of hours worked, deductions made and actual wages paid. Records shall be maintained in an easily understandable and retrievable form, however, to the degree that existing records satisfy this requirement, the Contractor shall not be required to maintain separate records.

D. Additional information. The report required by Article V.A shall be accompanied by:

1. A statement of any problems encountered by the Contractor in obtaining Minority, women or resident referrals from any union and
2. A statement of the reasons why the Contractor failed to meet the ethnic, gender or 50 percent San Francisco Resident employment goals (if the goals were not met), and the reasons why the Contractor was not able to perform any of the steps set forth in Article III.A.1-14 (if any of the steps were not taken).

- E. Inspection of records. The Contractor shall make the records required under this section available for inspection or copying by authorized representatives of the Agency, and shall accommodate reasonable requests by the Agency to interview employees during working hours on the job if it is not feasible to conduct such interviews during non-working hours.
- F. Failure to submit reports. If a Contractor fails or refuses to provide the reports to the general contractor as required by Article V.A, the Agency, upon notice from the general contractor of the Owner, shall consider but not be required to institute arbitration proceedings against the noncompliant Contractor pursuant to Article VIII of Attachment H.
- G. Submission of good faith effort documentation. If the Contractor's good faith efforts are at issue, the Contractor shall provide the Agency with the documentation of its efforts as required by Article III.A.

VI. AGENCY MEETINGS.

The Agency shall make a representative available to hold periodic on-site meetings for each Project to discuss the reporting requirements, prospective work force composition and any problems that may be anticipated in meeting the work force goals. The Agency may invite outreach organizations to attend such meetings. A representative of each Contractor, Consultant and each of its subcontractors and subconsultants currently at work on the Owner Improvements who have not attended a prior meeting shall be required by its Contract or Professional Services Contract to attend such meeting; however, failure by any Contractor, Consultant, subcontractor or subconsultant to attend the Agency meeting shall not constitute a breach of this Attachment H.

EXHIBIT D

Construction Workforce Hire Policy

EXHIBIT D

CONSTRUCTION WORKFORCE HIRE POLICY of the Successor Agency to the Redevelopment Agency ("Agency")

A. Procedures For Construction Workforce Hires

1. Compliance with the Policy

The Project Sponsor agrees and will require each Contractor and all subcontractors to use its good faith efforts to employ 50% of its construction workforce hires by trade and by hours from qualified San Francisco Residents with first consideration given to Project Area Residents. Project Sponsors and Contractors will be deemed in compliance with this Construction Workforce Hire Policy ("Policy") by meeting or exceeding the goal or by taking the following steps in good faith towards compliance.

2. Execute Employment and Contracting Agreement

The Project Sponsor shall execute an Agreement which details the requirements of the Policy, as well as the Successor Agency's Equal Opportunity Program, if applicable. The Project Sponsor shall incorporate by reference or attach the Agreement to its contract with the general contractor. The general contractor shall do the same in its contracts with its subcontractors. Thus, each Contractor will be obligated to comply with the terms of the Agreement. The Project Sponsor and/or Contractors shall retain the executed Agreements and make them available to the Compliance Officer upon request.

3. Submission of Labor Force Projections and Other Data

The general contractor shall submit, to the extent available, labor force projections to the Compliance Officer within two (2) weeks of award.

4. Submit Subcontractor Information Form

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

5. Preconstruction Meeting

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

6. Submit Construction Worker Request Form

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

EXHIBIT D

7. Response from CityBuild

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

8. Action by Contractor When Referrals Available

The Project Sponsor or Contractor whose request has been satisfied in full or in part shall make the final determination of whether the Project Area Residents or San Francisco Residents are qualified for the positions and the ultimate hiring decision. The Agency strongly encourages the Contractor to hire the qualified Project Area Residents or San Francisco Residents referred by CityBuild. However, if the Contractor finds the Project Area Residents or San Francisco Residents are not qualified, then the Contractor shall send the Project Area Residents or San Francisco Residents back to CityBuild. Before the close of business on the same day, the Contractor shall fax or email a statement addressed to CityBuild stating in detail the reason(s) the Project Area Residents or San Francisco Residents were not qualified or the reason(s) for not hiring the Project Area Residents or San Francisco Residents. CityBuild shall, within one (1) business day of receipt of the fax or email, send new qualified Project Area Residents or San Francisco Residents that meet the legitimate qualifications set by the Contractor or alternatively, send a fax or email stating that no qualified Project Area Residents or San Francisco Residents are currently available.

9. Action by Contractor When Referrals Unavailable

If a Contractor receives a response from CityBuild stating that no qualified Project Area Residents or San Francisco Residents are currently available, then the Contractor may hire the number of construction workers requested from CityBuild, using its own recruiting methods, giving first consideration to Project Area Residents and then San Francisco Residents. Any additional new construction workforce hires (including the replacement of any terminated workers) must comply with this Policy, unless the Contractor has already met or exceeded the goal. The Contractor must keep a copy of the response it receives from CityBuild as proof of compliance and submit a copy of each response received to the Compliance Officer upon request.

10. Action by Contractor When No Response From CityBuild

If a Contractor has not received a response to its construction worker request from CityBuild within two (2) business days, then the Contractor should immediately advise the Compliance Officer by phone, fax or email. The Compliance Officer or his/her designee shall cause a response to be sent to the Contractor within two (2) business days of being notified. If the Contractor does not receive a response from CityBuild within four (4) business days (the original two (2) business days plus the additional two (2) business days), then the Contractor may hire the number of construction workers requested from CityBuild, using its own recruiting methods, giving first consideration to Project Area Residents and then San Francisco Residents. Any construction workforce hires (including the replacement of any terminated workers) must comply with this Policy, unless the Contractor has already met or exceeded the goal. The Contractor must keep a copy of the response it receives from CityBuild as proof of compliance and submit a copy of each response received to the Compliance Officer upon request. This Policy is intended to provide qualified Project Area and San Francisco Residents with employment opportunities without causing undue delay in hiring needed construction workers.

EXHIBIT D

11. Action by Contractor When No Response From Union

The Contractor should immediately advise the Compliance Officer by phone, fax or email when the Contractor has sent a qualified Project Area Resident or San Francisco Resident to a union hall for referral in accordance with a collective bargaining agreement and the union did not refer the qualified Project Area or San Francisco Resident back for employment or when the union referral process impedes the Contractor's ability to meet its obligations under this Policy. Nothing in this Policy shall be interpreted to interfere with or prohibit existing labor agreements or collective bargaining agreements.

12. Hiring Apprentices

A Contractor may meet part of the Construction Workforce Goal by hiring apprentices. However, hiring an apprentice does not satisfy or waive the trainee hiring obligation, if any, for design professionals. Unless otherwise permitted by law, apprentices must be trained pursuant to training programs approved by the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training or the California Department of Industrial Relations, Division of Apprenticeship Standards. Credit towards compliance will only be given for paid apprentices actually working on the project. No credit is available for apprentices while receiving class room training. Under no circumstances shall the ratio of apprentices to journeymen in a particular trade or craft exceed 1:5.

13. Termination and Replacement of Referrals

If at any time it becomes necessary to terminate for cause a construction worker who was hired under this Policy, the Contractor shall notify CityBuild in writing via fax or email and submit a report of termination pursuant to Section (B)(4). If the Contractor intends to fill the vacant position, then the Contractor shall follow the process set forth in this Policy beginning at Section (A)(6).

B. Reporting Requirements For Construction Workforce

1. Submission of Certified Payroll Reports

Each Contractor subject to this Policy shall submit to the Agency a certified payroll report for the preceding work week on each of its employees. The Project Sponsor is ultimately responsible for the submission of these reports by the Contractors. The certified payroll report is due to the Agency by noon each Wednesday. To facilitate compliance, the Agency uses the online Elation System (<http://www.elationsys.com>) for submission of certified payroll reports. This system is available at no cost to the Contractor and Elation is compatible with all major computer payroll systems. Training and educational materials for Elation are available at no cost online and through the Compliance Officer. Contractors are required to report certified payroll using the Elation System at www.elationsys.com. However, a waiver may be granted to any Contractors who do not have a computer, online access or who use a computer payroll system that is incompatible with Elation.

2. Contents of Certified Payroll Reports

If certified payroll records are submitted via the Elation System, the required data points are already listed. If certified payroll records are submitted in paper form, the records shall be organized in an easily understandable format and contain all the following information: the name, address, telephone number, residency (redevelopment project area, San Francisco or other), last four (4) digits of the worker's Social Security number, gender, ethnicity (see codes in Section (B)(8)), construction trade (see codes in Section (B)(8)), classification (e.g., mechanic, apprentice, trainee, helper or laborer), union affiliation (if any), dates of changes in status, daily and weekly number of hours worked, hourly wage rates (including rates of contributions for costs anticipated for fringe benefits or cash equivalents thereof), deductions made and actual wages paid. To the degree that existing certified payroll records satisfy these requirements, the Contractor shall not be required to maintain separate records.

EXHIBIT D

3. Additional Information

In order to prevent unlawful discrimination in the selection, hiring and termination of employees on the basis of race, ethnicity, gender or any other basis prohibited by law and to identify and correct such unlawful practices, the Agency will monitor and collect information on the ethnicity and gender of each construction worker and apprentice. If an identifiable pattern of apparent discrimination is revealed by this additional information, it will be treated as a breach of this Policy and may be addressed as set forth in the arbitration provisions included in Agency contracts.

4. Report on Terminations

1 Note: The Project Sponsor is required to provide complete Social Security numbers upon the request of the Agency. In the event a Project Area Resident or San Francisco Resident hired pursuant to this Policy is terminated for cause, the responsible Contractor shall within two (2) days fax or email a termination report to CityBuild with a copy to the Compliance Officer stating in detail: (1) the name of the worker(s) terminated; (2) his/her job title and duties; (3) the reasons and circumstances leading to the termination(s); (4) whether the Contractor replaced the construction worker(s); and (5) whether the replacement worker(s) were Project Area Resident(s) or San Francisco Resident(s).

5. Inspection of Records

The Project Sponsor and each Contractor shall make the records required under this Policy available for inspection or copying by authorized representatives of the Agency and its designated Compliance Officer, and shall permit such representatives to interview construction workers and apprentices during working hours on the job.

6. Failure to Submit Reports

If a Contractor fails or refuses to provide the reports as required it will be treated as a breach of this Policy and may be addressed under arbitration provisions included in Agency contracts.

7. Submission of Good Faith Effort Documentation

If the Project Sponsor's or Contractor's good faith efforts are at issue, the Contractor shall provide the Agency or its designated Compliance Officer with the documentation of its efforts to comply with this Policy and the Agreement. The Project Sponsor or Contractor must maintain for the duration of the Term, a current file of the names, addresses and telephone numbers of each Project Area Resident or San Francisco Resident applicant referral (whether a self referral or a referral from a union, CBO or CityBuild referral) and what action was taken with respect to each such individual.

EXHIBIT E

Trainee Hiring Program

EXHIBIT E

**OFFICE OF COMMUNITY INVESTMENT AND INFRASTRUCTURE (OCII)
TRAINEE HIRING PROGRAM**

A. Procedures For Trainee Hiring

1. Compliance with the Trainee Hiring Goal

The Project Sponsor acknowledges there is a trainee hiring goal for architects, engineers, and other design professionals on contracts or subcontracts over \$100,000. The trainee hiring goal requires architects, engineers and other design professionals only to hire qualified San Francisco residents as trainees. The trainee hiring goal is based upon the total amount of the design professional’s contract as follows:

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

The Project Sponsor agrees and will require each design professional to exercise the good faith efforts in an attempt to meet the trainee hiring goal. Project Sponsors and design professionals will be deemed in compliance with this Trainee Hiring Program (“Program”) by meeting or exceeding the trainee hiring goal or by take the following steps in good faith towards compliance.

2. Execution and Incorporation of a Trainee Hiring Agreement

The Project Sponsor shall execute an Agreement which details the requirements of the Program, and shall incorporate by reference or attach the Agreement to its contract(s) with the architects, engineers and other design professionals. Thus, each design professional (regardless of tier) will be obligated to comply with the terms of the Agreement. The Project Sponsor and/or the design professionals shall retain the executed Agreements and make them available to the Compliance Officer upon request.

3. Contact OEWD for Referrals

Each design professional shall contact the City and County of San Francisco Office of Economic and Workforce Development (OEWD) to request referrals for the required trainee positions. The request will indicate generally: (1) the number of trainees sought; (2) the required skills set (keeping in mind that these are trainee positions); (3) a brief description of job duties; (4) the duration of the trainee period; and (5) any other information that would be helpful or necessary for OEWD (or the educational institutions that it works with) to make the referral. The minimum duration of assignment is part-time for one semester. However, design professionals are strongly encouraged to offer longer trainee employment periods to allow a more meaningful learning experience. (For example, a half-time or full-time assignment over the summer.) The manner of contact between the design professional and OEWD shall defined at the discretion of OEWD and may require the design professionals to send a confirming letter or complete one or more forms. Each design professional is required to timely provide all of the information requested by the OEWD in order to get the referrals.

4. **Response from OEWD**

OEWD may make a direct referral or request one of its partners, such as a community based organization (“CBO”) or educational institution, to make a referral. Each CBO or educational institution may have a different way of referring applicants, such as: sending resumes directly to the design professional; having the applicant contact the design professional by phone; require design professionals to conduct on-campus interviews; or some other method. The timing and method of the response will be defined with the design professional during the initial referral request. The design professional is required to follow the process set by OEWD or its partner (CBO or educational institution) in order to get the referrals.

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

The design professional shall interview each applicant prior to making the decision to hire or not to hire. The design professional shall make the final determination whether the applicant is qualified for the trainee position and the ultimate hiring decision. The design professional shall notify OEWD or its partner in writing of the hiring decision.

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

If after contacting OEWD the design professional is informed that no San Francisco residents are currently available, then the design professional should wait thirty (30) days and contact OEWD or its partner a second time to inquire whether qualified San Francisco residents are currently available for hire as trainees. If no qualified San Francisco residents are currently available after the second request, then the design professional has fulfilled its obligation under the Program, provided that the design professional has acted in good faith. The design professional must retain its file on all of the steps it took to comply with the Program and submit a copy of its file to the Compliance Officer upon request.

7. **Action by Design Professional When No Response is Provided**

If a design professional has not received a response to its request for referrals from any of OEWD’s CBOs or educational institutions within five (5) business days after the design professional has fully complied with the procedures, if any, set by OEWD for obtaining referrals, then the design professional should immediately advise the Compliance Officer by phone, fax or email. The Compliance Officer or his/her designee shall cause the CBO or educational institution to respond to the design professional within five (5) business days of the Compliance Officer being notified. If the design professional still has not received a response after this additional five (5) business day period has run, then the design professional has fulfilled its obligation under the Program, provided that the design professional has acted in good faith. Each design professional must retain its file on all of the steps it took to comply with the Program and submit a copy of its file to the Compliance Officer upon request.

8. **Termination of Trainee for Cause**

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

B. Reporting Requirements For Trainee Hires

1. Reporting

Upon request, the design professional (i.e. employer) shall fax or email a report to the Compliance Officer stating in detail: (1) the names of the San Francisco resident(s) interviewed for trainee positions; (2) the date(s) of each interview; (3) the reasons for not hiring the San Francisco resident(s) interviewed; (4) the name, address, gender and racial/ethnic background of the successful candidate for the trainee position; and (5) the number of San Francisco residents hired as trainees.

2. Report on Terminations

In the event a San Francisco resident hired pursuant to the Program is terminated for cause, the responsible design professional shall within five (5) days fax or email a termination report to the Compliance Officer stating in detail: (1) the name of the trainee(s) terminated; (2) his/her job title and duties; (3) the reasons and circumstances leading to the termination(s); and (4) whether the design professional replaced the trainee(s).