CLA MEMORANDUM

DATE: November 16, 2017 Assignment No: 17-11-1056

TO: Honorable Members of the
Rules, Elections, and Intergovernmental Relations Committee

FROM: Sharon M. Tso
Chief Legislative Analyst

Addendum to the Cannabis Social Equity Analysis Report

Honorable Members:

At its meeting on October 30, 2017, the Rules, Elections, and Intergovernmental Relations Committee (Rules Committee) considered the Cannabis Social Equity Analysis Report, which was prepared by the consulting firm of Amec Foster Wheeler. During this meeting, the Members of the Rules Committee requested additional information for several components of the proposed Social Equity Program (Program), which includes the following:

- Additonal research and analysis concerning the proposed ownership requirements and Board of Directors composition.
- Additional research on the legality of the proposed residency requirements of the Program.
- Additional analysis on implementation of the Community Reinvestment Program and Community Benefits Agreements.
- Additional information as it relates to start-up costs for cannabis businesses.

Pursuant to the above request, transmitted herewith is the Addendum to the Cannabis Social Equity Analysis Report prepared by the consulting firm Amec Foster Wheeler. The report was prepared with extensive consultation and participation of the Chief Legislative Analyst; City Administrative Officer; Cannabis Department; Planning Department; City Attorney; Police Department; Fire Department; Department of Water & Power; and Department of Building & Safety.

The Consultant will be available to present their report and findings. If we may be of further assistance, please let us know.

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Addendum to the Cannabis Social Equity Analysis Report



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Acronyms and Abbreviations

ANWOL	A New Way of Life
CDD	Community Development Department of the City of Los Angeles
CFR	Code of Federal Regulations
City	City of Los Angeles
DSHS	Department of Social and Health Services
DVBE	Disabled Veterans Business Enterprise
EWDD	Department of Economic and Workforce Development
FAME	First African Methodist Episcopal Church
FIT	Feed-In-Tariff Program
GAO	U.S. Government Accountability Office
HCIDLA	Los Angeles Housing and Community Development Investment Department
HSC	Health and Safety Code
LADBS	Los Angeles Department of Building and Safety
LADOT	Los Angeles Department of Transportation
LADWP	Los Angeles Department of Water and Power
LAFD	Los Angeles Fire Department
LAFLA	Legal Aid Foundation of Los Angeles
LAPD	Los Angeles Police Department
LARRP	Los Angeles Regional Reentry Program
LAWA	Los Angeles World Airports
MAUCRSA	Medical and Adult-Use Cannabis Regulation and Safety Act
MBE	Minority Business Enterprise
MCTF	Marijuana Tax Cash Fund
Oakland	City of Oakland
Program	City of Los Angeles Cannabis Social Equity Program
Rules Committee	Rules, Elections, and Intergovernmental Relations Committee
SBA	Small Business Administration
SIP	Solar Incentive Program
UCLA	University of California, Los Angeles
WIB	Workforce Investment Board of the City of Los Angeles
yr	year

CANNABIS SOCIAL EQUITY ANALYSIS ADDENDUM

1.0 INTRODUCTION

The purpose and intent of the addendum is to respond to the Rules, Election, and Intergovernmental Relations Committee (Rules Committee) direction and to provide the Council, City staff and the public with new information that may be relevant to their deliberation of the proposed City of Los Angeles (City) cannabis social equity program (Program). The Rules Committee meeting was held on October 30, 2017 to discuss the proposed Program as described in the Cannabis Social Equity Analysis Report published on October 25, 2017. At the meeting, the Rules Committee requested additional information for several program components.

- First, the Rules Committee requested additional research for proposed ownership requirements and Board of Directors composition and revised recommendations if determined appropriate based on new research findings.
- Second, the Rules Committee requested additional analysis on implementation of the Community Reinvestment Program.

Additional information is also provided based on new research that is relevant to Rules Committee and Council deliberations. This includes how Program components regarding permitting, business assistance, workforce development, expungement, community reinvestment, incubator program, residency requirement, and ownership requirement could be more specifically implemented.

Recommendations

Ownership:

1. The ownership requirement should be adapted to be 51 percent ownership interest and majority of the Board of Directors for higher priority benefits (Tier 1 and 2).
    a. Language should be crafted to ensure that the analogous structures in non-profits and collectives reflect the proposed majority ownership and majority Board of Directors requirements.
    b. These businesses should be entitled to 51 percent of the annual distribution of profits.
2. Change of ownership or business structure should require approval by the Department of Cannabis Regulation.
3. Monitoring for the ownership requirement should follow the structure of the Disabled Veterans Business Enterprise (DVBE) program.
4. Tier 3 eligibility should be given to equity businesses demonstrating 33⅓ percent ownership and 33⅓ percent Board of Directors requirement.
    a. Language should be crafted to ensure that the analogous structures in non-profits and collectives reflect the proposed 33⅓ percent ownership and 33⅓ percent Board of Directors requirement.
    b. These businesses should be entitled to 33⅓ percent of the annual distribution of profits.

5. Monitoring for the proposed incubator program should follow the structure of the federal Mentor-Protégé program.

Residency:

6. The City Attorney should determine if a legally defensible argument can be made for the proposed 5 year accumulative residency requirement.
7. If the proposed residency requirement is not feasible, then non-residents should not be barred from the Program, but residents applying under Tiers 1-4 should have priority over non-residents in receiving Program benefits.

Community Benefits Program:

8. The Rules Committee may consider inclusion of a Community Benefits Program. Such a program could be modeled on existing City Community Benefits Programs, involving the Economic Development Committee and established agencies including the Economic and Workforce Development Department of the City of Los Angeles (EWDD) and the Workforce Investment Board of the City of Los Angeles (WIB), and working in collaboration with the Department of Cannabis Regulation.

Interdepartmental Coordination:

9. In order to promote essential coordination and an efficient licensing program, 5 interdepartmental task forces, with oversight by the Department of Cannabis Regulation. Relevant agencies and organizations are described in section 1.6. The interdepartmental task forces should include the following:
    a. Licensing & Compliance
    b. Business Training
    c. Workforce Development
    d. Community Reinvestment
    e. Expungement
10. The Department of Cannabis Regulation should identify a contact person for departments participating in the task force and further develop a process prior to City issuance of licensing to ensure coordinated and timely collaboration regarding implementation of the program.
11. The Department of Cannabis Regulation should direct applicants both to the designated contact person in other departments and to the LA Business Portal (http://www.business.lacity.org/), which describes the requirements for starting a business in the City.

This memo also addresses supporting information regarding the purpose and intent of the proposed Program, and startup costs estimates that will help inform funding for the proposed industry ownership investment program. Recommendations provided for the proposed Program components are intended to be flexible in order to be adaptable to respond to emerging issues as the Program is implemented. As with many social and planning programs, overly specific regulations could result in indirect and unintended consequences once a program has been in effect. This study recommends that the Program be adaptive to be responses to such issues that may arise. As discussed in the *Final Cannabis Social Equity Analysis Report*, it should be at the discretion of the Department of Cannabis Regulation as necessary.

1.1 Ownership

The Rules Committee expressed concern regarding the recommended 51 percent ownership requirement, inquired if lowering the ownership requirement could broaden Program participation and questioned if the composition of the Board of Directors should be used as a qualifying criteria. In response, in order to provide further data on composition and effectiveness of established similar governmental programs, the team reviewed and analyzed the ownership requirements to determine the effectiveness of relevant long established federal, state, and City social equity related programs. Based on this analysis, recommendations for ownership are provided for Committee consideration. These recommendations include the following:

- The ownership requirement should be adapted to be 51 percent ownership interest and majority of the board of directors for higher priority benefits (Tiers 1 and 2).
    - Language for the ownership requirement should be adapted from the federal Mentor-Protégé program for corporations, limited liability companies, and partnerships.
    - Language should be crafted to ensure that the analogous structures in non-profits and collectives reflect the proposed majority ownership and Board of Directors requirement.
    - These businesses should be entitled to 51 percent of the annual distribution of profits.
        - Language should be adapted from the DVBE program.
- Change of ownership or business structure should require approval by the Department of Cannabis Regulation.
    - Language for a change of ownership should be adapted from the federal Mentor-Protégé program.
- Monitoring for the ownership requirement should follow the structure of the Disabled Veterans Business Enterprise (DVBE) program.
    - Language for monitoring should be adapted from the DVBE program.
- Tier 3 eligibility should be given to equity businesses demonstrating 33⅓ percent ownership and 33⅓ percent Board of Directors.
    - Language should be crafted to ensure that the analogous structures in non-profits and collectives reflect the proposed 33⅓ percent ownership and Board of Directors requirement.
    - These businesses should be entitled to 33⅓ percent of the annual distribution of profits.
- Monitoring for the proposed incubator program should follow the structure of the federal Mentor-Protégé program.

Federal Mentor-Protégé Program

Program Description

The federal Mentor-Protégé program, administered by the Small Business Association (SBA), contains language related to ownership that is relevant to the proposed Program. The goal of the federal Mentor-Protégé program is to benefit small businesses that are unconditionally owned and controlled by one or more socially and economically disadvantaged individuals (Code of Federal Regulations 2017a). Under the program, the mentor is paid by the SBA for the direct and indirect cost of the training and assistance it agrees to provide a protégé under a written development plan approved by the protégé (Code of Federal Regulations 2017b). The program's purpose and intent is similar to that of the proposed Program, because it seeks to shorten the opportunity gap between individuals who by some circumstance beyond their control had fewer capital and credit opportunities than those without that social disadvantage.

Mentor Protégé Program: Ownership

- Majority ownership requirement
- Majority control requirement
  - Board of Directors
  - Day-to-day management & administration
- Ownership restrictions for non-disadvantaged individuals
- Change of ownership requires SBA approval

The ownership requirements under the federal Mentor-Protégé program are useful in informing the structure of the ownership requirement for the proposed Program. Under the program, a company applying for participation must be 51 percent unconditionally and directly owned by one or more socially and economically disadvantaged individuals. This requirement's intent is to ensure that individuals who this program seeks to target are individuals that are receiving program benefits. Attachment 1 provides the federal code text for the program. It contains specific language for ownership of a partnership, limited liability company, and corporation (CFR §124.105c-d).

Notably, the program contains language for ownership restrictions for non-disadvantaged individuals (CFR §124.105h). It states that a non-disadvantaged individuals or non-Participant "that is a general partner or stockholder with at least 10 percent ownership interest in one Participant may not own more than 10 percent interest in another Participant…" This requirement addresses the potential unintended consequence that non-disadvantaged businesses fund disadvantaged businesses in order to obtain program benefits for themselves. This program component is relevant to the proposed Program and we recommend inclusion of this language for the Program and adaptive review of this requirement once partnerships are in effect.

Another key component of the federal Mentor-Protégé program is that it requires that disadvantaged applicants have control over their business. Under the program, control includes "both strategic policy setting exercised by board of directors and the day-to-day management and administration of business operations" (CFR §124.106). Specific language for control can be found in the federal code text for the program provided in Attachment 1. Further, the program provides language for a change of ownership (CFR §124.105i). A change of ownership or business structure under the program is permissible only if one or more disadvantaged individuals own and control the business after the change and the SBA approves the change in writing.

In addition to the ownership language, the federal Mentor-Protégé program is relevant in informing monitoring of the proposed incubator program. Under the Mentor-Protégé program, the protégé must submit an annual report detailing whether the mentor has provided them with the services agreed upon in the development plan (U.S. Government Accountability Office 2011). Should a protégé indicate that a mentor is not providing them with the assistance agreed upon, then the SBA could terminate the partnership and suspend the mentor from future program participation based on agency findings.

Mentor Protégé Program: Incubator

- Written agreement of assistance
- Limit of 3 protégés per mentor
- Annual report of services provided
- SBA discretion to terminate partnership & prevent program participation for 2 years

Program effectiveness

Analyses performed by the U.S. Government Accountability office (GAO) describe differences in program regulation by federal agencies that implement the program and calls for data collection, but does not specifically state any issues that have arisen regarding the program (Congressional Research Service 2017). However, changes made to the SBA's regulations for the program demonstrate a response to issues that arose. For instance, in 2011, the SBA limited the number of protégés a mentor could have to three (Congressional Research Service 2017). It also allowed firms seeking to become mentors to submit audited financial statements or other evidence to demonstrate their "favorable financial health." The SBA was authorized to recommend the issuance of a "stop work" order on any executive branch contract performed by a mentor-protégé joint venture when it determined that the mentor has not provided the protégé with the development assistance set forth in the mentor-protégé agreement. It also prohibited mentors who were terminated for failure to provide assistance under their mentor-protégé agreement from serving as a mentor for two years. Further changes were made to the regulations regarding joint ventures under the program to ensure that protégé (8[a]) firms are not "taken advantage of by certain non-8(a) joint venture partners." The protégé must receive profits from the joint venture commensurate of the work it performs, and must perform at least 40 percent of work done by the joint venture, which must be proven by the joint venture firm.

Disabled Veterans Business Enterprise (DVBE) Program

Program Description

The purpose of the California DVBE program is "to provide procuring agencies with the authority to set acquisitions aside for exclusive competition among service-disabled veteran-owned business concerns, as well as the authority to make sole source awards to service-disabled veteran-owned small business concerns if certain conditions are met" (U.S. Small Business Administration 2017). The California Code of Regulations §1896.81 provides eligibility requirements for certification as a DVBE (California Code of Regulations 2017). Under the certification, one or more disabled veterans must own and control the business. Specifically, the business must be "at least 51 percent unconditionally owned by one or more disabled veterans" (§1896.81a; see Attachment 2). Additionally, "daily business shall be managed and controlled by one or more disabled veterans" (§1896.81a). However, "the disabled veteran who manages and controls the business is not required to be the disabled veteran business owner" (§1896.81a). The code also provides ownership language for sole proprietorships, partnerships, corporations, and subsidiaries (§1896.81b).

Unlike the federal Mentor-Protégé program, the DVBE certification provides language specifying the benefits the disabled veteran owners are entitled to receive (§1896.81g), which includes "at least 51 percent of the annual distribution of profits paid to the owners of a corporation or partnership." Like the federal Mentor-Protégé program, one or more disabled veterans must maintain control of the business (§1896.81h). This includes "both strategic policy setting exercised by boards of directors and the day-to-day management and administration of business operations." Control under the program is both managerial and operational (§1896.81h). Additionally, like the federal Mentor-Protégé program, the DVBE program requires that the business notify all awarding departments of any change in ownership or business structure (§1896.82h).

DBVE Program: Ownership

- Majority ownership requirement
- Daily management & control requirement
- Entitled to majority of annual distribution of profits
- Annual reporting of ownership structure
  - Change of ownership must be reported
  - Sanctions & penalties for falsifying majority ownership

Federal tax returns are required to be submitted annually to determine if a disabled veteran is a majority owner of the business (California Department of General Services 2013). Firms that have been determined to be violation face various sanctions and penalties. For example, they may face a misdemeanor punishable by imprisonment, financial penalties, and suspension from bidding on or participating in any state contract for a period of time (California Department of General Services 2017).

Program effectiveness

The California Department of General Services made changes to the eligibility requirements for DVBEs in 2016. As with the federal Mentor-Protégé program, changes made to the DVBE regulations demonstrate a response to issues that arose. Under the revised regulations, the California Department of General Services can require owners of the certified firm to complete and submit tax returns to ensure they meet eligibility requirements (§1896.12d; see Attachment 3) (California Department of General Services 2016). Additionally, new provisions were written to ensure that certified businesses are actually performing the contract work (§1896.15a-e).

Oakland Cannabis Social Equity Program

Program Description

The City of Oakland's (Oakland) cannabis social equity program also has a majority ownership requirement. However, unlike the Business Mentor-Protégé program and DVBE programs, Oakland's ownership requirement includes definitions for collectives and not-for-profit entities. Oakland defines ownership as the individual or individuals who:

(i) With respect to for-profit entities, including without limitation corporations, partnerships, limited liability companies, has or have an aggregate ownership interest (other than a security interest, lien, or encumbrance) of 50 percent or more in the entity

(ii) With respect to not for-profit entities, including without limitation a non-profit corporation or similar entity, constitutes or constitute a majority of the board of directors

(iii) With respect to collectives, has or have a controlling interest in the collective's governing body

Program effectiveness

Oakland has opened the application window for cannabis licensing, but has yet to begin issuing licensing. As of October 31, 2017, the Assistant to the City Administrator for Oakland reported an even 50-50 split between equity and general applicants exists. Thus, even with a majority ownership requirement, Oakland has met its participation ratio of 1 equity applicant for every 1 general applicant.

Oakland Program: Ownership

- Majority ownership requirement & analogous structures for nonprofits & collectives
- Has equal participation of equity & general applicants despite majority ownership requirement

Other data useful in informing the potential effectiveness of the City's Program includes numerics regarding the incubator program, how many equity applicants had secured property at the time of application, the percentage of equity applicants qualifying based on residency and prior conviction, and the distribution of cannabis industry types amongst applicants. Seventy-eight percent of all equity applicants applied based on residency in the city and 22 percent based on prior cannabis-related conviction. Twenty percent of Oakland's applicants are incubators or indicated their interest in incubating, while 59 percent of equity applicants indicated that they do not currently have property. Thus, the number of incubators is only a third of what is needed to provide these equity applicants with property. This highlights the importance of providing temporary/conditional property for equity applicants in Los Angeles who do not yet have real estate. Additionally, it supports the need for applicable City-owned properties to be made available to supplement property needs of social equity applicants and the importance of the proposed industry ownership investment fund in providing equity applicants the capital they need to secure property.

As Table 1 shows, the distribution of cannabis activity types amongst equity applicants and general applicants is similar. The majority of applicants are interested in delivery, cultivation, distribution, and manufacturing.

Table 1. Oakland applicants by cannabis activity type.

Cannabis Activity Type	Percent of Equity Applicants	Percent of General Applicants	Percent of All Applicants (General + Equity)
Delivery	24	18	21
Cultivation	33	36	35
Distributor	19	14	16
Manufacturing	18	27	22
Transporter	2	3	3
Lab testing	4	2	3

Additional Ownership Recommendations

The original proposed ownership requirement was 51 percent ownership or board of directors. However, concerns were raised regarding how Board of Directors are structured amongst various organizations. Depending on how a particular organization is structured, a majority of the Board of Directors requirement may not reflect the degree of ownership as a majority ownership requirement. Thus, it is recommended that the ownership requirement be revised based on the analysis provided above of federal, state, and city social equity related programs.

With the precedent set by the federal Mentor-Protégé program, Oakland's equity participation and the DVBE program, it is recommended that the City consider providing higher priority to businesses that are 51 percent

owned by one or more equity individuals. Language for the ownership requirement for corporations, limited liability companies, and partnerships should be adapted from the Mentor-Protégé program. However, the Mentor-Protégé program does not have language for non-profits and collectives. Thus, language should be crafted to ensure that the analogous structures in non-profits and collectives reflect the proposed majority ownership requirement.

Like the DVBE program, the equity owners should receive the majority of the annual distribution of profits from the business. This will ensure that equity individuals, rather than their non-equity partners, are receiving the majority of the Program's benefits. Like the federal Mentor-Protégé program and DVBE program, an equity applicant under the proposed Program should be required to notify the Department of Cannabis Regulation should it have a change in ownership or business structure. In order to verify equity ownership of an equity business, tax returns could be required to be provided.

Ownership Requirement

- Majority ownership & majority Board of Directors requirement for higher priority benefits (Tiers 1 and 2)
  - Analogous structures for nonprofits & collectives
  - Entitled to majority of annual distribution of profits
- Tier 3 eligibility given to businesses demonstrating 33⅓ percent ownership & 33⅓ percent Board of Directors
  - Analogous structure for nonprofits & collectives
  - Entitled to 33⅓ percent annual distribution of profits
- Change of business structure must be approved

The federal Mentor-Protégé program and DVBE program had requirements for control of the business. Thus, it is recommended that the new proposed ownership requirement consist of both 51 percent ownership and majority of the Board of Directors. However, this proposed requirement does not include day-to-day management and administrative control. This is because the goal of the proposed recommendations is to balance ease of implementation with meeting the proposed Program's purpose of intent. As recommended, the majority of Program benefits will be given to individuals whose life outcomes were disproportionately impacted by cannabis enforcement if the business meets the majority ownership requirement, majority of Board of Directors requirement, and workforce composition requirement (50 percent of workforce is composed of residents of defined social equity communities, individuals who have been arrested and convicted of a cannabis crime and their immediate family members, and low-income individuals in the City). Though no information is available regarding the difficulty of implementing the managerial and administrative control requirement under the federal Mentor-Protégé program and DVBE program, our experience working with the agricultural industry and other industry groups has indicated that governments have difficulty regulating industry at the management level. We have seen that the benefit of a day-to-day management and administration requirement may not be as important as having an experienced non-equity manager or administrator who can address such business functions as regulatory challenges, operational requirements, and industry trends. Thus, it is recommended that managerial and administrative control not be a requirement under the program.

During the Rules Committee meeting, Council members raised concern regarding the majority ownership requirement. Their concern was that a majority ownership requirement may limit the ability of individuals disproportionately impacted by cannabis enforcement to participate in the proposed Program. In balancing the concern over broadening participation in the Program with focusing receipt of majority benefits to disproportionately impacted individuals, lowering the ownership requirement to 33⅓ percent would result in an individual, who has not been disproportionately impacted by cannabis enforcement, receiving majority benefits. The model programs reviewed as part of this report, the Federal Mentorship-Protégé Program California DVBE Program and City of Oakland Cannabis Social Equity Program all require majority

ownership. However, to the Rules Committee concerns, if a majority requirement excludes individuals who were disproportionately impacted by cannabis enforcement from participating in the program, then the Program's purpose and intent will not be met. Therefore, in order to broaden potential participation in the Program, while retaining the highest level of benefit for disproportionately impacted individuals, it is recommended that a new Tier be created for equity individuals who have 33⅓ percent ownership up to but not including 51 percent ownership. In order to balance who will receive program benefits, these individuals should be eligible for Tier 3 Program benefits, which includes licensing fee deferrals.

As previously noted, it is recommended that this Program be flexible and adaptive to respond to unintended direct and indirect consequences should they arise. Therefore, it should be at the discretion of the Department of Cannabis Regulation to adapt the ownership requirement and control incentive as necessary to meet the Program's purpose and intent. The Department plans to provide regular briefings to the Rules committee during Program implementation which will permit decision-maker feedback and guidance on major adaptations.

Flexibility & Adaptability

- To respond to unintended consequences should they arise
- Direction of the Department of Cannabis Regulation to adapt Program as necessary
- Department of Cannabis Regulation to provide regular briefings to City Council & incorporate their guidance on major program adaptations

1.2 Residency

The Rules Committee and members of the public raised concern regarding the legality of the proposed residency requirement. This section describes the legal concerns of the current proposed residency requirement, and provides alternative mechanisms to incorporate the purpose and intent behind the residency requirement into the proposed Program. Recommendations include the following:

- The City Attorney should determine if a legally defensible argument can be made for the proposed 5 year accumulative residency requirement.
- If the proposed residency requirement is not feasible, then non-residents should not be barred from the Program and should be part of Tier 4; residents applying under Tiers 1-3 would have priority over non-residents in receiving Program benefits.

Legal Concerns

The Transportation Research Board, a division of the National Research Council, prepared a report regarding legality of local hiring preference programs (Transportation Research Board 2013). Under a local hiring program, contractors and developers receiving public funds must utilize the labor of a certain percentage of local residents. The goal of these programs is to reduce local unemployment by providing job opportunities to local residents. However, these programs indirectly disadvantaged nonresidents, which has resulted in legal challenges to local hiring programs. To avoid these legal challenges, there has been a shift towards using community benefit agreements (which are discussed in section 1.4 of this addendum). Nevertheless, local hiring programs are still used and the legal issues arising from them are relevant in informing the proposed residency requirement for this Program.

Privileges and Immunities Clause

The main legal challenges to local hiring programs pertain to the Privileges and Immunities Clause, Commerce Clause, and Equal Protection Clause. Local hiring programs trigger scrutiny under the Privileges and Immunity Clause, because a non-local or out-of-state citizen or resident cannot enjoy the same privileges given to a city citizen/resident under the program. To violate the Privileges and Immunity Clause, it must be considered a "fundamental right" of all citizens to enjoy those privileges. This fundamental right has been further defined as the right of a "citizen of one State to pass into any other State of the Union for the purpose of engaging in lawful commerce, trade, or business without molestation."

In order to avoid implication under the Privileges and Immunity Clause, there must be 1) a substantial reason for the difference in treatment and 2) the discriminatory remedy must bear "close relation" to the state's objective. The substantial reason for the different in treatment must be "beyond the fact that they are citizens of other States." Evidentiary proof is required to show that nonresidents are a source of "peculiar evil" or that preference for residents is required to counteract "grave economic and social ills and spiraling unemployment." As stated, the discriminatory remedy must bear "close relation" to the state's objective. Substantial evidence must be presented to show that there is a "reasonable relationship between the danger presented by noncitizens, as a class, and the severe discrimination practiced upon them." Thus, it is necessary to show that nonresidents were a cause of the unemployment the hiring preference is designed to alleviate. Because this is so difficult of an argument to make, most courts have found local hiring laws with resident preferences to be unconstitutional (Transportation Research Board 2013).

Legal Considerations: Residency Requirement

- For Privileges & Immunities Clause, must show:
  - Substantial reason for difference in treatment
  - Remedy must bear "close relation" to objective
- For Commerce Clause, must show:
  - Not intentionally discriminatory or protectionist
  - Burden on interstate commerce does not outweigh local benefits
- For Equal Protection Clause, must show:
  - New regulation is least drastic means available to remedy problem
  - Remedy is "narrowly tailored" (e.g., benefits proportional to harm, geographically tailored, not over-inclusive)

Commerce Clause

Implication under the "dormant" Commerce Clause arises when states and municipalities impose burdens on interstate commerce. This occurs when states and municipalities adopt regulations that benefit local economic interests at the expense of out-of-state competitors. If the law is not intentionally discriminatory or protectionist but still impacts interstate commerce, the Court will determine if the burden on interstate commerce outweighs the benefits. If it does, then the law is unconstitutional. Additionally, when states and municipalities act as a "market participant" or proprietor (i.e., purchases goods or services with its own money), they can place restrictions on the immediate parties they conduct business with (including residency restrictions). Thus, if the states and municipalities provide evidence that they are a "market participant," then they can survive a Commerce Clause challenge.

Equal Protection Clause

The Equal Protection Clause prevents a state from denying "any person within its jurisdiction the equal protection of the law." Both durational and conditional residency requirements have been challenged under the Equal Protection Clause. Durational residency requirements, similar to that of the proposed Program,

base eligibility for benefits on an individual having resided in the jurisdiction for a minimum period of time. The issue raised regards an individual's fundamental right to travel, which encompasses the right to "migrate, resettle, find a job, and start a new life." One legal challenge involving a violation of the Equal Protection Clause, involved an Alaskan local hiring law. In the case of the local hiring law, Alaska was found to be in violation because the new law was not the least drastic means available to reduce Alaska's high unemployment rate. Thus, Alaska failed the "strict scrutiny test" and was implicated under the Equal Protection Clause.

Unlike durational residency requirements, conditional residency requirements have been upheld for specific types of municipal positions and public professions under the Equal Protection clause. Under this type of residency requirement, residency within or near a specified government unit is a condition of obtaining or continuing employment. It is argued that residents have a better understanding of the local problems, and thus, hiring local public school teachers, police officers, and firefighters is justified. An example of a city with a residency requirement is Boston. The city has a residency requirement for City employment and requires annual proof of residency (City of Boston 2017).

Like durational residency requirements, governmental programs that give preference based on ethnicity are subject to the strict scrutiny test. In the case of local hiring, the government entity must show gross statistical disparities between the proportion of people of color hired and the proportion of people of color willing to do work. This demonstrates a compelling state interest. Thus, an eligibility preference may be upheld if the preference is supported by a statistical study that demonstrates the disparities the population segment receiving the preference has faced. In addition to serving a compelling interest, remedies must be "narrowly tailored" to the compelling government interest of eliminating discrimination, or in this case an equity gap caused by the disproportionate effects of cannabis enforcement. The remedy is "narrowly tailored" if it 1) considers other alternatives prior to adoption 2) the benefits proportionately correspond to the identified discrimination 3) the program is flexible and provides exemptions when "good faith efforts" are made (e.g., a contractor make a good faith effort to meet project contracting goals for inclusion of people of color) and 4) the ordinance or statute is geographically tailored and not over-inclusive, which is most relevant to the proposed Program. For example, in *Associated General Contractors of California*, the court upheld its program because its reach was limited to Minority Business Enterprises (MBEs) in San Francisco and avoided any extension of benefits to groups not shown to have be subject to discriminatory practices.

Recommendations

Upholding the proposed residency requirement of 5 accumulative years is possible but would be difficult. Given the difficulty of avoiding legal implication, this addendum provides alternatives to the proposed residency requirement. An alternative would be to incentivize or prioritize residency. Non-residents would not be barred from the Program but would not be prioritized in receiving program benefits. Non-residents would only be eligible for Tier 4 listing under the Program. Thus, residents eligible for Tier 1-3 listing would have priority in receiving the available resources under the proposed Program. However, further legal analysis is required by the City Attorney to ensure that these recommendations are legally defensible.

1.3 Cannabis Use, Arrest & Life Outcomes

This section provides additional information that may be relevant to the Rules Committee and City Council regarding information encountered during additional research, including data on broad use of cannabis throughout the general population, including individuals not necessarily convicted of a cannabis-related crime.

This information addresses analysis in the draft Report as well as discussion at the Rules committee hearing of October 30, 2107. Information is also provided on the discrepancy between the total number of possession arrests compared to cultivation and manufacturing based on Los Angeles Police Department (LAPD) arrest data from 2000-2016. The final subsection describes the new information on the results of study conducted by the U.S. General Accountability Office (GAO) that identified the collateral consequences of nonviolent drug offenses.

Cannabis Use & Sale Rates by Race

The rates of cannabis usage or sales among various racial groups were discussed at the last Rules Committee hearing. A recent study by the Drug Policy Alliance analyzed the results of the 2010 National Survey on Drug Use and Health conducted by the U.S. Department of Health and Human Service Substance Abuse and Mental Health Service Administration's Center for Behavioral Health Statistics and Quality (Substance Abuse and Mental Health Services Administration 2010). Based on the results of the National Survey, the Drug Policy Alliance found that Black/African Americans, Whites, and Latinos consume and sell cannabis at similar rates (Drug Policy Alliance 2016). Thus, it is expected that the racial composition of the population and the racial composition of cannabis-related arrests would be approximately the same. However, as the Final Cannabis Social Equity Analysis Report details, there are significant disparities in the racial distribution of cannabis arrests and felony offenses. For example, individuals who identify as Black/African American represent 9.6 percent of the City's population, but comprise 40 percent of the City's cannabis-related arrests and 51 percent of cannabis-related felonies (see *Final Cannabis Social Equity Analysis Report*, Section 3.3).

Black/African Americans, Whites, and Latinos consume and sell cannabis at similar rates (Substance Abuse and Mental Health Service Administration). However, there are significant disparities in the racial distribution of cannabis arrests and felony offenses.

Number of Arrests by Arrest Type

Arrests for possession compose the majority of cannabis-related arrests in the City of Los Angeles since 2000. Of the 89,552 cannabis-related arrests between 2000 and 2017, 55,055 arrests, 61 percent were specifically cited as related to possession of less than 28.5 grams of marijuana. This does not include arrests for possession of marijuana by a minor, 1721 arrests, or possession of marijuana for sale, 22,466 arrests. Arrests for cultivation of marijuana compose a relatively small portion of cannabis-related arrests in Los Angeles between 2000 and 2017, 817 arrests or less than one percent of arrests over the study time period. There were no arrests for cannabis manufacturing. Therefore, most citizens that were arrested for cannabis-related offenses were arrested for possession of marijuana in amounts that are no longer illegal under the Medical and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA).

The majority of citizens were arrested for cannabis-related offenses that are no longer illegal under MAUCRSA (LAPD arrest statistics 2000-2016).

Impact of Nonviolent Drug Offenses

Under Housing & Safety Code (HSC) 11361.8, persons with prior convictions for cannabis offenses, including felonies for possession for sale, sale, or cultivation have the ability to have those felonies removed from or reduced on their record. Thus, under current state law, individuals with prior cannabis convictions have a relatively high potential to have such convictions removed from their record. Despite current legal status, available data demonstrates that their life outcomes may have been greatly affected by cannabis enforcement. As part of a 2017 report, the GAO reviewed the penalties and disadvantages that can be imposed upon individuals with a nonviolent drug conviction (U.S. Government Accountability Office 2017). The GAO identified 641 collateral consequences that may limit employment, business licensing, education, and government benefits to such individuals. Seventy-eight percent of these consequences can potentially last a lifetime. Only 20 percent of these consequences can be removed using a legal relief mechanism. Thus, the GAO report confirmed the potentially life altering consequences of cannabis related arrests.

GAO-identified consequences

- 641 collateral consequences in total
- Limit employment, business licensing, education, and access to government benefits
- 78% of consequences last a lifetime
- Only 20% can be removed using a legal relief mechanism

1.4 Community Benefits Agreement

The Rules Committee expressed interest in community reinvestment. This section provides information on the language and structure used in existing business agreements that may be relevant to implementing the proposed cannabis social equity program. For example, the Los Angeles Sports and Entertainment District agreement provides a mechanism to monitoring the workforce force requirement under the proposed Program and work with businesses to achieve the workforce composition target.

Examples

Community Benefits Agreement for LAX Master Plan Program

The Los Angeles World Airports (LAWA) community benefits agreement includes job training and priority hiring programs (Los Angeles World Airports 2005). The language included in this agreement (Attachment 4) could be adapted for the Cannabis Social Equity Program. Under the job training program, LAWA must provide $3 million per year for five years to fund job training for airport jobs, aviation-related jobs, and pre-apprenticeship programs. Funds for the job training program are administered by EWDD and WIB. The program is implemented by qualified job training organizations selected by EWDD and WIB. The content of job training includes job readiness programs, skills development, career ladder programs, and incumbent worker training. In addition to the job training program, funds are given to EWDD and WIB to implement a work experience program for residents within

LAX Master Plan CBA

- Job training
  - $3 million/yr for 5 years
  - Workforce Development Board & Community Development Department
- Priority hiring
  - Residents impacted by Project
  - Low-income residents of City

LAWA's project impact area. The job-training programs funded by LAWA are predominantly made available for low-income individuals living in the project impact area for at least one year, special needs individuals, low-income individuals residing in the City, and individuals currently working in airport jobs or aviation-related jobs and eligible for incumbent worker training.

The priority hiring program is called the First Source Hiring Program. It provides early access to targeted applicants for available airport jobs. Qualified and trained applicants are referred to employers at no cost to the employers. The first priority for the program are low-income individuals living in the project impact area for at least one year and special needs individuals. Second priority is given to low-income individuals living in the City. The referral system is designed and implemented by LAWA, EWDD, and WIB who work with employers; community-based job training organizations; and other community-based organizations. These organizations administer notices of job openings, provide referrals under the First Source Hiring Program, and assist with monitoring and compliance of the program.

Community Benefits Agreement for Los Angeles Sports and Entertainment District Project

The L.A. Arena Land Company and Flower Holdings, LLC community benefits agreement focuses on maximizing benefits of the project to the local community, the Figueroa Corridor (Figueroa Corridor Coalition for Economic Justice 2001). Benefits of the agreement include publically accessible park space, open space, and recreational opportunities; employment opportunities to residents in the vicinity of the project area; permanent affordable housing; basic services need by the community; addressing issues of traffic, parking, and public safety.

STAPLES Center CBA

- Parks & recreation facilities
  - $1 million
- 70% of Project jobs are living wage
  - Review by Economic Development Committee
- Local hiring & job training
  - $100,000 to seed third party training organization

The Figueroa Corridor community did not meet the park space acreage required by the City. Under the community benefits agreement, the developers are to provide $1 million to fund the creation or improvement of one or more parks and recreation facilities that are open to the public and free of charge within a one-mile radius of the project (see Attachment 5). The parks created or improved under the agreement had to include active recreation components (e.g., playgrounds, playing fields) and permanent improvements and features (e.g., restroom facilities, drinking fountains, park benches, patio structures, barbecue facilities, picnic tables). The selection of improvement is based on a needs assessment conducted by a qualified organization agreed upon by both the developer and the Figueroa Corridor Coalition for Economic Justice (Coalition). The park and recreation facilities created under the agreement had to be completed within 5 years of completion of the needs assessment.

Under the agreement, the developer must maintain at least 70 percent of the jobs in the project as living wage jobs (Attachment 5). The developer must provide the City Council's Economic Development Committee an annual report of the percentage of jobs in the project that are living wage jobs. If actual performance is less than 80 percent of that target for two consecutive years, the developers must meet with the Coalition to agree upon steps to achieve that target.

In addition to the living wage requirement, the agreement includes local hiring and job training (Attachment 5). Under the customized job training program, employers of the Project can request specialized job training for applicants they intend to hire. Additionally, the agreement requires the creation of a First Source Referral System. The Coalition and developer agree upon a nonprofit organization to implement the First Source Hiring Policy, a policy by which qualified, trained applicants are referred to employers for available jobs. The

developer provides $100,000 in seed funding to the organization to begin implementing the First Source Hiring Policy program.

Recommendations

The Rules Committee may consider inclusion of a Community Benefits Program. Such a program could be modeled on existing City Community Benefits Programs, involving the Economic Development Committee and established agencies including EWDD and WIB, and working in collaboration with the Department of Cannabis Regulation.

1.5 Start-Up Costs of Cannabis Businesses

Additional information regarding start-up costs for social equity businesses is pertinent to future deliberation about the proposed Program. For example, information regarding start-up costs will help inform cannabis tax allocation for the proposed Social Equity Program Industry Ownership Investment Program and Fund (see *Final Cannabis Social Equity Analysis Report*, Section 6.4).

Start-Up Costs

Los Angeles Rent

Section 4.1 of the Final Cannabis Social Equity Analysis Report provides rent estimates for commercial rent. Rent is $2.85 per square foot in Downtown, $7.81 per square foot in West Los Angeles, and $3.55 per square foot in Mid-Wilshire (Kim, E. 2016). Table 1 provides estimate for rent based on facility size and location in the City. As the Final Cannabis Social Equity Analysis Report discusses, rent would comprise a significant portion of cannabis business start-up costs.

Table 2. Estimated First Year Rent for Commercial Cannabis Businesses in Los Angeles

Facility Size (sq. ft.)	Downtown ($/year)	West Los Angeles ($/year)	Mid-Wilshire ($/year)
1,000	$34,200/ yr	$93,720/ yr	$42,600/ yr
5,000	$171,000/ yr	$468,600/ yr	$213,000/ yr
20,000	$684,000/ yr	$1,874,400/ yr	$852,000/ yr

Startup Costs of Existing Operators

Beyond real estate, start-up costs for commercial cannabis businesses include materials including: plants, soils, lighting, climate control systems, and irrigation tubing for cultivators; resin presses and pressure extraction machinery for manufacturers; cannabis chemical analysis equipment for testing facilities; and vehicles for off-site delivery services. Existing industry operators in Santa Barbara County have provided guidance in estimating startup costs for differing cannabis businesses including raw materials to activation. Generally, indoor cultivation operations are the more expensive facility compared to hoop houses (not proposed for the City of Los Angeles) and mixed-light greenhouses (proposed to be restricted only to A1 and A2 agricultural zones).

Table 3. Estimated cost of cannabis operation facilities and materials by licensing type.

Facility type	Cost
Cultivation	
Hoop house	30 cents per square foot (similar to berries)
Greenhouse	$22-$60 per square foot (though typically more than $45 per square foot)
Indoor	$100-$150 per square foot
Processing	$50 per square foot (includes separating, trimming, and drying; 10 percent of cultivation canopy space required)
Manufacturing	
Manufacturing	$55-$60 per square foot (estimate includes materials and other start-up costs; between 5,000 and 10,000 square feet of space needed)
Distribution	
Distribution	$35 per square foot (includes coolers, pallets, office desks, and loading docks)
Testing	
Testing	$4,000,000 total (includes testing equipment and staffing; approximately 5,000 to 10,000 square feet required)

Source: existing cannabis operator in Santa Barbara County

All cannabis businesses would require some level of security by state and local requirements. An industry estimator provided information for security features that would vary based on the business type. For instance, a multi-acre outdoor operation which would not be permissible under the proposed City ordinances, could cost approximately $500,000.

Beyond security, all cannabis businesses will have expenses for permitting and on-going compliance, which will be partially scaled in cost depending on size, intensity, and complexity of the operation. The operator estimated permitting and compliance costs to be approximately 50 percent of the physical startup costs.

Utility costs, namely power and water, also vary widely by commercial cannabis activity with indoor cultivation requiring the most electricity to operate lights and water for irrigation in contrast with retail locations which function analogously to other typical retail uses.

1.6 Interdepartmental Coordination

Cannabis licensing, including that for Social Equality applicants will be a complex process involving many City departments. Interdepartmental coordination will be key to the overall success of the licensing program as well as to social equity applicants. Thus, the following are recommended:

- In order to promote coordination and an efficient licensing program, interdepartmental task forces, with oversight by the Department of Cannabis Regulation, should be formed prior to licensing for:
    - Licensing & compliance
    - Business assistance
    - Workforce development
    - Expungement

- Community reinvestment

- The Department of Cannabis Regulation should identify a contact person for each of those departments and develop a process prior to City issuance of licensing to ensure coordinated and timely collaboration regarding implementation of the program.
- The Department of Cannabis Regulation should direct applicants both to the designated contact person in other departments and to the LA Business Portal (http://www.business.lacity.org/), which describes the requirements for starting a business in the City.

The following sections identify the applicable departments for each task force and provide a description of services which may be relevant for cannabis businesses in the City.

Applicant Compliance with City Regulations

City Departments

Compliance
Cannabis businesses will have to obtain permits from several City and County agencies. Thus, interdepartmental coordination is essential.

Office of Finance – issues Business Tax Registration Certificates; administering some types of business permits and licenses (police alarm permits, police permits, fire permits, tobacco retailer permits, police garage forms, monthly communication user's tax, parking occupancy taxes, transient occupancy taxes).

Fire Department (LAFD) – fire life safety inspection; fire life safety plan check; plan reviews for site access and fire hydrant placement.

Police Department (LAPD) – crime prevention (security plans); police permit issuance for certain types of businesses, including pool rooms, dance halls and businesses that provide live entertainment (e.g., café entertainment).

Department of Water and Power (LADWP) – permitting/plan check/inspections for planned electric services

Department of Public Works (Bureau of Engineering) – reviewing and approving permits for sidewalk/outdoor dining and other business activities that take place on sidewalks or other public right-of-way.

Department of City Planning – review conditional use permit applications that allow an establishment to conduct certain business activities; monitoring and enforcement of zoning regulations; reviewing applications for zoning variances or rezoning.

Department of Building and Safety – enforces LA building code to ensure that businesses are safe for employees and patrons; issues permits that allow building, renovation, repairs and demolition; conducts inspections to ensure construction and renovation work is completed properly and safely.

Concierge Program (help navigate through development permitting process)

Parallel Design-Permitting Process (Los Angeles Department of Building and Safety [LADBS] will start to plan check building plans at the conceptual design phase, correction verification, and code consultation services through the various design phases = design process and permitting process occur concurrently)

Preliminary Plan Check Service (meet with a plan check engineer to identify site-specific issues prior to plan check submittal)

Inspection Case Managers (liaisons for all LADBS for construction projects valued above $5 million and projects to development restaurants and other food services establishments)

County Departments

Los Angeles County Agricultural Commissioner/Weights & Measures – pesticide permits & compliance inspections, state law requires that devices to weigh goods must be accurate.

Los Angeles County Department of Public/Environmental Health – public health and safety as it relates to incorporating cannabis into food.

Los Angeles County Sanitation District – industrial wastewater discharge permits (for cultivation, cannabis extraction, and food production).

Business Assistance

Business Assistance & Workforce Development
Several City agencies have existing programs that could be utilized by cannabis businesses and employees.

Economic and Workforce Development Department (EWDD)– BusinessSource Centers (free one-on-one consulting for business owners and start-ups); tax incentives & credits (Small Business Loan Program).

Mayor's Office of Economic Development – conducts workshops on how to legally start a business in the City and City resources available to small businesses.

Department of Water and Power (LADWP) – rebates and incentives for energy-efficient upgrades (e.g., Solar Incentive Program [SIP], Feed-In-Tariff [FIT] Program, Utility Infrastructure Program, So Cal Watersmart Commercial Rebate Incentive Program); installation/upgrade electrical and water services; outdoor lighting for business; tree trimming for vegetation surrounding business; electrical vehicle charging station installation; solar meter installation.

Department of Transportation (LADOT) – installing and maintaining bicycle parking, including racks and corrals, upon request of business owners; providing transportation access to businesses via the DASH bus lines, bike infrastructure and parking.

Department of Public Works – managing environmental waste and working with certain types of businesses to pretreat their wastewater and operating the City's Green Business Certification program (Bureau of Sanitation); installing and maintaining street lighting outside of businesses (Bureau of Street Lighting).

General Services Department – leases retail and office space in City-owned and managed properties through its Real Estate division.

Workforce Development

Economic and Workforce Development Department (EWDD) – support for employees in the case of a business closure or staff reduction (Rapid Response Program); free resources for employee hiring and workforce development (WorkSource and YouthSource Centers); review of EB-5 Visa applications.

Mayor's Office of Reentry – assists formerly incarcerated individuals in finding employment.

Expungement

Expungement
Organizing expungement clinics would involve coordination with local nonprofits, churches, universities, and County and City agencies.

The Department of Cannabis Regulation should coordinate with other agencies and entities to organize and disseminate information about the expungement clinics. A New Way of Life Re-Entry Project (ANWOL) runs free monthly re-entry legal clinics in partnership with University of California Los Angeles (UCLA) School of Law's Critical Race Studies Program (A New Way of Life Reentry Project 2017). These clinics focus on expungement under Proposition 47 and Proposition 64. Other organizations who organize expungement clinics include but are not limited to Loyola Law School (Loyola Marymount University 2012), LAW Project Los Angeles (LAW Project of Los Angeles 2017), Legal Aid Foundation of Los Angeles (LAFLA) (Legal Aid Foundation of Los Angeles 2017), First African Methodist Episcopal Church (FAME) (First African Methodist Episcopal Church 2017), and Pepperdine University (Pepperdine University School of Law 2017). Other legal clinics can be found at the following link: http://www.reentrylegalclinic.org/other-clinics.html. Other relevant organizations include the Mayor's Office of Reentry and Los Angeles County Public Defender's Office. The Department's outreach strategy should also include information about where Live Scan fingerprinting services are available within the County of Los Angeles. These locations can be found at the following link: https://oag.ca.gov/fingerprints/locations?county=Los%20Angeles.

Community Reinvestment Program

Community Reinvestment
- Proposed sub-components
  - Community beautification
  - Health & wellness
  - Community education
  - Housing
  - Employment
  - Reentry
- Funding:
  - 20% of annual cannabis tax revenue
  - Alternative: start at 5% of annual cannabis tax revenue & increase to 20% over next 5 years

The Rules Committee expressed interest in a Community Reinvestment Program and requested more information about how the program could be more specifically implemented. Proposed Community Reinvestment Program sub-components could include programs such as community beautification, youth prevention, drug treatment, education, housing, employment, re-entry, neighborhood facilities, and health and wellness services. This section provides existing examples of proposed sub-programs, as well as agencies and organizations relevant to Program implementation. The Department of Cannabis Regulation should coordinate with these agencies and organizations to form a task force to assess proposed programs for feasibility and set mid- and long-term goals for program implementation.

The City is facing a $224 million budget deficit (Smith, D. 2017). Cannabis revenue may be needed to reduce this deficit. If that is the case, an alternative may be required for the 20 percent of annual tax revenue proposed to fund the community reinvestment program. One alternative would be to start community reinvestment funding at 5 percent, and increase it by 3 percent a year until the full 20 percent is reached 5 years after cannabis licensing begins. This would increase funding as proposed sub-components become established and enable more cannabis funds to be used initially to address the City's deficit.

Other Jurisdiction Examples

Colorado

The State of Colorado legalized the recreational use of cannabis in 2012 including state sales, special sales, and excise taxes on the new retail cannabis industry to be deposited into two funds, Building Excellent Schools Today (BEST) and Marijuana Tax Cash Fund (MCTF). The BEST fund receives the first $40,000,000 of the state excise tax collected annually and is used to renew or replace deteriorating public schools and funds are awarded as competitive grants on an annual basis. The MCTF is funded by state sales taxes on medical and retail cannabis along with revenue from the state excise tax exceeding $40,000,000 appropriated for the BEST fund. MCTF funds are, by law, appropriated for new and existing programs (Colorado Joint Budget Committee 2017) including, but not limited to:

- Creating prevention and education campaigns about appropriate and legal use of cannabis;
- Obtaining health data through surveys or other means regarding cannabis and other drugs and to monitor health impacts of cannabis;
- Improvements to the State's Poison Control Center; and,
- Substance abuse prevention.

Washington

The State of Washington legalized the recreational use of cannabis in 2012, with follow up legislation appropriating tax revenues for new and existing programs including, but not limited to health services, substance abuse prevention, and school dropout prevention (Washington Office of Financial Management 2017). The State taxes cannabis via a 37 percent excise tax at the point of retail sales, and funds are distributed to cities and counties or deposited into a dedicated marijuana tax revenue fund. Washington appropriates funds from its dedicated marijuana tax revenue account on a set dollar amount basis that requires changes to state law to alter exiting appropriations. Examples of appropriations include $125,000 for the Department of Social and Health Services (DSHS) for an annual survey of youth and family attitudes towards cannabis use and $25,500,000 for the DSHS for prevention and reduction of substance abuse.

California

At the state level in California, cannabis tax revenue will be deposited into the California Marijuana Tax Fund. A portion of these funds will go to research on the effects of the measure ($10 million), establishing driving while impaired protocols ($3 million), and medical cannabis research ($2 million) (Legislative Analyst's Office 2017). Funds will be set aside for community reinvestment (e.g., job placement assistance and substance use disorder treatment), which will be distributed to communities that were most affected by past drug policies. These funds will start at $10 million in 2018-2019, increase annually by $10 million until 2022-2023, and continue at $50 million every year thereafter. Sixty percent of the remaining funds will go toward youth drug prevention, education, and treatment. The remaining funds are planned to go toward environmental restoration (20 percent) and law enforcement (20 percent).

Proposed National Program

In addition to these state level programs, the federal Marijuana Justice Act introduced by Senator Cory Booker, New Jersey (Booker, C. 2017) would include a national $500,000,000 annual appropriation for a community reinvestment fund to,

Establish a grant program to reinvest in communities most affected by the war on drugs, which shall include providing grants to impacts communities for programs such as –

(1) Job training;

(2) Reentry services;

(3) Expenses related to the expungement of convictions;

(4) Public libraries;

(5) Community centers;

(6) Programs and opportunities directed at youth;

(7) Support a special purpose fund; and

(8) Health education programs.

New York City

Although not specifically tied to cannabis legalization, other jurisdictions, are beginning to make social equity a part of their community vision and planning including New York City's OneNYC plan (onenyc.cityofnewyork.us) that seeks to balance growth with sustainability, resiliency, and equity. Reported successes under OneNYC include providing free broadband to over 5,000 New York City Housing Authority households to address equity gaps in internet service to low income households and universal Pre-K serving 69,510 children including increased support for students whose native language is not English, students with disabilities, and students from high-need areas.

Proposed Sub-Program Examples

Existing City, County, and non-profit programs that could potentially coordinate with the Community Reinvestment Program include, but are not limited to:

Community Beautification

The City Public Works Department includes the Office of Community Beautification which supports community and volunteer activities such as tree planting (via the City Plants program including offers of free trees), painting of murals (and removal of graffiti), sidewalk repair, planting community gardens, and the Adopt-a-Median program which beautifies street medians).

Health and Wellness

The Los Angeles County Department of Public Health administers the Substance Abuse and Prevention Control program which includes a number of community health operations related to drug use including youth addiction treatment services and the Juvenile Justice Crime Prevention Act – Youth Substance Abuse Program designed to reduce crime among at-risk and juvenile probationers. Additional County-administered substance abuse initiatives include parolee and reentry programs.

Community Education

Non-profit community organizations such as the Watts Labor Community Action Committee provide a youth center and education, employment training programs, family wellness programs, and a community gathering place.

Housing

The Los Angeles Housing and Community Investment Department's (HCIDLA's) mission is to promote livable and prosperous communities through the development and preservation of decent, safe, and affordable housing, neighborhood investment, and social services. HCIDLA focuses on housing development including financing from federal and state sources to build and preserve low-income communities and community services and development including social services and housing programs to assist low-income, homeless, and special needs populations and communities.

Employment

The City of Los Angeles Economic & Workforce Development Department (EWDD) provides assistance to prospective employees and business owners via a number of services including BusinessSource which provides startup ventures and small business owners tools to make their business a success and LA:RISE which helps those with high barriers to employment get good jobs and stay employed from unemployment, to transitional employment, to permanent work. The City of Los Angeles Workforce Development Board operates WorkSource Centers across the City that provide employment assistance including collecting job listings, resume writing, and training opportunities.

Re-entry

The Los Angeles Regional Reentry Partnership (LARRP) is a network of public (including the Mayor's Office of Reentry), community, and faith-based agencies and advocates to ensure the reentry system meets the needs of agencies, communities, and citizens they serve. LARRP is directed by a Steering Committee and includes three standing committees: Housing, Employment, and Behavior Health

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ATTACHMENTS

Attachment 1: Federal Mentor-Protégé Program

reinvested in the firm or used to pay taxes arising in the normal course of operations of the firm. Losses from the S corporation, LLC or partnership, however, are losses to the company only, not losses to the individual, and cannot be used to reduce an individual's personal income.

(4) *Fair market value of all assets.* An individual will generally not be considered economically disadvantaged if the fair market value of all his or her assets (including his or her primary residence and the value of the applicant/Participant firm) exceeds $4 million for an applicant concern and $6 million for continued 8(a) BD eligibility. The only assets excluded from this determination are funds excluded under paragraph (c)(2)(ii) of this section as being invested in a qualified IRA account.

[63 FR 35739, June 30, 1998, as amended at 76 FR 8254, Feb. 11, 2011; 81 FR 48580, July 25, 2016]

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§124.105 What does it mean to be unconditionally owned by one or more disadvantaged individuals?

An applicant or Participant must be at least 51 percent unconditionally and directly owned by one or more socially and economically disadvantaged individuals who are citizens of the United States, except for concerns owned by Indian tribes, Alaska Native Corporations, Native Hawaiian Organizations, or Community Development Corporations (CDCs). *See* §124.3 for definition of unconditional ownership; and §§124.109, 124.110, and 124.111, respectively, for special ownership requirements for concerns owned by Indian tribes, ANCs, Native Hawaiian Organizations, and CDCs.

(a) *Ownership must be direct.* Ownership by one or more disadvantaged individuals must be direct ownership. An applicant or Participant owned principally by another business entity or by a trust (including employee stock ownership trusts) that is in turn owned and controlled by one or more disadvantaged individuals does not meet this requirement. However, ownership by a trust, such as a living trust, may be treated as the functional equivalent of ownership by a disadvantaged individual where the trust is revocable, and the disadvantaged individual is the grantor, a trustee, and the sole current beneficiary of the trust.

(b) *Ownership of a partnership.* In the case of a concern which is a partnership, at least 51 percent of every class of partnership interest must be unconditionally owned by one or more individuals determined by SBA to be socially and economically disadvantaged. The ownership must be reflected in the concern's partnership agreement.

(c) *Ownership of a limited liability company.* In the case of a concern which is a limited liability company, at least 51 percent of each class of member interest must be unconditionally owned by one or more individuals determined by SBA to be socially and economically disadvantaged.

(d) *Ownership of a corporation.* In the case of a concern which is a corporation, at least 51 percent of each class of voting stock outstanding and 51 percent of the aggregate of all stock outstanding must be unconditionally owned by one or more individuals determined by SBA to be socially and economically disadvantaged.

(e) *Stock options' effect on ownership.* In determining unconditional ownership, SBA will disregard any unexercised stock options or similar agreements held by disadvantaged individuals. However, any unexercised stock options or similar agreements (including rights to convert non-voting stock or debentures into voting stock) held by non-disadvantaged individuals will be treated as exercised, except for any ownership interests which are held by investment companies licensed under the Small Business Investment Act of 1958.

(f) *Dividends and distributions.* One or more disadvantaged individuals must be entitled to receive:

(1) At least 51 percent of the annual distribution of dividends paid on the stock of a corporate applicant concern;

(2) 100 percent of the value of each share of stock owned by them in the event that the stock is sold; and

(3) At least 51 percent of the retained earnings of the concern and 100 percent of the unencumbered value of each share of stock owned in the event of dissolution of the corporation.

(g) *Ownership of another Participant in the same or similar line of business.* (1) An individual may not use his or her disadvantaged status to qualify a concern if that individual has an immediate family member who is using or has used his or her disadvantaged status to qualify another concern for the 8(a) BD program. The AA/BD may waive this prohibition if the two concerns have no connections, either in the form of ownership, control or contractual relationships, and provided the individual seeking to qualify the second concern has management and technical experience in the industry. Where the concern seeking a waiver is in the same or similar line of business as the current or former 8(a) concern, there is a presumption against granting the waiver. The applicant must provide clear and compelling evidence that no connection exists between the two firms.

(2) If the AA/BD grants a waiver under paragraph (g)(1) of this section, SBA will, as part of its annual review, assess whether the firm continues to operate independently of the other current or former 8(a) concern of an immediate family member. SBA may initiate proceedings to terminate a firm for which a waiver was granted from further participation in the 8(a) BD

program if it is apparent that there are connections between the two firms that were not disclosed to the AA/BD when the waiver was granted or that came into existence after the waiver was granted. SBA may also initiate termination proceedings if the firm begins to operate in the same or similar line of business as the current or former 8(a) concern of the immediate family member and the firm did not operate in the same or similar line of business at the time the waiver was granted.

(h) *Ownership restrictions for non-disadvantaged individuals and concerns.* (1) A non-disadvantaged individual (in the aggregate with all immediate family members) or a non-Participant concern that is a general partner or stockholder with at least a 10 percent ownership interest in one Participant may not own more than a 10 percent interest in another Participant that is in the developmental stage or more than a 20 percent interest in another Participant in the transitional stage of the program. This restriction does not apply to financial institutions licensed or chartered by Federal, state or local government, including investment companies which are licensed under the Small Business Investment Act of 1958.

(2) A non-Participant concern in the same or similar line of business or a principal of such concern may not own more than a 10 percent interest in a Participant that is in the developmental stage or more than a 20 percent interest in a Participant in the transitional stage of the program, except that a former Participant in the same or similar line of business or a principal of such a former Participant (except those that have been terminated from 8(a) BD program participation pursuant to §§124.303 and 124.304) may have an equity ownership interest of up to 20 percent in a current Participant in the developmental stage of the program or up to 30 percent in a transitional stage Participant.

(i) *Change of ownership.* A Participant may change its ownership or business structure so long as one or more disadvantaged individuals own and control it after the change and SBA approves the transaction in writing prior to the change. The decision to approve or deny a Participant's request for a change in ownership or business structure will be made and communicated to the firm by the AA/BD. The decision of the AA/BD is the final decision of the Agency. The AA/BD will issue a decision within 60 days from receipt of a request containing all necessary documentation, or as soon thereafter as possible. If 60 days lapse without a decision from SBA, the Participant cannot presume that it can complete the change without written approval from SBA. A decision to deny a request for change of ownership or business structure may be grounds for program termination where the change is made nevertheless.

(1) Any Participant that was awarded one or more 8(a) contracts may substitute one disadvantaged individual for another disadvantaged individual without requiring the termination of those contracts or a request for waiver under §124.515, as long as it receives SBA's approval prior to the change.

(2) Where the previous owner held less than a 10 percent interest in the concern, or the transfer results from the death or incapacity due to a serious, long-term illness or injury of a disadvantaged principal, prior approval is not required, but the concern must notify SBA within 60 days.

(3) Continued participation of the Participant with new ownership and the award of any new 8(a) contracts requires SBA's determination that all eligibility requirements are met by the concern and the new owners.

(4) Where a Participant requests a change of ownership or business structure, and proceeds with the change prior to receiving SBA approval (or where a change of ownership results from the death or incapacity of a disadvantaged individual for which a request prior to the change in ownership could not occur), SBA will suspend the Participant from program benefits pending resolution of the request. If the change is approved, the length of the suspension will be restored to the Participant's program term in the case of death or incapacity, or if the firm requested prior approval and waited 60 days for SBA approval.

(5) A change in ownership does not provide the new owner(s) with a new 8(a) BD program term. For example, if a concern has been in the 8(a) BD program for five years when a change in ownership occurs, the new owner will have four years remaining until program graduation.

(j) *Public offering.* A Participant's request for SBA's approval for the issuance of a public offering will be treated as a request for a change of ownership. Such request will cause SBA to examine the concern's continued need for access to the business development resources of the 8(a) BD program.

(k) *Community property laws given effect.* In determining ownership interests when an owner resides in any of the community property states or territories of the United States (Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Puerto Rico, Texas, Washington and Wisconsin), SBA considers applicable state community property laws. If only one spouse claims disadvantaged status, that spouse's ownership interest will be considered unconditionally held only to the extent it is vested by the community property laws. A transfer or relinquishment of interest by the non-disadvantaged spouse may be necessary in some cases to establish eligibility.

[63 FR 35739, June 30, 1998, as amended at 74 FR 45753, Sept. 4, 2009; 76 FR 8255, Feb. 11, 2011; 81 FR 48580, July 25, 2016]

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§124.106 When do disadvantaged individuals control an applicant or Participant?

Control is not the same as ownership, although both may reside in the same person. SBA regards control as including both the strategic policy setting exercised by boards of directors and the day-to-day management and administration of business operations. An applicant or Participant's management and daily business operations must be conducted by one or more disadvantaged individuals, except for concerns owned by Indian tribes, ANCs, Native Hawaiian Organizations, or Community Development Corporations (CDCs). (*See* §§124.109, 124.110, and 124.111, respectively, for the requirements for concerns owned by Indian tribes or ANCs, for concerns owned by Native Hawaiian Organizations, and for CDC-owned concerns.) Management experience need not be related to the same or similar industry as the primary industry classification of the applicant or Participant. Disadvantaged individuals managing the concern must have managerial experience of the extent and complexity needed to run the concern. A disadvantaged individual need not have the technical expertise or possess a required license to be found to control an applicant or Participant if he or she can demonstrate that he or she has ultimate managerial and supervisory control over those who possess the required licenses or technical expertise. However, where a critical license is held by a non-disadvantaged individual having an equity interest in the applicant or Participant firm, the non-disadvantaged individual may be found to control the firm.

(a)(1) An applicant or Participant must be managed on a full-time basis by one or more disadvantaged individuals who possess requisite management capabilities.

(2) A disadvantaged full-time manager must hold the highest officer position (usually President or Chief Executive Officer) in the applicant or Participant and be physically located in the United States.

(3) One or more disadvantaged individuals who manage the applicant or Participant must devote full-time to the business during the normal working hours of firms in the same or similar line of business. Work in a wholly-owned subsidiary of the applicant or participant may be considered to meet the requirement of full-time devotion. This applies only to a subsidiary owned by the 8(a) firm, and not to firms in which the disadvantaged individual has an ownership interest.

(4) Any disadvantaged manager who wishes to engage in outside employment must notify SBA of the nature and anticipated duration of the outside employment and obtain the prior written approval of SBA. SBA will deny a request for outside employment which could conflict with the management of the firm or could hinder it in achieving the objectives of its business development plan.

(5) Except as provided in paragraph (d)(1) of this section, a disadvantaged owner's unexercised right to cause a change in the control or management of the applicant concern does not in itself constitute disadvantaged control and management, regardless of how quickly or easily the right could be exercised.

(b) In the case of a partnership, one or more disadvantaged individuals must serve as general partners, with control over all partnership decisions. A partnership in which no disadvantaged individual is a general partner will be ineligible for participation.

(c) In the case of a limited liability company, one or more disadvantaged individuals must serve as management members, with control over all decisions of the limited liability company.

(d) One or more disadvantaged individuals must control the Board of Directors of a corporate applicant or Participant.

(1) SBA will deem disadvantaged individuals to control the Board of Directors where:

(i) A single disadvantaged individual owns 100% of all voting stock of an applicant or Participant concern;

(ii) A single disadvantaged individual owns at least 51% of all voting stock of an applicant or Participant concern, the individual is on the Board of Directors and no super majority voting requirements exist for shareholders to approve corporation actions. Where super majority voting requirements are provided for in the concern's articles of incorporation, its by-laws, or by state law, the disadvantaged individual must own at least the percent of the voting stock needed to overcome any such super majority voting requirements; or

(iii) More than one disadvantaged shareholder seeks to qualify the concern (i.e., no one individual owns 51%), each such individual is on the Board of Directors, together they own at least 51% of all voting stock of the concern, no super majority voting requirements exist, and the disadvantaged shareholders can demonstrate that they have made enforceable arrangements to permit one of them to vote the stock of all as a block without a shareholder meeting. Where the concern has super majority voting requirements, the disadvantaged shareholders must own at least that percentage of voting stock needed to overcome any such super majority ownership requirements.

(2) Where an applicant or Participant does not meet the requirements set forth in paragraph (d)(1) of this section, the disadvantaged individual(s) upon whom eligibility is based must control the Board of Directors through actual numbers of voting directors or, where permitted by state law, through weighted voting (e.g., in a concern having a two-person Board of Directors where one individual on the Board is disadvantaged and one is not, the disadvantaged vote must be weighted—worth more

than one vote—in order for the concern to be eligible for 8(a) participation). Where a concern seeks to comply with this paragraph:

(i) Provisions for the establishment of a quorum cannot permit non-disadvantaged Directors to control the Board of Directors, directly or indirectly;

(ii) Any Executive Committee of Directors must be controlled by disadvantaged directors unless the Executive Committee can only make recommendations to and cannot independently exercise the authority of the Board of Directors.

(3) An applicant must inform SBA of any super majority voting requirements provided for in its articles of incorporation, its by-laws, by state law, or otherwise. Similarly, after being admitted to the program, a Participant must inform SBA of changes regarding super majority voting requirements.

(4) Non-voting, advisory, or honorary Directors may be appointed without affecting disadvantaged individuals' control of the Board of Directors.

(5) Arrangements regarding the structure and voting rights of the Board of Directors must comply with applicable state law.

(e) Non-disadvantaged individuals may be involved in the management of an applicant or Participant, and may be stockholders, partners, limited liability members, officers, and/or directors of the applicant or Participant. However, no non-disadvantaged individual or immediate family member may:

(1) Exercise actual control or have the power to control the applicant or Participant;

(2) Be a former employer or a principal of a former employer of any disadvantaged owner of the applicant or Participant, unless it is determined by the AA/BD that the relationship between the former employer or principal and the disadvantaged individual or applicant concern does not give the former employer actual control or the potential to control the applicant or Participant and such relationship is in the best interests of the 8(a) BD firm; or

(3) Receive compensation from the applicant or Participant in any form as directors, officers or employees, including dividends, that exceeds the compensation to be received by the highest officer (usually CEO or President). The highest ranking officer may elect to take a lower salary than a non-disadvantaged individual only upon demonstrating that it helps the applicant or Participant. In the case of a Participant, the Participant must also obtain the prior written consent of the AA/BD or designee before changing the compensation paid to the highest ranking officer to be below that paid to a non-disadvantaged individual.

(f) Non-disadvantaged individuals who transfer majority stock ownership or control of the firm to an immediate family member within two years prior to the application and remain involved in the firm as a stockholder, officer, director, or key employee of the firm are presumed to control the firm. The presumption may be rebutted by showing that the transferee has independent management experience necessary to control the operation of the firm.

(g) Non-disadvantaged individuals or entities may be found to control or have the power to control in any of the following circumstances, which are illustrative only and not all inclusive:

(1) In circumstances where an applicant or Participant seeks to establish disadvantaged control of the Board of Directors through paragraph (d)(2) of this section, non-disadvantaged individuals control the Board of Directors of the applicant or Participant, either directly through majority voting membership, or indirectly, where the by-laws allow non-disadvantaged individuals effectively to prevent a quorum or block actions proposed by the disadvantaged individuals.

(2) A non-disadvantaged individual or entity, having an equity interest in the applicant or participant, provides critical financial or bonding support or a critical license to the applicant or Participant which directly or indirectly allows the non-disadvantaged individual significantly to influence business decisions of the Participant.

(3) A non-disadvantaged individual or entity controls the applicant or Participant or an individual disadvantaged owner through loan arrangements. Providing a loan guaranty on commercially reasonable terms does not, by itself, give a non-disadvantaged individual or entity the power to control a firm.

(4) Business relationships exist with non-disadvantaged individuals or entities which cause such dependence that the applicant or Participant cannot exercise independent business judgment without great economic risk.

(h) Notwithstanding the provisions of this section requiring a disadvantaged owner to control the daily business operations and long-term strategic planning of an 8(a) BD Participant, where a disadvantaged individual upon whom eligibility is based is a reserve component member in the United States military who has been called to active duty, the Participant may elect to designate one or more individuals to control the Participant on behalf of the disadvantaged individual during the active duty call-up period. If such an election is made, the Participant will continue to be treated as an eligible 8(a) Participant and no additional

time will be added to its program term. Alternatively, the Participant may elect to suspend its 8(a) BD participation during the active duty call-up period pursuant to §§124.305(h)(1)(ii) and 124.305(h)(4).

[63 FR 35739, June 30, 1998, as amended at 74 FR 45753, Sept. 4, 2009; 76 FR 8255, Feb. 11, 2011; 81 FR 48580, July 25, 2016]

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§124.107 What is potential for success?

The applicant concern must possess reasonable prospects for success in competing in the private sector if admitted to the 8(a) BD program. To do so, it must be in business in its primary industry classification for at least two full years immediately prior to the date of its 8(a) BD application, unless a waiver for this requirement is granted pursuant to paragraph (b) of this section.

(a) Income tax returns for each of the two previous tax years must show operating revenues in the primary industry in which the applicant is seeking 8(a) BD certification.

(b)(1) SBA may waive the two years in business requirement if each of the following five conditions are met:

(i) The individual or individuals upon whom eligibility is based have substantial business management experience;

(ii) The applicant has demonstrated technical experience to carry out its business plan with a substantial likelihood for success if admitted to the 8(a) BD program;

(iii) The applicant has adequate capital to sustain its operations and carry out its business plan as a Participant;

(iv) The applicant has a record of successful performance on contracts from governmental or nongovernmental sources in its primary industry category; and

(v) The applicant has, or can demonstrate its ability to timely obtain, the personnel, facilities, equipment, and any other requirements needed to perform contracts as a Participant.

(2) The concern seeking a waiver under paragraph (b) must provide information on governmental and nongovernmental contracts in progress and completed (including letters of reference) in order to establish successful contract performance, and must demonstrate how it otherwise meets the five conditions for waiver. SBA considers an applicant's performance on both government and private sector contracts in determining whether the firm has an overall successful performance record. If, however, the applicant has performed only government contracts or only private sector contracts, SBA will review its performance on those contracts alone to determine whether the applicant possesses a record of successful performance.

(c) In assessing potential for success, SBA considers the concern's access to credit and capital, including, but not limited to, access to long-term financing, access to working capital financing, equipment trade credit, access to raw materials and supplier trade credit, and bonding capability.

(d) In assessing potential for success, SBA will also consider the technical and managerial experience of the applicant concern's managers, the operating history of the concern, the concern's record of performance on previous Federal and private sector contracts in the primary industry in which the concern is seeking 8(a) BD certification, and its financial capacity. The applicant concern as a whole must demonstrate both technical knowledge in its primary industry category and management experience sufficient to run its day-to-day operations.

(e) The Participant or individuals employed by the Participant must hold all requisite licenses if the concern is engaged in an industry requiring professional licensing (e.g., public accountancy, law, professional engineering).

(f) An applicant will not be denied admission into the 8(a) BD program due solely to a determination that potential 8(a) contract opportunities are unavailable to assist in the development of the concern unless:

(1) The Government has not previously procured and is unlikely to procure the types of products or services offered by the concern; or

(2) The purchase of such products or services by the Federal Government will not be in quantities sufficient to support the developmental needs of the applicant and other Participants providing the same or similar items or services.

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§124.108 What other eligibility requirements apply for individuals or businesses?

(a) *Good character.* The applicant or Participant and all its principals must have good character.

Attachment 2: Disabled Veterans Business Enterprise (DVBE) Program

(a) Data reported by the awarding department as required by § 10111 of the Public Contract Code shall be consistent with the regulations governing the award of the contracts. For contracts with a participation goal, awards shall be reported as proposed by the contractor per § 1896.70(g) or as documented by contract modification per § 1896.76. For contracts awarded without a participation goal, the awarding department shall report each business represented in the contract that is a DVBE.
(b) Awarding departments shall not count contracts toward participation goals that were awarded to equipment brokers as defined in § 1896.62(u) and in accordance with Military and Veterans Code §§ 999.2(b)(3), 999.2(c) and 999.2(e).
(c) Awarding departments shall not count toward participation goals any contract funds awarded during any period in which a DVBE is not in compliance with Military and Veterans Code § 999.2(g)(4) with respect to furnishing required declarations.
(d) Awarding departments shall not count toward participation goals any state funds expended with a business that is not certified.
(e) Upon completion of a contract for which a commitment to achieve a DVBE goal was made, the contractor shall certify in writing to the awarding department, all of the items listed:
    (1) Total amount the prime contractor received under the contract.
    (2) The name and address of the DVBE that participated in the performance of the contract.
    (3) The amount each DVBE received from the prime contractor.
    (4) That all payments under the contract have been made to the DVBE.
(f) Awarding departments shall maintain the contractor's written statement in § 1896.78(e) on file pursuant to records retention requirements.

NOTE:
Authority cited: §§ 14600 and 14615, Government Code; § 10111, Public Contract Code; and §§ 999.2 and 999.5, Military and Veterans Code.
Reference: § 10111, Public Contract Code; §§ 999.2 and 999.5, Military and Veterans Code; and *Monterey Mechanical Co. v. Wilson*, 125 F.3d 702 (9th Cir. 1997), rehearing denied, ___ F.3d ____ (March 9, 1998).

Article 3. DVBE Certification

§ 1896.80. Application
An electronic application may be submitted via the DGS website: http://www.dgs.ca.gov. Upon receipt of the electronic application, an acknowledgement will be emailed. Instead of the electronic application, a Small Business & DVBE Certification Application, 812 (Rev. 12/2012), incorporated by reference, may be obtained from the website and submitted to the OSDS. A list of support documents is also contained in the paper application and located on the website.

NOTE:
Authority cited: §§14600 and 14615, Government Code; § 999.5(f), Military and Veterans Code; and § 10115.3, Public Contract Code.
Reference: § 10115.3, Public Contract Code; and § 999.5(f), Military and Veterans Code; and *Monterey Mechanical Co. v. Wilson*, 125 F.3d 702 (9th Cir. 1997), rehearing denied, ___ F.3d ____ (March 9, 1998).

§ 1896.81. Eligibility for Certification as a DVBE
(a) Applications shall be approved, and certification granted, when found to have met

eligibility requirements. Applications that do not meet these requirements shall be denied. If a business is unable to maintain eligibility or has violated program requirements, the certification shall be revoked. The applicant or DVBE shall meet and maintain all of the following qualifying criteria:

(1) The DVs shall have at least a ten percent service-connected disability and be domiciled in California.

(2) The principal office of the firm shall be located in the United States and cannot be a branch or subsidiary of a foreign corporation, foreign firm, or other foreign-based business.

(3) The business shall be at least 51-percent unconditionally owned by one or more DVs.

(4) The daily business operations shall be managed and controlled by one or more DVs. The DV who manages and controls the business is not required to be the DV business owner.

(5) The DVBE shall file and submit federal tax returns to the OSDS annually, without exception.

(b) The OSDS shall evaluate ownership according to the following criteria for specific types of businesses:

(1) It is a sole proprietorship with at least 51-percent ownership by one or more DVs. If the sole proprietorship submits a federal individual tax return, each owner shall submit a Schedule C. The Schedule C shall list the qualifying DV as the majority owner.

(2) It is a partnership with at least 51-percent interest unconditionally owned by one or more DVs. The partnership agreement shall reflect each owner's interest.

(3) It is a limited liability company unconditionally owned by one or more DVs.

(4) It is a corporation with at least 51-percent unconditional ownership of all outstanding stock, including but not limited to voting stock owned by one or more DVs. DV owners shall control the board of directors. There shall be no formal or informal restrictions which limit voting power or control of the DV owners.

(5) It is a subsidiary. The parent corporation shall be unconditionally owned by one or more DVs. The DVs shall own at least 51 percent of voting stock of the parent corporation.

(c) Ownership by a living trust. Ownership by a living trust shall be equivalent to ownership by a DV. The trust shall be revocable, and the DV shall be the sole grantor, trustee and beneficiary.

(d) Ownership by an employee stock ownership plan. The plan shall be less than or equal to 49-percent ownership.

(e) Ownership shall be unconditional by one or more DVs. Ownership shall not be subject to conditions precedent, conditions subsequent, executory agreements, voting trusts, restrictions on or assignments of voting rights, or other arrangements of voting rights, or other arrangements causing or potentially causing ownership benefits to go to another (other than after death or incapacity). The pledge or encumbrance of stock or other ownership interest as collateral, including seller-financed transactions, does not affect the unconditional nature of ownership if the terms follow normal commercial practices and the owner retains control absent violations of the terms.

(f) In determining unconditional ownership, any unexercised stock options or similar agreements held by DVs are disregarded. However, any unexercised stock options or similar agreements (including rights to convert non-voting stock or debentures into voting stock) held by Non-DVs will be treated as exercised, except for any ownership interests that are held by investment companies licensed under part 107 of Title 13, Code of Federal Regulations.

(g) One or more DV owners shall be entitled to receive:
  (1) At least 51 percent of the annual distribution of profits paid to the owners of a corporation or partnership;
  (2) One hundred percent of the value of shares of stock in the event that the stock is sold;
  (3) At least 51 percent of the retained earnings of the business. In the event of dissolution of the corporation or partnership, the DV shall receive 100 percent of the unencumbered value of each share owned.
  (4) Profits of the business commensurate with the extent of ownership interest.

(h) The DV owners and/or DV managers shall document they maintain control of the business. The OSDS regards control as including both the strategic policy setting exercised by boards of directors and the day-to-day management and administration of business operations. A business's management and daily business operations shall be conducted by one or more DVs. The DVs managing the business shall have managerial experience of the extent and complexity needed to run the business. However, where a license is held by a Non-DV having an ownership interest in the business, the Non-DV may be found to control the business.

(i) Control is comprised of two parts -- Managerial and Operational.
  (1) DV owners shall have managerial control of the overall destiny of the business. The DV owners and/or DV managers shall demonstrate responsibility for the critical areas of the business's operations. The DV owners and/or DV managers shall be personally responsible for, including but not limited to, the following:
  (A) Negotiations, execution and signature of contracts; and
  (B) Execution of financial (credit, banking, bonding) transactions and agreements.
  (2) To have operational control of the day-to-day operations, the DV owners and/or DV managers shall demonstrate independent decisions for the day-to-day operations. Absentee or titular management by the qualifying DVs shall not be deemed to be in operational control. The DV owners and/or DV managers shall include an active role in controlling the business. Control is demonstrated by, including but not limited to, all of the following:
  (A) DV owners and/or DV managers possess the requisite experience, education, knowledge and qualifications in the business's field of operations;
  (B) No third party agreements restrict control by DV owners and/or DV managers; and
  (C) DV owners and/or DV managers control the operation of the business in the following areas:
    1. Supervision - direct responsibility for subordinates
    2. Work force - direct responsibility for subordinates or subcontractors
    3. Equipment
    4. Materials
    5. Facilities (office /yard)

(j) The business shall be controlled by one or more DVs who possess requisite management capabilities:
  (1) DVs shall show sustained and significant time invested in the business. A DV engaged in full-time employment or management with another business, federal, state, or local government (30 hours per week or more) shall submit a detailed statement with the application. The statement shall demonstrate why these activities will not impact the DV's ability to manage and control the business. If the DV is a federal, state or local government employee, a copy of the conflict of interest statement or equivalent document shall be submitted.
  (2) A DV shall hold the highest officer position exercising control over all other positions in the business.

(3) A DV's unexercised right to cause a change in the management of the business does not in itself constitute DV control, regardless of how quickly or easily the right could be exercised. Exception is when the OSDS deems a DV to control the board of directors as provided for in § 1896.81(m)(1).

(k) In the case of a partnership, one or more DVs shall serve as general partners, with control over all partnership decisions. A partnership in which no DV is a general partner will be ineligible for certification.

(l) In the case of a limited liability company, one or more DVs shall serve as managing members, with control over all decisions of the limited liability company.

(m) In the case of a corporation, one or more DVs shall control the board of directors.

(1) The OSDS will deem DVs to control the board of directors, including but not limited to, the following:

(A) A DV owns 100 percent of all voting stock of the business; or

(B) A DV owns at least 51 percent of all voting stock of a business, the DV is on the board of directors and no supermajority voting requirements exist for shareholders to approve corporate actions. If a supermajority exists that limits the majority DV's voting stock, the applicant or DVBE shall be ineligible for certification; or

(C) One or more DVs own at least 51 percent of all voting stock, each DV owner is on the board of directors, and no supermajority voting requirements exist for shareholders to approve corporate actions. The DV shareholders shall demonstrate that they have an enforceable arrangement to permit DV to vote the stock of all as a block without a shareholder meeting.

(2) Where a business does not meet the requirements set forth in § 1896.81(m)(1), the DVs upon whom eligibility is based shall control the board of directors. Where a business has a two person board of directors, one individual is a DV and one is not, the DV vote shall be weighted. In order for the business to be eligible for certification, the DV's vote shall be worth more than one vote.

(A) Provisions for the establishment of a quorum cannot permit Non-DV directors to control the board of directors directly or indirectly;

(B) Any executive committee of the board of directors shall be controlled by DV directors unless the executive committee only makes recommendations to the board.

(3) Non-voting, advisory, or honorary directors may be appointed without the ability to control the board of directors.

(4) Arrangements regarding the structure and voting rights of the board of directors shall comply with applicable state law.

(n) Non-DVs may be involved in the management of a business, and may be stockholders, partners, officers, or directors of the business. Non-DVs shall not:

(1) Exercise control or have the power to control the business; or

(2) Receive compensation from the business in any form as directors, officers or employees, including dividends that exceed the compensation received by the DV holding the highest officer position.

(o) Non-DVs who transfer majority stock ownership of the business to DVs within two years prior to the application and remain involved in the business, in any capacity, are presumed to control the business. This presumption may be rebutted by documenting that the DV has the experience necessary to manage and control all activities of the business. The rebuttal shall be submitted by the DV.

(p) Non-DVs or entities may be found to control or have the power to control in the following situations, including but not limited to:

(1) When the by-laws allow the Non-DVs through a quorum to block the DVs proposals.

(2) When the Non-DV provides licenses, critical financial or bonding support which influence business decisions.

(3) When the terms of the loan agreement gives the grantor the power to control the business.

(4) When relationships exist with Non-DVs or entities which cause such dependence that the DVs cannot exercise independent business judgment without great economic risk.

NOTE:
Authority cited: §§ 14600, 14615 and 14840, Government Code; § 999.5(f), Military and Veterans Code, and §§ 10115.3(b), 10115.9 and 10295, Public Contract Code.
Reference: §§ 10115.1 and 10115.9, Public Contract Code; and § 999(g), Military and Veterans Code, and § 23101, Revenue and Taxation Code.

§ 1896.82. Responsibilities of the DV Applicant and DVBE

In order to be considered by the OSDS for certification as a DVBE, a business must meet, including but not limited to, all of the following:

(a) A business shall meet all requirements set forth in this subchapter and Article 6 (commencing with § 999) of Chapter 6, Division 4 of the California Military and Veterans Code.

(b) Provide the following documentation to OSDS electronically or by paper copy, no later than five o'clock p.m. (5:00 p.m.) of the bid due date, unless the regulations (§ 1896 et seq., Title 2, California Code of Regulations) implementing the Small Business Procurement and Contract Act (SBPCA) specify a different time, in which case the submission time for application as identified in the SBPCA shall prevail:

(1) A completed DVBE certification application and required support documents;

(2) A copy of an Award of Entitlement letter from the United States Department of Veterans Affairs or United States Department of Defense that was issued within six months of the application. The letter shall certify the existence of a service-connected disability of at least ten percent;

(c) DVBEs shall notify the OSDS in writing upon changes of the business address, contact information, and changes to the DVs home address within 30 calendar days.

(d) In the case of a renewal, the qualifying DV shall certify in writing there are no changes in the service-connected disability status. If the disability status has changed, a new Award of Entitlement letter is required.

(e) A DVBE shall maintain all licenses, permits and registrations, including but not limited, to those issued by any California State Department or local government.

(f) A DVBE shall provide notice to the OSDS and the awarding department, including but not limited to, any changes in licenses, permits, registrations, operation or ownership within 30 calendar days.

(g) A DVBE, including a DV in the case of equipment ownership, shall provide the OSDS the most recent copies of federal tax returns and amendments upon filing with the Internal Revenue Service, within 90 calendar days.

(h) The following shall be required for changes in ownership or business structure:

(1) DVBE shall submit a new application identifying the new DV owners, DV managers and new business structure. Continued eligibility and the award of any new contracts require that the OSDS first verify that all eligibility requirements are met by the business and the new owners.

(2) Any DVBE that is performing contracts and desires to substitute one DV owner for another DV shall submit a proposed novation agreement and supporting documentation to the awarding departments prior to the substitution or change of ownership for approval.

(3) In the event of a permanent disability or death of the majority DV owner, the business shall do the following within 30 calendar days:
(A) Notify awarding departments.
(B) Submit documents establishing the DV's permanent disability or death to the OSDS. In addition, provide documents verifying who controls or has inherited the business. The DVBE designation shall be continued if the business is controlled or inherited by the spouse or children. This designation may not exceed three years. It is solely for the purpose of completing existing contracts. If the business is a small business, a certification application and appropriate documents may be submitted.

(i) A DVBE shall perform a CUF pursuant to § 1896.62(l) as determined by § 1986.71 by awarding departments.

(j) A DVBE shall withdraw their certification when they no longer meet eligibility requirements. The OSDS shall end the certification except when the business or its affiliates are under investigation.

(k) Applicants are responsible for renewing certifications whether or not a renewal notice is received. Renewals shall be submitted, including required documents, prior to the certification expiration dates. Applicants may submit an electronic or paper application. Both options are located on the website at www.dgs.ca.gov. Renewals may not be submitted earlier than 90 calendar days before certifications expire. An applicant with an expired certification shall submit a new application. An expired certification shall not be submitted as a renewal application.

(l) DVBE certification shall be revoked for any of the following reasons:
(1) Failure to respond to a certification notice issued by the OSDS within 30 calendar days from the date of the notice.
(2) Failure to notify the OSDS and the awarding department that the certification requirements have not been maintained pursuant to § 999.2(h) of the Military and Veterans Code.
(3) Failure to submit federal income returns as required by § 999.2(g) of the Military and Veterans Code.
(4) Failure to reinstate to an active status with the California Secretary of State within 60 calendar days.
(5) Violation of § 999.9(a) of the Military and Veterans Code shall also include, but is not limited to, suspension from participation in state contracting.
(6) Violation of §§ 14842 or 14842.5 of the Government Code shall also include, but is not limited to, suspension from participation in state contracting.

NOTE:
Authority cited: §§ 14600, 14615 and 14840, Government Code; §§ 999.2 and 999.5(f), Military and Veterans Code, and §§ 10115.3(b), 10115.9 and 10295, Public Contract Code.
Reference: §§ 10115.1 and 10115.9, Public Contract Code; and § 999.2(g), Military and Veterans Code, and § 23101, Revenue and Taxation Code.

§ 1896.83. Determination of Intent to Perform a Commercially Useful Function (CUF)
For certification purposes only, the OSDS shall determine if the applicant establishes the intent and ability to perform a CUF pursuant to § 1896.62(l) in the primary business type identified in the application. Documents to support the determination include, but are not limited to, professional licenses, financial records, ownership, facilities, and agreements required to determine eligibility for certification in § 1896.81. Certification does not override or replace the CUF determination required of awarding departments in §

Attachment 3: DVBE Program Revisions

are filed, the awarding department shall give notice in writing of at least five (5) working days to the listed subcontractor of a hearing by the awarding department on the prime contractor's request for substitution.

(e) Failure of the contractor to subcontract with the small businesses listed on its bid to the state, or follow these substitution rules may be grounds for the Department to apply such ~~impose~~ sanctions as ~~pursuant to~~ Government Code §§ 14842 and 14842.5 and the subsequent provisions of this subchapter permit ~~§1896.16~~. In the event such sanctions are ~~to be~~ imposed, the contractor shall be notified in writing and entitled to a hearing pursuant ~~to~~ §§ 1896.18 and 1896.20.

Note: Authority cited: Sections 14837(d)(4), 14842(f), and 14843, Government Code. Reference: Sections 14837, 14842 and 14842.5 Government Code; and Sections 4100, 4107~~,~~ and 4107.5, Public Contract Code.

Article 3 Heading is amended to read:

Article 3. Small Business Eligibility, Certification Process and Responsibilities

Subsection 1896.12 is amended to read:

§1896.12. Eligibility for Certification as a Small Business.

(a) To be eligible for certification as a small business, a business must meet all of the following qualifying criteria:

(1) It is independently owned and operated; and

(2) It's ~~The~~ principal office is located in California; and

(3) The officers of the business (in the case of a corporation); officers and/or managers, or in the absence of officers and/or managers, all members in the case of a limited liability company; partners in the case of a partnership; or the owner(s) in all other cases, are domiciled in California; and

(4) It is not dominant in its field of operation(s), and

(5) It is either:

(A) A business that, together with all affiliates, has 100 or fewer employees, and annual gross receipts of fifteen ~~fourteen~~ million dollars ($15~~4~~,000,000) or less as averaged for the previous three (3) tax years, as biennially adjusted by the Department in accordance with ~~pursuant to~~ Government Code § 14837(d)(3) (If the business or its affiliate(s) has been in existence for less than three (3) tax years, then the GAR will be based upon the number of years in existence);or

(B) A manufacturer as defined herein that, together with all affiliates, has 100 or fewer employees.

(b) To be eligible for designation as a microbusiness, a business must meet all the qualifying criteria in subparagraph (a)(1) – (4), and in addition, must be either:

(1) A business that, together with all affiliates, has annual gross receipts of three million, five hundred thousand dollars ($3,500,000) or less as averaged for the previous three (3) tax years, as biennially adjusted by the Department in accordance with ~~pursuant to~~ Government Code §14837(d)(3) (If the business or its affiliate(s) has been in existence for less than three (3) tax years, then the GAR will be based upon the number of years in existence); or

(2) A manufacturer as defined herein that, together with all affiliates, has 25 or fewer employees.

(c) Joint ventures may ~~must~~ be certified as a small business or microbusiness ~~on a bid-by-bid basis. The joint venture shall not be subject to the average annual gross receipts and employee limits imposed by this subchapter.~~ when each individual business of the joint venture is a certified small

business. The joint venture is established by written agreement to engage in and carry out a business venture for joint profit, for which purpose they combine their efforts, property, money, skills and/or knowledge. The joint venture shall not be subject to the average annual gross receipts and employee limits imposed by this subchapter. ~~However, each individual business participating in the joint venture must be certified as a small business~~.

(d) Criteria for Certification Determination(s):

(1) In determining if a business is eligible for certification, OSDS ~~the Department~~ may consider the applicant's ~~or small business'~~ organizational structure, operations and business relationships during the previous three (3) tax years (or years the business has been in existence if fewer than three (3) tax years)., ~~and~~ OSDS may request the applicant provide copies of income tax returns as filed with the State of California or other jurisdictions ~~California Franchise Tax Board~~ in addition to the required federal income tax returns and schedules, as filed with the ~~federal~~ Internal Revenue Service, and/or other documentation deemed necessary for the OSDS ~~Department~~ to make a final certification determination.

(2) The OSDS may require the owner(s) or the certified firm to complete and submit an Internal Revenue Service Form 4506-T, for the purpose of requesting a tax return transcript for certification eligibility review. ~~In determining if a business is eligible for small business certification, the applicant business, together with all affiliates, has been in existence less than three years shall have 100 or fewer employees, and an average annual gross receipts of $14 million or less as averaged by the number of years in existence, as adjusted by the Department pursuant to Government Code, § 14837(d)(3).~~

(3) ~~In determining if a business is eligible for microbusiness certification, applicant business, together with all affiliates, in existence less than three years shall have an average annual gross receipts of $3.5 million or less as averaged by the number of years in existence, as adjusted by the Department pursuant to Government Code, §14837(d)(3).~~

~~(4)~~ Government Code § 14837(c) defines manufacturer for purposes of this subchapter. OSDS's ~~The Department's~~ determination of whether a business is a manufacturer may include consideration of ~~be based on, but not limited to~~: (A) Whether the business, with its own facilities, performs the primary activities in transforming inorganic or organic substances into the end item being acquired, and is not a packager or, in the case of kits, a final assembler. The end item must possess characteristics that, as a result of mechanical, chemical, or human action, it did not possess before the original substances, parts, or components were assembled or transformed. The end item may be finished and ready for utilization or consumption, or it may be semi-finished as a raw material to be used in further manufacturing. (B) ~~The factors considered by the federal Small Business Administration pursuant to Title 13, Code of Federal Regulations (CFR), Chapter I, Part 121, § 121.406(b)(2). (C)~~ Whether more than fifty percent (50%) of its' annual gross receipts, as determined by the Department, result from the manufacture and sale of products manufactured by the business.

~~(4)~~(5) OSDS's ~~The Department's~~ determination of whether the officers, owners and/or partners, managers or members of a business, as applicable, are domiciled in California may be based on, but not ~~be~~ limited to, a review of:

(A) Voter registration records;
(B) Homeowner's property tax ~~exemption~~ filings;
(C) Driver's licenses;
(D) Utility billings; ~~and~~
(E) Individual state tax returns; and
(F) Other currently valid documentations~~, acts, occurrences,~~ or submissions ~~events~~ that indicate presence in California is more than temporary or transient, and clearly substantiate the claimed domicile.

(5)~~(6)~~ OSDS's ~~The Department's~~ determination of whether the p~~P~~rincipal o~~O~~ffice of a business is located in California, as GC §14837(d) mandates, may ~~shall~~ be based on, but not limited to, a review of the address or physical location where management, direction and control of operations originate.~~:~~

~~(A) In the case of a corporation, the location where the corporate officers manage, direct and control the operations must be located within California;~~

~~(B) In the case of Limited Liability Companies, the location where the Manager(s) and/or Officer(s) or Members manage, direct and control the operations must be located within California;~~

~~(C) In all other cases, the location where the owner(s) manage, direct and control the operations must be located within California.~~

(6)~~(7)~~ OSDS's ~~The Department's~~ determination of whether a business is affiliated with another, with respect to satisfying GC §14837(d) requirements ~~business~~, may be based on, but not limited to, historical and current factors including ownership, management, financial and/or business relationships or ties with another business, such as familial relationships, contractual relationships, assignments, passage of title to goods or merchandise, and other related matters as reflected in tax returns and other documentation.

(A) OSDS ~~The Department~~ may additionally consider the following in determining affiliation:

1. The applicant business assigns a contract, in whole or in part, to another business.
2. There exists common ownership and/or management with the applicant business and another business.
3. The applicant business and another business share facilities, equipment, systems, or employees.
4. There is a familial relationship with the applicant business and another business and both businesses are in the same industry.
5. A person or business has assisted the applicant business with activity to meet bond/security requirements.

(B) The following types of business relationships shall not be considered affiliations:

1. A franchise and/or license agreement provided that the franchisee or licensee has the right to profit from its efforts and bears the risk of loss commensurate with ownership.
2. A manufacturer's or service provider's representative provided that a written agreement exists between the manufacturer(s) or service provider(s) and the representative that substantiates the independent nature of the individual businesses.

(C) A joint venture shall be deemed an affiliate for the purposes of this subchapter.

(7)~~(8)~~ A business entity whose ownership interests, management and operation are not subject to control, restriction, modification or limitation by an outside source, individual or another business entity is considered independently owned and operated. OSDS ~~The Department~~ shall presume an applicant business not to be independently owned and operated if evidence exists of any of the following ~~exists~~:

(A) An outside person or business concern owns or controls, or has the power to control, fifty percent (50%) or more of the voting stock of the applicant business, or

(B) One or more business owners, general partners, directors, officers or members of an outside business concern controls or ha~~ves~~ the power to control or influence the day-to-day operations of the applicant business, board of directors and/or owner(s) of the applicant business.

(8)~~(9)~~ An applicant ~~business concern~~ that exercises or has the ability to exercise a controlling or major influence, on a statewide basis, in a kind of business activity or field of operation ~~in which a number of business concerns are primarily engaged~~, may ~~shall~~ be determined to be dominant in its field of operation, and statutorily ineligible for small business certification. The following criteria,

among others, may be considered by the OSDS ~~Department~~ in determining if the applicant business is dominant in its field of operation:

(A) Volume of business;
(B) Financial resources;
(C) Competitive status or position;
(D) Ownership or control of materials, processes, licenses agreements and facilities;
(E) Sales territory and nature of business activity.

(e) Except as limited by law, and only i~~I~~n order to determine the eligibility of a business for certification ~~as a small business~~, OSDS ~~the Department~~ may consider ~~whatever~~ information ~~is~~ provided to it from multiple sources, including but not limited to those seeking certification, and records gathered or held by any California state or local agency, any governmental agency of another state, or the federal government.

(f) To promote a core statewide small business certification process, the Department shall provide local agencies and the general public web access to a small business statewide directory maintained by the OSDS for the purpose of searching and confirming small b~~B~~usiness~~es that have been certified by or on behalf of other governmental organizations may be eligible for~~ certifications ~~as a small business if the organization uses substantially the same or more stringent definitions as those set forth in Government Code § 14837 and substantially the same or more stringent certification analysis process than used by the Department~~.

(g) Nonprofit veteran service agencies are eligible for certification as a small business if all of the conditions set forth in Military and Veterans Code Subsection 999.51 are met. Nonprofit public benefit corporations are registered with the Department solely for the purpose of compliance with the provisions of the California Prompt Payment Act (Government Code §927 et seq.).

Note: Authority cited: Sections 14837(d), 14839 and 14843, Government Code. Reference: Sections 927.2(e), 14615(a), 14837(c) and (d), 14838, 14839(a) and (h), 14839.1(b) and 14340(b), Government Code; Section 999.51, Military and Veterans Code; and Title 13, Code of Federal Regulations (CFR), Chapter I, § 121.406.

Subsection 1896.14 is amended to read:

§1896.14. Responsibilities of the Applicant Small Business.

(a) In order to register and be considered by OSDS ~~the Department~~ for certification as a small business a business must:

(1) Supply electronically via the appropriate web portal, or s~~S~~ubmit a completed hard copy certification request ~~application~~ to OSDS ~~the Department~~, including all of the required substantiating documentation and information needed by OSDS ~~the Department~~ to determine the business' eligibility for small business certification; and

(2) Submit all the information requested by the date and time stated in r~~R~~espons~~ed~~ to any notice from OSDS ~~the Department, by the date and time specified by the Department, with all additional information requested.~~, Upon good cause ~~or provide reasons acceptable to the Department regarding why the deficiency request cannot be fulfilled~~ OSDS may extend deadlines; and

(3) Meet all eligibility requirements as set forth in this subchapter.

(4) OSDS must be immediately notified of any changes in operation or ownership during the certification application process.

(b) A business that does not meet the eligibility requirements for certification, or does not respond to requests from OSDS for additional information by the date and time specified, will be denied certification. ~~A small business must provide written notification to the Department of any changes in its~~

~~operation or ownership during its certification period that may affect its continuing eligibility as a small business pursuant to § 1896.12. Should a small business be sold during its certification period, the certification is not transferable to the new owners. Should the new business owners choose to do so, they may submit a new application for certification.~~

(c) A certified small business shall keep current all of its licenses or permits during certification. ~~Small business contractors and subcontractors shall perform commercially useful functions in each contract they are awarded by the state agencies.~~

~~(d) Every business certified as a small business shall be subject to reverification of status at any time. Failure by a small business to provide requested information that supports its continued eligibility as a small business, by the date and time specified by the Department, shall be grounds for decertification.~~

Note: Authority cited: Sections 14837(d)(4), 14839.1(a), and 14843, Government Code. Reference: Sections 14837(d)(4), 1483942(i), 14840(a) and 14842.5, Government Code.

Subsection 1896.15 is adopted to read:

§ 1896.15. Definition and Determination of Commercially Useful Function (CUF).

(a) A certified small business contractor, subcontractor or supplier of goods and/or services that contributes to the fulfillment of the contract requirements, shall perform a Commercially Useful Function (CUF) for each contract in accordance with the requirements of GC §14837(d)(4).

(b) A small business contractor, subcontractor, or a supplier of goods and/or services is deemed to perform a CUF if the business does all of the following:

(1) Is responsible for the execution of a distinct element of the work of the contract; (including the supplying of services and goods);

(2) Carries out its obligation by actually performing, managing, or supervising the work involved;

(3) Performs work that is normal for its business services and functions;

(4) Is responsible, with respect to products, inventories, materials and supplies required for the contract, for negotiating price, determining quality and quantity, ordering, installing, if applicable, and making payment.

(5) Is not further subcontracting a portion of the work that is greater than that expected to be subcontracted by normal industry practices.

(c) A contractor, or subcontractor or supplier will not be considered to perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract or project through which funds are passed in order to obtain the appearance of small business participation.

(d) Contracting/procurement officials of the awarding department must:

(1). Evaluate if a certified small business (including microbusiness) awarded a contract, meets the CUF requirement as defined in this subsection.

(2) During the duration of the contract, monitor for CUF compliance. (see State Contracting Manual Volume 1 Chapter 8 and Volumes 2 and 3, Chapter 3).

(e) If a CUF evaluation identifies potential program violations, the awarding departments shall investigate and report findings to the OSDS in accordance with § 1896.17(i).

Note: Authority cited: Sections 14837(d)(4), 14839.1, and 14843, Government Code. Reference: Sections 14837, 14839(g) 14842.5(a)(6) and 14842.5(e), Government Code; Sections 999(b)(5)(B) and 999.6 Military and Veterans Code; Volume 1 Chapter 8 and Volumes 2 and 3, Chapter 3, State Contracting Manual.

Attachment 4: LAX Master Plan Program Community Benefits Agreement

c. **Implementation of LAX Proposed Restriction.** If the FAA or any other regulatory authority approves in full or in part the application described in Section III.G.1, LAWA shall implement the LAX Proposed Restriction to the extent permitted in the approval.

2. **Record of Eastbound Departures.** LAWA shall maintain a record of all nighttime eastbound departures during Over-Ocean Operations and Westerly Operations. This record shall be made available to the public on the LAWA website and shall be updated monthly.

3. **Community Response Program.** LAWA shall operate a community response program through which the public may report nighttime flights in the areas east of LAX. LAWA shall maintain a record of all individual reports, and shall prepare annual reports documenting individual reports, including records of airline, flight, date, and time of each reported flight, where possible. All records of reports, excluding the reporting individual's name and address, shall be maintained as public records and posted on the LAWA website.

IV. JOB TRAINING.

A. Job Training Program. Beginning in fiscal year 2005-06, LAWA shall provide $3 million per year for five years, not to exceed $15 million over five years, to fund job training for Airport Jobs and Aviation-Related Jobs, and for Pre-apprenticeship Programs. Any funds unspent in a particular year shall be rolled over to the subsequent year. At the conclusion of the five-year period, any unused funds shall revert to the job training funds described in Section XV.

1. **FAA Modification.** If at any time the FAA expands the job categories for which it will permit LAWA to expend job training funds under this Section IV.A, LAWA shall expend those funds for all newly available job categories. At all times, if the FAA prohibits particular job training expenditures required under this Section IV.A, then LAWA shall provide the full funding amount described in this section for job training expenditures that are required by this section and are not prohibited.

2. **Seeking Alternative Funding Sources in Case of FAA Prohibition.** Beginning in fiscal year 2004-05, LAWA shall consult with CDD and the WIBs to identify and secure funds or redirect existing resources for any job training described in this Section IV.A for which the FAA has prohibited expenditures, with an overall goal of securing funding and resources from alternative sources for five years. Potential resource providers for this activity shall include, but not be limited to, local and neighboring WIBs, the State of California, the County of Los Angeles, the Los Angeles Community College District, and the Los Angeles Unified School District. Funds secured by LAWA under this Section IV.A.2 shall be administered as described in Section IV.B. Funds secured from alternative sources under this Section IV.A.2 shall not reduce the funding commitment made by LAWA elsewhere in this Section IV.

B. Administration.

1. **Coordination among LAWA, CDD, and WIB.** LAWA shall make best efforts to negotiate a memorandum of understanding ("MOU") between LAWA, CDD and the WIB, under which job training funds provided under this Section IV shall be administered by CDD and WIB. LAWA shall consult with the Coalition Representative in negotiating the MOU with CDD and a WIB. The administrative and fiscal oversight shall entail CDD and the WIB receiving LAWA funds described in Section IV.A, selecting Qualified Job Training Organizations, and providing the funds to Qualified Job Training Organizations for performance of job training as described in this Section IV.

If LAWA does not enter into such an MOU with CDD and a WIB within six months of the effective date of this Agreement, LAWA shall initiate a Contract Award Process for a contractor to perform the administration described in this Section IV.B.

Regardless of what entity performs the administration, LAWA shall ensure that job training funded under Section IV.A commences by July 1, 2005, if CDD participates or by January 1, 2006, if CDD does not participate.

2. **Provisions of MOU.** Under the MOU described in Section IV.B.1, training paid for with funds provided under this Section IV.A shall be performed by Qualified Job Training Organizations that are selected in accordance with City and WIB applicable procurement policies. LAWA recognizes that the South Bay Workforce Investment Board is a current primary service provider to eligible residents of Inglewood, Lennox and West Athens. Under this MOU, CDD shall contract with the South Bay Workforce Investment Board, reserving all administrative and contractual remedies to enforce performance; CDD shall consult with LAWA and the Coalition Representative at regular intervals regarding the progress of the job training provided under this Section IV.A; and CDD shall provide an opportunity for consultation with the Coalition Representative on program design issues during the development of the RFP. At the conclusion of the term of the MOU, any unused funds shall revert to the job training funds described in Section XV.

3. **Limitation on Administrative Costs**. At least 90 percent of the funds provided by LAWA under this Section IV shall be provided by CDD and/or the WIB, or other contractor administering job training funds, to Qualified Job Training Organizations under contract awards, rather than retained as compensation for services provided under the MOU or contract.

C. **Work Experience Programs.** LAWA shall provide work experience jobs and pay applicable wages. The funding of these Work Experience Programs is separate from that described in Section IV.A and is independent of the job training program to be operated by CDD and WIB. LAWA shall, to the extent permissible by law, specifically target opportunities for placement in these work experience programs to Project Impact Area residents. Funding provided under this Section IV.C shall not qualify as an expenditure under any other provision of Section IV.

D. Eligibility. Enrollment opportunities in all job-training programs funded primarily by funds distributed under this Section IV shall be predominantly made available to:

- Low-Income Individuals living in the Project Impact Area for at least one year;
- Special Needs Individuals;
- Low-Income Individuals residing in the City;
- Individuals currently working in Airport Jobs or Aviation-Related Jobs and eligible for incumbent worker training.

E. Content of Job Training. Job training programs funded by funds distributed under this Section IV shall include job readiness programs, skills development, career ladder programs, incumbent worker training, and other, similar programs as approved by LAWA and the Coalition Representative. Recipients of these funds shall be required to consult with LAWA, the Coalition Representative, CDD, WIB and the designated WorkSource Center in design of training programs.

V. FIRST SOURCE HIRING PROGRAM.

A. First Source Hiring Program for Airport Jobs. The First Source Hiring Program shall provide early access to targeted applicants for available Airport Jobs, and employers will receive prompt, cost-free referrals of qualified and trained applicants. Except where the City's Worker Retention Policy requires retention of particular workers, LAWA shall require participation in the First Source Hiring Program with regard to all Airport Jobs by any:

- new Airport Contractor, Airport Lessee, and/or Airport Licensee resulting from the approved LAX Master Plan Program;
- Airport Contractor that enters into or receives a new, amended, or renewed Airport Contract, or receives a voluntary extension of an existing Airport Contract;
- Airport Lessee that enters into or receives a new, amended, or renewed lease of any property owned by LAWA, or receives a voluntary extension of an existing lease; and
- Airport Licensee that agrees, receives, or is subject to a new, amended, extended, or revised licensing or permitting agreement or set of requirements.

AS of July 1, 2005, LAWA shall ensure that the First Source Hiring Program, attached as Exhibit C, is a material term of all Airport Contracts, lease agreements, and licensing or permitting agreements or sets of requirements that are new, extended, amended, renewed, or revised. Under these Airport Contracts, agreements, or requirements, employer participation in the First Source Hiring Program shall commence on the effective date of the Airport Contract, agreement, or requirement in question, or on July 1, 2005, whichever is later. LAWA shall actively monitor compliance with the First Source Hiring Program by all covered employers; shall enforce the liquidated damages provision of Exhibit C with regard to any instances of noncompliance; and shall take any other enforcement action under Airport Contracts, lease agreements, and licensing and permitting requirements necessary to prevent noncompliance.

Nothing in this Agreement shall require employers that are subject to collective bargaining agreements that conflict with the terms of the First Source Hiring Program, are construction contractors, or that operate Transportation Charter Party limousines, non-tenant shuttles, or taxis, to comply with the First Source Hiring Program. Applicants hired under the First Source Hiring Program shall have to meet any applicable LAX security-badging requirements. The Coalition Representative shall participate in monitoring participation in the First Source Hiring Program, as described in Exhibit C.

B. Targeted Applicants. Referrals under the First Source Hiring Program shall, to the extent permissible by law, be made in the order of priority set forth below.

- **First Priority:** Low-Income Individuals living in the Project Impact Area for at least one year and Special Needs Individuals;
- **Second Priority:** Low-Income Individuals residing in the City.

C. Referral System. The Referral System, to be designed and implemented through a joint effort of LAWA and the Coalition, and CDD and WIB, if possible, will work with employers, community-based job training organizations, and other community-based organizations to receive notices of job openings, to provide referrals under the First Source Hiring Program, and to assist in monitoring compliance with the First Source Hiring Program. LAWA and the Coalition shall ensure that the Referral System operates as described in this Agreement.

1. LAWA Expenditure and Provision of Office Space. LAWA shall annually provide funds sufficient for all costs associated with two full-time employees, and shall provide office space On-Site and any necessary equipment for operation of the Referral System.

2. CDD/WIB Operation of Referral System. In consultation with the Coalition, LAWA shall negotiate a memorandum of understanding under which CDD and the WIBs shall operate the Referral System. This memorandum of understanding shall require that in operation of the Referral System, CDD and/or WIB practice cultural and language sensitivity to the relevant communities, and perform outreach and build relationships to develop a network of community-based organizations that can access a large and diverse pool of job applicants. If LAWA does not enter into a memorandum of understanding with CDD and/or WIB by July 1, 2005, LAWA shall complete a Contract Award Process for selection of an entity to operate the Referral System.

3. Contract Award Process for Operation of Referral System. In the event that LAWA initiates a Contract Award Process for selection of an entity to operate the Referral System, then the RFP shall require that respondents demonstrate cultural and language sensitivity to the relevant communities, and demonstrate the ability to do outreach and build relationships to develop a network of community-based organizations that can access a large and diverse pool of job applicants, and perform other functions as described in this Agreement.

4. **Use of Available Systems.** Any entity selected to operate the Referral System shall utilize established job opportunity reporting and tracking systems currently available through the City's Workforce Development System, to the extent that these systems are compatible with the functions of the Referral System as described in this Agreement.

D. Referral System Participants. LAWA shall make best efforts to negotiate a memorandum of understanding with CDD, under which LAWA shall utilize CDD and WIB services to facilitate the First Source Hiring process. LAWA, CDD and the WIB shall have the following Referral System roles, in addition to responsibilities described elsewhere described in this Agreement:

1. **LAWA - Launch of Employer Outreach.** LAWA, through its Small Business and Job Opportunities Unit, shall conduct outreach to Airport Contractors, Airport Lessees, and Airport Licensees ("Airport Employers") to establish awareness of the First Source Hiring Program, and to secure voluntary participation and/or required commitments for overall Airport Employer participation, and familiarize Airport Employers with CDD and WIB services provided through the Referral System.

2. **CDD/WIB - Development of Job Opportunities and Applicant Pool.** CDD and the WIB will develop and implement specific systems required to effectively match qualified priority job applicants with available Airport Jobs. CDD will conduct Airport Employer job development functions, coordinate the development of a qualified applicant pool for Airport Job opportunities and refer job candidates to Airport Employers. CDD shall also develop and access any systems necessary to complete Program performance tracking and reporting.

E. FAA Prohibition.

1. **FAA Prohibition of Application to Certain Jobs**. If an FAA Determination, as defined in and pursuant to the procedures set out in the Cooperation Agreement, or any other regulatory authority prohibits application of the First Source Hiring Program to certain Airport Jobs, or threatens to withhold federal funding if LAWA applies the First Source Hiring Program to certain Airport Jobs, then LAWA shall nonetheless implement the First Source Hiring Program with regard to all other Airport Jobs.

2. **Complete FAA Prohibition.** If an FAA Determination, as defined in and pursuant to the procedures set out in the Cooperation Agreement, or any other regulatory authority completely prohibits LAWA from taking actions required by this Section V, or threatens to withhold federal funding if LAWA takes actions required by this Section V, then LAWA shall contribute $200,000 annually to the job training funds described in Section XV until 2015.

F. Construction. LAWA shall work collaboratively with the Coalition Representative to implement the Los Angeles International Airport Project Labor Agreement in a manner that, to the greatest extent possible, enhances employment opportunities for underemployed individuals residing in the Project Impact Area and the City, especially minorities and women.

VI. LIVING WAGE, WORKER RETENTION, AND CONTRACTOR RESPONSIBILITY.

LAWA shall apply to all Airport Contractors, Airport Lessees, and Airport Licensees the City's Living Wage Ordinance, as set forth in Los Angeles Administrative Code Section 10.37; the City's Worker Retention Policy, as set forth in Los Angeles Administrative Code Section 10.36; and the Contractor Responsibility Program set forth in BOAC Resolution No. 21601, in accordance with City policy.

VII. AIR QUALITY STUDY.

A. Air Quality Study. LAWA shall fund a study by an Independent Expert of toxic air contaminants and criteria air pollutant emissions from jet engine exhaust and other emission sources ("Air Quality Study"). In addition to other contaminant and pollutant emissions, the Air Quality Study shall measure jet engine exhaust emissions and provide chemical composition data from a representative sample of engine types and ages under a variety of conditions that reflect actual operations, and shall include this data and all other relevant study results as part of the final study provided to LAWA.

B. Air Quality Study Draft Protocols. The Air Quality Study draft protocols shall be based upon the "Air Quality and Source Apportionment Study" described in LAWA, *Air Quality and Source Apportionment Study of the Area Surrounding Los Angeles International Airport, Technical Workplan*, November 17, 2000, and all associated documents, as listed in part in Exhibit D. LAWA, in consultation with the Coalition Representative, shall review draft protocols set forth in the above document, and shall update and modify these draft protocols as appropriate for use in the Air Quality Study. Within 150 days of the effective date of this Agreement, LAWA shall provide to the Coalition Representative all documents relevant to the Air Quality Study draft protocols and shall meet with the Coalition Representative to facilitate his/her participation in this process. LAWA shall incorporate into the draft protocols changes proposed by the U.S. Environmental Protection Agency peer review group, as described in EC/R Incorporated, *Report on the Peer Review Workshop on the Los Angeles World Airports, Air Quality and Source Apportionment Study of the Area Surrounding Los Angeles International Airport*, August 8, 2003. Within 240 days of the effective date of this Agreement, LAWA shall request, pursuant to the procedures in Section II.D of the Cooperation Agreement, an FAA Approval to proceed with the Air Quality Study. The resulting draft protocols shall be included in the RFP for the Air Quality Study.

C. Contract Award Process. Within 270 days of the date LAWA receives an FAA Approval to proceed with the Air Quality Study, LAWA shall complete a Contract Award Process for selection of a contractor to conduct the Air Quality Study. Within 90 days of the contract award, the contractor shall commence the Air Quality Study.

D. Review of Protocols and Interim Reporting. Prior to commencing the Air Quality Study, the contractor selected to conduct the Air Quality Study shall submit proposed

Attachment 5: Los Angeles Sports and Entertainment District Project Community Benefits Agreement

Tenant shall exclude any tenant of a residential dwelling unit, any guest or other client of any hotel and any governmental entity.

III. PARKS AND RECREATION

A. PURPOSE. The purpose of this Section is to help address the deficit of park space in the Figueroa Corridor community. The Figueroa Corridor contains less than a quarter of the park space acreage required by the City. The park construction efforts under this Section will help address this deficit, providing a measurable and lasting benefit to the Figueroa Corridor community.

B. QUIMBY FEES. Developer agrees to pay all fees required by the Los Angeles Municipal Code, Chapter I, Article 7, Section 17.12, "park and recreation site acquisition and development provisions," subject to offsetting credits as allowed by that section and/or state law and approved by the city. The Coalition shall support Developer's application for Quimby credit under this section, provided that Developer's applications for credits are based on publicly accessible space and facilities.

C. PARKS AND OPEN SPACE NEEDS ASSESSMENT.

1. **Needs Assessment.** The Developer will fund an assessment of the need for parks, open space, and recreational facilities in the area bounded by the following streets: Beverly Boulevard and the 101 freeway (north boundary); Western Avenue (west boundary); Vernon Avenue (south boundary); and Alameda Street (east boundary). Developer will commence fulfillment of its responsibilities under this section III.C within 90 days after enactment by the Los Angeles City Council of a development agreement ordinance for the Project.

2. **Funding.** Developer will fund the Needs Assessment in an amount between $50,000 and $75,000, unless the Coalition consents to the Developer funding the Needs Assessment in an amount less than $50,000.

3. **Selection of organization conducting needs assessment.** The Needs Assessment will be conducted by a qualified organization agreed upon by both the Developer and the Coalition, and paid an amount consistent with Section III.C.2, above. The Developer and the Coalition may enlist other mutually agreed upon organizations to assist in conducting the Needs Assessment.

D. PARK AND RECREATION FACILITY CREATION BY DEVELOPER.

1. **Park and recreation facility creation.** Following the completion of the needs assessment, the Developer shall fund or cause to be privately funded at least one million dollars ($1,000,000) for the creation or improvement of one or more parks and recreation facilities, including but not limited to land acquisition, park design, and construction, within a one-mile radius of the Project, in a manner consistent with the results of the Needs Assessment. By mutual agreement of the Coalition and the Developer, this one-mile radius may be increased. Each park or recreation facility created pursuant to this agreement shall be open to the public and free of charge. Developer shall have no responsibility for operation or

maintenance of any park and recreation facility created or improved pursuant to this agreement. Developer after consultation with the Coalition shall select the location of park and recreation facilities to be created or improved. Park and recreation facilities shall be created or improved in a manner such that a responsible entity shall own, operate, and maintain such facilities. Each park created or improved pursuant to this agreement shall include active recreation components such as playgrounds and playing fields, and shall also include permanent improvements and features recommended by the Needs Assessment, such as restroom facilities, drinking fountains, park benches, patio structures, barbecue facilities, and picnic tables. Recreation facilities created pursuant to this Section should to the extent appropriate provide opportunities for physical recreation appropriate for all ages and physical ability levels.

2. **Timeline**. The park and recreation facilities created or improved pursuant to this agreement shall be completed within five years of completion of the Needs Assessment. At least $800,000 of the funds described in Section III.D.1, above, shall be spent within four years of completion of the Needs Assessment.

E. OPEN SPACE COMPONENTS OF DEVELOPMENT.

1. **Street-level plaza.** The Project will include a street-level plaza of approximately one-acre in size and open to the public.

2. **Other public spaces.** The Project will include several publicly-accessible open spaces, such as plazas, paseos, walkways, terraces, and lawns.

IV. COMMUNITY PROTECTION

A. PARKING PROGRAM. The Developer shall assist the Coalition with the establishment of a residential permit parking program as set forth below.

1. **Permit Area**. The area initially designated as part of the Parking Program is generally bounded by James Wood Drive on the north, Byram and Georgia Streets on the west, Olympic Boulevard on the south and Francisco on the east. The permit area may be adjusted from time to time by mutual agreement of the Developer and the Coalition or upon action by the City determining the actual boundaries of a residential parking district in the vicinity of the Project.

2. **Developer Support**. The Developer shall support the Coalition's efforts to establish the parking program in the permit area by requesting the City to establish a residential permit parking district through a letter to City Council members and City staff, testimony before the City Council or appropriate Boards of Commissioners, and through technical assistance which reasonably may be provided by Developer's consultants.

To defray the parking program's costs to residents of the permit area, the Developer shall provide funding of up to $25,000 per year for five years toward the cost of developing and implementing the parking program within the permit area. Such funding shall be provided to the City.

3. **Limitations**. The Coalition understands, acknowledges and hereby agrees that the City's determination of whether to establish a residential permit parking district and the boundaries thereof are within the City's sole discretion. The Developer is not liable for any action or inaction on the part of the City as to establishment of a residential permit parking district or for the boundaries thereof. The Coalition understands, acknowledges and hereby agrees that the total annual aggregate cost of a residential permit parking district may exceed $25,000 per year and that in such event, the Developer shall have no liability for any amounts in excess of $25,000 per year for five years.

B. TRAFFIC. The Developer in consultation with the Coalition shall establish a traffic liaison to assist the Figueroa Corridor community with traffic issues related to the Project.

C. SECURITY. The Developer shall encourage the South Park Western Gateway Business Improvement District to address issues of trash disposal and community safety in the residential areas surrounding the Project. The Developer shall request the BID to provide additional trash receptacles in the vicinity of the Project, including receptacles located in nearby residential areas.

V. LIVING WAGE PROGRAM

A. DEVELOPER RESPONSIBILITIES REGARDING LIVING WAGES.

1. **Compliance With Living Wage Ordinance.** The Developer, Tenants, and Contractors shall comply with the City's Living Wage Ordinance, set forth in the Los Angeles Administrative Code, Section 10.37, to the extent such ordinance is applicable.

2. **Seventy Percent Living Wage Goal.** The Developer shall make all reasonable efforts to maximize the number of living wage jobs in the Project. The Developer and the Coalition agree to a Living Wage Goal of maintaining 70% of the jobs in the Project as living wage jobs. The Developer and the Coalition agree that this is a reasonable goal in light of all of the circumstances. Achievement of the Living Wage Goal shall be measured five years and ten years from the date of this Agreement. In the event that actual performance is less than 80% of the goal for two consecutive years, Developer shall meet and confer with the Coalition at the end of such two year period to determine mutually agreeable additional steps which can and will be taken to meet the Living Wage Goal.

3. **Achievement of Living Wage Goal.** For purposes of determining the percentage of living wage jobs in the Project, the following jobs shall be considered living wage jobs:

- jobs covered by the City's Living Wage Ordinance;
- jobs for which the employee is paid on a salaried basis at least $16,057.60 per year if the employee is provided with

employer-sponsored health insurance, or $18.657.60 per year otherwise (these amounts will be adjusted in concert with cost-of-living adjustments to wages required under the City's Living Wage Ordinance);

- jobs for which the employee is paid at least $7.72 per hour if the worker is provided with employer-sponsored health insurance, or $8.97 per hour otherwise (these amounts will be adjusted in concert with cost-of-living adjustments to wages required under the City's Living Wage Ordinance); and

- jobs covered by a collective bargaining agreement.

The percentage of living wage jobs in the Project will be calculated as the number of on-site jobs falling into any of the above four categories, divided by the total number of on-site jobs. The resulting number will be compared to the Living Wage Goal to determine whether the Living Wage Goal has been achieved.

4. **Developer Compliance If Goal Not Met.** Whether or not the Living Wage Goal is being met at the five- and ten-year points, the Developer shall be considered to be in compliance with this Section if it is in compliance with the remaining provisions of this Section.

5. **Reporting Requirements**. The Developer will provide an annual report to the City Council's Community and Economic Development Committee on the percentage of jobs in the Project that are living wage jobs. The report will contain project-wide data as well as data regarding each employer in the Project. Data regarding particular employers will not include precise salaries; rather, such data will only include the number of jobs and the percentage of these jobs that are living wage jobs, as defined in Section V.A.3, above. If the report indicates that the Living Wage Goal is not being met, the Developer will include as part of the report a discussion of the reasons why that is the case. In compiling this report, Developer shall be entitled to rely on information provided by Tenants and Contractors, without responsibility to perform independent investigation. This report shall be filed for any given year or partial year by April 30th of the succeeding year.

6. Selection of Tenants.

a. **Developer Notifies Coalition Before Selecting Tenants.** At least 45 days before signing any lease agreement or other contract for space within the Project, the Developer shall notify the Coalition that the Developer is considering entering into such lease or contract, shall notify the Coalition of the identity of the prospective Tenant, and shall, if the Coalition so requests, meet with the Coalition regarding the prospective Tenant's impact on the 70% living wage goal. If exigent circumstances so

require, notice may be given less than 45 days prior to signing such a lease agreement or other contract; however, in such cases the Developer shall at the earliest possible date give the Coalition notice of the identity of the prospective Tenant, and, if the Coalition requests a meeting, the meeting shall occur on the earliest possible date and shall in any event occur prior to the signing of the lease agreement or other contract.

b. **Coalition Meeting with Prospective Tenants.** At least 30 days before signing a lease agreement or other contract for space within the Proposed Development, the Developer will arrange and attend a meeting between the Coalition and the prospective Tenant, if the Coalition so requests. At such a meeting, the Coalition and the Developer will discuss with the prospective Tenant the Living Wage Incentive Program and the Health Insurance Trust Fund, and will assist the Coalition in encouraging participation in these programs. If exigent circumstances so require, such a meeting may occur less than 30 days prior to the signing of a lease agreement; however, in such cases the meeting shall be scheduled to occur on the earliest possible date and shall in any event occur prior to the signing of the lease agreement or other contract. The Developer will not enter into a lease agreement with any prospective Tenant that has not offered to meet with the Coalition and the Developer regarding these issues prior to signing of the lease.

c. **Consideration of Impact on Living Wage Goal.** When choosing between prospective Tenants for a particular space within the Project, the Developer will, within commercially reasonable limits, take into account as a substantial factor each prospective Tenant's potential impact on achievement of the Living Wage Goal.

d. **Tenants Agree to Reporting Requirements.** Tenants are not required to participate in the Living Wage Incentive Program or the Health Insurance Trust Fund. However, all Tenants in the Project shall make annual reports as set forth in Section V.B.3, below. The Developer will include these reporting requirements as a material term of all lease agreements or other contracts for space within the Project.

B. TENANTS' OPPORTUNITIES AND RESPONSIBILITIES.

1. **Living Wage Incentive Program.** All Tenants will be offered the opportunity to participate in a Living Wage Incentive Program. Tenants are not required to participate in this program, but may choose to participate. Under the Living Wage Incentive Program, Tenants providing living wage jobs may receive various benefits of substantial economic value. The Coalition, the Developer, and the City will collaborate to structure a set of incentives, at no cost to the Developer, to assist the Project in meeting the Living Wage Goal. The Living Wage Incentive Program shall be described in a simple and accessible written format suitable for presentation to prospective Tenants. The Coalition, working collaboratively with the Developer, shall seek funding from governmental and

private sources to support the incentives and benefits provided in the Living Wage Incentive Program.

2. **Health Insurance Trust Fund.** All Tenants will be offered the opportunity to participate in the Health Insurance Trust Fund. Tenants are not required to participate in this program, but may choose to participate. The Health Insurance Trust Fund, still being established by the City, will provide Tenants with a low-cost method of providing employees with basic health insurance.

3. **Reporting Requirements.** Each Tenant in the Project must annually report to the Developer its number of on-site jobs, the percentage of these jobs that are living wage jobs, and the percentage of these jobs for which employees are provided health insurance by the Tenant. Tenants need not include precise salaries in such reports; rather, with regard to wages, Tenants need only include the number of jobs and the percentage of these jobs that are living wage jobs, as defined in Section V.A.3, above. Such reports shall be filed for any given year or partial year by January 31st of the succeeding year.

C. TERM. All provisions and requirements of this Section shall terminate and become ineffective for each Tenant ten years from the date of that Tenant's first annual report submitted pursuant to Section V.B.3, above.

VI. LOCAL HIRING AND JOB TRAINING

A. PURPOSE. The purpose of this Section is to facilitate the customized training and employment of targeted job applicants in the Project. Targeted job applicants include, among others, individuals whose residence or place of employment has been displaced by the STAPLES Center project, low-income individuals living within a three-mile radius of the Project, and individuals living in low-income areas throughout the City. This Section (1) establishes a mechanism whereby targeted job applicants will receive job training in the precise skills requested by employers in the Project, and (2) establishes a non-exclusive system for referral of targeted job applicants to employers in the Project as jobs become available.

B. CUSTOMIZED JOB TRAINING PROGRAM. The First Source Referral System, described below, will coordinate job training programs with appropriate community-based job training organizations. Prior to hiring for living wage jobs within the Project, employers may request specialized job training for applicants they intend to hire, tailored to the employers' particular needs, by contacting the First Source Referral System. The First Source Referral System will then work with appropriate community-based job training organizations to ensure that these applicants are provided with the requested training.

C. FIRST SOURCE HIRING POLICY. Through the First Source Hiring Policy, attached hereto as attachment No. 1, qualified individuals who are targeted for employment opportunities as set forth in Section IV.D of the First Source Hiring Policy will have the opportunity to interview for job openings in the Project. The Developer, Contractors, and Tenants shall participate in the First Source Hiring Policy, attached

hereto as Attachment No. 1. Under the First Source Hiring Policy, the First Source Referral System will promptly refer qualified, trained applicants to employers for available jobs. The Developer, Contractors, and Tenants shall have no responsibility to provide notice of job openings to the First Source Referral System if the First Source Referral System is not fulfilling its obligations under the First Source Hiring Policy. The terms of the First Source Hiring Policy shall be part of any deed, lease, or contract with any prospective Tenant or Contractor.

D. FIRST SOURCE REFERRAL SYSTEM. The First Source Referral System, to be established through a joint effort of the Developer and the Coalition, will work with employers and with appropriate community-based job training organizations to provide the referrals described in this Section. The Coalition and the Developer will select a mutually agreeable nonprofit organization to staff and operate the First Source Referral System, as described in the First Source Hiring Policy. The Developer will provide $100,000 in seed funding to this organization. The Developer will meet and confer with the Coalition regarding the possibility of providing space on site for the First Source Referral System, for the convenience of Tenants and job applicants; provided, however, the Developer may in its sole and absolute discretion determine whether or on what terms it would be willing to provide space for the First Source Referral System. If the First Source Referral System becomes defunct, Employers shall have no responsibility to contact it with regard to job opportunities.

VII. SERVICE WORKER RETENTION

A. SERVICE CONTRACTOR WORKER RETENTION. The Developer and its Contractors shall follow the City's Worker Retention Policy as set forth in the Los Angeles Administrative Code, Section 10.36. The City's Worker Retention Policy does not cover individuals who are managerial or supervisory employees, or who are required to possess an occupational license.

B. WORKER RETENTION FOR HOTEL AND THEATER EMPLOYEES. The Developer agrees that Tenants in hotel and theater components of the Project will follow the City's Worker Retention Policy with regard to all employees, and will require contractors to do the same. The Developer will include these requirements as material terms of all lease agreements or other contracts regarding hotel and/or theater components of the Project.

C. INCLUSION IN CONTRACTS. The Developer shall include the requirements of this section as material terms of all contracts with Contractors and with Tenants in hotel and theater components of the Project, with a statement that such inclusion is for the benefit of the Coalition.

VIII. RESPONSIBLE CONTRACTING

A. DEVELOPER SELECTION OF CONTRACTORS. The Developer agrees not to retain as a Contractor any business that has been declared not to be a responsible contractor under the City's Contractor Responsibility Program (Los Angeles Administrative Code, Section 10.40.)