

**DEVELOPMENT AGREEMENT EXHIBIT [XX]**

**WORKFORCE AGREEMENT  
FOR PROPERTY AT INNES BETWEEN EARL AND GRIFFITH STREETS  
(India Basin)**

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## INDIA BASIN WORKFORCE AGREEMENT

**I. Project Background.** The development plan for the Project Site under the Development Agreement provides for the development of a new mixed-use urban village composed of market rate and affordable residential uses, office, retail, as well as new Infrastructure and Parks and Opens Spaces. Construction work under the Development Agreement will include development of Developer Property, as well as construction by Developer of a series of contiguous, integrated waterfront parks on City-owned property, including the India Basin Open Space and the Big Green. The ownership map attached shows those areas of the Project that will be owned by Developer during construction (the “**Developer Property**”) and those areas that will be conveyed to the City for Infrastructure and for parks and open space in connection with the public trust exchange contemplated under the Development Agreement (the “**City Property**”).

This Workforce Agreement sets forth the activities Developer shall undertake, and require their Construction Contractors, Consultants, Subcontractors, Subconsultants, and Commercial Tenants, as applicable, to undertake, to support workforce development in the construction of the Project and end use phases of the Project Site as required under this Workforce Agreement.

**II. Purpose of the Workforce Agreement.** This Workforce Agreement sets forth the employment and contracting requirements for the construction and operation of the Project. This Workforce Agreement has been jointly prepared by the City and Developer (on behalf of itself and its successors), in consultation with others including OEWD and other relevant City Agencies.

The purpose of this Workforce Agreement is to ensure training, employment and economic development opportunities are part of the development and operation of the Project. This Workforce Agreement creates a mechanism to provide employment and economic development opportunities for economically disadvantaged persons and San Francisco residents. The City and Developer agree that job creation and equal opportunity contracting opportunities in all areas of employment are an essential part of the redevelopment of the Project Site. The City and Developer agree that it is in the best interests of the Project and the City for a portion of the jobs and contracting opportunities to be directed, to the extent possible based on the type of work required, and subject to collective bargaining agreements, to local, small and economically disadvantaged companies and individuals whenever there is a qualified candidate.

This Workforce Agreement identifies goals for achieving this objective and outlines certain measures that will be undertaken in order to help ensure that these goals and objectives are successfully met. In recognition of the unique circumstances and requirements surrounding the Project, OEWD and Developer have agreed that this Workforce Agreement will constitute the exclusive workforce requirements for the Project.

This Workforce Agreement requires the following:

- [Developer to fund certain OEWD job readiness and training programs run by CityBuild.] [*open*]
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- Permanent Employers that occupy more than [25,000 gsf] to enter into a First Source Hiring Agreement (in the forms attached as Attachment A-1 and Attachment A-2) that will require participation in the City’s Workforce System towards the hiring goals of Chapter 83, meet the hiring goals applicable to Covered Operations for First Source referrals. Developer shall also include in such Contracts provisions that require Lessees and Service Providers to identify a single point of contact and contact OEWD’s Business Services team to discuss its obligations under the First Source Hiring Agreement.
- Developer to enter into a First Source Hiring Agreement for Construction Work on Covered Operations, in the form attached as Attachment A.
- Developer to meet the hiring and apprenticeship goals applicable to certain construction work for Local Residents and Disadvantaged Workers for Covered Projects on City Property, as set forth in Attachment B (Local Hiring Requirements).
- Developer to meet the utilization and outreach goals applicable to certain construction work for Local Business Enterprises, as set forth in Attachment C (LBE Utilization Plan).
- Developer to meet the outreach goals applicable to the initial leasing of retail space suitable for use by local diverse small businesses.

The foregoing summary is provided for convenience and for informational purposes only. In case of any conflict between this Workforce Agreement and the Development Agreement, the provisions of this Workforce Agreement shall control.

### **III. Workforce Agreement.**

#### **A. DEFINITIONS**

The following terms specific to this Workforce Agreement have the meanings given to them below or are defined where indicated. Other initially capitalized terms are defined in the Development Agreement. This Workforce Agreement and all Workforce-Development Plan-specific definitions will prevail over the Development Agreement in relation to the rights and obligations of Developers with respect to workforce development. All references to the Development Agreement include this Workforce Agreement unless explicitly stated otherwise.

**“Apprenticeship”** shall mean a work experience that combines formal job-related technical instruction with structured on-the-job learning experiences. Apprentices are hired by employer at outset of training program, and the training program is pre-approved by the US Department of Labor (USDOL) or California Division of Apprenticeship Standards (DAS). Apprentices receive progressive wages commensurate with their skill attainment throughout an apprenticeship training program. Upon successful completion of all phases of on-the-job learning and related instruction components, Apprentices receive nationally recognized certificates of completion issued by the USDOL or DAS.

**“Building”** means each of the existing, modified and new buildings to be constructed on the Project Site under the SUD.

**“Chapter 83”** is defined in Section III.D.2.

**“Commercial Activity”** means retail sales and services, restaurant, hotel, education and office uses, technology and biotechnology business, and any other non-profit or for-profit commercial uses permitted under the SUD that are conducted within a Building.

**“Construction Contractor”** means a construction contractor hired by or on behalf of Developer who performs Construction Work on the Project Site or other construction work otherwise covered under the LBE Utilization Plan or First Source Hiring Agreement for Construction (in the form of Attachment A-3).

**“Construction Work”** means, as applicable, (a) the initial construction of all Public Improvements, (b) the initial construction of Privately-Owned Community Improvements that are items of Infrastructure or Parks and Open Spaces, (c) the initial construction of all Buildings to be carried out by a Developer under the Development Agreement, and (d) initial tenant improvement work for all Buildings. For the avoidance of doubt, Construction Work for Buildings shall not include any repairs, maintenance, renovations or other construction work performed after issuance of the last Certificate of Occupancy for a Building (i.e., the initial completion of a Building under the Development Agreement).

**“Construction Workforce Requirements”** is defined in Section III.C.1.

**“Consultant”** is defined in Attachment C.

**“Covered Operations”** means (i) Commercial Activity which results in the expansion of entry and apprentice level positions that are located within a newly constructed Building or an addition, or alteration thereto, where the Building (or addition or alteration thereto) contains more than 25,000 gross square feet in floor area, and (ii) the operation of a Residential Project containing more than 25,000 square feet or more than 10 Residential Units. Covered Operations do not include (a) any operations or activities conducted by tenants, subtenants or owners of Residential Units, (b) Residential Projects containing less than 25,000 square feet or fewer than 10 dwelling units, (c) Buildings containing less than 25,000 square feet and (d) activities or operations conducted by tenants, subtenants and other occupants of less than 25,000 gross square feet of sublease space within a Building. Covered Operations are limited to the period that starts at the initial certificate of occupancy for the applicable space and ends on the date that is 10 years of operations thereafter.

**“Developer”** means each and every Developer under the Development Agreement, including any Developer of a Building. For purposes of the initial tenant improvements within a Building, Developer shall mean the property owner or tenant that is responsible for the initial tenant improvements.

**“Disadvantaged Worker(s)”** is defined in Attachment B.

“**Final, Binding and Non-Appealable**” means 90-days after the subject approval, or if a third party files an action challenging the approval during such 90-day period, thirty days after the final judgment or other resolution of the action or issue.

“**FSHA**” means the City’s First Source Hiring Administration.

“**Horizontal Improvements**” means the (a) the initial construction of all Public Improvements, and (b) the initial construction of Privately-Owned Community Improvements that are items of Infrastructure or Parks and Open Spaces.

[“**Job Readiness and Training Funds**” is defined in Section III.B.] [*open*]

“**Local Business Enterprise(s)**” or “**LBE**” means a firm that has been certified as an LBE as set forth in Administrative Code Chapter 14B (Local Business Enterprise Utilization and Non-Discrimination in Contracting Ordinance).

“**Local Resident(s)**” is defined in Attachment C.

“**OEWD**” means the City’s Office of Economic & Workforce Development.

“**OLSE**” means the City’s Office of Labor Standards Enforcement.

“**Operations Workforce Requirements**” is defined in Section D.1.

“**Permanent Employer**” means each employer in a Covered Operation.

“**Referral**” shall mean a member of the Workforce System who has participated in an OEWD workforce training program.

“**Subconsultant**” is defined in Attachment C.

“**Subcontractor**” is defined in Attachment A3.

“**Threshold Amount**” is defined in Section 6.1 of the Administrative Code.

**B. WORKFORCE JOB READINESS AND TRAINING FUNDS.** [*open; renumber below if included*]

**B. CONSTRUCTION WORK**

- 1. Application.** Developer and Construction Contractors shall comply with the applicable provisions of this **Section III.B.1** (the “**Construction Workforce Requirements**”) during construction of Horizontal Improvements and Buildings.
- 2. Local Hiring Requirements.** Developer and Construction Contractors (and their subcontractors regardless of tier) must comply with the Local Hiring Requirements

set forth on Attachment B attached with respect to Covered Projects (as defined therein) on City Property.

- 3. First Source Hiring Program for Construction Work.** Developer performing Construction Work on any Covered Operations, that is not subject to the Local Hiring Requirements, will enter into a Memorandum of Understanding with the City's First Source Hiring Administration in the form attached as Attachment A under which Developer must include in their contracts with Construction Contractors for Construction Work a requirement that the applicable Construction Contractor enter into a First Source Hiring Agreement in the form attached as Exhibit A, and to provide a signed copy of the relevant Form exhibits to the FSHA.
- 4. Local Business Enterprise Requirements.** Developer and their respective Contractors and Consultants (as defined in Attachment C) must comply with the Local Business Enterprise Utilization Program set forth in Attachment C.
- 5. Obligations; Limitations on Liability.** Developer shall use good faith efforts, working with the OEWD or its designee, to enforce the applicable Construction Workforce Requirements with respect to its Construction Contractors (as defined above), Contractors and Consultants (as defined in Attachment C), and each Construction Contractor, Contractor and Consultant, as applicable, shall use good faith efforts, working with OEWD or its designee, to enforce the Construction Workforce Requirements with respect to its Subcontractors and Subconsultants (regardless of tier). However, Developer shall not be liable for the failure of their respective Construction Contractors, Contractors and Consultants, and Construction Contractors, Contractors and Consultants shall not be liable for the failure of their respective Subcontractors and Subconsultants.
- 6. Prevailing Wages and Working Conditions.** Certain contracts for work at the Project Site may be public works contracts if paid for in whole or part out of public funds, as the terms "public work" and "paid for in whole or part out of public funds" are defined in and subject to exclusions and further conditions under California Labor Code sections 1720 1720.6. In connection with the Project, Developer shall comply with all California public works requirements as and to the extent required by State law. In addition, Developer agrees that all workers performing labor in the construction of public works or Improvements for the City under this Agreement will be: (1) pay workers performing that work not less than the Prevailing Rate of Wages as defined in Administrative Code section 6.22 and established under Administrative Code section 6.22(e), (2) provide the same hours, working conditions, and benefits as in each case are provided for similar work performed in San Francisco County in Administrative Code section 6.22(f), and (3) employ Apprentices in accordance with San Francisco Administrative Code Section 23.61. Any contractor or subcontractor performing a public work or constructing Improvements must make certified payroll records and other records required under Administrative Code section 6.22(e)(6) available for inspection and examination by the City with respect to all workers performing covered labor. OLSE enforces labor laws, and OLSE shall be the lead agency responsible for

ensuring that prevailing wages are paid and other payroll requirements are met in connection with the work, as more particularly described in the Workforce Agreement.

### C. PROJECT OPERATIONS

1. **Application.** Covered Operations within the Project will be subject to the applicable First Source Hiring Requirements set forth in this Section (collectively, the “**Operations Workforce Requirements**”).
2. **First Source Hiring Program for Operations.** Each Developer of Commercial Space will ensure compliance with the operational requirements of Administrative Code Chapter 83 (“**Chapter 83**”). Compliance with Chapter 83 will be achieved by the following: (i) Developer will include in all lease, subleases or other occupancy contracts for Covered Operations (each, a “**Commercial Lease**”), a requirement that the Commercial Tenant enter into a FSHA Operations Agreement in the form in Attachment A-1; (ii) Developer will provide the executive(s) contact information within 10 days of execution of, or, if available, prior to execution of the applicable Commercial Lease, and will provide updated contact information annually thereafter; and (iii) With the execution of each applicable Commercial Lease, Developer will provide information and require the tenant to notify OEWD Business Services. [*deleted LBE Retail Marketing Program from Pier 70; confirm – seems tied to a more robust retail and commercial leasing program*]

### D. GENERAL PROVISIONS

1. **Enforcement.** OEWD shall have the authority to enforce the Construction Workforce Requirements and the Operations Workforce Requirements. OEWD staff agree to work cooperatively to create efficiencies and avoid redundancies and to implement this Workforce Agreement in good faith, and to work with all of the Project’s stakeholders, including Developer, and Construction Contractors (and Subcontractors) and Permanent Employers, in a fair, nondiscriminatory and consistent manner.
2. **Third Party Beneficiaries.** Each contract for Construction Work and Covered Operations shall provide that OEWD shall have third party beneficiary rights thereunder for the limited purpose of enforcing the requirements of this Workforce Agreement applicable to such party directly against such party.
3. **Flexibility.** Some jobs will be better suited to meeting or exceeding the hiring goals than others, hence all workforce hiring goals under a Construction Contract will be cumulative, not individual, goals for that Construction Contract or Permanent Employer. In addition, Developer shall have the right to reasonably spread the workforce goals, in different percentages, among separate Construction Contracts so long as the cumulative goals among all of the Construction Contracts at any given time meet the requirements of this Workforce Agreement. The parties shall make such modifications to the applicable First Source Hiring Agreements



consistent with Developers' allocation. This acknowledgement does not alter in any way the requirement that Developer, Construction Contractors and Permanent Employers comply with good faith effort obligations to meet their respective participation goals for the Construction Work and Covered Operations.

4. **Exclusivity.** In recognition of the unique circumstances and requirements surrounding the Project, OEWD and Developer have agreed that this Workforce Agreement will constitute the exclusive workforce requirements for the Project. Without limiting the generality of the foregoing, if the City implements or modifies any workforce development policy or requirements after the date of this Workforce Agreement, whether relating to construction or operations, that would otherwise apply to the Project and Developer asserts that such change as applied to the Project would be prohibited by the Development Agreement (including an increase in the obligations of Developer or its contractors under any provisions of the Development Agreement), then the parties shall resolve the issue through the Dispute Resolution procedures of Section III.F below.

## E. DISPUTE RESOLUTION.

1. **Meet and Confer.** In the event of any dispute under this Workforce Agreement (including, without limitation, as to compliance with this Workforce Agreement), the parties to such dispute shall meet and confer in an attempt to resolve the dispute. The parties shall negotiate in good faith for a period of 10 business days in an attempt to resolve the dispute; provided that the complaining party may proceed immediately to the Arbitration Provisions of Attachment D (Dispute Resolution) attached, without engaging in such a conference or negotiations, if the facts could reasonably be construed to support the issuance of a temporary restraining order or a preliminary injunction.
2. **Arbitration.** Disputes arising under this Workforce Agreement may be submitted to the provisions of Attachment D (Dispute Resolution) if the meet and confer provision of Section III.D.1 above does not result in resolution of the dispute.

**Attachment A-1**

**Form of First Source Hiring Agreement for Operations**

**Attachment A-2**

**Form of First Source Hiring Agreement for Construction**

[see attached]

# City and County of San Francisco      First Source Hiring Program



Office of Economic and Workforce Development  
Workforce Development Division

## Attachment A-2: First Source Hiring Agreement For Construction

### MEMORANDUM OF UNDERSTANDING

**This Memorandum of Understanding (“MOU”) is entered into as of \_\_\_\_\_, by and between the City and County of San Francisco (the “City”) through its First Source Hiring Administration (“FSHA”) and \_\_\_\_\_ (“Project Sponsor”).**

WHEREAS, Project Sponsor, as developer, proposes to construct \_\_\_\_\_ new dwelling units, with up to \_\_\_\_\_ square feet of commercial space and \_\_\_\_\_ accessory, off-street parking spaces (“Project”) at \_\_\_\_\_, Lots \_\_\_\_\_ in Assessor’s Block \_\_\_\_\_, San Francisco California (“Site”); and

WHEREAS, the Administrative Code of the City provides at Chapter 83 for a “First Source Hiring Program” which has as its purpose the creation of employment opportunities for qualified Economically Disadvantaged Individuals (as defined in Exhibit A); and

WHEREAS, the Project requires a building permit for a commercial activity of greater than 25,000 square feet and/or is a residential project greater than ten (10) units and therefore falls within the scope of the Chapter 83 of the Administrative Code; and

WHEREAS, Project Sponsor wishes to make a good faith effort to comply with the City’s First Source Hiring Program.

Therefore, the parties to this Memorandum of Understanding agree as follows:

- A. Project Sponsor, upon entering into a contract for the construction of the Project with Contractor after the date of this MOU, will include in that contract a provision requiring the Contractor to enter into a First Source Hiring Agreement in the form attached as Exhibit A. It is the Project Sponsor’s responsibility to provide a signed copy of Exhibit A to First Source Hiring program and CityBuild within 10 business days of execution.
- B. CityBuild shall represent the First Source Hiring Administration and will provide referrals of Qualified (as defined in Exhibit A) Economically Disadvantaged Individuals for employment on the construction phase of the Project as required under Chapter 83. The First Source Hiring Program will provide referrals of Qualified Economically Disadvantaged Individuals for the permanent jobs located within the commercial space of the Project.

- C. The owners or residents of the residential units within the Project shall have no obligations under this MOU, or the attached First Source Hiring Agreement.
- D. FSHA shall advise Project Sponsor, in writing, of any alleged breach on the part of the Project's contractor and/or tenant(s) with regard to participation in the First Source Hiring Program at the Project prior to seeking an assessment of liquidated damages pursuant to Section 83.12 of the Administrative Code.
- E. As stated in Section 83.10(d) of the Administrative Code, if Project Sponsor fulfills its obligations as set forth in Chapter 83, it shall not be held responsible for the failure of a contractor or commercial tenant to comply with the requirements of Chapter 83.
- F. This MOU is an approved "First Source Hiring Agreement" as referenced in Section 83.11 of the Administrative Code. The parties agree that this MOU shall be recorded and that it may be executed in counterparts, each of which shall be considered an original and all of which taken together shall constitute one and the same instrument.
- G. Except as set forth in Section E, above: (1) this MOU shall be binding on and inure to the benefit of all successors and assigns of Project Sponsor having an interest in the Project and (2) Project Sponsor shall require that its obligations under this MOU shall be assumed in writing by its successors and assigns. Upon Project Sponsor's sale, assignment or transfer of title to the Project, it shall be relieved of all further obligations or liabilities under this MOU.

Signature: _____	Date:
Name of Authorized Signer:	Email:
Company:	Phone:
Address:	
<hr/>	
Project Sponsor:	
Contact:	Phone:
Address:	Email:
<hr/>	

\_\_\_\_\_  
**First Source Hiring Administration**  
 OEWD, 1 South Van Ness 5<sup>th</sup> Fl. San Francisco, CA 94103  
 Attn: Ken Nim, Compliance Manager, [ken.nim@sfgov.org](mailto:ken.nim@sfgov.org)

**Exhibit A:  
First Source Hiring Agreement**

This First Source Hiring Agreement (this "Agreement"), is made as of \_\_\_\_\_, by and between \_\_\_\_\_, the First Source Hiring Administration, (the "FSHA"), and the undersigned contractor ("Contractor"):

RECITALS

WHEREAS, Contractor has executed or will execute an agreement (the "Contract") to construct or oversee a portion of the project to construct \_\_\_\_\_ new dwelling units, with up to \_\_\_\_\_ square feet of commercial space and \_\_\_\_\_ accessory, off-street parking spaces ("Project") at \_\_\_\_\_, Lots \_\_\_\_\_ in Assessor's Block \_\_\_\_\_, San Francisco California ("Site"), and a copy of this Agreement is attached as an exhibit to, and incorporated in, the Contract; and

WHEREAS, as a material part of the consideration given by Contractor under the Contract, Contractor has agreed to execute this Agreement and participate in the San Francisco Workforce Development System established by the City and County of San Francisco, pursuant to Chapter 83 of the San Francisco Administrative Code;

WHEREAS, as a material part of the consideration given by Contractor under the Contract, Contractor has agreed to execute this Agreement and participate in the San Francisco Workforce Development System established by the City and County of San Francisco, pursuant to Chapter 83 of the San Francisco Administrative Code;

NOW, THEREFORE, in consideration of the mutual covenants set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties covenant and agree as follows:

1. DEFINITIONS

For purposes of this Agreement, initially capitalized terms shall be defined as follows:

- a. "Core" or "Existing" workforce. Contractor's "core" or "existing" workforce shall consist of any worker who appears on the Contractor's active payroll for at least 60 days of the 100 working days prior to the award of this Contract.
- b. "Economically Disadvantaged Individual". An individual who is either (a) eligible for services under the Workforce Investment Act of 1998 (29 U.S.C.A. 2801, *et seq.*), as may be amended from time to time, or (b) designated as "economically disadvantaged" by the OEWD/First Source Hiring Administration as an individual who is at risk of relying upon, or returning to, public assistance.
- c. "Hiring opportunity". When a Contractor adds workers to its existing workforce for the purpose of performing the work under this Contract, a "hiring opportunity" is created. For example, if the carpentry subcontractor has an existing crew of five carpenters and needs seven carpenters to perform the work, then there are two hiring opportunities for carpentry on the Project.

- d. "Job Notification". Written notice of job request from Contractor to CITYBUILD for any hiring opportunities. Contract shall provide Job Notifications to CITYBUILD with a minimum of 3 business days' notice.
- e. "New hire". A "new hire" is any worker who is not a member of Contractor's core or existing workforce.
- f. "Referral". A referral is an individual member of the CITYBUILD Referral Program who has received training appropriate to entering the construction industry workforce.
- g. "Workforce participation goal". The workforce participation goal is expressed as a percentage of the Contractor's and its Subcontractors' new hires for the Project.
- h. "Entry Level Position". A non-managerial position that requires no education above a high school diploma or certified equivalency, and less than two (2) years training or specific preparation, and shall include temporary and permanent jobs, and construction jobs related to the development of a commercial activity.
- i. "First Opportunity". Consideration by Contractor of System Referrals for filling Entry Level Positions prior to recruitment and hiring of non-System Referral job applicants.
- j. "Job Classification". Categorization of employment opportunity or position by craft, occupational title, skills, and experience required, if any.
- k. "Job Notification". Written notice, in accordance with Section 2(b) below, from Contractor to FSHA for any available Entry Level Position during the term of the Contract.
- l. "Publicize". Advertise or post available employment information, including participation in job fairs or other forums.
- m. "Qualified". An Economically Disadvantaged Individual who meets the minimum bona fide occupational qualifications provided by Contractor to the System in the job availability notices required this Agreement.
- n. "System". The San Francisco Workforce Development System established by the City and County of San Francisco, and managed by the Office of Economic and Workforce Development (OEWD), for maintaining (1) a pool of Qualified individuals, and (2) the mechanism by which such individuals are certified and referred to prospective employers covered by the First Source Hiring requirements under Chapter 83 of the San Francisco Administrative Code. Under this agreement, CityBuild will act as the representative of the San Francisco Workforce Development System.
- o. "System Referrals". Referrals by CityBuild of Qualified applicants for Entry Level Positions with Contractor.

- p. “Subcontractor”. A person or entity who has a direct contract with Contractor to perform a portion of the work under the Contract.

## 2. PARTICIPATION OF CONTRACTOR IN THE SYSTEM

- a. The Contractor agrees to work in Good Faith with the Office of Economic and Workforce Development (OEWD)’s CityBuild Program to achieve the goal of 50% of new hires for employment opportunities in the construction trades and Entry-level Position related to providing support to the construction industry.

The Contractor shall provide CityBuild the following information about the Contractor’s employment needs under the Contract:

- i. On Exhibit A-1, the CityBuild Workforce Projection Form 1, Contractor will provide a detailed numerical estimate of journey and apprentice level positions to be employed on the project for each trade.
  - ii. Contractor is required to ensure that a CityBuild Workforce Projection Form 1 is also completed by each of its Subcontractors.
  - iii. Contractor will collaborate with CityBuild staff to identify, by trade, the number of Core workers at project start and the number of workers at project peak; and the number of positions that will be required to fulfill the First Source local hiring expectation.
  - iv. Contractor and Subcontractors will provide documented verification that its “core” employees for this contract meet the definition listed in Section 1.a.
- b. The Contractor shall perform the following in its good faith efforts to meet the hiring goals set forth in this Agreement:
    - i. Contractor must (A) give good faith consideration to all CityBuild Referrals, (B) review the resumes of all such referrals, (C) conduct interviews for posted Entry Level Positions in accordance with the non-discrimination provisions of this contract, and (D) affirmative obligation to notify CityBuild of any new entry-level positions throughout the life of the project.
    - ii. Contractor must provide constructive feedback to CityBuild on all System Referrals in accordance with the following:
      - (A) If Contractor meets the criteria in Section 5(a) below that establishes “good faith efforts” of Contractor, Contractor must



only respond orally to follow-up questions asked by the CityBuild account executive regarding each System Referral; and

(B) After Contractor has filled at least 5 Entry Level Positions under this Agreement, if Contractor is unable to meet the criteria in Section 5(b) below that establishes “good faith efforts” of Contractor, Contractor will be required to provide written comments on all CityBuild Referrals.

c. Contractor must provide timely notification to CityBuild as soon as the job is filled, and identify by whom.

### 3. CONTRACTOR RETAINS DISCRETION REGARDING HIRING DECISIONS

Contractor agrees to offer the System the first opportunity to provide qualified applicants for employment consideration in Entry Level Positions, subject to any enforceable collective bargaining agreements. Contractor shall consider all applications of Qualified System Referrals for employment. Provided Contractor utilizes nondiscriminatory screening criteria, Contractor shall have the sole discretion to interview and hire any System Referrals.

### 4. COMPLIANCE WITH COLLECTIVE BARGAINING AGREEMENTS

Notwithstanding any other provision hereunder, if Contractor is subject to any collective bargaining agreement(s) requiring compliance with a pre-established applicant referral process, Contractor’s only obligations with regards to any available Entry Level Positions subject to such collective bargaining agreement(s) during the term of the Contract shall be the following:

a. Contractor shall notify the appropriate union(s) of the Contractor’s obligations under this Agreement and request assistance from the union(s) in referring Qualified applicants for the available Entry Level Position(s), to the extent such referral can conform to the requirements of the collective bargaining agreement(s).

b. Contractor shall use “name call” privileges, in accordance with the terms of the applicable collective bargaining agreement(s), to seek Qualified applicants from the System for the available Entry Level Position(s).

c. Contractor shall sponsor Qualified apprenticeship applicants, referred through the System, for applicable union membership.

### 5. CONTRACTOR’S GOOD FAITH EFFORT TO COMPLY WITH ITS OBLIGATIONS HEREUNDER

Contractor will make good faith efforts to comply with its obligations to participate in the System under this Agreement. Determinations of Contractor's good faith efforts shall be in accordance with the following:

- a. Contractor shall be deemed to have used good faith efforts if Contractor accurately completes and submits prior to the start of demolition and/or construction Exhibit A-1: CityBuild Workforce Projection Form 1; and
- b. Contractor's failure to meet the criteria set forth from Section 5(c) to 5(m) does not impute "bad faith." Failure to meet the criteria set forth in Section 5(c) to 5(m) shall trigger a review of the referral process and the Contractor's efforts to comply with this Agreement. Such review shall be conducted by FSHA in accordance with Section 11(c) below.
- c. Meet with the Project's owner, developer, general contractor, or CityBuild representative to review and discuss your plan to meet your local hiring obligations under San Francisco's First Source Hiring Ordinance (Municipal Code- Chapter 83) or the City and County of San Francisco Administrative Code Chapter 6.
- d. Contact a CityBuild representative to review your hiring projections and goals for the Project. The Project developer and/or Contractor must take active steps to advise all of its Subcontractors of the local hiring obligations on the Project, including, but not limited to providing CityBuild access and presentation time at each pre-bid, each pre-construction, and if necessary, any progress meeting held throughout the life of the project
- e. Submit to CityBuild a "Projection of Entry Level Positions" form or other formal written notification specifying your expected hiring needs during the Project's duration.
- f. Notify your respective union(s) regarding your local hiring obligations and request their assistance in referring qualified San Francisco residents for any available position(s). This step applies to the extent that such referral would not violate your union's collective bargaining agreement(s).
- g. Be sure to reserve your "name call" privileges for qualified applicants referred through the CityBuild system. This should be done within the terms of applicable collective bargaining agreement(s).
- h. Provide CityBuild with up-to-date list of all trade unions affiliated with any work on the Project in a timely matter in order to facilitate CityBuild's notification to these unions of the Project's workforce requirements.
- i. Submit a "Job Request" in the form attached as Attachment A-1, Form 3, to CityBuild for each apprentice level position that becomes available. Please allow a minimum of 3 Business Days for CityBuild to provide appropriate candidate(s). You should simultaneously contact your union about the position as well, and let

them know that you have contacted CityBuild as part of your local hiring obligations.

- j. Developer has an ongoing, affirmative obligation and must advise each of its Subcontractors of their ongoing obligation to notify CityBuild of any/all apprentice level openings that arise throughout the duration of the project, including openings that arise from layoffs of original crew. Developer/contractor shall not exercise discretion in informing CityBuild of any given position; rather, CityBuild is to be universally notified, and a discussion between the developer/contractor and CityBuild can determine whether a CityBuild graduate would be an appropriate placement for any given apprentice level position.
- k. Hire qualified candidate(s) referred through the CityBuild system. In the event of the firing/layoff of any CityBuild graduate, Project developer and/or Contractor must notify CityBuild staff within two days of the decision and provide justification for the layoff; ideally, Project developer and/or Contractor will request a meeting with the Project's employment liaison as soon as any issue arises with a CityBuild placement in order to remedy the situation before termination becomes necessary.
- l. Provide a monthly report and/or any relevant workforce records or data from contractors to identify workers employed on the Project, source of hire, and any other pertinent information as pertain to compliance with this Agreement.
- m. Maintain accurate records of your efforts to meet the steps and requirements listed above. Such records must include the maintenance of an on-site First Source Hiring Compliance binder, as well as records of any new hire made by the Contractor and/or Project developer through a San Francisco community-based organization whom the Contractor believes meets the First Source Hiring criteria. Any further efforts or actions agreed upon by CityBuild staff and the Project developer and/or Contractor on a project-by-project basis.

## 6. COMPLIANCE WITH THIS AGREEMENT OF SUBCONTRACTORS

In the event that Contractor subcontracts a portion of the work under the Contract, Contractor shall determine how many, if any, of the Entry Level Positions are to be employed by its Subcontractor(s) using Form 1: the CityBuild Workforce Projection Form and the City's online project reporting system (currently Elation), provided, however, that Contractor shall retain the primary responsibility for meeting the requirements imposed under this Agreement. Contractor shall ensure that this Agreement is incorporated into and made applicable to such Subcontract.

## 7. EXCEPTION FOR ESSENTIAL FUNCTIONS

Nothing in this Agreement precludes Contractor from using temporary or reassigned existing employees to perform essential functions of its operation; provided, however, the obligations of this Agreement to make good faith efforts to fill such vacancies permanently with System Referrals remains in effect. For these purposes, "essential

functions” means those functions absolutely necessary to remain open for business.

8. **CONTRACTOR’S COMPLIANCE WITH EXISTING EMPLOYMENT AGREEMENTS**

Nothing in this Agreement shall be interpreted to prohibit the continuation of existing workforce training agreements or to interfere with consent decrees, collective bargaining agreements, or existing employment contracts. In the event of a conflict between this Agreement and an existing agreement, the terms of the existing agreement shall supersede this Agreement.

9. **HIRING GOALS EXCEEDING OBLIGATIONS OF THIS AGREEMENT**

Nothing in this Agreement shall be interpreted to prohibit the adoption of hiring and retention goals, first source hiring and interviewing requirements, notice and job availability requirements, monitoring, record keeping, and enforcement requirements and procedures which exceed the requirements of this Agreement.

10. **OBLIGATIONS OF CITYBUILD**

Under this Agreement, CityBuild shall:

- a. Upon signing the CityBuild Workforce Hiring Plan, immediately initiate recruitment and pre-screening activities.
- b. Recruit Qualified individuals to create a pool of applicants for jobs who match Contractor’s Job Notification and to the extent appropriate train applicants for jobs that will become available through the First Source Program;
- c. Screen and refer applicants according to qualifications and specific selection criteria submitted by Contractor;
- d. Provide funding for City-sponsored pre-employment, employment training, and support services programs;
- e. Follow up with Contractor on outcomes of System Referrals and initiate corrective action as necessary to maintain an effective employment/training delivery system;
- f. Provide Contractor with reporting forms for monitoring the requirements of this Agreement; and
- g. Monitor the performance of the Agreement by examination of records of Contractor as submitted in accordance with the requirements of this Agreement.

11. **CONTRACTOR’S REPORTING AND RECORD KEEPING OBLIGATIONS**

Contractor shall:

- a. Maintain accurate records demonstrating Contractor's compliance with the First Source Hiring requirements of Chapter 83 of the San Francisco Administrative Code including, but not limited to, the following:
  - (1) Applicants
  - (2) Job offers
  - (3) Hires
  - (4) Rejections of applicants
- b. Submit completed reporting forms based on Contractor's records to CityBuild quarterly, unless more frequent submittals are reasonably required by FSHA. In this regard, Contractor agrees that if a significant number of positions are to be filled during a given period or other circumstances warrant, CityBuild may require daily, weekly, or monthly reports containing all or some of the above information.
- c. If based on complaint, failure to report, or other cause, the FSHA has reason to question Contractor's good faith effort, Contractor shall demonstrate to the reasonable satisfaction of the City that it has exercised good faith to satisfy its obligations under this Agreement.

## 12. DURATION OF THIS AGREEMENT

This Agreement shall be in full force and effect throughout the term of the Contract. Upon expiration of the Contract, or its earlier termination, this Agreement shall terminate and it shall be of no further force and effect on the parties .

## 13. NOTICE

All notices to be given under this Agreement shall be in writing and sent by: certified mail, return receipt requested, in which case notice shall be deemed delivered three (3) business days after deposit, postage prepaid in the United States Mail, a nationally recognized overnight courier, in which case notice shall be deemed delivered one (1) business day after deposit with that courier, or hand delivery, in which case notice shall be deemed delivered on the date received, all as follows:

If to FSHA:

First Source Hiring Administration  
OEWD, 1 South Van Ness 5<sup>th</sup> Fl.  
San Francisco, CA 94103  
Attn: Ken Nim, Compliance Manager,  
[ken.nim@sfgov.org](mailto:ken.nim@sfgov.org)

Attn: Ken Nim

If to CityBuild:

CityBuild Compliance Manager  
OEWD, 1 South Van Ness 5<sup>th</sup> Fl.  
San Francisco, CA 94103  
Attn: Ken Nim, Compliance Manager,  
[ken.nim@sfgov.org](mailto:ken.nim@sfgov.org)

If to Developer:

Attn:

If to Contractor:

Attn:

- a. Any party may change its address for notice purposes by giving the other parties notice of its new address as provided herein. A “business day” is any day other than a Saturday, Sunday or a day in which banks in San Francisco, California are authorized to close.
- b. Notwithstanding the forgoing, any Job Notification or any other reports required of Contractor under this Agreement (collectively, “Contractor Reports”) shall be delivered to the address of FSHA pursuant to this Section via first class mail, postage paid, and such Contractor Reports shall be deemed delivered two (2) business days after deposit in the mail in accordance with this Subsection.

#### 14. ENTIRE AGREEMENT

This Agreement contains the entire agreement between the parties to this Agreement and shall not be modified in any manner except by an instrument in writing executed by the parties or their respective successors in interest.

#### 15. SEVERABILITY

If any term or provision of this Agreement shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement shall not be affected.

#### 16. COUNTERPARTS

This Agreement may be executed in one or more counterparts. Each shall be deemed an original and all, taken together, shall constitute one and the same instrument.

17. SUCCESSORS

This Agreement shall inure to the benefit of and shall be binding upon the parties to this Agreement and their respective heirs, successors and assigns. If there is more than one person comprising Seller, their obligations shall be joint and several.

18. HEADINGS

Section titles and captions contained in this Agreement are inserted as a matter of convenience and for reference and in no way define, limit, extend or describe the scope of this Agreement or the intent of any of its provisions

19. GOVERNING LAW

This Agreement shall be governed and construed by the laws of the State of California.

IN WITNESS WHEREOF, the following have executed this Agreement as of the date set forth above.

**CONTRACTOR:**

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Name of Authorized Signer: \_\_\_\_\_

Company: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_





•  
**Table 2: List all construction trades projected to perform work**

Construction Trades	Journey or Apprentice	Union (Yes or No)	Total Work Hours	Total Number of Workers on the Project	Total Number of New Hires
	J <input type="checkbox"/> A <input type="checkbox"/>	Y <input type="checkbox"/> N <input type="checkbox"/>			
	J <input type="checkbox"/> A <input type="checkbox"/>	Y <input type="checkbox"/> N <input type="checkbox"/>			
	J <input type="checkbox"/> A <input type="checkbox"/>	Y <input type="checkbox"/> N <input type="checkbox"/>			
	J <input type="checkbox"/> A <input type="checkbox"/>	Y <input type="checkbox"/> N <input type="checkbox"/>			
	J <input type="checkbox"/> A <input type="checkbox"/>	Y <input type="checkbox"/> N <input type="checkbox"/>			
	J <input type="checkbox"/> A <input type="checkbox"/>	Y <input type="checkbox"/> N <input type="checkbox"/>			
	J <input type="checkbox"/> A <input type="checkbox"/>	Y <input type="checkbox"/> N <input type="checkbox"/>			
	J <input type="checkbox"/> A <input type="checkbox"/>	Y <input type="checkbox"/> N <input type="checkbox"/>			

**Table 3: List your core or existing employees projected to work on the project**

- Please provide information on your projected core or existing employees that will perform work on the jobsite.
- "Core" or "Existing" workers are defined as any worker appearing on the Contractor's active payroll for at least 60 out of the 100 working days prior to the award of this Contract. If necessary, continue on a separate sheet.

Name of Core or Existing Employee	Construction Trade	Journey or Apprentice	City	Zip Code
		J <input type="checkbox"/> A <input type="checkbox"/>		
		J <input type="checkbox"/> A <input type="checkbox"/>		
		J <input type="checkbox"/> A <input type="checkbox"/>		
		J <input type="checkbox"/> A <input type="checkbox"/>		
		J <input type="checkbox"/> A <input type="checkbox"/>		
		J <input type="checkbox"/> A <input type="checkbox"/>		
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		J <input type="checkbox"/> A <input type="checkbox"/>		
		J <input type="checkbox"/> A <input type="checkbox"/>		
		J <input type="checkbox"/> A <input type="checkbox"/>		

**FOR CITY USE ONLY:** CityBuild Staff: \_\_\_\_\_ Approved: Yes  No  Date: \_\_\_\_\_  
Reason: \_\_\_\_\_

# FORM 3: CITYBUILD JOB NOTICE FORM

**INSTRUCTIONS:** To meet the requirements of the First Source Hiring Program (San Francisco Administrative Code Chapter 83), the Contractor shall notify CityBuild, the First Source Hiring Administrator, of all new hiring opportunities with a minimum of 3 business days prior to the start date.

1. Complete the form and fax to CityBuild 415-701-4896 or EMAIL: [workforce.development@sfgov.org](mailto:workforce.development@sfgov.org)
2. Contact Workforce Development at 415-701-4848 or by email: [local.hire.ordinance@sfgov.org](mailto:local.hire.ordinance@sfgov.org)

OR call the main line of the Office of Economic and Workforce Development (OEWD) at 415-701-4848 to confirm receipt of fax or email.

**ATTENTION:** Please also submit this form to your union or hiring hall if you are required to do so under your collective bargaining agreement or contract. CityBuild is not a Dispatching Hall, nor does this form act as a Request for Dispatch. All formal Requests for Dispatch will be conducted through your union or hiring hall.

### Section A. Job Notice Information

Trade \_\_\_\_\_ # of Journeymen \_\_\_\_\_ # of Apprentices \_\_\_\_\_

Start Date \_\_\_\_\_ Start Time \_\_\_\_\_ Job Duration \_\_\_\_\_

Brief description of your scope of work: \_\_\_\_\_

### Section B. Union Information (Union contractors complete Section B. Otherwise, leave Section B blank)

Local # \_\_\_\_\_ Union Contact Name \_\_\_\_\_ Union Phone # \_\_\_\_\_

### Section C. Contractor Information

Project Name: \_\_\_\_\_

Jobsite Location: \_\_\_\_\_

Contractor: \_\_\_\_\_ Prime  Sub

Contractor Address: \_\_\_\_\_

Contact Name: \_\_\_\_\_ Title: \_\_\_\_\_

Office Phone: \_\_\_\_\_ Cell Phone: \_\_\_\_\_ Email: \_\_\_\_\_

Alt. Contact: \_\_\_\_\_ Phone #: \_\_\_\_\_

Contractor Contact Signature \_\_\_\_\_ Date \_\_\_\_\_

**OEWD USE ONLY** Able to Fill Yes  No

**Attachment B**

**Local Hiring Requirements**

[see attached]

## WORKFORCE DEVELOPMENT PLAN – ATTACHMENT B

### LOCAL HIRING PLAN FOR CONSTRUCTION

#### 1.1 SUMMARY

- A. This Attachment B to the India Basin Workforce Agreement (“**Local Hiring Plan**”) governs the obligations of the Project to comply with the City’s Local Hiring Policy for Construction pursuant to Chapter 82 of the San Francisco Administrative Code (the “**Policy**”). In the event of any conflict between Administrative Code Chapter 82 and this Attachment, this Attachment shall govern.
- B. The provisions of this Local Hiring Plan are hereby incorporated as a material term of the Development Agreement. Developer performing any work on City Property under the Development Agreement shall require any Contractor performing Construction Work on City Property to agree that (i) the Contractor shall comply with all applicable requirements of this Local Hiring Plan; (ii) the provisions of this Local Hiring Plan and the Policy are reasonable and achievable by Contractor and its Subcontractors; and (iii) they have had a full and fair opportunity to review and understand the terms of the Local Hiring Plan.
- C. The Office of Economic and Workforce Development (OEWD) is responsible for administering the Local Hiring Plan and will be administering its applicable requirements. For more information on the Policy and its implementation, please visit the OEWD website at: [www.workforcedevelopmentsf.org](http://www.workforcedevelopmentsf.org).
- D. Capitalized terms not defined herein shall have the meanings ascribed to them in the Development Agreement or the Policy, as applicable.

#### 1.2 DEFINITIONS

- A. “Apprentice” means any worker who is indentured in a construction apprenticeship program that maintains current registration with the State of California’s Division of Apprenticeship Standards.
- B. “Area Median Income (AMI)” means unadjusted median income levels derived from the Department of Housing and Urban Development (“HUD”) on an annual basis for the San Francisco area, adjusted solely for household size, but not high housing cost area.
- C. “Construction Work” means the initial construction of all Horizontal Improvements that are required or permitted to be made to the Project Site to be carried out by Developer under the Development Agreement. The parties acknowledge that the Construction Work does not include the construction of Buildings on non-City property or that are not intended for dedication to the City under the Development Agreement.
- D. “Covered Project” means Construction Work with an estimated cost in excess of the Threshold Amount.

- E. “Contractor” means a prime contractor, general contractor, or construction manager contracted by a Developer who performs Construction Work
- F. “Disadvantaged Worker” as defined in Administrative Code Section 82.3 (as that Code Section is amended from time to time, except to the extent that future changes to the definition are prohibited under the terms of Section 5.3(b)(xi) of the Development Agreement).
- G. "Job Notification" means the written notice of any Hiring Opportunities from Contractor to CityBuild. Contractor shall provide Job Notifications to CityBuild with a minimum of 3 business days' notice.
- H. “Local Resident” means an individual who is domiciled, as defined by Section 349(b) of the California Election Code, within the City at least seven (7) days prior to commencing work on the project.
- I. “Non-Covered Project” means any construction projects not covered by the San Francisco Local Hiring Policy.
- J. “Project Work”. Construction Work performed as part of a Covered Project.
- K. “Project Work Hours” means the total onsite work hours worked on a construction contract for a Covered Project by all Apprentices and journey-level workers, whether those workers are employed by the Contractor or any Subcontractor.
- L. “Subcontractor” means any person, firm, partnership, owner operator, limited liability company, corporation, joint venture, proprietorship, trust, association, or other entity that contracts with a Contractor or another subcontractor to provide services to a Contractor or another subcontractor in fulfillment of the Contractor’s or that other subcontractor’s obligations arising from a contract for construction work on a Covered Project who performs Construction Work on the 28 Acre site.
- M. “Targeted Worker” means any Local Resident or Disadvantaged Worker.
- N. “Threshold Amount” as defined in Section 6.1 of the San Francisco Administrative Code.

### 1.3 LOCAL HIRING REQUIREMENTS

- A. Total Project Work Hours By Trade. For all construction contracts for Covered Projects, the mandatory participation level in terms of Project Work Hours within each trade to be performed by Local Residents is 30%, with a goal of no less than 15% of Project Work Hours within each trade to be performed by Disadvantaged Workers. The mandatory participation levels required under this Local Hire Program will be determined by OEWD for each Phase under the Development Agreement, and in no event shall be greater than 30%; however, the Parties acknowledge that Developer intends to require each construction contract for Covered Projects to meet the mandatory participation levels on an individual contract level.
- B. Apprentices: For all construction contracts for Covered Projects, at least 30% of the Project Work Hours performed by Apprentices within each trade is required to be performed by Local Residents, with an aspirational goal of achieving 50%. Hiring

preferences shall be given to Apprentices who are referred by the CityBuild program. This document also establishes a goal of no less than 25% of Project Work Hours performed by Apprentices within each trade to be performed by Disadvantaged Workers.

- C. Out-of-State Workers. For all Covered Projects, Project Work Hours performed by residents of states other than California will not be considered in calculation of the number of Project Work Hours to which the local hiring requirements apply. Contractors and Subcontractors shall report to OEWD the number of Project Work Hours performed by residents of states other than California.
- D. Pre-construction or other Local Hire Meeting. Prior to commencement of Construction Work on Covered Projects, Contractor and its Subcontractors whom have been engaged by contract and identified in the Local Hiring Forms as contributing toward the mandatory local hiring requirement shall attend a preconstruction or other Local Hire meeting(s) convened by Developer or OEWD staff. Representatives from Contractor and the Subcontractor(s) who attend the pre-construction or other Local Hire meeting must have hiring authority. Contractor and its Subcontractors who are engaged after the commencement of Construction Work on a Covered Project shall attend a future preconstruction meeting or meetings as mutually agreed by Contractor and OEWD staff.
- E. This Local Hiring Plan does not limit Contractor's or its Subcontractors' ability to assess qualifications of prospective workers, and to make final hiring and retention decisions. No provision of this Local Hiring Plan shall be interpreted so as to require a Contractor or Subcontractor to employ a worker not qualified for the position in question, or to employ any particular worker.
- F. Construction Work for Non-Covered Projects will be subject to the First Source Hiring Program for Construction Work in accordance with Section III.C.3 of the Workforce Agreement.

#### 1.4 CITYBUILD WORKFORCE DEVELOPMENT PROGRAM: EMPLOYMENT NETWORKING SERVICES

- A. OEWD administers the CityBuild Program. Subject to any collective bargaining agreements in the building trades and applicable law, CityBuild shall be a primary resource available for Contractor and Subcontractors to meet Contractors' local hiring requirements under this Local Hiring Plan. CityBuild has two main goals:
  - 1. Assist with local hiring requirements under this Local Hiring Plan by connecting Contractor and Subcontractors with qualified journey-level, Apprentice, and pre-Apprentice Local Residents.
  - 2. Promote training and employment opportunities for disadvantaged workers of all ethnic backgrounds and genders in the construction work force.
- B. Where a Contractor's or its Subcontractors' preferred or preexisting hiring or staffing procedures for a Covered Project do not enable Contractor to satisfy the local hiring requirements of this Local Hiring Plan, the Contractor or Subcontractor shall use other procedures to identify and retain Targeted Workers, including the following:

1. Requesting to connect with workers through CityBuild, with qualifications described in the request limited to skills directly related to performance of job duties.
2. Considering Targeted Workers networked through CityBuild within three business days of the request and who meet the qualifications described in the request. Such consideration may include in-person interviews. All workers networked through CityBuild will qualify as Disadvantaged Workers under this Local Hiring Plan. Neither Contractor nor its Subcontractors are required to make an independent determination of whether any worker is a "Disadvantaged Worker" as defined above.

C. **CONDITIONAL WAIVER FROM LOCAL HIRING REQUIREMENTS**

- A. Contractor or the Subcontractor may use one or more of the following pipeline and retention compliance mechanisms to receive a conditional waiver from the Local Hiring Requirements of Section 1.3 on a project-specific basis. All requests for conditional waivers must be submitted to OEWD for approval.
1. Specialized Trades: OEWD has published a list of trades designated as "Specialized Trades" for which the local hiring requirements of this Local Hiring Plan will not apply. The list is available on the OEWD website. Contractor and its Subcontractors shall report to OEWD the Project Work Hours utilized in each designated Specialized Trade and in each OEWD-approved project-specific Specialized Trade.
  2. Credit for Hiring on Non-Covered Projects: Contractor and its Subcontractors may accumulate credit hours for hiring Targeted Workers on Non-Covered Projects in the nine-county San Francisco Bay Area and apply those credit hours to contracts for Covered Projects to meet the mandatory local hiring requirement. For hours performed by Targeted Workers on Non-Covered Projects, the hours shall be credited toward the local hiring requirement for this Contract provided that:
    - a. the Targeted Workers are paid the prevailing wages or union scale for work on the Non-Covered Projects; and
    - b. such credit hours shall be committed to by the Contractor on future projects to satisfy any short fall the Contractor may have on a Covered Project. Such commitment shall be in writing by the Contractor, shall extend for a period of time negotiated between the contractor and OEWD, and shall commit to satisfying any assessed penalties should Contractor fail to achieve the required credit hours.
  3. Sponsoring Apprentices: Contractor or a Subcontractor may agree to sponsor an OEWD-specified number of new Apprentices in trades in which noncompliance is likely and retaining those Apprentices for the period of Contractor's or a Subcontractor's work on the project. OEWD will verify with the California Department of Industrial Relations that the new Apprentices are registered and active Apprentices. Contractor will be required to write a sponsorship letter on behalf of the identified candidate to the appropriate Local Union and will make the necessary arrangements with the Union to hire the candidate as soon as s/he is indentured.
  4. Direct Entry Agreements: OEWD is authorized to negotiate and enter into direct entry agreements with apprenticeship programs that are registered with the

California Department of Industrial Relations' Division of Apprenticeship Standards. Contractor may avoid assessment of penalties for non-compliance with this Local Hiring Plan by Contractor or its Subcontractors hiring and retaining Apprentices who are enrolled through such direct entry agreements. Contractor may also utilize OEWD-approved organizations with direct entry agreements with Local Unions, including District 10 based organizations to hire and retain Targeted Workers. To the extent that Contractor or its Subcontractors have hired Apprentices or Targeted Workers under a direct entry agreement entered into by OEWD or reasonably approved by OEWD, OEWD will not assess penalties for non-compliance with this Local Hiring Plan.

5. Corrective Actions: Should local employment conditions be such that adequate Targeted Workers for a craft, or crafts, are not available to meet the requirements and Contractor can document their efforts to achieve the requirements through the mechanisms and processes in this document, a corrective action plan must be negotiated between Contractor and OEWD.

## 1.5 LOCAL HIRING FORMS

- A. Utilizing the City's online Project Reporting System, Contractors for Covered Projects shall submit the following forms, as applicable, to the Contracting City Agency and OEWD:
  1. Form 1: Local Hiring Workforce Projection. OEWD Form 1 (Local Hiring Workforce Projection), a copy of which is attached, shall be initially submitted prior to the start of construction and updated quarterly by the Contractor until all subcontracting is completed.
  2. Form 2: Local Hiring Plan. For Covered Projects estimated to cost more than \$1,000,000, Contractor shall prepare and submit to Contracting City Agency and OEWD for approval a Local Hiring Plan for the project using OEWD Form 2, a copy of which is attached. This Form 2 shall be initially submitted prior to the start of construction and updated quarterly by the Contractor until all subcontracting is completed.
  3. Job Notifications. Upon commencement of work, Contractor and its Subcontractors may submit Job Notifications to CityBuild to connect with local trades workers.
  4. Form 4: Conditional Waivers. If a Contractor or a Subcontractor believes the local hiring requirements cannot be met, it will submit OEWD Form 4 (Conditional Waiver), a copy of which is attached, as more particularly described in Articles 1.4 and 1.5 above.

## 1.6 ENFORCEMENT, RECORD KEEPING, NONCOMPLIANCE AND PENALTIES

- A. Subcontractor Compliance. Each Contractor and Subcontractor shall ensure that all Subcontractors agree to comply with applicable requirements of this document. All Subcontractors agree as a term of participation on the Project that the City shall have third party beneficiary rights under all contracts under which Subcontractors are performing Project Work. Such third party beneficiary rights shall be limited to the right to enforce the requirements of this Local Hiring Plan directly against the Subcontractors. All Subcontractors on the Project shall be responsible for complying with the



recordkeeping and reporting requirements set forth in this Local Hiring Plan. Subcontractors with work in excess of the of \$600,000 shall be responsible for ensuring compliance with the Local Hiring Requirements set forth in Section 1.3 of this Local Hiring Plan based on Project Work Hours performed under their Subcontracts, including Project Work Hours performed by lower tier Subcontractors with work less than the Threshold Amount.

- B. Reporting. Contractor shall submit certified payrolls to the City electronically using the Project Reporting System. OEWD and will monitor compliance with this Local Hiring Plan electronically.
- C. Recordkeeping. Contractor and each Subcontractor shall keep, or cause to be kept, for a period of four years from the date of Substantial Completion of Construction Work, certified payroll and basic records, including time cards, tax forms, and superintendent and foreman daily logs, for all workers within each trade performing work on a Covered Project.
  - 1. Such records shall include the name, address and social security number of each worker who worked on the covered project, his or her classification, a general description of the work each worker performed each day, the Apprentice or journey-level status of each worker, daily and weekly number of hours worked, the self-identified race, gender, and ethnicity of each worker, whether or not the worker was a Local Resident, and the referral source or method through which the contractor or subcontractor hired or retained that worker for work on the Covered Project (e.g., core workforce, name call, union hiring hall, City-designated referral source, or recruitment or hiring method) as allowed by law.
  - 2. Contractor and Subcontractors may verify that a worker is a Local Resident by following OEWD's domicile policy.
  - 3. All records described in this subsection shall at all times be open to inspection and examination by the duly authorized officers and agents of the City, including representatives of the OEWD.
- D. Monitoring. From time to time and in its sole discretion, OEWD may monitor and investigate compliance of Contractor and Subcontractors working on a Covered Project with requirements of this Local Hiring Plan. Contractor shall allow representatives of OEWD, in the performance of their duties, to engage in random inspections of Covered Projects. Contractor and all Subcontractors shall also allow representatives of OEWD to have access to employees of the Contractor and Subcontractors and the records required to be maintained under this document.
- E. Noncompliance and Penalties. Failure of Contractor and/or its Subcontractors to comply with the requirements of this document and the obligations set forth in this Local Hiring Plan may subject Contractor to the consequences of noncompliance, including but not limited to the assessment of penalties, but only if City determines that the failure to comply results from willful actions of Contractor and/or its Subcontractors, and not by reason of unavailability of sufficient qualified Local Residents and Disadvantaged Workers to meet the goals required hereunder. The assessment of penalties for noncompliance shall not preclude the City from exercising any other rights or remedies to which it is entitled.

1. **Penalties Amount.** If any Contractor or Subcontractor fails to satisfy the Local Hiring Requirements of this Local Hiring Plan applicable to Project Work Hours performed by Local Residents, and the applicable Contractor or Subcontractor is unable to provide evidence reasonably satisfactory to the City that such failure arose solely due to unavailability of qualified Local Residents despite Contractors or Subcontractors good faith efforts in accordance with this Local Hiring Program, then the Contractor, and in the case of any Subcontractor so failing, and Subcontractor shall jointly and severally forfeit to the City, an amount equal to the Journeyman or Apprentice prevailing wage rate, as applicable, with such wage as established by the Board of Supervisors or the California Department of Industrial Relations under subsection [6.22\(e\)\(3\)](#) of the Administrative Code, for the primary trade used by the Contractor or Subcontractor on the Covered Project for each hour by which the Contractor or Subcontractor fell short of the Local Hiring Requirement. The assessment of penalties under this subsection shall not preclude the City from exercising any other rights or remedies to which it is entitled.
2. **Assessment of Penalties.** OEWD shall determine whether a Contractor and/or any Subcontractor has failed to comply with the Local Hire Requirement. If after conducting an investigation, OEWD determines that a violation has occurred, it shall issue and serve an assessment of penalties to the Contractor and/or any Subcontractor that sets forth the basis of the assessment and orders payment of penalties in the amounts equal to the Journeyman or Apprentice prevailing wage rates, as applicable, for the primary trade used by the Contractor or Subcontractor on the Project for each hour by which the Contractor or Subcontractor fell short of the Local Hiring Requirement. Assessment of penalties under this subsection shall be made only upon an investigation by OEWD and upon written notice to the Contractor or Subcontractor identifying the grounds for the penalty and providing the Contractor or Subcontractor with the opportunity to respond pursuant to the recourse procedures prescribed in this Local Hiring Plan.
3. **Recourse Procedure.** If the Contractor or Subcontractor disagrees with the assessment of penalties, then the following procedure applies:
  - a. The Contractor or Subcontractor may request a hearing in writing within 15 days of the date of the final notification of assessment. The request shall be directed to the City Controller. Failure by the Contractor or Subcontractor to submit a timely, written request for a hearing shall constitute concession to the assessment and the forfeiture shall be deemed final upon expiration of the 15-day period. The Contractor or Subcontractor must exhaust this administrative remedy prior to commencing further legal action.
  - b. Within 15 days of receiving a proper request, the Controller shall appoint a hearing officer with knowledge and not less than five years' experience in labor law, and shall so advise the enforcing official and the Contractor or Subcontractor, and/or their respective counsel or authorized representative.
  - c. The hearing officer shall promptly set a date for a hearing. The hearing must commence within 45 days of the notification of the appointment of the hearing officer and conclude within 75 days of such notification unless all parties agree to an extended period.

- d. Within 30 days of the conclusion of the hearing, the hearing officer shall issue a written decision affirming, modifying, or dismissing the assessment. The decision of the hearing officer shall consist of findings and a determination. The hearing officer's findings and determination shall be final.
- e. The Contractor or Subcontractor may appeal a final determination under this by filing in the San Francisco Superior Court a petition for a writ of mandate under California Code of Civil Procedure Section 1084 *et seq.*, as applicable and as may be amended from time to time.

## 1.8 COLLECTIVE BARGAINING AGREEMENT

Nothing in this Local Hiring Plan shall be interpreted to prohibit the continuation of existing workforce training agreements or to interfere with consent decrees, collective bargaining agreements, project labor agreements or existing employment contracts (Collective Bargaining Agreements"). In the event of a conflict between this Local Hiring Plan and a Collective Bargaining Agreement, the terms of the Collective Bargaining Agreement shall supersede this Local Hiring Plan.

END OF DOCUMENT



CITY AND COUNTY OF SAN FRANCISCO  
 OFFICE OF ECONOMIC AND WORKFORCE DEVELOPMENT  
 CITYBUILD PROGRAM

LOCAL HIRING PROGRAM  
 OEWD FORM 1  
 CONSTRUCTION CONTRACTS

**FORM 1: LOCAL HIRING WORKFORCE PROJECTION**

**Contractor:** \_\_\_\_\_ **Project Name:** \_\_\_\_\_ **Contract #:** \_\_\_\_\_

The Contractor must complete and submit this Local Hiring Workforce Projection (Form 1) prior to the start of construction and quarterly until all subcontracting is complete. The Contractor must include information regarding all of its Subcontractors who will perform construction work on the project regardless of Tier and Value Amount.

**Will you be able to meet the mandatory Local Hiring Requirements?**

- YES (Please provide information for all contractors performing construction work in Table 1 below.)
- NO (Please complete Table 1 below and Form 4: Conditional Waivers.)

**INSTRUCTIONS FOR COMPLETING TABLE 1:**

- Please organize the contractors' information based on their Trade Craft work.
- For contractors performing work in various Trade Craft, please list contractor name in each Trade Craft (i.e. if Contractor X will perform two trades, list Contractor X under two Trade categories.)
- If you anticipate utilizing Apprentices on this project, please note the requirement that 30% of Apprentice hours must be performed by San Francisco residents.
- Additional blank form is available at our Website: [www.workforcedevelopsf.org](http://www.workforcedevelopsf.org). For assistance or questions in completing this form, contact (415) 701-4894 or Email @ [Local.hire.ordinance@sfgov.org](mailto:Local.hire.ordinance@sfgov.org).

**TABLE 1: WORKFORCE PROJECTION**

Trade Craft	Contractor <i>List contractors by Trade Craft</i>		Est. Total Work Hours	Est. Total Local Work Hours	Est. Total Local Work Hours %
<i>Example:</i> Laborer	Contractor X	<b>Journey</b>	800	250	31%
		<b>Apprentice</b>	200	100	50%
<i>Example:</i> Laborer	Contractor Y	<b>Journey</b>	500	100	20%
		<b>Apprentice</b>	0	0	0
<i>Example:</i>	TOTAL LABORER	<b>Journey</b>	1300	350	27%
		<b>Apprentice</b>	200	100	50%
<i>Example:</i>	TOTAL		1500	450	30%
		<b>Journey</b>			
		<b>Apprentice</b>			
		<b>Journey</b>			
		<b>Apprentice</b>			
		<b>Journey</b>			
		<b>Apprentice</b>			

**DISCLAIMER:** If the Total Work Hours for a Trade Craft are less than 5% of the Total Project Work Hours, the Trade Craft is exempt from the Mandatory Requirement. Subsequently, if the Trade Craft exceeds 5% of the Total Project Work Hours at any time during the project, the Trade Craft is subject to the Mandatory Requirement.



CITY AND COUNTY OF SAN FRANCISCO  
OFFICE OF ECONOMIC AND WORKFORCE DEVELOPMENT  
CITYBUILD PROGRAM

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Name of Authorized Representative	Signature	Date	Phone	Email
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CITY AND COUNTY OF SAN FRANCISCO  
 OFFICE OF ECONOMIC AND WORKFORCE DEVELOPMENT  
 CITYBUILD PROGRAM



LOCAL HIRING PROGRAM  
 OEWD FORM 2  
 CONSTRUCTION CONTRACTS

**FORM 2: LOCAL HIRING PLAN**

**Contractor:** \_\_\_\_\_ **Project Name:** \_\_\_\_\_ **Contract #:** \_\_\_\_\_

If the Estimate for this Project exceeds **\$1 million**, then Contractor must submit a Local Hiring Plan using this Form 2 through the City's Project Reporting System. Form 2 shall be initially submitted prior to the start of construction and include all known subcontractors. Contractor shall update this Form 2 quarterly as subcontractors are identified and shall continue with updates until all subcontracting is complete. The OEWD-approved Local Hiring Plan will be a Contract Document and will be the basis for determining Contractor's and its Subcontractors' compliance with the local hiring requirements. Any OEWD-approved Conditional Waivers (Form 4) will be incorporated into the OEWD-approved Local Hiring Plan.

**COMPLETE AND SUBMIT A SEPARATE FORM 2 FOR EACH TRADE THAT WILL BE UTILIZED ON THIS PROJECT.**

**INSTRUCTIONS:**

1. Please complete tables below for Contractor and all Subcontractors that will be contributing Project Work Hours to meet the Local Hiring Requirement.
2. Please note that a Form 2 will need to be developed and approved separately for each trade craft that will be utilized on this project.
3. If you anticipate utilizing apprentices on this project, please note the requirement that 30% of apprentice hours must be performed by San Francisco residents.
4. The Contractor and each Subcontractor identified in the Local Hiring Plan must sign this form before it will be considered for approval by OEWD.
5. If applicable, please attach all OEWD-approved Form 4 Conditional Waivers.
6. Additional blank form is available at our Website: [www.workforcedevelopsf.org](http://www.workforcedevelopsf.org). For assistance or questions in completing this form, contact (415) 701-4894 or Email @ [Local.hire.ordinance@sfgov.org](mailto:Local.hire.ordinance@sfgov.org).

**List Trade Craft. Add numerical values from Form 1: Local Hiring Workforce Projection and input in the table below.**

Trade Craft	Total Work Hours	Total Local Work Hours	Local Work Hours%	Total Apprentice Work Hours	Total Local Apprentice Work Hours	Local Apprentice Work Hours %
<i>Example: Laborer</i>	1500	450	30%	200	100	50%

**List all contractors contributing to the project work hours to meet the Local Hiring Requirements for the above Trade Craft**

Contractor and Authorized Representative	Local Journey Hours	Local Apprentice Hours	Total Local Work Hours	Start Date	Number of Working Days	*Contractor Signature
Contractor X Joe Smith	250	100	350	3/25/13	60	Joe Smith
Contractor Y Michael Lee	100	0	100	5/25/13	30	Michael Lee

**\*We the undersigned, have reviewed Form 2 and agree to deliver the hours set forth in this document.**



CITY AND COUNTY OF SAN FRANCISCO  
OFFICE OF ECONOMIC AND WORKFORCE DEVELOPMENT  
CITYBUILD PROGRAM

City Use Only	
OEWD Approval	<input type="checkbox"/> Yes <input type="checkbox"/> No
Signature and Date:	





**Attachment C**

**LBE Utilization Plan**

[see attached]

## WORKFORCE AGREEMENT

### ATTACHMENT C - LBE UTILIZATION PLAN

1. Purpose and Scope. This Attachment C ("**LBE Utilization Plan**") governs the Local Business Enterprise obligations of the Project pursuant to San Francisco Administrative Code Section 14B.20 and satisfies the obligations of each Project Sponsor and its Contractors and Consultants for a LBE Utilization Plan as set forth therein. Capitalized terms not defined herein shall have the meanings ascribed to them in the Workforce Plan or Section 14B.20 as applicable. Developer will seek to, whenever practicable, conduct outreach to contracting teams that reflect the diversity of the City and include participation of both businesses and residents from the City's most disadvantaged communities such as the 94107, 94124, and 94134 zip codes. In the event of any conflict between Administrative Code Chapter 14B and this Attachment, this Attachment shall govern.

2. Roles of Parties. In connection with the design and construction phases of all Construction Work (as defined in the Workforce Plan), the Project will provide community benefits designed to foster employment opportunities for disadvantaged individuals by offering contracting and consulting opportunities to local business enterprises ("LBEs"). Each Project Sponsor shall participate in a local business enterprise program, and the City's Contract Monitoring Division will serve the roles as set forth below.

3. Definitions. For purposes of this Attachment, the definitions shall be as follows:

a. "CMD" shall mean the Contract Monitoring Division of the City Administrator's Office.

b. "Commercially Useful Function" shall mean that the business is directly responsible for providing the materials, equipment, supplies or services to the Contracting Party as required by the solicitation or request for quotes, bids or proposals. Businesses that engage in the business of providing brokerage, referral or temporary employment services shall not be deemed to perform a "commercially useful function" unless the brokerage, referral or temporary employment services are those required and sought by the Contracting Party.

c. "Consultant" shall mean a person or company that has entered into a professional services contract for monetary consideration with a Project Sponsor to provide advice or services to the Project Sponsor directly related to the architectural or landscape design, physical planning, and/or civil, structural or environmental engineering of an LBE Improvement.

d. "Contract(s)" shall mean an agreement, whether a direct contract or subcontract, for Consultant or Contractor services for all or a portion of an LBE Improvement.

e. "Contracting Party" means a Project Sponsor, Contractor or Consultant retained to work on LBE Improvements, as the case may be.

f. "Contractor" shall mean a prime contractor, general contractor, or construction manager contracted by a Project Sponsor who performs construction work on an LBE Improvement.

g. "Follow-on Tenant Improvements" means tenant improvements within commercial spaces in residential or commercial buildings (office, retail) that are constructed pursuant to an approved building permit or site permit/addenda issued after the building permit or site permit/addenda for the Initial Tenant Improvements.

h. "Good Faith Efforts" shall mean procedural steps taken by the Project Sponsor, Contractor or Consultant with respect to the attainment of the LBE participation goals, as set forth in Section 7 below.

i. "Initial Tenant Improvements" means tenant improvements within commercial spaces in residential or commercial buildings (office, retail) that are constructed pursuant to the first building permit or site permit/addenda issued for such spaces after completion of building core and shell.

j. "Local Business Enterprise" or "LBE" means a business that is certified as an LBE under Chapter 14B.3.

k. "LBE Liaison" shall mean the Project Sponsor's primary point of contact with CMD regarding the obligations of this LBE Utilization Plan. Each prime Contractor(s) shall likewise have a LBE Liaison.

l. "LBE Improvements" means, as applicable, (a) all Horizontal Improvements required or permitted to be made to the Project Site to be carried out by Developer under the Development Agreement and (b) Workforce Buildings.

m. "Project Sponsor" shall mean the Developer of Horizontal Improvements or of Buildings constructed pursuant to the Development Agreement.

n. "Subconsultant" shall mean a person or entity that has a direct Contract with a Consultant to perform a portion of the work under a Contract for an LBE Improvement.

o. "Subcontractor" shall mean a person or entity that has a direct Contract with a Contractor to perform a portion of the work under a Contract for Construction Work.

p. "Workforce Buildings" means the following: (i) residential buildings, including associated residential units, common space, amenities, parking and back of house construction; (ii) commercial office, retail, parking buildings core & shell; (iii) tenant improvement for all commercial spaces in residential or commercial buildings (office, retail) which are 15,000 square feet (per square footage on building permit application) and above; and (iv) all construction related to standalone affordable housing buildings. Workforce Buildings shall expressly exclude residential owner-contracted improvements in for-sale residential units. Developer will use good faith efforts to hire LBEs for ongoing service contracts (e.g. maintenance, janitorial, landscaping, security etc.) within Workforce Buildings and advertise such contracting opportunities with CMD except to the extent impractical or infeasible. If a master association is responsible for the operation and maintenance of publicly owned improvements within the Project Site, CMD shall refer LBEs to such association for consideration with regard to contracting opportunities for such improvements. Such association will consider, in good faith such LBE referrals, but hiring decisions shall be entirely at the discretion of such association.

4. LBE Participation Goal. Project Sponsor agrees to participate in this LBE Utilization Plan and CMD agrees to work with Project Sponsor in this effort, as set forth in this Attachment C. As long as this Attachment C remains in full force and effect, each Project Sponsor shall make good faith efforts as defined below to achieve an overall LBE participation goal of [18%] of the total cost of all Contracts for an LBE Improvement awarded to LBE Contractors, Subcontractors, Consultants or Subconsultants that are Small and Micro-LBEs, as set forth in Administrative Code Section 14B.8(A); Follow-on Tenant Improvements and services are not included in the numerical goal. Notwithstanding the foregoing, CMD's Director may, in his or her discretion, provide for a downward adjustment of the LBE participation requirement, depending on LBE participation data presented by the Project Sponsor and its team in quarterly and annual reports and meetings. Where, based on reasonable evidence presented to the Director by a party attempting to achieve the LBE Participation goals, that there are not sufficient qualified Small and Micro-LBEs available, the Director may authorize the applicable party to satisfy the LBE participation goal through the use of Small, Micro or SBA-LBEs (as each such term is defined is employed in Chapter 14B of the Administrative Code), or may set separate subcontractor participation requirements for Small and Micro- LBEs, and for SBA-LBEs.

5. Project Sponsor Obligations. For each LBE Improvement, the Project Sponsor shall comply with the requirements of this Attachment C as follows: Upon entering into a Contract with a Contractor or Consultant, each Project Sponsor will include each such Contract a provision requiring the Contractor or Consultant to comply with the terms of this Attachment C, and setting forth the applicable percentage goal for such Contract, and provide a signed copy thereof to CMD within 10 business days of execution. Such Contract shall specify the notice information for the Contractor or Consultant to receive notice pursuant to Section 17. Each Project Sponsor shall identify a "LBE Liaison" as its main point of contact for outreach/compliance concerns. The LBE Liaison shall be a LBE Consultant with the experience in and responsible for making recommendations on how to maximize engagement of local small businesses/LBEs from disadvantaged communities including the 94124, 94134 and 94107 zip codes. The LBE Liaison shall be available to meet with CMD staff on a regular basis or as necessary regarding the implementation of this Attachment C. For the term of the Development Agreement, at least once per year, each Project Sponsor shall hold a public workshop for applicable contractor communities to publicize anticipated contracting opportunities for LBE Improvements for the succeeding year, which workshops may be held independently or in conjunction with each other. Each Project Sponsor will use good faith efforts to hire Small, Micro or SBA-LBEs for ongoing service contracts including janitorial, security and parking management contracts and advertise these contracting opportunities with the CMD except to the extent impractical or infeasible (e.g., a parking management contract cannot be broken down to allow two parking operators). Each Project Sponsor agrees to utilize a "subguard" policy or other means (i.e., OCIP or CCIP) to provide bonding capacity or assistance for LBEs working on the Project at the developer or contractor's option, should the firm be required to bond.

If a Project Sponsor fulfills its obligations as set forth in this Section 6 and otherwise cooperates in good faith at CMD's request with respect to any meet and confer process or enforcement action against a non-compliant Contractor, Consultant, Subcontractor or Subconsultant, then it shall not be held responsible for the failure of a Contractor, Consultant, Subcontractor or Subconsultant or any other person or party to comply with the requirements of this Attachment C.

7. Good Faith Efforts. City acknowledges and agrees that each Project Sponsor, Contractor, Subcontractor, Consultant and Subconsultant shall have the sole discretion to qualify, hire or not hire LBEs. If a Contractor or Consultant does not meet the LBE hiring goal set forth above, it will nonetheless be deemed to satisfy the good faith effort obligation of this Section 7 and thereby satisfy the requirements and obligations of this Attachment C if the Contractor, Consultants and their Subcontractors and Subconsultants, as applicable, perform the good faith efforts set forth in this Section 7 as follows:

a. Advance Notice. Notify CMD in writing of all upcoming solicitations of proposals for work under a Contract at least 15 business days before issuing such solicitations to allow opportunity for CMD to identify and outreach to any LBEs that it reasonably deems may be qualified for the Contract scope of work.

b. Contract Size. Where practicable, the Project Sponsor, Contractor, Consultant, Subcontractor or Subconsultant, in their sole discretion, may divide the work in order to encourage maximum LBE participation or, encourage joint venturing. The Contracting Party will identify specific items of each Contract that may be performed by Subcontractors.

c. Advertise. The Project Sponsor, Contractor, Consultant, Subcontractor or Subconsultant may advertise for professional services and contracting opportunities in media focused on small businesses including the Bid and Contract Opportunities website through the City's Office of Contract Administration (<http://mission.sfgov.org/OCABidPublication>) and other local and trade publications, and allowing subcontractors to attend outreach events, pre-bid meetings, and inviting LBEs to submit bids to Project Sponsor or its prime Contractor or Consultant, as applicable. As Contractor deems necessary, convene pre-bid or pre-solicitation meetings no less than 15 days prior to the opening of bids and proposals for LBEs to ask questions about the selection process and technical specifications/requirements.

d. CMD Invitation. If a pre-bid meeting or other similar meeting is held with proposed Contractors, Subcontractors, Consultants or Subconsultants, invite CMD to the meeting to allow CMD to explain proper LBE utilization.

e. Public Solicitation. The Project Sponsor or its prime Contractor(s) and/or Consultants, as applicable, will work with CMD to follow up on initial solicitations of interest by contacting LBEs to determine with certainty whether they are interested in performing specific items in a project.

f. Outreach and Other Assistance. The Project Sponsor or its prime Contractor (s) and/or Consultants, as applicable, will a) provide LBEs with plans, specifications and requirements for all or part of the project; b) notify LBE trade associations that disseminate bid and contract information and provide technical assistance to LBEs. The designated LBE Liaison(s) will work with CMD to conduct outreach to LBEs for all consulting/contracting opportunities in the applicable trades and services in order to encourage them to participate on the project.

g. **Contacts.** Make contacts with LBEs, associations or development centers, or any agencies, which disseminate bid and contract information to LBEs and document any other efforts undertaken to encourage participation by LBEs.

h. **Good Faith/Nondiscrimination.** Make good faith efforts to enter into Contracts with LBEs and give good faith consideration to bids and proposals submitted by LBEs. Use nondiscriminatory selection criteria (for the purpose of clarity, exercise of subjective aesthetic taste in selection decisions for architect and other design professionals shall not be deemed discriminatory and the exercise of its commercially reasonable judgment in all hiring decisions shall not be deemed discriminatory).

i. **Incorporation into contract provisions.** Project Sponsor shall include in Contracts provisions that require prospective Contractors and Consultants that will be utilizing Subcontractors or Subconsultants to follow the above good faith efforts to subcontract to LBEs, including the overall LBE participation goal and any LBE percentage that may be required under such Contract (Note: Developer/applicable tenants shall follow this programs Good Faith Efforts for Follow-on Tenant Improvements and services, but such work is not subject to the numerical LBE goal).

j. **Monitoring.** Allow CMD Contract Compliance unit to monitor Consultant/Contractor selection processes and, when necessary give suggestions as to how best to maximize LBEs ability to complete and win procurement opportunities.

k. **Maintain Records and Cooperation.** Maintain records of LBEs that are awarded Contracts, not discriminate against any LBEs, and, if requested, meet and confer with CMD as reasonably required in addition to the meet and confer sessions described in Section 10 below to identify a strategy to meet the LBE goal;

l. **Quarterly and Annual Reports.** During construction, the LBE Liaison(s) shall prepare a quarterly and annual report of LBE participation goal attainment and submit to CMD as required by Section 10 herein; and

m. **Meet and Confer.** Attend the meet and confer process described in Section 10.

8. **Good Faith Outreach.** Good faith efforts shall be deemed satisfied solely by compliance with Section 7. Contractors and Consultants, and Subcontractors and Subconsultants as applicable shall also work with CMD to identify from CMD's database of LBEs those LBEs who are most likely to be qualified for each identified opportunity under Section 7.a, and following CMD's notice under Section 9.a, shall undertake reasonable efforts at CMD's request to support CMD's outreach identified LBEs as mutually agreed upon by CMD and each Contractor or Consultant and its Subcontractors and Subconsultants, as applicable.

9. **CMD Obligations.** The following are obligations of CMD to implement this LBE Utilization Plan:

a. During the fifteen (15) business day notification period for upcoming Contracts required by Section 7.a, CMD will work with the Project Sponsor and its Contractor and/or

Consultant as applicable to send such notification to qualified LBEs to alert them to upcoming Contracts.

- b. Provide assistance to Contractors, Subcontractors, Consultants and Subconsultants on good faith outreach to LBEs.
- c. Review quarterly reports of LBE participation goals; when necessary give suggestions as to how best to maximize LBEs ability to compete and win procurement opportunities.
- d. Perform other tasks as reasonably required to assist the Project Sponsor and its Contractors, Subcontractors, Consultants and Subconsultants in meeting LBE participation goals and/or satisfying good faith efforts requirements.
- e. Insurance and Bonding. Recognizing that lines of credit, insurance and bonding are problems common to local businesses, CMD staff will be available to explain the applicable insurance and bonding requirements, answer questions about them, and, if possible, suggest governmental or third party avenues of assistance.

10. Meet and Confer Process. Commencing with the first Contract that is executed for an LBE Improvement, and every six (6) months thereafter, or more frequently if requested by either CMD, Project Sponsor or a Contractor or Consultant and the CMD shall engage in an informal meet and confer to assess compliance of such Contractor and Consultants and its Subcontractors and Subconsultants as applicable with this Attachment C. When deficiencies are noted, meet and confer with CMD to ascertain and execute plans to increase LBE participation.

11. Prohibition on Discrimination. Project Sponsors shall not discriminate in its selection of Contractors and Consultants, and such Contractors and Consultants shall not discriminate in their selection of Subcontractors and Subconsultants against any person on the basis of race, gender, or any other basis prohibited by law. As part of its efforts to avoid unlawful discrimination in the selection of Subconsultants and Subcontractors, Contractors and Consultants will undertake the Good Faith Efforts and participate in the meet and confer processes as set forth in Sections 7 and 10 above.

12. Collective Bargaining Agreements. Nothing in this Attachment C shall be interpreted to prohibit the continuation of existing workforce training agreements or to interfere with consent decrees, collective bargaining agreements, project labor agreement, project stabilization agreement, existing employment contract or other labor agreement or labor contract ("Collective Bargaining Agreements"). In the event of a conflict between this Attachment C and a Collective Bargaining Agreement, the terms of the Collective Bargaining Agreement shall supersede this Attachment C.

13. Reporting and Monitoring. Each Contractor, Consultant, and its Subcontractors and Subconsultants as applicable shall maintain accurate records demonstrating compliance with the LBE participation goals, including keeping track of the date that each response, proposal or bid that was received from LBEs, including the amount bid by and the amount to be paid (if different) to the non-LBE contractor that was selected, documentation of any efforts regarding

good faith efforts as set forth in Section 7. Project Sponsors shall create a reporting method for tracking LBE participation. Data tracked shall include the following (at a minimum):

- a. Name/Type of Contract(s) let (e.g. civil engineering contract, environmental consulting, etc.)
- b. Name of Contractors (including identifying which are LBEs and non-LBEs)
- c. Name of Subcontractors (including identifying which are LBEs and non-LBEs)
- d. Scope of work performed by LBEs (e.g. under an architect, an LBE could be procured to provide renderings)
- e. Dollar amounts associated with both LBE and non-LBE Contractors at both prime and Subcontractor levels.
- f. Total LBE participation is defined as a percentage of total Contract dollars.
- g. Outcomes with respect to Developer's efforts to engage (hire) local small businesses/LBEs from disadvantaged communities including the 94124, 94134 and 94107 zip codes.

14. Written Notice of Deficiencies. If based on complaint, failure to report, or other cause, the CMD has reason to question the good faith efforts of a Project Sponsor, Contractor, Subcontractor, Consultant or Subconsultant, then CMD shall provide written notice to the Project Sponsor, each affected Contractor or Consultant and, if applicable, also to its Subcontractor or Subconsultant. The Contractor or Consultant and, if applicable, the Subcontractor or Subconsultant, shall have a reasonable period, based on the facts and circumstances of each case, to demonstrate to the reasonable satisfaction of the CMD that it has exercised good faith to satisfy its obligations under this Attachment C. When deficiencies are noted CMD staff will work with the appropriate LBE Liaison(s) to remedy such deficiencies.

15. Remedies. Notwithstanding anything to the contrary in the Development Agreement, the following process and remedies shall apply with respect to any alleged violation of this Attachment C:

Mediation and conciliation shall be the administrative procedure of first resort for any and all compliance disputes arising under this Attachment C. The Director of CMD shall have power to oversee and to conduct the mediation and conciliation.

Non-binding arbitration shall be the administrative procedure of second resort utilized by CMD for resolving the issue of whether a Project Sponsor, Contractor, Consultant, Subcontractor or Subconsultant discriminated in the award of one or more LBE Contracts to the extent that such issue is not resolved through the mediation and conciliation procedure described above. Obtaining a final judgment through arbitration on LBE contract related disputes shall be a condition precedent to the ability of the City or the Project Sponsor, Contractor, Consultant, Subcontractor or Subconsultant to file a request for judicial relief.



If a Project Sponsor, Contractor, Consultant, Subcontractor or Subconsultant is found to be in willful breach of the obligations set forth in this Attachment C, assess against the noncompliant Project Sponsor, Contractor, Consultant, Subcontractor or Subconsultant liquidated damages not to exceed \$25,000 or 5% of the Contract, whichever is less, for each such willful breach. In determining the amount of any liquidated damages to be assessed within the limits described above, the arbitrator or court of competent jurisdiction shall consider the financial capacity of the Project Sponsor, Contractor, Consultant, Subcontractor or Subconsultant. For purposes of this paragraph, “willful breach” means a knowing and intentional breach.

For all other violations of this Attachment C, the sole remedy for violation shall be specific performance, without the limits with respect thereto in Section 9.3 of the Development Agreement.

16. Duration of this Agreement. This Attachment C shall terminate (i) as to each work of Horizontal Improvement where work has commenced under the Development Agreement, upon a determination by the City that such Horizontal Improvement is complete; and (ii) as to each Workforce Building, upon the issuance of the last Certificate of Occupancy for such Workforce Building (i.e., upon completion of the Workforce Building); and (iii) as to all Initial Tenant Improvements and Follow-on Tenant Improvements, ten (10) years after issuance of the last Temporary Certificate of Occupancy for the Buildings in which the Initial Tenant Improvements or Follow-on Tenant Improvements are located. Upon such termination, this Attachment C shall be of no further force and effect.

17. Notice. All notices to be given under this Attachment C shall be in writing and sent by: certified mail, return receipt requested, in which case notice shall be deemed delivered three (3) business days after deposit, postage prepaid in the United States Mail, a nationally recognized overnight courier, in which case notice shall be deemed delivered one (1) business day after deposit with that courier, or hand delivery, in which case notice shall be deemed delivered on the date received, all as follows:

If to CMD: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

If to Project Sponsor: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

If to Contractor: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

If to Consultant:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

Any party may change its address for notice purposes by giving the other parties notice of its new address as provided herein. A "business day" is any day other than a Saturday, Sunday or a day in which banks in San Francisco, California are authorized to close.

102332121.9

## Attachment D

### Dispute Resolution

#### 1. *Arbitration*

Any dispute involving the alleged breach or enforcement of this Workforce Agreement (excluding disputes relating to the First Source Hiring Agreement and the applicable City ordinances, which shall be resolved in accordance with their respective terms) shall be submitted to arbitration in accordance with this **Attachment D**.

The arbitration shall be submitted to the American Arbitration Association, San Francisco, California office (“AAA”) which will use the Commercial Rules of the AAA then applicable, but subject to the further revisions t. If there is a conflict between the Commercial Rules of the AAA and the arbitration provisions in this Attachment D, the arbitration provisions of this Attachment D shall govern. The arbitration shall take place in the City and County of San Francisco.

#### 2. *Demand for Arbitration*

The party seeking arbitration shall make a written demand for arbitration (“***Demand for Arbitration***”) in accordance with the notice procedures of Appendix Pt. A, Section 5 (Notices). The Demand for Arbitration shall contain at a minimum: (1) a cover letter demanding arbitration under this provision and identifying the entities believed to be involved in the dispute; (2) a copy of the notice of default, if any, sent from one party to the other; (3) any written response to the notice of default; and (4) a brief statement of the nature of the alleged default.

#### 3. *Parties’ Participation*

All persons or entities affected by the dispute (including, as applicable, OEWD, Developer, and Construction Contractor (and subcontractor)) and shall be made Arbitration Parties. Any such person or entity not made an Arbitration Party in the Demand for Arbitration may intervene as an Arbitration Party and in turn may name any other such affected person or entity as an Arbitration Party; provided that, upon request by any party, the arbiter may dismiss such party if it is not reasonably affected by the dispute.

#### 4. *OEWD Request to AAA*

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

#### 5. *Selection of Arbitrator*

One arbitrator shall arbitrate the dispute. The arbitrator shall be selected from the panel of arbitrators from AAA by the Arbitration Parties in accordance with the AAA rules. The parties shall act diligently in this regard. If the Arbitration Parties fail to agree on an arbitrator within seven (7) business days from the receipt of the panel, AAA shall appoint the arbitrator. A condition to the selection of any arbitrator shall be the arbitrator’s agreement to: (i) submit to all Arbitration

Parties the disclosure statement required under California Code of Civil Procedure Section 1281.9; and (ii) render a decision within thirty (30) days from the date of the conclusion of the arbitration hearing.

**6. *Setting of Arbitration Hearing***

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

**7. *Discovery***

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

**8. *California Law Applies***

California law, including the California Arbitration Act, Code of Civil Procedure Part 3, Title 9, §§ 1280 through 1294.2, shall govern all arbitration proceedings in any Employment and Contracting Agreement.

**9. *Arbitration Remedies and Sanctions***

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

a. Order specific, reasonable actions and procedures to mitigate the effects of the non-compliance and/or to bring any non-compliant Arbitration Party into compliance with the Workforce Agreement.

b. Require any Arbitration Party to refrain from entering into new contracts related to work covered by the applicable sections of the Workforce Agreement, or from granting extensions or modifications to existing contracts related to services covered by the applicable sections of the Workforce Agreement, other than those minor modifications or extensions necessary to enable completion of the work covered by the existing contract.

c. Direct any Arbitration Party to cancel, terminate, suspend or cause to be cancelled, terminated or suspended, any contract or portion(s) thereof for failure of any Arbitration Party to comply with any of the requirements in this Workforce Agreement. Contracts may be continued upon the condition that a program for future compliance is approved by OEWD. If any Arbitration Party is found to be in willful breach of its obligations hereunder, the arbitrator may impose a monetary sanction not to exceed Fifty Thousand Dollars (\$50,000.00) or ten percent (10%) of the base amount of the breaching party's contract, whichever is less, provided that, in determining the amount of any monetary sanction to be assessed, the arbitrator shall consider the financial capacity of the breaching party. No monetary sanction shall be imposed pursuant to this paragraph for the first willful breach of the Workforce Agreement unless the breaching party has failed to cure after being provided written notice and a reasonable opportunity to cure. Monetary sanctions may be imposed for subsequent uncured willful breaches by any Arbitration Party whether or not the

breach is subsequently cured. For purposes of this paragraph, “*willful breach*” means a knowing and intentional breach.

d. Direct any Arbitration Party to produce and provide to OEWD any records, data or reports which are necessary to determine if a violation has occurred and/or to monitor the performance of any Arbitration Party.

**10. *Arbitrator’s Decision***

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

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

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

**12. *Arbitrator Lacks Power to Modify***

Except as expressly provided above in this Attachment D, the arbitrator shall have no power to add to, subtract from, disregard, modify or otherwise alter the terms of the Workforce Agreement or to negotiate new agreements or provisions between the parties.

**13. *Jurisdiction/Entry of Judgment***

The inquiry of the arbitrator shall be restricted to the particular controversy which gave rise to the Demand for Arbitration. A decision of the arbitrator issued hereunder shall be final and binding upon all Arbitration Parties. The prevailing Arbitration Party(ies) shall be entitled to reimbursement for the arbitrator’s fees and related costs of arbitration. If a subcontractor is the losing party and fails to pay the fees within 30 days, then the applicable Construction Contractor (for whom that subcontractor worked) shall pay the fees. Each Arbitration Party shall pay its own attorneys’ fees, provided, however, those attorneys’ fees may be awarded to the prevailing party if the arbitrator finds that the arbitration action was instituted, litigated, or defended in bad faith. Judgment upon the arbitrator’s decision may be entered in any court of competent jurisdiction.

**14. *Exculpation***

Except as set forth in **Section 13** of this Attachment D, each Arbitration Party shall expressly waive any and all claims against OEWD and the City for costs or damages, direct or indirect, relating to this Workforce Agreement or the arbitration process in this Attachment D,

including but not limited to claims relating to the start, continuation and completion of construction.