



# MEMORANDUM

ADA ITEM NO. 17 12

LONG BEACH  
CALIFORNIA

BOARD OF  
HARBOR COMMISSIONERS

Meeting of SEP 20 2004

Action 1st Reading  
of Ordinance

DATE September 15, 2004

TO Board of Harbor Commissioners

FROM D. A. Thiessen, Chief Harbor Engineer

SUBJECT Small Business Enterprises (SBE) and Very Small Business Enterprises (VSBE) Program

## REQUESTED ACTION

Approve an ordinance implementing the SBE and VSBE Program, approve execution of an agreement with the Metropolitan Water District of Southern California for sharing of small business enterprises information, and approve an Annual Overall SBE Participation Goal for FY 04-05.

## BACKGROUND

At the May 10th, 2004 Board meeting, a proposed SBE program was described and referred to the Administration and Finance Committee. At a special May 17<sup>th</sup> meeting of this Committee, Bobbi Becker, Business Outreach Program Manager for the Metropolitan Water District (MWD), described MWD's small business program. An additional ad-hoc meeting was held on July 26<sup>th</sup> in which further Board member input was received.

A proposed Small Business Enterprises Program is attached, which responds to the comments raised at previous Board and Committee meetings. The program promotes participation of SBEs in Port contracts by setting minimum SBE and VSBE participation requirements for individual construction and professional services contracts. It does not rely on price preferences. As proposed, the Board will be requested to approve overall SBE participation goals on an annual basis. This process would be similar to the current practice of Board approval of Federal Disadvantaged Business Enterprises (DBE) goals.

Contract specific goals would be approved by the Board when authority to advertise a construction contract or award a professional services contract is approved.

A proposed MOU prepared by MWD is attached. It primarily is a reciprocity agreement for mutual recognition of small business enterprise certifications, sharing of business opportunity information, and an agreement to cooperate on outreach efforts. Each agency would bear its own costs. The MOU could be terminated by either party at any time.

It is expected that the SBE Program would significantly increase the portion of work that is awarded to small businesses.

BOARD OF  
HARBOR COMMISSIONERS

Meeting of OCT 11 2004

Action APPROVED

DOCUMENT NO. HD-6864

ORDINANCE NO. HD-1923

## DESCRIPTION OF WORK

All bidders/ proposers on Port contracts would be encouraged to pre-register. Qualifying firms would be certified as SBEs or VSBEs, using US Small Business Administration criteria. Requirements for SBE participation would be set for each consultant contract and construction contract. Firms that did not meet the requirements would be deemed non-responsive, unless they could demonstrate a good faith effort. This is only expected to occur in a small portion of contracts.

A good faith effort evaluation process is proposed and described in the attachment.

A contract reporting system and compliance program would be established to ensure that contractors fulfill the SBE and VSBE contractual commitments.

Each year the Board will be requested to review and approve small business goals for the coming year. Statistics on program participation, funds earned by small business, and outreach efforts will be tracked and reported on.

The Port would conduct quarterly pre-advertisement meetings for all up-coming projects. These would assist the contracting community in preparing for the solicitation.

The Port's contract specifications and contract administration procedures must be revised to implement and monitor this program. This would be done after approval of the Ordinance.

## OVERALL GOAL FY 04-05

To establish an overall first year annual goal staff reviewed the Port's contracting program for FY 03, Census data for Los Angeles County, and the goals of comparable public agencies.

A survey of Port contracts for FY 03 determined that approximately 9% of the dollar value of our construction and professional service contracts were awarded to SBEs. A review of US Census - County Business Patterns data for Los Angeles County indicates over 60% of the employees in the heavy construction, engineering services consulting, and environmental consulting industries are employed by SBEs. For contracts over \$100,000 Metropolitan Water District has a SBE participation requirement of 20%. The Los Angeles Unified School District has an overall annual goal of 35%. Their program is in its second year. In the first year their SBE goal was 21%. The Federal Government requires its agencies to award 21% of the dollar value of all prime contracts to small businesses.

In this first year of the program one goal is to balance SBE participation improvement with potential contract delays until more experience is gained. It is expected that goals would increase in future years. The proposed overall SBE Participation Goal for FY 04-05 is 20%.

The Small Business Administration standard for a small business heavy construction contractor is less than \$28.5 million/year annual gross revenue, and for a specialty trade contractor

\$12 million/year annual gross revenue. Our definition of a VBSE allows an annual gross revenue of \$2 million per year. Based on comparative size and ability to serve the market the proposed overall VSBE Participation Goal for FY 04-05 is 3%. Participation of a firm that is a VSBE would also be credited toward the SBE goal.

### FINANCIAL IMPLICATIONS

One full time staff person would be added to administer the program. In the initial year, a consultant SBE Administrator will be hired to provide this service. Current Port staff would review project specific goals with the SBE Administrator and assist in contract monitoring. The proposed FY 2004-2005 budget allocates \$200,000 for these program support activities.

It is expected that the program would lead to more competition for construction and professional service contracts. This should result in costs savings to the Port in the years to come. The SBE Administrator will track the effect of the SBE program on project costs.

### PREVIOUS REVIEW/ APPROVALS

This action was approved by the Development Committee on September 13, 2004. The ordinance has been prepared by the City Attorney.

### RECOMMENDATION

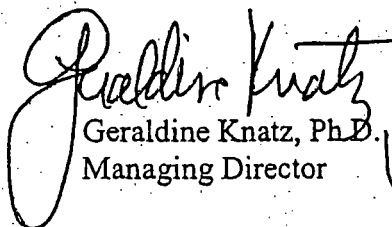
It is requested that the Board of Harbor Commissioners approve the attached ordinance implementing the Small Business Enterprise and Very Small Business Enterprise Program, authorize the Executive Director to execute the attached agreement with the Metropolitan Water District, and approve an Annual Overall SBE Participation Goal for FY 04-05 of 20% which includes a VSBE goal of 3%.

Recommended by:

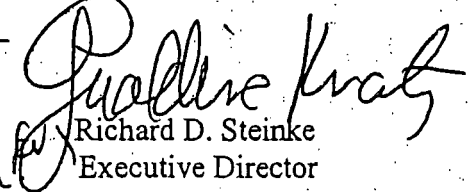
Approved by:



D. A. Thiessen  
Chief Harbor Engineer



Geraldine Knatz, Ph.D.  
Managing Director



Richard D. Steinke  
Executive Director

Attachments: Ordinance  
MWD MOU

DAT/ldr

ORDINANCE NO: HD-1923

AN ORDINANCE OF THE BOARD OF HARBOR  
COMMISSIONERS OF THE CITY OF LONG BEACH  
ADOPTING A SMALL AND VERY SMALL BUSINESS  
ENTERPRISE PROGRAM FOR PUBLIC WORKS  
CONSTRUCTION AND PROFESSIONAL SERVICES  
CONTRACTS AND MAKING A DETERMINATION RELATED  
THERETO

WHEREAS, the Board of Harbor Commissioners of the City of Long  
Beach ("Board") has determined that it serves a public purpose, and it is of benefit to  
the City of Long Beach, to promote and facilitate the fullest possible participation of  
small and very small business enterprises in the provision of goods and services to the  
Port of Long Beach ("Port"), and in the construction (including alteration, demolition,  
repair or improvement) of Port facilities; and

WHEREAS, in order to preserve free competitive enterprise and to ensure  
that a fair proportion of the total purchases and contracts of the Port be placed with  
small and very small business enterprises, the Port desires to establish subcontracting  
participation goals for such enterprises and require bidders to make good faith efforts to  
meet the subcontracting participation goals; and

WHEREAS, under Section 2002 of the Public Contract Code of the State  
of California the Port may establish a subcontracting participation goal on public works  
construction and professional services contracts for small and very small business  
enterprises and require bidders to make a good faith effort to meet the participation  
goals notwithstanding any other provision of law requiring a local agency to award such  
contracts to the lowest responsible bidder.

NOW, THEREFORE, the Board ordains as follows:

Robert E. Shannon  
City Attorney of Long Beach  
333 West Ocean Boulevard  
Long Beach, California 90802-4664  
Telephone (562) 570-2200

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Long Beach, California 90802-4664  
Telephone (562) 570-2200

1 Section 1. The Board hereby adopts the Small and Very Small Business  
2 Enterprise Program in the form attached hereto as Exhibit "A" (the "Program"), a copy of  
3 which is available for inspection in the office of the Executive Secretary of the Board.


4 Section 2. The Board hereby directs the Managing Director -  
5 Development of the Harbor Department of the City of Long Beach ("Managing Director")  
6 to implement the Program.

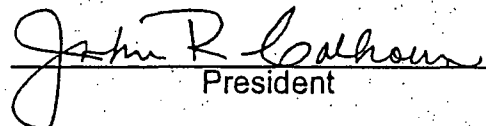
7 Section 3. The Board hereby finds and determines that the  
8 Memorandum of Agreement between the City of Long Beach, acting by and through the  
9 Board, and the Metropolitan Water District of Southern California in the form of Exhibit  
10 "B", a copy of which is available for inspection in the office of the Executive Secretary of  
11 the Board and by this reference made a part hereof, is statutorily exempt from the  
12 provisions of the California Environmental Quality Act.

13 Section 4. The Executive Director of the Harbor Department of the City  
14 of Long Beach is hereby authorized and directed to execute, in duplicate, the  
15 Memorandum of Agreement referred to in Section 3 hereof, which document is hereby  
16 approved, and any related documents necessary to implement the provisions of the  
17 Memorandum of Agreement.

18 Section 5. This ordinance shall be signed by the President or Vice  
19 President of the Board and attested to by the Secretary. The Secretary shall certify to  
20 the passage of this ordinance by the Board, shall cause the same to be posted in three  
21 (3) conspicuous places in the City of Long Beach, and shall cause a certified copy of  
22 this ordinance to be filed forthwith with the City Clerk. This ordinance shall take effect  
23 on the 31<sup>st</sup> day after its final passage.

24  
25 ATTEST:

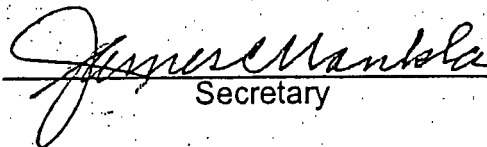
26   
27 \_\_\_\_\_  
Secretary

  
\_\_\_\_\_  
President

28 I hereby certify that the foregoing ordinance was adopted by the Board of

1 Harbor Commissioners of the City of Long Beach at its meeting of October 11, 2004  
2 by the following vote:

3 Ayes: Commissioners: Hancock, Topsy-Elvord, Calhoun  
4 \_\_\_\_\_  
5  
6 Noes: Commissioners: \_\_\_\_\_  
7 Absent: Commissioners: Cordero, Hankla  
8 \_\_\_\_\_  
9 Not Voting: Commissioners: \_\_\_\_\_

10   
11 \_\_\_\_\_  
12 Secretary

13 Robert E. Shannon  
14 City Attorney of Long Beach  
15 333 West Ocean Boulevard  
16 Long Beach, California 90802-4664  
17 Telephone (562) 570-2200

# EXHIBIT A

## Board of Harbor Commissioners, Small Business Enterprises (SBE) and Very Small Business Enterprises (VSBE) Program

### Applicability

This program shall initially apply to all Port construction, and professional services contracts, managed by the Development Bureau and funded with Port revenues and federal funds except those subject to 49 CFR 26, "Disadvantaged Business Enterprises Program" (DBE).

### Policy

The Port shall promote utilization of small businesses enterprises (SBEs) and very small business enterprises (VSBEs) on construction and professional service contracts. The goal is expected to provide the Port with more competition, lower costs and better community participation.

The program shall be administered in a streamlined and cost effective manner. It shall reduce barriers to small business participation in the Port's contracting program.

### Program Structure

The Board will adopt an ordinance establishing a Small Business Enterprises Program. Some elements of the program will be updated annually by Board resolution. The major elements of the program are as follows:

### Registration, Certification, Overall Goal, Individual Contract Goals

1. All SBE and VSBE bidders and proposal submitters will be encouraged to pre-register. SBE registration will be relatively simple and quick. Contractors can self certify their SBE and VSBE status, gross receipts, employee levels, US company, and Census Bureau industrial classification codes for the last three years.
2. The small business standards developed by the US Small Business Administration (SBA) shall be used. A sample of the current SBA allowable annual gross revenues for several relevant business types follows: heavy construction contractor less than \$28.5 million, specialty trade contractor less than \$12 million, engineering services consultant less than \$4 million, and environmental consulting services less than \$6 million. Currently, we are defining a VSBE as a SBE with less than \$2 million annual gross revenues over the last three years.
3. The Port will enter into a reciprocal SBE certification recognition and contractor database agreement with agencies such as Metropolitan Water District, Los Angeles Unified School District, City of San Diego, and San Diego County Water Authority. These agencies have adopted similar programs.
4. SBE and VSBE status will be audited prior to contract award.
5. Annual overall SBE and VSBE goals will be approved by the Board.

6. The SBE and VSBE goals for each contract will be established so that the total participation for all contracts awarded in a fiscal year would meet the annual overall goals. The SBE Program Administrator will determine individual contract goals after consultation with the contract Program Manager and other staff. Goals would vary with the number of qualified SBE firms available to provide the required services. If the dollar value of the work elements of a contract that could be performed by SBEs were high, the contract would have a higher SBE goal than one where only a small portion of the work could be competitively performed by SBEs or VSBEs.

The following is an illustrative example. Starting with a detailed cost estimate for each contract, the SBE Program Administrator would identify the type and amount of work to be performed in the contract, preferably by US Census - North American Industrial Classification Codes (NAICS). The SBE Program Administrator would research government and Port databases. If less than 10 SBE contractors for a work element are identified that might bid or propose on the work element, there would be no SBE participation requirement for that work element. If more than 10 and less than 20 SBE firms are identified the annual goal (20% in FY 2005) would be applied to this work element. If more than 20 are identified the SBE participation goal for that work element would be increased by 10% to 30%. A similar procedure would apply to VSBE goals.

In the FY 04-05, the SBE participation goals for individual contracts will vary between 0% and 30%. It is expected that the average SBE participation of all contracts will meet or exceed the 20% annual overall goal.

Annual adjustments will be made in the methodology for determining individual contract goals

7. Specialized work may be exempted from the SBE program requirements for compelling reasons after approval by the Chief Harbor Engineer or Director of Planning.

#### **SBE Participation Requirement for Professional Services Contracts**

1. In the initial evaluation of a consultant's statement of qualifications or proposal, the consultant must demonstrate the ability or intent to meet SBE requirements.
2. Consultants would demonstrate the required SBE and VSBE participation prior to receiving authorization for a work task.

#### **SBE Participation Requirement for Construction Contracts**

1. The three lowest responsive construction contract bidders will be required to describe their SBE and VSBE participation by 2:00 PM of the third business day after receipt of bids. The description shall include the name of the subcontractor, and work description including dollar value.
2. If any of the three lowest responsive bidders does not meet the SBE or VSBE participation goal they may submit a good faith effort documentation within five business days after receipt of bids, if they wish to continue to be considered.



3. Bidders that do not meet the SBE or VSBE goal shall be deemed non-responsive unless they demonstrate that they have made a good faith effort within the applicable time period.
4. Within ten days of being informed by the Port that a firm is non responsive because it has not met the SBE or VSBE requirement and it has not documented acceptable good faith efforts, a bidder may request administrative reconsideration. Bidders shall make this request in writing to the following SBE Reconsideration Official: Managing Director Development, 925 Harbor Plaza, Long Beach, California 90802. The reconsideration official will not be involved in the initial evaluation of the bidder good faith effort.
5. The reconsideration process provides the bidder an opportunity to meet in person with the SBE Reconsideration Official to discuss the merits of their good faith effort. The Port will send the bidder a written decision on reconsideration explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts. Any appeal of the reconsideration official's decision to the Board of Harbor Commissioners must be submitted within ten business days of being informed of the decision.

#### **Good Faith Effort Evaluation Criteria**

A construction contractor whose bid failed to meet the SBE or VSBE minimum requirement that is the lowest responsive bidder shall be awarded the contract if an acceptable good faith effort is demonstrated. The following criteria may be used in evaluating the acceptability of a contractor's good faith effort:

1. The bidder attended the pre-bid conference.
2. Contractor prepared and followed a small business acquisition plan to subdivide the work into units that could be economically performed by small businesses. It is the bidder's responsibility to demonstrate that sufficient work was made available to SBEs and VSBEs to meet contract requirements.
3. Contractor submits written evidence of advertising for small business subcontractors. The dates of advertisement, name of publication, and copy of the advertisement must be provided. Contractor submits written evidence of using Port of Long Beach SBE Program Database, small business, minority business, women-owned business associations, and chambers of commerce to help solicit subcontractors.
4. Contractor submits written evidence of directly soliciting for small business contractors. The names and dates or written notices sent directly to subcontractors soliciting bids must be provided. A direct solicitation should include a brief specific description of the work offered.
5. Contractor describes methods to follow up initial solicitations.
6. Contractors must demonstrate that they have negotiated in good faith with interested small businesses. This includes responding in writing to proposals from small businesses. Contractor must provide interested small businesses with information about the plans, specifications, and requirements of the prime contract at least ten days before the bid due date.
7. Contractor assists small businesses in obtaining bonding, insurance or equipment.
8. For any negotiations which were unsuccessful, the contractor submits copies of correspondence and telephone numbers from unsuccessful bidders, names of successful bidder, and a summary of the negotiations. If the reason for rejecting a bid was price, furnish the price bid by the rejected and successful subcontractors.

9. The SBE participation of the Contractor is equal or greater than the median of all contractors that submitted bids or proposals.

Initially criteria number 6 and number 8 will be weighted at 15 points each all others will be weighted at 10 points. The bidder/proposer must achieve a score of 75 points to be deemed to have made an acceptable good faith effort.

The Small Business Program Administrator shall evaluate the evidence submitted by the bidder/proposer and determine the evaluation score.

These criteria and point system will apply to all projects managed by the Development Bureau. The Board prior to receipt of bids may modify these criteria.

### Contract Monitoring

1. Successful contractors will be required to report each month and at project closeout the dollar value of payments to small businesses subcontractors. Voluntarily submitted information will be collected on minority, women, disadvantaged, and local business enterprises. Only the SBE and VSBE data will be verified. This will be used for data tracking purposes.
2. The SBE participation level of prime contractor will be measured by determining the value of the work to be performed by the prime, if an SBE, and any SBE subcontractors.
3. SBE subcontractor substitutions must be approved by the SBE Program Administrator, appropriate Division Director and the Executive Director. Nothing herein shall be construed to supercede or limit the requirements for contractor substitutions provided in Section 4100 et seq. of the California Public Contract Code.
4. The Construction Manager, Program Manager, and SBE Program Administrator may conduct site visits and subcontractor interviews to verify proper and full utilization of SBEs and VSBEs and achievement of contract requirements.

### Contract Compliance

Appropriate language will be included in contracts to establish the following compliance procedures:

1. If a Contractor fails to submit in a timely manner its monthly SBE utilization report or Contract Compliance Close-out Report, or falsifies or misrepresents information in the Small Business certification, it may be considered in material breach of contract. In addition to any other remedy the Port may have under the Contract or by operation of law, the Port, in its sole discretion, may impose any or all of the following provisions against the Contractor:
  - a. Assess the cost of the Port's audit of books and records of the Contractor, subcontractors, and all other firms claiming SBE status, where such audit is necessary because the Contractor has failed to timely submit a required SBE or VSBE program report.
  - b. Withhold payment of the disputed amount up to ten percent (10%) of a monthly progress payment;
  - c. Assess a monetary penalty in the disputed amount up to five percent (5%) of

- the Contract value; or
- d. Disqualify the Contractor from bidding on Port projects for up to five years.
2. If a firm falsifies or misrepresents information contained in the form, "Vendor Application," the Port, in its sole discretion, may disqualify the firm from participation in other Port contracts for a period of up to five years.
  3. Within ten days of written notification of intent to enforce any of the measures described above, the Construction Contractor or Professional Services Contractor or other firm shall have the right to an administrative hearing conducted by the Port's SBE Reconsideration Official. This decision may be appealed to the Board of Harbor Commissioners in a similar manner to the process for evaluation of good faith efforts.

### **Small Business Facilitation**

1. To the extent practicable the Port will endeavor to disassemble larger construction and procurement projects into contract packages of \$15 million or less. This is estimated to be the current bonding limit of heavy construction SBEs.
2. Quarterly meetings will be held for primes, SBEs, VSBES and DBEs that ordinarily bid Port projects, prior to project advertisement, or solicitation. These will be informal discussion meetings of upcoming projects. Interested contractors and subcontractors will be invited. Letters of interest in the project from potential subcontractors will be distributed to plan holders. Names of bondable SBEs registered in the Port's and reciprocating agency's database will be distributed. Explanations of the Port's bidding process, including bonding and insurance requirements will be given.
3. Pre-bid meetings will continue to be held for individual projects between advertisements and bid openings. These will provide opportunities to raise questions about the plans and specifications and for prime and subcontractors to meet.
4. The Port will cooperate with other agencies in providing SBE contractor training.
5. The Port will provide information to contractors on available loan, insurance, and bonding programs that could assist small businesses.
6. The Board may initiate new programs, time and staff permitting, to assist all bidders with insurance and bonding, similar to the Port of Oakland "SBE Surety Bonding, and Loan Program".
7. The Port will coordinate outreach activities with the City's Diversity Outreach Program and Community Development Department. The Port will participate in business and vendor fairs directed at local small businesses.

### **Periodic Review**

1. Port staff will seek periodic comments from small contractors on the effectiveness of the program.
2. Staff shall report to the Board every October on the effectiveness and progress of the program. The report shall include data on contracts issued in the preceding twelve months and payments to all contractors and SBEs, VSBES, MBEs and WBEs. To the extent possible, the cost effectiveness of the program, including Port staff costs, will also be measured.
3. The annual overall goal will be submitted for Board approval every October along with any proposed modifications to the contract goal methodology and good faith effort criteria.

# EXHIBIT B

## MEMORANDUM OF UNDERSTANDING BETWEEN CITY OF LONG BEACH AND THE METROPOLITAN WATER DISTRICT FOR THE ENHANCEMENT OF THE SMALL BUSINESS ENTERPRISE PROGRAM

This Memorandum of Understanding (MOU) is made and entered into as of \_\_\_\_\_, 2004 between City of Long Beach acting through the Board of Harbor Commissioners (Port) and THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA (Metropolitan) and in a spirit of collaboration towards the expansion of small business participation in professional services, procurement bids, and construction projects; and the coordinating and managing business development and outreach efforts designed to increase and expand business opportunities for Southern California small and minority business enterprises.

This effort demonstrates the benefits of public agency partnerships, a commitment to small business participation, an effort to increase opportunities for the local business communities, program information sharing, and finally the creation of an active forum for sharing methodologies and techniques for improved business development.

The Port and Metropolitan will collaborate through mutual efforts to increase cost savings and further develop vehicles to enhance the success of local and small business with public sector opportunities. All parties will jointly coordinate these efforts in the following manner to maximize the benefits of this mutual agreement:

1. Collaborate on the development of local and small business enterprise programs, contracting and bidding procedures, advertisement and marketing, and share information on utilization of Southern California small business enterprises between public agencies.
2. Share information on participation in business-to-business opportunities as utilized by local small and minority-owned businesses on all contracts awarded.
3. Share vendor databases and directories of qualified local, small business and other businesses, business assistance agencies, capital providers, bonding and insurance providers, and certification providers with designated agency representatives in an effort to increase participation within the region.

4. Evaluate and recommend certification program components for mutual utilization by agencies' participating small business enterprises.
5. Utilize web technology as an electronic solution as an enhanced marketing effort of mutual business outreach programs.
6. Develop, implement, and share informational workshops for local and small business enterprises with department personnel.

This effort will be conducted within the following terms and conditions:

1. Construction opportunities, and consulting services procured through a competitive process are subject to this MOU.
2. No funds are obligated under this MOU and each party shall bear the full cost it incurs in performing, managing and administering its responsibilities under this MOU.
3. Neither Metropolitan nor the Port makes any express or implied warranty as to any matter arising under this MOU.
4. The parties agree to communicate with each other on a regular basis, but at a minimum once a month, on subject matter relating to this MOU.
5. The parties understand and agree that this MOU does not confer any legal rights, duties or obligations on either party and is not subject to dispute in any forum.
6. This MOU will continue in force until terminated in writing by either party.

PORT OF LONG BEACH

THE METROPOLITAN WATER DISTRICT  
OF SOUTHERN CALIFORNIA

By \_\_\_\_\_

By \_\_\_\_\_

Richard D. Steinke

Ronald R. Gastelum

Executive Director

Chief Executive Officer

Date \_\_\_\_\_

Date \_\_\_\_\_