

1 [Establishing a Small Local Business Enterprise Program; Prohibiting Discrimination in  
2 Contracting and Subcontracting.]

3 **Ordinance amending the San Francisco Administrative Code by adding Chapter 14B to**  
4 **establish a Small and Micro Local Business Enterprise Program, prohibit**  
5 **discrimination in City contracting, and suspend Chapter 12D.A.**

6 Note: Additions are *single-underline italics Times New Roman*;  
7 deletions are ~~*strikethrough italics Times New Roman*~~.  
8 Board amendment additions are double underlined.  
9 Board amendment deletions are ~~strikethrough normal~~.

10 Be it ordained by the People of the City and County of San Francisco:

11 Section 1. The San Francisco Administrative Code is hereby amended by adding  
12 Section 14A.04 to read as follows:

13 **SEC. 14A.04 ENACTING CHAPTER 14A AS A NON-EMERGENCY ORDINANCE.**

14 (A) *This Chapter 14A, which was initially enacted by the Board of Supervisors as an*  
15 *emergency ordinance, is hereby enacted as a non-emergency ordinance. Chapter 14A shall apply to*  
16 *(1) all contracts in which the Contractor agreed to comply with Chapter 14A and any amendment to*  
17 *those contracts and (2) all contracts initiated on or after July 26, 2004 and before July 1, 2006 and any*  
18 *amendment to such contracts; provided, however, that if a competitive solicitation for an agreement to*  
19 *the proposed changes to the contract is required by law, or the law would otherwise require execution*  
20 *of a new contract, rather than an amendment to an existing contract, the provisions of Chapter 14B and*  
21 *not Chapter 14A shall apply.*

22 (B) *Any amendment to a contract initiated before July 26, 2004 in which the Contractor*  
23 *agreed to comply with Chapter 12D.A shall be governed by Chapter 12D.A; provided, however, that if*  
24 *a competitive solicitation for an agreement to the proposed changes to the contract is required by law,*  
25

1 or the law would otherwise require execution of a new contract, rather than an amendment to an  
2 existing contract, the provisions of Chapter 14B and not Chapter 12D.A shall apply.

3 (C) All contracts initiated on or after May 1, 2006 shall be governed by Chapter 14B.

4  
5 Section 2. The San Francisco Administrative Code is hereby amended by adding  
6 Chapter 14B to read as follows:

7 **SEC. 14B.1 PURPOSE AND FINDINGS.**

8 (A) **Short Title.** This ordinance shall be entitled "Local Business Enterprise and Non-  
9 Discrimination in Contracting Ordinance."

10 (B) **Findings.**

11 (1) The Board finds that San Francisco's small businesses are a significant sector of the  
12 local economy and form the backbone of our neighborhoods. Small businesses contribute hundreds of  
13 millions of dollars to San Francisco's economy each year. Through payroll taxes alone, small  
14 businesses make a significant investment in the economic health of our City and the quality of life of its  
15 citizens and visitors.

16 (2) Because San Francisco's small businesses experience higher costs than large businesses  
17 or businesses located outside the City, they suffer disadvantage in any competition with those  
18 businesses. The Board finds that small local businesses are at a competitive disadvantage in competing  
19 for work on public contracts. Because of their size, very small, or "micro," local businesses are at an  
20 even greater competitive disadvantage in competing for work on public contracts.

21 (3) The public has an interest in fostering a strong and vibrant network of small and very  
22 small micro businesses in San Francisco. In part, San Francisco can accomplish this goal by ensuring  
23 that small and micro local businesses can compete for public contracts on a level playing field.

24 (4) The Board finds that the disadvantages suffered by very small and micro local  
25 businesses in competing as prime contractors on public contracts can be reduced by discounting their

1 bids and ratings by ten percent. Granting a ten percent discount does not unduly burden businesses not  
2 eligible for such discounts, and is similar to the corrective adjustments given to small and very small  
3 micro businesses in other jurisdictions.

4 (5) San Francisco has a long history of working to end discrimination in all aspects of  
5 public contracting. The City must continue to award and administer its public contracts in a manner  
6 that is fair and provides equal opportunity to all local businesses, regardless of race, gender or other  
7 category protected by law. San Francisco must ensure that it does not discriminate and does not  
8 contract with any business that discriminates on the basis of race, gender or other protected category.

9 Specifically, this Board initially passed Ordinance No. 139-84 on April 2, 1984 to combat the  
10 City and County of San Francisco's own active and passive participation in discrimination against  
11 minority- and women- owned businesses, both in its own contracting for goods and services and in the  
12 private market for such goods and services. At the time of passage, women- and minority-owned  
13 businesses were virtually excluded as contractors on prime City contracts.

14 Since that time, this Board and the City's Human Rights Commission have actively and  
15 extensively documented and studied discrimination against and disadvantages faced by these groups to  
16 gauge the effectiveness of the prior Minority, Women and Local Business Enterprise Ordinances (the  
17 "M/W/LBE Ordinances") and to assess the need for further and continuing action. The earlier studies  
18 are documented in the legislative history of the previous amendments and re- enactments of the  
19 ordinance, including Ordinance Nos. 175-89,155-92, 210-97, 457-97, 82-98, 296-98, 210-99, 283-99  
20 and 134-03. The findings underlying these ordinances have been reviewed and analyzed in the  
21 preparation of this ordinance and are hereby incorporated by reference into the legislative history of  
22 this ordinance. These materials include disparity studies, transcripts of live testimony by dozens of  
23 witnesses, case studies of discrimination, and voluminous other materials. An index and a separate  
24 synopsis of this material are on file with the Clerk of this Board in File No. 98-0612. These materials  
25

1 are all incorporated by reference into the legislative history of this ordinance. The collection and  
2 analysis of relevant information is ongoing.

3 On July 26, 2004, in Coral Construction, Inc. v. City and County of San Francisco (Sup. Ct. No.  
4 421249), the San Francisco Superior Court enjoined the City from enforcing certain provisions of the  
5 M/W/LBE Ordinance. In a subsequent order, the court clarified that the injunction applied to Sections  
6 12D.A.6, 12D.A.7, 12D.A.8, 12D.A.9, 12D.A.10, 12D.A.14, and 12D.A.17 of the Administrative Code,  
7 for all contracts for which bids or proposals are advertised or solicited on or after July 26, 2004. The  
8 injunction became effective immediately.

9 In issuing its injunction, the Superior Court did not dispute the accuracy of the City's disparity  
10 studies or otherwise take issue with the City's underlying findings of discrimination and disparity.  
11 However, the Court ruled that California's Proposition 209 does not allow the City to address the  
12 identified problem through its prior methods. The Board finds and declares that the need for the City  
13 to identify, rectify, and prevent discrimination in its public contracting still exists, and the City is  
14 committed to ensuring that neither MBEs nor WBEs nor any other business is arbitrarily or unfairly  
15 excluded from contracting opportunities. The City remains committed to addressing discrimination in  
16 public contracting to the fullest extent allowed by law, in a manner that is consistent with all  
17 requirements of federal and state law.

18 (C) **Purpose.**

19 (1) Assistance to Small Local Businesses. The City shall assist small and micro local  
20 businesses to increase their ability to compete effectively for the award of City contracts. The Mayor  
21 shall establish Citywide goals for participation by small and micro local businesses in contracting.  
22 The City shall provide the bid discounts and subcontracting opportunities set forth in this ordinance,  
23 information and training, and other assistance to small and micro local businesses in order to reach  
24 these goals. The Human Rights Commission and Director shall assist other City departments to  
25 implement the goal of increasing participation in City contracts by small and micro local businesses.

1           (2) Nondiscrimination. Neither the City nor any of its officers or employees shall  
2 discriminate against any person or business on any basis prohibited by law in the award or  
3 administration of City contracts. Persons or businesses that are awarded City contracts shall not  
4 discriminate against any person or business on any basis prohibited by law in the performance or  
5 administration of any City contract, including in the selection of subcontractors.

6           (3) Human Rights Commission. The Human Rights Commission shall adopt rules and  
7 regulations necessary to carry out this ordinance.

8 SEC. 14B.2 DEFINITIONS.

9           "Architect/Engineering Contract" means an agreement for architectural, engineering, or other  
10 professional design, consulting or construction management services for a public work project.

11           "Back contracting" shall mean any agreement or other arrangement between a prime  
12 contractor and its subcontractor that requires the prime contractor to perform or to secure the  
13 performance of the subcontract in such a fashion and/or under such terms and conditions that the  
14 prime contractor enjoys the financial benefits of the subcontract. Such agreements or other  
15 arrangements include, but are not limited to, situations in which either a prime contractor or  
16 subcontractor agrees that any term, condition or obligation imposed upon the subcontractor by the  
17 subcontract shall be performed by or be the responsibility of the prime contractor.

18           "Bid" means a quotation, proposal, solicitation or offer by a bidder or contractor to perform  
19 or provide labor, materials, equipment, supplies or services to the City for a price.

20           "Bidder" means any business that submits a bid or proposal.

21           "City" means the City and County of San Francisco.

22           "Commercially useful function" shall mean that the business is directly responsible for  
23 providing the materials, equipment, supplies or services to the City as required by the solicitation or  
24 request for quotes, bids or proposals. Businesses that engage in the business of providing brokerage,  
25 referral or temporary employment services shall not be deemed to perform a "commercially useful

1 function” unless the brokerage, referral or temporary employment services are those required and  
2 sought by the City. When the City requires and seeks specialty products made to order for the City or  
3 otherwise seeks products which, by industry practice, are not regularly stocked in warehouse inventory  
4 but instead are purchased directly from the manufacturer, no more than five percent of the cost of the  
5 product shall be credited towards LBE participation goals. When the City requires and seeks products  
6 which are, by industry practice, stocked in warehouse inventory and are in fact, regularly stocked by  
7 the listed supplier or distributor, no more than sixty percent of the cost of the product shall be credited  
8 towards LBE participation goals. If the listed supplier or distributor does not regularly stock the  
9 required product, no more than five percent of the cost of the product shall be credited towards LBE  
10 participation goals.

11 “Commission” means the Human Rights Commission.

12 “Commodity Contract” means an agreement to purchase any product, including materials,  
13 equipment and supplies.

14 “Contract” means any agreement between the City and a person to provide or procure labor,  
15 materials, equipment, supplies, or services to, for, or on behalf of the City for a price to be paid out of  
16 monies deposited in the City treasury or out of trust monies under the control of or collected by the  
17 City. A “contract” includes an agreement between a non-profit or public entity and a contractor for  
18 the performance of construction or construction-related services, where the contract is funded by the  
19 City. A “contract” does not include: (1) grants, whether funded by the City or by federal or state grant  
20 funds, to a nonprofit entity to provide services to the community; (2) sales of the City's personal or real  
21 property; (3) loan transactions, whether the City is a debtor or creditor; (4) lease, franchise, or  
22 concession agreements; (5) agreements to use City real property; (6) gifts of materials, equipment,  
23 supplies or services to the City; or (7) agreements with a public agency except that “contract” includes  
24 all contracts or other agreements between the City and persons or entities, public or private, in which  
25 such persons or entities receive money from or through the City for the purpose of contracting with

1 businesses to perform public improvements. Without limitation of the foregoing, "contract" includes  
2 any agreement between the City and a person to provide or procure labor, materials, equipment,  
3 supplies, or services to, for, or on behalf of the City for PUC Regional Projects.

4 "Contract awarding authority" means any City officer, department, commission, employee or  
5 board authorized to enter into contracts on behalf of the City. A non-profit or government entity that  
6 receives funds from the City to pay for construction or related services is a "contract awarding  
7 authority" for the purposes of contracting for the performance of those services.

8 "Contractor" means any person who enters into a contract with the City.

9 "Control" means an individual possesses the legal authority to manage business assets, good  
10 will and the daily operations of a business, and actively and continuously exercises such authority.

11 "Director" means the Director of the Human Rights Commission, or his or her designee.

12 "Discount" means a downward adjustment in price or upward adjustment in rating of a  
13 proposal, whichever applies, that is made under Section 14B.7.

14 "General Manager" means the General Manager of the San Francisco Public Utilities  
15 Commission, or his or her designee.

16 "General services contract" means an agreement for those services that are not professional  
17 services. Examples of "general services" include: janitorial, security guard, pest control, parking lot  
18 management and landscaping services.

19 "Joint Venture" shall mean an association of two or more professional services or  
20 architecture/engineering businesses acting as a contractor and performing or providing services on a  
21 professional services or architecture/engineering contract, in which each joint venture partner  
22 combines property, capital, efforts, skill, and/or knowledge and each joint venture partner shares in the  
23 ownership, control, management responsibilities, risks and profits of the joint venture in proportion to  
24 its claimed level of participation.

1 "Local Business Enterprise (LBE)" means a business that is certified as an LBE under Section  
2 14B.3. LBEs are either Small-LBEs or Micro-LBEs, and are also either MBEs, WBEs, or OBEs.

3 "Minority business enterprise (MBE)" means a business that is certified as an MBE under  
4 Section 14B.4(B)

5 "Other Business Enterprise (OBE)" means a business that is certified as an OBE under Section  
6 14B.4(D).

7 "Owns" or "Ownership" means an individual: (a) possesses a record ownership interest, such  
8 as partnership interest or stock interest, of at least 51 percent of the business; (b) possesses incidents  
9 of ownership, including an interest in profit and loss, equal to at least the required record ownership  
10 interest; (c) contributes capital to the business equal to at least the required record ownership  
11 percentage (unsecured promissory notes or notes secured by the business or business assets are not  
12 sufficient to constitute capital contributions); and (d) contributes expertise relevant to the business  
13 'commercially useful function' proportionate to the stated ownership interest.

14 "Person" means any individual or group of individuals, including but not limited to  
15 partnerships, associations, and corporations.

16 "Professional services contract" means an agreement for services that require extended  
17 analysis, the exercise of discretion and independent judgment, or the application of an advanced,  
18 specialized type of knowledge, expertise, or training customarily acquired either by a prolonged course  
19 of study or equivalent experience in the field. Examples of professional service providers include  
20 licensed professionals such as accountants, and non-licensed professionals such as software developers  
21 and financial consultants. For the purpose of this ordinance, a contract for architectural, engineering,  
22 or other professional design, consulting or construction management services for a public work project  
23 shall be considered an architect/engineering contract and not a professional services contract.

24 "PUC" or "Public Utilities Commission" means the San Francisco Public Utilities Commission,  
25 the City Department that provides water, wastewater, and municipal power services to San Francisco



1 and, under contractual agreement with 29 wholesale water agencies, also supplies water to 1.6 million  
2 additional customers within three Bay Area counties.

3 “Public works/construction contract” means a contract for the erection, construction,  
4 renovation, alteration, improvement, demolition, excavation, installation, or repair of any public  
5 building, structure, infrastructure, bridge, road, street, park, dam, tunnel, utility or similar public  
6 facility that is performed by or for the City, and the cost of which is to be paid wholly or partially out of  
7 moneys deposited in the City treasury or out of trust monies under the control of or collected by the  
8 City. For purposes of this ordinance only, "public works/construction contract" includes contracts  
9 between a person, including a non-profit entity or public agency, and a contractor for construction or  
10 construction-related services, where the contract is funded by the City.

11 “Subcontractor” means any person providing goods or services to a contractor or  
12 subcontractor in fulfillment of the contractor or subcontractor's obligations arising from a contract  
13 with the City.

14 PUC Regional Projects means the projects identified as regional projects and included in the  
15 formally approved Capital Improvement program of the San Francisco Public Utility Commission's  
16 approximately \$4.3 billion project to seismically reinforce and otherwise enhance the Hetch Hetchy  
17 water supply system, as it may be amended from time to time and all other contracts issued by the PUC  
18 to be performed at sites beyond the geographic limits of the City.

19 "Woman Business Enterprise (WBE)" means a business that is certified as a WBE under Section  
20 14B.4(C).

21 **SEC. 14B.3 LBE CERTIFICATION.**

22 (A) **Criteria for LBE Certification.** Through appropriately promulgated procedures, if any,  
23 the Director shall certify as an LBE any business that meets all of the following criteria and also meet  
24 either the criteria set forth in Section 14.B.3(B) or Section 14.B.3(C):

1           (1) The business is financially and operationally independent from, and operates at arm's  
2 length to, any other business.

3           (2) The business is continuously in operation.

4           (3) The business is a for-profit enterprise.

5           (4) The business performs a commercially useful function. 7

6           (5) The business maintains its principal place of business in a fixed office within the  
7 geographic boundaries of the City; provided, however, that suppliers are not required to maintain their  
8 principal place of business in San Francisco, but are required to maintain a fixed office in San  
9 Francisco that meets all of the requirements of this Section other than the principal place of business  
10 requirement. The office must provide all of the services for which LBE certification is sought, other  
11 than work required to be performed at a job site. .

12           An office is a fixed and established place of business, including a qualified home office, where  
13 business is conducted on a regular basis of the type for which certification is sought. A residence  
14 qualifies as an office only if none of the persons who own or control the business also maintains an  
15 office outside the residence in the same or related field, and the persons who own or control the  
16 business claimed a business deduction on the prior year's income tax return, or for, businesses started  
17 after the last tax return, would qualify for a deduction on the next tax return. None of the following  
18 constitutes an office: a post office box, a temporary location, a movable property, a location that was  
19 established to oversee a project such as a construction project office, or work space provided in  
20 exchange for services, as opposed to monetary rent.

21           To establish a principal place of business in San Francisco, a business must demonstrate that  
22 the majority of its principals are based in the San Francisco office, and that it pays San Francisco  
23 payroll taxes on at least 51% of its total payroll.

1 Suppliers must maintain a warehouse in the City that is continuously stocked with inventory  
2 consistent with their certification. Truckers must park their registered vehicles and trailers within the  
3 City.

4 (6) The business possesses a current San Francisco Business Tax Registration Certificate.

5 (7) The business has been located and doing business in San Francisco for at least six  
6 months preceding the application for certification.

7 (8) The business owner has licenses or other relevant trade or professional certifications,  
8 or, where licensing is not required, relevant training and experience that are appropriate for the type  
9 of business for which the business seeks certification.

10 (9) The business is owned and controlled as defined herein by individuals who reside in the  
11 United States or its territories.

12 (10) The business has average gross annual receipts in the prior three fiscal years that  
13 satisfy the criteria set forth in either Section 14B.3(B) or Section 14B.3(C).

14 (11) The business is not owned or controlled as defined herein in part or in whole by a full  
15 time City employee.

16 (B) **Criteria for Small – LBE.** The Director shall certify as a "Small – LBE" any business  
17 that meets the requirements of 14B.3(A) and has average gross annual receipts in the prior three fiscal  
18 years that do not exceed the following limits: (1) public works/ construction - \$14,000,000; (2)  
19 specialty construction contractors - \$7,000,000; (3) goods/ materials/ equipment and general services -  
20 \$7,000,000; (4) professional services and architect/engineering - \$2,500,000; and (5) trucking -  
21 \$3,500,000. The City shall determine gross receipts, according to recognized accounting  
22 methodologies that the City determines most accurately reflect the actual money that the business  
23 received during the relevant period. Any business under common ownership, in whole or in part, with  
24 any other business meets the requirements of this subparagraph only if the aggregate gross annual  
25 receipts of all of the businesses under such common ownership do not exceed these limits. All

1 businesses owned by married spouses or domestic partners are considered under common ownership  
2 unless the businesses are in unrelated industries and no community property or other jointly owned  
3 assets were used to establish or are used to operate either business. ).

4 (C) **Criteria for Micro – LBE.** The Director shall certify as a "Micro – LBE" any business  
5 that meets the requirements in 14B.3(A) and also has average gross annual receipts in the prior three  
6 fiscal years that do not exceed the following limits: (1) public works/ construction - \$7,000,000;(2)  
7 specialty construction contractors - \$3,500,000; (3) goods/ materials/ equipment and general services -  
8 \$3,500,000; (4) professional services and architect/engineering - \$1,250,000; and (5) trucking -  
9 \$1,750,000. Any business under common ownership, in whole or in part, with any other business meets  
10 the requirements of this subparagraph only if the aggregate gross annual receipts of all of the  
11 businesses under such common ownership do not exceed these limits. All businesses owned by married  
12 spouses or domestic partners are considered under common ownership unless the businesses are in  
13 unrelated industries and no community property or other jointly owned assets were used to establish or  
14 are used to operate either business.

15 **SEC. 14B.4 NON-DISCRIMINATION CERTIFICATION.**

16 (A) For purposes of ensuring non-discrimination in City contracting and subcontracting,  
17 and subject to appropriately promulgated procedures, if any, the Director shall further certify Small-  
18 LBEs and Micro-LBEs as MBEs, WBEs and OBEs according to the ownership and control of the LBE.

19 (B) **MBE Certification.** The Director shall certify as an MBE any business that is certified  
20 as an LBE and is owned and controlled by one or more minority persons. A minority person is a  
21 member of one or more of the following ethnic groups:

22 (1) African Americans, defined as persons whose ancestry is from any of the Black racial  
23 groups of Africa or the Caribbean;

24 (2) Arab Americans, defined as persons whose ancestry is from an Arabic speaking country  
25 that is a current or former member of the League of Arab States;

1           (3) Asian Americans, defined as persons with Chinese, Japanese, Korean, Pacific Islander,  
2 Samoan, Filipino, Asian Indian, and Southeast Asian ancestry;

3           (4) Iranian Americans, defined as persons whose ancestry is from the country of Iran;

4           (5) Latino Americans, defined as persons with Mexican, Puerto Rican, Cuban, Central  
5 American or South American ancestry. Persons with European Spanish ancestry are not included as  
6 Latino Americans; and

7           (6) Native Americans, defined as any person whose ancestry is from any of the original  
8 peoples of North America, and who maintains cultural identification through tribal affiliation or  
9 community recognition.

10           (C) WBE Certification. The Director shall certify as a WBE any business that is certified as  
11 an LBE and is owned and controlled by one or more women.

12           (D) OBE Certification. The Director shall certify as an OBE any business that is certified  
13 as an LBE and does not demonstrate to the satisfaction of the Director that it is owned and controlled  
14 by one or more women or one or more minority persons.

15           (E) Period of Certification. The Director may certify LBEs as small-LBEs or Mico-LBEs,  
16 and as MBEs, WBEs or OBEs for a period not to exceed three years provided that businesses must at  
17 all times throughout the certification period meet the criteria in Section 14B.3 and Section 14B.4 as  
18 applicable. The Director may require certified businesses annually to submit documentation for the  
19 purpose of verifying continuing eligibility for any certification hereunder.

20           **SECTION 14B.5 PUC-LBE CERTIFICATION.**

21           (A) PUC-LBE Certification. In order to increase the ability of small businesses that are  
22 located within the PUC water system service area but outside of the geographical limits of San  
23 Francisco to compete for regional PUC contracts, the Director shall certify businesses as PUC-LBEs,  
24 including as either Small-PUC-LBEs or Micro- PUC-LBEs, and as either PUC-MBEs, PUC-WBEs, or  
25 PUC-OBEs , that meet all of the following criteria:

1 (1) Only established small public works/construction firms and trucking firms may be certified  
2 as PUC-LBEs or any subcategory of PUC-LBE.

3 (2) Only firms located within the PUC water system service area may be certified as PUC-LBEs  
4 or any subcategory of PUC-LBE.

5 (3) Only firms with average gross annual receipts in the prior three fiscal years that meet the  
6 requirements of Section 14B.3(B) or Section 14B.3(C) for Small-LBEs or Micro-LBEs, respectively may  
7 be certified as PUC-Small-LBEs or PUC-Micro-LBEs.

8 (4) PUC-LBEs owned and controlled by one or more minority persons or women according to  
9 all of the criteria set forth in Section 14B.3(B) or 14B.3(C), respectively, shall be certified as PUC-  
10 MBEs or PUC-WBEs. PUC-LBEs that do not demonstrate qualifying ownership and control by  
11 minority persons or women shall be certified as PUC-OBEs.

12 (5) Firms shall meet all criteria and be certified for the period that the PUC shall by rule adopt  
13 under Section 14B.5(B), to the end that firms certified as PUC-LBEs shall be similarly situated to  
14 LBEs to the extent practicable, taking into account the special circumstances of their location and the  
15 needs of the PUC Regional projects.

16 **(B) PUC Small Firm Contracting Oversight Committee.** There is hereby established a PUC  
17 Small Firm Contracting Oversight Committee as follows:

18 (1) The PUC Small Firm Contracting Oversight Committee shall have seven (7)  
19 members. The PUC General Manager shall appoint five (5) members in consultation with the Bay  
20 Area Water Supply and Conservation Agency (BAWSCA) to represent the interest of individuals and  
21 businesses located within the PUC water system service area but outside of the geographical limits of  
22 San Francisco (2) The Chair of the Human Rights Commission shall appoint one(1) member, who  
23 shall be a current Commissioner of the Human Rights Commission. The Mayor shall appoint  
24 (1)member who shall be a certified LBE to represent the interests of Small-LBEs, Micro-LBEs, MBEs,  
25 WBEs and OBEs. Each member shall serve at the pleasure of his or her appointing authority.

1 Members of the PUC Small Firm Contracting Oversight Committee shall not be compensated, but shall  
2 be reimbursed for expenses in accordance with the Controller's published policies.

3 (2)The purposes and duties of the PUC Small Firm Contracting Oversight Committee are

4 (a) To adopt rules and procedures and to recommend legislative changes to the City that will  
5 result in the broadest possible participation of PUC-LBEs in PUC Regional Projects;

6 (b) to outreach to the business community about PUC contracting opportunities and provide  
7 information to the Director regarding the availability of potential PUC-LBEs;

8 (c) to receive reports from the City, to publicly discuss, and make recommendations to the  
9 Director and the PUC regarding the implementation of this Ordinance for PUC regional projects; and

10 (d) to study the feasibility of additional programs to further the goals of the Ordinance.

11 (4 )The PUC Small Firm Contracting Oversight Committee shall establish bylaws, rules and/or  
12 regulations for the conduct of its business. Administrative assistance and staffing for the PUC Small  
13 Firm Contracting Oversight Committee shall be provided in the discretion of the PUC.

14 (5) Except for the PUC Small Firm Contracting Oversight Committee's authority to adopt rules  
15 and procedures provided herein, the Director shall have full power and authority over the  
16 implementation of this Ordinance for PUC Regional Projects to the same extent as all other bids,  
17 proposals and contracts subject to the Ordinance.

18 (C) PUC-LBEs shall have the status of LBEs for all purposes of this Ordinance only for  
19 construction, specialty construction and trucking services for PUC Regional Projects to be performed  
20 outside of the geographic limits of San Francisco and other PUC contracts to be performed outside of  
21 the geographic limits of San Francisco . PUC-LBEs shall not have the status of LBEs for PUC  
22 contracts for architectural and engineering services, professional services or general services to be  
23 performed outside of the geographic limits of San or for any other bid, proposal or contract subject to  
24 this Ordinance.

25 **SEC. 14B.6 RESERVED**

1 **SEC. 14B.7 PRIME CONTRACTS.**

2 (A) Good Faith Efforts to Obtain LBE Bids on Contracts Subject to this Ordinance.  
3 Contract awarding authorities shall use good-faith efforts for all contracts subject to the discount  
4 provisions of this ordinance to solicit and to obtain bids from the broadest possible range of LBEs and  
5 to ensure that neither MBEs nor WBEs nor OBEs are arbitrarily excluded from participation. Good  
6 faith efforts shall include the following.

7 (1) Arranging contracts by size and type of work to maximize the opportunities for LBEs to  
8 participate. This includes dividing projects into smaller parts.

9 (a) As soon as practical before soliciting bids or proposals, contract awarding authorities  
10 shall submit large contract proposals to the Director for review. The Director shall determine whether  
11 the proposed contract can be divided into smaller contracts so as to enhance the opportunity for  
12 participation by LBEs. For purposes of this paragraph, "large project" means any public  
13 works/construction contract estimated to cost more than \$5,000,000, any professional services contract  
14 estimated to cost more than \$100,000, and any multiple year commodities contract with a term greater  
15 than one year, including any options to renew or extend.

16 (b) If the Director determines, after consulting with the contract awarding authority, that  
17 the contract can be divided into smaller contracts, then the Director and the contract awarding  
18 authority shall confer regarding all of the costs and benefits of soliciting the contract as a single  
19 contract or dividing it into smaller contracts, including but not limited to the potential for enhanced  
20 opportunities for LBE participation as prime contractors, the potential for LBE participation as  
21 subcontractors, relative costs, administrative issues, and any other matters relevant to the  
22 accomplishment of the purpose of the subject contract or contracts. If, after exchanging information  
23 and conferring regarding these issues, the contract awarding authority and the Director are unable to  
24 agree on whether or how the contract divided into smaller contracts, or on the size and number of  
25 contracts, the Mayor or his designee shall resolve the matter.



1           (2) Encouraging LBEs to attend prebid meetings that are held to inform potential bidders of  
2 contracting opportunities.

3           (3) Advertising in general circulation media, trade association publications and local  
4 business media, and posting the contacting opportunity on the department's website or other  
5 centralized City website.

6           (4) Notifying LBEs that are certified to perform the work contemplated in a contract and  
7 soliciting their interest in the contract.

8           (5) Providing LBEs with adequate information about the plans, specifications and  
9 requirements of the contract.

10          (6) When allowed by local laws governing City contracting, negotiating with LBEs in good  
11 faith.

12          (7) Using the services of community and contractors' groups to assist in the recruitment of  
13 LBEs.

14          (B) Best Efforts on Contracts Not Otherwise Subject to this Ordinance. In the award of  
15 leases, franchises, concessions, and other contracts not subject to the discount provisions of this  
16 ordinance, contract awarding authorities shall utilize the good faith efforts steps unless impracticable  
17 to do so. At a minimum, contract awarding authorities should notify LBEs that are certified to perform  
18 the work contemplated in a contract and solicit their interest in the contract.

19          (C) Non-Discrimination in Prime Contracting. Contract awarding authorities shall ensure  
20 that all aspects of the contracting process are free from discrimination against any person on any basis  
21 prohibited by law, and ensure broad contracting opportunities for all categories of LBEs. Contract  
22 awarding authorities shall maintain such documentation of their selection process as required by the  
23 Director to monitor and ensure compliance with this provision.

1           (D) Contracts Subject to Prime Bidding Discounts. Unless otherwise provided in this  
2 ordinance, contract awarding authorities shall apply discounts to all contracts the estimated cost of  
3 which exceeds \$10,000.

4           (E) Amount of Discount. Unless otherwise provided in this ordinance, contract awarding  
5 authorities shall apply a 10% discount to any bid from a Small – LBE or Micro – LBE. Contract  
6 awarding authorities shall apply these discounts to each stage of the selection process, including  
7 qualifications, proposals and interviews.

8           (F). Joint Ventures For Professional Services and Architecture/Engineering. Unless  
9 otherwise provided in this ordinance, contract awarding authorities shall extend the following  
10 bid/rating discount to all bids, proposals and contracts from LBEs on professional services and  
11 architecture/engineering contracts: (1) five percent to a joint venture with LBE participation that  
12 equals or exceeds 35 percent but is under 40 percent; (2) seven and one-half percent to a joint venture  
13 with LBE participation that equals or exceeds 40 percent; (3) ten percent to a LBE or a joint venture  
14 among LBEs. Contract awarding authorities shall apply the bid/rating discount to each stage of the  
15 selection process, including qualifications, proposals and interviews.

16           The contract awarding authority shall apply the joint venture bid/ratings discount only to  
17 professional services and architecture/engineering contracts and only to a joint venture (1) that meets  
18 the requirements contained in this ordinance, and (2) when the LBE is an active partner in the joint  
19 venture, performs work, manages the job and takes financial risks in proportion to the required level of  
20 participation stated in the bid documents, is responsible for a clearly defined portion of the work to be  
21 performed, and shares proportionately in the ownership, control, management responsibilities, risks,  
22 and profits of the joint venture. The portion of the LBE joint venture's work shall be set forth in detail  
23 separately from the work to be performed by the non-LBE joint venture partner. The LBE joint  
24 venture's portion of the contract must be assigned a commercially reasonable dollar value.

1           (G) Affidavit. Each bidder, proposer and contractor shall be required to sign an affidavit  
2 declaring under penalty of perjury its intention to comply fully with the provisions of this ordinance  
3 and attesting to the truth and accuracy of all information provided regarding such compliance.

4           (H) Additional Requirements and Required Contract Terms. Contract awarding authorities  
5 shall include in all contracts with their contractors, and all contractors shall include in their contracts  
6 with subcontractors the following requirements , in addition to other requirements set forth in the  
7 municipal code. For the purposes of this section, "contractor" includes all subcontractors.

8           (1) Each contract shall incorporate this ordinance by reference and shall provide that the  
9 willful failure of any bidder or contractor to comply with the requirements of this ordinance or rules  
10 and regulations implementing this ordinance shall be deemed a material breach of contract.

11           (2) Contracts shall provide that in the event that the Director finds that any bidder,  
12 subcontractor or contractor willfully fails to comply with any of the provisions of this ordinance, rules  
13 and regulations implementing the ordinance, or contract provisions pertaining to LBE, MBE, WBE,  
14 OBE or Micro-LBE participation, outreach, or non-discrimination, the bidder, subcontractor or  
15 contractor shall be liable for liquidated damages for each contract in an amount equal to the bidder's  
16 or contractor's net profit on the contract, 10 percent of the total amount of the contract or \$1,000,  
17 whichever is greatest, as determined by the Director. All contracts shall also contain a provision in  
18 which the bidder, subcontractor or contractor acknowledges and agrees that the liquidated damages  
19 assessed shall be payable to the City upon demand and may be set off against any monies due to the  
20 bidder, subcontractor or contractor from any contract with the City.

21           (3) Contracts shall require all contractors to maintain records, including such information  
22 requested by the Director or Commission, necessary for monitoring their compliance with this  
23 ordinance. Contracts shall require prime contractors to include in any subcontract with a LBE a  
24 provision requiring the subcontractor to maintain the same records. Contracts shall require  
25

1 contractors and subcontractors to maintain such records for three years following completion of the  
2 project and shall permit the Commission and Controller to inspect and audit such records.

3 (4) Contracts shall require prime contractors, during the term of the contract, to fulfill the  
4 LBE participation commitments submitted with their bids. Willful failure to comply with the level of  
5 LBE subcontractor participation specified in the contract shall be deemed a material breach of  
6 contract.

7 (5) Contracts shall require, and shall require prime contractors to include in any  
8 subcontract with a LBE a provision requiring, the prime contractor to compensate any LBE  
9 subcontractor for damages for breach of contract or liquidated damages equal to 5% of the  
10 subcontract amount, whichever is greater, if the prime contractor willfully fails to comply with its  
11 commitment to use the LBE subcontractor as specified in the bid/proposal unless the **Commission** and  
12 the contract awarding authority both give advance approval to the prime contractor to substitute  
13 subcontractors or otherwise modify the commitments in the bid/proposal documents. . This provision  
14 shall also state that it is enforceable in a court of competent jurisdiction.

15 (6) Contracts shall require prime contractors, whenever amendments, modifications,  
16 supplements, or change orders cumulatively increase the total dollar value of the contract by more than  
17 10 percent, to comply with those provisions of this ordinance that applied to the original contract with  
18 respect to the amendment, modification, supplement or change order.

19 (7) Contracts shall require prime contractors to submit to the Director for approval all  
20 contract amendments, modifications, supplements, and change orders that cumulatively increase by  
21 more than 20 percent the total dollar value of all contracts originally valued at \$50,000 or more. The  
22 Director shall review the proposed amendment, modification, supplement or change order to correct  
23 any contracting practices that exclude any category of LBEs from new contracting opportunities.

24 (8) Contracts in which subcontracting is used shall prohibit back contracting to the prime  
25 contractor or lower-tier subcontracting for any purpose inconsistent with the provisions of this

1 ordinance, rules and regulations adopted pursuant to this ordinance, or contract provisions pertaining  
2 to LBE utilization.

3 (9) Contracts in which subcontracting is used shall require the prime contractor to pay its  
4 subcontractors within three working days after receiving payment from the City unless the prime  
5 contractor notifies the Director in writing within 10 working days prior to receiving payment from the  
6 City that there is a bona fide dispute between the prime contractor and the subcontractor, in which  
7 case the prime contractor may withhold the disputed amount but shall pay the undisputed amount. The  
8 Director may, upon making a determination that a bona fide dispute exists between the prime  
9 contractor and subcontractor, waive this three-day payment requirement. In making the determination  
10 as to whether a bona fide dispute exists, the Director shall not consider the merits of the dispute.

11 Contracts in which subcontracting is used shall also require the contractor, within 10 working days  
12 following receipt of payment from the City, to file an affidavit, under penalty of perjury, that he or she  
13 has paid all subcontractors. The affidavit shall provide the names and address of all subcontractors  
14 and the amount paid to each.

15 (I) Exceptions.

16 (1) The bid discount provisions of this ordinance are not applicable to any contract  
17 estimated by the contract awarding authority to cost in excess of \$10,000,000.

18 (2) Notwithstanding any other provision of this Section, contract awarding authorities shall  
19 not apply a discount where to do so would result in a contract being awarded to a business without the  
20 capacity to perform it. The Commission may adopt rules and regulations setting standards for  
21 determining that an LBE has sufficient skill, experience, and financial capacity to perform the contract.

22 (J) Waivers. The Director shall waive the LBE bid discounts, and report the waiver to the  
23 Commission, if:

1           (1) The Director finds, with the advice of the contract awarding authority and the Office of  
2 Contract Administration, that needed goods or services are available from a sole source that is  
3 qualified to do business with the City;

4           (2) The contract awarding authority certifies in writing to the Director, prior to the  
5 Controller's contract certification, that the contract is being awarded under the emergency provisions  
6 of Administrative Code Section 6.60 or Administrative Code Section 21.15 and that there is either (i) no  
7 time to apply bid discounts or establish subcontracting goals, or (ii) no immediately available LBEs  
8 that are capable of performing the emergency work; or

9           (3) For contracts in excess of \$5,000,000, a contract awarding authority establishes that  
10 sufficient qualified LBEs capable of providing the needed goods and services required by the contract  
11 are not available, or the application of the LBE discount will result in significant additional costs to the  
12 City if the waiver of the bid discount is not granted.

13           (K) Pilot Set-Aside Program. The Director may set aside for competitive award to Micro –  
14 LBEs any of the following contracts:

15           (1) Public work/ construction contracts where the contract amount is equal to or less than  
16 \$250,000;

17           (2) Contracts other than public work/ construction contracts where the contract amount is  
18 equal to or less than \$100,000.

19           (3) The competitive award requirements of the Municipal Code shall apply to contracts in  
20 the set-aside program, except that if (a) fewer than two Micro – LBEs submit bids, or (b) the contract  
21 awarding authority determines that the contract would be awarded at a fair market price, then the  
22 contract awarding authority may reject all bids and remove the contract from the set-aside program.

23           (4) The Director shall have a goal of setting aside in each fiscal year 25% of all contracts  
24 that are eligible to be set aside in each fiscal year.

1           (5) . Contracts that are set-aside for award to Micro – LBEs shall not be subject to  
2 subcontracting goals under Section 14B.8. Micro – LBEs that subcontract any portion of a set-aside  
3 contract should subcontract to businesses certified as Micro – LBEs, to the maximum extent possible.  
4 Micro – LBEs that subcontract any portion of a set-aside contract must serve a commercially useful  
5 function based on the contract's scope of work, and must perform at least 50% of the contract work.

6           (L) Prompt payment. The City shall pay LBEs within 30 days of the date on which the City  
7 receives an invoice for work performed for and accepted by the City. The Controller shall work with  
8 the Director and contract awarding authorities to implement this Citywide prompt-payment policy. The  
9 City shall consult with affected community members and relevant City officials, including the Director,  
10 the Controller, and contract awarding authorities, to design and implement a prompt payment program  
11 within six (6) months of the effective date of this ordinance. Such program shall include procedures for  
12 the payment of late penalties where prompt payment does not occur.

13 **SEC. 14B.8 SUBCONTRACTING.**

14           (A) **LBE Participation Goals.** Prior to soliciting bids or proposals, contract awarding  
15 authorities shall provide the Director with a proposed job scope for all public work/construction,  
16 architect/engineering, professional service and general service contracts. The contract awarding  
17 authority may ask the Director to waive subcontracting goals where it anticipates that there are no  
18 subcontracting opportunities or there are not sufficient LBEs available to perform the subcontracting  
19 work available on the contract.

20           The Director shall set LBE participation goals for each contract, where appropriate, based on  
21 the following factors:

- 22           (1) The extent of subcontracting opportunities presented by the contract; and  
23           (2) The availability of LBE subcontractors capable of providing goods and services on the  
24 contract.

1           (B) Bids that do not meet the LBE participation goal set under 14B.8(A) will be rejected as  
2 non-responsive. The contract awarding authority shall require bidders or proposers on the contracts  
3 to contact a LBE before listing that LBE as a subcontractor in the bid or proposal and only LBEs that  
4 have been contacted and agreed to be listed as subcontractors shall be credited toward meeting the  
5 LBE participation goal.

6           (C) **Good Faith Outreach** All bidders shall undertake good faith outreach as set forth in  
7 this Section 14B.8(C) to select subcontractors to meet LBE goals. Bids from bidders who fail to  
8 undertake the following good faith outreach steps and/or who fail to submit the documentation of good  
9 faith outreach required in Section 14B.8(D) shall be declared nonresponsive:

10           (1) Attending any presolicitation or prebid meetings scheduled by the City to inform all  
11 bidders of LBE program requirements for the project for which the contract is awarded;

12           (2) Identifying and selecting subcontracting opportunities to meet LBE goals;

13           (3) Advertising for LBE subcontractors by posting the opportunity in an accessible location,  
14 specified by the City, not less than 10 calendar days before the date the bids can first be submitted.  
15 This paragraph applies only if the City gave public notice of the project not less than 15 calendar days  
16 prior to the date the bids can first be submitted;

17           (4) Contacting LBEs certified to perform the identified work;

18           (5) Providing LBEs that have notified the bidder of their interest with adequate information  
19 about the plans, specifications, and requirements for the work, provided that the Director may cap the  
20 number of contacts required;

21           (6) Negotiating in good faith with LBEs, and not unjustifiably rejecting their bids or  
22 proposals; and

23           (7) Advising and assisting interested LBEs to obtain bonds, lines of credit, or insurance  
24 required by the City or the bidder.



1           (D) Each bid shall document good faith outreach and include the documentation with the  
2 bid. Such documentation shall include: (a) the dollar amount of each subcontract and a statement of  
3 the scope of work to be performed under the subcontract; and (b) the identification of each subcontract  
4 awarded to an LBE. Bidders shall also maintain the following documentation, which shall be  
5 submitted upon request of the Director: (a) for each subcontract, copies of the subcontractor bids  
6 submitted. Such documentation shall contain at least the bid amount and a description of the scope of  
7 work. If no written bids were submitted by some or all of the subcontractors who bid the job, the  
8 bidder shall maintain a written statement containing the amount of each oral bid; and (b) separately,  
9 for each subcontract, a full and complete statement of the reason(s) for selection of the subcontractor.  
10 If the reason is based on relative qualifications, the statement must address the particular  
11 qualifications at issue. If the reason is the respective dollar amounts bid, the statement must state the  
12 amounts and describe the similarities and/or dissimilarities in the scope of work covered by the bids.  
13 Bidders shall maintain the documentation described in this paragraph for three years following  
14 submission of the bid or completion of the contract, whichever is later.

15 **SEC. 14B.9 ENSURING NON-DISCRIMINATION IN SUBCONTRACTING.**

16           (A) **Prohibition on Discrimination.** A bidder may not discriminate in its selection of  
17 subcontractors against any person on the basis of race, gender, or any other basis prohibited by law.

18           (B) **Availability Data.** In order to prevent unlawful discrimination in the selection of  
19 subcontractors, and to identify and correct unlawful practices, the City will monitor the administration  
20 of City contracts, including the selection of subcontractors, as provided in this Section. For public  
21 work/construction, architect/engineering, professional service, and general service contracts which the  
22 contract awarding authority reasonably anticipates will include subcontractor participation, prior to  
23 the solicitation of bids or proposals, the Director shall assemble data regarding the availability of  
24 MBEs, WBEs and OBEs to provide work that is likely to be subcontracted. The Director, in the  
25 Director's sole discretion, shall determine the appropriate methodology.

1           (C) Requirements for Solicitations. In all solicitations of public work/construction,  
2 architect/engineering, professional service, and general service contracts which the contract awarding  
3 authority reasonably anticipates will include subcontractor participation, the contract awarding  
4 authority shall include the availability data described above. Bidders shall undertake all required  
5 good faith efforts outreach steps in such a manner as to ensure that neither MBEs nor WBEs nor OBEs  
6 are unfairly or arbitrarily excluded from the required outreach.

7           (D) Review of Bid. The Director may review or investigate any bid, including the selection  
8 of the bidder's subcontractors, to determine whether discrimination may have occurred. The Director  
9 shall review bids, during the bid protest period, to determine whether: (1) a potential subcontractor or  
10 other person has filed a complaint of discrimination; (2) there is a significant difference between the  
11 percentages of MBEs, WBEs, or OBEs available to provide goods and services as subcontractors on  
12 the contract and the percentages of the bidder's subcontractors who are MBEs, WBEs, or OBEs; or (3)  
13 other facts and circumstances suggest that further inquiry is warranted. The Director, in the Director's  
14 sole discretion, shall determine whether and when to investigate further the conduct of a bidder or  
15 contractor. Investigations will be conducted under the procedures in Section 14B.17.

16 **SEC. 14B.10 POWERS AND DUTIES OF THE COMMISSION AND THE DIRECTOR.**

17           (A) Human Rights Commission. In addition to the duties and powers given to the  
18 Human Rights Commission elsewhere, the Commission shall:

19           (1) When necessary, subpoena persons and records, books and documents for a proceeding  
20 of the Commission or an investigation by the Director or an audit pursuant to Section 14B.10(B)(5)  
21 conducted to further the purposes of this ordinance.

22           (2) Adopt rules and regulations establishing standards and procedures for effectively  
23 carrying out this ordinance.

24           (3) Issue forms for the Controller or contract awarding departments to collect information  
25 from contractors as prescribed by this ordinance.

1           (4) Hear appeals challenging: (i) the Director's disqualification of a bidder or Contractor,  
2 (ii) the Director's denial of an application for or revocation of the certification of a business as a  
3 Small- LBE, Micro-LBE, MBE, WBE, or OBE or (iii) the Director's denial of a request to waive or to  
4 reduce subcontractor participation goals.

5           (5) By regulation require contract awarding authorities, departments and the Controller to  
6 provide to the Director such information as will be necessary to enable the Director to report to the  
7 Mayor and the Board of Supervisors at the end of each fiscal year on the progress each City  
8 department has made towards the achievement of LBE participation goals and towards the goal of  
9 ensuring against discrimination and exclusion of MBEs, WBEs, or OBEs, and to perform his/her other  
10 duties. The database is a public record available to the public as provided by state and local law;

11           (6) Adopt rules and regulations as deemed necessary by the Director to ensure that the joint  
12 venture bid/rating discount is applied only to joint ventures where the LBE has sufficient skill,  
13 experience, and financial capacity to perform the portion of the work identified for the LBE.

14           (B) HRC Director. In addition to the duties and powers given to the HRC Director  
15 elsewhere, the Director shall:

16           (1) Levy the same sanctions that a contracting awarding authority may levy as specified in  
17 Section 14B.17.

18           (2) Ensure that the necessary data is collected and analyzed. Annually, and more often if  
19 the Director deems necessary, the Director shall identify areas of contracting where the City or any of  
20 its departments are failing to meet LBE participation goals or are contracting with MBEs, WBEs, or  
21 OBEs at rates less than would be expected in the absence of discrimination. The results of this study  
22 shall be included in the Commission's annual report required by Section 14B.15(B).

23           (3) Provide information and other assistance to LBEs to increase their ability to compete  
24 effectively for the award of City contracts.

1           (4) Grant waivers as set forth in Sections 14B.7(J) and 14B.8(A), and disqualify a bidder or  
2 contractor as set forth in Section 14B.17.

3           (5) In cooperation with the Controller, randomly audit at least three prime contractors each  
4 fiscal year in order to insure their compliance with the provisions of this ordinance. The Director, in  
5 cooperation with the Controller, shall furthermore randomly audit 10 percent of the joint ventures  
6 granted bid discounts in each fiscal year. The Controller shall have the right to audit the books and  
7 records of the contractors, joint venture participants, and any and all subcontractors to insure  
8 compliance with the provisions of this ordinance.

9           (6) Take actions to ensure compliance with the provisions of this ordinance, including,  
10 without limitation, intervening in the selection process, by modifying the criteria used for selecting  
11 selection panelists or contractors to correct any practices that hinder equal business opportunities for  
12 LBEs or Micro-LBEs, and for MBEs, WBEs, and OBEs.

13 **SEC. 14B.11 POWERS AND DUTIES OF THE CONTROLLER.**

14           (A) In addition to the duties given to the Controller elsewhere, the Controller shall work  
15 cooperatively with the Director to provide such contractual encumbrance and payment data as the  
16 Director advises are necessary to monitor the participation of Small – LBEs, Micro – LBEs, MBEs,  
17 WBEs, and OBEs in City prime contracts. If any department refuses or fails to provide the required  
18 data to the Controller, the Controller shall immediately notify the Mayor, this Board and the Director.

19           (B) The Controller shall not certify the award of any contract subject to this ordinance  
20 where the Director has notified the Controller that the contract awarding authority has not provided  
21 the information the Director advises is necessary under this ordinance.

22           (C) Each request for payment to a City contractor submitted to the contract awarding  
23 authority shall be accompanied by a subcontractor participation form approved by the Commission.  
24 That form shall contain information that the Commission has determined is necessary to enable the  
25 Commission and the Director (1) to monitor compliance by City departments and their prime

1 contractors with their obligations under this ordinance (2) to determine whether City departments are  
2 achieving their prime and subcontracting goals under this ordinance, and (3) to make such other  
3 reports and analyses as are required by this ordinance.

4 In the event that a request for payment fails to include the information required pursuant to this  
5 Section, the contract awarding authority shall, within two working days, notify the Director and the  
6 affected prime contractor[s] of the failure and afford each affected prime contractor an opportunity to  
7 be heard promptly. That notice shall inform the contractor that the contract awarding authority has  
8 tentatively determined that the information has not been provided, what information is missing and that  
9 if this failure is substantiated, then the Controller will be notified to withhold 20 percent of the  
10 requested payment until the information is provided. If the Controller finds, after consultation with the  
11 Director and notice and opportunity to be heard, that the information has not been provided, the  
12 Controller shall withhold 20 percent of the payment otherwise due until the information is provided.

13 (D) The contract awarding authority shall require all prime contractors to submit, within 10  
14 days following payment to the prime contractor of moneys owed for work completed on a project, an  
15 affidavit under penalty of perjury, that all subcontractors on the project or job have been paid and the  
16 amounts of each of those payments. The name, telephone number and business address of every  
17 subcontractor shall be listed on the affidavit. If a prime contractor fails to submit this affidavit, the  
18 contract awarding authority shall notify the Director who shall take appropriate action as authorized  
19 under Section 14B.17.

20 **SEC. 14B.12 POWERS AND DUTIES OF THE MAYOR.**

21 In addition to the duties given to the Mayor elsewhere, the Mayor shall:

22 (A) By July 1st of each fiscal year, issue notices to all City departments informing them of  
23 their duties under this ordinance. The notice shall contain the following information: (1) the City-wide  
24 and department-specific LBE goals that departments are expected to use good-faith efforts to attain  
25 during the fiscal year and that a department's failure to use good-faith efforts to attain the participation

1 goals shall be reported to this Board in the Commission's annual report; (2) the availability of MBEs,  
2 WBEs, and OBEs to perform City contracting, both City-wide and department-specific, and that  
3 departments are expected to take all steps necessary to ensure against illegal or arbitrary  
4 discrimination or exclusion of any certified business; and (3) the data each department is required to  
5 provide the Controller on each contract award.

6 (B) Coordinate and enforce cooperation and compliance by all departments with this  
7 ordinance.

8 (C) Designate a liaison to the Human Rights Commission to facilitate communication and  
9 compliance with this ordinance.

10 **SEC. 14B.13 POWERS AND DUTIES OF CONTRACT AWARDING AUTHORITIES.**

11 (A) In addition to the powers and duties given to contract awarding authorities elsewhere,  
12 contract awarding authorities shall:

13 (1) Adjust bid bonding and insurance requirements in accordance with the most current  
14 version of the City's "Contract Insurance Manual" or as otherwise authorized by the City Risk  
15 Manager, Department of Administrative Services.

16 (2) Use the City's Surety Bonding Program set forth in Section 14B.17 to assist LBEs  
17 bidding on and performing City public works/construction contracts to meet bonding requirements  
18 and/or obtain construction loans.

19 (3) Submit to the Office of Contract Administration (OCA) in electronic format or a format  
20 specified by the OCA, all bid opportunities, requests for proposals and solicitations for which  
21 published notice or advertising is required, no later than 10 calendar days prior to the due date of the  
22 bid opportunity, request for proposals or solicitation. A contract awarding authority must obtain a  
23 waiver from its commission, or in the case of a department that has no commission, from the Board of  
24 Supervisors, if it cannot meet the requirements of this Section.

1           (4) Impose such sanctions or take such other actions as are designed to ensure compliance  
2 with the provisions of this ordinance, which shall include, but are not limited to:

3           (a) Refuse to award a contract.

4           (b) Order the suspension of a contract.

5           (c) Order the withholding of funds.

6           (d) Order the revision of a contract based upon a material breach of contract provisions  
7 pertaining to LBE participation or outreach to MBEs, WBEs, or OBEs.

8           (e) Disqualify a bidder, contractor, subcontractor, or other business from eligibility for  
9 providing goods or services to the City for a period not to exceed five years, based on the standards set  
10 forth in this ordinance and rules and regulations promulgated by the Commission. Any business  
11 disqualified under this subsection shall have a right to review and reconsideration by the Commission  
12 after two years upon a showing of corrective action indicating that violations are not likely to recur.

13           (5) Not award any contract to a person or business that is disqualified from doing business  
14 with the City under the provisions of this ordinance.

15           (6) Designate a staff person to be responsible for responding to the Director and  
16 Commission regarding the requirements of this ordinance.

17           (7) Maintain accurate records as required by the Director and the Commission for each  
18 contract awarded, its dollar value, the nature of the goods or services to be provided, the name of the  
19 contractor awarded the contract, its identity as a Small-LBE, Micro – LBE, MBE, WBE or OBE, the  
20 efforts made by the contract awarding authority to solicit bids from LBEs, including Micro – LBEs,  
21 MBEs, WBEs and OBEs, responses received from such businesses, and a full and complete statement of  
22 the reason(s) for selection of the contractor addressing the particular qualifications at issue.

23           (8) Where feasible, provide technical assistance to LBEs to increase their ability to compete  
24 effectively for the award of City contracts.

1           (9) Work with the Director and the Controller to implement a City-wide prompt-payment  
2 policy requiring that LBEs be paid by the City within 30 days of the date on which the City receives an  
3 invoice from a LBE for work performed for the City.

4           (10) Provide the Director with written notice of all contract amendments, modifications,  
5 supplements and change orders that cumulatively result in an increase or decrease of the contract's  
6 dollar amount of more than 10 percent. Such notice shall be provided within 10 days of each such  
7 contract modification.

8           (11) Whenever contract amendments, modifications, supplements or change orders  
9 cumulatively increase the total dollar value of a contract by more than 10 percent, the contract  
10 awarding authority shall require compliance with those provisions of this ordinance that applied to the  
11 original contract.

12           (12) All contract amendments, modifications, supplements or change orders that  
13 cumulatively increase by more than 20 percent the total dollar value of all contracts originally valued  
14 at \$50,000 or more shall be subject to prior approval of the Director, who shall review the proposed  
15 amendment, modification, supplement or change order to correct contracting practices that exclude  
16 Small-LBEs or Micro – LBEs from new contracting opportunities or discriminate against MBEs, WBEs  
17 or OBEs.

18           (B) Contract awarding authorities or departments may invite, encourage or request  
19 businesses to joint venture on any professional services or architecture/engineering contact to promote  
20 LBE participation.

21           (C) For the purpose of determining LBE participation, contracts awarded to joint ventures  
22 in which one or more LBEs are combined with one or more business that are not LBEs shall be deemed  
23 by the contract awarding authority to be awarded to LBEs only to the extend of the LBE participation  
24 in the joint venture.



1           (D) Subject to the budgetary and fiscal provisions of the San Francisco Charter and to any  
2 limitations or requirements associated with the issuance of municipal financings, including but not  
3 limited to the use of tax-exempt financing and other long-term obligations, contract awarding  
4 authorities shall set aside the following percentage of the value of each contract, as defined in Section  
5 14B.2, to fund the administration and enforcement of this Chapter 14B by the HRC. Such funds shall  
6 be used solely for the actual costs of administering and enforcing this Chapter. The HRC shall provide  
7 monthly statements to contract awarding authorities and the Controller's Office that account for all  
8 expenditures related to administering and enforcing this Chapter, broken down by staff member,  
9 project, and activity. Any funds that are not expended on the actual costs of administration and  
10 enforcement relating to the subject contract shall be returned to the source fund as soon as practicable.  
11 This Section 14B.13(D) shall not apply to contracts that are funded by bonds that were authorized prior  
12 to the effective date of his ordinance.

13           (1) For contracts having an estimated value under \$ 1 million, the contract awarding  
14 authority shall set aside 2% of the value of the contract for the purpose described in this Section.

15           (2) For contracts having an estimated value of at least \$ 1 million but less than \$ 10 million,  
16 the contract awarding authority shall set aside 1% of the value of the contract for the purpose  
17 described in this Section.

18           (3) For contracts having an estimated value of at least \$ 10 million but less than \$ 50  
19 million, the contract awarding authority shall set aside .5% of the value of the contract for the purpose  
20 described in this Section.

21           (4) For contracts having an estimated value of \$ 50 million or more, the HRC Director, in  
22 consultation with the contract awarding authority, shall determine the level of funding necessary to  
23 administer and enforce this ordinance with respect to the subject contract, provided that the funding  
24 shall not exceed .5% of the value of the contract. The contract awarding authority shall set aside the  
25 designated funds for the purpose described in this Section.

1           (5) Notwithstanding Sections 14B.13(D)(1), (2), (3) and (4), for the **Port of San Francisco,**  
2 **the San Francisco Public Utilities Commissio, the San Francisco Department of Public Works and**  
3 **the San Francisco International Airport, each such contract awarding authority and the HRC**  
4 **Director shall confer and jointly shall estimate the costs of administering and enforcing this Chapter**  
5 **with respect to each contract to be issued by each such **contract awarding authority.** The contract**  
6 **awarding authority shall set aside the agreed-upon funds for the purpose described in this Section.**

7           If, after exchanging information regarding the nature of the contract and the administrative  
8 activities required, the contract awarding authority and the Director do not agree on the cost of  
9 administering and enforcing this Chapter, the Mayor or his designee shall determine the appropriate  
10 amount to be set aside for the purpose described in this Section.

11           The Human Rights Commission shall report on set-asides determined under this Section  
12 14B.13(D)(5) in the Commission's annual report under Section 14B.15(B).

13           The Board of Supervisors shall assess the operation of this Section 14B.13(D)(5) in its three-  
14 year review under Section 14B.18(H).

15 **SEC. 14B.11 POWERS AND DUTIES OF THE OFFICE OF CONTRACT ADMINISTRATION.**

16           In addition to the duties given the Office of Contract Administration elsewhere, the Office of  
17 Contract Administration shall:

18           (A) Maintain, with the assistance of the Director, a current list of Small-LBEs, Micro-LBEs,  
19 MBEs, WBEs, and OBEs to provide each of those commodities or services subject to this ordinance  
20 that the Office of Contract Administration indicates are required by the City.

21           (B) Maintain a central office where all bids, requests for proposals and solicitations will be  
22 listed and kept current.

23           (C) Cause to be posted upon a website the following information concerning current bids,  
24 requests for proposals and solicitations: the title and number; the name of the contract awarding  
25 authority; and the name and telephone number of the person to be contacted for further information.

1 Such information shall be posted with sufficient lead time to provide adequate notice and opportunity to  
2 potential City contractors and vendors to participate in the bid opportunity, request for proposals or  
3 solicitation, but in no event less than 10 calendar days prior to the due date for such bid opportunity,  
4 request for proposals or solicitation.

5 **SEC. 14B.15 REPORTING AND REVIEW.**

6 (A) Reporting by the Director. Commencing January 1, 2007, and no later than the first day  
7 of every third month thereafter, the Director shall issue a written report to this Board. That report shall  
8 document each City department's performance under the terms of this ordinance, including, among  
9 other things, each City department's progress in meeting LBE goals and ensuring non-discrimination  
10 against MBEs, WBEs, and OBEs, and the success of each department's prime contractors in complying  
11 with the LBE subcontracting provisions of this ordinance and ensuring non-discrimination against  
12 MBEs, WBEs, and OBEs. That report shall also state whether or not each City department has fully  
13 reported all data required by this ordinance or requested by HRC or the Controller.

14 (1) Whenever the Director's report concludes that a department management's intentional  
15 disregard or negligent performance of obligations imposed by this ordinance has contributed to that  
16 department's failure to meet its prime contracting goals or requirements of this ordinance, or the  
17 failure of its prime contractors to meet their subcontracting goals or requirements of this ordinance, or  
18 whenever the Director's report concludes that a City department has failed to provide any data  
19 required by this ordinance or requested by the HRC or the Controller, the Clerk of this Board shall  
20 schedule before the appropriate committee of the Board a hearing on that report. The Clerk shall also  
21 give notice of that hearing to the heads of the departments identified in the report and request the  
22 attendance of the heads of those departments at the committee hearing. The Clerk's notice shall inform  
23 the department heads that they must be prepared to respond to the Director's finding of intentional  
24 disregard and/or negligent performance and to explain what steps they intend to take to forestall  
25 repetition of the problems identified in the Directors' report. The same procedure shall be followed

1 whenever the Director's report identifies any department as having failed to meet its prime or  
2 subcontracting goals for three consecutive quarters. If the Director's report indicates that a City  
3 department has not met its goals for three consecutive quarters, HRC and the City department shall  
4 institute a targeted program to remedy lack of participation by LBEs in any affected industry.

5 (2) The Director shall report to the Commission all waivers acted upon pursuant to Section  
6 14B.7(J) and 14B.8(A). Such report shall be made on a monthly basis following the granting of the  
7 waiver.

8 (B) Reporting by City Departments. By the last day of each fiscal year, all contract  
9 awarding authorities and City departments shall report annually to the Mayor on their progress in the  
10 preceding fiscal year toward the achievement of the LBE goals and their steps to ensure non-  
11 discrimination against MBEs, WBEs, and OBEs.

12 (C) Reporting by the Commission. By July 1st of each fiscal year subject to this ordinance,  
13 the Commission shall submit an annual report to the Mayor and this Board on the progress of the City  
14 toward the goals of this ordinance, together with an identification of problems and specific  
15 recommendations for: (1) improving the City's performance in fostering LBE participation in City  
16 contracting, and (2) ensuring non-discrimination against MBEs, WBEs, and OBEs. The Commission's  
17 report shall include an analysis of the bidding environment in the various industries that participate in  
18 City contracts.

19 Each year, after receiving the Commission's annual report, the Board shall hold a hearing to  
20 review the City's performance under this ordinance, the administration of this ordinance by the HRC,  
21 and the progress of City departments towards the purposes of this ordinance, and other subjects  
22 pertaining to the ordinance.

23 The Board shall act upon the Commission's recommendations by the first Board meeting of  
24 January in each fiscal year subject to this ordinance.

25 **SEC. 14B. 16 BONDING AND OTHER ASSISTANCE.**

1           (A) Bonding and Financial Assistance Program.

2           (1) Program Description. The City and County of San Francisco, acting through the  
3 Commission, intends to provide guarantees to private bonding companies and financial institutions in  
4 order to induce those entities to provide required bonding and financing to eligible contractors and  
5 subcontractors bidding on and performing City public work and construction contracts. This bonding  
6 and financial assistance program is subject to the provisions of this Section 14B.16(A).

7           (2) Eligible Contracts. The assistance described in this Section 14B.16(A) shall be available  
8 for any City public works or construction contract to which this ordinance applies.

9           (3) Eligible Businesses. Businesses must meet the following criteria to qualify for  
10 assistance under this Section 14B.16(A).

11           (a) The business may be either a prime contractor or subcontractor; and

12           (b) The business must be certified by the Director as an LBE according to the requirements  
13 of Section 14B.3;

14           (c) The business may be required to participate in a "bonding assistance training program"  
15 as offered by the Commission, which is anticipated to provide the following:

16           (i) Bond application assistance,

17           (ii) Assistance in developing financial statements,

18           (iii) Assistance in development of a pre-bond surety profile,

19           (iv) Identification of internal financial control systems, and

20           (v) Development of accurate financial reporting tools.

21           (4) Agreements Executed by the Human Rights Commission. The Director is hereby  
22 authorized to enter into the following agreements in order to implement the bonding and financial  
23 assistance program described in this Section 14B.16(A):

24           (a) With respect to a surety bond, the agreement to guaranty up to 40 percent of the face  
25 amount of the bond or \$750,000, whichever is less;

1           (b) With respect to a construction loan to be made to a contractor or subcontractor, an  
2 agreement to guaranty up to 50 percent of the original principal amount of the construction loan or 50  
3 percent of the actual loss suffered by the financial institution as a result of a loan default, whichever is  
4 less; provided that in any event the City's obligations with respect to a guaranty shall not exceed  
5 \$750,000;

6           (c) Any other documents deemed necessary by the Director to carry out the objectives of  
7 this program, provided that such documents shall be subject to review and approval by the City  
8 Attorney's Office.

9           (5) Monitoring and Enforcement. The Director shall maintain records on the use and  
10 effectiveness of this program, including but not limited to (1) the identities of the businesses and  
11 bonding companies participating in this program, (2) the types and dollar amounts of public work  
12 contracts for which the program is utilized, and (3) the types and dollar amounts of losses which the  
13 City is required to fund under this program. The Director shall submit written reports to the Board of  
14 Supervisors every six months beginning January 1, 2007, advising the Board of the status of this  
15 program and its funding capacity, and an analysis of whether this program is proving to be useful and  
16 needed.

17           (6) Funding and Accounts. As of July 1, 2006, funding for this program may be derived  
18 from the following sources:

19           (a) The Board of Supervisors has appropriated or will appropriate funds for the operation  
20 of this program.

21           (b) Each Department authorized to contract for public works or improvements pursuant to  
22 San Francisco Administrative Code Chapter 6 may commit to this program up to ten percent (10%),  
23 but not less than one percent (1%), of the budget for every public work or improvement undertaken. (A  
24 "public work or improvement" is defined in San Francisco Administrative Code Chapter 6.).

1           (c) The Treasurer of the City and County of San Francisco is hereby authorized to negotiate  
2 a line(s) of credit or any credit enhancement program(s) or financial products(s) with a financial  
3 institution(s) to provide funding; the program's guaranty pool may serve as collateral for any such line  
4 of credit.

5           In the event the City desires to provide credit enhancement under this Subsection for a period in  
6 excess of one fiscal year, the full aggregate amount of the City's obligations under such credit  
7 enhancement must be placed in a segregated account encumbered solely by the City's obligations under  
8 such credit enhancement.

9           (7) Term of Bonding Assistance Program. The Director is authorized to enter into the  
10 agreements described in this Subsection for a period ending on the earlier of (1) June 30, 2008 or (2)  
11 the date on which the Controller is no longer able to certify the availability of funds for any new  
12 guarantee agreement.

13           (8) Default on Guarantees. The Human Rights Commission shall decertify any contractor  
14 that defaults on a loan or bond for which the City has provided a guarantee on the contractor's behalf.  
15 However, the Human Rights Commission may in its sole discretion refrain from such decertification  
16 upon a finding that the City has contributed to such default.

17           (B) Education and Training. The Director shall continue to develop and to strengthen  
18 education and training programs for LBEs and City contract awarding personnel.

19           (C) Cooperative Agreements. With the approval of the Commission and the Board of  
20 Supervisors, the Director may enter into cooperative agreements with agencies, public and private,  
21 concerned with increasing the use of LBEs in government contracting.

22 **SEC. 14B.17 ENFORCEMENT.**

23           (A) The Director shall monitor the City's utilization of Small-MBEs, Micro-LBEs, MBEs,  
24 WBEs, and OBEs in City contracting. The Director shall issue an exit report for any contract that  
25 includes LBE subcontracting participation and/or LBE prime contract participation as a joint venture

1 partner. The purpose of this exit report is to ensure that prime contractors are complying with their  
2 commitments to use LBE subcontractors and LBEs are performing services as set forth in the  
3 bid/proposal and contract documents for the joint ventures.

4 (B) **Investigations.** The Director shall investigate potential violations of this ordinance.  
5 Bidders, contractors, subcontractors and applicants for certification shall provide to the City  
6 any information that the City deems relevant, and shall cooperate in all other respects with such an  
7 investigation. A request for information from a bidder, contractor, subcontractor or applicant shall  
8 identify the records required and the time for response. If the bidder, contractor, subcontractor or  
9 applicant fails to respond to the request for information, or otherwise fails to cooperate in the  
10 investigation, appropriate sanctions, as provided in Section 14B.17(C), may be imposed. In an  
11 investigation of potential discrimination by a prime bidder prior to contract award, if the bidder fails to  
12 respond to the request for information, or otherwise fails to cooperate in the investigation, the bid will  
13 be rejected as non-responsive, and additional sanctions may be imposed.

14 (C) **Conference and Conciliation.**

15 In the Director's sole discretion, the Director may attempt to resolve noncompliance with this  
16 ordinance by any bidder, contractor, subcontractor or applicant for certification through informal  
17 processes, including conference and conciliation.

18 (D) **Sanctions.** The City, including the Director and contract awarding authorities, as  
19 appropriate, may impose any of the following sanctions on a bidder, contractor, subcontractor or  
20 applicant for certification who fails to comply with this ordinance, provided that, except as may  
21 otherwise be provided by duly promulgated rules, if any, under Section 14B.5 for PUC-LBEs, any  
22 violation related to certification must be based on a finding by the Director:

23 (1) **Reject all bids;**

24 (2) **Declare a bid non-responsive;**

25 (3) **Suspend a contract;**



- 1           (4) Withhold funds;
- 2           (5) Assess penalties;
- 3           (6) Debar a bidder;
- 4           (7) Deny certification;
- 5           (8) Revoke certification.

6           **(E) Procedures for Denials or Revocation of Certification.** Whenever the Director  
7 proposes to deny an application for or revoke the certification of a business, the Director shall notify  
8 the applicant or certified business in writing of the basis for the denial or revocation, and the date on  
9 which the business will be eligible to reapply for certification. The Director shall provide the applicant  
10 or certified business with an opportunity to be heard before a final determination is made. The  
11 Director shall require a business to wait at least six months but not more than two years after the  
12 denial or revocation before reapplying for certification in the same category.

13           **(F) Procedures for Director Findings of Discrimination.**

14           In determining whether a bidder, contractor or subcontractor has engaged in discrimination in  
15 violation of this ordinance, the Director may consider: (1) direct evidence of discrimination, (2)  
16 procedures used to select subcontractors, including relative qualifications, (3) significant differences  
17 not attributable to any legitimate non-discriminatory business reason between the available  
18 percentages of MBEs, WBEs, or OBEs capable of providing goods and services as subcontractors on a  
19 contract or a series of contracts and the percentages of the bidder's subcontractors who are MBEs,  
20 WBEs, or OBEs, or (4) any other relevant evidence.

21           Whenever the Director proposes to issue a finding of discrimination against any bidder,  
22 contractor or subcontractor, the Director shall notify the bidder, contractor or subcontractor in writing  
23 of the basis for the finding, provided that any proposal to debar a business shall be governed by Section  
24 14B.17(G) The Director shall provide the bidder, contractor or subcontractor with an opportunity to be  
25 heard before a final determination is made.

1           (G) **Procedures for Debarment.** The Director shall have the authority to act as a charging  
2 official under San Francisco Administrative Code Chapter 28 to debar a bidder or contractor for  
3 violations of this Chapter. The debarment procedures of Chapter 28 shall govern.

4           (H) **Commission to Hear Appeals.** Except as provided in Section 14B.(G), the Commission  
5 shall hear appeals challenging any determination of the Director under this section. The Commission  
6 may sustain, reverse or modify the Director's findings and sanctions imposed, or take such other action  
7 to effectuate the purpose of this ordinance. Unless the Commission so orders, an appeal shall not stay  
8 the Director's findings and the imposition of sanctions.

9           (I) **Referral to Other Agencies.** No person shall knowingly make, file or cause to be filed  
10 with the City any materially false or misleading statement or report in connection with this ordinance.  
11 If the Director has reason to believe that any person has knowingly made, filed, or caused to be filed  
12 with the City any materially false or misleading statement or report made in connection with this  
13 ordinance, the Director shall report that information may impose any sanction described in this Section  
14 14B.17, or may refer the matter to the City Attorney or the District Attorney for appropriate action.

15           (J) **Willful Noncompliance by Contract Awarding Authority.** Whenever the  
16 Director finds after investigation that a contract awarding authority has willfully failed to comply with  
17 its duties under this ordinance, the Director shall transmit a written finding of noncompliance  
18 specifying the nature of the noncompliance, to the contract awarding authority, the Commission, the  
19 Mayor and this Board.

20           The Director shall attempt to resolve any noncompliance through conference and conciliation.  
21 Should such attempt fail to resolve the noncompliance, the Director shall transmit a copy of the finding  
22 of noncompliance along with a finding that conciliation was attempted and failed to the Commission  
23 and this Board.

24           The finding of noncompliance shall be communicated to the Mayor for appropriate action to  
25 secure compliance.

1 **SEC. 14B. 15 APPLICABILITY, OPERATIVE DATE AND TRANSITION PROVISIONS.**

2 **(A) Suspension of Chapter 12D.A.** *All provisions of Administrative Code Chapter 12D.A*  
3 *that were invalidated by the Superior Court orders dated July 26 and August 23, 2004, in Coral*  
4 *Construction, Inc. v. City and County of San Francisco (Sup. Ct. No. 421249) shall be and are*  
5 *suspended and are of no force and effect; provided, however, the provisions of Chapter 12D.A that*  
6 *were invalidated by the court's orders shall be suspended only so long as, and only to the extent that,*  
7 *the City is enjoined by the court from enforcing the provisions of Chapter 12D.A. If the injunction is*  
8 *lifted or stayed in its entirety, Chapter 12D.A shall automatically become effective and enforceable,*  
9 *and this Chapter 14B shall be suspended.*

10 **(B) Operative date of this Chapter.** *Chapter 14B shall become operative on July 1, 2006,*  
11 *and shall govern all contracts initiated on or after that date.*

12 **(C) Applicability.**

13 *Chapters 12D.A, 14A and 14B shall apply as follows.*

14 **(1)** *Any amendment to a contract initiated before July 26, 2004 in which the Contractor*  
15 *agreed to comply with Chapter 12D.A shall be governed by Chapter 12D.A; provided, however, that if*  
16 *a competitive solicitation for an agreement to the proposed changes to the contract is required by law,*  
17 *or the law would otherwise require execution of a new contract, rather than an amendment to an*  
18 *existing contract, the provisions of Chapter 14B and not Chapter 12D.A shall apply.*

19 *Chapter 14A shall apply to (1) all contracts in which the Contractor agreed to comply with*  
20 *Chapter 14A and any amendment to those contracts and (2) all contracts initiated on or after July 26,*  
21 *2004 and before July 1, 2006 and any amendment to such contracts; provided, however, that if a*  
22 *competitive solicitation for an agreement to the proposed changes to the contract is required by law, or*  
23 *the law would otherwise require execution of a new contract, rather than an amendment to an existing*  
24 *contract, the provisions of Chapter 14B and not Chapter 14A shall apply .*

1           (2) This Chapter 14B shall govern all contracts initiated on or after July 1, 2006, and any  
2 amendments thereto.

3           (3) For all contracts described in Section 14B.18(C)(1) and Section 14B.18(C)(2) to which  
4 this Chapter 14B applies, when any provision of the San Francisco Municipal Code or other local law  
5 refers to Chapter 12D.A or 14A of the San Francisco Administrative Code, it shall be read as referring  
6 instead to Chapter 14B.

7           (D) Transition Provisions.

8           In order to effect an orderly transition from Chapter 14A to this ordinance, any business  
9 certified as an LBE under Chapter 12D.A or a DBE under Chapter 14A shall be deemed an LBE under  
10 this Chapter 14B until the earlier of (1) the expiration of the business' certification under 12D.A or  
11 14A, (2) the business' failure to maintain the certification criteria under which it was certified, or (3)  
12 January 1, 2007. The Director may, by appropriate rules and regulations, establish procedures to  
13 allow such businesses certified as LBEs or DBEs under 12D.A or 14A to demonstrate their eligibility  
14 for certification under Section 14B.3 of this ordinance on an expedited basis, prior to the expiration of  
15 their existing certification.

16           The Director shall deem any application for DBE certification under Chapter 14A that is  
17 pending on the effective date of this ordinance to be an application for certification under Chapter 14B.

18           (E) State or Federal Provisions. In contracts which involve the use of any funds furnished,  
19 given or loaned by the government of the United States or the State of California, all laws, rules and  
20 regulations of the government of the United States or the State of California or of any of its  
21 departments relative to the performance of such work and the conditions under which the work is to be  
22 performed, shall prevail over the requirements of this ordinance when such laws, rules or regulations  
23 are in conflict.

24           (F) Severability. The provisions of this ordinance are declared to be separate and  
25 severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this

1 ordinance, or the invalidity of the application thereof to any person or circumstances shall not affect  
2 the validity of the remainder of this ordinance, or the validity of its application to other persons or  
3 circumstances.

4 (G) General welfare clause. In undertaking the enforcement of this ordinance, the City is  
5 assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing on  
6 its officers and employees, an obligation for breach of which it is liable in money damages to any  
7 person who claims that such breach proximately caused injury.

8 (H) Three-year review. No later than three years from the effective date of this ordinance,  
9 the Board of Supervisors shall hold a hearing for the purpose of conducting a comprehensive review of  
10 this ordinance. The Board shall take testimony from all affected parties, and shall enact any changes  
11 that it deems appropriate.

12 (I) Municipal Transportation Agency. Consistent with Charter section 8A.101(g), the  
13 Municipal Transportation Agency shall comply with the provisions of this Chapter 14B.

14 APPROVED AS TO FORM:  
15 DENNIS J. HERRERA, City Attorney

16 By: \_\_\_\_\_  
17 Deputy City Attorney

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