

ATTACHMENT H

MISSION BAY SOUTH

PROGRAM IN DIVERSITY/ECONOMIC DEVELOPMENT PROGRAM

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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.

ATTACHMENT H

SCHEDULE 2

**EQUAL PRE-CONSTRUCTION AND CONSTRUCTION PHASE OPPORTUNITY FOR
MINORITY AND WOMAN-OWNED BUSINESS ENTERPRISES**

- I. **INCORPORATION.** Each Contract or Professional Services Contract between an Owner, a Consultant or Contractor and any Person shall physically incorporate in and make binding on the parties to that Contract or Professional Services Contract the applicable provisions of Articles VI, VII and VIII of Attachment H and this Schedule 2.
- II. **MBE AND WBE PARTICIPATION GOALS.** The Agency has made a finding that discrimination has occurred against businesses Owned by women and Minority Group Persons. Accordingly, each Contractor shall make good faith efforts to achieve the goals which have been designed to correct the effects of past discrimination and are set forth in Articles VI and VII of Attachment H. The goals described in this Schedule 2 shall be calculated as a percentage of the total value of all Professional Services Contracts or Contracts, as applicable, on an individual Project basis, or, at an Owner's election, on a Major Phase basis, as described in Article VI.C of Attachment H.
- III. **GOOD FAITH EFFORTS TO MEET GOALS WITH LOCAL MBEs AND WBEs.**
- A. Each Owner and all Contractors and Consultants with Contracts or Professional Services Contracts shall make good faith efforts as defined in this Article III to give First Consideration to M/WBEs with respect to Owner Improvements constructed by or at the behest of the Owner. The general contractor and prime contractors are responsible for ensuring that each of their subcontractors meets these requirements.
- B. Good faith efforts constitute the standard by which compliance will be measured, and compliance with the following steps shall be deemed to constitute good faith efforts:
- I. Not less than 30 days prior to the selection of Contractors, each Owner, Contractor or Consultant shall:
- a. Advertise for M/WBEs interested in competing for the Contract or Professional Services Contract, in general circulation media, trade association publications, including local publications serving the Covered Area and media focused specifically on Minority or Woman-Owned businesses such as the *Small Business Exchange* and the *Bid and Opportunities Newsletter*, of the opportunity to

submit bids or proposals and to attend a pre-bid meeting to learn about contracting opportunities.

- b. Search through available published lists of M/WBEs in San Francisco and the Bay Area which provide the service being sought including local lists including M/WBEs in the Covered Area such as the San Francisco Human Rights Commission's MBE/WBE Directory and the Agency's M/WBE database, in order to identify such M/WBEs and provide written notice to them, of the opportunity to bid for Contracts or Professional Services Contracts and to attend a pre-bid or pre-solicitation meeting to learn about contracting opportunities.
2. Where Contracts or Professional Services Contracts are being awarded pursuant to a bidding process, each Owner, Contractor or Consultant shall hold a pre-bid or pre-solicitation meeting for all interested Contractors or Consultants not less than 15 days prior to the opening of bids or the closing of the solicitation process. The Agency shall be advised of any such meetings and may attend as an observer.
 3. Each Owner or Contractor or Consultant shall follow up initial solicitations of interest by contacting the M/WBEs to determine with certainty whether the enterprises are interested in performing specific items for design or construction of Owner Improvements.
 4. Each Owner and Contractor or Consultant shall divide, where feasible and consistent with other contracting objectives, the Contract and Professional Services Contract work into small units to facilitate M/WBE participation, including, where feasible, offering items of the Contract work which the Contractor or Consultant would normally perform itself.
 5. Each Owner and Contractor or Consultant shall provide M/WBEs with complete, adequate and ongoing information about the plans, specifications and requirements of construction work, service work and material supply work. This paragraph does not require the Owner, Contractor or Consultant to give M/WBEs any information not provided to other contractors. This paragraph does require the Owner and the Contractor or Consultant to answer carefully and completely all reasonable questions asked by M/WBEs and to undertake good faith effort to ensure that M/WBEs understand the nature and the scope of the work.
 6. Each Owner or Contractor or Consultant shall assist M/WBEs in their efforts to obtain bonds, lines of credit and insurance. This assistance shall include making use of the Citywide Surety Bond Program, where applicable and appropriate. The Owner and Contractor or Consultant shall

require no more stringent bond or insurance standards than required of other business enterprises.

7. Each Owner and its general contractor or lead Consultant shall encourage and assist higher tier subcontractors in undertaking good faith efforts to utilize M/WBEs as lower tier subcontractors.
8. Each Owner and Contractor or Consultant shall use the services of Minority and woman contractor associations, Local M/WBE assistance offices and other community-based, Minority and women business development organizations that provide assistance in the recruitment and placement of M/WBEs.
9. Each Owner, Contractor and Consultant shall negotiate with potential subcontractors in good faith and shall not reject as unqualified an M/WBE without due consideration of its capacities.

IV. **PROCESS AND CRITERIA FOR DETERMINING M/WBE ELIGIBILITY.**

- A. If at any time an Owner or Contractor or Consultant seeks to confirm that an MBE or WBE is eligible to be included in the percentage calculations contained in Articles VI or VII of Attachment H, the Owner, Contractor or Consultant may submit to the Agency an M/WBE Application for Certification and its accompanying Affidavit (Exhibit A hereto) completed by the Minority or woman owner; provided that an M/WBE that was previously certified by the Agency may, instead, submit only the short M/WBE Eligibility Statement (Exhibit B hereto). After receipt of the Application/Affidavit or eligibility statement, the Agency shall provide written notice to the Owner, Contractor or Consultant confirming whether the MBE or WBE is deemed certified by the Agency. Such notice shall be provided within five (5) days for M/WBEs who were previously certified by the Agency and ten (10) days for all others.
- B. The Agency shall have sole authority for certification or denial of certification of MBEs and WBEs, except that the Agency shall accept the certifications of the Human Rights Commission of the City and County of San Francisco unless the Agency has reasonable grounds to believe that the certification is inappropriate or otherwise incorrect or the MBE/WBE does not meet the definition of MBE or WBE set forth in Attachment H, Articles II.N or II.U, respectively. The Agency may certify MBEs and WBEs that are not certified by the Human Rights Commission.
- C. In order to be certified as an MBE or WBE the business must meet the definition of MBE set forth in Attachment H, Article II.N or WBE set forth in Article II.U and meet any additional standard Agency criteria, including those relating to M/WBE suppliers, that are consistent with this Attachment H and are generally

applicable to other redevelopment projects. In the event of any conflict between the certification criteria and this Attachment H (including the definitions herein), Attachment H shall control. For informational purposes, a copy of the certification criteria as of the date of adoption of the South OPA is included as Exhibit C to this Schedule 2.

V. **PROCEDURES.**

- A. Notice to Agency. On a quarterly basis, each Owner will provide the Agency with a written summary of all Contracts and Professional Services Contracts awarded during the prior quarter for its Project(s). The summary shall be provided for informational purposes and for each Contract and Professional Services Contract shall include the following: (i) name, address and any license number(s) of Contractor or Consultant; (ii) name of awarding authority; (iii) basic description of scope of work; (iv) whether M/WBE status is claimed for the Contractor or Consultant.

- B. Dissemination of Agency Information. Each Owner shall provide to each of its Consultants and Professional Services Contracts a basic information packet regarding the Agency's M/WBE program and procedures, provided that the same has been provided by the Agency to Owner.

EXHIBIT A

APPLICATION FOR CERTIFICATION
(MINORITY OR WOMAN-OWNED BUSINESS ENTERPRISE AFFIDAVIT)
(To be completed by Minority or Woman Owner)

(Name of Project)

(General Contractor if not the General itself)

1. Name of Firm _____
(Has business operated under another name? _____ If so, explain under item 22.)

2. Contact Person _____

3. Business Address _____
(P. O. Box is unacceptable)

4. Mailing Address _____
(If different)

5. Telephone Number(s) _____ FAX: _____

6. Is business address or phone number also that of a residence? _____ If so, please explain under item 22.

7. Indicate the type of industry or the business:

- Construction Professional Consultant Supplier
 Manufacturer Manufacturer's Representative Other _____

Identify types of services or products offered. (Equipment operator or trucker should identify the equipment it owns here or under item 22.)

8. Type of ownership: Corporation Sole Proprietor Partnership
 Joint Venture Indicate if another entity _____

9. With your application please submit true and correct copies of the following documents:
- a. Proof of ethnic identification, such as birth certificate or tribal registration, if you are a minority owner.
 - b. Contractors' State License No. _____
(Name of person who qualified for license)

NOTE: If you have formed a partnership or incorporated since becoming a contractor, the partnership or corporation must have its own Contractors' State License.

- c. Registration and license issued by the State Board of Architectural Examiners, the Board of Registration for Professional Engineers and Land Surveyors, the State Board of Accountancy or the State Bar of California or the Bureau of Collection and Investigative Services.
- d. Local business license(s) and permits(s).
- e. Fictitious name filing, if you are doing business as a fictitious entity. The names on the Contractors' State License and the fictitious name filing must match.
- f. Partnership Agreement, if the firm is a partnership. The names of the partners must match those shown to be partners on the Contractors' State License.
- g. If the firm is a corporation:
 - i. Articles of Incorporation,
 - ii. Corporate Bylaws and
 - iii. Minutes of the first meeting.
- h. Joint Venture Agreement (including dollar amount of capital contribution), if a joint venture is the applicant.
- i. Federal personal tax returns, Form 1040, in full with W-2 statements and all supporting schedules and statements for *all* shareholders for the past two years.
- j. Federal corporate tax returns, Form 1120 (including Schedule E), in full with *all* supporting schedules and statements such as Form 4562 for the past two years.
- k. Resumes pointing out the years of specific experience to qualify for the responsibilities delegated to each *Management* person listed in item 15 of this Application.
- l. Proof, if the firm is registered as a disadvantaged business under section 8(a) of the Small Business Act.
- m. Inventory (not to exceed a 10-page extract), if the firm is a manufacturer or supplier.

10. List the owners who have an interest of five (5) percent or greater:

Name	Ethnicity*	Gender M/F	Date of Ownership	Number of Shares	Vote %	U. S. Citizen (yes/no)
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____

If more Owners, check here and continue listing under item 22.

*American Indian or Alaskan Native, which includes Alaskan Indians, Inuits and Aleuts (any person having origins in the indigenous peoples of North America and who is an enrolled member of a federally-recognized tribe), Asian (any person of Chinese, Japanese, Korean, Pacific Islander, Samoan, Filipino, Asian-Indian or South East Asian), Black (any person having origins in any of the Black racial groups of Africa), Latino (any person of Spanish culture with origins in Mexico or other Spanish speaking countries in Central or South America, or the Caribbean Islands).

11. List the contributions of money, equipment, real estate, or expertise of each of the owners for firms with less than 100 percent disadvantaged ownership.

12. Date firm was established _____. The total number of years the firm has been in business is _____. The number of years the firm has been in business under present ownership is _____. The following is a brief explanation of the change in ownership of the firm (if applicable):

13. Board of Directors:

Name	Title	Ethnicity	Gender M/F	Date Elected/ Expiration/Term
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

If more Directors, check here and continue listing under item 22.

14. If the Board of Directors has changed within the last three years, list the names of the former Directors, their ethnicity, gender and date of resignation under item 22.

15. **Management:** The following duties are actually performed by the persons indicated below:

a. Preparation of estimates and bids:

by _____ who reports to _____
name name

b. Hiring, firing of management personnel:

by _____ who reports to _____
name name

c. Purchasing of major equipment, material or supplies:

by _____ who reports to _____
name name

d. Financial control:

by _____ who reports to _____
name name

e. Negotiations and approval of contracts:

by _____ who reports to _____
name name

f. Administration of contracts:

by _____ who reports to _____
name name

g. Supervision of field operations:

by _____ who reports to _____
name name

h. Marketing and sales activities:

by _____ who reports to _____
name name

i. Warehouse inventory and control:

by _____ who reports to _____
name name

16. Federal identification no. _____

17. Indicate the firm's gross receipts and average number of employees for the last three tax years:

Year ending _____ Amount _____ Employees _____

Year ending _____ Amount _____ Employees _____

Year ending _____ Amount _____ Employees _____

18. **MANUFACTURERS AND SUPPLIERS ONLY**: For last year:

a. Lowest no. of employees _____

b. Highest no. of employees _____

c. No. of employees whose job lasted the entire year _____

d. Were any of the employees on another firm's payroll? _____ If so, identify the firm: _____

e. Value of current inventory \$ _____

f. Location of inventory _____

19. How were applications to other local agencies handled?

	<u>Name of local agency</u>	<u>L/M/WBE?</u>	<u>Approved Yes/No</u>	<u>Date</u>
a.	_____	_____	_____	_____
b.	_____	_____	_____	_____
c.	_____	_____	_____	_____
d.	_____	_____	_____	_____

20. Name of Surety _____

Name of Agent _____ Telephone No. _____

Bonding Limit _____ Sources of letter of credit _____

21. If the firm or other firms with any of the same officers has previously been denied recognition as an M/WBE, MBE or WBE please explain the circumstances.

22. Identify any owner or management official of the named firm who is or has been an employee of another firm that has an ownership interest in or a present business relationship with the named firm. Describe present business relationships which include sharing space, equipment, financing or employees, as well as common owners. Please use this additional space to supplement the information provided above, especially under items 1, 6, 10, 11, 12 and 13. You may attach additional sheets.

23. The firm intends to subcontract _____ percent of the work to be performed under its contract with _____ to the following:

	<u>Name</u>	<u>M/WBE Yes/No</u>	<u>Amount of Subcontract</u>	<u>Scope of Work</u>
a.	_____	_____	_____	_____
b.	_____	_____	_____	_____
c.	_____	_____	_____	_____
d.	_____	_____	_____	_____
e.	_____	_____	_____	_____
f.	_____	_____	_____	_____
g.	_____	_____	_____	_____

AFFIDAVIT

(To be completed by Minority or Woman Owner)

"The undersigned swears that the foregoing statements are true and correct and include all material information necessary to identify and explain the operations of _____

(Name of Firm)

as well as the ownership thereof. Further, the undersigned covenant(s) and agree(s) to provide to the local agency current, complete and accurate information regarding actual joint venture arrangements and to permit the audit and examination of the books, records and files of the joint venture, or those of each joint venturer relevant to the joint venture, by authorized representatives of the agency. Any material misrepresentation will be grounds for terminating any contract which may be awarded and for initiating action under state law concerning false statements."

NOTE:

- a. The conditions outlined in this affidavit are applicable to any additional information that is required to be provided to authenticate the affiant's firm.
- b. You are required to notify the agency if any significant changes occur that would alter your status as an M/WBE.
- c. Section 94.4 of the Streets and Highways Code states that a D/M/WBE is subject to a civil penalty of not more than \$5,000 if said firm willfully and knowingly makes a false statement with the intent to defraud this certification.

Name of Firm

Name of Firm

Signature

Signature

Name and Title

Name and Title

Date _____

Date _____

On this _____ day of _____, 199_____, before me appeared _____, to me personally known, who, being duly sworn, did execute the foregoing affidavit, and did state that he or she was properly authorized by _____ to execute the affidavit and did so as his or her free act and deed.
(Name of Firm)

Notary Public _____ Commission expires _____
(Seal)

Date _____, State of California, County of _____

On this _____ day of _____, 199_____, before me appeared _____, to me personally known, who, being duly sworn, did execute the foregoing affidavit, and did state that he or she was properly authorized by _____ to execute the affidavit and did so as his or her free act and deed.
(Name of Firm)

Notary Public _____ Commission expires _____
(Seal)

Date _____, State of California, County of _____

EXHIBIT B

M/WBE ELIGIBILITY STATEMENT

(To be completed by Minority or Woman Owner)

(Name of Project)

(General Contractor if not the General itself)

I, _____, declare:

1. I have carefully reviewed the **Affidavit/Declaration** executed by myself

on _____ on behalf of _____
Date Name of Firm

2. The only changes to said document are:

I have personal knowledge of the foregoing facts and if called as a witness I could and would testify competently thereto. I declare under penalty of perjury that the foregoing is true and correct.

Executed on _____
Date

in _____
Place of Execution

Signature of Declarant

Title

EXHIBIT C

M/WBE DEFINITIONS

A. **Economically Disadvantaged:** Once a business reaches the 3-year average size threshold for the applicable industry the business ceases to be economically disadvantaged, it is not an eligible M/WBE and it will not be counted towards meeting M/WBE goals.

<u>Industry</u>	<u>Gross Income</u>
Construction	\$14,000,000
Suppliers	2,000,000
Professional or Personal Service	2,000,000

B. **Minority or Minority Group Person**

1. **American Indian:** any person having origins in the original peoples of North America including Alaskan Natives, Aleuts, Eskimos, and American Indians and who maintains cultural identification through tribal roll registration, membership, participation or community recognition.
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;
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;

C. **Minority-owned Business Enterprise (MBE):** an economically disadvantaged business, which is an independent and continuing business for profit, 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.

D. **Owned:** 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 the claimed ownership percentage.

E. **Person:** one or more individuals, partnerships, associations, organizations, corporations, and cooperatives.

F. **Woman-owned Business Enterprise (WBE):** an economically disadvantaged business, which is an independent and continuing business for profit, which performs a commercially useful function, and is owned and controlled by one or more women residing in the United States or its territories.

G. **Woman/Minority-owned Business Enterprise (W/MBE):** an economically disadvantaged business, which is an independent and continuing business for profit, which performs a commercially useful function, and is owned and controlled by one or more women and minority group persons residing in the United States or its territories.

M/WBE CERTIFICATION CRITERIA

1. The Agency will accept the certifications or denials of the Human Rights Commission of the City and County of San Francisco unless the Agency has reasonable grounds to believe that the certification or denial is inappropriate or otherwise incorrect.
2. In order to be certified as an MBE or WBE the business must meet the definition of MBE set forth in subsection C or WBE set forth in subsection F.
3. In order for the M/WBE component of a joint venture to be recognized the ownership interest must meet a 35 percent threshold; provided, that if the joint venture subcontracts to non-M/WBEs a percent of the work in excess of the percentage interest that the M/WBE has in the joint venture, the joint venture shall not be recognized as an M/WBE.
4. The Agency will not recognize a subcontractor as an M/WBE if it subcontracts more than 50 percent of its subcontract amount to non-M/WBEs.
5. A contractor may substitute the amount of a purchase order to a minority or woman-owned supplier for up to 15 percent of the M/WBE subcontractor goals. In order to be recognized, a supplier must perform a commercially useful function in the supply process. However, if the supplier is acting as a mere conduit such as a manufacturer's representative or broker then only the amount of the commission or three percent, whichever is greater, will be credited towards meeting the M/WBE goals. If none of the work is to be subcontracted, minority and woman-owned suppliers may be utilized without limitation.
6. If a firm contends that it is an MBE or WBE, the minority or woman owner must submit to the Agency an M/WBE Application for Certification with accompanying Affidavit under penalty of perjury that he or she is a member of a class protected by the Purchasing Policy and Procedures; provided that an M/WBE that was previously recognized by the Agency may, instead, submit a one-page M/WBE Eligibility Statement to update its file. The owner of the firm will sign a declaration swearing to the truth and accuracy of all statements made and material submitted to the Agency, including additional information.
7. An eligible MBE or WBE shall be an independent business. In determining whether a business is independent, the Agency shall examine the adequacy of the business's resources for the scope of work under a proposed contract, its financial independence, the extent of its equipment leasing, and its relationships with non-minority firms; whether the firm:
 - a. is known in the industry or trade to be operated by a non-minority male;
 - b. is operated in tandem with a non-M/WBE;
 - c. has multiple licenses, some of which belong to non-M/WBEs;
 - d. itself owns the equipment or trucks that are to be used on the job;

- e. is listed in the telephone book, preferably in the Yellow Pages under the class for which it is seeking Agency recognition;
 - f. subcontracts back to, leases from or is back-contracted by its prime contractor or subcontractor or joint venturer(s) in an amount unrelated to shared risks and profits. Back contracting includes any agreement or other arrangement between a prime contractor and its subcontractor where the prime contractor performs or secures the performance of the subcontract in such a fashion and/or under such terms and conditions that the prime contractor enjoys the financial benefit of the subcontract. Said agreement or other arrangement includes, but is not limited to, situations where either a contractor or subcontractor agrees that any term, condition or obligation imposed upon the subcontractor by the subcontract shall be performed by or be the responsibility of the prime contractor.
 - g. maintains a permanent office separate from that of its sources of vehicles, subcontractors, the general contractor or from any joint venturer(s) ; and
 - h. in the case of a supplier, whether it carries the material being supplied as a regular part of its inventory.
8. An minority or woman-owned firm shall not have any formal or informal restrictions which limit the customary discretion of the minority or woman owner. The owner should have the authority to perform all of the below functions:
- a. manage either the marketing or production aspects of the business;
 - b. be authorized to sign on all bank accounts, to draw against letters of credit, and to secure surety bonds and insurance; and
 - c. control the profit sharing, pensions or stock option plans.
9. The minority or woman owner must serve as the Chief Executive Officer of the firm, i.e. be the boss. If there are part-owners of the firm who are not minority group persons or women and who are disproportionately responsible (according to percent or degree of ownership) for the operation of the firm, then the firm shall be deemed not controlled by minority group persons or women and shall not be considered an eligible MBE or WBE. Where the actual day-to-day management of the firm is handled by individuals other than the owner, those persons who have the ultimate power to hire and fire the managers shall be considered as controlling the business.
10. All securities evidencing full or partial ownership and/or control of a business entity for purposes of establishing it as a MBE or WBE shall be held directly by minority group persons or women. Among the factors considered in making a determination are whether the owner itself:
- a. possesses sufficient working experience and knowledge to perform the contract;
 - b. controls at least 51 percent of the directors' votes if the firm is incorporated.

11. Minority and woman owners of firms shall make real and substantial contributions of capital and expertise to acquire their interests in the firm. Examples of insufficient contributions include a note payable to the firm or those of its part-owners who are neither minority group persons nor women, or the participation as an employee without management authority.
12. License Qualification Essential: An unregistered person who is used to qualify a professional business as an M/WBE does not meet the Agency's M/WBE requirements of having management and control of the business. Likewise, a person used to qualify a construction business who is not the Qualifying Partner, Responsible Managing Employee or Responsible Managing Officer cannot meet the Agency's M/WBE requirements of having management and control of the business. An owner who is certified by the Agency for one profession, e.g. electrical engineering, cannot attribute that certification to another profession, e.g. mechanical engineering, unless he or she is registered for more than one professional license. By extension a certified minority-owned plumbing business must also be certified to perform electrical work to be an eligible minority-owned electrical contractor.
13. A business requesting to be certified as a MBE or WBE shall supply the Agency with all such additional information as the Agency may deem relevant in order to make a determination of such status. If such information is not supplied within 45 days of it being requested, the Agency may consider the Application for certification withdrawn.
14. A change in ownership of a firm from majority to all or mostly all minority or woman ownership will be carefully scrutinized. The following factors shall be considered:
 - a. The reason of the timing of the change in ownership of the business relative to the time that bids are opened or proposals are considered;
 - b. Whether an employee-owner who had previous or continuing employee-employer relationship between or among present owners has management responsibilities and capabilities;
 - c. Whether the interest of the non-minority ownership or non-woman ownership conflicts with the ownership and control requirements of this Purchasing Policy.

ATTACHMENT H

SCHEDULE 3

PREVAILING WAGE PROVISIONS
(LABOR STANDARDS)

- 1.01 **Applicability.** These Prevailing Wage Provisions (hereinafter referred to as “Labor Standards”) apply to any and all Contracts for construction of the Owner Improvements as defined in this South OPA between each Owner and the Agency of which this Schedule 3 and these Labor Standards are a part.
- 1.02 **All Contract and Subcontracts shall contain the Labor Standards.**
Confirmation by Construction Lender. All specifications relating to the construction of the Owner Improvements shall contain these Labor Standards and the Owner shall have the responsibility to assure that all Contracts, regardless of tier, incorporate by reference the specifications containing these Labor Standards. If for any reason said Labor Standards are not included, the Labor Standards shall nevertheless apply. Each Owner shall supply the Agency with true copies of each Contract for the construction of the Owner Improvements showing the specifications that contain these Labor Standards promptly after due, and complete execution thereof and before any work under such contract commences. Failure to do shall be a violation of these Labor Standards.
- 1.03 **Definitions.** The following definitions shall apply for purposes of this Schedule 3. All terms used herein and not otherwise defined shall have the same meaning as the same term in this South OPA.
- (a) “Contractor” is an Owner if permitted by law to act as a contractor, the general contractor, and any contractor as well as any subcontractor of any tier subcontractor having a Contract that exceeds \$10,000, and who employs Laborers, Mechanics, Working Forepersons, and security guards to perform the construction on all or any part of the Owner Improvements.
 - (b) “Laborers” and “Mechanics” are all persons providing labor to perform the construction, including Working Forepersons and security guards.
 - (c) “Working Foreperson” is a person who, in addition to performing supervisory duties, performs the work of a Laborer or Mechanic during a least 20 percent of the work week.

Prevailing Wage.

- (a) All Laborers and Mechanics employed in the construction of the Owner Improvements will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by section 1.05) the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at the time of payment computed at rates not less than those contained in the General Prevailing Wage Determination (hereinafter referred to as the "Wage Determination") made by the Director of Industrial Relations pursuant to California Labor Code Part 7, Chapter 1, Article 2, sections 1770, 1773 and 1773.1, regardless of any contractual relationship which may be alleged to exist between the Contractor and such Laborers and Mechanics. A copy of the applicable Wage Determination is on file in the offices of the Agency with the Chief of Development and Real Estate. On the date of the South OPA execution, the Agency shall provide the Owner with a copy of the applicable Wage Determination.

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

- (b) Whenever the wage rate prescribed in the Wage Determination for a class of Laborers or Mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractors shall either pay the benefit in the manner as stated therein i.e. the vacation plan, the health benefit program, the pension plan and the apprenticeship program, or shall pay an hourly cash equivalent thereof.
- (c) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or Mechanic the amount of any costs reasonably anticipated in providing benefits under a plan or program of a type expressly listed in the Wage Determination, provided that the Executive Director of the Agency has found, upon the written request of the Contractor, made through an Owner that the intent of the Labor Standards has been met. Records of such costs shall be maintained in the manner set forth in subsection (a) of Article 1.08. The Executive Director of the Agency may require the Owner to set aside in a separate interest bearing account with a member of the Federal Deposit Insurance Corporation, assets for the meeting of obligations under the plan or program referred to above in subsection (b)

of this Article 1.04. The interest shall be accumulated and shall be paid as determined by the Agency acting at its sole discretion.

- (d) Regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

1.05

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

- (a) Any withholding made in compliance with the requirements of Federal, State or local income tax laws, and the Federal social security tax.
- (b) Any repayment of sums previously advanced to the employee as a bona fide prepayment of wages when such prepayment is made without discount or interest. A "bona fide prepayment of wages" is considered to have been made only when cash or its equivalent has been advanced to the employee in such manner as to give him or her complete freedom of disposition of the advanced funds.
- (c) Any garnishment, unless it is in favor of the Contractor (or any affiliated person or entity), or when collusion or collaboration exists.
- (d) Any contribution on behalf of the employee, to funds established by the Contractor, representatives of employees or both, for the purpose of providing from principal, income or both, medical or hospital care, pensions or annuities on retirement, death benefits, compensation for injuries, illness, accidents, sickness or disability, or for insurance to provide any of the foregoing, or unemployment benefits, vacation pay, savings accounts or similar payments for the benefit of employees, their families and dependents provided, however, that the following standards are met:
 - 1. The deduction is not otherwise prohibited by law; and
 - 2. It is either:
 - a. Voluntarily consented to by the employee in writing and in advance of the period in which the work is to be done and such consent is not a condition either for obtaining or for the continuation of employment, or

- b. Provided for in a bona fide collective bargaining agreement between the Contractor and representatives of its employees; and
- 3. No profit or other benefit is otherwise obtained, directly or indirectly, by the Contractor (or any affiliated person or entity) in the form of commission, dividend or otherwise; and
- 4. The deduction shall serve the convenience and interest of the employee.
- (e) Any authorized purchase of United States Savings Bonds for the employee.
- (f) Any voluntarily authorized repayment of loans from or the purchase of shares in credit unions organized and operated in accordance with Federal and State credit union statutes.
- (g) Any contribution voluntarily authorized by the employee for the American Red Cross, United Way and similar charitable organizations.
- (h) Any payment of regular union initiation fees and membership dues, but not including fines or special assessments provided, that a collective bargaining agreement between the Contractor and representatives of its employees provides for such payment and the deductions are not otherwise prohibited by law.

1.06

Apprentices and Trainees. Apprentices and trainees will be permitted to work at less than the Mechanic's rate for the work they perform when they are employed pursuant to and are individually registered in an apprenticeship or trainee program approved by the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training ("BAT") or with the California Department of Industrial Relations, Division of Apprenticeship Standards ("DAS") or if a person is employed in his or her first 90 days of probationary employment as an apprentice or trainee in such a program, who is not individually registered in the program, but who has been certified by BAT or DAS to be eligible for probationary employment. Any employee listed on a payroll at an apprentice or trainee wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate for a Mechanic. Every apprentice or trainee must be paid at not less than the rate specified in the registered program for the employee's level of progress, expressed as a percentage of a Mechanics' hourly rate as specified in the Wage Determination. Apprentices or trainees shall be paid fringe benefits in accordance with the provisions of the respective program. If the program does not specify

fringe benefits, employees must be paid the full amount of fringe benefits listed in the Wage Determination.

1.07

Overtime. No Contractor contracting for any part of the construction of the Owner Improvements which may require or involve the employment of Laborers or Mechanics shall require or permit any such Laborer or Mechanic in any workweek in which he or she is employed on such construction to work in excess of eight hours in any calendar day or in excess of 40 hours in such workweek unless such Laborer or Mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of eight hours in any calendar day or in excess of 40 hours in such workweek, whichever is greater.

1.08

Payrolls and Basic Records.

- (a) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of its construction of the Owner Improvements and preserved for a period of one year thereafter for all Laborers and Mechanics it employed in the construction of the Owner Improvements. Such records shall contain the name, address and social security number of each employee, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for fringe benefits or cash equivalents thereof), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the wages of any Laborer or Mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program, the Contractor shall maintain records which show the costs anticipated or the actual costs incurred in providing such benefits and that the plan or program has been communicated in writing to the Laborers or Mechanics affected. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage prescribed in the applicable programs or the Wage Determination.
- (b) 1. The Contractor shall submit to the Agency on the first Wednesday of each week at noon a copy of the payrolls for the previous month in which any construction of the Owner Improvements was performed. The payrolls submitted shall set out accurately and completely all of the information required by the Agency's Optional Form, an initial supply of which may be obtained from the Agency. The Contractor if a prime contractor or an Owner acting as the Contractor is responsible for the submission of copies of certified payrolls by all subcontractors; otherwise each Contractor shall timely submit such payrolls.

2. Each weekly payroll shall be accompanied by the Statement of Compliance that accompanies the Agency's Optional Form and properly executed by the Contractor or his or her agent, who pays or supervises the payment of the employees.

(c) The Contractor shall make the records required under this Article 1.08 available for inspection or copying by authorized representatives of the Agency. On request the Executive Director of the Agency shall advise the Contractor of the identity of such authorized representatives.

1.09 Occupational Safety and Health. No Laborer or Mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous to his or her safety and health as determined under construction safety and health standards promulgated by Cal-OSHA or if Cal-OSHA is terminated, then by the federal OSHA.

1.10 Diversity Action Program. The utilization of apprentices, trainees, Laborers and Mechanics under this part shall be in conformity with the diversity program set forth in Attachment H including Schedule 1. Any conflicts between the language contained in this Schedule 3 shall be resolved in favor of the language set forth in Attachment H, except that in no event shall less than the Prevailing Wage be paid.

1.11 Nondiscrimination Against Employees for Complaints. No Laborer or Mechanic to whom the wage, salary or other Labor Standards of this Agreement are applicable shall be discharged or in any other manner discriminated against by the Contractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or relating to these Labor Standards.

1.12 Posting of Notice to Employees. A copy of the Wage Determination referred to above in subsection (a) of Article 1.04 together with a copy of a "Notice to Employees," in the form appearing on the last page of these Labor Standards, shall be posted and maintained by the Contractor in a prominent place readily accessible to all applicants and employees performing construction of the Owner Improvements before construction commences. If such Notice and Wage Determination is not so posted or maintained, the Agency may do so.

1.13 Violation and Remedies.

(a) **Compliance Determined on Contract Basis.** Compliance with the provisions of this Schedule 3 shall be determined, and remedies shall be applied, on an individual Contract basis.

- (b) Liability to Employee for Unpaid Wages. The Contractor shall be liable to the employee for unpaid wages, overtime wages and benefits in violation of these Labor Standards.
- (c) Stop Work--Contract Terms, Records and Payrolls. If there is a violation of these Labor Standards by reason of the failure of any Contract for the construction of the Owner Improvements to contain the Labor Standards as required by Article 1.02 ("Non-Conforming Contract"); or by reason of any failure to submit the payrolls or make records available as required by Article 1.08 ("Non-Complying Contractor"), the Executive Director of the Agency may, after written notice to the Owner with a copy to the Contractor involved and failure to cure the violation within five working days after the date of such notice, stop the construction work under the Non-Conforming Contract until the Non-Complying Contractor comes into compliance.
- (d) Stop Work and Other Violations. For any violation of these Labor Standards, the Executive Director of the Agency may give written notice to the Owner, with a copy to the Contractor involved, which notice shall state the claimed violation and the amount of money, if any, involved in the violation. Within five working days from the date of said notice, the Owner shall advise the Agency in writing whether or not the violation is disputed by the Contractor and a statement of reasons in support of such dispute (the "Notice of Dispute"). In addition to the foregoing, the Owner, upon receipt of the notice of claimed violation from the Agency, shall with respect to any amount stated in the Agency notice withhold payment to the Contractor of the amount stated multiplied by 45 working days and shall with the Notice of Dispute, also advise the Agency that the moneys are being or will be withheld. If the Owner fails to timely give a Notice of the Dispute to the Agency or to advise of the withhold, then the Executive Director of the Agency may stop the construction of the Owner Improvements under the applicable Contract or by the involved Contractor until such Notice of Dispute and written withhold advice has been received.

Upon receipt of the Notice of Dispute and withhold advice, any stop work which the Executive Director has ordered shall be lifted, but the Owner shall continue to withhold the moneys until the dispute has been resolved either by agreement, or failing agreement, by arbitration as is provided in Article 1.14.

- (e) General Remedies. In addition to all of the rights and remedies herein contained, but subject to arbitration, except as hereinafter provided, the Agency shall have all rights in law or equity to enforce these Labor

Standards including, but not limited to, a prohibitory or mandatory injunction with respect to the Improvements work being performed by the Non-Complying Contractor. Provided, however, the stop work remedy of the Agency above provided in section (b) and (c) is not subject to arbitration.

1.14


Arbitration of Disputes.

- (a) Any dispute regarding these Labor Standards shall be determined by arbitration through the American Arbitration Association, San Francisco, California office (“AAA”) in accordance with the Commercial Rules of the AAA then applicable, but subject to the further provisions thereof.
- (b) The Agency and all persons or entities who have a contractual relationship affected by the dispute shall be made a party to the arbitration. Any such person or entity not made a party in the demand for arbitration may intervene as a party and in turn may name any such person or entity as a party.
- (c) The arbitration shall take place in the City and County of San Francisco.
- (d) Arbitration may be demanded by the Agency, the Owner or the Contractor.
- (e) With the demand for arbitration, there must be enclosed a copy of these Labor Standards, and a copy of the demand must be mailed to the Agency and the Owner, or as appropriate to one or the other if the Owner or the Agency is demanding arbitration. If the demand does not include the Labor Standards they are nevertheless deemed a part of the demand. With the demand if made by the Agency or within a reasonable time thereafter if not made by the Agency, the Agency shall transmit to the AAA a copy of the Wage Determination (referred to in Article 1.04) and copies of all notices sent or received by the Agency pursuant to Article 1.13. Such materials shall be made part of the arbitration record.
- (f) One arbitrator shall arbitrate the dispute. The arbitrator shall be selected from the panel of arbitrators of the AAA by the parties to the arbitration in accordance with the AAA rules. The parties shall act diligently in this regard. If the parties fail to select an arbitrator, within seven (7) days from the receipt of the panel, the AAA shall appoint the arbitrator. A condition to the selection of any arbitrator shall be that person’s agreement to render a decision within 30 days from appointment.
- (g) Any party to the arbitration whether the party participates in the arbitration or not shall be bound by the decision of the arbitrator whose decision shall

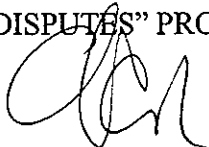
be final and binding on all of the parties and any and all rights of appeal from the decision are waived except a claim that the arbitrator's decision violates an applicable statute or regulation. The decision of the arbitrator shall be rendered on or before 30 days from appointment. The arbitrator shall schedule hearings as necessary to meet this 30 day decision requirement and the parties to the arbitration, whether they appear or not, shall be bound by such scheduling.

- (h) Any party to the arbitration may take any and all steps permitted by law to enforce the arbitrator's decision and if the arbitrator's decision requires the payment of money the Contractor shall make the required payments and the Owner shall pay the Contractor from money withheld.
- (i) Cost and Expenses. Each party shall bear its own costs and expenses of the arbitration and the costs of the arbitration shall be shared equally among the parties.
- (j) 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

1.15

Non-liability of the Agency. Each Owner and Contractor acknowledge and agree that the procedures hereinafter set forth in for dealing with violations of these Labor Standards are reasonable and have been anticipated by the parties in

securing financing, in inviting, submitting and receiving bids for the construction of the Owner Improvements, in determining the time for commencement and completion of construction and in proceeding with construction work.

Accordingly the Owner, and any Contractor, by proceeding with construction expressly waives and is deemed to have waived any and all claims against the Agency for damages, direct or indirect, arising out of these Labor Standards and their enforcement and including but not limited to claims relative to stop work orders, and the commencement, continuance or completion of construction.

ATTACHMENT H

SCHEDULE 4

JOB TRAINING, REFERRAL, HIRING AND ECONOMIC DEVELOPMENT PROGRAM

- I. **PROGRAM COMPONENTS.** Owner and the Agency recognize that development in the South Plan Area has the potential to create substantial employment opportunities at all levels, including Entry Level Positions for Economically Disadvantaged Individuals. To capitalize on these opportunities, Owner commits to the following which shall constitute the sole obligations of Owner, its future tenants and Transferees with respect to first source hiring, referral and job training:
- A. **Establishment of First Source Fund.** To enable the City to administer a program to prepare Economically Disadvantaged Individuals for Entry Level Positions, Owner will pay the sum of One Million Five Hundred Thousand Dollars (\$1,500,000) into a First Source Hiring Fund, designated by the City and to be used for the purposes of job training, referral, and other activities of the citywide First Source Hiring Program as determined appropriate by the City. The “First Source Hiring Program” is a City program which identifies Entry Level Positions to properly allocate training resources, and seeks to make available job opportunities for graduates of these training programs. The funds will be contributed by Owner in three increments of Five Hundred Thousand Dollars (\$500,000) each, once the Certificate of Completion has been finally granted to Owner for each Project that brings the total combined, cumulative development of Commercial Industrial, Retail, and Hotel uses, as defined in the Mission Bay South Redevelopment Plan, to one (1) million, two (2) million, and three (3) million Leasable square feet, respectively. As used in this subsection I.A., “finally granted” shall mean any and all applicable appeal periods for the filing of any administrative appeal challenging the issuance of each Certificate of Completion shall have expired and no such appeal shall have been filed, or if such administrative appeal is filed, the Certificate of Completion shall have been upheld by a final decision in each such appeal without any adverse effect on the Certificate of Completion.
- B. **Job Training Program.** The job training fund described in Article I.A shall be used by the City for the purpose of job training and referral for Economically Disadvantaged Individuals. The Agency acknowledges that the City and not Owner is solely responsible for the design, implementation and maintenance of job training programs to assist Economically Disadvantaged Individuals in the development of the necessary skills, knowledge and experience to apply and successfully compete for entry level positions in the South Plan Area. Agency acknowledges that such job training programs may be administered directly by the

City or community based organizations which may be selected by the City from time to time and not by Owner. All costs of designing, implementing and maintaining such job training programs shall be born exclusively by the City from the job training fund or other sources, and Owner shall not be responsible for any amount in excess of that contributed pursuant to Article I.A. Agency acknowledges that City and not Owner has the sole responsibility for directing, supervising and coordinating with any such community based organizations.

- C. First Source Hiring Program. Each Owner shall comply with any applicable provisions of the City's First Source Hiring Program pursuant to Ordinance No. 264-98 adopted on August 10, 1998, to the extent that and so long as such provisions remain in full force and effect on a city-wide basis to established and future development. Owner acknowledges its application, to the extent therein provided, to future tenants and Transferees.