

- (b) **Affordability Covenants.** With respect to each Private Development Parcel that will contain Affordable Housing Units, the Affordable Housing Covenants shall be recorded against title to the Deed for such Private Development Parcel following recordation of the Deed for such Private Development Parcel.

10.3 **Minority Business Enterprise, and Emerging Small Business Participation.**

- (a) **Definitions.** As used in this Section, the following capitalized terms shall have the meanings set forth below:

“**Contractor**” means a Person contracted by the Developer to perform services or work on any Development Parcel in connection with the construction of the Project.

“**Developer’s MBE Plan.**” Within fourteen (14) calendar days after the city and Developer execute this Development Agreement, the Developer shall furnish the City, for the City’s approval, the MBE Plan.

“**Developer’s MBE/ESB Coordinator**” means the Person identified pursuant to Section 10.3(b).

“**Emerging Small Business**” means a Person certified by the Office of Minority Business Development as meeting the definition of “emerging small business” in section 21-4 of the Code of the City of Richmond or any successor ordinance.

“**Goal**” means the goal set forth in Section 10.3(c).

“**Good Faith Efforts**” has the same meaning as provided in section 21-4 of the Code of the City of Richmond or any successor ordinance for “good faith minority business enterprise and emerging small business participation efforts.”

“**Improvement Cost**” means all costs expended by the Developer to complete construction of the Project, except for the following:

- (i) any payment to a grantor of real property as consideration for the acquisition of real property from that grantor, excluding any charges, commissions, fees, or other compensation due to real estate agent, broker or finder on account thereof;
- (ii) any payment to a public or private utility to connect to the utility services of that public or private utility;
- (iii) any payment by the Developer to any non-affiliate of the Developer for legal, consulting and professional fees other than fees for design, engineering, environmental, geotechnical and construction services; and

- (iv) other costs expended by the Developer to complete construction of the Project that the Office of Minority Business Development determines cannot be performed by an Emerging Small Business or a Minority Business Enterprise.

“**MBE Plan**” means that Plan developed to create diverse Small Business Enterprise, and emerging Small Business participation in the execution of the Development.

“**Minority Business Enterprise**” means a Person registered by the Office of Minority Business Development as meeting the definition of “minority business enterprise” in section 21-4 of the Code of the City of Richmond or any successor ordinance.

“**Office of Minority Business Development**” means the City’s Office of Minority Business Development or its successor agency.

“**Purchaser**” means the Developer and any Contractor or Subcontractor of the Developer.

- (b) **Developer’s MBE/ESB Coordinator.** Within fourteen (14) calendar days after the City and the Developer execute this Development Agreement, the Developer shall furnish the City, for the City’s approval, with the following information about the Developer’s MBE/ESB Coordinator, a Person either employed or contracted by the Developer, who will be responsible for ensuring that all Purchasers make the requisite good faith efforts to achieve the Goal:
 - (i) The person’s name, title and employer’s name and State Corporation Commission registration number;
 - (ii) Number of years that the Person has worked for the Person’s prior employers and current employer; and
 - (iii) A list of construction projects using the same project delivery method that the Person has worked on, including (i) the position the Person had on each such project; (ii) the scope of work, construction value, quality, initial and final costs and initial and actual completion dates for each such project; (iii) whether each such project met any minority participation or similar goal set for such project; and (iv) the telephone number and electronic mail address of the owner’s representative for each such project.

The City shall, within fourteen (14) calendar days after receiving all of the aforementioned information from the Developer, communicate in writing its approval or disapproval of the Developer’s MBE/ESB Coordinator. If the City disapproves, in the City’s sole and absolute discretion, the Person selected by the Developer as the Developer’s MBE/ESB Coordinator, the Developer shall, within 14 calendar days of the Developer’s receipt of such disapproval, submit

all of the aforementioned information for a different Person to serve as Developer's MBE/ESB Coordinator.

(c) **Goal.**

- (i) **Calculation.** The Developer has set a goal that Three Hundred Million Dollars (\$300,000,000) (or expressed as a percentage, a goal of thirty percent (30%)) of the Improvement Cost of the entire Project will be spent with Emerging Small Businesses and Minority Business Enterprises that perform commercially useful functions towards the construction of the Project. Within and as part of such goal (and not as a separate goal), the Developer has set as a further goal that a minimum of twenty percent (20%) of the Improvement Cost for each Project Segment will be spent with Emerging Small Businesses and Minority Business Enterprises that perform commercially useful functions towards the construction of such Project Segment.
- (ii) **Efforts Cumulative.** Except as otherwise provided in the Leases, the Goal does not apply individually to each contract into which the Developer and other Purchasers enter for part of the Improvement Cost to which the Goal applies. Rather, the Developer shall be considered to have met the Goal if the Goal's percentage of the entire Improvement Cost is fulfilled even if the Goal is not met for individual contracts that relate to that Improvement Cost.
- (iii) **Performance Measurement.** The Office of Minority Business Development will use the following rules to determine whether the Developer properly has counted particular payments to Contractors and Subcontractors towards meeting the Goal:
 - (A) Only payments made to a Contractor or Subcontractor that is an Emerging Small Business or a Minority Business Enterprise will be counted towards the Goal.
 - (B) The value of work performed by a Contractor or Subcontractor that ceases to be certified by the Office of Minority Business Development as an Emerging Small Business or registered by the Office of Minority Business Development as a Minority Business Enterprise will not be counted, unless such Contractor or Subcontractor is recertified or reregistered, as applicable, within 90 calendar days following the termination of its certification or registration, as applicable.
 - (C) When an Emerging Small Business or a Minority Business Enterprise subcontracts part of the work of its contract to a Subcontractor, the value of the subcontracted work will be counted

towards the Goal only if that Subcontractor is itself an Emerging Small Business or a Minority Business Enterprise.

- (D) The entire amount of payments to an Emerging Small Business or a Minority Business Enterprise for “general conditions,” as that term is used in the construction industry to describe a category of a construction contractor’s costs, will be counted towards the Goal.
 - (E) When an Emerging Small Business or a Minority Business Enterprise performs as a participant in a joint venture, a portion of the total value of the contract equal to the portion of the work of that contract that the Emerging Small Business or the Minority Business Enterprise performs, as measured by the amount paid to that Emerging Small Business or Minority Business Enterprise and not paid to a Subcontractor thereof will be counted towards the Goal.
 - (F) Payments to an Emerging Small Business or a Minority Business Enterprise for materials or supplies will be counted towards the Goal as follows:
 - (i) If the materials or supplies are obtained directly from a manufacturer that is an Emerging Small Business or a Minority Business Enterprise, 100 percent of the cost of those materials or supplies will count towards the Goal; and
 - (ii) If the materials or supplies are obtained from an Emerging Small Business or a Minority Business Enterprise that has stored or warehoused the materials or supplies, 60 percent of the cost of those materials or supplies so stored or warehoused by the Emerging Small Business or the Minority Business Enterprise will count towards the Goal.
- (d) **Good Faith Efforts.** The Developer will be deemed to have made Good Faith Efforts to achieve the Goal if the Developer has done all of the following:
- (i) The Developer has employed the MBE/ESB Coordinator required by Section 10.3(b).
 - (ii) The Developer has caused each Purchaser to implement plans and procedures that will require that Purchaser to comply with all elements of this Section 10.3.
 - (iii) The Developer causes implementation of the following:
 - (A) Contractor controlled insurance programs to cover Subcontractors under a Contractor’s insurance policies for each component of the construction of the Project.

- (B) Payment schedules for Subcontractors that are biweekly instead of monthly.
- (iv) The Developer has caused all Purchasers to do the following:
 - (A) Provide and, as needed, update contact information for a point of contact to the Developer and the City for the purpose of communications required or permitted to be given pursuant to this Section 10.3.
 - (B) Set individual targets on individual contracts consistent with the Developer's Good Faith Efforts to achieve the Goal.
 - (C) If the Purchaser is a Contractor, work with the Developer to host, plan, adequately advertise, and conduct at least two "meet and greet" sessions intended to introduce Emerging Small Businesses and Minority Business Enterprises to the Contractor.
 - (D) If the Purchaser is a Contractor, hold a pre-bid or pre-proposal meeting for all Subcontractors prior to any due date for bids or proposals at which the Goal and the requirements of this Section 10.3 are explained.
 - (E) If the Purchaser is a Contractor, recruit Subcontractors to participate in the pre-bid or pre-proposal.
- (v) For each contract the cost of which is part of the Improvement Cost, between the date on which the City and the Developer execute this Development Agreement and the date on which bids or proposals are due to the Purchaser:
 - (A) The Developer has used the Office of Minority Business Development's database and other available sources to identify qualified, willing and able Emerging Small Businesses and Minority Business Enterprises.
 - (B) The Developer has participated in outreach efforts and programs designed to assist qualified potential Contractors or Subcontractors in becoming certified as Emerging Small Businesses or registered as Minority Business Enterprises.
 - (C) The Developer has notified potential Contractors or Subcontractors that might qualify as Emerging Small Businesses and Minority Business Enterprises, through meetings, fora, presentations, seminars, newsletters, website notices or other means of the upcoming opportunities available to Emerging Small Businesses

and Minority Business Enterprises to participate in the construction of the Project.

- (D) The Developer has provided Purchasers with assistance and resources to identify and contract with Emerging Small Businesses and Minority Business Enterprises.
 - (E) The Developer has worked with not-for-profit organizations to reduce barriers to Emerging Small Business and Minority Business Enterprise participation in the construction of the Project, including implementation of the requirements of this Section.
- (vi) For each contract the cost of which is part of the Improvement Cost, between the pre-bid or pre-proposal meeting described in above and the date on which bids or proposals are due:
- (A) The Developer has assisted Purchasers, bidders or offerors and Emerging Small Businesses and Minority Business Enterprises with any questions relating to this Section 10.3.
 - (B) The Developer has provided the City with a copy of all correspondence in which it has informed Purchasers, bidders or offerors and Emerging Small Businesses and Minority Business Enterprises of the Developer's opinion as to whether a particular contract or portion thereof should be counted towards the Goal.
 - (C) The Developer has required Purchasers to submit a form containing all of the information required above for each Emerging Small Business or Minority Business Enterprise the Purchaser is committing to using.
- (vii) For each contract the cost of which is part of the Improvement Cost, between the award of the contract and completion of the work required by that contract:
- (A) The Developer has resolved any disputes related to Emerging Small Business or Minority Business Enterprise participation in the construction of the Project and advised the City in writing of each such dispute and its resolution.
 - (B) The Developer has complied with and caused all Purchasers to comply with all requirements of Section 10.4.

10.4 Compliance Monitoring and Reporting.

- (a) **Responsibility.** Although all final determinations as to whether the Goal has been met shall be made only by the City, in consultation with the Office of Minority

Business Development, the Developer shall be responsible for monitoring and enforcing the compliance of Purchasers with this Section 10.4. The Developer shall cause all Purchasers to gather and report to the Developer all data needed to ensure that all Purchasers are complying with the requirements of this Section 10.4. The Developer shall furnish the City with all data so gathered and reported and all other information required by this Section 10.4 no less frequently than once per month at a time designated by the City.

(b) **Reporting.** The Developer shall require all Purchasers to submit, monthly and on a form approved by the Office of Minority Business Development, complete and accurate data on the participation of Emerging Small Businesses and Minority Business Enterprises, including, but not necessarily limited to, the following:

- (i) The name, address, identification number and work description of each Emerging Small Business or Minority Business Enterprise that the Purchaser has committed to use, as of the date of the report;
- (ii) Identification of the Purchaser that has hired each Emerging Small Business or Minority Business Enterprise;
- (iii) The total contract value for each committed Emerging Small Business or Minority Business Enterprise;
- (iv) Any changes to the total contract value for each committed Emerging Small Business or Minority Business Enterprise;
- (v) The classification of each Emerging Small Business or Minority Business Enterprise by function using classifications prescribed by the Office of Minority Business Development;
- (vi) The value of each element of work or supplies provided by each Emerging Small Business or Minority Business Enterprise during the reporting period;
- (vii) The value of each element of work or supplies that the Developer believes should be counted towards the Goal during the reporting period;
- (viii) The total value of work or supplies invoiced during the reporting period and paid during the reporting period for each Emerging Small Business or Minority Business Enterprise; and
- (ix) The total amount of Improvement Cost invoices during the reporting period and paid during the reporting period.

10.5 **Jobs and Training.** The Developer shall work in good faith to create training and outreach programs within the City of Richmond to identify opportunities to secure the jobs skills needed for both the construction and post-construction phases of the Project, described in Recital K. All opportunities for employment in connection with the development of the