118-0012019-014 Agenda Item **No. 5(A)**
Meeting of September 9, 2019

MEMORANDUM

TO: Oversight Board

FROM: Nadia Sesay, Executive Director

SUBJECT: Pursuant to Section 34181(c) of the Health and Safety Code, transfering to the Mayor's Office of Housing and Community Development, as housing successor, affordable housing assets, namely the Phase II-III Rental Tax Increment Loan Agreement by and between the Redevelopment Agency of the City and County of San Francisco ("Former Agency") and Hunters View Associates, L.P., a California Limited Partnership, a Declaration of Restrictions, and related enforceable obligations associated with the Hunters View Phase IIA Project

EXECUTIVE SUMMARY

The Former Agency Commission approved a Phase II-III Rental Loan Agreement (the "Loan Agreement") for a total of $31,406,982 on April 19, 2011, which fulfilled the Former Agency's financial commitment for the completion of the multi-phased Hunters View project. This action was taken just prior to the state-wide dissolution of redevelopment agencies through Assembly Bill AB 26 in June of 2011 (later amended through subsequent laws including AB 1484, together the "Dissolution Law"). Since the Former Agency loan was in effect prior to the passage of the Dissolution Law, the Loan Agreement became an enforceable obligation of the Office of Community Investment and Infrastructure, as the Successor Agency to the Former Agency, ("OCII") and was retained as a housing asset of OCII for purposes of completing the project. Under the Loan Agreement, the Former Agency was required to disburse funds under a separate action. On January 7, 2014, the OCII Commission approved a Declaration of Restrictions and a Disbursement Agreement, disbursing $21,775,220 in funds from the Loan Agreement for development activities to Hunters View Associates, L.P., and Hunters View Partners 2, L.P., both California limited partnerships, to develop 106 very-low income rental housing units, plus one manager's unit at 227-229 West Point Road (Hunters View Phase IIA).

The first two phases of the Hunters View project have now completed construction, are currently occupied with 283 very low-income households plus three managers units, and the Hunters View Phase IIA project financing permanently converted in September 2018. Accordingly, the Hunters View Phase IIA assets are now ready for transfer.

Consistent with Dissolution Law, the City and County of San Francisco ("City") designated, by Board of Supervisors' ("BOS") Resolution No. 11-12 (Jan. 26, 2012), the Mayor's Office of Housing and Community Development ("MOHCD") as the Housing Successor, which accepted all of the Former Agency's completed housing obligations and related assets. Now that OCII has completed its obligations related to Hunters View Phase IIA, it will transfer the Loan Agreement, Declaration of Restrictions and ancillary documents ("Housing Assets") to MOHCD upon approval of the Oversight Board and the California Department of Finance ("DOF"). The City has already authorized, by BOS Resolution No. 51-17, acceptance of the Housing Assets. Upon Oversight

Board approval of the transfer at the meeting of September 9, 2019, staff will immediately submit the action to DOF for review.

Staff recommends authorizing the transfer of the Phase II-III Rental Tax Increment Loan Agreement, the Declaration of Restrictions and ancillary documents to the Mayor's Office of Housing and Community Development.

BACKGROUND AND PROJECT HISTORY

The revitalized Hunters View development will provide for full replacement of 267 extremely distressed, public housing units, plus an additional 84 units of affordable rental housing. The development will also include approximately 390 additional mixed-income rental and for-sale housing units, all constructed in multiple phases and as part of a green and sustainable community, for a total of approximately 740 units. The Hunters View development was the first to utilize the "HOPE SF" financing structure, an innovative program developed by the City in response to the lack of Federal HOPE VI funds which had been historically used for this type of project. The Project is also receiving funding from the City, State, Federal and private sources.

In 2010, the Former Agency Commission provided a total of $30,596,884 for the redevelopment of Phase I. Phase I includes 106 affordable rental units, plus one manager's unit. Of the 106 units there are a total of: 80 Public Housing Replacement Units and, 26 non-Public Housing Affordable Rental Units. Construction was completed in Fall 2013. The Hunters View Phase I development was transferred to MOHCD as a housing asset as of February 1, 2012 and this transfer was confirmed by Oversight Board Resolution No. 12-2013 (Nov. 25, 2013).

On April 19, 2011, the Former Agency Commission approved a Phase II-III Rental Loan Agreement (the "Loan Agreement") for a total of $31,406,982, which fulfilled the Former Agency's financial commitment for the completion of this multi-phased project. In early 2014, OCII approved, by Resolution No. 3-2014, a Disbursement Agreement that was required under the Loan Agreement for funding associated with the development of Hunters View Phase IIA. This disbursement provided funding for infrastructure work and one phase of vertical construction of affordable housing for a total of 106 affordable units plus one manager's unit. The infrastructure work in Phase II included a new public right-of-way and a new park. The first phase of vertical construction in Phase II, hereafter known as Hunters View Phase IIA, is located on Blocks 7 and 11.

Hunters View Phase IIA construction was completed in November 2016, and achieved stabilized occupancy in late October 2017. Hunters View Phase IIA converted to permanent financing at the end of September 2018, which included a closing of the Multi-Family Housing (MHP) loan with the California Housing and Community Development. Since February 2013, the Loan Agreement has consistently appeared on each Recognized Obligation Payment Schedule ("ROPS") submitted to, and approved by, the DOF.

TRANSFER OF HOUSING ASSETS

Pursuant to Dissolution Law, a successor agency may transfer, under Section 34181 (c) of the Health and Safety Code, housing assets to the housing successor at the direction of the Oversight Board. OCII has already transferred over land and/or affordability restrictions relating to over a thousand completed projects to MOHCD. OCII, however, retained housing assets that were not yet complete, including the Loan Agreement and Declaration of Restrictions. See OCII's "Retained Housing

Obligations" under Oversight Board Resolution No. 13-2013 (Nov. 25, 2013). Now OCII is seeking to transfer certain completed housing assets to MOHCD and, by early publication of the Oversight Board agenda, has provided the ten days notice to the public of the proposed transfer, as required under Section 34181 (c) of the Health and Safety Code.

On February 28, 2017, the San Francisco Board of Supervisors approved Resolution Number 51-17, allowing MOHCD the ability to accept certain housing assets from OCII, including the Loan Agreement and Declaration of Restrictions and making findings that such acceptance is in accordance with the California Environmental Quality Act, the General Plan, and the eight priority policies of the Planning Code, Section 101.1.

Next Steps

Upon Oversight Board approval, staff will then forward the matter on to DOF for review and approval. DOF will have 5 days to review the item; if they choose not to review it, the Oversight Board action will be considered final. If DOF does review the matter, it may take up to 100 days to review the action and render a decision. Cal. Health & Safety Code § 34181 (f).

STAFF RECOMMENDATION

Staff recommends authorizing the assignment of the Loan Agreement, Declaration of Restrictions and ancillary documents to the Mayor's Office of Housing and Community Development.

(Originated by Pamela Sims, Senior Development Specialist)

Nadia Sesay
Executive Director

Attachment 1: Hunters View Phase II-III Rental Tax Increment Loan Agreement and Declaration of Restrictions
Attachment 2: Declaration of Restrictions

SAN FRANCISCO REDEVELOPMENT AGENCY
PHASE II-III RENTAL
TAX INCREMENT LOAN AGREEMENT

By and Between

THE REDEVELOPMENT AGENCY OF THE
CITY AND COUNTY OF SAN FRANCISCO

and

HUNTERS VIEW ASSOCIATES, L.P., A CALIFORNIA LIMITED PARTNERSHIP

For Predevelopment and Construction Costs, associated with PHASE II-II

Hunters View Low-Income Rental Units
227-229 West Point Road
Block 4624, Lots 9 and 10 as shown on Final Map No. 5461

DATED April 19, 2011

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SAN FRANCISCO REDEVELOPMENT AGENCY
TAX INCREMENT
PHASE II-III RENTAL LOAN AGREEMENT
Hunters View
227-229 West Point Road
Block 4624, Lots 9 and 10 as shown on Final Map No. 5461

THIS LOAN AGREEMENT (the "**Agreement**") is entered into this 19th day of April, 2011, between the REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO, a public body, corporate and politic, (the "**Agency**") and HUNTERS VIEW ASSOCIATES, L.P., a California limited partnership ("**Borrower**").

A. The Agency is authorized pursuant to California Community Redevelopment Law (Health and Safety Code, Section 33000 et seq.) and desires to distribute monies from its Tax Increment Affordable Housing Fund to developers and sponsors for the specific and special purpose of increasing and maintaining the housing stock in the City and County of San Francisco (the "City") affordable to very low-, low-, and moderate-income households.

B. The Hunters View site consists of an approximately 21 acre site formerly improved with 267 public housing units located in Area B of the Bayview Hunters Point Redevelopment Project Area, generally known as 227-229 West Point Road, Lots 1 through 17 inclusive and Lots A, B, C and D, all as shown on Final Map No. 5461, Assessor's Lots 23 through 43 inclusive, Block 4624, which is owned and operated by the San Francisco Housing Authority (the "Housing Authority Site") and known as the Hunters View Public Housing Development.

C. The Agency formerly owned a portion of former Block 4720, Lot 27 (also known as the Agency Parcel AA-3), an approximately 1.65 acre parcel adjacent to the Housing Authority Site (the "Agency Parcel"). The Agency Commission subsequently authorized the conveyance of the Agency Parcel to the San Francisco Housing Authority ("SFHA") which conveyance occurred on December 10, 2010, and future conveyance to the Borrower or HV Partners 1, L.P. (collectively "HVA"). The Housing Authority Site and the Agency Parcel are collectively referred to as the "Site."

D. In 2003, the SFHA (the owner and operator of the Housing Authority Site), issued a Request for Qualifications for a developer to redevelop the Site. In August 2005, SFHA selected the development team known as Hunters View Community Partners, the predecessor-in-interest to HVA.

E. Over the course of multiple phases, Borrower will demolish the Housing Authority Site improvements and envisions it will construct the following components: (i) 267 replacement public housing rental units (the "Replacement Units"), and (ii) approximately 83 new rental units affordable to very low-income households earning no more than 50% of the Area Median Income adjusted solely for household size. Additionally, Borrower intends to develop, or cause to be developed approximately 59 new below market for-sale units to be sold to first time homebuyers with an average affordability of 80% of Area Median Income (collectively the "Project").

F. Borrower and Agency have previously entered into the following agreements ("Phase I Agreements") for Phase IA and Phase IB of the Project:

a. Master Planning Loan Agreement pursuant to Resolution No. 042-2008, Amended May 6, 2008, in an aggregate amount not to exceed $1,904,679; and
b. Phase I Homeownership Loan Agreement pursuant to Resolution No.112-2008 and dated September 16, 2008, in an amount not to exceed $4,410,206; and
c. Phase IB Infrastructure Loan Agreement pursuant to Resolution No. 109-2010 and dated August 17, 2010 in an amount not to exceed $3,000,000; and
d. Second Amendment to the Second Amended and Restated Phase IA Rental Loan Agreement pursuant to Resolution No. 32-2011 and dated March 15, 2011, in an amount not to exceed $9, 817,252; and
e. Agency Payment Obligation pursuant to Resolution No. 33-2011 and dated March 15, 2011, in an amount not to exceed $9,631,762 to guarantee a Phase I permanent loan commitment of the San Francisco Mayor's Office of Housing.

G. This Agreement provides for the development of a portion of this multi-phased Project, which includes an approximate 187 units of Public Housing Replacement Units and 56 Agency Rental Units for a total of 243 units as well as common areas and open space (the "Phase II-III Project"). HVA has caused or will cause the formation of two or more single asset limited partnerships with subsidiary limited liability corporations ("LLC"s), to be wholly controlled by HVA and/or its general partners, to act as the developers respectively of the Phase II-III Project sub phases.

H. Borrower has, intends to continue to work with the SFHA to subdivide the Housing Authority Site into numerous lots for transfer of lots in fee or by ground lease to facilitate the financing and development of the residential components described in Recital E above.

I. Borrower has obtained a loan pursuant to the Loan Agreement (City and County of San Francisco Home Program) between HVA and the City of San Francisco Mayor's Office of Housing dated as of March 8, 2007, in the aggregate amount of $597,900 (the "City Loan") for certain Project predevelopment costs, including the site planning, architectural and civil design for the Project. Furthermore, Borrower has secured $1,500,000 in Phase I Predevelopment funds from the City of San Francisco's HOPE SF Program, $30,000,000 in State Infill Infrastructure grant funding, $10,000,000 in State Multi-Family Housing Program loan funds, and a commitment for $6,000,000 in Federal Stimulus funds and grants and loans from a number of organizations.

J. Borrower now wishes to secure funding for the Phase II-III Project in an aggregate amount not to exceed $31,406,982 for the predevelopment and construction activities related to the Phase II-III Project (the "Phase II-III Rental Loan Agreement").

K. On April 19, 2011 and pursuant to Resolution No. 48-2011, the Agency received authority to execute a Phase II-III Rental Loan Agreement in an amount not to exceed $31,406,982.

L. Borrower acknowledges that it is anticipated that the Phase II-III Rental Loan will be funded utilizing a number of sources which currently include but are not limited to:

a. $15,365,014 – Citywide Tax Increment
b. $2,000,000 – FY 10-11 Agency Budget "HOPE SF Swap Funds"
c. $4,410,206 – Phase I Homeownership Loan to be cancelled and encumbered for this Agreement
d. $9,631,762 – Phase IA Agency Payment Obligation funds to be released and encumbered for this Agreement upon Phase IA construction loan conversion

M. Borrower and Agency further acknowledge that the Phase II-III Rental Loan will be amended in the future to transfer portions of the Loan to the Borrower or its successors and assigns, creating new loan agreements ("Future Loan Agreements") for the purpose of predevelopment and construction of an as yet undetermined number of smaller phases within the Phase II-III Project, the structure of which will be agreed upon by Borrower and Agency.

N. Borrower also acknowledges that all or a portion of the Loan made available pursuant to this Agreement may be converted to a loan or loans secured by a Deed(s) of Trust in the form attached hereto as **Exhibit C** (the "Deed of Trust") on the Borrower's Leasehold Interest.

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth in this Agreement, the parties agree as follows:

ARTICLE 1: DEFINITIONS

"Agency" has the meaning set forth in the first paragraph hereof. Whenever the Agency may or must act in connection with this Agreement, Agency means the Agency's Executive Director, unless another entity, such as "Agency Commission" or "Agency Deputy Executive Director, Housing" is specified.

"Agency Rental Unit" means one of approximately 56 total units of rental housing to be subsidized by the Agency which do not include the Replacement Units, and developed as part of the Project for Qualifying Agency Rental Unit Tenants.

"Agreement" means this Phase II-III Tax Increment Loan Agreement dated as of April 19, 2011.

"Agreement Date" means the date set forth in the first paragraph hereof.

"Area Median Income" means median area income as determined by the United States Department of Housing and Urban Development for the San Francisco area, adjusted solely for actual household size.

"Attributable Capital Contributions and Loans" means the investments, capital contributions and land contributions attributable to the Agency, SFHA and Mayor's Office of Housing, including but not limited to, loans, land, competitive loans and grants to the extent each is provided to the Project.

"Authorization" means any authorization, consent, approval, order, license, permit, exemption or other action by or from, or any filing, registration or qualification with, any governmental agency or other person.

"Authorizing Resolutions" means (a) in the case of a corporation, a certified copy of resolutions adopted by its board of directors, (b) in the case of a partnership (whether general or limited), a certificate signed by all of its general partners, and (c) in the case of any other entity, evidence of such other action as the Agency may require, in each case authorizing the execution, delivery and performance of all Loan Documents (as defined in this Agreement) pertaining to the Project to which the Borrower or any of its general partners is a party or by which such entity is bound.

"Borrower" means the Hunters View Associates, L.P., a California limited partnership. As of the date of this Agreement, the Borrower's managing general partner is JSCO HVA LLC, a California limited liability company, and the Borrower's co-general partners are (a) Hunters Point Affordable Housing, Inc., a California nonprofit public benefit corporation which is a wholly controlled subsidiary of Ridge Point Non-Profit Housing Corporation, a California nonprofit public benefit corporation, and (b) HV MAFANIKIO LLC, a California limited liability company. Borrower also includes those additional persons and entities hereafter admitted as limited partners pursuant to the Agreement of Limited Partnership of Hunters View Associates, L.P. Borrower also includes any successor-in-interest to Hunters View Associates, L.P. or to the Project. In addition, and for the purpose of the conflict of interest requirements in Article 9 of this Agreement, Borrower is further defined in Section 9.1(c) herein.

"CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended from time to time (42 U.S.C. 9601 et seq.), as amended by Superfund Amendments and Reauthorization Act of 1986 ("**SARA**") (42 U.S.C. Sections 9601 et seq.).

"Certificate Holder" means a person displaced by Agency action and to whom the Agency issued a Certificate of Preference, as further defined in Exhibit J, "Property Owner and Occupancy Preference Program."

"Certificate of Completion" means a certificate issued by the San Francisco Department of Building Inspection.

"Certificate of Preference" means a document issued by the Agency to a person or household displaced by Agency activity in redevelopment project areas located in San Francisco. This Certificate gives each such person or household preferential consideration for Agency-assisted housing and business opportunities in such redevelopment project areas pursuant to Exhibit J, the Property Owner and Occupant Preference Program, including amendments to such Program hereafter adopted.

"Charter Documents" means (a) in the case of a corporation, its articles of incorporation, bylaws, and a certificate of good standing from the California Secretary of State; (b) in the case of a partnership, its partnership agreement, any certificate or statement of partnership, and a certificate of good standing from the California Secretary of State if the partnership is a California limited partnership; and (c) in the case of any other entity, its formation documents, in each case as amended from time to time.

"City" has the meaning set forth in Recital A.

"CNA" means Capital Needs Assessment, as further described in Article 12.1.

"Commencement of Construction" means the start of construction activities for each Phase as authorized by a Notice to Proceed.

"Completion Date" has the meaning set forth in Section 5.5 which will be established upon amendment of this document and creation of Future Loan Agreements pursuant to Exhibit K of each Future Loan Agreement.

"Compliance Term" has the meaning set forth in Section 3.1.

"Covered Employees" has the meaning set forth in Section 9.1(l).

"Declaration of Restrictions" means a form of declaration of restrictions, substantially in the form attached hereto as Exhibits B-1 and B-2, which will require the Project to comply with certain affordability restrictions once the Project is complete. A separate Declaration of Restrictions will be recorded for each Phase of the Project prior to the Commencement of Construction on each such Phase.

"Deed of Trust" is defined in Recital N.

"Default Interest Rate" has the meaning set forth in Article 3.3.

"Disbursement" means the disbursement of all or a portion of the Phase II-III Loan Amount (as defined in Section 2.1) from the Agency through an Agency approved draw process, as described in Article 4.

"Disbursement Request" has the meaning set forth in Section 4.3 (c).

"Distributions" has the meaning set forth in Section 13.1.

"Environmental Activity" means any actual, proposed or threatened storage, existence, release, generation, abatement, removal, disposal, handling or transportation of any Hazardous Substance from, under, into or on the Site.

"Environmental Requirements" means all present and future federal, state and local laws, ordinances, statutes, rules and regulations, orders, judgments, decrees, agreements, authorizations, consents, licenses, permits and other governmental restrictions and requirements relating to the environment or to any Hazardous Substance or Environmental Activity, including but not limited to CERCLA and SARA.

"Event of Default" has the meaning set forth in Section 19.1.

"Expenditure Request" means a written request by the Borrower for a withdrawal from the Depository Account, which shall: (i) state the purpose of the disbursement; (ii) certify that the Project costs covered by the request have been paid or incurred by the Borrower; and (iii) include copies of documents supporting the request, including invoices, bids, contracts, schedules, or other documents covering all amounts requested.

"Final Map No. 5461" means that certain Final Map No. 5461, filed for record in Official Records of the City and County of San Francisco, State of California, on December 23, 2010, in Book DD of the Survey Maps, Pages 90-97.

"First Lease Year" means the first year of the term of the Ground Lease.

"First Mortgage Loan" means the permanent mortgage financing, with first priority security, for Phase I.

"Force Majeure" is defined in Section 19.4.

"Future Loan Agreements" means one or more Loan Agreements which shall be executed concurrent with an amendment to this Agreement for the purpose of predevelopment or construction activities associated with one or more Phases, the aggregate of which comprise Phase II-III.

"Ground Lease" means any Ground Lease Agreement by and between the Housing Authority and the Borrower providing the Borrower with a leasehold interest in one or more parcels within the Site.

"Hazardous Substance" means any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health or safety or to the environment. Hazardous Substance includes, without limitation, flammable or explosive material, polychlorinated biphenyls, formaldehyde, urea, petroleum, petroleum product or by-product, crude oil, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel or mixture thereof, radon, asbestos and asbestos containing materials, radioactive materials, and any substance, chemical, waste or other material which is listed, defined or otherwise identified as a "hazardous substance," "hazardous waste," "hazardous material," "pollutant," "contaminant," "pesticide" or is listed as a chemical known to cause cancer or reproductive toxicity or is otherwise identified as "hazardous" or "toxic" under any federal, state, local or administrative agency ordinance or law, including, without limitation, CERCLA; the Resource Conservation and Recovery Act of 1976, as amended by the Solid Waste and Disposal Act of 1984 (42 U.S.C. Sections 6901 et seq.); the California Hazardous Substance Account Act (also known as the Carpenter-Presley-Tanner Hazardous Substance Account Law and commonly known as the "California Superfund" law) (California Health and Safety Code Sections 25300 et seq.); and the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as "Proposition 65") (California Health and Safety Code Sections 25249.2 et seq.). Notwithstanding the foregoing, "Hazardous Substance" shall not include materials of a type and quantity normally used in the construction, rehabilitation, operation or maintenance of developments similar to the Project.

"Homeownership Loan Agreement" means the agreement dated September 16, 2008 and pursuant to Resolution No. 112-2008 in an amount not to exceed $4,410,206; as amended from time to time.

"Housing Authority" means the San Francisco Housing Authority.

"Housing Authority Site" has the meaning set forth in Recital B.

"HUD" means the United States Department of Housing and Urban Development.

"Improvements" means all physical construction including all structures, fixtures and other improvements now or in the future located or to be constructed on or adjacent to the Site for the Project.

"Incentive Management Fee" has the meaning set forth in Section 3.4(b).

"Indemnify" has the meaning set forth in Article 24.

"Initial Master Planning Loan Agreement" is defined in Recital F.

"Initial Master Planning Loan Amount" is defined in Recital F.

"Interest" is defined in Section 3.2.

"Limited Partner" is defined as the entity or entities which are the limited partners of the Borrower.

"Loan Documents" mean this Agreement, and any other documents executed or delivered in connection with this Agreement.

"Loan Repayment Term" has the meaning set forth in Section 3.4.

"Loss" includes any loss, liability, damage, cost, claim, expense or charge (including reasonable attorney's fees and costs).

"MHP" means the California Multi-Family Housing Program as implemented by the California Department of Housing and Community Development.

"MHP Loan Payment" means the required annual payment of .42% of the outstanding principal loan balance.

"Note" means the form of promissory note, substantially in the form attached to this Agreement as Exhibit D-1.

"Official Records" has the meaning set forth in Article 5.8(b).

"Opinion" means an opinion of the Borrower's California legal counsel, satisfactory to the Agency and its legal counsel, that the Borrower is duly formed, validly existing and in good standing under the Laws of the State of California or other state in which the Borrower has been formed, has the power and authority to enter into the Loan Documents and shall be bound by the terms of such documents when executed and delivered, and that addresses such other matters as the Agency may reasonably request.

"Permitted Exceptions" means liens on the Site in favor of the Housing Authority or the Agency, real property taxes and assessments that are not delinquent, and such other liens and encumbrances as the Agency shall expressly approve in writing in its escrow instructions.

"Phase" means one of multiple phases of the Project, defined as Phase I and Phase II-III which may be further divided into sub-phases as necessary to facilitate development of the Project.

"Phase I" means the first phase of this multi-phased Project, consisting of Phase IA(1), Phase IA(2) and Phase IB and incorporating Lots 1 through 8 inclusive, Lots 11 through 17 inclusive, and Lots A, B, C and D as shown on Final Map No. 5461 (as described on Exhibit A-2 attached hereto), as well as associated infrastructure and open spaces and the construction of the following approximate unit mix: 99 Public Housing Replacement Units, 31 Agency Rental Units.

"**Phase IA(1)**" means the first phase of the Project incorporating Lots 4, 5, 6, 11, 12, 13, 14, 15, 16, and 17 as shown on Final Map No. 5461, and consisting of the construction of

the following approximate unit mix: 80 units of Public Housing Replacement Units, and 27 Agency Rental Units.

"Phase IA(2)" means the second portion of Phase 1 of the Project incorporating Lots A, 8, B, and D as shown on Final Map No. 5461, involving associated private open space, park areas and other improvements.

"Phase IB" means a third portion of Phase I incorporating Lots 1, 2, C, 3 and 7 as shown on Final Map No. 5461, involving associated infrastructure improvements.

"Phase II-III" means the remaining rental housing unit development phases of the Project consisting of 243 units of which 187 represent Public Housing Replacement Units and 56 Agency Rental Units as well as associated infrastructure and open spaces and incorporating Lot 9 (Phase II, as described on Exhibit A-3 attached hereto) and Lot 10 (Phase III, as described on Exhibit A-4 attached hereto).

"Phase II-III Loan Amount" or **"Phase II-III Loan Amount"** has the meaning set forth in Section 2.1(c).

"Phase II-III Loan Note" means the form of promissory note substantially in the form attached to this Agreement as Exhibit D.

"Prior Agreements" has the meaning set forth in Section 20.6.

"Project" has the meaning set forth in Recital E.

"Project Expenses" means (a) all charges incurred by Borrower in the operation of the Project including but not limited to: lease payments, utilities, real estate taxes and assessments, and liability, fire and other hazard insurance premiums; (b) salaries, wages, and any other compensation due and payable to the employees or agents of Borrower who maintain, administer, operate, or provide services in connection with the Project, including all withholding taxes, insurance premiums, Social Security payments and other payroll taxes or payments required for such employees; (c) payments of required interest and principal, if any, on the First Mortgage Loan and MHP Loan Payment and any other financing requiring debt service secured by the Project; (d) all other expenses incurred by Borrower to cover routine operating and service provision costs of the Project, including maintenance and repair and the fee of any managing agent; (e) any extraordinary expenses as approved in advance by the Agency; and (f) required deposits to the Replacement Reserve Account and Operating Reserve Account, as defined in Sections 12.1 and 12.2 below. During the First Lease Year and until the first mortgage lender's construction loan is repaid, Project Expenses may also include, with the approval of the Agency's Deputy Executive Director - Housing, construction loan debt service and certain development costs.

"Project Income" means all revenue, income, receipts, and other consideration actually received from leasing the Improvements within the Project. Project Income shall include, but not be limited to: all rents; fees and charges paid by tenants; project based rental assistance payments; or other rental subsidy payments received for the dwelling Units; supportive services funding, if applicable; commercial lease income; deposits forfeited by tenants; all cancellation fees; price index adjustments and any other rental adjustments to leases or rental agreements; proceeds from vending and laundry room machines; and the proceeds of business interruption or similar insurance. Project Income shall also include

the fair market value of any goods or services provided in consideration for the leasing or other use of any portion of the Property and Project. Project Income shall not include tenants' security deposits, loan proceeds, capital contributions or similar advances.

"Project Income Account" is defined in Section 11.1 and means an account established by Borrower with a federally insured bank or savings and loan institution acceptable to the Agency, into which Borrower shall deposit all Project Income.

"Public Housing Replacement Unit" means one of 267 units of very low income rental public housing on the Site, which will replace the existing public housing units on the Housing Authority Site.

"Qualifying Agency Rental Unit Tenant" means a tenant household who occupies an Agency Rental Unit, whose initial household income does not exceed Fifty Percent (50%) of Area Median Income, and whose subsequent household income does not exceed One Hundred and Twenty Percent (120%) of Area Median Income.

"Qualifying Public Housing Tenant" means a tenant household who occupies a Public Housing Replacement Unit, whose initial household income does not exceed Fifty Percent (50%) of Area Median Income and who meets certain criteria of the San Francisco Housing Authority and HUD.

"Rental Loan Agreement" is defined in Recital F.

"Rental Loan Amount" is defined in Recital F.

"Rental Portion of Phase I" means the Public Housing Replacement Units and the Agency Rental Units to be constructed as part of Phase I of the Project.

"Replacement Units" also "Public Housing Replacement Unit" has the meaning contained in Recital E.

"Site" has the meaning set forth in Recital C.

"Surplus Cash" has the meaning set forth in the Second Amended and Restated Limited Partnership Agreement, Exhibit A-4, after payment of the items listed in lines First through Ninth.

"Title Policy" means an ALTA extended coverage lender's policy of title insurance in form and substance satisfactory to the Agency, issued by an insurer selected by the Borrower and satisfactory to the Agency, together with such endorsements as may be required by the Agency, in a policy amount equal to the amount of any loan secured by a Deed of Trust and Declaration of Restrictions on the leasehold estate in the Site, subject only to the Permitted Exceptions.

"Unit" means a residential dwelling unit constructed as part of the Project for rent or for sale (as applicable).

"Work Product" means any interest of Borrower or any of its general partners in the drawings, plans, specifications, studies, reports, memoranda, computation sheets, contents of computer diskettes or other documents prepared by or on behalf of Borrower with any portion of the Loan proceeds provided pursuant to this Agreement, as well as contracts and authorizations for services pertaining to the predevelopment, planning and

design of the Project and any express agreement by the provider of such services (collectively **"Work Product").**

ARTICLE 2: LOAN

2.1 **Loan Amount**

(a) Borrower and Agency now agree to execute a Phase II-III Loan Agreement dated April 19, 2011 in an amount not to exceed THIRTY ONE MILLION FOUR HUNDRED SIX THOUSAND NINE HUNDRED EIGHTY TWO ($31,406,982) the "Phase II-III Loan Amount".

2.2 **Purpose of the Loan and Disbursements.** The Borrower agrees to use the Phase II-III Loan Amount to pay the following Phase II-III predevelopment and construction costs of the Project when Future Loan Agreements are executed and approved by the Agency: (a) design development, (b) costs related to the filing of other permits that are necessary for Phase II-III of the Project, (c) completion of construction documents, (d) legal and consultant fees, (e) developer fee(s) and (f) other reasonably incurred Phase II-III predevelopment and construction costs of Phase II-III Agency Rental and Phase II-III Replacement Unit(s) of the Project. The Phase II-III Loan Amount shall be disbursed according to the terms and conditions set forth in this Agreement.

2.3 **Approval of Future Funds**. The Agency execution of this Agreement is in no way a commitment by the Agency to provide funds in excess of the Phase II-III Loan Amount. The Agency may approve such funds, in its sole discretion, by amendment of this Agreement, execution of Future Loan Agreement(s) and to increase the Phase II-III Loan Amount after Borrower's satisfaction of any conditions imposed by the Agency to the receipt of such funds.

ARTICLE 3: LOAN TERMS

3.1 **Term**. The term of this Agreement (**"Compliance Term"**) shall commence on the Agreement Date and shall continue until the 55th anniversary of the Agreement or Future Loan Agreements as executed and as may be amended from time to time. In order to ensure the Borrower's continued compliance with loan term obligations it has made or may make in the future with other lenders, the Compliance Term may be extended.

3.2 **Interest.** The outstanding principal balance of the Loan shall bear twenty five one hundredths of one percent (0.25%) simple interest per annum.

3.3 **Default Interest**. Upon the occurrence of an Event of Default under any Loan Documents, following any applicable notice and cure periods, and without waiving any other remedy of the Agency, interest shall be deemed to have accrued on the outstanding principal balance of the Loan at a compounded annual rate equal to the lesser of (a) ten percent (10%), or (b) the maximum lawful rate of interest, commencing on the date of the Event of Default through the date the Event of Default is cured ("Default Interest").

3.4 **Loan Repayment Term**. The term of Borrower's obligation to repay the Phase II-III Loan Amount shall commence on the Future Loan Agreement Date(s) and be repaid in full on the 55th anniversary of the Future Loan Agreement Date(s).

(a) **Distribution of Surplus Cash and Repayment of Principal.** Within one hundred twenty (120) days of the end of each Fiscal Year following the

Completion Date, Borrower shall calculate Surplus Cash. If the Borrower is found by the Agency to be in compliance with all applicable requirement and agreements, Borrower shall use Surplus Cash in the manner prescribed in the Memorandum of Understanding executed on January 21, 2010 by and between the Agency, the San Francisco Housing Authority and the San Francisco Mayor's Office of Housing.

3.5 **Repayment of Unused Portion of Loan Amount.** In addition to any other payment requirements, within ten (10) months after the Completion Date, the Borrower shall promptly repay to the Agency any portion of the Phase II-III Loan Amount previously disbursed to Borrower and not used for development costs as described in this Agreement.

ARTICLE 4: DISBURSEMENTS

4.1 **Generally**. Subject to the terms of this Agreement, the Agency shall make Disbursements of the Phase II-III Loan Amount to or for the account of the Borrower in accordance with this Agreement and the approved line item budget contained in the Table (Exhibit E-1).

4.2 **Use of Funds.** Borrower shall use the Loan proceeds only in accordance with the provisions of this Agreement and the Sources and Uses Budget (Exhibit E-1), as such table may be modified in accordance with Article 4.4.

4.3 **Conditions Precedent to Disbursements**. The Agency's obligation to disburse the Phase II-III Loan Amount to Borrower is conditioned upon Borrower's satisfactory completion and Citywide Loan Committee approval of the following Predevelopment and Construction/Permanent Loan requests:

(a) Submission and approval of a Phase II-III Predevelopment Funding Request. As part of this submission and approval, Borrower will provide the following:

i. Predevelopment Funding Request
ii. Proposed Basic Concept Design
iii. Predevelopment Schedule of Performance
iv. Predevelopment Sources & Uses
v. Proposed Operating Budget
vi. Proposed 30 year cash flow

(b) Submission and approval of Phase II – III MOH Construction/Permanent Loan Request(s). As part of this submission and approval, Borrrower will provide the following:

i. Construction/Permanent Funding Request
ii. Approved Designs
iii. Schedule of Performance
iv. Sources & Uses
v. Operating Budget
vi. 30 year cash flow

Additionally, Borrower shall provide the following prior to disbursement of any Phase II-III Loan Amount of any Future Loan:

(a) Borrower shall have delivered to the Agency fully-executed (and for documents to be recorded, fully-acknowledged) originals of the following documents, in form and substance satisfactory to the Agency: (i) this Agreement; (ii) the applicable Note in the form attached as Exhibit D; (iii) the opinions of Borrower's counsel; (iv) the Authorizing Resolutions; and (v) any other Loan Documents and other documents reasonably requested by the Agency;

(b) Borrower shall have delivered to the Agency the Borrower's Charter Documents and proof that Borrower and its affiliated entities are in good standing;

(c) Borrower shall have delivered to the Agency a written request for disbursement of funds, which shall include the total amount requested, and shall provide the Agency with invoices, approved draw requests, or other written documentation acceptable in form and substance to the Agency (the "Disbursement Request"); and

(d) No Event of Default shall have occurred that remains uncured as of the date of the Disbursement Request.

4.4 **Line Item Changes**. This Section intentionally omitted.

4.5 **Schedule of Performance**. This Section intentionally omitted.

4.6 **Expenditures for Construction Costs**. For all Future Loan Agreements, in addition to the other conditions to Disbursements, Borrower acknowledges that the amount of hard costs or tenant improvements costs included in any Expenditure Request associated with rehabilitation or construction, when added to previously approved costs, may not exceed ninety percent (90%) of the approved budgeted costs on a line item basis. The Agency will retain the remaining ten percent (10%) of hard costs or tenant improvement costs associated with rehabilitation or construction (the "Retention"). Borrower may request disbursement of the aggregate amount of the Retention only upon satisfaction of each of the following conditions, unless otherwise approved in writing by the Agency: (a) completion of rehabilitation or construction of each Phase of the Project in accordance with the plans and specifications approved by the Agency, as evidenced by a certificate of occupancy or equivalent certification provided by the City's Department of Building Inspection, and an architect's or engineer's certificate of completion; (b) timely recordation of a notice of completion; and (c) either expiration of the mechanics lien period and the absence of any unreleased mechanics' liens or stop notices or recordation of the lien releases of all contractors, subcontractors and suppliers who provided labor or materials for the Project. After fifty percent (50%) of the rehabilitation or construction of each building in each Phase of the Project is complete as determined by the City, and upon Borrower's written request, the Agency may elect to reduce the amount of Retention withheld to a level of no less than five percent (5%) of the hard costs or tenant improvements, provided that the following prerequisites have been met: (a) all work required to be performed by all parties for whom the Agency agrees to release the Retention (the "Early Retention Release Contractors") has been completed in conformance with the terms of the applicable contract documents, the plans and specifications approved by the Agency and all applicable Laws; (b) the applicable Early Retention Release Contractors have filed conditional lien waivers satisfactory to the Agency; (c) no liens or stop notices have been filed against such Phase of the Project by the

Early Retention Release Contractors and no claims are pending; (d) the Agency determines that the contingency is in balance and adequate to complete each Phase of the Project; and (e) the Phase of the Project is on schedule according to the contract documents and approved extensions. Retention for early work shall be released with the approval of the lenders which shall not be unreasonably denied upon proper completion of that work provided Contractor has furnished Borrower with a request for release of retention, accompanied by an unconditional waiver for all sums paid related to such work, and a conditional waiver for final payment for the amount of the retention request. Unconditional lien waivers for the final payment of the retention release shall be provided to the Borrower within 10 days of receipt of payment.

4.7 **Limitations on Approved Expenditures.** The Agency may refuse to approve any expenditure during the period in which an Event of Default has occurred and is continuing. The Agency is not obligated to approve disbursement of the entire Phase II-III Loan Amount related to this or any Future Loan Agreement(s) unless approved Disbursement Requests are submitted for the entire undisbursed balance of the Phase II-III Loan Amount, and in no event shall the aggregate amount of all funds disbursed to Borrower under this or Future Loan Agreement(s) exceed the Phase II-III Loan Amount.

4.8 **Records**. Borrower shall maintain and provide to the Agency upon request records that accurately and fully show the date, amount, purpose and payee of all expenditures, and shall keep all estimates, invoices, receipts and other documents related to expenditures.

ARTICLE 5: DEVELOPMENT ACTIVITIES AND CONSTRUCTION OF THE IMPROVEMENTS

5.1 **Bidding Requirements**. In selection of a contractor for the Project, the Borrower must comply with the requirements of the Agency's Equal Opportunities Programs according to the procedures established by the Agency's Contract Compliance Division, the Bayview Hunters Point Employment and Contracting Policy, and the Workforce MOU (defined below), as such MOU may be amended from time to time, and all as set forth more specifically in Exhibit H. Notwithstanding the foregoing, should there be any conflicts between the Agency's Equal Opportunities Programs as included in Exhibit H and the Workforce Memorandum of Understanding as negotiated and executed by the Borrower, Agency, City and Housing Authority (the "Workforce MOU") and amended from time to time, the Workforce MOU will control.

5.2 **Plans and Specifications; Change Orders**. Prior to the start of any construction on the Site, the Borrower shall have delivered to the Agency, and the Agency shall have reviewed and approved, plans and specifications for each Phase of such construction. The Borrower shall not approve or permit any change orders to the plans and specifications approved by the Agency without the Agency's prior written consent. Upon completion of the each Phase of the Project, Borrower shall deliver to the Agency a set of "as-built" plans for each Phase of the Project. The Borrower acknowledges that the Agency's approval of any change order will not constitute an agreement to amend the Agreement(s), their Exhibits, or to provide additional funds for the Project, except as provided for in Section 4.4.

5.3 **Insurance and Bonds**. Prior to the disbursement of any funds or the commencement of any work in connection with this Agreement or any Future Loan Agreements, the Borrower shall deliver to the Agency certificates of insurance and bonds as described in Article 17.

5.4 **Notice to Proceed.** No demolition, rehabilitation or construction may commence on any Phase until Borrower has issued a written notice to proceed, or other written notice to perform work on the Site, with the Agency's approval.

5.5 **Commencement and Completion of Construction**. Borrower shall commence and complete construction of each phase of the Improvements within the required timeframes of any other financing requirements that may be applicable.

5.6 **Construction Standards**. All rehabilitation/construction shall be performed in a high quality manner and shall be done substantially in accordance with final plans and specifications approved by the Agency, in accordance with all applicable codes. Borrower also agrees to use its best efforts to incorporate green building features exceeding 100 points under the Green Point Rated system and/or incorporate strategies meeting LEED (U.S. Green Building Council Leadership in Energy and Environmental Design) certified standards.

5.7 **Reports.** Until construction of each Phase of the Project has been completed, Borrower shall make reports, as may be required by the Agency from time to time, setting forth in reasonable detail Borrower's progress with respect to such construction. These reports shall describe, among other matters, work completed, funds expended, balance of funds remaining, change orders and their cost and the projected completion date(s).

5.8 **Preconstruction Conditions.** The following conditions must be met prior to the issuance of a Notice to Proceed and start of construction of each Phase:

(a) Borrower shall have delivered to the Agency evidence satisfactory to the Agency's Deputy Executive Director, Housing that Borrower has obtained commitments for any additional financing for each Phase of the Project that may be required by the Agency, as determined by the Agency in its reasonable discretion;

(b) The Declaration of Restrictions shall have been executed and delivered to the Escrow Agent to be recorded in the official records of the City and County of San Francisco ("Official Records"), on the leasehold interest subject only to the Permitted Exceptions, pursuant to the Affordability and Leasing Restrictions set forth in Section 7 at such time that Borrower acquires a leasehold interest in the Site;

(c) No Event of Default under any of the Loan Documents shall have occurred that remains uncured;

(d) Borrower shall have fulfilled all additional terms, covenants, and conditions then due in any Loan Documents;

(e) The Deed of Trust shall have been executed and delivered to the Escrow Agent to be recorded as a valid Lien in the Official Records, subject only to (x) the Permitted Exceptions and (y) the understanding of the parties regarding execution by the Lender of releases and reconveyances of portions of the property conveyed in the Deed of Trust, which understanding is set forth in Recital R;

(f) Escrow Agent shall be irrevocably committed to deliver to the Agency the Title Policy in form and substance satisfactory to the Agency;

(g) Borrower shall have delivered to the Agency a proposed estimated closing cost statement in a form that is acceptable to the Agency's Deputy Executive Director , Housing;

(h) Agency review and approval of the Borrower's final design and funding plan. Borrower agrees to work with Agency staff to incorporate green building features exceeding 100 points under the Green Point Rated system and/or incorporate strategies meeting LEED (U.S. Green Building Council Leadership in Energy and Environmental Design) certified standards. Such review and reasonable approval shall be carried out by the Agency's Deputy Executive Director, Housing.

ARTICLE 6: MARKETING OF AGENCY RENTAL UNITS AND LOW- AND MODERATE-INCOME HOMEOWNERSHIP UNITS

6.1 **Marketing Plan.** The following requirements apply to all units in the Rental Portion of any Phase except for the Public Housing Replacement Units. Twelve months prior to completion of any Phase of the Project, the Borrower shall deliver to the Agency for the Agency's review and approval an affirmative marketing plan (the "Marketing Plan"), a written tenant selection procedure for the marketing of the Agency Rental Units in compliance with the restrictions contained in this Agreement, all in form and substance acceptable to the Agency. After the Agency's initial approval of such Marketing Plan, the Borrower may request the Agency to approve reasonable alterations to such Marketing Plan. The Borrower shall market the Agency Rental Units in the manner set forth in the Marketing Plan as approved by the Agency.

6.2 **Affirmative Marketing Elements.** The Borrower's Marketing Plan for the Agency Rental Units shall include as many of the following elements as are appropriate to such Units in the Project, as determined and approved by the Agency:

(a) A reasonable accommodations policy that indicates how the Borrower intends to market Units to disabled individuals, including an indication of the types of accessible Units in the Project, the procedure for applying for vacant Units, and a policy that disabled individuals will be given a priority in the occupancy of accessible rental Units.

(b) Applicant screening criteria that are consistent with the fair housing law and the reasonable accommodations policy.

(c) A plan for outreach to Agency Certificate of Preference holders ("Certificate Holders").

(d) A grievance procedure that is consistent with the reasonable accommodations policy.

(e) Any applicable marketing requirements pursuant to the Bayview Hunters Point Redevelopment Plan.

(f) Noticing of vacant Units to neighborhood-based, non-profit housing corporations and other low-income housing advocacy organizations that maintain waiting lists or make referrals for below-market-rate rental housing.

(g) All marketing materials, ads and representations of the Project shall display the "Equal Housing Opportunity" logo prominently and shall be reviewed and approved by Agency staff prior to publication or distribution.

6.3 **Marketing Records**. The Borrower shall keep records of its activities in implementing the affirmative marketing plan. The Borrower shall maintain records of advertisement and other community outreach efforts.

ARTICLE 7: AFFORDABILITY AND OTHER LEASING RESTRICTIONS

The following requirements apply to all units in the Rental Portion of each Phase, including the Public Housing Replacement Units.

7.1 **Term of Affordability Restrictions**. Borrower covenants that the covenants and affordability restrictions of this Article 7 will remain in full force and effect for the Compliance Term and shall survive the termination of this Agreement, or any earlier repayment of the Loan or reconveyance of the Deed of Trust.

7.2 **Income Restrictions.** The Agency Rental Units shall at all times be rented to Qualifying Agency Rental Unit Tenants.

7.3 **Rent Restrictions**

(a) **Agency Rental Units**. The total charges for rent and utilities for an Agency Rental Unit (in an amount for a utility allowance determined by the San Francisco Housing Authority) to each Qualifying Tenant shall not exceed thirty percent (30%) of fifty percent (50%) of Area Median Income, as determined by HUD adjusted only for household size.

(b) **Public Housing Replacement Units**. The total charges for rent and utilities for a Public Housing Replacement Unit shall meet the regulations for such rent and utilities, as established by the San Francisco Housing Authority.

7.4 **Certification**. As a condition to occupancy, and annually thereafter, each person who desires to be a Qualifying Tenant in the Project shall be required to sign and deliver to the Borrower a certification in the form of Exhibit F in which the prospective Qualifying Tenant certifies that his/her household qualifies as a Qualifying Tenant. In addition, subject to any applicable state and/or federal privacy laws as determined by the Agency, such person shall be required to provide whatever other information, documents or certifications are deemed necessary by the Agency to substantiate the income certification. Income certifications shall be maintained on file at the principal office of the Borrower with respect to each Qualifying Tenant who resides in a Unit or resided therein during the immediately preceding calendar year, and the Borrower shall promptly file or cause to be filed copies thereof with the Agency upon request by the Agency. In addition, such person shall be required to provide whatever other information, documents or certifications are deemed necessary by the Agency, HUD and other Project lenders, if any, to substantiate the Income Certification.

7.5 **Form of Lease.** The form of lease to be utilized in renting any Units in the Project to any person who is intended to be a Qualifying Tenant shall provide: (1) for termination of the lease and consent by such person to immediate eviction for failure to qualify as a Qualifying Tenant if there has been any material misrepresentation made by such person with respect to the income certification; and (2) in the event that a tenant resides in, but does not

require an accessible unit, that such person will transfer to a comparable unit if such unit is available and there is a Qualifying Tenant with disabilities on the waiting list who requires such accessible features.

7.6 **Nondiscrimination**. Except as provided for in California Civil Code Section 51.3 or otherwise required by law, Borrower shall not, in the operation and use of the Project, discriminate against or permit discrimination against any person or group of persons because of race, color, creed, national origin, ancestry, age, sex, sexual orientation, gender identity, marital or domestic partner status, disability (including HIV or AIDS status), or source of income except to the extent permitted by law or required by any other funding source for the Project. Borrower shall not discriminate against or permit discrimination against tenants using Section 8 Certificates or Vouchers or other rental subsidy programs.

7.7 **Security Deposits.** Security deposits shall be required of tenants of the Project only in accordance with law, HUD requirements and this Agreement. Any security deposits collected by Borrower or Borrower's agents shall be segregated from all other funds of the Project in a trust account with a depository insured by the Federal Deposit Insurance Corporation (F.D.I.C.) or other comparable federal deposit insurance program, and shall be held and disbursed in accordance with California Law. The balance of such account shall at all times equal or exceed the aggregate of all outstanding obligations under said account, plus accrued interest thereon.

7.8 **Occupancy Priorities**.

1. **Public Housing Replacement Units.** Borrower shall comply with the leasing and occupancy regulations of all applicable financing sources while, to the extent possible, giving occupancy priority to the following:

(a) Residents of Hunters View residing at Hunters View as of November 10, 2005;

(b) Residents of Hunters View after November 10, 2005 but prior to receipt of Certificate of Occupancy of the first building in Phase I of the Project;

(c) Persons on the Housing Authority waitlist;

(d) Hunters Point Certificate of Preference Holders;

(e) Western Addition Certificate of Preference Holders;

(f) All other Agency Certificate of Preference Holders;

Notwithstanding the above, Qualifying Public Housing Tenants will be granted such occupancy priorities for the Public Housing Replacement Units as long as such Qualifying Tenants are otherwise eligible for the Public Housing Replacement Units, including being on the Housing Authority's wait list, if such status is required. However, any Qualifying Public Housing Tenants with an Agency Certificate of Preference will receive a priority in the order for Certificate of Preference Holder priority provided above.

2. **Agency Rental Units**. Borrower shall comply with the leasing and occupancy regulations of all applicable financing sources while, to the extent possible,

giving occupancy priority to the following potential Qualifying Tenants in the following order:

(a) Hunters Point Certificate of Preference Holders;

(b) Western Addition Certificate of Preference Holders;

(c) All other Agency Certificate of Preference Holders;

(d) Rent burdened or assisted housing residents, defined as persons paying more than fifty percent (50%) of their income for housing, or persons residing in public housing or Project-Based Section 8 housing;

(e) San Francisco residents and San Francisco workers;

(f) Members of the general public.

ARTICLE 8: MAINTENANCE AND MANAGEMENT OF THE PROJECT

The following requirements apply to all units in the Rental Portion of each Phase except for the Public Housing Replacement Units.

8.1 **Borrower's Responsibilities.** Subject to the rights contained in Section 8.2, the Borrower shall be specifically and solely responsible for causing all maintenance, repair, and management functions performed in connection with the Project, including without limitation, selection of tenants, rectification of income and household size, evictions, collection of rents, routine and extraordinary repairs and replacement of capital items. Borrower shall maintain or cause to be maintained the Project, including the Units and common areas in a safe and sanitary manner in accordance with local health, building, and housing codes.

8.2 **Contracting With Management Agent.** The Borrower may contract or permit contracting with a management agent for the performance of the services or duties required in Section 8.1, subject to the Agency's prior written consent, which consent shall not be unreasonably withheld of both the management agent and, at the Agency's discretion, the management contract between the Borrower and the management agent. However, such an arrangement shall not relieve the Borrower of responsibility for performance of those duties as required herein. Such contract shall contain a provision allowing the Borrower to terminate the contract for cause without penalty upon no more than sixty (60) days' after a thirty (30) day Notice to Cure has been delivered to management agent. Upon a determination by the Agency, and notice to the Borrower thereof, that the contractor performing the functions required in Section 8.1 has failed to operate and manage the Site in accordance with this Agreement and has failed to cure such default after notice, the Borrower shall immediately exercise such right of termination and shall make immediate arrangements, which shall be subject to Agency approval, for continuing performance of the functions required in Section 8.1.

8.3 **Borrower Management.** The Borrower may manage the Project itself only with prior written approval of the Agency. Upon a determination by the Agency that the Borrower has failed to manage the Project in accordance with this Agreement, and upon no more than sixty (60) days after a thirty (30) day Notice to Cure has been delivered to Borrower, with a copy to the Housing Authority, the Agency may require the Borrower, in accordance with its agreements with the Housing Authority, to contract or cause contracting with a management agent to operate

the Project, or to make such other arrangements as the Agency deems necessary to ensure performance of the functions required in Section 8.1. Notwithstanding the above, the Agency recognizes and accepts the John Stewart Company as the manager.

ARTICLE 9: GOVERNMENTAL REQUIREMENTS

9.1 **Borrower Compliance.** The Borrower shall comply, and where applicable, require its contractors to comply, with all applicable laws and regulations, including but not limited to:

(a) Prevailing Wages. Borrower agrees to comply with the Agency's Prevailing Wage Provisions (Labor Standards) attached hereto as Exhibit I.

(b) Environmental Review. Borrower agrees to comply, and to require its contractors to comply with the requirements of the California Environmental Quality Act and implementing regulations and of the National Environmental Protection Act and implementing regulations, as applicable. Borrower agrees to comply with the mitigation measures included in Exhibit Q.

(c) Conflict of Interest.

(i) Except for approved eligible administrative or personnel costs, no employee, agent, contractor, officer or official of the Agency who exercises any functions or responsibilities with respect to the Site or the Project, or who is in a position to participate in a decision making process or gain inside information with regard to it, shall obtain a personal or financial interest in or benefit from any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for himself or herself or for those with whom they have family or business ties, during his or her tenure or for two years thereafter.

(ii) Borrower represents that it is familiar with the provisions of Government Code sections 1090 through 1097, which relate to prohibited conflicts of interest by a public official, officer, employee or consultant ("**Public Official**") in connection with government contracts, and Government Code sections 87100 through 87103.5 of the California Government Code, which prohibit a Public Official from participation in a governmental decision which may affect a Public Official's financial interest. Borrower certifies that it knows of no facts that constitute a violation of said sections, or any of them, and agrees to immediately notify the Agency if the Borrower at any time obtains knowledge of facts constituting such a violation.

(iii) In the event of any violation of the conflict of interest prohibitions, the Borrower agrees that the Agency may refuse to consider any future application for funding from the Borrower or any affiliate or entity related to the Borrower until such time as the violation has been corrected to the Agency's satisfaction, in the Agency's sole discretion.

(iv) The term "Borrower" also includes the employees, officers (including board members), agents and subcontractors of Borrower and its

general partners under this Contract. In order to carry out the purposes of this Section, Borrower shall incorporate, or cause to be incorporated, in all contracts and subcontracts relating to activities pursuant to this Agreement, a provision similar to that of this Section.

(d) Limitations on Contributions. Through execution of this Agreement, Borrower acknowledges that it is familiar with section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the Agency for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) the Mayor or members of the Board of Supervisors, (2) a candidate for Mayor or Board of Supervisors, or (3) a committee controlled by such office holder or candidate, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Borrower acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of $50,000 or more. Borrower further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Borrower's board of directors; Borrower's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Borrower; and any committee that is sponsored or controlled by Borrower. Additionally, Borrower acknowledges that Borrower must inform each of the persons described in the preceding sentence of the prohibitions contained in section 1.126.

Finally, Borrower agrees to provide to the Agency the names of each member of Borrower's board of directors; Borrower's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Borrower; and any committee that is not sponsored or controlled by Borrower.

(e) Disability Access. The Borrower shall comply with all applicable federal, state and local disability access laws, including but not limited to the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, the Fair Housing Amendments Act and any other applicable disability access laws. The Borrower is responsible for determining those disability access laws applicable to the Project. In addition, prior to occupancy of the Project, the Borrower shall provide to the Agency a written reasonable accommodations policy that indicates how the Borrower will respond to requests by disabled individuals for accommodations in Units and common areas of the Project.

(f) Lead-based Paint. The Borrower shall comply with the requirements of Chapter 36 of the San Francisco Building Code ("**Work Practices for Exterior Lead-Based Paint**") and the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821 et seq.) and implementing regulations at 24 C.F.R. Part 35.

(g) Relocation. The Borrower shall comply with the Hunters View Relocation Plan as adopted by the San Francisco Housing Authority on January 8, 2009 (the "Plan") which Plan and its implementation shall adhere to the requirements of the California Relocation Assistance Act (Government Code Sections 7260 et seq.) and implementing regulations in Title 25, Chapter 6 of the California Administrative Code as well as the requirements of the Uniform Relocation Act and implementing regulations, if applicable.

(h) Equal Opportunity Program. Borrower agrees to comply with the requirements of the Agency's Equal Opportunity Program and related requirements attached hereto as Exhibit H.

(i) Certificate and Business Preference Program. Borrower agrees to comply with the requirements of the Agency's Certificate and Business Preference Program as set forth in Exhibit J attached hereto.

(j) Non-Discrimination in Agency Contracts and Benefits Policy.

(i) Borrower Shall Not Discriminate. In the performance of this Agreement, Borrower agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status) against any employee of Borrower, or applicant for employment with Borrower, in any of Borrower's operations within the United States, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in any business, social, or other establishments or organizations operated by Borrower.

(ii) Non-Discrimination in Benefits. Borrower does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in San Francisco or where the work is being performed for the Agency or elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in the Agency's Nondiscrimination in Contracts Policy ("Policy"), adopted by Agency Resolution 175-97, as such Policy may be amended from time to time.

(k) Public Disclosure. The Borrower understands and agrees that under the Public Records Act (California Government Code section 6250 et seq.) and the Agency's Public Records Policy, this Agreement and any and all records, information, and materials submitted to the Agency hereunder may be public records subject to public disclosure. The Borrower hereby authorizes the Agency to disclose, as required by law, any records, information and materials submitted to the Agency in connection with this Agreement.

(l) Compliance with Minimum Compensation Policy and Health Care Accountability Policy. Borrower agrees, as of the date of this Agreement and during the term of this Agreement, to comply with the provisions of the Agency's Minimum Compensation Policy and Health Care Accountability Policy (the "**Policies**"), adopted by Agency Resolution 168-2001, as such policies may be amended from time to time. Such compliance includes providing all "Covered Employees," as defined under Section 2.7 of the Policies, a minimum level of compensation and offering health plan benefits to such employees or to make payments to the City's Department of Public Health, or to participate in a health benefits program developed by the City's Director of Health.

(m) Compliance with Small Business Enterprise Program. The Agency has adopted a Small Business Enterprise ("SBE") Program, which provides first consideration in awarding contracts in the following order: (1) Project Area SBEs, (2) Local SBEs (outside an Agency Project or Survey Area, but within San Francisco), and (3) all other SBEs (outside of San Francisco). Non-local SBEs should be used to satisfy participation goals only if Project Area SBEs or Local SBEs are not available, qualified, or if their bids or fees are significantly higher than those of non-local SBEs. (See SBE Agreement, Exhibit O). Borrower shall make good faith efforts to achieve the goals of the SBE Program, which are 50% SBE participation for professional, personal services, and construction contracts. SBEs must be certified with the Agency. If Borrower intends to utilize subcontractors/subconsultants in the provision of services, it must consult with the Agency's Contract Compliance Division and execute and comply with all the provisions of the Small Business Enterprise Agreement.

ARTICLE 10: PROJECT MONITORING

10.1 **Generally**. The Borrower understands and agrees that it will be monitored by the Agency from time to time to assure compliance with all terms and conditions in this Agreement and all laws. The Borrower acknowledges that the Agency may also conduct periodic on-site inspections of the Project during reasonable times upon reasonable notice and subject to the rights of tenants. The Borrower shall cooperate with the monitoring by the Agency, and, subject to the rights of tenants, shall ensure full access by the Agency to the Project and all information related to the Project as reasonably required by the Agency.

10.2 **Annual Monitoring Report**. The Borrower acknowledges and agrees that it shall file with the Agency or its representative an annual report within one hundred twenty (120) days after the end of each Fiscal Year following receipt of Certificate of Occupancy for all buildings in a Phase (the "Annual Monitoring Report") which includes audited financial statements with an income and expense statement for the Project covering the applicable

reporting period, a statement of balances, deposits, and withdrawals from the accounts described in this Agreement, a rent roll and such other information as reasonably requested by the Agency from time to time.

10.3 **Project Completion Report.** Upon completion of construction of each Phase, lease-up, and permanent financing of the Project, the Borrower shall provide to the Agency the following documents:

(a) A project completion audit performed by an independent certified public accountant identifying the sources and uses of all Project funds including Loan proceeds;

(b) A report on the lease-up of the Agency Rental Units and the Low- and Moderate-Income Homeownership Units, indicating the Units by income category.

ARTICLE 11: USE OF INCOME FROM OPERATION

11.1 **Project Income Account**. Borrower acknowledges and agrees to deposit all Project Income promptly into a Project Income Account established exclusively for the Project with a financial institution acceptable to the Agency. Withdrawals from the Project Income Account shall be made only in accordance with the provisions of this Agreement. Disbursements shall be made from the Project Income Account, or reserved and set aside for payment when due, solely for Project Expenses.

ARTICLE 12: REQUIRED RESERVES

12.1 **Replacement Reserve Account.** Commencing no later than sixty (60) days after the Completion Date of each Phase of the Project or such later date as the Agency shall designate in writing, Borrower shall establish or show proof of an existing insured interest-bearing replacement reserve account (the "**Replacement Reserve Account**") with a financial institution acceptable to the Agency. All interest accrued on funds in the Replacement Reserve Account shall remain in and become a part of the Replacement Reserve Account. Upon Completion and lease-up of each Phase of the Project, Borrower shall make disbursements from the Project Income Account to the Replacement Reserve Account in monthly deposits in arrears equal to or greater than $350.00 per rental Unit per year. This amount may be revised every five (5) years based on a current Capital Needs Assessment ("**CNA**") acceptable to the Agency. Withdrawals from the Replacement Reserve Account shall be made only for capital improvements to the Project, including replacing or repairing structural elements, furniture, fixtures or equipment as may be reasonably required to preserve the property value of the Project. The Agency may review the adequacy of these deposits on an annual basis, and require adjustments in the amount as it deems necessary in its reasonable discretion. The Agency reserves the right to require additional deposits into the Replacement Reserve Account in its reasonable discretion.

12.2 **Operating Reserve Account**. Commencing no later than sixty (60) days after the Completion Date of each Phase of the Project, or any other later date the Agency designates in writing, Borrower shall establish or show proof of an existing insured interest-bearing operating reserve account (the "**Operating Reserve Account**") with a financial institution acceptable to the Agency, and deposit an amount equal to 25% of budgeted first full year operating expenses.

Sixty (60) days after the Completion Date of each Phase of the Project, Borrower shall begin to make monthly deposits, on or before the 15th day of each month, from the Project Income Account into the Operating Reserve Account if the account balance drops below 25% of the previous Fiscal Year's operating expenses, including debt service, if any. The deposits shall be in an amount equal to the difference between 25% of the previous Fiscal Year's operating expenses and the Operating Reserve Account balance. These deposits will be made after all required payments from cash flow are made, including other reserve payments, but prior to Distributions. All interest accruing on funds in the Operating Reserve Account shall remain in and become a part of the Operating Reserve Account. Borrower may disburse funds from the Operating Reserve Account only to pay normal operating, maintenance and service expenses of the Project that are in excess of Project Income. Borrower shall not disburse funds from the Operating Reserve Account for any other purpose without the prior written approval of the Agency. Notwithstanding this Section 12.2, the Agency reserves the right to accept no or reduced annual deposits into the Operating Reserve Account if the Borrower is required by other sources of financing for the Project, to make deposits into the Replacement Reserve Account that exceed the Agency's requirement of $350 per rental Unit per year. Determination of appropriate annual deposits other than what is described in this Article 12.2 is delegated to the Agency's Housing Manager. The Agency reserves the right to require additional deposits into the Operating Reserve Account in its reasonable discretion.

ARTICLE 13: DISTRIBUTIONS

13.1 **Definition.** "Distributions" shall mean Surplus Cash distributed pursuant to Sec. 3.4(a) of this Agreement.

13.2 **Conditions to Distributions.** Distributions for a particular fiscal year may be made only upon: (1) Agency approval of the Annual Monitoring Report submitted for that year; (2) determination by the Agency that no Event of Default has occurred and is continuing under this Agreement; and (3) prior written determination by the Agency that the amount of such Distributions is consistent with the provisions of this Agreement.

13.3 **Prohibited Distributions.** No Distribution shall be made in the following circumstances:

(a) When a written notice of default has been issued by any entity with an equitable or beneficial interest in the Project and such default is not cured within the applicable cure periods;

(b) When the Agency determines that the Borrower or the Borrower's management agent has failed materially to comply with this Agreement;

(c) If all currently required debt service on all loans secured by the Project and all operating expenses have not been paid; or

(d) If the Replacement Reserve Account, or Operating Reserve Account is not fully funded pursuant to this Agreement.

ARTICLE 14: SYNDICATION PROCEEDS

14.1 **Distribution and Use.** If Borrower is a limited partnership, and unless otherwise approved by the Agency in writing, Borrower shall allocate, distribute and pay or cause to be

allocated, distributed, and paid all net syndication and all loan proceeds as specified in the Sources and Uses Budget (Exhibit E-1). Borrower shall notify the Agency of the receipt of any net syndication proceeds received by Borrower during the term of this Agreement and the disposition of said proceeds.

ARTICLE 15: DEVELOPER FEES

15.1 **Distribution and Use.** Pursuant to the Future Loan Agreements, Borrower is entitled to receive a Developer Fee n from the Future Loan Agreement(s) in amounts not to exceed those approved by the Citywide Loan Committee.

ARTICLE 16: TRANSFERS

16.1 **Permitted Transfers/Consent.** Borrower shall not cause or permit any voluntary transfer, assignment or encumbrance of its interest in all or any portion of the Site or Project, or lease or permit a sublease on all or any part of the Site or Project that is inconsistent with this Agreement, other than (a) leases to commercial tenants, if any, prior to commencement of construction and thereafter in accordance with all applicable restrictions; (b) security interests for the benefit of private lenders securing loans for the Project as approved by the Agency on terms and in amounts as approved by Agency in its reasonable discretion; (c) transfers of a general partnership interest in the Borrower to a nonprofit public benefit corporation approved in advance by the Agency; (d) transfers of the limited partnership interest in the Borrower to one or more investors pursuant to the tax credit syndication of the Project and transfers by the investors to other investors as transfers by the investors of interests therein; (e) an option agreement from the Borrower to the Borrower's general partner or an affiliate thereof in connection with the tax credit syndication of the Project, (f) transfer to a limited partnership in which Hunters Point Affordable Housing, Inc. or affiliates thereof and of the other co-general partners are the general partners and (g) transfers by the Borrower or any general partner of Borrower to affiliates or subsidiaries of such entities. Any other transfer, assignment, encumbrance, or lease of Borrower's interest in the Project without the Agency's written consent shall be voidable and, at the Agency's election, shall constitute a breach of this Agreement No consent to any assignment, encumbrance, lease or other transfer shall constitute a consent to any subsequent transfer, or a waiver of any of the Agency's rights under this Agreement.

ARTICLE 17: INSURANCE AND BONDS

17.1 **Borrower's Insurance.** Without in any way limiting Borrower's indemnification obligations under this Agreement, and subject to approval by the Agency's Risk Manager of the insurers and policy forms, the Borrower shall obtain and maintain, at the Borrower's expense, the following insurance and bonds throughout the Compliance Term, unless otherwise provided in this Agreement:

17.2 **Minimum Scope of Insurance.** Coverage shall be at least as broad as:

(a) Insurance Services Office Commercial General Liability coverage ("occurrence" form CG 00 01) or other form acceptable to the Agency.

(b) Insurance Services Office form number CA 00 01) covering Automobile Liability, code 1 (any auto) or other form acceptable to the Agency.

(c) Workers' Compensation insurance as required by the Labor Code of the State of California and Employers Liability insurance.

(d) Professional Liability insurance covering all negligent acts, errors and omissions in Borrower's Architectural and Engineering Professional Design Services. As an alternative to Borrower's providing said Professional Liability insurance, Borrower shall require that all architectural and engineering professional consultants for the Project have liability insurance covering negligent acts, errors and omissions. Borrower shall provide the Agency with copies of consultants' insurance certificates showing such coverage.

(e) Property Liability Insurance against all risks of direct physical loss to the Project, excluding earthquake and flood, during the course of construction and following completion of construction on any portion of the Site.

17.3 **Minimum Limits of Insurance.** Borrower shall maintain limits no less than:

(a) General Liability:

(i) $1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage before the start of demolition, construction or rehabilitation.

(ii) $5,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage at all times during demolition, construction or rehabilitation and occupancy of the Site after construction of any portion of the Project and on-going operations of the Project.

(iii) If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this Project or the general aggregate limit shall be twice the required occurrence limit.

(iv) As to the for-sale Units hereafter constructed on any portion of the Site, Products and Completed Operations coverage shall be maintained for no less than ten (10) years beyond completion of construction of any for-sale units.

(b) Automobile Liability: $1,000,000 combined single limit per accident for bodily injury and property damage.

(c) Workers' Compensation and Employers' Liability: Workers' compensation limits as required by the California Labor Code and Employers Liability limits of $1,000,000 for bodily injury by accident and $1,000,000 per person and in the aggregate for bodily injury by disease.

(d) Professional Liability: Professional Liability: $1,000,000 per claim and in the annual aggregate during the course of any new construction or remodeling in

excess of $100,000. If the Professional Liability insurance provided by Borrower's hired architects or engineers is "claims made" coverage, Borrower shall assure that these minimum limits are maintained for no less than ten (10) years beyond completion of construction.

(e) Property Insurance:

(i) During the course of construction, full completed value of the Project.

(ii) Following completion of construction, full replacement value of the Project with no coinsurance penalty provision, unless otherwise approved by Agency.

17.4 **Deductibles and Self-Insured Retentions.** Any deductibles or self insured retentions must be declared to and approved by the Agency's Risk Manager. At the option of the Agency, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions with respect to the Agency, the City and their respective officers, agents, employees and Commissioners; or Borrower shall procure a bond guaranteeing payment of losses and related investigation, claim administration and defense expenses.

17.5 **Other Insurance Provisions.** The policies are to include, or be endorsed to include, the following provisions.

(a) General Liability and Automobile Coverages.

(i) "The San Francisco Redevelopment Agency, the City and County of San Francisco and their respective officers, agents, employees and Commissioners" are to be covered as additional insureds as respects: liability arising out of activities performed for or on behalf of Borrower related to the Project; products and completed operations of Borrower, premises owned, occupied or used by Borrower; or automobiles owned, leased, hired or borrowed by or on behalf of the Borrower. The coverage shall contain no special limitations on the scope of protection afforded to the Agency, the City and their respective officers, agents, employees and commissioners.

(ii) Borrower's insurance coverage shall be primary insurance with respect to "the San Francisco Redevelopment Agency, the City and County of San Francisco and their respective officers, agents, employees and Commissioners" in relation to this Project. Any insurance or self-insurance maintained by the Agency, the City and their respective officers, agents, employees and Commissioners shall be in excess of Borrower's insurance and shall not contribute with it.

(iii) Any failure to comply with reporting provisions of the policy shall not affect coverage provided to the Agency, the City and County of San

Francisco and their respective officers, agents, employees or Commissioners.

(iv) Borrower's insurance shall apply separately to each insured against which claim is made or suit is brought in relation to this Project, except with respect to the limits of the insurers' liability.

(b) Workers' Compensation and Employer's Coverage. The insurer shall agree to waive all rights of subrogation against the Agency, the City and their respective officers, agents, employees and Commissioners for losses arising from or in connection with the Project

(c) All Coverages. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided or canceled by either party, or reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the Agency.

17.6 **Acceptability of Insurers.** Insurance is to be placed with insurers with a Best's rating of no less than A:VII , unless otherwise approved by the Agency's Risk Manager.

17.7 **Verification of Coverage.** Borrower shall furnish the Agency's Risk Manager with certificates of insurance prior to any disbursement of funds and with original endorsements effecting coverage as required by this clause. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements are to be received and approved by the Agency before work commences. Agency reserves the right to require complete, certified copies of all required insurance policies at any time.

17.8 **Subcontractors.** Borrower shall include all subcontractors and consultants as insureds under its policies or shall cause each subcontractor and consultant to furnish separate certificates and endorsements. All coverages for subcontractors and consultants shall be subject to all of the requirements stated herein, unless otherwise approved by the Agency's Risk Manager.

17.9 **Fidelity Bond.** Borrower shall obtain a blanket fidelity bond or crime insurance policy from a bonding company acceptable to the Agency covering all officers and employees of Borrower for the loss of Loan funds, Project Income and Reserve Accounts caused by dishonesty in an amount not less than $1,000,000. Should such a loss occur, Borrower agrees to diligently pursue recovery under the bond and to assign or remit to the Agency those funds owed to the Agency to the extent recovered.

17.10 **Performance and Payment Bonds.** Prior to commencement of construction, Borrower shall deliver to the Agency performance and payment bonds from the General Contractor, each for the full value of the cost of construction of the Improvements, which bonds shall name the Agency and First Mortgage Lender as co-obligees, or such other completion security which is acceptable to the Agency.

17.11 **Review of Minimum Limits**. At no less than every five (5) years during the Compliance Term, the minimum limits of Insurance required in Section 17.3 may be adjusted at

the reasonable discretion of the Agency's Risk Manager to reflect current risk management practices in the City.

ARTICLE 18: GOVERNMENTAL APPROVALS

18.1 Borrower covenants that it has obtained or will obtain in a timely manner and comply with all federal, state and local governmental approvals required by law to be obtained for the Project.

ARTICLE 19: DEFAULT

19.1 **Event of Default**. An "**Event of Default**" shall consist of any material breach by Borrower of any covenant, agreement, provision or warranty contained in this Agreement or in any of the Loan Documents, including but not limited to the following, but only following the expiration of any applicable notice and cure periods contained in any Loan Document:

(a) The Borrower fails to make any payment required under this Agreement within ten (10) days after the date when due; or

(b) Any lien is recorded against all or any part of the Site or the Project over which the Borrower has control without the Agency's prior written consent, whether such lien is prior or subordinate to the liens of the Deed of Trust, or the Declaration of Restrictions, and such lien is not removed from title or otherwise remedied to the Agency's satisfaction within the time periods specified in 19.2, below; or

(c) The Borrower fails to perform or observe any other term, covenant or agreement contained in any Loan Documents, including, but not limited to those ancillary to this Agreement, and any other agreement entered into by Borrower, after expiration of applicable cure periods; or

(d) Any representation or warranty made by the Borrower in any Loan Document proves to have been incorrect in any material respect when made; or

(e) All or a substantial or material portion of the Improvements on the Site is damaged or destroyed by fire or other casualty, and the Agency has reasonably determined upon restoration or repair that the security of the Deed of Trust has been impaired or that the repair, restoration or replacement of the Improvements in accordance with the requirements of the Deed of Trust is not economically practicable or is not completed within two (2) years of the receipt of insurance proceeds; or all or a substantial or material portion of the improvements is condemned, seized or appropriated by any governmental agency or subject to any action or other proceeding instituted by any governmental agency for any such purpose such that the improvements cannot be operated for their intended purpose; or

(f) The Borrower is dissolved or liquidated or merged with or into any other entity; or, if the Borrower is a corporation, partnership, or trust, for any period of more than ten (10) days the Borrower ceases to exist and (where applicable) in good standing and duly qualified under the Laws of the jurisdiction of formation and California; or, if the Borrower is an individual, the Borrower dies or becomes

incapacitated; or all or substantially all of the assets of the Borrower are sold or otherwise transferred; or

(g) Any dissolution, merger, consolidation or other reorganization, or any issuance, sale, assignment, hypothecation or other transfer of legal or beneficial interests in the Borrower other than as permitted in this Agreement; or

(h) The Borrower assigns or attempts to assign any rights or interest under any Loan Document, whether voluntarily or involuntarily, without the prior written consent of the Agency except as may be permitted under Section 16.1; or

(i) The Deed of Trust ceases to constitute a valid and indefeasible perfected lien on the Site and Improvements, or the Declaration of Restrictions ceases to constitute a valid and indefeasible perfected lien on the Site and Improvements subject only to Permitted Exceptions; or

(j) The Borrower is subject to an order for relief by the bankruptcy court, or is unable or admits in writing its inability to pay its debts as they mature or makes an assignment for the benefit of creditors; or the Borrower applies for or consents to the appointment of any receiver, trustee or similar official for it or for all or any part of its property (or any such appointment is made without its consent and the appointment continues undischarged and unstayed for sixty (60) days); or the Borrower institutes or consents to any bankruptcy, insolvency, reorganization, arrangement, readjustment of debt, dissolution, custodianship, conservatorship, liquidation, rehabilitation or similar proceeding relating to it or to all or any part of its property under the Laws of any jurisdiction (or any such proceeding is instituted without its consent and continues undismissed and unstayed for sixty (60) days); or any judgment, writ, warrant of attachment or execution or similar process is issued or levied against the Site, the improvements or any other property of the Borrower and is not released, vacated or fully bonded within sixty (60) days after its issue or levy; or

(k) Any material adverse change occurs in the financial condition or operations of the Borrower that has a material adverse impact on the Project.

19.2 **Remedies.** In the event of a default, except as otherwise provided in this Agreement, the Borrower and its Investor Limited Partner shall have thirty (30) days from the receipt of written notice from the Agency to cure such default, or, if such default cannot reasonably be cured within such 30-day period, the Borrower and Limited Partner shall commence action to cure such failure within such 30-day period and diligently and continuously prosecute such action to completion. A cure of any default by the Investor Limited Partner shall be deemed a cure by Borrower.

(a) The Agency may, at its option, terminate all commitments to make Disbursements or to release any Improvements from the Deed of Trust, or the Agency may waive the Event of Default or, without waiving, determine, upon terms and conditions satisfactory to the Agency, to make further Disbursements or to release any of the Improvements from the Deed of Trust;

(b) The Agency may perform any of Borrower's obligations under this Agreement or applicable law in such manner as the Agency may determine;

(c) The Agency may, either directly or through an agent or court-appointed receiver, take possession of any Phase of the Project which is the subject of such event of default and enter into such contracts and take such other action as the Agency deems appropriate to complete or partially construct all or any part of the Improvements within the Phase of the Project which is the subject of such event of default, subject to such modifications and changes in such Phase of the Project or the plans submitted to the Agency as the Agency may deem appropriate;

(d) The Agency may proceed to protect, exercise and enforce all other remedies provided under the Loan Documents or by applicable laws; and

(e) All costs, expenses, charges and advances of the Agency in exercising any such remedies (including any such amounts that cause the obligations of Borrower to exceed the face amount of the Note) shall be payable by Borrower to the Agency.

19.3 **Repayment After Event of Default.** Following an Event of Default under this Agreement, the entire outstanding principal balance of the disbursed Loan Amount, together with default interest as described in Section 3.3, shall be immediately due and payable at the election of the Agency upon written notice to the Borrower all as more specifically set forth in the Deed of Trust.

19.4 **Force Majeure**. For the purposes of any of the provisions of this Agreement, neither the Agency nor Borrower, as the case may be, shall be considered in breach of or default in its obligations, nor shall there be deemed a failure to satisfy any conditions with respect to the beginning and completion of construction of the Improvements, or progress in respect thereto, in the event of enforced delay in the performance of such obligations or satisfaction of such conditions, due to unforeseeable causes beyond its control and without its fault or negligence, including, but not restricted to, acts of God, or of the public enemy, acts of the Government, acts of the other party, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, general scarcity of materials and unusually severe weather or delays of subcontractors due to such causes; it being the purposes and intent of this provision that in the event of the occurrence of any such enforced delay, the time or times for the satisfaction of conditions to this Agreement including those with respect to construction of the Improvements, shall be extended for the period of the enforced delay; provided, however, that the party seeking the benefit of the provisions of this paragraph shall have notified the other party thereof in writing of the cause or causes thereof within thirty (30) days after the beginning of any such enforced delay and requested an extension for the period of the enforced delay; and, provided further, that this paragraph shall not apply to, and nothing contained in this paragraph shall extend or shall be construed to extend, the time of performance of any obligations to be performed prior to the commencement of construction.

ARTICLE 20: RECORDS AND DOCUMENTS; WORK PRODUCT

20.1 **Generally.** Borrower shall keep and maintain books, records, and other documents relating to the receipt and use of all Loan proceeds, including but not limited to all documents evidencing any Project Income, Project Expenses and all reserve accounts. Borrower shall maintain records of all income, expenditures, assets, liabilities, contracts, operations, tenant

eligibility, and condition of the Project, which shall be maintained in accordance with generally accepted accounting principles, as applicable.

20.2 **Response to Inquiries**. At the request of the Agency, its agents, employees, or attorneys, the Borrower shall promptly and specifically respond to questions relating to the income, expenditures, assets, liabilities, contracts, related to the predevelopment and any other information with respect to the Borrower or the Project.

20.3 **Delivery of Records**. At the request of the Agency, made through its agents, employees, officers, auditors or attorneys, the Borrower shall provide the Agency with a photocopy of each of the following documents, certified in writing by the Borrower to be complete and accurate:

(a) Copies of all returns filed with the United States Internal Revenue Service, the California Franchise Tax Board, and/or the California State Board of Equalization on behalf of the Borrower, and as applicable, any general partner of Borrower; and

(b) Copies of all certified financial statements of the Borrower and, if applicable, its general partner, the accuracy of which shall be certified by an auditor satisfactory to the Agency.

20.4 **Access to the Project and Other Project Books and Records**. In addition to Borrower's obligations under Sections 20.2 and 20.3, Borrower agrees that duly authorized representatives of the Agency shall, at all reasonable times, following reasonable notice, have access to and the right to inspect, copy, audit, and examine all books, records, and other documents of the Borrower required to be kept under Section 20.1 above until three (3) years after expiration of the compliance term for tax credits allocated to the Project, if any.

20.5 **Reports and Accounting of Surplus Cash.**

(a) Audited Financial Statement. In connection with the repayment of the Loan, the Borrower shall furnish to the Agency an audited statement duly certified by an independent firm of certified public accountants, setting forth in reasonable detail: (i) the deposits and withdrawals of funds from the Operating Reserve Account during the applicable preceding period; and (ii) the computation and amount of Surplus Cash during the preceding calendar year.

(b) Books and Records. The Borrower shall keep and maintain on the Site, or elsewhere with the Agency's written consent, full, complete and appropriate books, record and accounts relating to the Project, including all such books, records and accounts necessary or prudent to evidence and substantiate in full detail Borrower's calculation of Surplus Cash and the deposits and withdrawals of funds from the Operating Reserve Account. Books, records and accounts relating to Borrower's compliance with the terms, provisions, covenants and conditions of this Agreement shall be kept and maintained in accordance with generally accepted accounting principles consistently applied, and shall be consistent with requirements of this Agreement which provide for the calculation of Surplus Cash on a cash basis.

20.6 **Work Product Assignment to Agency.** Upon termination of this Agreement, Borrower covenants that it will promptly assign to the Agency any interest of Borrower or any of its general partners in the **Work Product.** Borrower also agrees to insert a provision providing notice of this Section's requirements in Borrower's contracts and agreements with providers of Work Product. Upon termination of this Agreement, Borrower will assign and deliver all such Work Product and lien releases from Work Product providers to the Agency within thirty days after the Borrower's receipt of the Agency's written request for Work Product. Borrower also agrees that Agency may use or assign such Work Product without payment of any additional compensation or payment if such Work Product has been fully paid for. To the extent that Borrower's Work Product obligations to the Agency pursuant to this Section conflict with any written agreement pertaining to the Project previously executed by or on behalf of Borrower with any other entity, the Borrower and Agency agree to meet with such other entity to discuss a resolution of such conflicting responsibilities.

ARTICLE 21: REPRESENTATIONS AND WARRANTIES

21.1 **Borrower Representations and Warranties**. As a further inducement for the Agency to make the Loan, each of the parties comprising the Borrower represents and warrants as to itself as follows:

(a) The execution, delivery and performance of the Loan Documents will not contravene or constitute a default under the Charter Document of Borrower or any instrument binding upon or affecting Borrower, or any contract, agreement, judgment, order, decrees or other instrument binding upon or affecting Borrower nor result in a lien upon assets of Borrower pursuant to any applicable law or regulation, other than any lien created pursuant to the Loan Documents.

(b) When duly executed, the Loan Documents shall constitute the legal, valid and binding obligations of the Borrower. Borrower hereby waives any defense to the enforcement of the Loan Documents related to alleged invalidity of the Loan Documents.

(c) There is no action, suit or proceeding pending or threatened against Borrower which might adversely affect the Borrower or the Project in any material respect.

(d) Borrower is not in default under any agreement to which it is a party, including but not limited to any lease of real property.

(e) Borrower has not been suspended or debarred by any federal, state or local governmental or regulatory agency, nor has Borrower been suspended, disciplined or prohibited from contracting with any federal, state or local governmental agency.

(f) All statements and representations made by Borrower in connection with the Loan remain true and correct as of the date of this Agreement.

ARTICLE 22: NOTICE

22.1 All notices, consents, communications or transmittals required by this Agreement shall be made in writing, and shall be deemed communicated by personal delivery or by United States certified mail, postage prepaid, return receipt requested, as of the earlier of actual receipt (or refusal to accept proper delivery) or seven (7) days after mailing, addressed as follows:

To the Agency: Executive Director
San Francisco Redevelopment Agency
One South Van Ness Avenue, 5th Floor
San Francisco, CA 94103

To Borrower: Hunters View Associates, L.P.
c/o John Stewart Company
1388 Sutter Street
San Francisco, CA 94109
Attn: President

With a copy to:
Hunters Point Affordable Housing, Inc.
c/o Ridge Point Non-Profit Housing Corporation
140 Cashmere Street
San Francisco, CA 94124
Attn: President

Devine & Gong, Inc.
100 Bush Street, Suite 600
San Francisco, CA 94104-3703
Attn: President

or such other address as any of the entities listed above may designate, from time to time, by written notice sent to all of the other entities listed above in like manner.

ARTICLE 23: HAZARDOUS SUBSTANCES

23.1 **Borrower's Representations**. Borrower represents and warrants to Agency that, to the best of Borrower's actual knowledge, without independent investigation or inquiry as of the Agreement Date, which knowledge is based solely upon and limited by the (1) Phase I Environmental Site Assessment (the "**Phase I Report**"); (2) Geotechnical Engineering Services Report by PSI; (3) Summary Report: Exterior Lead-Based Paint Risk Assessment; (4)

Geotechnical Exploration Report by Engeo; (5) Asbestos Survey Report; (6) Hazardous Materials Survey by PSI; (7) Supplemental Geotechnical Design Recommendations by Engeo; (8) Retaining Wall Stability, Additional Geotechnical Exploration, Clarification and Supplemental Geotechnical Design Recommendations, Review of Foundation Plans Block 4, 5A, 5B, 6A, 6B, by Engeo; (9) Biological Assessment, Environmental Impact Report, and Environmental Assessment, by PBS&J; (10) Environmental Noise Study by Charles M. Salter; (11) Combined Phase I and Phase II Environmental Site Assessment Report by Engeo; (12) Environmental Assessment by Tetra Tech for SF MOH; (13) Dust Control Plan, and Naturally Occurring Asbestos Dust Mitigation Plan by Engeo; (14) Bird Survey Report/Letter by PBS&J; (15) Consultation regarding Project Soil Conditions by Engeo; (16) Memo documenting Section 106 Compliance and Fulfillment of Mitigation Measures for Phase I by Garcia and Associates; (17) Combined Phase I and Phase II Environmental Site Assessment Update, and Phase I Environmental Site Assessment by Engeo; (18) ACM Survey (Tables for each Phase I building) and Subsurface Pipe Insulation Sampling Results, by PSI, (19) Phase I Asbestos Abatement Activities Final Report by Twegbe, Inc., the following statements are true and correct except as disclosed in the Phase I Report or otherwise in writing: (a) the Site is not in violation of any Environmental Laws; (b) the Site is not now, nor has it been, used for the manufacture, use, storage, discharge, deposit, transportation or disposal of any Hazardous Substances, except for the use of such substances in such limited quantities as are customarily used in residences and offices, and retail business establishments, which limited use has been, and is in compliance with Environmental Laws; (c) the Site does not consist of any landfill or contain any underground storage tanks; (d) the Improvements on the Site do not consist of any asbestos-containing materials or building materials, at a level determined to be hazardous by the current State of California and federal environmental standards, or building materials that contain any other Hazardous Substances, however the Site may contain naturally occurring asbestos in the form of serpentine rock or serpentinite materials; (e) there has been no release of any Hazardous Substances in the Improvements on the Site or in, on, under or about the Site; and (f) the Site is not subject to any claim by any governmental regulatory agency or third party related to any Environmental Activity or the release of any Hazardous Substances, and there is no inquiry by any governmental agency (including, without limitation, the California Department of Toxic Substances Control or the Regional Water Quality Control Board) with respect to the presence of Hazardous Substances in the Improvements on the Site or in, on, under or about the Site, or the migration of Hazardous Substances from or to other real property.

23.2 **Environmental Covenant.** After Borrower assumes control of the Site, unless the Agency otherwise consents in writing, the Borrower shall at all times from and after the date of this Agreement, at its sole expense: (a) comply with all applicable Environmental Requirements relating to the Site and the Project, and not engage in or otherwise permit the occurrence of any Environmental Activity in violation of any applicable Environmental Requirements or which is not customary and incidental to the intended use of the Site, provided that nothing contained in this Article shall prevent the Borrower from contesting, in good faith and by appropriate proceedings, any such Environmental Requirements or the interpretation or application of such Environmental Requirements; and (b) deliver to the Agency promptly following the occurrence of any such event, notice of the discovery by the Borrower of any event, the occurrence of which would render any representation contained in this Article incorrect in any respect.

ARTICLE 24: INDEMNITY

The Borrower shall **Indemnify**, defend, and hold harmless, the Agency, the City and their respective commissioners, officers, agents and employees (individually or collectively, an "**Indemnitee**") from and against Losses arising out of (a) any default by the Borrower in the observance or performance of any of the Borrower's obligations under the Loan Documents (including, without limitation, those covenants set forth in Article 23 above); (b) any failure of any representation by the Borrower to be correct in all material respects when made; (c) injury or death to persons or damage to property or other Loss occurring on or in connection with the Site or the Project, whether caused by the negligence or any other act or omission of the Borrower or any other person or by negligent, faulty, inadequate or defective design, building, construction, rehabilitation or maintenance or any other condition or otherwise; (d) any claim of any surety in connection with any bond relating to the construction or rehabilitation of any Improvements or offsite improvements; (e) any claim, demand or cause of action, or any action or other proceeding, whether meritorious or not, brought or asserted against any Indemnitee that relates to or arises out of the Loan Documents, the Loan, the Site or the Project or any transaction contemplated by, or the relationship between, the Borrower and the Agency, or any action or inaction by the Agency, under the Loan Documents; (f) the occurrence, prior to the expiration of the Compliance Term, of any Environmental Activity or any failure of the Borrower or any other person to comply with all applicable Environmental Requirements relating to the Project or the Site; (g) the occurrence during or after the Compliance Term, of any Environmental Activity which has resulted directly or indirectly from any Environmental Activity occurring during the Compliance Term; (h) any liability of any nature arising from Borrower's contest of, or relating to the application of any law, including, without limitation, any contest permitted under Section 23.2 hereof; or (i) any claim, demand or cause of action, or any investigation, inquiry, order, hearing, action or other proceeding by or before any governmental agency, whether meritorious or not, which directly or indirectly relates to, arises from, or is based on the occurrence or allegation of any of the matters described in clauses (a) through (h) above, provided that no Indemnitee shall be entitled to indemnification under this Article for matters caused by such Indemnitee's negligence or misconduct. In the event any action or proceeding is brought against an Indemnitee by reason of a claim arising out of any Loss for which the Borrower has indemnified the Indemnitees, and upon written notice from such Indemnitee, the Borrower shall at its sole expense answer and otherwise defend such action or proceeding using counsel approved in writing by the Indemnitee. The Indemnitees shall have the right, exercised in their sole discretion, but without being required to do so, to defend, adjust, settle or compromise any claim, obligation, debt, demand, suit or judgment against the Indemnitee in connection with the matters covered by this Agreement. The provisions of this Article 24 shall survive the repayment of the Loan and/or termination of this Agreement.

ARTICLE 25: GENERAL PROVISIONS

25.1 **Subordination.** Any Deed(s) of Trust associated with any Future Loan Agreement may be subordinated to other financing secured by and used for development of the Project, provided that all of the following conditions are satisfied:

(a) All of the proceeds of the proposed financing, less any transaction costs, must be used to provide acquisition, construction and/or permanent financing for the Project;

(b) The terms of the proposed financing and any subordination agreement must be reviewed and approved by the Agency, which approval shall not be unreasonably withheld or delayed;

(c) The proposed lender (the "**Lender**") shall be a state or federally chartered financial institution, a nonprofit corporation or a public entity that is not affiliated, other than as a depositor or a lender, with the Borrower or any of the Borrower's affiliates;

(d) The Borrower shall demonstrate, to the satisfaction of the Agency, that subordination of the Deed of Trust is necessary to secure adequate acquisition, construction and/or permanent financing to ensure the viability of the Project, including the operation of the Project as affordable housing, as required by the Loan Documents. To satisfy this requirement, the Borrower shall provide the following information to the Agency, in addition to any other information reasonably required by the Agency:

(i) A written request from the Lender stating the economic reasons for the proposed subordination; and

(ii) Evidence demonstrating that the proposed amount of the loan is necessary to provide adequate acquisition/rehabilitation and/or permanent financing to ensure the viability of the Project, and adequate financing for the Project would not be available without the proposed subordination;

(e) The subordination agreement(s) shall be structured to minimize the risk that, as a result of a foreclosure by the Lender or other holder of such financing, the Deed of Trust would be extinguished. To satisfy this requirement, the subordination agreement must provide the Agency with adequate rights to cure any defaults by the Borrower, including but not limited to (i) providing the Agency or its successor with copies of any notices of default in the same time and manner as provided to the Borrower, and (ii) providing the Agency with a cure period at least equal to that provided to the Borrower to cure such default;

(f) The subordination(s) described in this condition shall be effective only during the original term of the superior loans and any extension of the term approved in writing by the Agency;

(g) The effect of the subordination shall be to extinguish the Deed of Trust subsequent to a transfer of the Project pursuant to a judicial foreclosure, private sale under a power or sale, or grant under a deed in lieu of foreclosure that arises out of a default under any of the loans; and

(h) Any subordination shall not limit the effect of the Deed of Trust prior to a foreclosure.

(i) Following review and approval by Agency staff, the Agency's Executive Director, or his/her successor or designee, shall be authorized to execute the approved subordination agreement without the necessity of any further action or approval.

25.2 **No Third Party Beneficiaries.** Nothing contained in this Agreement, nor any act of the Agency, shall be interpreted or construed as creating the relationship of third party beneficiary, limited or general partnership, joint venture, employer and employee, or principal and agent between the Agency and Borrower or Borrower's agents, employees or contractors. Borrower shall at all times be deemed an independent contractor and shall be wholly responsible for the manner in which it or its agents, employees or contractors, or any of them, perform the services required of it by the terms of this Agreement for the development of the Project. Borrower has and hereby retains the right to exercise full control of employment, direction, compensation and discharge of all persons assisting in the performance of services hereunder. In regard to the development of the Project, Borrower acknowledges and agrees to be solely responsible for all matters relating to payment of its agents, employees, and contractors, including compliance with Social Security withholding and all other laws and regulations governing such matters, and shall include requirements in each contract that contractors shall be solely responsible for similar matters relating to their employees. Borrower agrees to be solely responsible for its own acts and those of its agents, employees and contractors.

25.3 **No Claims by Third Parties.** Nothing contained in this Agreement shall create or justify any claim against the Agency by any person or entity with respect to the purchase of materials, supplies or equipment, or the furnishing or the performance of any work or services with respect to the Project. Borrower shall include this requirement as a provision in any contracts entered into for the development of the Project.

25.4 **Entire Agreement.** This Agreement and the Exhibits to it incorporate the terms of all agreements made by the Agency and Borrower with regard to the Agency's loan to the Borrower of the Loan Amount. No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto. No oral understandings or agreements not incorporated herein shall be binding on the Agency or Borrower.

25.5 **Agency Obligations**. The Agency's sole obligation under this Agreement is limited to the providing of funds as described in this Agreement, up to the Loan Amount. Under no circumstances, including breach of this Agreement, shall the Agency be liable to the Borrower for any special or consequential damages arising out of actions or failure to act by the Agency in connection with any of the Loan Documents.

25.6 **Borrower Solely Responsible**. Borrower shall be solely responsible for its work, shall bear full responsibility for any losses or damages incurred by Borrower, any of its contractors or subcontractors, the Agency, its officers, representatives, agents and employees on account of any act, error or omission of the Borrower in the performance of this Agreement and the development of the Project.

25.7 **No Inconsistent Agreements**. Borrower warrants that it has not, and will not execute any other agreement(s) with provisions materially contradictory or in opposition to the provisions hereof without the Agency's prior written consent.

25.8 **Inconsistencies in Loan Documents**. Except as otherwise set forth herein to the contrary, in the event of any conflict between the terms of this Agreement and any other Loan Document, the terms of this Agreement shall control. However, any provision in this Agreement in conflict with any federal, state or local statute or regulation shall be interpreted subject to said statute or regulation.

25.9 **Governing Law.** This Agreement shall be governed by California law.

25.10 **Joint and Several Liability**. If more than one (1) person or entity executes this Agreement, each shall be jointly and severally liable to the Agency for the faithful performance of this Agreement.

25.11 **Successors**. Except as otherwise limited herein, the provisions of this Agreement shall be binding upon and inure to the benefit of the undersigned parties and their heirs, executors, administrators, legal representatives, successors and assigns.

25.12 **Attorneys' Fees**. If any lawsuit is commenced to enforce any of the terms of this Agreement, the prevailing party shall have the right to recover its reasonable attorneys' fees and costs of suit from the other party.

25.13 **Severability.** The invalidity or unenforceability of any one or more provisions of this Agreement shall in no way affect any other provision.

25.14 **Time**. Time is of the essence in this Agreement. The Borrower agrees to pursue the purpose of this Agreement in an effective and continuous manner and agrees to use best efforts to achieve the purpose of this Agreement pursuant to the provisions of the Agreement.

25.15 **Binding Covenants**. The provisions of the Loan Documents shall be binding upon Borrower and Borrower's successors and assigns, and all parties having or acquiring any right, title, interest in whatever form, including but not limited to leasehold interests, in or to any part of the subject property, except that the same shall terminate and become void automatically at the expiration of the Compliance Term of this Agreement. Any attempt to transfer title or any interest therein in violation of these covenants shall be void.

25.16 **Consent.** Except as expressly provided otherwise, whenever consent or approval of either party is required, that party shall not unreasonably withhold or delay consideration of such consent or approval.

25.17 **Future Modification of Security Instruments**. Borrower and Lender hereby agree to modify the security instruments, including the Deed of Trust and the Declaration of Restrictions, upon the recordation of final subdivision maps for each of the three phases of the Project such that the legal descriptions of the real property affected by the instruments will be limited to the specific lots and/or parcels, as shown on the recorded final subdivision maps, in which interests are being offered as security for the Loan.

ARTICLE 26: EXECUTION OF COUNTERPARTS

This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in counterpart at San Francisco, California as follows:

Authorized by Agency Resolution No.48-2011,

Adopted April 19, 2011.

AGENCY:

REDEVLOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO, a public body, corporate and politic

By: _____
Amy Lee
Deputy Executive Director
Finance and Administration

APPROVED AS TO FORM:

_____
James B. Morales
Agency General Counsel

BORROWER:
HUNTERS VIEW ASSOCIATES, L.P. a California Limited Partnership

MANAGING GENERAL PARTNER:

JSCo HVA LLC,
a California limited liability company

By: John Stewart Company, a California corporation, its managing member

By: _____
Jack D. Gardner
Its President

CO-GENERAL PARTNER:
HV MAFANIKIO LLC,
a California limited liability company

By: Devine & Gong, Inc., a California corporation, its managing member

By: _____
Richard J. Devine
Its President

CO-GENERAL PARTNER:
HUNTERS POINT AFFORDABLE HOUSING, INC., a California nonprofit public benefit corporation

By: _____
Larry Hollingsworth
Its President

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in counterpart at San Francisco, California as follows:

Authorized by Agency Resolution No.48-2011,

Adopted April 19, 2011.

AGENCY:

REDEVLOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO, a public body, corporate and politic

By: _____
Amy Lee
Deputy Executive Director
Finance and Administration

APPROVED AS TO FORM:

_____
James B. Morales
Agency General Counsel

BORROWER:
HUNTERS VIEW ASSOCIATES, L.P. a California Limited Partnership

MANAGING GENERAL PARTNER:

JSCo HVA LLC,
a California limited liability company

By: John Stewart Company, a California corporation, its managing member

By: _____
Jack D. Gardner
Its President

CO-GENERAL PARTNER:
HV MAFANIKIO LLC,
a California limited liability company

By: Devine & Gong, Inc., a California corporation, its managing member

By: Richard J. Devine
Richard J. Devine
Its President

CO-GENERAL PARTNER:
HUNTERS POINT AFFORDABLE HOUSING, INC., a California nonprofit public benefit corporation

By: _____
Larry Hollingsworth
Its President

INITIAL LIMITED PARTNER:

HUNTERS POINT AFFORDABLE HOUSING, INC., a California nonprofit public benefit corporation

By: _____
Larry Hollingsworth
Its President

EXHIBITS

EXHIBIT A-1

LEGAL DESCRIPTION OF PROJECT SITE

The land referred to herein is situated in the State of California, County of San Francisco, and is described as follows:

Lots 1 through 17 inclusive, and Lots A, B, C and D as shown on Final Map 5461, filed for record in Official Records of the City and County of San Francisco, State of California, on December 23, 2010, in Book DD of the Survey Maps, Pages 90-97.

EXHIBIT A-2

PHASE I LEGAL DESCRIPTION

The land referred to herein is situated in the State of California, County of San Francisco, and is described as follows:

Lots 1 through 8 inclusive, Lots 11 through 17 inclusive and Lots A, B, C and D as shown on Final Map 5461, filed for record in Official Records of the City and County of San Francisco, State of California, on December 23, 2010, in Book DD of the Survey Maps, Pages 90-97.

EXHIBIT A-3

PHASE II LEGAL DESCRIPTION

LEGAL DESCRIPTION OF THE LAND

The land referred to herein is situated in the State of California, County of San Francisco, and is described as follows:

Lot 9 as shown on Final Map 5461, filed for record in Official Records of the City and County of San Francisco, State of California, on December 23, 2010, in Book DD of the Survey Maps, Pages 90-97.

EXHIBIT A-4

PHASE III LEGAL DESCRIPTION

LEGAL DESCRIPTION OF THE LAND

The land referred to herein is situated in the State of California, County of San Francisco, and is described as follows:

EXHIBIT B-1

Form of Declaration of Restrictions (Phase II)

FREE RECORDING REQUESTED PURSUANT TO GOVERNMENT CODE SECTION 27383 BY THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO.

WHEN RECORDED MAIL TO:
SAN FRANCISCO REDEVELOPMENT AGENCY
ONE SOUTH VAN NESS AVENUE
FIFTH FLOOR
SAN FRANCISCO, CA 94103
ATTN: Development Services

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

112 Middle Point Road @ Evans

[APNs: Block 4624, Lot 9 as shown on Final Map No. 5461 (Phase II)]

DECLARATION OF RESTRICTIONS

This Declaration of Restrictions (the "Declaration") is made as of April 19, 2011 by _____ **(A CALIFORNIA LIMITED PARTNERSHIP)**, (the "**Borrower**"), whose address is 1388 Sutter St, 11th floor, San Francisco, to **CHICAGO TITLE COMPANY**, a California corporation ("**Trustee**"), whose address is 388 Market Street, 13th Floor, San Francisco CA 94111, in favor of the Redevelopment Agency of the City and County of San Francisco (the "**Agency**").

The Agency made a loan (the **"Loan"**) to Borrower to finance costs associated with the development and permanent financing of the real property described in Exhibit A-1 attached hereto and incorporated herein by reference (the "**Property**") as housing for very low and moderate income persons. The Loan is evidenced by, among other documents, Phase II-III Loan Agreement between the Agency and Borrower dated as of April 19, 2011 (the "**Loan Agreement**"). In order to secure Borrower's obligations under the Loan Agreement, Borrower has executed and concurrently herewith is recording a Deed of Trust on the Property.

The Loan Agreement requires that the Agency Rental Units on the Property be subject to the following restrictions (the "**Affordability Restrictions**"):

1. All of the units, including the manager's unit but excluding a single public housing unit designated for a returning Hunters View resident, shall at all times be occupied or held vacant and available for rental by Qualifying Tenants. For purposes of this Declaration, Qualifying Tenant shall mean a tenant household whose initial household income at time of first occupancy does not exceed Fifty Percent (50%) of Area Median Income, adjusted solely for household size at time of first occupancy. If the Qualifying Tenant's subsequent household income exceeds One Hundred and Twenty Percent (120%) of Area Median Income based on actual household size, the Qualifying Tenant shall be allowed to remain a tenant of the Property, provided that

when the Qualifying Tenant vacates the Property the vacated unit shall be occupied by a Qualifying Tenant.

2. The total charges for rent, including a utility allowance to each Qualifying Tenant shall not exceed thirty percent (30%) of fifty percent (50%) of Area Median Income, adjusted by household size.

3. The Borrower agrees, in accordance with the Loan Agreement, that this Declaration will remain in effect as restrictions on the Property during the Compliance Term.

4. Capitalized terms used and not defined herein shall have the meanings assigned thereto in the Loan Agreement.

BORROWER:
HUNTERS VIEW ASSOCIATES, L.P.,
a California limited partnership
MANAGING GENERAL PARTNER:

JSCo HVA LLC,
a California limited liability company

By: John Stewart Company, a California corporation,
its managing member

By: _____
Jack D. Gardner
Its President

CO-GENERAL PARTNER:

HV MAFANIKIO LLC,
a California limited liability company

By: Devine & Gong, Inc., a California
corporation, its managing member

By: _____
Richard J. Devine
Its President

CO-GENERAL PARTNER:

HUNTERS POINT AFFORDABLE HOUSING, INC.,
a California nonprofit public benefit corporation

By: _____
Larry Hollingsworth
Its President

INITIAL LIMITED PARTNER:

HUNTERS POINT AFFORDABLE HOUSING, INC.,
a California nonprofit public benefit corporation

By: _____
Larry Hollingsworth
Its President

ALL SIGNATURES MUST BE NOTARIZED

EXHIBIT B-2

Form of Declaration of Restrictions (Phase III)

FREE RECORDING REQUESTED PURSUANT TO GOVERNMENT CODE SECTION 27383 BY THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO.

WHEN RECORDED MAIL TO:
SAN FRANCISCO REDEVELOPMENT AGENCY
ONE SOUTH VAN NESS AVENUE
FIFTH FLOOR
SAN FRANCISCO, CA 94103
ATTN: Development Services

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

112 Middle Point Road @ Evans

[APNs: Block 4624, Lot 10 as shown on Final Map No. 5461 (Phase III)]

DECLARATION OF RESTRICTIONS

This Declaration of Restrictions (the "Declaration") is made as of April 19, 2011 by _____ **(A CALIFORNIA LIMITED PARTNERSHIP)**, (the "**Borrower**"), whose address is 1388 Sutter St, 11th floor, San Francisco, to **CHICAGO TITLE COMPANY**, a California corporation ("**Trustee**"), whose address is 388 Market Street, 13th Floor, San Francisco CA 94111, in favor of the Redevelopment Agency of the City and County of San Francisco (the "**Agency**").

The Agency made a loan (the **"Loan"**) to Borrower to finance costs associated with the development and permanent financing of the real property described in Exhibit A-1 attached hereto and incorporated herein by reference (the "**Property**") as housing for very low and moderate income persons. The Loan is evidenced by, among other documents, Phase II-III Loan Agreement between the Agency and Borrower dated as of April 19, 2011 (the "**Loan Agreement**"). In order to secure Borrower's obligations under the Loan Agreement, Borrower has executed and concurrently herewith is recording a Deed of Trust on the Property.

The Loan Agreement requires that the Agency Rental Units on the Property be subject to the following restrictions (the "**Affordability Restrictions**"):

5. All of the units, including the manager's unit but excluding a single public housing unit designated for a returning Hunters View resident, shall at all times be occupied or held vacant and available for rental by Qualifying Tenants. For purposes of this Declaration, Qualifying Tenant shall mean a tenant household whose initial household income at time of first occupancy does not exceed Fifty Percent (50%) of Area Median Income, adjusted solely for household size at time of first occupancy. If the Qualifying Tenant's subsequent household income exceeds One Hundred and Twenty Percent (120%) of Area Median Income based on actual household size, the Qualifying Tenant shall be allowed to remain a tenant of the Property, provided that

when the Qualifying Tenant vacates the Property the vacated unit shall be occupied by a Qualifying Tenant.

6. The total charges for rent, including a utility allowance to each Qualifying Tenant shall not exceed thirty percent (30%) of fifty percent (50%) of Area Median Income, adjusted by household size.

7. The Borrower agrees, in accordance with the Loan Agreement, that this Declaration will remain in effect as restrictions on the Property during the Compliance Term.

8. Capitalized terms used and not defined herein shall have the meanings assigned thereto in the Loan Agreement.

BORROWER:

HUNTERS VIEW ASSOCIATES, L.P.,
a California limited partnership
MANAGING GENERAL PARTNER:

JSCo HVA LLC,
a California limited liability company

By: John Stewart Company, a California corporation,
its managing member

By: _____
Jack D. Gardner
Its President

CO-GENERAL PARTNER:

HV MAFANIKIO LLC,
a California limited liability company

By: Devine & Gong, Inc., a California
corporation, its managing member

By: _____
Richard J. Devine
Its President

CO-GENERAL PARTNER:

HUNTERS POINT AFFORDABLE HOUSING, INC.,
a California nonprofit public benefit corporation

By: _____
Larry Hollingsworth
Its President

INITIAL LIMITED PARTNER:

HUNTERS POINT AFFORDABLE HOUSING, INC.,
a California nonprofit public benefit corporation

By: _____
Larry Hollingsworth
Its President

ALL SIGNATURES MUST BE NOTARIZED

EXHIBIT C
Form of Deed of Trust

INTENTIONALLY OMITTED

EXHIBIT D
PROMISSORY NOTE

Phase II-III Rental Note

(HUNTERS VIEW ASSOCIATES, L.P.)

Amount: $31,406,982 ***SAN FRANCISCO***
April 19, 2011

FOR VALUE RECEIVED, the undersigned HUNTERS VIEW ASSOCIATES, L.P., a California Limited Partnership ("Borrower" or "Maker"), hereby promises to pay to the order of the REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO ("Holder" or "Agency"), a public body, corporate and politic, the principal sum of THIRTY ONE MILLION FOUR HUNDRED SIX THOUSAND NINE HUNDRED EIGHTY TWO AND NO/100 DOLLARS ($31,406,982) (the "Loan Amount" or "Loan"), as set forth by the parties in the Agreement described in Paragraph 1 below.

1. Agreement. This promissory note (the "Note") is given under the terms of the Loan Agreement of even date herewith by and between the Agency and the Maker (the "Agreement") as evidence of the Loan (as defined in the Agreement), between the Maker and Holder, for the purpose of enabling Maker to continue to develop the property owned by the San Francisco Housing Authority on Block Lots 1 through 17 inclusive, and Lots A, B, C and D as shown on Final Map No. 5461, filed for record in Official Records of the City and County of San Francisco, State of California, on December 23, 2010, in Book DD of the Survey Maps, Pages 90-97 (commonly known as "Hunters View") located at 112 Middle Point Road at Evans (the "Project"), for full replacement of 267 distressed public housing units with the addition of mixed-income rental and for-sale housing. The rights and obligations of the Maker under this Note shall be governed by the Agreement and by the additional terms set forth in this Note. Capitalized terms used but not defined herein shall have the meaning set forth in the Agreement.

2. Payments. The principal amount of this Note shall be THIRTY ONE MILLION FOUR HUNDRED SIX THOUSAND NINE HUNDRED EIGHTY TWO AND NO/100 DOLLARS ($31,406,982) and shall constitute the Loan. Maker shall pay principal and interest in the amount and at the times set forth in Article 3 of the Agreement.

3. Repayment of Unused Portion of Loan Amount. In addition to any other payment requirements, within ten (10) months after the Completion Date, the Borrower shall promptly pay to the Agency any portion of the Loan Amount previously disbursed to Borrower not used for eligible costs as described in this Agreement.

4. Interest and Term. The term of the Maker's obligation to repay the Loan Amount owing under the Loan Documents (the "Term") shall commence on the

Agreement Date and shall continue until the end of the Compliance Term. Interest shall accrue at 0.25% per annum simple interest on the outstanding principal amount of the Loan commencing on the date of disbursement until paid in full.

5. Default Interest Rate. Upon the occurrence of an Event of Default under any of the Loan Documents, following any applicable notice and cure periods, and without waiving any other remedy of the Holder, interest shall be deemed to have accrued on the outstanding principal balance of the Loan at a compounded annual rate equal to the lesser of (a) ten percent (10%), or (b) the maximum lawful rate of interest, commencing on the date of the Event of Default through the date the Event of Default is cured.

6. Security. The Maker's obligation under this Note is a nonrecourse loan secured by the Work Product as of the date of this Note which Work Product assignment is more fully described in Sec. 20.6 of the Loan Agreement. However, the Maker acknowledges that the Loan memorialized in this Note may be converted, at Holder's option, to a nonrecourse loan secured by a Deed of Trust if and when Holder acquires an interest in any portion of the Site currently owned by the Housing Authority or by the Agency.

7. Terms of Payment.

   a. All payments under this Note shall be paid in currency of the United States of America, which at the time of payment is lawful for the payment of public and private debts.

   b. All payments shall be made payable to Holder and mailed or delivered in person to Holder's office at One South Van Ness Avenue, 5th Floor, San Francisco, California 94103 or to such other place as the Holder may from time to time designate.

   c. Notwithstanding any other provisions of this Note, or any instrument securing the obligations of Maker under this Note, if, for any reason whatsoever, the payment of any sums by Maker pursuant to the terms of this Note would result in the payment of interest which would exceed the amount that Holder may legally charge under the laws of the State of California, then the amount by which the payment of such sums exceeds the sum calculated using the lawful interest rate shall automatically be deducted from the interest owing on this Note, so that in no event shall Maker be obligated under the terms of this Note to pay any interest which would exceed the lawful rate.

8. Default.

   a. Any of the following shall constitute an event of default under this Note.

(i) Any failure to make any payment required under this Note within ten (10) days after the date when due;

(ii) Any failure in the performance by the Maker of any term, condition, provision, or covenant set forth in this Note or the Agreement, following the expiration of the applicable notice and cure periods; or

(iii) The occurrence of any Event of Default under the Agreement, the Deed of Trust or other instrument securing the obligations of Maker under this Note to Holder, including, but not limited to those ancillary to the Agreement, as well as any other agreement Maker has entered into related to this Project, including but not limited to, any agreements with the First Mortgage Lender, if any.

b. Upon the occurrence of such an Event of Default, Holder shall provide to Maker written notice of said occurrence, and Maker shall have thirty (30) days from the receipt of such written notice to cure such default, or if such default cannot reasonably be cured within such thirty (30) day period (but is reasonably capable of being cured with sixty (60) days after such notice or such longer period as deemed reasonable by the Holder), Maker shall commence action to cure such default within said thirty (30)-day period, and thereafter shall diligently and continuously prosecute such action to cause such default to be cured within sixty (60) days after such notice, or such longer period as deemed reasonable by the Holder. If, after the time provided in this Subparagraph 8(b), Maker has not cured the Event of Default, and Holder has not waived its rights under this Note or the Agreement, the entire unpaid principal balance, together with all other sums then payable under this Note, shall at the election of the Holder become immediately due and payable upon written notice from Holder to Maker without further demand.

c. If an Event of Default shall occur and be continuing, Holder shall be entitled to pursue all rights and remedies available under this Note, the Agreement and as may otherwise be available to Holder.

9. Waivers

a. Maker expressly agrees that this Note or any payment hereunder may be extended from time to time at the Holder's sole discretion and that Holder may accept security in consideration for any such extension or release any security for this Note at its sole discretion all without in any way affecting the liability of Maker.

b. No extension of time for payment of this Note or any installment hereof made by agreement by Holder with any person now or hereafter liable for the payment of this Note shall operate to release, discharge, modify,

change or affect the original liability of Maker under this Note, either in whole or in part.

c. The obligations of Maker under this Note shall be absolute and Maker waives any and all rights to offset, deduct or withhold any payments or charges due under this Note for any reasons whatsoever.

10. Miscellaneous Provisions

a. All notices to Holder or Maker shall be given in the manner and at the addresses set forth in the Agreement, or to such addresses as Holder or Maker may hereafter designate, in accordance with the Agreement.

b. In the event of litigation arising from the enforcement of, or a default under, this Note, the Maker promises to pay all reasonable costs and expenses, including reasonable attorney's fees, incurred by Holder, provided that in any such action initiated by Holder, Holder prevails.

c. This Note may not be changed orally, but only by an amendment in writing signed by Maker and acknowledged by Holder.

d. This Note shall be governed by and construed in accordance with the laws of the State of California.

e. The times for the performance of any obligations hereunder shall be strictly construed, time being of the essence.

THE REMAINDER OF THIS PAGE HAS BEEN LEFT BLANK

MAKER:

HUNTERS VIEW ASSOCIATES, L.P.,
A California Limited Partnership

MANAGING GENERAL PARTNER:

JSCo HVA LLC,
a California limited liability company

By: John Stewart Company, a California corporation,
its managing member

By: _____
Jack D. Gardner
Its President

CO-GENERAL PARTNER:

HV MAFANIKIO LLC,
a California limited liability company

By: Devine & Gong, Inc., a California
corporation, its managing member

By: _____
Richard J. Devine
Its President

CO-GENERAL PARTNER:

HUNTERS POINT AFFORDABLE HOUSING, INC., a California nonprofit public benefit corporation

By: _____
Larry Hollingsworth
Its President

(Signatures continue on following page)

MAKER:

HUNTERS VIEW ASSOCIATES, L.P.,
A California Limited Partnership

MANAGING GENERAL PARTNER:

JSCo HVA LLC,
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By: John Stewart Company, a California corporation,
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Jack D. Gardner
Its President

CO-GENERAL PARTNER:

HV MAFANIKIO LLC,
a California limited liability company

By: Devine & Gong, Inc., a California
corporation, its managing member

By: Richard J. Devine
Richard J. Devine
Its President

CO-GENERAL PARTNER:

HUNTERS POINT AFFORDABLE HOUSING, INC., a California nonprofit public benefit corporation

By: _____
Larry Hollingsworth
Its President

(Signatures continue on following page)

INITIAL LIMITED PARTNER:

HUNTERS POINT AFFORDABLE HOUSING, INC., a California nonprofit public benefit corporation

By: Larry B. Hollingsworth its

Larry Hollingsworth
Its President

[Attached Acknowledgements for all Signatures]

DO NOT DESTROY THIS NOTE: When paid, this note will be surrendered for cancellation after confirmation of repayment is made by Holder

EXHIBIT E-1

INTENTIONALLY OMITTED

EXHIBIT E-2

Loan Disbursement Budget

INTENTIONALLY OMITTED

EXHIBIT F

Form of Tenant Income Certification

[Intentionally Omitted]

EXHIBIT G

Form of Annual Monitoring Report

Intentionally Omitted

EXHIBIT H.
Equal Opportunity Program
Bayview Hunters Point Employment and Contracting Policy

Redevelopment Agency of the
City and County of San Francisco

BAYVIEW HUNTERS POINT EMPLOYMENT AND CONTRACTING POLICY

Adopted December 4, 2007

Resolution No. 127-2007

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I. PURPOSE

A. Purpose

1. Pursuant to California Community Redevelopment Law ("**CRL**") and consistent with long standing practice, the San Francisco Redevelopment Agency ("**Agency**") hereby adopts this Employment and Contracting Policy to ensure training and employment opportunities for lower-income residents in the Bayview Hunters Point ("**BVHP**") Redevelopment Project Area, including residents in the 94124 zip code, subject to the criteria set forth below.

2. In adopting the BVHP Redevelopment Plan, the Agency and the City and County of San Francisco ("**City**") have made a commitment to vigorous equal opportunity and diversity in employment. Thus, the Agency has proposed programs to encourage local hiring and contracting by the private sector engaged in development in the Project Area.

3. This BVHP Employment and Contracting Policy is designed to ensure that Agency Action Projects and private Significant Projects (which do not receive Agency assistance), provide employment opportunities for lower-income BVHP Residents and San Francisco Residents in the areas of construction, professional services, and permanent jobs. This Policy will supplement and not supplant the existing Agency employment and contracting policies found in the Agency's Equal Opportunity Program and the Agency Purchasing Policy, which are briefly summarized in Section X. The Employment and Contracting Policy seeks to provide economic benefits to existing BVHP Residents and San Francisco Residents from redevelopment activities within the Project Area. BVHP Residents have disproportionately lower income levels. As part of this policy, residents will be referred by the CBOs (defined below) that serve San Francisco lower-income residents. Therefore, the BVHP residential preference fulfills the purpose of providing economic opportunity to lower-income residents.

4. This Employment and Contracting Policy meets or exceeds the requirements of the City of San Francisco's Administrative Code Chapter 83 (First Source policy) and CityBuild Program. Thus, entering into and complying with the terms of an Employment and Contracting Policy Agreement will satisfy the requirements of the City's First Source Policy. It is also intended to satisfy the requirements of Health and Safety Code Section 33422.3 which states that for any contract over $100,000, the Agency may set specific percentages by craft or trade for the employment of available project area residents.

5. The Agency is committed to facilitating Project Sponsor, Contractor and Employer access to and the hiring of qualified BVHP and San Francisco Residents. To further this goal, the Agency will continue to contract with CBOs to provide education and referral programs and services which will allow BVHP and San Francisco Residents to be considered for employment.

6. The Agency and the Planning Department of the City and County of San Francisco ("**Planning**") entered into a delegation agreement as of September 19, 2006 (the "**Delegation Agreement**"). Per the Delegation Agreement, Planning shall not approve a Significant Project in the Project Area unless the Project Sponsor has entered into an Employment and Contracting Agreement(s) with the Agency. Ongoing compliance with such Agreements(s) shall become a condition of the permit.

7. This Employment and Contracting Policy shall be effective on or after December 4, 2007 ("**Effective Date**").

8. The Agency and the PAC shall review the effectiveness of the new Employment and Contracting Policy after one (1) year of implementation.

II. HIRING GOALS

A. *Construction Workforce Hiring Goal*

1. The Employment and Contracting Policy has a goal that **fifty percent (50%)** of construction workforce hires for each trade be qualified BVHP Residents and then San Francisco Residents with First Consideration to BVHP Residents. This goal is expressed as a percentage of each Contractor's total hours of employment and training by trade on the project. The procedure for meeting the construction workforce goal is set forth in Section VII.

B. *Permanent / Temporary Workforce Goal*

1. The Employment and Contracting Policy has a goal that **fifty percent (50%)** of permanent / temporary workforce hires be qualified BVHP Residents and then San Francisco Residents with First Consideration given to BVHP Residents. The procedure for meeting the permanent / temporary workforce goal is set forth in Section IX.

C. *Trainee Goals*

1. The Employment and Contracting Policy requires that all design professionals (architects, engineers, planners, and environmental consultants) on contracts over $100,000, hire qualified BVHP Residents and then San Francisco Residents with First Consideration given to BVHP Residents as trainees. The trainee hiring goal for architects, engineers and other design professionals is based upon the total amount of the design professional's contract as follows:

Trainees	Design Professional Fees
0	$ 0 - $ 99,000
1	$100,000 - $ 249,999
2	$250,000 - $ 499,999
3	$500,000 - $ 999,999
4	$1,000,000 - $1,499,999
5	$1,500,000 - $1,999,999
6	$2,000,000 - $4,999,999
7	$5,000,000 - $7,999,999
8	$8,000,000 - or more

2. The procedure for meeting the trainee hiring goal is set forth in Section VIII.

III. DEFINITIONS

1. **Agency-Action Project** means, as applicable, the Agency's funding (including conduit bond financing), acquisition, disposition, or development of property through a Development and Disposition Agreement ("DDA"), Owner Participation Agreement ("OPA"), loan agreement, grant agreement or other transactional and/or funding documents between a Project Sponsor and the Agency, provided however, that the Agency's Model Block Program is excluded from this definition, as it will contain its own local hiring and contracting requirements.

2. **Agency Compliance Officer** means the Agency's Contract Compliance Specialist assigned to oversee the Project Sponsor's compliance with the requirements of the Employment and Contracting Policy Agreement.

3. **Agreement** means an Employment and Contracting Agreement entered into between the Agency and the Project Sponsor pursuant to this Employment and Contracting Policy.

4. **Arbitration Parties** means the Agency, Project Sponsor, Contractors, Employers and all persons who attend the arbitration hearing pursuant to Section XII, as well as those persons and Project Sponsors who are subject to a default award provided that all of the requirements in Section XII (11) have been met.

5. **BVHP Resident** means, for the purposes of this Employment and Contracting Policy only, any person who resides in the BVHP Project Area or within the 94124 zip code as it is defined on the Effective Date.

6. **CBO** means any community based organization that provides training, education and referral services to BVHP Residents, including but not limited to:

Young Community Developers, Inc., 1715 Yosemite Avenue, San Francisco, CA 94124, (415) 822-3491;
Mission Hiring Hall, 3042 – 16th Street, San Francisco, CA 94103, (415) 626-1919 (Construction jobs only);
South of Market Employment Center, 288 – 7th Street, San Francisco, CA 94103, (415) 865-2105 (Permanent Jobs only) and
Ella Hill Hutch Community Center, 1050 McAllister Street, San Francisco, CA 94115, (415) 921-6276

7. **City** means the City and County of San Francisco.

8. **Commercial Project** means (for purposes of this Employment and Contracting Policy only): (1) any building permit application for a commercial activity over 25,000 square feet in floor area and involving new construction, an addition, or alteration which results in over $2,000,000 in improvements as stated on the City's building permit application (including any tenant improvements covered by said building permit); or (2) any application which requires discretionary action by the City's Planning Commission relating to a commercial activity over 25,000 square feet including, but not limited to conditional use project authorization under San Francisco Planning Code section 309, and office development under San Francisco Planning Code Sections 320, et seq.

9. **Contractor** means any person(s), firm, partnership, corporation (whether for profit or nonprofit), or combination thereof, who is a general contractor, subcontractor (regardless of tier) or consultant working on: (i) an Agency Action Project, (ii) a Significant Project in the Project Area, or (iii) a development project when the Project Sponsor has voluntarily subscribed to this Employment and Contracting Policy.

10. **Delegation Agreement** means the delegation agreement between the Agency and Planning dated September 19, 2006 as such agreement may be amended from time to time.

11. **Employer** means any person(s), firm, partnership, corporation (whether for profit or nonprofit), or combination thereof, who owns or operates a retail or commercial business which is part of: (i) an Agency Action Project, (ii) a Significant Project in the Project Area, or (iii) a

development project when the Project Sponsor has voluntarily subscribed to this Employment and Contracting Policy.

12. **Employment and Contracting Agreement or ("Agreement")** means the written agreement entered into between the Project Sponsor and the Agency which details the particular requirements the Project Sponsor must meet in order to be in compliance with this Employment and Contracting Policy.

13. **First Consideration** means that a Project Sponsor. Contractor and/or Employer shall give first consideration to qualified BVHP Residents in accordance with Section VII.A. (6) - (8) of this Employment and Contracting Policy and then to San Francisco residents for hiring opportunities in the areas of construction workforce, permanent / temporary workforce and trainee hires prior to offering the hiring opportunity to other applicants.

14. **Housing Project** means (for purposes of this Employment and Contracting Policy only) new construction, an addition, a conversion, or substantial rehabilitation that results in the creation or addition of ten or more residential units.

15. **PAC** means the Bayview Hunters Point Project Area Committee.

16. **Planning** means the Planning Department and/or the Planning Commission of the City and County of San Francisco.

17. **Position** means a permanent / temporary position not related to construction or construction trades.

18. **Project Area** means the Bayview Hunters Point Project Areas as delineated in the Bayview Hunters Point Redevelopment Plan, adopted June 1, 2006 and recorded June 23, 2006, (Document Number 2006I199495) as it may be amended from time to time.

19. **Project Sponsor** means the developer of commercial space or new housing units defined herein as a Significant Project in the Project Area.

20. **San Francisco Resident** means any person who resides in the City and County of San Francisco.

21. **Significant Project** means, for purposes of this Employment and Contracting Policy only, a Commercial Project or Housing Project as defined in this Employment and Contracting Policy.

IV. APPLICATION OF POLICY BY PROJECT TYPE [1]

A. Agency Action Projects

1. The Employment and Contracting Policy is mandatory for Agency Action Projects. Agency Action Projects will require the Project Sponsor to execute an Employment and Contracting Agreement with the Agency as a condition of approval. The construction workforce goal, permanent / temporary workforce goal and the trainee hiring goal for professional services contracts all apply to this type of project.

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[1] Page 24 contains a BVHP Employment and Contracting Policy Matrix which also gives an overview of the application of the policy by project type.

2. Additionally, the Agency's Small Business Enterprise ("SBE") Program, as amended from time to time, will apply when Project Sponsors on Agency Action Projects contracts for professional / personal services related to the project, such as planning studies, building and/or landscape design, economic or feasibility studies, community outreach services, printing or graphic production. The SBE participation goal is a good faith effort that 50% of the subcontracting opportunities go to Agency certified SBEs with First Consideration given to SBEs within the Project Area.

3. In addition to the local hiring and small business contracting programs listed above, Project Sponsors will be **required to comply** with the Agency's Equal Opportunity Program which include:

- o Nondiscrimination in Contracts and Equal Benefits Policy
- o Minimum Compensation Policy
- o Health Care Accountability Policy
- o Agency Prevailing Wage Policy (Labor Standards)

4. The Agency's Equal Opportunity Program is described briefly in Section X.

5. ~~The requirements of the Employment and Contracting Policy and the Agency's~~ Equal Opportunity Policies will be incorporated into an Agreement. The Agency's Executive Director will review and approve the Agreement on behalf of the Agency. Adherence to the Agreement shall be monitored by the Agency's Contract Compliance Division. Agency staff shall periodically report to the BVHP PAC and the Agency Commission on the compliance status of Agency Action Projects.

B. ***Private Significant Projects***

1. The Employment and Contracting Policy is mandatory for private Significant Projects (not requiring Agency assistance) in the Project Area that exceed the following thresholds:

- **Housing Projects**: new construction, an addition, a conversion, or substantial rehabilitation that results in the creation or addition of ten or more residential units ; or
- **Commercial Projects**: (1) any building permit application for a commercial activity over 25,000 square feet in floor area and involving new construction, an addition, or alteration which results in over $2,000,000 in improvements as stated on the City's building permit application (including any tenant improvements covered by said building permit); or (2) any application which requires discretionary action by the City's Planning Commission relating to a commercial activity over 25,000 square feet including, but not limited to conditional use project authorization under San Francisco Planning Code section 309, and office development under San Francisco Planning Code Sections 320, et seq.

2. Private Significant Projects shall be entitled by Planning as set forth in the Delegation Agreement and will require the Project Sponsor to execute an Employment and Contracting Agreement with the Agency as a condition of approval. The construction workforce

goal, permanent / temporary workforce goal and the trainee hiring goal for professional services contracts all apply to this type of project.

3. In addition to the hiring program, Project Sponsors will be encouraged to subscribe **voluntarily** to the Agency's Equal Opportunity Program which include:

- o Small Business Enterprise Program
- o Nondiscrimination in Contracts and Equal Benefits Policy
- o Minimum Compensation Policy
- o Health Care Accountability Policy
- o Prevailing Wage Provisions (Labor Standards)

4. The Agency's Equal Opportunity Program is described briefly in Section X.

5. The mandatory programs and the programs which the Project Sponsor has voluntarily subscribed to, if any, will be incorporated into an Agreement and at that point become mandatory. The Agency's Executive Director will review and approve the Agreement on behalf of the Agency. Adherence to the Agreement shall be monitored by the Agency's Contract Compliance Division. Agency staff shall periodically report to the BVHP PAC and the Agency Commission on the compliance status of private Significant Projects.

C. *CityBuild and Public Improvements*

1. While not part of the Employment and Contracting Policy, the CityBuild workforce initiative applies to all public infrastructure and other public improvements projects that the City funds in the Project Area. CityBuild is an initiative of the Mayor's Office of Economic and Workforce Development, in partnership with other City departments, that utilizes City-sponsored construction as a vehicle to deliver training and employment opportunities to San Francisco residents. When the Agency is providing additional funding for a City funded public project, Agency staff shall work with CityBuild and the lead City department to consider implementation of elements of the Agency Employment and Contacting Policy as well as the Equal Opportunity Program.

2. The purpose of CityBuild is to ensure equal employment opportunities for San Francisco residents of all backgrounds and genders in construction workforce activities provided under City-sponsored construction projects. CityBuild establishes a goal of 50% participation for San Francisco residents in each trade for total hours worked on a project. CityBuild creates a single, responsible and accountable entity, Mayor's Office of Economic and Workforce Development, to direct construction employment and training efforts across projects and departments and develops trained, committed men and women to become the construction workforce of the future.

3. The Agency's Equal Opportunity Program is described briefly in Section X.

D. *Small Private Projects*

1. The Employment and Contracting Policy does not mandate local hiring or contracting for purely private projects that fall below the threshold of Significant Projects.

However, Project Sponsors will be encouraged to subscribe **voluntarily** to the following Agency's Equal Opportunity Programs and other policies which include:

- o BVHP Employment and Contracting Policy
- o Small Business Enterprise Policy
- o Nondiscrimination in Contracts and Equal Benefits Policy
- o Minimum Compensation Policy
- o Health Care Accountability Policy
- o Agency Prevailing Wage Policy (Labor Standards)

2. The Agency's Equal Opportunity Program is described briefly in Section X.

V. TERM

1. The term for meeting the obligations under the Employment and Contracting Policy ("**Term**") shall be as follows:

For Construction Workforce – From the date of the Employment and Contracting Agreement until two (2) years thereafter or the expiration of the building permit for the project, whichever is later.

For Trainee Hiring – From the date of the Employment and Contracting Agreement until two (2) years thereafter or the expiration of the building permit for the project, whichever is later.

For Permanent / Temporary Workforce – Up to ten (10) years from the date of the temporary certificate of occupancy per building , as determined through good faith negotiations between the Project Sponsor and the Agency based upon the anticipated number of permanent and/or temporary positions created by the Project.

VI. APPLICABLE COMMUNITY REDEVELOPMENT LAWS

1. The Employment and Contracting Policy is designed to further the objectives of the Community Redevelopment Law that redevelopment project areas support local businesses and lower-income BVHP Residents in the revitalization efforts of the Agency. Specifically, the Community Redevelopment law (which is codified in the California Health and Safety Code) states:

33422.1. Preference in Awarding Contracts to Local Businesses.

To the greatest extent feasible, contracts for work to be performed in connection with any redevelopment project shall be awarded to business concerns which are located in, or owned in the substantial part by persons residing in, the project area.

33422.3. Agency Specification of Workmen to be Lower-Income Project Area Residents for Certain Contracts.

To insure training and employment opportunities for lower-income project area residents, the agency may specify in the call for bids for any contract over one hundred thousand dollars ($100,000) for work to be performed in connection with any redevelopment project that project area

residents, if available, shall be employed for a specified percentage of each craft or type of workmen needed to execute the contract or work.

33423. Prevailing Wage Rates Required.

Before awarding any contract for such work to be done in a project, the agency shall ascertain the general prevailing rate of per diem wages in the locality in which the work is to be performed, for each craft or type of workman needed to execute the contract or work, and shall specify in the call for bids for the contract and in the contract such rate and the general prevailing rate for regular holiday and overtime work in the locality, for each craft or type of workman needed to execute the contract.

33424. Payment of Prevailing Wages.

The contractor to whom the contract is awarded and any subcontractor under him shall pay not less than the specified prevailing rate of wages to all workmen employed in the execution of the contract.

33425. Penalty for Noncompliance with Prevailing Wages.

As a penalty to the agency which awarded the contract, the contractor shall forfeit ten dollars ($10) for each calendar day or portion thereof for each workman paid less than the stipulated prevailing rates for any public work done under the contract by him or by any subcontractor under him. A stipulation to this effect shall be included in the contract.

33426. Record of Wages.

Each contractor and subcontractor shall keep an accurate record showing the name, occupation, and actual per diem wages paid to each workman employed by him in connection with the work. The record shall be kept open at all reasonable hours to the inspection of the agency.

VII. CONSTRUCTION WORKFORCE HIRES[2]

A. *Procedures For Construction Workforce Hires*

1. Compliance with the Policy

The Project Sponsor agrees and will require each Contractor and all subcontractors to use its good faith efforts to employ 50% of its construction workforce hires by trade and by hours from qualified BVHP Residents and then San Francisco Residents with First Consideration to BVHP Residents. Project Sponsors and Contractors will be deemed in compliance with this Employment and Contracting Policy by meeting or exceeding the goal or by taking the following steps in good faith towards compliance.

2. Execute Employment and Contracting Agreement

The Project Sponsor shall execute an Agreement which details the requirements of the Employment and Contracting Policy, as well as the Agency's Equal Opportunity Program, if

[2] The same procedure for construction workforce hires applies to all Project Sponsors regardless of whether the project is an Agency Action, private Significant Project, or small Private Project when the Project Sponsor has voluntarily subscribed to the Employment and Contracting Policy

applicable. The Project Sponsor shall incorporate by reference or attach the Agreement to its contract with the general contractor. The general contractor shall do the same in its contracts with its subcontractors. Thus, each Contractor will be obligated to comply with the terms of the Agreement. The Project Sponsor and/or Contractors shall retain the executed Agreements and make them available to the Agency Compliance Officer upon request.

3. **Submission of Labor Force Projections and Other Data**

The general contractor shall submit, to the extent available, labor force projections to the Compliance Officer within two (2) weeks of award.

4. **Submit Subcontractor Information Form**

The general contractor shall submit to the Compliance Officer the Subcontractor Information Forms, twenty-four (24) hours prior to the preconstruction meeting. The Subcontractor Information Forms are available from the Compliance Officer upon request.

5. **Preconstruction Meeting**

The general contractor shall hold a preconstruction meeting which shall be attended by the Compliance Officer, the CBO assigned to the proposed project, all prime contractor(s) and all subcontractor(s). The preconstruction meeting shall be scheduled between two (2) days and thirty (30) days prior to the start of construction at a time and place convenient to all attendees. The purpose of the meeting is to discuss: the hiring goals, workforce composition, role of the CBOs, worker referral process, certified payroll reporting, procedure for termination and replacement of workers covered by this policy and to explore any anticipated problems in complying with the Employment and Contracting Policy. All questions regarding how this Employment and Contracting Policy applies to the Project Sponsor, general contractor, subcontractors and consultants should be answered at this meeting. Failure to hold or attend at least one (1) preconstruction meeting will be a breach of this Employment and Contracting Policy that may result in the Agency ordering a suspension of work until the breach has been cured. Suspension under this provision is not subject to arbitration.

6. **Submit Construction Worker Request Form**

For the Term of the Agreement, each time the Project Sponsor or Contractor seeks to hire workers for the construction or rehabilitation of improvements, they must first submit, by fax, email or hand delivery, an executed construction worker request form to the CBO. Preferably this request will be submitted at least two (2) business days before the workers are needed. However, requests with less than two (2) business days notice will be accepted. The construction worker request form will indicate generally: the number of workers needed, duration needed, required skills or trade and date/time to report. The construction worker request form is available from the CBO or Compliance Officer upon request.

7. **Response from CBO**

The CBO shall respond, in writing, via fax, email or hand delivery to each request for construction workers. The response shall state that the CBO was able to satisfy the request in full, in part or was unable to satisfy the request. The CBOs shall look to their own referral lists, as well as confer with other CBOs and CityBuild in an attempt to find qualified BVHP Residents and San

Francisco Residents. If the CBO is able to satisfy the request in full or in part, it shall direct the qualified BVHP Resident(s) or San Francisco Resident(s) to report to the Contractor on the date and time indicated in the request. If the CBO is unable to satisfy the request, then the CBO shall send a fax or email stating that no qualified BVHP Residents or San Francisco Residents are currently available.

8. **Action by Contractor When Referrals Available**

The Project Sponsor or Contractor whose request has been satisfied in full or in part shall make the final determination of whether the BVHP Residents or San Francisco Residents are qualified for the positions and the ultimate hiring decision. The Agency strongly encourages the Contractor to hire the qualified BVHP Residents or San Francisco Residents referred by the CBO. However, if the Contractor finds the BVHP Residents or San Francisco Residents are not qualified, then the Contractor shall send the BVHP Residents or San Francisco Residents back to the CBO. Before the close of business on the same day, the Contractor shall fax or email a statement addressed to the CBO stating in detail the reason(s) the BVHP Residents or San Francisco Residents were not qualified or the reason(s) for not hiring the BVHP Residents or San Francisco Residents. The CBO shall, within one (1) business day of receipt of the fax or email, send new qualified BVHP Residents or San Francisco Residents that meet the legitimate qualifications set by the Contractor or alternatively, send a fax or email stating that no qualified BVHP Residents or San Francisco Residents are currently available.

9. **Action by Contractor When Referrals Unavailable**

If a Contractor receives a response from the CBO stating that no qualified BVHP Residents or San Francisco Residents are currently available, then the Contractor may hire the number of construction workers requested from the CBO, using its own recruiting methods, giving first consideration to BVHP Residents and then San Francisco Residents. Any additional new construction workforce hires (including the replacement of any terminated workers) must comply with this Employment and Contracting Policy, unless the Contractor has already met or exceeded the goal. The Contractor must keep a copy of the response it receives from the CBO as proof of compliance and submit a copy of each response received to the Agency Compliance Officer upon request.

10. **Action by Contractor When No Response From CBO**

If a Contractor has not received a response to its construction worker request from the CBO within two (2) business days, then the Contractor should immediate advise the Agency Compliance Officer by phone, fax or email. The Agency Compliance Officer or his/her designee shall cause a response to be sent to the Contractor within two (2) business days of being notified. If the Contractor does not receive a response from the CBO within four (4) business days (the original two (2) business days plus the additional two (2) business days), then the Contractor may hire the number of construction workers requested from the CBO, using its own recruiting methods, giving first consideration to BVHP Residents and then San Francisco Residents. Any construction workforce hires (including the replacement of any terminated workers) must comply with this Employment and Contracting Policy, unless the Contractor has already met or exceeded the goal. The Contractor must keep a copy of the response it receives from the CBO as proof of compliance and submit a copy of each response received to the Agency Compliance Officer upon request. This Employment and Contracting Policy is intended to provide qualified BVHP and San Francisco

Residents with employment opportunities without causing undue delay in hiring needed construction workers.

11. **Action by Contractor When No Response From Union**

The Contractor should immediately advise the Agency Compliance Officer by phone, fax or email when the Contractor has sent a qualified BVHP Resident or San Francisco Resident to a union hall for referral in accordance with a collective bargaining agreement and the union did not refer the qualified BVHP or San Francisco Resident back for employment or when the union referral process impedes the Contractor's ability to meet its obligations under this policy. Conflicts between this Employment and Contracting Policy and any collective bargaining agreements will be resolved pursuant to Section XI (4).

12. **Hiring Apprentices**

A Contractor may meet part of the Construction Workforce Goal by hiring apprentices. However, hiring an apprentice does not satisfy or waive the trainee hiring obligation, if any, for design professionals. Unless otherwise permitted by law, apprentices must be trained pursuant to training programs approved by the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training or the California Department of Industrial Relations, Division of Apprenticeship Standards. Credit towards compliance will only be given for paid apprentices actually working on the project. No credit is available for apprentices while receiving class room training. Under no circumstances shall the ratio of apprentices to journeymen in a particular trade or craft exceed 1:5.

13. **Termination and Replacement of Referrals**

If at any time it becomes necessary to terminate for cause a construction worker who was hired under this Employment and Contracting Policy, the Contractor shall notify the CBO in writing via fax or email and submit a report of termination pursuant to Section VII (B)(4). If the Contractor intends to fill the vacant position, then the Contractor shall follow the process set forth in this Employment and Contracting Policy beginning at Section VII (A)(6).

B. Reporting Requirements For Construction Workforce

1. **Submission of Certified Payroll Reports**

Each Contractor subject to this Employment and Contracting Policy shall submit to the Agency a certified payroll report for the preceding work week on each of its employees. The Project Sponsor is ultimately responsible for the submission of these reports by the Contractors. The certified payroll report is due to the Agency by noon each Wednesday. To facilitate compliance, the Agency uses the online LCP Tracker system (www.lcptracker.com) for submission of certified payroll reports. This system is available at no cost to the Contractor and LCP Tracker is compatible with all major computer payroll systems. Training and educational materials for LCP Tracker are available at no cost online and through the Compliance Officer. Contractors are required to report certified payroll using the LCP Tracker system at www.lcptracker.com. However, a waiver shall be granted pursuant to Section XI (10) to any Contractors who do not have a computer, online access or who use a computer payroll system that is incompatible with LCP Tracker.

2. **Contents of Certified Payroll Reports**

If certified payroll records are submitted via the LCP Tracker system, the required data points are already listed. If certified payroll records are submitted in paper form, the records shall be organized in an easily understandable format and contain **all** the following information: the name, address, telephone number, residency (Bayview Hunters Point, another redevelopment project area, San Francisco or other), last four (4) digits of the worker's Social Security number[3], gender, ethnicity (see codes in Section VII (B)(8)), construction trade (see codes in Section VII (B)(8)), classification (e.g., mechanic, apprentice, trainee, helper or laborer), union affiliation (if any), dates of changes in status, daily and weekly number of hours worked, hourly wage rates (including rates of contributions for costs anticipated for fringe benefits or cash equivalents thereof), deductions made and actual wages paid. The foregoing notwithstanding, the reporting of hourly wage rates, deductions and actual wages paid are not required for Significant Projects unless the Project Sponsor has voluntarily subscribed to the Agency's Prevailing Wage Policy or the payment of prevailing wages is otherwise required by law. To the degree that existing certified payroll records satisfy these requirements, the Contractor shall not be required to maintain separate records.

3. **Additional Information**

In order to prevent unlawful discrimination in the selection, hiring and termination of employees on the basis of race, ethnicity, gender or any other basis prohibited by law and to identify and correct such unlawful practices, the Agency will monitor and collect information on the ethnicity and gender of each construction worker and apprentice. If an identifiable pattern of apparent discrimination is revealed by this additional information, it will be treated as a breach of this Employment and Contracting Policy and may be addressed as set forth in Section XII, Arbitration of Disputes.

4. **Report on Terminations**

In the event a BVHP Resident or San Francisco Resident hired pursuant to this Employment and Contracting Policy is terminated for cause, the responsible Contractor shall within two (2) days fax or email a termination report to the CBO with a copy to the Agency Compliance Officer stating in detail: (1) the name of the worker(s) terminated; (2) his/her job title and duties; (3) the reasons and circumstances leading to the termination(s); (4) whether the Contractor replaced the construction worker(s); and (5) whether the replacement worker(s) were BVHP Resident(s) or San Francisco Resident(s).

5. **Inspection of Records**

The Project Sponsor and each Contractor shall make the records required under this Employment and Contracting Policy available for inspection or copying by authorized representatives of the Agency, and shall permit such representatives to interview construction workers and apprentices during working hours on the job.

6. **Failure to Submit Reports**

[3] Note. The Project Sponsor is required to provide complete Social Security numbers upon the request of the Agency.

If a Contractor fails or refuses to provide the reports as required it will be treated as a breach of this Employment and Contracting Policy and may be addressed as set forth in Section XII, Arbitration of Disputes.

7. **Submission of Good Faith Effort Documentation**

If the Project Sponsor's or Contractor's good faith efforts are at issue, the Contractor shall provide the Agency with the documentation of its efforts to comply with this Employment and Contracting Policy and the Agreement. The Project Sponsor or Contractor must maintain for the duration of the Term, a current file of the names, addresses and telephone numbers of each BVHP Resident or San Francisco Resident applicant referral whether self referral, union referral or CBO referral and what action was taken with respect to each such individual.

8. **Coding Certified Payrolls**

Each Contractor shall include, on the weekly payroll submissions, the code designating each construction worker's and apprentice's craft, skill level, protected class status and domicile in accordance with the following tables:

CRAFT CODE	DESCRIPTION	CRAFT CODE	DESCRIPTION
1	Electrician	22	Carpet, Linoleum and Vinyl Tile Layer
2	Iron Worker	23	Elevator Constructor
3	Sheet Metal Worker	24	Cement Mason
4	Asbestos Worker/ Heat & Frost Insulator	25	Laborer or Allied Worker
5	Plumber, Pipe or Steamfitter	26	Glazier & Glassmaker
6	Refrigeration	27	Painter, Paperhanger, Taper
7	Boilermaker	28	Sign Installer
8	Sprinkler Fitter	29	Scrapper
9	Brick, Caulk, Marble, Point, Terrazzo		
10	Hod Carrier		
11	Terrazzo Finisher	32	Low Voltage Electrician
12	Plasterer	33	Towboat Operator-Marine Engineer
13	Lather	34	Towboat Deckhand-Inland Boat worker
14	Carpenter or Drywall Hanger	35	Owner/Operator - Truck
15	Mill Worker or Cabinetmaker	36	Owner/Operator - Heavy Equipment
16	Millwright	37	Upholsterer
17	Roofer	38	Teamster, Construction
18	Pile Driver	39	Janitor
19	Surveyor/Operating Engineer	40	Environmental Control System Installer
20	Tile (Ceramic)/Marble Finisher	41	Window Cleaner
21	Tile (Ceramic)Setter	89	Security Guard

ETHNICITY CODE	DESCRIPTION
B	African American
L	Latino
I	American Indian
C	Caucasian/White
A	Asian
PI	Pacific Islander
F	Female (all females regardless of ethnicity)

PROJECT AREA CODE	DESCRIPTION
BIT	Bayview Industrial Triangle
BVHP	Bayview Hunters Point
HPSY	Hunters Point Shipyard
IB	India Basin Industrial Park
GG	Golden Gateway
MBN	Mission Bay (North)
MBS	Mission Bay (South)
MM	Mid-Market
~~RPSB~~	~~Rincon Point/South Beach~~
SF	San Francisco (not in any redevelopment project areas)
SOM	South of Market
TB	Transbay
VV	Visitacion Valley
WA	Western Addition Area A-2
YBC	Yerba Buena Center

VIII. TRAINEE HIRES[4]

A. *Procedures For Trainee Hires*

1. Compliance with the Policy

For architects, engineers and other design professionals only, there is a trainee hiring goal as set forth in Section II (C) above. These design professionals will be deemed in compliance with this Employment and Contracting Policy by meeting or exceeding the trainee hiring goal or by take the following steps in good faith towards compliance.

2. Execute Employment and Contracting Agreement

The Project Sponsor shall execute an Agreement which details the requirements of the Employment and Contracting Policy, as well as the Agency's Equal Opportunity Program, if applicable. The Project Sponsor shall incorporate by reference or attach the Agreement to its contract with the architects, engineers and other design professionals. Thus, each design professional will be obligated to comply with the terms of the Agreement. The Project Sponsor

[4] The same procedure for trainee hires applies to all design professionals regardless of whether the project is an Agency Action, private Significant Project, or small Private Project when the Project Sponsor has voluntarily subscribed to the Employment and Contracting Policy

and/or the design professionals shall retain the executed Agreements and make them available to the Agency Compliance Officer upon request.

3. **Contact Educational Institutions**

The Agency works with the City, as well as educational institutional within the City, to provide a pool of student referrals to assist design professionals in meeting the trainee hiring goal. Within thirty (30) days of execution of the Agreement, the Agency Compliance Officer shall contact each design professionals and provide it with the name, address and telephone number of a point of contact at the City, **City College or other educational institutions in the Bay Area** who have a current list of students who are BVHP Residents or San Francisco Residents and are available for hire as trainees. Each design professional shall call the City or educational institution(s) and request referrals for the required trainee positions. The request will indicate generally: (1) the number of trainees sought; (2) the required skills set (keeping in mind that these are trainee positions); (3) a brief description of job duties; (4) the duration of the trainee period; and (5) any other information that would be helpful or necessary for the educational institution to make the referral. The minimum duration of assignment is part-time for one semester. However, design professionals are strongly encouraged to offer longer trainee employment periods to allow a more meaningful learning experience. (For example, a half-time or full-time assignment over the summer.) Although the initial contact shall be made by phone, the educational institution(s) may require the design professionals to send a confirming letter or fill out a form which the educational institution will provide. Each design professional is required to timely provide all of the information requested by the City or educational institution(s) in order to get the referrals.

4. **Response from Educational Institutions**

Each educational institution may have a different way of referring applicants, such as: sending resumes directly to the design professional; having the applicant contact the design professional by phone; require design professionals to conduct on-campus interviews; or some other method. The timing and method of the response will normally have be discussed with the design professional during the initial phone request. The design professional is required to follow the process set by the educational institution(s) in order to get the referrals.

5. **Action by Design Professionals When Referrals Available**

The design professional shall give First Consideration to BVHP Residents and then to San Francisco Residents referred by the educational institution(s). The design professional shall interview each applicant prior to making the decision to hire or not to hire. The design professional shall make the final determination whether the applicant is qualified for the trainee position and the ultimate hiring decision. The Agency strongly encourages the design professional to hire a qualified BVHP Resident or San Francisco Resident referred by the educational institution(s). The design professional shall notify each BVHP Resident and San Francisco Resident interviewed and the CBO in writing of the hiring decision.

6. **Action by Design Professionals When Referrals Unavailable**

If after contacting all of the educational institutions provided by the Agency Compliance Officer, the design professional is informed that no qualified BVHP residents or San Francisco Residents are currently available, then the design professional should wait thirty (30) days and contact the educational institutions a second time to inquire whether qualified San Francisco

Residents are currently available for hire as trainees. If no qualified San Francisco Residents are currently available after the second request, then the design professional has fulfilled its obligation under this Section VIII, provided that the design professional has acted in good faith. The design professional must retain its file on all of the steps it took to comply with this policy and submit a copy of its file to the Agency Compliance Officer upon request.

7. **Action by Design Professional When No Response From Educational Institutions**

If a design professional has not received a response to its request for referrals from any of the educational institutions within five (5) business days after the design professional has fully complied with the procedures, if any, set by the educational institution(s) for obtaining referrals; then the design professional should immediately advise the Agency Compliance Officer by phone, fax or email. The Agency Compliance Officer or his/her designee shall cause the educational institution(s) to respond to the design professional within five (5) business days of the Agency Compliance Officer being notified. If the design professional still has not received a response from the educational institution(s) after this additional five (5) business day period has run, then the design professional has fulfilled its obligation under this Section VIII, provided that the design professional has acted in good faith. Each design professional must retain its file on all of the steps it took to comply with this policy and submit a copy of its file to the Agency Compliance Officer upon request.

8. **Termination of Trainee for Cause**

If at any time during the Term, it becomes necessary to terminate for cause a trainee who was hired under this Employment and Contracting Policy and the design professional has not met the minimum duration requirements under this policy, then the design professional shall hire a new trainee by following the process set forth in Section VIII(A)(3) above.

B. Reporting Requirements For Trainee Hires

1. **Annual Reporting**

Annually, during the Term of the Agreement or the term of the design professional's contract with the Project Sponsor, whichever is less, the Employer shall fax or email a report to the Agency Compliance Officer stating in detail: (1) the names of the BVHP Resident(s) or San Francisco Resident(s) interviewed in the past year for trainee positions; (2) the date(s) of each interview; (3) the reasons for not hiring the BVHP Residents or San Francisco Residents interviewed; (4) the name, address, gender and racial/ethic background of the successful candidate for the trainee position; (5) whether the successful candidate is a BVHP or San Francisco Resident; (6) the maximum number of trainees the Employer has had within the last calendar year; and (7) the number of BVHP Residents and San Francisco Residents hired within the last calendar year.

2. **Report on Terminations**

In the event a BVHP Resident or San Francisco Resident hired pursuant to this Employment and Contracting Policy is terminated for cause, the responsible design professional shall within five (5) days fax or email a termination report to the Agency Compliance Officer stating in detail: (1) the name of the trainee(s) terminated; (2) his/her job title and duties; (3) the reasons and

circumstances leading to the termination(s); (4) whether the design professional replaced the trainee(s); and (5) whether the new trainee(s) are BVHP Resident(s) or San Francisco Resident(s).

IX. PERMANENT / TEMPORARY WORKFORCE POLICY[5]

A. *Permanent / Temporary Workforce Hires*

1. Policy Statement

Due to the wide variety of development, both public and private, that occurs in the City and is anticipated to occur in the Project Area as redevelopment commences, it is difficult to develop a single hiring requirement or procedure that is appropriate in all situations. The Agency seeks to ensure that BVHP Residents have the opportunity to share in the permanent and temporary jobs that come from redevelopment in the Project Area. At the same time, the Agency seeks to assist Employers in meeting workforce demands for Significant Projects within the Project Area. The Agency has adopted a flexible approach to achieve these goals. The Employment and Contracting Policy sets an overall goal of 50% for permanent / temporary workforce hires but allows flexibility to tailor the remaining key terms of the Agreement to fit the specific project.

2. Compliance with the Policy

The Project Sponsor agrees and will require each Employer to use its good faith efforts to employ 50% of its permanent / temporary workforce from qualified BVHP Residents and then San Francisco Residents with First Consideration to BVHP Residents. Project Sponsors and Employers will be deemed in compliance with this Employment and Contracting Policy by meeting or exceeding the goal or by documenting the good faith efforts as set forth in the Agreement.

3. Negotiate and Execute Employment and Contracting Agreement

The Project Sponsor shall negotiate in good faith with the Agency's Contract Compliance staff to reach agreement on: (a) the Term of the Agreement; (b) the job titles or type of positions subject to this hiring obligation; (c) procedures for fulfilling the hiring obligation or meeting the good faith efforts; and (d) reporting requirements. These negotiations will be based upon the anticipated number of permanent and/or temporary positions created by the project. The executed Agreement will set forth the mutually agreed upon details, as well as the requirements of the Agency's Equal Opportunity Program, if applicable. The Project Sponsor shall incorporate by reference or attach the Agreement to its contract with the Employer. The Project Sponsor and/or Employer shall retain the executed Agreement and make it available to the Agency Compliance Officer upon request.

4. Review of Permanent / Temporary Workforce Policy

Working with the PAC, the CBOs and the City's workforce development systems, the Agency will review the Permanent / Temporary Workforce Policy and will revise the procedures

[5] The same procedure for permanent / temporary workforce hires applies to all Project Sponsors regardless of whether the project is an Agency Action, private Significant Project, or small Private Project when the Project Sponsor has voluntarily subscribed to the Employment and Contracting Policy.

and goals as necessary to ensure that BVHP and San Francisco Residents are given First Consideration for these job opportunities.

X. AGENCY EQUAL OPPORTUNITY PROGRAM

A. *Compliance with Agency's Equal Opportunity Program*

Compliance with some or all of the Agency's Equal Opportunity Program may be mandatory or voluntary depending on whether the development is an Agency Action Project, private Significant Project, CityBuild / public improvement project or a small Private Project. The components of the Agency's Equal Opportunity Program are described briefly below for reference. The full policies and procedures associated with these programs are available from the Agency's Contract Compliance Division.

1. Small Business Enterprise Program

The Agency's Small Business Enterprise ("**SBE**") Program was adopted by Agency Resolution No. 133-2004 on November 16, 2004, as part of the Agency's Interim Purchasing Policy and Procedures, and may be amended from time to time. The SBE Program provides for first consideration in awarding subcontracts and sub-consulting opportunities to Agency certified local small business enterprises. The SBE Program is designed to help ensure that SBEs have a fair opportunity to compete for and participate in contracts related to Agency- Action Projects and other projects that are subject to the SBE Program. SBEs are divided into three groups: (1) Project Area SBEs, (2) Local SBEs (outside an Agency project or survey area, but within San Francisco), and (3) all other SBEs (outside of San Francisco). If subject to the SBE Program, the Project Sponsor and its Contractors and Employers must make good faith efforts to achieve the goal of 50% SBE participation for professional / personal services, and construction contracts. The SBE Program sets a contracting goal and thus is different from the Employment and Contracting Policy which sets hiring goals. The Project Sponsor's obligations under the SBE Program will be incorporated into a SBE Agreement ("**SBE Agreement**"). The Agency Executive Director will review and approve the SBE Agreement on behalf of the Agency. The Agency's Compliance Officer will ensure compliance with the requirements and will report periodically to the BVHP PAC and the Agency Commission on compliance matters.

2. Nondiscrimination in Contracts and Equal Benefits Policy

The Agency's Nondiscrimination in Contracts and Equal Benefits Policy was adopted by Agency Resolution No. 175-97 on September 9, 1997 and may be amended from time to time. The Nondiscrimination in Contracts and Equal Benefits Policy prohibits discrimination in contracting and which includes a prohibition on discrimination in providing benefits between employees with spouses and employees with domestic partners. This policy requires the Project Sponsor to agree not to discriminate against or segregate any person, or group of persons, on account of race, color, religion, creed, national origin or ancestry, sex, gender identity, age, marital or domestic partner status, sexual orientation or disability (including HIV or AIDS status). This policy also requires that employee benefits be equally available to domestic partners as they are to spouses.

3. Minimum Compensation Policy and Health Care Accountability Policies

The Agency's Minimum Compensation Policy ("MCP") and Health Care Accountability Policy ("HCAP") were adopted by Agency Resolution 168-2001 on September 25, 2001 and may be amended from time to time. MCP requires that all "Covered Employees," as defined therein, receive a minimum level of compensation. HCAP requires offering health plan benefits to Covered Employees or to make payments to the City and County of San Francisco's Department of Public Health, or to participate in a health benefits program developed by the City and County of San Francisco's Director of Health.

4. Agency's Prevailing Wage Policy

The Agency's Prevailing Wage Policy (Labor Standards) was adopted by Agency Resolution No. 327-85 on November 12, 1985 and may be amended from time to time. The Agency's Prevailing Wage Policy applies to projects: (i) covered under Labor Code Section 1720 *et seq.*, (ii) that are Agency-Action Projects) or (iii) for which the Project Sponsor has voluntarily subscribed to this requirement. The Agency's Prevailing Wage Policy references the State's Labor Standards and the prevailing wage, benefits, eligibility, etc. are all calculated using the State's standards. In many instances, both the California Labor Code and the Agency's Prevailing Wage Policy will apply.

XI. EMPLOYMENT AND CONTRACTING POLICY - ADDITIONAL PROVISIONS

Project Sponsors, Contractors and Employers that are subject to this Employment and Contracting Policy (including those who have voluntarily subscribed to this policy) are subject to the following additional provisions.

1. Designate a Point of Contact

Each Project Sponsor, Contractor and Employer shall designate a responsible representative, manager or agent to monitor all employment-related activity under this Employment and Contracting Policy and to be the primary point of contact for issues arising under this policy.

2. No Retaliation

No person hired pursuant to this policy shall be discharged or in any other manner discriminated against by the Project Sponsor, Contractor or Employer because such person has filed any complaint or instituted or caused to be instituted any proceeding under or relating to enforcement of this Employment and Contracting Policy.

3. No Discrimination

There shall be no discrimination against or segregation of any person, or group of persons, on account of race, color, religion, creed, national origin or ancestry, sex, gender identity, age, marital or domestic partner status, sexual orientation or disability (including HIV or AIDS status). The Project Sponsor, Contractors and Employers will ensure that applicants are employed, and that persons are treated during employment, without regard to their race, color, religion, creed, national origin or ancestry, sex, gender identity, age, marital or domestic partner status, sexual orientation or disability (including HIV or AIDS status) or other protected class status. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or

recruitment advertising; layoff or termination; rates of pay or other forms of compensation; selection for training, including apprenticeship; and provision of any services or accommodations.

4. **Collective Bargaining Exclusion**

Notwithstanding anything to the contrary in this Employment and Contracting Policy, if an Agreement conflicts with an existing labor agreement or collective bargaining agreement to which a Project Sponsor, Contractor or Employer is a party, the labor agreement or collective bargaining agreement shall prevail. Nothing in this Employment and Contracting Policy shall be interpreted to interfere with or prohibit existing labor agreements or collective bargaining agreements. However, the Project Sponsor, Contractor or Employer will still be obligated to provide workforce needs information to the CBO prior to hiring and the Employer will be obligated to make good faith efforts to comply with the requirements of its Employment and Contracting Policy Agreement that do not conflict with the collective bargaining agreement.

5. **No Conflict with State or Federal Law**

This Employment and Contracting Policy is to be implemented in a manner that does not conflict with applicable federal or state laws.

6. **Existing Workforce**

Nothing in this Employment and Contracting Policy shall be interpreted in a manner that would require termination of the Project Sponsor's, Contractor's or Employer's existing workers and employees.

7. **Use of Debarred Entities Prohibited**

Neither the Project Sponsor, Contractor nor Employer shall enter into any subcontract with any person or firm that the Project Sponsor, Contractor or Employer knows or should have known is debarred from federal, state or local government contracts.

8. **Incorporation**

Whenever the Project Sponsor, Contractor or Employer subcontracts a portion of the work, it shall set forth verbatim and make binding on each subcontractor the provisions of this Employment and Contracting Policy. That subcontract shall then be deemed a Contractor or Employer for the purposes of this Employment and Contracting Policy and shall be subject to all of the requirements hereto.

9. **Severability**

If any part or provision of this Employment and Contracting Policy or the application thereof to any person or circumstance is held to be invalid, then the remainder of this Employment and Contracting Policy, including the application of such part or provision to other persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, the provisions of this Employment and Contracting Policy are severable.

10. **Waiver**

Any of the Employment and Contracting Policy requirements may be waived by the Agency's Executive Director, if he/she determines for good cause shown that a specific requirement

is not relevant to the particular situation, would cause undue hardship, or that an alternative approach would better meet the goals of the Employment and Contracting Policy.

XII. ARBITRATION OF DISPUTES

1. Arbitration by AAA

Any dispute involving the alleged breach or enforcement of an Employment and Contracting Policy Agreement, including but not limited to disputes over qualification of referrals; whether termination was for good cause; and whether the Project Sponsor, Contractor or Employer has complied with this Employment and Contracting Policy Agreement in good faith shall be submitted to arbitration. The arbitration shall be submitted to the American Arbitration Association, San Francisco, California office ("**AAA**") which will use the Commercial Rules of the AAA then applicable, but subject to the further revisions thereof. If there is a conflict between the Commercial Rules of the AAA and the arbitration provisions in this Employment and Contracting Policy, this Employment and Contracting Policy shall govern. The arbitration shall take place in the City and County of San Francisco.

2. Demand for Arbitration

The party seeking arbitration shall make a written demand for arbitration ("**Demand for Arbitration**"). The Demand for Arbitration shall contain at a minimum: (1) a cover letter demanding arbitration under this provision and identifying the entities believed to be involved in the dispute; (2) a copy of the notice of default, if any, sent from one party to the other; and (3) any written response to the notice of default.

3. Parties' Participation

The Agency, Project Sponsor, Contractor, Employer and all persons or entities affected by the dispute shall be made Arbitration Parties. Any such person or entity not made an Arbitration Party in the Demand for Arbitration may intervene as an Arbitration Party and in turn may name any other such affected person or entity as an Arbitration Party.

4. Agency Request to AAA

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

5. Selection of Arbitrator

One arbitrator shall arbitrate the dispute. The arbitrator shall be selected from the panel of arbitrators from AAA by the Arbitration Parties in accordance with the AAA rules. The parties shall act diligently in this regard. If the Arbitration Parties fail to agree on an arbitrator within seven (7) business days from the receipt of the panel, AAA shall appoint the arbitrator. A condition to the selection of any arbitrator shall be the arbitrator's agreement to: (i) submit to all Arbitration Parties the disclosure statement required under California Code of Civil Procedure Section 1281.9; and (ii) render a decision within thirty (30) days from the date of the conclusion of the arbitration hearing.

6. **Setting of Arbitration Hearing**

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

7. **Discovery**

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

8. **California Law Applies**

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

9. **Arbitration Remedies and Sanctions**

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

a. Order specific, reasonable actions and procedures, in the form of a temporary restraining order, preliminary injunction or permanent injunction, to mitigate the effects of the non-compliance and/or to bring any non-compliant Arbitration Party into compliance with the Employment and Contracting Policy Agreement.

b. Require any Arbitration Party to refrain from entering into new contracts related to work covered by the Employment and Contracting Policy Agreement, or from granting extensions or other modifications to existing contracts related to services covered by the Employment and Contracting Policy Agreement, other than those minor modifications or extensions necessary to enable compliance with the Employment and Contracting Policy Agreement.

c. Direct any Arbitration Party to cancel, terminate, suspend or cause to be cancelled, terminated or suspended, any contract or portion(s) thereof for failure of any Arbitration Party to comply with any of the requirements in the Employment and Contracting Policy Agreement. Contracts may be continued upon the condition that a program for future compliance is approved by the Agency.

d. If any Arbitration Party is found to be in willful breach of its obligations hereunder, the arbitrator may impose a monetary sanction not to exceed Fifty Thousand Dollars ($50,000.00) or ten percent (10%) of the base amount of the breaching party's contract, whichever is less, for each such willful breach; provided that, in determining the amount of any monetary sanction to be assessed, the arbitrator shall consider the financial capacity of the breaching party. No monetary sanction shall be imposed pursuant to this paragraph for the first willful breach of the Employment and Contracting Policy Agreement unless the breaching party has failed to cure after being provided written notice and a reasonable opportunity to cure. Monetary sanctions may be imposed for subsequent willful breaches by any Arbitration Party

whether or not the breach is subsequently cured. For purposes of this paragraph, "willful breach" means a knowing and intentional breach.

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

10. **Arbitrator's Decision**

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

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

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

12. **Arbitrator Lacks Power to Modify**

Except as expressly provided above in this Section XII, the arbitrator shall have no power to add to, subtract from, disregard, modify or otherwise alter the terms of the Employment and Contracting Policy Agreement or to negotiate new agreements or provisions between the parties.

13. **Jurisdiction/Entry of Judgment**

The inquiry of the arbitrator shall be restricted to the particular controversy which gave rise to the Demand for Arbitration. A decision of the arbitrator issued hereunder shall be final and binding upon all Arbitration Parties. The prevailing Arbitration Party (ies) shall be entitled to reimbursement for the arbitrator's fees and related costs of arbitration. Each Arbitration Party shall pay its own attorneys' fees, provided, however, that attorneys' fees may be awarded to the prevailing party if the arbitrator finds that the arbitration action was instituted, litigated, or defended in bad faith. Judgment upon the arbitrator's decision may be entered in any court of competent jurisdiction.

BVHP EMPLOYMENT AND CONTRACTING POLICY MATRIX

	Agency-Action Projects	Private Significant Projects	CityBuild & Public Improvements	Small Private Projects
BVHP Employment and Contracting Policy	Mandatory[6]	Mandatory	Voluntary but Encouraged	Voluntary but Encouraged
Small Business Enterprise Policy	Mandatory	Voluntary but Encouraged[7]	Voluntary but Encouraged	Voluntary but Encouraged
Nondiscrimination and Equal Benefits Policy	Mandatory	Voluntary but Encouraged	Voluntary but Encouraged	Voluntary but Encouraged
Minimum Compensation Policy	Mandatory	Voluntary but Encouraged	Voluntary but Encouraged	Voluntary but Encouraged
Healthcare Accountability Policy	Mandatory	Voluntary but Encouraged	Voluntary but Encouraged	Voluntary but Encouraged
Agency's Prevailing Wage Policy	Mandatory	Voluntary but Encouraged	Voluntary but Encouraged[8]	Voluntary but Encouraged

[6] Mandatory means that the Project Sponsor **is required** to comply with the Agency's policy. However, each Agency policy has its own threshold and compliance requirements. For example, the Agency's Minimum Compensation Policy ("MCP") will apply to all Agency-Action projects but MCP has no compliance requirements for Project Sponsors with less than 25 employees.

[7] Voluntary but Encouraged means that the Project Sponsor **is not required** to comply with the Agency's policy as a condition to developing the project. However, the Agency's Contract Compliance Department will encourage the Project Sponsor to subscribe voluntarily to these Agency policies. If the Project Sponsor voluntarily agrees to comply with one or more Agency's policies, then those policies will be added as a condition to the building permit and at that point will become mandatory.

[8] *Public Improvements and public/private project receiving City funds are subject to the State of California's prevailing wage requirements per California Labor Code Section 1720 et seq.*

EXHIBIT H-1

Form of Interagency Memorandum of Understanding
Hunters View Contract Compliance Workforce Development & Training

INTERAGENCY MEMORANDUM OF UNDERSTANDING

BETWEEN

SAN FRANCISCO REDEVELOPMENT AGENCY
SAN FRANCISCO HOUSING AUTHORITY
MAYOR'S OFFICE OF HOUSING
MAYOR'S OFFICE OF COMMUNITY INVESTMENT/COMMUNITIES OF OPPORTUNITY
and
DEPARTMENT OF ECONOMIC & WORKFORCE DEVELOPMENT

FOR THE
HUNTERS VIEW DEVELOPMENT PROJECT

CONTRACT/WORKFORCE COMPLIANCE
WORKFORCE DEVELOPMENT & TRAINING

SECTION I. PURPOSE

This Inter-Agency Memorandum of Understanding (MOU) is between the San Francisco Redevelopment Agency (SFRA), San Francisco Housing Authority (SFHA), Mayor's Office of Housing (MOH), Mayor's Office of Community Investment/ "Communities Of Opportunity" (MOCI/COO) and Department of Economic and Workforce Development (DEWD), collectively referred to as the "MOU members."

The primary purpose of this MOU is to clarify and define the roles, responsibilities, goals and procedures of each of the aforementioned parties in relation to the City's "community benefit" program for the Hunters View Development Project. This "community benefit" program is designed to institute the mechanisms by which the Project's developer, Hunters View Associates L.P. (Developer), will demonstrate the requisite good faith efforts necessary to achieve the specified goals for the project. The specific programs to be enforced or executed are:

1. Small Business Enterprise Program
2. Bayview Hunters Point Employment & Contracting Policy*
3. Housing and Urban Development Act of 1968
4. San Francisco Housing Authority Resolution No. 4967

(*) These SFRA programs/goals are amended to incorporate SFHA goals and define how the developer and/or contractors/subcontractors can demonstrate their good faith efforts.

SECTION II. AGREEMENTS AMONG PARTICIPATING PARTIES

The San Francisco Redevelopment Agency (SFRA), San Francisco Housing Authority (SFHA), Mayor's Office of Housing (MOH), Mayor's Office of Community Investment/ "Communities Of Opportunity" (MOCI/COO), and Department of Economic and Workforce Development (DEWD) all agree as follows.

1. DEVELOPER COMPLIANCE

Compliance by the Developer with all the requirements contained in this MOU will relieve the Developer from all other workforce requirements, programs and policies of the MOU members.

2. CONSTRUCTION WORKFORCE

a. The rules of the San Francisco Redevelopment Agency's Bayview Hunters Point Employment and Contracting Policy (BVHP ECP) governs construction workforce hiring and placement, with a residency modification to accommodate provisions in the Housing and Urban Development (HUD) Act of 1968, Section 3 and the San Francisco Housing Authority's Resolution Number 4967. These modifications are detailed in Section III of this MOU.
b. SFRA will monitor and enforce the BVHP ECP.
c. SFRA will provide access to all MOU members through an electronic certified payroll system (e.g., Elations).
d. DEWD/CityBuild will serve as the lead and initial point of contact between the Bayview Hunters Point community and construction (sub)contractors for construction worker placement.
e. Contractor and/or subcontractors will also submit to SFRA copies of all correspondences to/from CityBuild, SFHA, MOCI/COO and/or trade unions requesting resident workers and will attach these documents to their Certified Payroll Reports.

3. PROFESSIONAL SERVICES TRAINEE REQUIREMENTS

a. The rules of the San Francisco Redevelopment Agency's Bayview Hunters Point Employment and Contracting Policy (BVHP ECP) governs trainee hiring and placement, with a residency modification to accommodate provisions in the Housing and Urban Development (HUD) Act of 1968, Section 3 and the San Francisco Housing Authority's Resolution Number 4967. These modifications are detailed in Section III of this MOU.
b. SFRA will monitor and enforce the BVHP ECP.
c. MOCI/COO, in cooperation with DEWD, will serve as the lead and initial point of contact between the Bayview Hunters Point community and professional services (sub)consultants for trainee placement.

4. **PERMANENT WORKFORCE**

a. The rules of the San Francisco Redevelopment Agency's Bayview Hunters Point Employment and Contracting Policy (BVHP ECP) governs permanent workforce hiring and placement, with a residency modification to accommodate provisions in the Housing and Urban Development (HUD) Act of 1968, Section 3 and the San Francisco Housing Authority's Resolution Number 4967. These modifications are detailed in Section III of this MOU.

b. According to HUD, Section 3, at least 30 percent of the permanent, full-time employees hired should be Section 3 residents. After a Section 3 employee has been employed for 3 years, the employee may no longer be counted as a Section 3 employee to meet the 30 percent requirement. This requires recipients to continue hiring Section 3 residents when employment opportunities are available.

c. SFRA will monitor and enforce the BVHP ECP.

d. DEWD, in cooperation with MOCI/COO, will serve as the lead and initial point of contact between the Bayview Hunters Point community and businesses for permanent workforce placement.

e. For permanent workforce tracking, the developer and/or retail tenants will submit a permanent workforce report provided by SFRA. The developer and/or retail tenants will submit to SFRA copies of all correspondence to/from SFHA, COO or DEWD requesting assistance to ensure that permanent employment placement occurs according to the Section III priority.

SECTION III. HUD REQUIREMENTS AND SFRA BVHP ECP MODIFICATIONS

1. Construction Workforce Hiring Goals

San Francisco Housing Authority Goal: at least 25 percent of all construction workforce hours going toward Public Housing Residents as defined in San Francisco Housing Authority's Resolution number 4967 requirement. This goal is not additional; the hiring of Public Housing Residents counts toward the goal for participation of San Francisco residents.

San Francisco Redevelopment Agency Goal: The Goal for participation of San Francisco residents in each trade: 50 percent of the total hours worked in each trade.

2. Permanent Workforce Hiring Goals

The Owner and the on-site retail tenants' permanent workforce requirements are outlined below.

a. The rules of the San Francisco Redevelopment Agency's Bayview Hunters Point Employment and Contracting Policy (BVHP ECP) governs permanent workforce hiring and placement, with a residency modification to accommodate provisions in the Housing and Urban Development (HUD) Act of 1968, Section 3 and the San Francisco Housing Authority's Resolution Number 4967. These modifications are detailed in Section III of this MOU.

b. According to HUD, Section 3, at least 30 percent of the permanent, full-time employees hired should be Section 3 residents. After a Section 3 employee has been employed for 3 years, the employee may no longer be counted as a Section 3 employee to meet the 30 percent requirement. This requires recipients to continue hiring Section 3 residents when employment opportunities are available.

3. Employment Placement Priority

Residents will be placed in employment opportunities in the following order of preference, using good faith efforts:

1. Hunters View Public Housing residents (named on lease);
2. Hunters View Communities of Opportunities members;
3. San Francisco Housing Authority residents within 94124
4. Bayview Hunters Point Project Area residents;
5. San Francisco Housing Authority residents in 94134 and 94107;
6. San Francisco Housing Authority residents in other zip codes;
7. San Francisco residents.

SECTION IV. ROLES AND RESPONSIBILITIES

A. San Francisco Redevelopment Agency: will serve as the primary agency to collect and share employment data with participating agencies. In addition, SFRA will be responsible for contract compliance. The SFRA is specifically responsible for workforce construction data collection and enforcement of the BVHP Employment and Contracting Policy.

B. San Francisco Housing Authority: will ensure qualified residents are referred to DEWD for employment opportunities. SFHA will also provide resident data to SFRA to track resident employment.

C. Mayor's Office of Housing: will not have any workforce related role.

D. Mayor's Office of Community Investment/Communities of Opportunity: will work with DEWD to identify and prepare its members to meet minimum employment qualifications.

E. Department Of Economic & Workforce Development: DEWD is the primary entity for developing and executing job-training program(s) specifically targeting residents to meet the goals and requirements outlined earlier. DEWD will also serve as the lead for referrals and placements.

To ensure an efficient work referral system, DEWD is the single point of contact and to work with the developer, its retail tenants and BVHP community for placement of San Francisco residents for permanent employment opportunities.

To ensure an efficient work referral system, the DEWD's CityBuild Program ("CityBuild") will be the lead and initial point of contact between the developer, its contractor/subcontractors and the BVHP community for placement of San Francisco residents for construction work.

SECTION V. PREVAILING WAGE REQUIREMENTS

All contractors are required to pay not less than the prevailing wage rate as determined by the General Prevailing Wage Determination made by the Director of Industrial Relations.

SECTION VI. COUNTERPARTS, FACSIMILE COPIES. This Agreement shall be executed simultaneously or in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement. This Agreement shall be effective upon transmission by any party to the other parties of a fully signed facsimile copy of the Agreement, so long as a copy of the Agreement signed by the transmitting party is delivered to the other parties within five (5) days thereafter.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first specified herein.

_____

SFRA Executive Director, Fred Blackwell Date

APPROVED AS TO FORM:

By:_____

SFRA General Counsel, James B. Morales

_____

SFHA Executive Director, Henry A. Alvarez, III Date

APPROVED AS TO FORM:

By:_____

SFHA Assistant General Counsel, Roger Crawford

_____

MOH Director, Douglas Shoemaker Date

_____

MOCI Director, Adrienne Pon Date

_____

DEWD Director, Michael Cohen Date

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SFRA Executive Director, Fred Blackwell — 9/2/08 Date

APPROVED AS TO FORM:

By: _____ 11/24/08

SFRA General Counsel, James B. Morales

SFHA Executive Director, Henry A. Alvarez, III — Date

APPROVED AS TO FORM:

By: _____

SFHA Assistant General Counsel, Roger Crawford

MOH Director, Douglas Shoemaker — Date

MOCI Director, Adrienne Pon — Date

DEWD Director, Michael Cohen — Date

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SFRA Executive Director, Fred Blackwell — Date: 4/2/08

APPROVED AS TO FORM:

By: _____ — Date: 10/24/07

SFRA General Counsel, James B. Morales

SFHA Executive Director, Henry A. Alvarez, III — Date

APPROVED AS TO FORM:

By: _____

SFHA Assistant General Counsel, Roger Crawford

MOH Director, Douglas Shoemaker — Date

MOCI Director, Adrienne Pon — Date

DEWD Director, Michael Cohen — Date

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SFRA General Counsel, James B. Morales

SFHA Executive Director, Henry A. Alvarez, III — Date

APPROVED AS TO FORM:

By: _____
SFHA Assistant General Counsel, Roger Crawford

MOH Director, Douglas Shoemaker — Date

MOCI Director, Adrienne Pon — Date

DEWD Director, Michael Cohen — Date

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APPROVED AS TO FORM:

By: _____
SFRA General Counsel, James B. Morales

SFHA Executive Director, Henry A. Alvarez, III — Date

APPROVED AS TO FORM:

By: _____
SFHA Assistant General Counsel, Roger Crawford

MOH Director, Douglas Shoemaker — 10/23/08 Date

MOCI Director, Adrienne Pon — Date

DEWD Director, Michael Cohen — Date

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SFRA Executive Director, Fred Blackwell — Date

APPROVED AS TO FORM:

By: _____
SFRA General Counsel, James B. Morales

SFHA Executive Director, Henry A. Alvarez, III — Date

APPROVED AS TO FORM:

By: _____
SFHA Assistant General Counsel, Roger Crawford

MOH Director, Douglas Shoemaker — Date

Adrienne Pon — 11/21/08

MOCI Director, Adrienne Pon — Date

DEWD Director, Michael Cohen — Date

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SFRA Executive Director, Fred Blackwell — Date

APPROVED AS TO FORM:

By: _____
SFRA General Counsel, James B. Morales

SFHA Executive Director, Henry A. Alvarez, III — Date

APPROVED AS TO FORM:

By: _____
SFHA Office of the General Counsel

MOH Director, Douglas Shoemaker — Date

MOCI Director, Adrienne Pon — Date

9/18/08
DEWD Director, Michael Cohen — Date

EXHIBIT I

Labor Standards

ATTACHMENT I.

PREVAILING WAGE PROVISIONS (LABOR STANDARDS)

11.1 **Applicability**. These Prevailing Wage Provisions (hereinafter referred to as "Labor Standards") apply to any and all construction of the Improvements as defined in the Agreement between the Borrower and the Agency of which this Attachment No. 4 and these Labor Standards are a part.

11.2 **All Contracts and Subcontracts shall contain the Labor Standards. Confirmation by Construction Lender**.

(a) All specifications relating to the construction of the Improvements shall contain these Labor Standards and the Borrower shall have the responsibility to assure that all contracts and subcontracts, regardless of tier, incorporate by reference the specifications containing these Labor Standards. If for any reason said Labor Standards are not included, the Labor Standards shall nevertheless apply. The Borrower shall supply the Agency with true copies of each contract relating to the construction of the Improvements showing the specifications that contain these Labor Standards promptly after due and complete execution thereof and before any work under such contract commences. Failure to do shall be a violation of these Labor Standards.

(b) Before close of escrow under the Agreement and as a condition to close of escrow, the Borrower shall also supply a written confirmation to the Agency from any construction lender for the Improvements that such construction lender is aware of these Labor Standards.

11.3 **Definitions**. The following definitions shall apply for purposes of this Attachment No. 4:

(a) "Contractor" is the Borrower if permitted by law to act as a contractor, the general contractor, and any contractor as well as any subcontractor of any tier subcontractor having a contract or subcontract that exceeds $10,000, and who employs Laborers, Mechanics, working foremen, and security guards to perform the construction on all or any part of the Improvements.

(b) "Laborers" and "Mechanics" are all persons providing labor to perform the construction, including working foremen and security guards.

(c) "Working foreman" is a person who, in addition to performing supervisory duties, performs the work of a Laborer or Mechanic during at least 20 percent of the work week.

11.4 **Prevailing Wage**.

(a) All Laborers and Mechanics employed in the construction of the Improvements will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by §11.5) the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at the time of payment computed at rates not less than those contained in the General Prevailing Wage Determination (hereinafter referred to as the "Wage Determination") made by the Director of Industrial Relations pursuant to California Labor Code Part 7, Chapter 1, Article 2, sections 1770, 1773 and 1773.1, regardless of any contractual relationship which may be alleged to exist between the Contractor and such Laborers and Mechanics. A copy of the applicable Wage Determination is on file in the offices of the Agency with the Development Services Manager. At the time of escrow closing the Agency shall provide the Borrower with a copy of the applicable Wage Determination.

(b) All Laborers and Mechanics shall be paid the appropriate wage rate and fringe benefits for the classification of work actually performed, without regard to skill. Laborers or Mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein provided that the Contractor's payroll records accurately set forth the time spent in each classification in which work is performed.

(c) Whenever the wage rate prescribed in the Wage Determination for a class of Laborers or Mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit in the manner as stated therein i.e. the vacation plan, the health benefit program, the pension plan and the apprenticeship program, or shall pay an hourly cash equivalent thereof.

(d) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any Laborer or Mechanic the amount of any costs reasonably anticipated in providing benefits under a plan or program of a type expressly listed in the Wage Determination, provided that the Executive Director of the Agency has found, upon the written request of the Contractor, made through the Borrower that the intent of the Labor Standards has been met. Records of such costs shall be maintained in the manner set forth in subsection (a) of §11.8. The Executive Director of the Agency may require the Borrower to set aside in a separate interest bearing account with a member of the Federal Deposit Insurance Corporation, assets for the meeting of obligations under the plan or program referred to above in subsection (b) of this §11.4. The interest shall be accumulated and shall be paid as determined by the Agency acting at its sole discretion.

(e) Regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which

cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

11.5 **Permissible Payroll Deductions**. The following payroll deductions are permissible deductions. Any others require the approval of the Agency's Executive Director.

(a) Any withholding made in compliance with the requirements of Federal, State or local income tax laws, and the Federal social security tax.

(b) Any repayment of sums previously advanced to the employee as a bona fide prepayment of wages when such prepayment is made without discount or interest. A "bona fide prepayment of wages" is considered to have been made only when case or its equivalent has been advanced to the employee in such manner as to give him or her complete freedom of disposition of the advanced funds.

(c) Any garnishment, unless it is in favor of the Contractor (or any affiliated person or entity), or when collusion or collaboration exists.

(d) Any contribution on behalf of the employee, to funds established by the Contractor, representatives of employees or both, for the purpose of providing from principal, income or both, medical or hospital care, pensions or annuities on retirement, death benefits, compensation for injuries, illness, accidents, sickness or disability, or for insurance to provide any of the foregoing, or unemployment benefits, vacation pay, savings accounts or similar payments for the benefit of employees, their families and dependents provided, however, that the following standards are met:

1. The deduction is not otherwise prohibited by law; and

2. It is either:

   a. Voluntarily consented to by the employee in writing and in advance of the period in which the work is to be done and such consent is not a condition either for obtaining or for the continuation of employment, or

   b. Provided for in a bona fide collective bargaining agreement between the Contractor and representatives of its employees; and

3. No profit or other benefit is otherwise obtained, directly or indirectly, by the Contractor (or any affiliated person or entity) in the form of commission, dividend or otherwise; and

4. The deduction shall serve the convenience and interest of the employee.

(e) Any authorized purchase of United States Savings Bonds for the employee.

(f) Any voluntarily authorized repayment of loans from or the purchase of shares in credit unions organized and operated in accordance with Federal and State credit union statutes.

(g) Any contribution voluntarily authorized by the employee for the American Red Cross, United Way and similar charitable organizations.

(h) Any payment of regular union initiation fees and membership dues, but not including fines or special assessments provided, that a collective bargaining agreement between the Contractor and representatives of its employees provides for such payment and the deductions are not otherwise prohibited by law.

11.6 **Apprentices and Trainees**. Apprentices and trainees will be permitted to work at less than the Mechanic's rate for the work they perform when they are employed pursuant to and are individually registered in an apprenticeship or trainee program approved by the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training ("BAT") or with the California Department of Industrial Relations, Division of Apprenticeship Standards ("DAS") or if a person is employed in his or her first 90 days of probationary employment as an apprentice or trainee in such a program, who is not individually registered in the program, but who has been certified by BAT or DAS to be eligible for probationary employment. Any employee listed on a payroll at an apprentice or trainee wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate for a Mechanic. Every apprentice or trainee must be paid at not less than the rate specified in the registered program for the employee's level of progress, expressed as a percentage of a Mechanic's hourly rate as specified in the Wage Determination. Apprentices or trainees shall be paid fringe benefits in accordance with the provisions of the respective program. If the program does not specify fringe benefits, employees must be paid the full amount of fringe benefits listed in the Wage Determination.

11.7 **Overtime**. No Contractor contracting for any part of the construction of the Improvements which may require or involve the employment of Laborers or Mechanics shall require or permit any such Laborer or Mechanic in any workweek in which he or she is employed on such construction to work in excess of eight hours in any calendar day or in excess of 40 hours in such workweek unless such Laborer or Mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of eight hours in any calendar day or in excess of 40 hours in such workweek, whichever is greater.

11.8 **Payrolls and Basic Records**.

(a) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of its construction of the Improvements and preserved for a period of one year thereafter for all Laborers and Mechanics it employed in the construction of the Improvements. Such records shall contain the name, address and social security number of each employee, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for fringe benefits or cash equivalents thereof), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the wages of any Laborer or Mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program, the Contractor shall maintain records which show the costs anticipated or the actual costs incurred in providing such benefits and that the plan or program has been communicated in writing to the Laborers or Mechanics affected. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage prescribed in the applicable programs or the Wage Determination.

(b) 1. The Contractor shall submit to the Agency on each Wednesday at noon a copy of the payrolls for the week preceding the previous week in which any construction of the Improvements was performed. The payrolls submitted shall set out accurately and completely all of the information required by the Agency's Optional Form, an initial supply of which may be obtained from the Agency. The Contractor if a prime contractor or the Borrower acting as the Contractor is responsible for the submission of copies of certified payrolls by all subcontractors; otherwise each Contractor shall timely submit such payrolls.

(c) 2. Each weekly payroll shall be accompanied by the Statement of Compliance that accompanies the Agency's Optional Form and properly executed by the Contractor or his or her agent, who pays or supervises the payment of the employees.

(d) The Contractor shall make the records required under this §11.8 available for inspection or copying by authorized representatives of the Agency, and shall permit such representatives to interview employees during working hours on

the job. On request the Executive Director of the Agency shall advise the Contractor of the identity of such authorized representatives.

11.9 **Occupational Safety and Health**. No Laborer or Mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous to his or her safety and health as determined under construction safety and health standards promulgated by Cal-OSHA or if Cal-OSHA is terminated, then by the federal OSHA.

11.10 **Equal Opportunity Program**. The utilization of apprentices, trainees, Laborers and Mechanics under this part shall be in conformity with the equal opportunity program set forth in Exhibit I of the Agreement including Schedules A and B. Any conflicts between the language contained in these Labor Standards and Exhibit I shall be resolved in favor of the language set forth in Exhibit I, except that in no event shall less than the prevailing wage be paid.

11.11 **Nondiscrimination Against Employees for Complaints**. No Laborer or Mechanic to whom the wage, salary or other Labor Standards of this Agreement are applicable shall be discharged or in any other manner discriminated against by the Contractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or relating to these Labor Standards.

11.12 **Posting of Notice to Employees**. A copy of the Wage Determination referred to in subsection (a) of §11.4 together with a copy of a "Notice to Employees," in the form appearing on the last page of these Labor Standards, shall be given to the Borrower at the close of escrow. The Notice to Employees and the Wage Determination shall both be posted and maintained by the Contractor in a prominent place readily accessible to all applicants and employees performing construction of the Improvements before construction commences. If such Notice and Wage Determination is not so posted or maintained, the Agency may do so.

11.13 **Violation and Remedies**.

(a) Liability to Employee for Unpaid Wages. The Contractor shall be liable to the employee for unpaid wages, overtime wages and benefits in violation of these Labor Standards.

(b) Stop Work--Contract Terms, Records and Payrolls. If there is a violation of these Labor Standards by reason of the failure of any contract or subcontract for the construction of the Improvements to contain the Labor Standards as required by §11.2 ("Non-Conforming Contract"); or by reason of any failure to submit the payrolls or make records available as required by §11.8 ("Non-Complying Contractor"), the Executive Director of the Agency may, after written notice to the Borrower with a copy to the Contractor involved and failure to cure the violation within five working days after the date of such notice, stop the construction work under the Non-Conforming Contract or of the Non-Complying Contractor until the Non-Conforming Contract or the Non-Complying Contractor comes into compliance.

(c) Stop Work and Other Violations. For any violation of these Labor Standards the Executive Director of the Agency may give written notice to the Borrower, with a copy to the Contractor involved, which notice shall state the claimed violation and the amount of money, if any, involved in the violation. Within five working days from the date of said notice, the Borrower shall advise the Agency in writing whether or not the violation is disputed by the Contractor and a statement of reasons in support of such dispute (the "Notice of Dispute"). In addition to the foregoing, the Borrower, upon receipt of the notice of claimed violation from the Agency, shall with respect to any amount stated in the Agency notice withhold payment to the Contractor of the amount stated multiplied by 45 working days and shall with the Notice of Dispute, also advise the Agency that the moneys are being or will be withheld. If the Borrower fails to timely give a Notice of Dispute to the Agency or to advise of the withhold, then the Executive Director of the Agency may stop the construction of the Improvements under the applicable contract or by the involved Contractor until such Notice of Dispute and written withhold advice has been received.

(d) Upon receipt of the Notice of Dispute and withhold advice, any stop work which the Executive Director has ordered shall be lifted, but the Borrower shall continue to withhold the moneys until the dispute has been resolved either by agreement, or failing agreement, by arbitration as is provided in §11.14.

(e) Withholding Certificates of Completion. The Agency may withhold any or all certificates of completion of the Improvements provided for in this Agreement, for any violations of these Labor Standards until such violation has been cured.

(f) General Remedies. In addition to all of the rights and remedies herein contained, but subject to arbitration, except as hereinafter provided, the Agency shall have all rights in law or equity to enforce these Labor Standards including, but not limited to, a prohibitory or mandatory injunction. Provided, however, the stop work remedy of the Agency provided above in subsection (b) and (c) is not subject to arbitration.

11.14 **Arbitration of Disputes**.

(a) Any dispute regarding these Labor Standards shall be determined by arbitration through the American Arbitration Association, San Francisco, California office ("AAA") in accordance with the Commercial Rules of the AAA then applicable, but subject to the further provisions thereof.

(b) The Agency and all persons or entities who have a contractual relationship affected by the dispute shall be made a party to the arbitration. Any such person or entity not made a party in the demand for arbitration may intervene as a party and in turn may name any such person or entity as a party.

(c) The arbitration shall take place in the City and County of San Francisco.

(d) Arbitration may be demanded by the Agency, the Borrower or the Contractor.

(e) With the demand for arbitration, there must be enclosed a copy of these Labor Standards, and a copy of the demand must be mailed to the Agency and the Borrower, or as appropriate to one or the other if the Borrower or the Agency is demanding arbitration. If the demand does not include the Labor Standards they are nevertheless deemed a part of the demand. With the demand if made by the Agency or within a reasonable time thereafter if not made by the Agency, the Agency shall transmit to the AAA a copy of the Wage Determination (referred to in §11.4) and copies of all notices sent or received by the Agency pursuant to §11.13. Such material shall be made part of the arbitration record.

(f) One arbitrator shall arbitrate the dispute. The arbitrator shall be selected from the panel of arbitrators of the AAA by the parties to the arbitration in accordance with the AAA rules. The parties shall act diligently in this regard. If the parties fail to select an arbitrator, within seven (7) days from the receipt of the panel, the AAA shall appoint the arbitrator. A condition to the selection of any arbitrator shall be that person's agreement to render a decision within 30 days from appointment.

(g) Any party to the arbitration whether the party participates in the arbitration or not shall be bound by the decision of the arbitrator whose decision shall be final and binding on all of the parties and any and all rights of appeal from the decision are waived except a claim that the arbitrator's decision violates an applicable statute or regulation. The decision of the arbitrator shall be rendered on or before 30 days from appointment. The arbitrator shall schedule hearings as necessary to meet this 30 day decision requirement and the parties to the arbitration, whether they appear or not, shall be bound by such scheduling.

(h) Any party to the arbitration may take any and all steps permitted by law to enforce the arbitrator's decision and if the arbitrator's decision requires the payment of money the Contractor shall make the required payments and the Borrower shall pay the Contractor from money withheld.

(i) Costs and Expenses. Each party shall bear its own costs and expenses of the arbitration and the costs of the arbitration shall be shared equally among the parties.

11.15 **Non-liability of the Agency**. The Borrower and each Contractor acknowledge and agree that the procedures hereinafter set forth for dealing with violations of these Labor Standards are reasonable and have been anticipated by the parties in securing financing, in inviting, submitting and receiving bids for the construction of the Improvements, in determining the time for commencement and completion of construction and in proceeding with construction work. Accordingly the Borrower, and any Contractor, by proceeding with construction expressly waives and is deemed to have waived any and all claims against the Agency for damages, direct or indirect, arising out of these Labor Standards and their enforcement and including but not limited to claims relative to stop work orders, and the commencement, continuance or completion of construction.

SAN FRANCISCO REDEVELOPMENT AGENCY

NOTICE TO EMPLOYEES

EQUAL OPPORTUNITY NON-DISCRIMI-NATION	The contractor must take equal opportunity to provide employment opportunities to minority group persons and women and shall not discriminate on the basis of age, ancestry, color, creed, disability, gender, national origin, race, religion or sexual orientation.
PREVAILING WAGE	You shall not be paid less than the wage rate attached to this Notice for the kind of work you perform.
OVERTIME	You must be paid not less than one and one-half times your basic rate of pay for all hours worked over 8 a day or 40 a week, whichever is greater.
APPRENTICES	Apprentice rates apply only to employees registered under an apprenticeship or trainee program approved by the Bureau of Apprenticeship and Training or the California Division of Apprenticeship Standards.
PROPER PAY	If you do not receive proper pay, write San Francisco Redevelopment Agency One South Van Ness Avenue, 5th Floor San Francisco, CA 94103. or call **415-749-2409** and ask for Mr. Roel Villacarlos Contract Compliance Specialist

EXHIBIT J

Property Owner and Occupant Preference Program

PROPERTY OWNER AND OCCUPANT PREFERENCE PROGRAM

(CERTIFICATE OF PREFERENCE PROGRAM)

OF THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO

As amended and restated pursuant to Agency Resolution No. 57-2008 (June 3, 2008)

Effective October 1, 2008

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I. INTRODUCTION.

The Redevelopment Agency of the City and County of San Francisco ("Agency") initially established a preference program for displaced residents and businesses in the 1960's when the Agency was implementing its federally-funded urban renewal program.[1] The Agency created a program whereby displaced residents and businesses of certain project areas received "Certificates of Preference" and were thus entitled to a priority in the renting or buying of Agency-owned or approved property. The preference was in addition to other relocation benefits (i.e., fair market value for acquired property, relocation assistance, replacement housing units) that the displacees may have received; it was also subject to otherwise applicable eligibility requirements that the Agency imposed on the renting or buying of the property.

The Certificate of Preference Program has special significance in the Western Addition A-2 and Hunters Point Redevelopment Project Areas, which were subject to massive urban renewal programs that the federal government funded and that involved the widespread clearance and relocation of communities.[2] These programs were replicated across the country and caused wide-spread social, economic, cultural, political, and emotional upheaval that has been documented in the affected communities.[3] In light of the unique social and individual losses associated with urban renewal, the Agency provides enhanced preferences to those who were directly or indirectly affected by the redevelopment activities in the Western Addition A-2 and Hunters Point Redevelopment Project Areas.

The Agency has statutory obligations under the California Community Redevelopment Law to provide preferences to low- and moderate-income displacees in Agency-assisted housing and to businesses for the purposes of reentering the project area.[4] The Agency has fulfilled these obligations through this Certificate of Preference Program and through separately-adopted business re-entry policies that are part of redevelopment plan approvals.[5] Historically, the Certificate of Preference Program has applied only in the Western Addition A-2,

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[1] See Rules Governing Business Preferences for the Western Addition Redevelopment Project Area A-2, Agency Resolution No. 136-63 (Oct. 22, 1963); Property Owner and Occupant Preference Policy for Reestablishment in the Western Addition Redevelopment Project A-2, Agency Resolution No. 103-67 (July 25, 1967).

[2] The Agency redeveloped other older project areas that relied on urban renewal funds and that involved widespread acquisition and clearance of property, but some of these project areas have long expired, e.g., the Western Addition A-1 Redevelopment Project Area, or are subject to separate relocation policies that did not rely on the Certificate of Preference Program, e.g., Special Assistance Available to Businesses and Industries and Business Preference Rules for the Yerba Buena Center Redevelopment Project Area D-1, Agency Resolution No. 108-1965 (Aug. 17, 1965).

[3] See generally M. Fullilove, Root Shock: How Tearing Up City Neighborhoods Hurts America, and What We Can Do About It (Ballantine Books 2004).

[4] California Health and Safety Code, Section 33339.5 (Availability in business in redeveloped areas); California Health and Safety Code, Section 33411.3 (Availability of low- and moderate-income units to displaced persons of low- and moderate-income).

[5] See List of Separately-Adopted Business Preference and Re-Entry Policies, attached as .

Hunters Point (Area A of the Bayview Hunters Point Redevelopment Plan), Stockton-Sacramento, and Bayview Industrial Triangle Redevelopment Project Areas,[6] although the Rincon Point-South Beach Redevelopment Project Area also has its own Certificate of Preference Program.[7] In other redevelopment project areas, the Agency did not use the Certificate of Preference Program, but implemented the separately-adopted business re-entry policies and directly relied on the statutory obligations to provide preferences to lower income displaced residents. Accordingly, the Certificate of Preference Program is only one means by which the Agency has fulfilled its statutory obligations to provide displaced persons with a priority in the renting or buying of property.

This Property Owner and Occupant Preference Program, as amended and restated, ("Amended and Restated Program") codifies and clarifies recent amendments that the Agency Commission authorized in Agency Resolution No. 57-2008 (June 3, 2008).[8] These amendments include extending the duration of certain residential certificates, expanding the housing opportunities for certain displacees who did not receive certificates at the time of displacement because they were not then eligible, e.g., minor children and adults who were not heads of the household, revising the appeals process when the Agency denies a certificate, providing an enhanced education and outreach program to identify displacees, and reaffirming existing policies that only persons displaced by Agency action are eligible for a certificate and that a displacee may establish eligibility even though his or her name does not appear on Agency records. In addition, the Agency Commission authorized Agency staff to continue exploring the future expansion of the certificate program to certain persons who did not live in the household at the time of displacement, but who may be the grandchildren of the original displaced heads of household, i.e., children of the persons who were children themselves at the time of displacement. The Agency Commission did not authorize an immediate expansion of the certificate program to include these "grandchildren;" rather it directed Agency staff to continue investigating, among other things, the feasibility of expanding eligibility in light of the supply of affordable housing and the ability of the Agency to meet existing demand. When Agency staff completes its review of the issues associated with the "grandchildren" expansion, it will make appropriate amendments to the program.

This Amended and Restated Program is divided into two separate sections: a program of preference for residential displacees and another program for business displacees. The residential program applies to all existing project areas, but has special provisions for certain project areas affected by urban renewal. The business program applies only to certain existing project areas that do not have a

[6] The Stockton-Sacramento Redevelopment Project Area expired in 2004; under the terms of the then-existing Property Owner and Occupant Preference Program, certificates of preference from that project area expired two years later in 2006.

[7] Property owner and occupant re-entry preference program for the Rincon Point-South Beach Redevelopment Project Area, Agency Resolution No. 330-1980 (Oct. 28, 1980).

[8] Agency Resolution No. 57-2008 is attached as Exhibit 2.

separately-adopted business re-entry policy, namely the Western Addition A-2, Hunters Point (Area A of the Bayview Hunters Point Redevelopment Plan), and Bayview Industrial Triangle Redevelopment Project Areas. In all other project areas, separate re-entry policies remain in effect and are not affected by this Amended and Restated Program.

II. RESIDENTIAL CERTIFICATE OF PREFERENCE PROGRAM.

A. Purpose.

1. To give certain preferences in consideration for housing to persons displaced by Agency action or action on behalf of the Agency.

2. To give enhanced preferences in consideration for housing opportunities to those persons affected by urban renewal programs in the Western Addition A-2 and Hunters Point (Area A of the Bayview Hunters Point Redevelopment Plan (the "Urban Renewal Project Areas").

3. To implement, for all project areas, statutory requirements under the Community Redevelopment Law (Health & Safety Code § 33411.3) requiring the Agency to give priority to displaced low- and moderate-income households in Agency-assisted housing and in other housing for low- and moderate-income households.

4. To supplement other rights and benefits that may be available to displaced persons, such as relocation benefits under the Relocation Assistance and Property Acquisition Guidelines, 25 Cal. Code of Regulations, Sections 6000 et seq.

B. Definitions.

1. "Agency-Assisted Housing Units" means those units that the Agency must make available to displaced persons under Section 33411.3 of the Health and Safety Code, i.e., low- or moderate-income housing units developed (i) with any Agency assistance, (ii) pursuant to Section 33413 of the Health and Safety Code, or (iii) in any redevelopment project area.

2. "Certificate" or "Certificate of Preference" is Agency documentation that a person or business is eligible for a preference described in this Program.

3. "Displaced Person" means a person who was a legal occupant of a building and who permanently moved him or herself from the property as a result of acquisition of the property (i) by the Agency, (ii) by a private entity under contract with or on behalf of

the Agency, or (iii) as a result of receipt of a notice of intention to acquire by the Agency. Displaced person also includes a person who moves as a result of the rehabilitation, demolition, or other displacing activity that the Agency or any person having an agreement with or acting on behalf of the Agency undertakes of real property on which the person is in lawful occupancy. A Displaced Person may be an owner or a tenant in lawful occupancy of the property from which he/she was displaced.

4. "Residential A Certificate Holder" means a Displaced Person who lived in an Urban Renewal Project Area and who is eligible to receive a Certificate of Preference based either: (i) on his or her status as a head of household at the time of displacement, or (ii) on his or her intent to live separate and apart from the household after displacement; and whose name appears on Agency records, e.g., the Site Occupant Record.

5. ~~"Residential C Certificate Holder" means a Displaced Person who~~ lived in an Urban Renewal Project Area and who is eligible to receive a Certificate based on his or residency in a household at the time of Agency displacement, but who was ineligible for a Residential A Certificate of Preference. To qualify for a Residential C Certificate, the person's name must appear on the Agency's Site Occupant Record for a dwelling unit or the person must be able to prove, to the reasonable satisfaction of the Agency, that he or she resided in the household at the time of displacement.

6. "Residential G Certificate Holder" means a Displaced Person a) who is the head of household or who demonstrates to the reasonable satisfaction of the Agency that he or she intends to live separate and apart from the household after displacement; b) who lived in the City and County of San Francisco other than an Urban Renewal Project Area at the time of displacement; and c) who has not been provided by the Agency with permanently affordable replacement housing in an Agency-Assisted Housing Unit.

7. "Residential Certificate" means Agency documentation that a person is eligible for a Residential A, C, or G Certificate.

8. "Residential Certificate of Preference Holder" or "Residential Certificate Holder" means all classes of residential certificate holders, i.e., Residential A, C, and G Certificate Holders.

9. "Site Occupant Record" means the Agency's record of the occupants of a building at the time of Agency displacement. The Agency or a designated agent of the Agency is responsible for

completing the Site Occupancy Record ("SOR") for each displaced household.

10. "Urban Renewal Project Area" means the Western Addition A-2 or Hunters Point (i.e., Area A of the Bayview Hunters Point Redevelopment Project Area) Redevelopment Project Areas.

11. "Used" means a) in the case of a rental or purchase of a cooperative share, means the execution of a lease or rental agreement; or b) in the case of a purchase, the execution of a deed by the Agency or a third party pursuant to an agreement with the Agency requiring priority in sales to Certificate Holders.

C. Use of Residential Certificates.

A Residential Certificate entitles a Displaced Person, in accordance with the California Health and Safety Code Section 33411.3, to receive a priority in the renting or buying of an Agency-Assisted Housing Unit, subject to the following conditions:

1. The Displaced Person must meet the income eligibility and other requirements for the Agency-assisted housing unit.

2. Residential Certificate Holders are eligible to use a Certificate to receive a priority: 1) in the renting of, or buying of a cooperative share in, Agency-Assisted Housing Unit; and 2) in the buying of an Agency-Assisted Housing Unit. All classes of Residential Certificate Holders thus have the opportunity to exercise the Certificate twice: once for a rental or cooperative share opportunity and again for a homeownership opportunity, provided, however, that a person who is otherwise eligible for a Residential G Certificate Holder is not eligible for a Certificate if the Agency has provided the displaced household with affordable housing in an Agency-Assisted Housing Unit.

3. Residential Certificate Holders have the above-described preferences for the renting or buying of Agency-Assisted Housing Units in the following descending order of priority, provided, however, that a redevelopment plan or Agency Commission action may change this order of priority for a particular project area or project:

   a. A Displaced Person with the earliest date of displacement.

b. A Displaced Person seeking to use a Certificate for a housing development in the Project Area from which the person was displaced.

c. A Displaced Person seeking to use a Certificate for a housing development either in a Project Area from which the person was not displaced or in any other part of the City.

4. The Certificate entitles the holder to preferential consideration only; the Residential Certificate Holder must still meet the otherwise applicable selection criteria on which the owner/agent shall make the final decision.

D. Exercising Certificate Opportunities.

1. As described in Section II.C.2 above, a Residential Certificate Holder has two opportunities to exercise a Certificate: once for rental or cooperative share opportunity and again for a homeownership opportunity. If the Residential Certificate Holder is successful in obtaining a unit through the use of the Certificate, he or she exercises (i.e., extinguishes) the right to use the Certificate for that particular type of housing, but may still use the certificate for a different tenure type.

a. In the case of a rental or cooperative share opportunity, to exercise a Residential Certificate means to secure successfully a tenancy in, or the purchase of a cooperative share in, an Agency-Assisted Housing Unit, as shown by the execution of a lease or other evidence of occupancy.

b. In the case of a homeownership opportunity, to exercise a Residential Certificate means to execute a deed and the closing of escrow for an Agency-Assisted Housing Unit.

2. A Residential G Certificate is exercised if the Agency provides the Residential Certificate Holder with affordable housing in an Agency-Assisted Housing Unit.

E. Application of Residential Certificate Program to a Particular Project.

The Agency shall require that developers and property managers of Agency-Assisted Housing Units extend preferences to Residential Certificate Holders upon initial occupancy of a housing project or upon the vacancy of previously-occupied units in the project. The terms and conditions by which the developer or property manager will implement

these preferences shall be consistent with this Amended and Restated Program and shall appear in the affirmative marketing plan or similar documents for the project.

F. Duration of the Effectiveness of the Residential Certificate.

A Residential Certificate remains effective until the Residential Certificate Holder has completely exercised his or her Certificate as described in Section II. D; provided, however, that Certificates that have not been fully exercised have the following time limitations:

1. The Residential A and C Certificates shall be valid until seven years after completion of an Urban Renewal Project Area (i.e., Jan. 1, 2016), unless the Agency Commission approves five year extensions of these Certificates. The Agency shall not approve more than two five-year extensions.

2. The Residential G Certificate shall be valid until five years after the Agency displacement.

III. BUSINESS CERTIFICATE OF PREFERENCE PROGRAM.

A. Purpose.

1. To give certain re-entry preferences in consideration for business opportunities to businesses displaced by Agency action or action on behalf of the Agency.

2. To implement, for those project areas without separately-adopted business re-entry policies,[9] statutory requirements under the Community Redevelopment Law (Health & Safety Code § 33339.5) requiring the Agency to extend reasonable preferences to persons who were engaged in business in a redevelopment project area to reenter in business within the redeveloped area if they otherwise meet the requirements prescribed by the redevelopment plan.

3. To supplement other rights and benefits that may be available to displaced businesses, such as relocation benefits under the Relocation Assistance and Property Acquisition Guidelines, 25 Cal. Code of Regulations, Sections 6000 et seq.

[9] Western Addition A-2, Hunters Point (Area A of the Bayview Hunters Point Redevelopment Project Area), and the Bayview Industrial Triangle Redevelopment Project Areas.

B. Definitions.

1. "Business Occupant" means: 1) the owner or renter of a building that was situated on real property in the Western Addition A-2, Hunters Point, or Bayview Industrial Triangle Redevelopment Project Areas and that was acquired by the Agency after the date of (i) the adoption of the redevelopment plans or (ii) the receipt of funds for acquisition of property for these project areas, whichever date occurred earlier; or 2) a tenant engaged in business in a building whose owner entered into an Owner Participation Agreement with the Agency to extensively rehabilitate the property and the tenant received the Agency's Notice of Displacement that was required under the then-applicable federal regulations. Acquisition by the Agency includes both purchase and acquisition by eminent domain/condemnation.

2. "Business Certificate of Preference Holder" means a Business Occupant who was engaged in business in a building at the time the Agency acquired the property. To be eligible for a Business Certificate of Preference, a property owner must have been the owner of record that executed the grant deed to the Agency or the owner of record in the eminent domain at the time the Agency acquired the property. If the property owner was a corporation, partnership or other legal entity, the Certificate will be listed in the corporation or the partnership's name. If there was more than one owner of record, only one certificate will be issued.

3. "Certificate" or "Certificate of Preference" is Agency documentation that a person or business is eligible for a preference described in this Program.

4. "Displaced Business" means a person who was a legal occupant of a building and who permanently moved his or her business from the property as a result of acquisition of the property (i) by the Agency, (ii) by a private entity under contract with or on behalf of the Agency, or (iii) as a result of receipt of a notice of intention to acquire by the Agency. Displaced business also includes a person who moves as a result of the rehabilitation, demolition, or other displacing activity that the Agency or any person having an agreement with or acting on behalf of the Agency undertakes of real property on which the person is in lawful occupancy. A Displaced Person may be an owner or a tenant in lawful occupancy of the property from which he/she was displaced.

C. Use of Business Certificates.

The Business Certificate Program applies only to the Western Addition A-2, Hunters Point, and Bayview Industrial Triangle Redevelopment Project Areas. Other redevelopment project areas have separate business re-entry and preference policies that implement Section 33339.5 of the California Health and Safety Code.[10]

1. Agency-Owned Property.

The Agency may offer property that it owns for purchase and development. The Agency selects developers of such parcels based on the extent to which the proposed development serves the needs of the Project Area and the City and County of San Francisco and satisfies the requirements of the request for proposals/ qualifications, if any. The Agency may extend preferences to Business Certificate Holders who were displaced from the project area in which the Agency-owned property is located. The major factors for evaluating proposals will include:

a. Economic feasibility of the proposal.

b. The financial capacity of the developer and the demonstrated ability of the development design team.

c. The ability of the developer to proceed expeditiously with development of the site.

d. Architectural quality and degree of compliance with design objectives of the offering.

e. Other factors included in the offering.

When the Agency determines that proposals from applicants with Business Certificates and from those without Business Certificates are substantially equivalent, the Agency shall give preference to the proposal associated with the Business Certificate.

2. Rehabilitated Structures.

In the event the Agency acquires structures for rehabilitation, the Agency may sell these structures to the Business Certificate Holder who has the highest qualified bid, who complies with the terms of offering, and who was displaced from the project area in which the rehabilitated structure was located; provided, however that these

[10] See List of Separately-Adopted Business Preference and Re-Entry Policies, attached as Exhibit I.

Business Certificate Holders will not receive a preference in bidding on a residential rehabilitation offering unless there are at least two units and the property will be used to engage in business; and provided further that a Business Certificate of Preference Holder may not use priority to bid on rehabilitation offering if the intended use is for private residency.

3. Privately-Owned Commercial Space.

A Business Certificate only entitles the Business Certificate Holder who desires to rent business space from a private property owner to a preferential consideration if the space meets the requirements of the redevelopment plan and if the Agency has required the owner to provide a preference to Business Certificate Holders who were displaced from the project area in which the privately-owned commercial space is located. The owner of the business space makes the final determination on the business mix, rental rates and terms and conditions.

4. Priority of Business Certificates.

Business Certificate Holders have the above-described preferences; provided, however, that a redevelopment plan or Agency Commission action may change or eliminate the priority for a particular project area or project; and provided further that in situations where the Agency or private property owner receives applications from multiple Business Certificate Holders having equal qualifications, the Business Certificate Holder with the earliest date of displacement from the project area in which the business opportunity is located will receive priority.

D. Timing of Eligibility Determination.

When a Business Certificate is to be used for priority in preferential offerings, eligibility must be established and a certificate issued prior to the bid opening or the specified deadline for the development proposal.

LIST OF SEPARATELY-ADOPTED BUSINESS PREFERENCE AND RE-ENTRY POLICIES

Business Occupant Re-Entry Policy, Bayview Hunters Point Redevelopment Project, Agency Resolution No. 34-2006 (March 7, 2006);

Rules Governing Participation by Property Owners and the Extension of Reasonable Preferences to Business Occupants in the Transbay Redevelopment Project, Agency Resolution No. 17-2005 (Jan. 25, 2005);

Amended Rules Governing Participation by Property Owners and the Extension of Reasonable Preferences to Business occupants for the South of Market Redevelopment Project, Agency Resolution No. 150-2005 (Oct. 4, 2005);

Business Reentry Preference Program for the Mission Bay North Redevelopment Project Area, Agency Resolution No. 187-98 (Sept. 17, 1998);

~~Business Reentry Preference Program for the Mission Bay South Redevelopment~~ Project Area, Agency Resolution No. 192-98 (Sept. 17, 1998);

Business Occupant Re-Entry Preference Program, Hunters Point Shipyard Redevelopment Project, Agency Resolution No. 93-97 (June 17, 1997);

Property owner and occupant re-entry preference program for the Rincon Point-South Beach Redevelopment Project Area, Agency Resolution No. 330-1980 (Oct. 28, 1980);

Rules for Business Preference and Reentry for the Butchertown Redevelopment Project ("India Basin"), Agency Resolution No. 238-1968 (Dec. 10, 1968)

Special Assistance Available to Businesses and Industries and Business Preference Rules for the Yerba Buena Center Redevelopment Project Area D-1, Agency Resolution No. 108-1965 (Aug. 17, 1965)

EXHIBIT 1

RESOLUTION NO. 57-2008

Adopted as Amended at the Commission Meeting of June 3, 2008

AUTHORIZING THE EXECUTIVE DIRECTOR 1) TO AMEND THE CERTIFICATE OF PREFERENCE PROGRAM BY EXTENDING THE PROGRAM'S TERMINATION DATE, EXPANDING BENEFITS TO EXISTING CERTIFICATE HOLDERS, AND AMENDING APPEAL PROCEDURES GOVERNING DENIAL OF CERTIFICATES, AND 2) TO DETERMINE THE TIMING AND APPROPRIATENESS OF A FUTURE EXPANSION OF ELIGIBILITY TO INCLUDE CERTAIN RELATIVES OF THE ORIGINAL DISPLACEES; ALL REDEVELOPMENT PROJECT AREAS AND CITYWIDE HOUSING

BASIS FOR RESOLUTION

1. On October 22, 1963, the Redevelopment Agency of the City and County of San Francisco ("Agency") initially authorized, by Resolution No. 136-63, a business preference program for the Western Addition Redevelopment Project Area A-2. Its primary purpose was to enable business owners "to re-enter [the displaced] business in the redeveloped area." Rules Governing Business Preferences for the Western Addition Redevelopment Project Area A-2 (Oct. 22, 1963) ("1963 Rules") at page 1. This program implemented the then newly-adopted California Community Redevelopment Law requirement that redevelopment agencies extend reasonable preferences to businesses "to reenter in business within the redeveloped area." Cal. Health & Safety Code § 33339.5. In conformity with this statute, the Agency has approved, on numerous occasions since 1963, business reentry programs for particular project areas prior to the approval of new redevelopment plans.

2. On July 25, 1967, the Agency extended, by Resolution No. 103-67, the preference program to residential owners and occupants who were "obliged to move as a direct result of the operation of the [redevelopment] program" in the Western Addition Redevelopment Project Area A-2. The program established that "every A-2 owner or occupant will be afforded preferential consideration in the purchase of project land for the purpose of private development, or the rental of improved space within the new and rehabilitated structures on such land." The program authorized the issuance of certificates, which were "non-assignable and non-transferable" to "a property owner or occupant of Area A-2 prior to the date of the adoption of Agency Resolution No. 103-67." Certificates were valid for one year from date of issuance and could only be used once for "reestablishment." The minutes of the Agency Commission meeting on July 25, 1967 describe the program as "the first of its kind on the West Coast."

3. In 1969, the California Legislature amended the Community Redevelopment Law to require redevelopment agencies to provide low- and moderate-income households displaced by a redevelopment project with a priority in the renting and buying of affordable housing units that the agency develops. The Legislature amended this section in 1974, 1975, and 2002.

4. The statutory authorization for the certificate of preference program in housing is codified at Section 33411.3 of the Health and Safety Code. It requires the Agency to give "priority in renting or buying" to displaced, low- and moderate-income households "whenever all or any portion of a redevelopment project is developed with low- or moderate-income housing units and whenever any low- or moderate-income housing units are developed with any agency assistance." To qualify, the lower income household must be "displaced by the redevelopment project."

5. On April 18, 1978, the Agency Commission rescinded, by Resolution No. 76-78, prior versions of the Certificate Program and adopted a new policy that clarified the Agency's rules and administration of the Certificate of Preference Program ("Certificate Program"). Memorandum, W. Hamilton to Agency Commissioners, No. 109-14078-002 (April 11, 1978). The 1978 policy established the framework for the current administration of the Certificate Program.

6. The 1978 policy made several changes including expanding the Certificate Program to include other project areas besides the A-2 Area; establishing that "only one certificate may be issued to a person or entity whether or not preference can be established on more than one basis;" and providing that a Certificate Holder could only use the certificate once to rent or to purchase units in assisted development unless a Certificate Holder who had used the certificate to rent subsequently used it to "upgrade" by purchasing an assisted unit.

7. The 1978 policy provided that a single certificate was available to the family unless the applicant determined "independent eligibility" by demonstrating that they were part of a separate family unit who lived in the same household at the time of displacement or that they intended to live separately apart from the family upon displacement. An individual or family received either: 1) a Residential Certificate A if they occupied a "Project Area building at the time it was acquired by the Agency," or 2) a Residential Certificate B if they occupied a Project Area building after a certain date but before the Agency acquired the building.

8. The 1978 policy stated that "When a Certificate is requested and proof of eligibility cannot be established by Agency records, the burden shall be upon the applicant to supply the Agency with necessary documentation." Section VII of Property Owner and Occupant Preference Program attached to Memorandum, W. Hamilton to Agency Commissioners (April 11, 1978).

9. In 1991, the Agency confirmed the applicability of the Certificate Program to all new housing developed within any redevelopment project areas and thereafter all developments assisted by tax increment funds were required to provide preferential consideration to the Certificate Holders.

10. On December 8, 1998, the Agency Commission authorized, by Resolution No. 253-98, the expansion of eligibility standards for the Certificate Program to include persons "who were minor children or adults in the household at the time of displacement and who appear in the Agency's Site Occupancy Records." Eligibility was limited to those persons whose names appeared on Agency records to ensure that a "preference" continued to provide meaningful opportunities only to persons whom the Agency could verify had been displaced. Agency staff estimated that the expanded eligibility could "translate to approximately 23,200 potential certificates." Memorandum, J. Morales to Agency Commissioners at page 2 (Dec. 1, 1998).

11. In new rules issued on June 1, 1999, the Agency established the Residential C Certificate Holder to describe the new class of eligible persons, but provided that ~~this new certificate of preference was derivative of the original Residential A~~ Certificate. In other words, the eligibility of the Residential C Certificate Holder was limited by the actions of the Residential A Certificate Holder in exercising the original certificate. If the Residential A Certificate Holder had used the certificate to rent, the Residential C Certificate Holder from that same displaced household could only use a certificate to obtain a preference in the purchase of an assisted unit. As with other Certificate Holders, the Residential C class had to meet income eligibility requirements for the low- and moderate-income housing that the Agency had assisted.

12. Since the beginning of 2007, the Agency Commission has received numerous memoranda from Agency staff and held several public hearings on the administration of the Certificate Program to consider how the Agency may improve it. See e.g., Memorandum, M. Rosen to Agency Commissioners, No. 118-41005-003 (Meeting of March 20, 2007); Memorandum, M. Rosen to Agency Commissioners, No. 118-35007-002 (May 31, 2007); and Memorandum, F. Blackwell to Agency Commissioners, No. 118-09908-002 (Jan. 29, 2008).

13. Agency wishes to modify immediately the Certificate Program by amending the rules to include the following:

    a. Extending the time limit for the Residential Certificates (which under current rules will expire two years after the expiration of a particular project area) by an additional 15 years subject to Agency Commission review and approval of the Certificate Program at or before the fifth year and the tenth year of the extended term, and also requiring that Agency staff report annually to the Agency Commission on the effectiveness of the Certificate Program;

    b. Providing an education and outreach program that fully informs the public about the eligibility and benefits under the Certificate Program;

c. Reaffirming eligibility for Residential C Certificates to include persons who were not on the Site Occupant Record but who were members of the displaced households so long as they are able to prove that they resided in the household at the time of displacement;

d. Expanding housing opportunities for the existing group of Residential C Certificate Holders by allowing them to use the certificate for either assisted rental or assisted ownership units, regardless of whether the Residential A Certificate, upon which the Residential C Certificate was based, was exercised;

e. Clarifying and enhancing the appeals process to resolve disputes regarding certificate eligibility and extending the time for Agency written responses to informal settlement meetings; and

f. Reaffirming existing Agency policy that eligibility for certificates requires that Agency action or action on behalf of the Agency is the cause of the original displacement.

14. The Agency wishes to take additional steps to establish the basis for expanding eligibility for certificates of preference to those persons who did not live in the household at the time of displacement, but who are the children of the displaced household members that are eligible for the Residential C Certificate Holders. In most instances, the Residential C Certificate Holders are the children of the head of the displaced household, who had originally qualified for Residential A Certificates. This proposed expansion thus may provide housing opportunities for many of the grandchildren of the original displaced head of households and also retains a nexus to the original displacement and the harm associated with that displacement. The additional steps that the Agency will take prior to expanding eligibility to the children of the Residential C Certificate Holders include:

a. Establishing the factual basis for the Agency to make findings that the expansion to the class of persons who did not reside in the displaced household, but whose parents were displaced nonetheless suffered economic, social and other harm because of the parents' displacement;

b. Conducting an extensive investigation and outreach effort to identify: 1) the remaining numbers of the Residential C Certificate Holders and their current addresses, and 2) their children, if any, who would be eligible under the expanded Certificate Program; and

c. Assessing whether the supply of newly-created affordable housing, and of existing affordable housing that becomes vacant upon turnover, is sufficient to meet the potential demands of existing Residential C Certificate Holders and those of an expanded class that includes the children of the Residential C Certificate Holders.

15. Authorization of the amendments to the Certificate Program does not constitute a project, pursuant to the California Environmental Quality Act Guidelines Section 15378(b)(5).

RESOLUTION

ACCORDINGLY, IT IS RESOLVED by the Redevelopment Agency of the City and County of San Francisco that the Executive Director is authorized: 1) to amend immediately the Certificate of Preference Program by extending the program's termination date, expanding benefits to existing certificate holders, amending appeal procedures governing denial of certificates, and making other changes described above, and 2) to determine the timing and appropriateness of a future expansion of eligibility to include certain relatives of the original displacees.

APPROVED AS TO FORM:

James B. Morales
Agency General Counsel

EXHIBIT K

Schedule of Performance

INTENTIONALLY OMITTED

EXHIBIT L

EXHIBIT N-1

Form of Assignment of Architects and Engineers Agreement

INTENTIONALLY OMMITTED

EXHIBIT N-2

Form of Consent to Assignment

INTENTIONALLY OMMITTED

EXHIBIT O-1

HEALTH CARE ACCOUNTABILITY POLICY (HCAP) DECLARATION

What the Ordinance does. The San Francisco Redevelopment Agency adopted the San Francisco Health Care Accountability Policy (the "HCAP"), which became effective on September 25, 2001. The HCAP requires contractors and subcontractors that provide services to the Agency, contractors and subcontractors that enter into leases with the Agency, and parties providing services to tenants and sub-tenants on Agency property to choose between offering health plan benefits to their employees or making payments to the Agency or directly to their employees.

Specifically, contractors can either: (1) offer the employee minimum standard health plan benefits approved by the Agency Commission (2) pay the Agency $3.00 per hour for each hour the employee works on the covered contract or subcontract or on property covered by a lease (but not to exceed $120 in any week) and the Agency will appropriate the money for staffing and other resources to provide medical care for the uninsured, or (3) participate in a health benefits program developed by the Agency.

The Agency may require contractors to submit reports on the number of employees affected by the HCAP.

Effect on Agency contracting. For contracts and amendments signed on or after September 25, 2001, the HCAP will have the following effect:

- in each contract, the contractor will agree to abide by the HCAP and to provide its employees the minimum benefits the HCAP requires, and to require its subcontractors to do the same.
- if a contractor does not provide the HCAP's minimum benefits, the Agency can award a contract to that contractor **only if** the contract is exempt under the HCAP, or if the contract has received waiver; from the Agency.

What this form does. If you can assure the Agency now that, beginning with the first Agency's contract or amendment you receive after September 25, 2001 and until further notice, you will provide the minimum benefit levels specified in the HCAP to your covered employees, and will ensure that your subcontractors also subject to the HCAP do the same, this will help the Agency contracting process. The Agency realizes that it may not be possible to make this assurance now.

If you cannot make this assurance now, please do not return this form.

For more information, (1) see the complete text of the HCAP, available from the Agency's Contract Compliance Department at: (415) 749-2400.

Routing. Return this form to: Contact Compliance Department, San Francisco Redevelopment Agency, 1 South Van Ness Avenue, Fifth Floor, San Francisco, CA 94103.

Declaration

Effective with the first Agency contract or amendment this company receives on or after September 25, 2001, this company will provide the minimum benefit levels specified in the HCAP to our covered employees, and will ensure that our subcontractors also subject to the HCAP do the same, until further notice. This company will give such notice as soon as possible.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Signature

4/19/11
Date

Jack Gardner
Print Name

John Stewart Company
Company Name

(415) 345-1400
Phone

HEALTH CARE ACCOUNTABILITY POLICY (HCAP) DECLARATION

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I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Barry B. Hollingsworth — Signature

4/19/11 — Date

Barry Hollingsworth — Print Name

Hunters Point Affordable Housing, Inc. — Company Name

(415) 821-7440 — Phone

HEALTH CARE ACCOUNTABILITY POLICY (HCAP) DECLARATION

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I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Richard J. Devine — Signature

4/19/11 — Date

RICHARD J. DEVINE — Print Name

DEVINE & BONO INC — Company Name

(415) 788-7983 — Phone

EXHIBIT O-2

MINIMUM COMPENSATION POLICY (MCP) DECLARATION

What the Policy does. The Redevelopment Agency of the City and County of San Francisco adopted the Minimum Compensation Policy (MCP), which became effective on September 25, 2001. The MCP requires contractors and subcontractors to provide the following to their employees covered by the MCP on Agency contracts and subcontracts for services: For Commercial Business MCP the wage rate is $11.54. For Nonprofit MCP the wage rate is $11.03 ;12 days' paid vacation per year (or cash equivalent); 10 days off without pay per year.

The Agency may require contractors to submit reports on the number of employees affected by the MCP.

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I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Signature

4/19/11
Date

Jack Gardner
Print Name

John Stewart Company
Company Name

(415) 345-4400
Phone

MINIMUM COMPENSATION POLICY (MCP) DECLARATION

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I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Signature: Barry B. Hollingsworth — Date: 4/19/11

Print Name: Barry Hollingsworth

Company Name: Hunters Point Affordable Housing, Inc — Phone: (415) 821-7440

MINIMUM COMPENSATION POLICY (MCP) DECLARATION

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I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Richard J. Devine
Signature

4/19/11
Date

Richard J. Devine
Print Name

Devine & Gong Inc.
Company Name

(415)788-7983
Phone

EXHIBIT P

SBE Program Agreement

EXHIBT "P"

SMALL BUSINESS ENTERPRISE AGREEMENT

The company or entity executing this Small Business Enterprise Agreement, by and through its duly authorized representative, hereby agrees to use good faith efforts to comply with all of the following:

I. **PURPOSE.** The purpose of entering into this Small Business Enterprise Program agreement ("**SBE Agreement**") is to establish a set of Small Business Enterprise ("SBE") participation goals and good faith efforts designed to ensure that monies are spent in a manner which provides SBEs with an opportunity to compete for and participate in contracts by or at the behest of the San Francisco Redevelopment Agency ("**Agency**") and/or the Agency-Assisted Contractor. A genuine effort will be made to give First Consideration to Project Area SBEs and Local SBEs before looking outside of San Francisco.

II. **APPLICATION**. This SBE Program applies to all Agency-Assisted Contractors and Contractors and their subcontractors who subcontract any portion of their contract (i.e. lower-tier subcontractors). The Contractor(s) are responsible for ensuring that each of their subcontractors meets these requirements. **Only subcontractors with no subcontracting opportunities are exempt from compliance with this SBE Agreement, which is required to be incorporated into all contracts pursuant to Section VII.**

III. **GOALS.** The Agency's SBE Participation Goals are:

CONSTRUCTION	**50%**
PROFESSIONAL SERVICES	**50%**
SUPPLIERS	**50%**

A. **Trainee Hiring Goal**. In addition to the goals set forth above in Section III, there is a trainee hiring goal for architects, designers and other professional services consultants as follows:

Trainees	Consultant Fees
0	$ 0 - $249,999
1	$ 250,000 - $399,999
2	$ 400,000 - $599,999
3	$ 600,000 - $999,999
4	$1,000,000 - $1,999,999
5	$2,000,000 - or more

IV. **TERM.** The obligations of the Agency-Assisted Contractor and/or Contractor(s) with respect to SBE Program shall remain in effect until completion of all work to be performed by the Agency-Assisted Contractor in connection with the original

construction of the site and any tenant improvements on the site performed by or at the behest of the Agency-Assisted Contractor.

V. **FIRST CONSIDERATION**. First consideration will be given by the Agency or Agency-Assisted Contractor in awarding contracts in the following order: (1) Project Area SBEs, (2) Local SBEs (outside an Agency Project or Survey Area, but within San Francisco), and (3) Non-local SBEs (outside of San Francisco). Non-local SBEs should be used to satisfy participation goals only if Project Area SBEs or Local SBEs are not available, qualified, or if their bids or fees are significantly higher than those of non-local SBEs.

VI. **CERTIFICATION.** Only businesses certified by the Agency as SBEs will be counted toward meeting the participation goals. The SBE Certification Criteria are set forth in the Policy (as defined in Section VII below).

VII. **INCORPORATION.** Each contract between the Agency, Agency-Assisted Contractor or Contractor on the one hand, and any subcontractor on the other hand, shall physically incorporate as an attachment or exhibit and make binding on the parties to that contract, a true and correct copy of this SBE Agreement.

VIII. **DEFINITIONS.** Capitalized terms not otherwise specifically defined in this SBE Agreement have the meaning set forth in the Agency's Interim Purchasing Policy and Procedures as adopted on November 16, 2004 ("**Policy**") or as defined in the Agency-Assisted Contract or Contract. In the event of a conflict in the meaning of a defined term, the Policy shall govern over the Agency- Assisted Contract or Contract which in turn shall govern over this SBE Agreement.

A. **Agency-Assisted Contract** means, as applicable, the Development and Disposition Agreement ("**DDA**"), Land Disposition Agreement ("**LDA**"), Lease, Loan and Grant Agreements, and Operations Agreement that the Agency executed with for-profit or non-profit entities.

B. **Agency-Assisted Contractor** means any person(s), firm, partnership, corporation, or combination thereof, who is negotiating or has executed an Agency-Assisted Contract.

C. **Arbitration Party** means all persons and entities who attend the arbitration hearing pursuant to Section XII, as well as those persons and entities who are subject to a default award provided that all of the requirements in Section XII.L. have been met.

D. **Contract** means any agreement between the Agency and a person(s), firm, partnership, corporation, or combination thereof, to provide or procure labor, supplies or services to, for, or on behalf of the Agency.

E. **Contractor** means any person(s), firm, partnership, corporation, or combination thereof, who is negotiating or has executed a Contract.

F. **Local Small Business Enterprise** means a SBE that: (a) has fixed offices located within the geographical boundaries of the City where a commercially useful

function is performed; (b) is listed in the Permits and License Tax Paid File with a San Francisco business street address; (c) possesses a current Business Tax Registration Certificate at the time of the application for certification as a SBE; (d) has been located and doing business in the City for at least six months preceding its application for certification as a SBE; and (e) has a San Francisco office in which business is transacted that is appropriately equipped for the type of business for which the enterprise seeks certification as a SBE. Post office box numbers or residential addresses alone shall not suffice to establish a firm's status as local.

G. **Non-local Small Business Enterprise** means a SBE that has fixed offices located outside the geographical boundaries of the City.

H. **Project Area Small Business Enterprise** means a SBE that: (a) has fixed offices located within the geographical boundaries of a Redevelopment Project or Survey Area where a commercially useful function is performed; (b) is listed in the Permits and License Tax Paid File with a Project Area or Survey Area business street address; (c) possesses a current Business Tax Registration Certificate at the time of the application for certification as a SBE; (d) has been located and doing business in a Project Area or Survey Area for at least six months preceding its application for certification as a SBE; and (e) has a Project Area or Survey Area office in which business is transacted that is appropriately equipped for the type of business for which the enterprise seeks certification as a SBE. Post office box numbers of residential addresses alone shall not suffice to establish a firms' location in a Project Area or Survey Area.

I. **Project Area** means an area of San Francisco that meets the requirements under Community Redevelopment Law, Health and Safety Code Section 33320.1. These areas are described in the Policy with specific street boundaries and include the Bayview Industrial Triangle, Hunters Point, Bayview Hunters Point, Hunters Point Shipyard, India Basin Industrial Park, Golden Gateway, Mission Bay (North), Mission Bay (South), Rincon Point/South Beach, South of Market, Western Addition Area A-2, Transbay and Yerba Buena Center.

J. **Small Business Enterprise (SBE)** means an economically disadvantaged business that: is an independent and continuing business for profit; performs a commercially useful function; is owned and controlled by persons residing in the United States or its territories; has average gross annual receipts in the three years immediately preceding its application for certification as a SBE that do not exceed the following limits: (a) construction--$14,000,000; (b) professional or personal services--$2,000,000 and (c) suppliers--$2,000,000; and is (or is in the process of being) certified by the Agency as a SBE.

K. **Survey Area** means an area of San Francisco that meets the requirements of the Community Redevelopment Law, Health and Safety Code Section 33310. These areas are described in the Policy with specific street boundaries and include the Mid-Market, and Visitacion Valley.

IX. **GOOD FAITH EFFORTS TO MEET SBE GOALS** Compliance with the following steps will be the basis for determining if the Agency-Assisted Contractor and/or Consultant has made good faith efforts to meet the goals for SBEs:

A. **Outreach**. Not less than 30 days prior to the opening of bids or the selection of contractors, the Agency-Assisted Contractor or Contractor shall:

1. **Advertise**. Advertise for SBEs interested in competing for the contract, in general circulation media, trade association publications, including timely use of the ***Bid and Contract Opportunities*** newsletter published by the City and County of San Francisco Purchasing Department and media focused specifically on SBE businesses such as the ***Small Business Exchange***, of the opportunity to submit bids or proposals and to attend a pre-bid meeting to learn about contracting opportunities.

2. **Request List of SBEs**. Request from the Agency's Contract Compliance Department a list of all known SBEs in the pertinent field(s), particularly those in the Project and Survey Areas and provide written notice to them of the opportunity to bid for contracts and to attend a pre-bid or pre-solicitation meeting to learn about contracting opportunities.

B. **Pre-Solicitation Meeting**. For construction contracts estimated to cost $300,000 or more, hold a pre-bid meeting for all interested contractors not less than 15 days prior to the opening of bids or the selection of contractors for the purpose answering questions about the selection process and the specifications and requirements. Representatives of the Contract Compliance Department will also participate.

C. **Follow-up**. Follow up initial solicitations of interest by contacting the SBEs to determine with certainty whether the enterprises are interested in performing specific items involved in work.

D. **Subdivide Work.** Divide, to the greatest extent feasible, the contract work into small units to facilitate SBE participation, including, where feasible, offering items of the contract work which the Contractor would normally perform itself.

E. **Provide Timely and Complete Information**. The Agency-Assisted Contractor or Contractor shall provide SBEs with complete, adequate and ongoing information about the plans, specifications and requirements of construction work, service work and material supply work. This paragraph does not require the Agency-Assisted Contractor or Contractor to give SBEs any information not provided to other contractors. This paragraph does require the Agency Assisted Contractor and Contractor to answer carefully and completely all reasonable questions asked by SBEs and to undertake every good faith effort to ensure that SBEs understand the nature and the scope of the work.

F. **Good Faith Negotiations.** Negotiate with SBEs in good faith and demonstrate that SBEs were not rejected as unqualified without sound reasons based on a thorough investigation of their capacities.

G. **Bid Shopping Prohibited.** Prohibit the shopping of the bids. Where the Agency-Assisted Contractor or Contractor learns that bid shopping has occurred, it shall treat such bid shopping as a material breach of contract.

H. **Other Assistance.** Assist SBEs in their efforts to obtain bonds, lines of credit and insurance. The Agency-Assisted Contractor or Contractor(s) shall require no more stringent bond or insurance standards of SBEs than required of other business enterprises.

I. **Delivery Scheduling.** Establish delivery schedules which encourage participation of SBEs.

J. **Encouragement to Subcontractors**. The Agency-Assisted Contractor and its Contractor(s) shall encourage and assist higher tier subcontractors in undertaking good faith efforts to utilize SBEs as lower tier subcontractors.

K. **Use of Other Resources.** Use the services of SBE associations, federal, state and local SBE assistance offices and other organizations that provide assistance in the recruitment and placement of SBEs, including the Small Business Administration and the Business Development Agency of the Department of Commerce. However, only SBEs certified by the Agency shall count towards meeting the participation goal.

L. **Replacement of SBE.** If during the term of this SBE Agreement, it becomes necessary to replace an SBE due to the failure or inability of the SBE to perform the required services or timely delivery the required supplies, then First Consideration should be given to another certified SBE, if available, as a replacement.

X. ADDITIONAL PROVISIONS

A. **No Retaliation.** No employee shall be discharged or in any other manner discriminated against by the Agency-Assisted Contractor or Contractor because

such employee has filed any complaint or instituted or caused to be instituted any proceeding under or relating to enforcement of this Agreement.

B. **No Discrimination.** There shall be no discrimination against or segregation of any person, or group of persons, on account of race, color, religion, creed, national origin or ancestry, sex, gender identity, age, marital or domestic partner status, sexual orientation or disability (including HIV or AIDS status) in the performance of an Agency-Assisted Contract or Contract. The Agency-Assisted Contractor or Contractor will ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, creed, national origin or ancestry, sex, gender identity, age, marital or domestic partner status, sexual orientation or disability (including HIV or AIDS status) or other protected class status. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; selection for training, including apprenticeship; and provision of any services or accommodations.

XI. PROCEDURES

A. **Notice to Agency**. The Agency-Assisted Contractor or Contractor(s) shall provide the Agency with the following information within 10 days of awarding a contract or selecting subconsultant:

1. the nature of the contract, e.g. type and scope of work to be performed;
2. the dollar amount of the contract;
3. the name, address, license number, gender and ethnicity of the person to whom the contract was awarded; And
4. SBE status of each subcontractor or subconsultant.

B. **Affidavit**. If the Agency-Assisted Contractor or Contractor(s) contend that the contract has been awarded to a SBE, the Agency-Assisted Contractor or Contractor(s) shall, at the same time also submit to the Agency a SBE Application for Certification and its accompanying Affidavit (Attachment 1-A hereto) completed by the SBE owner. However, a SBE that was previously certified by the Agency shall submit only the short SBE Eligibility Statement (Attachment 1-B hereto).

C. **Good Faith Documentation**. If the 50% SBE Participation Goals are not met in each category (Construction, Professional Services and Suppliers), the Agency-Assisted Contractor or Contractor(s) shall meet and confer with the Agency at a date and time set by the Agency. If the issue of the Agency-Assisted Contractor's or Contractor's good faith efforts is not resolved at this meeting, the Agency-Assisted Contractor or Contractor shall submit to the Agency within five (5) days, a declaration under penalty of perjury containing the following documentation with respect to the good faith efforts ("**Submission**"):

1. A report showing the responses, rejections, proposals and bids (including the amount of the bid) received from SBEs, including the date each response, proposal or bid was received. This report shall indicate the action taken by the Agency-Assisted Contractor or Contractor(s) in response to each proposal or bid received from SBEs, including the reasons(s) for any rejections.

2. A report showing the date that the bid was received, the amount bid by and the amount to be paid (if different) to the non-SBE contractor that was selected. If the non-SBE contractor who was selected submitted more than one bid, the amount of each bid and the date that each bid was received shall be shown in the report. If the bidder asserts that there were reasons other than the respective amounts bid for not awarding the contract to an SBE, the report shall also contain an explanation of these reasons.

3. Documentation of advertising for and contacts with SBEs, contractor associations or development centers, or any other agency which disseminates bid and contract information to small business enterprises.

4. Copies of initial and follow-up correspondence with SBEs, contractor associations and other agencies, which assist SBEs.

5. A description of the assistance provided SBE firms relative to obtaining and explaining plans, specifications and contract requirements.

6. A description of the assistance provided to SBEs with respect to bonding, lines of credit, etc.

7. A description of efforts to negotiate or a statement of the reasons for not negotiating with SBEs.

8. A description of any divisions of work undertaken to facilitate SBE participation.

9. Documentation of efforts undertaken to encourage subcontractors to obtain small business enterprise participation at a lower tier.

10. A report which shows for each private project and each public project (without a SBE program) undertaken by the bidder in the preceding 12 months, the total dollar amount of the contract and the percentage of the

contract dollars awarded to SBEs and the percentage of contract dollars awarded to non-SBEs.

11. Documentation of any other efforts undertaken to encourage participation by small business enterprises.

D. **Presumption of Good Faith Efforts**. If the Agency-Assisted Contractor or Contractor(s) achieves the Participation Goals, it will not be required to submit Good Faith Effort documentation.

E. **Waiver**. Any of the SBE requirements may be waived if the Agency determines that a specific requirement is not relevant to the particular situation at issue, that SBEs were not available, or that SBEs were charging an unreasonable price.

F. **SBE Determination**. The Agency shall exercise its reasonable judgment in determining whether a business, whose name is submitted by the Agency-Assisted Contractor or Contractor(s) as a SBE, is owned and controlled by a SBE. A firm's appearance in any of the Agency's current directories will be considered by the Agency as prima facie evidence that the firm is a SBE. Where the Agency-Assisted Contractor or Contractor(s) makes a submission the Agency shall make a determination, as to whether or not a business which the Agency-Assisted Contractor or Contractor(s) claims is a SBE is in fact owned and controlled by local SBEs. If the Agency determines that the business is not a SBE, the Agency shall give the Agency-Assisted Contractor or Contractor a Notice of Non-Qualification and provide the Agency-Assisted Contractor or Contractor with a reasonable period (not to exceed 20 days) in which to meet with the Agency and if necessary make a Submission, concerning its good faith efforts. If the Agency-Assisted Contractor or Contractor disagrees with the Agency's Notice of Non-Qualification, the Agency-Assisted Contractor or Contractor may request arbitration pursuant to Section XII.

G. **Agency Investigation**. Where the Agency-Assisted Contractor or Contractor makes a Submission and, as a result, the Agency has cause to believe that the Agency-Assisted Contractor or Contractor has failed to undertake good faith efforts, the Agency shall conduct an investigation, and after affording the Agency-Assisted Contractor or Contractor notice and an opportunity to be heard, shall recommend such remedies and sanctions as it deems necessary to correct any alleged violation(s). The Agency shall give the Agency-Assisted Contractor or Contractor a written Notice of Non-Compliance setting forth its findings and recommendations. If the Agency-Assisted Contractor or Contractor disagree with the findings and recommendations of the Agency as set forth in the Notice of Non-Compliance, the Agency-Assisted Contractor or Contractor may request arbitration pursuant to this SBE Agreement.

XII. ARBITRATION OF DISPUTES.

A. **Arbitration by AAA**. Any dispute regarding this SBE Agreement shall be determined by arbitration through the American Arbitration Association, San Francisco, California office ("AAA") in accordance with the Commercial Rules of

the AAA then applicable, but subject to the further revisions thereof. The arbitration shall take place in the City and County of San Francisco.

B. **Demand for Arbitration**. Where the Agency-Assisted Contractor or Contractor disagrees with the Agency's Notice of Non-Qualification or Notice of Non-Compliance, **the Agency-Assisted Contractor or Contractor shall have seven (7) business days, in which to file a Demand for Arbitration,** unless otherwise stipulated by the parties. The Demand for Arbitration shall contain at a minimum: (1) a cover letter demanding arbitration under this provision and identifying a entities believed to be involved in the dispute; (2) a copy of the Notice of Non-Qualification or Notice of Non-Compliance; and (3) any written response to the Notice of Non-Qualification or Notice of Non-Compliance. If the Agency-Assisted Contractor and Contractor fails to file a timely Demand for Arbitration, the Agency-Assisted Contractor and Contractor shall be deemed to have accepted and to be bound by the finding of Non-Qualification or the findings and recommendations contained in the Notice of Non-Compliance.

C. **Parties' Participation**. The Agency and all persons or entities who have a contractual relationship affected by the dispute shall be made an Arbitration Party. Any such person or entity not made an Arbitration Party in the Demand for Arbitration may intervene as an Arbitration Party and in turn may name any other such person or entity as an Arbitration Party, provided however, that the Agency-Assisted Contractor or Contractor made an initial timely Demand for Arbitration pursuant to Section XII.B. above.

D. **Agency Request to AAA**. Within seven (7) business days after service of a Demand for Arbitration, the Agency shall transmit to AAA a copy of the Demand for Arbitration, the Notice of Non-Qualification or Notice of Non-Compliance, and any written response thereto from the affected party. Such material shall be made part of the arbitration record.

E. **Selection of Arbitrator**. One arbitrator shall arbitrate the dispute. The arbitrator shall be selected from the panel of arbitrators from AAA by the parties to the arbitration in accordance with the AAA rules. The parties shall act diligently in this regard. If the Arbitration Parties fail to agree on an arbitrator within seven (7) days from the receipt of the panel, AAA shall appoint the arbitrator. A condition to the selection of any arbitrator shall be that person's agreement to render a decision within ninety (90) days from the arbitrator's fulfillment of the disclosure requirements set forth in California Code of Civil Procedure Section 1281.9.

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

G. **Discovery.** In arbitration proceedings hereunder, discovery shall be permitted in accordance with Code of Civil Procedure §1283.05.

H. **Burden of Proof**. The burden of proof with respect to SBE status and/or Good Faith Efforts shall be on the Agency-Assisted Contractor and/or Contractor. The burden of proof as to all other alleged breaches by the Agency-Assisted Contractor and/or Contractor shall be on the Agency.

I. **California Law Applies.** Except where expressly stated to the contrary in this SBE Agreement, California law, including the California Arbitration Act, Code of Civil Procedure §§ 1280 through 1294.2, shall govern all arbitration proceedings.

J. **Arbitration Remedies and Sanctions.** The arbitrator may impose only the remedies and sanctions set forth below:

1. Order specific, reasonable actions and procedures, in the form of a temporary restraining order, preliminary injunction or permanent injunction, to mitigate the effects of the non-compliance and/or to bring any non-compliant Arbitration Party into compliance.

2. Require any Arbitration Party to refrain from entering into new contracts related to work covered by the Agency-Assisted Contract or this SBE Agreement, or from granting extensions or other modifications to existing contracts related to services covered by the Agency-Assisted Contract or this SBE Agreement, other than those minor modifications or extensions necessary to enable compliance with this SBE Agreement.

3. Direct any Arbitration Party to cancel, terminate, suspend or cause to be cancelled, terminated or suspended, any contract or portion(s) thereof for failure of any party to the arbitration to comply with any of the SBE Program requirements in the Agency-Assisted Contract or this SBE Agreement. Contracts may be continued upon the condition that a program for future compliance is approved by the Agency.

4. If any Arbitration Party is found to be in willful breach of its obligations hereunder, the arbitrator may impose a monetary sanction not to exceed Fifty Thousand Dollars ($50,000.00) or ten percent (10%) of the base amount of the breaching party's contract, whichever is less, for each such willful breach; provided that, in determining the amount of any monetary sanction to be assessed, the arbitrator shall consider the financial capacity of the breaching party. No monetary sanction shall be imposed pursuant to this paragraph for the first willful breach of this SBE Agreement unless the breaching party has failed to cure after being provided notice and a reasonable opportunity to cure. Monetary sanctions may be imposed for subsequent willful breaches by any Arbitration Party whether or not the breach is subsequently cured. For purposes of this paragraph, "willful breach" means a knowing and intentional breach.

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

K. **Arbitrator's Decision**. The arbitrator shall make his or her award within twenty (20) days after the date that the hearing is completed; provided that where a temporary restraining order is sought, the arbitrator shall make his or her award not later than twenty-four (24) hours after the hearing on the motion. The arbitrator shall send the decision by certified or registered mail to each Arbitration Party.

L. **Default Award; No Requirement to Seek an Order Compelling Arbitration**. The arbitrator may enter a default award against any person or entity who fails to appear at the hearing, provided that: (1) said person or entity received actual notice of the hearing; and (2) the complaining party has a proof of service for the absent person or entity. In order to obtain a default award, the complaining party need not first seek or obtain an order to arbitrate the controversy pursuant to Code of Civil Procedure §1281.2.

M. **Arbitrator Lacks Power to Modify**. Except as otherwise provided, the arbitrator shall have no power to add to, subtract from, disregard, modify or otherwise alter the terms of the Agency-Assisted Contract, this SBE Agreement or any other agreement between the Agency, the Agency-Assisted Contractor or Contractor or to negotiate new agreements or provisions between the parties.

N. **Jurisdiction/Entry of Judgment**. The inquiry of the arbitrator shall be restricted to the particular controversy which gave rise to the Demand for Arbitration. A decision of the arbitrator issued hereunder shall be final and binding upon all Arbitration Parties. The non-prevailing Arbitration Party(ies) shall pay the arbitrator's fees and related costs of arbitration (or reimburse the Arbitration Parties that advanced such arbitration fees and costs). Each Arbitration Party shall pay its own attorneys' fees, provided, however, that attorneys' fees may be awarded to the prevailing party if the arbitrator finds that the arbitration action was instituted, litigated, or defended in bad faith. Judgment upon the arbitrator's decision may be entered in any court of competent jurisdiction

O. **Exculpatory Clause**. Agency-Assisted Contractor or Contractor (regardless of tier) expressly waive any and all claims against the Agency for damages, direct or indirect, including, without limitation, claims relative to the commencement, continuance and completion of construction and/or providing professional and consulting services ("the Work"). Agency-Assisted Contractor or Contractor (regardless of tier) acknowledge and agree that the procedures set forth herein for dealing with alleged breaches or failure to comply with the obligations and requirements of this SBE Agreement are reasonable and have been anticipated by the parties in securing financing, in inviting, submitting and receiving bids and proposals for the planning, design and construction of the improvements and in determining the times for commencement and completion of the planning, design and construction and/or for providing consulting, professional or personal services.

P. **Severability**. The provisions of this SBE Agreement are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this SBE Agreement or the invalidity of the application thereof to any person or circumstance shall not affect the validity of the remainder of this

SBE Agreement or the validity of their application to other persons or circumstances.

Q. **Arbitration Notice**: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS SUCH RIGHTS ARE SPECIFICALLY INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION TO NEUTRAL ARBITRATION.

_____ _____

Agency Agency-Assisted Contractor

XIII. AGREEMENT EXECUTION

Note: This SBE Agreement is to be executed only by Agency-Assisted Contractors and Contractors or their subcontractors who have subcontracting opportunities (i.e. lower-tier subcontractors). If you are seeking Agency certification as a SBE, you should fill out Attachment 1-A Application for SBE Certification. If you are already an Agency certified SBE, you should execute Attachment 1-B SBE Eligibility Statement.

I, hereby certify that I have authority to execute this SBE Agreement on behalf of the business, organization or entity listed below and that it will use good faith efforts to comply with the Agency's 50% SBE Participation Goals. I declare under penalty of perjury under the laws of the State of California that the above statement is true and correct.

_____ _____

Signature Date

_____ _____

Print Your Name Title

_____

Company Name and Phone Number

ATTACHMENT NO. 1-A

APPLICATION FOR SMALL BUSINESS ENTERPRISE CERTIFICATION

Note: This form is to be completed only by Small Business Enterprise Owners seeking Agency certification as a SBE. Your SBE status will be subject to recertification every three years. If you are already a certified SBE, you should fill out Attachment 1-B SBE Eligibility Statement.

1. Name of Business _____
(Has your business operated under another name? Yes/ No If so, please state the names used, the address(es) of the business and the time period each name was used in the space provide for item 33 below.)

2. Federal identification no. of Business _____

3. Contact Person: _____

4. Business Address: _____
(P. O. Box is Unacceptable)

5. Mailing Address: _____
(If different from above)

6. Telephone Number(s) _____

7. Email Address _____ Fax: _____

8. Is business address or phone number also that of a residence? _____ If so, please explain under item 33.

9. Indicate the type of industry or the business:

☐ Construction ☐ Professional and/or Consultant ☐ Supplier
☐ Manufacturer ☐ Manufacturer's Representative ☐ Other

_____

10. Identify the types of services or products offered. (Equipment operator or trucker should identify the equipment it owns here.)

_____

_____

_____

11. Type of ownership:

☐ Corporation ☐ Sole Proprietor ☐ Partnership ☐ Joint Venture

☐ Other (Please specify) _____

12. With your application, please submit true and correct copies of the following documents:

a. Small Business Enterprise Owner's Proof of identification, such as birth certificate or driver's license and

b. Federal personal tax returns, Form 1040, in full with W-2 statements and all supporting schedules and statements for ***all*** Small Business Enterprise Owners for the past three years **OR** Federal corporate tax returns, Form 1120 (including Schedule E), in full with ***all*** supporting schedules and statements such as Form 4562 for the past three years.

13. If a contractor or subcontractor, submit:

a. Contractors' State License No. (If a contractor)

_____

b. Name of person who qualified for license

_____

NOTE: If you have formed a partnership or incorporated since becoming a contractor, the partnership or corporation must have its own Contractors' State License.

14. If a California state board certified professional, submit a copy of your registration and license issued by the State Board of Architectural Examiners, the Board of Registration for Professional Engineers and Land Surveyors, the State Board of Accountancy or the State Bar of California.

15. Submit a copy of all local business license(s) and permits(s) required to perform your business.

16. Submit a copy of your fictitious name filing, if you are doing business as a fictitious entity. The names on the Contractors' State License and the fictitious name filing must match.

17. Submit a copy of your Partnership Agreement, if the business is a partnership. The names of the partners must match those shown to be partners on the Contractors' State License.

18. If the firm is a corporation, submit a copy of your Articles of Incorporation, Corporate Bylaws and Minutes of the first meeting.

19. Joint Venture Agreement (including dollar amount of capital contribution), if a joint venture is the applicant.

20. List the owners who have an interest of five (5) percent or greater:

Name	Date of Ownership	Number Of Shares	Vote %	U. S. Citizen (Yes / No)

If more Owners, check here ☐ and continue listing under item 33.

21. List the contributions of money, equipment, real estate, or expertise of each of the owners for businesses with less than 100 percent disadvantaged ownership. Use the additional space is provided in item 33 if necessary.

_____

_____

_____

_____

22. Date business was established _____. The total number of years the firm has been in business is _____. The number of years the firm has been in business under present ownership is _____. The following is a brief explanation of the change in ownership of the business (if applicable):

_____

_____

23. Board of Directors:

Name	Title	Date Elected/ Expiration of Term

If more Directors, check here ☐ and continue listing under item 33.

24. If the Board of Directors has changed within the last three years, list the names of the former Directors and date of resignation under item 33.

25. **Management**: The following duties are actually performed by the persons indicated below:

a. Preparation of estimates and bids is done by

_____ (name) who reports to _____ (name).

b. Hiring, firing of management personnel is done by

_____ (name) who reports to _____ (name).

c. Purchasing of major equipment, material or supplies is done by

_____ (name) who reports to _____ (name).

d. Financial control is done by

_____ (name) who reports to _____ (name).

e. Negotiations and approval of contracts is done by

_____ (name) who reports to _____ (name).

f. Administration of contracts is done by

_____ (name) who reports to _____ (name).

g. Supervision of field operations is done by

_____ (name) who reports to _____ (name).

h. Marketing and sales activities is done by

_____ (name) who reports to _____ (name).

i. Warehouse inventory and control is done by

_____ (name) who reports to _____ (name).

26. Resumes pointing out the years of specific experience to qualify for the responsibilities delegated to each ***Management*** person listed in item 15 of this Application.

27. Indicate the firm's gross receipts and average number of employees for the last three tax years:

Year ending _____	Amount _____	Employees _____
Year ending _____	Amount _____	Employees _____
Year ending _____	Amount _____	Employees _____

28. **This item # 28 is to be answered by manufacturers and suppliers only**: For last year:

a. Lowest number of employees _____

b. Highest number of employees _____

c. Number of employees whose job lasted the entire year _____

d. Were any of the employees on another firm's payroll? _____ If so, identify the firm: _____

e. Submit a copy of your current inventory (not to exceed a 10-page extract).

f. Value of current inventory $ _____

g. Location of inventory _____

29. Name of Surety _____

_____

Name of Agent _____ Telephone No. _____

Bonding Limit _____

Sources of letter of credit _____

30. If the business or other businesses with any of the same officers has/have previously been denied recognition as an SBE, please explain the circumstances.

_____

_

31. Identify any owner or management official of the named business who is or has been an employee of another firm that has an ownership interest in or a present business relationship with the named business. Describe present business relationships, which include sharing space, equipment, financing or employees, as well as common owners.

32. The firm intends to subcontract _____ percent of the work to be performed under its contract with _____ to the following:

	Name	SBE Yes/No	Subcontract Total	Scope of Work
a.				
b.				
c.				

33. Please use this additional space to supplement the information provided above. Print the corresponding item number before each supplemental response. You may attach additional sheets if necessary.

Item # Supplemental Response:

AFFIDAVIT
(To be completed by Small Business Enterprise Owner)

The undersigned swears that the foregoing statements are true and correct and include all material information necessary to identify and explain the operations of _____ (Name of Business) as well as the ownership thereof. Further, the undersigned covenant(s) and agree(s) to provide to the local agency current, complete and accurate information regarding actual joint venture arrangements and to permit the audit and examination of the books, records and files of the joint venture, or those of each joint venturer relevant to the joint venture, by authorized representatives of the agency. Any material misrepresentation will be grounds for terminating any contract which may be awarded and for initiating action under state law concerning false statements.

NOTE:

a. The conditions outlined in this affidavit are applicable to any additional information that is required to be provided to authenticate the affiant's business.

b. You are required to notify the Agency if any significant changes occur that would alter your status as a SBE.

_____ _____

Signature Date

_____ _____

Print Your Name Title

_____

Company Name and Phone Number

ATTACHMENT NO. 1-B

SBE ELIGIBILITY STATEMENT
(To be completed by Small Business Enterprise Owner)

_____

_____

(Name of Project) (Contractor)

I, _____, declare that:

1. I have carefully reviewed the Application for Small Business Enterprise Certification ("Application") executed by me on _____ (date) on behalf of _____ (name of business).

2. All of the statements and information contained in said Application are still true and correct with the following exceptions:

3. All of the new statements and information provided in item 2 above are true and correct.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on _____ in _____
Date Place of Execution

_____ _____
Signature of Declarant Title

Note: Your SBE status is subject to recertification every three (3) years.

EXHIBIT Q

San Francisco Planning Department

Approvals and Conditions Dated June 12, 2008

SAN FRANCISCO
PLANNING DEPARTMENT

Planning Commission Motion 17618

HEARING DATE: JUNE 12, 2008

1650 Mission St.
Suite 400
San Francisco,
CA 94103-2479

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

Date:	June 12, 2008
Case No.:	2007.0168CETZ
Project Address:	227 - 229 WEST POINT ROAD
Zoning:	RH-2 (Residential, House Two Family) RM-1 (Residential, Mixed Low Density) NC-2 (Neighborhood Commercial, Small-Scale) M-1 (Light Industrial) 40-X Height and Bulk District
Block/Lot:	4624/003, 004, 009 4720/027
Project Sponsor:	Hunter's View Associates, LP 576 Sacramento Street, 7th Floor San Francisco, CA 94111
Staff Contact:	Mat Snyder - 415/575-6891 mathew.snyder@sfgov.org

ADOPTION OF CEQA FINDINGS RELATED TO THE FINAL ENVIRONMENTAL IMPACT REPORT AND PROPOSED PLANNING CODE MAP AMENDMENTS, PLANNING CODE TEXT AMENDMENTS, AND CONDITIONAL USE AUTHORIZATION TO ALLOW THE CONSTRUCTION OF APPROXIMATELY 6,400 SQUARE FEET OF RETAIL USE, 21,600 SQUARE FEET OF COMMUNITY SPACE, AND UP TO 800 DWELLING UNITS IN RM-1, RH-2, NC-2, AND M-1 ZONING DISTRICTS WITH A 40 X HEIGHT AND BULK DESIGNATION ON ASSESSOR'S BLOCK 4624, LOTS 3, 4 & 9 AND BLOCK 4720, LOT 27.

PREAMBLE

On February 1, 2007, pursuant to the provisions of the California Environmental Quality Act (Cal. Pub.Res. Code Section 21000 et seq., hereinafter "CEQA"), the State CEQA Guidelines (Cal. Admin. Code Title 14, Section 15000 et seq., hereinafter CEQA "Guidelines"), and Chapter 31 of the San Francisco Administrative Code (hereinafter "Chapter 31"), the Pang Department ("Department') received an Environmental Evaluation Application form for the Project, in order that it might conduct an initial evaluation to determine whether the Project might have a significant impact on the environment.

The Planning Department determined that an Environmental Impact Report (hereinafter "EIR") was required and provided public notice of that determination and of a public scoping meeting by publication in a newspaper of general circulation on November 17, 2007.

On March 27, 2008, Hunters View Associates, L.P. (hereinafter "Project Sponsor") filed Application No. 2007.0168C (hereinafter "Application") with the Planning Department (hereinafter "Department") for Conditional Use authorization per Planning Code Sections 303 and 304 to create a new Planned Unit Development (PUD) to allow the construction up to 800 dwelling units and including the

following exceptions: lot width and area (Planning Code Section 121), rear yards (Planning Code Section 134(a) and (c)), usable open space (Planning Code Section 135), allowable obstructions (Planning Code Section 136), spacing of street trees (Planning Code Section 143), parking (Planning Code Sections 150, 151, 154 and 155), bicycle parking (Planning Code Section 155.5), loading (Section 152), dwelling unit exposure (Section 140), measurement of height (Planning Code Sections 102..12 and 260(a)) and density (Planning Code Section 209.1).

The revitalization of Hunters View will include the demolition of all of the existing public housing units and other community facilities on the site, resulting in a mixed-income community that will include up to 800 new residential units and provide one-for-one replacement of the existing 267 public housing units. The current project proposal includes up to 800 total units, including a total of 350 affordable rental units (267 of which will be the replacement public housing units) and up to 450 home ownership units, of which 10-15% will be affordable and 17 of those will be developed by Habitat for Humanity. This new mixed-income development will result in a range of resident incomes from less than 10% to over 120% of AMI. Additionally, the net proceeds from the sale of the market-rate for-sale units will cross-subsidize a portion of the development costs of the public housing replacement units and affordable rental units.

On May 20, 2008, the Board of Supervisors initiated legislation to amend the Planning Code by adding Section 249.39 and 263.20 establishing the Hope SF Hunters View Special Use District ("SUD") and related Map Change Amendment; the legislation was subsequently transmitted to the Planning Commission for their action under Planning Code Section 302(c). The Planning Code Amendments would allow greater densities on some portions of the site (but not the site as a whole), and would allow some non-residential uses that are currently restricted, and heights greater than 40-feet with the condition that design guidelines or a "Design-for-Development" document be created as part of the Project's Conditional Use / Planned Unit Development approval;

On June 12, 2008, the Department certified the Final Environmental Impact Report for the Hunters View Redevelopment Project (State Clearinghouse No. SCH 2007112086) for the Project (the "Final EIR").

On June 12, 2008, the San Francisco Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting on Map and Text Amendments and Conditional Use Application No. 2007.0168ECTZ.

The Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented on behalf of the applicant, Department staff, and other interested parties.

MOVED, that the Commission hereby adopts CEQA Findings:

FINDINGS

Having reviewed the materials identified in the preamble above, and having heard all testimony and arguments, this Commission finds, concludes, and determines as follows:

1. The above recitals are accurate and constitute findings of this Commission.

2. Where feasible, all significant environmental impacts of the Project have been mitigated to a less than significant level, and to the extent that an environmental impact of the Project cannot feasibly be mitigated to a less than significant level, specific overriding economic, legal, social, technological and other benefits of the Project each independently outweigh these significant and unavoidable impacts and warrant approval of the Project, as stated in the Findings of Fact, Evaluation of Mitigation Measures and Alternatives, and Statement of Overriding Considerations which is attached hereto as "Attachment A" and incorporated by this reference.

DECISION

The Commission, after carefully balancing the competing public and private interests, and based upon the Recitals and Findings set forth above, in accordance with the standards specified in the Code, hereby adopts CEQA findings for the subject Project, which includes up to 800 dwelling units, approximately 6,400 square feet of retail use, approximately 21,600 square feet of community space, approximately 58,300 square feet of parks, and up to 816 off-street parking spaces, at 227-229 West Point Road in three construction phases.

I hereby certify that the foregoing Resolution was ADOPTED by the San Francisco Planning Commission on June 12, 2008.

Linda Avery
Commission Secretary

AYES: Olague, Antonini, Miguel, Moore, Lee, Sugaya

NOES:

ABSENT:

ADOPTED: JUNE 12, 2008

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ATTACHMENT A

HUNTERS VIEW REDEVELOPMENT PROJECT

CALIFORNIA ENVIRONMENTAL QUALITY ACT FINDINGS

SAN FRANCISCO PLANNING COMMISSION

1. INTRODUCTION

These Findings are made by the Planning Commission of the City and County of San Francisco (the "Planning Commission") pursuant to the California Environmental Quality Act, California Public Resources Code section 21000 et seq., ("CEQA") with respect to the Hunters View Redevelopment Project ("Project"), in light of substantial evidence in the record of Project proceedings, including but not limited to, the Hunters View Redevelopment Project Final Environmental Impact Report ("FEIR") prepared pursuant to CEQA, the State CEQA Guidelines, 14 California Code of Regulations Sections 15000 et seq., (the "CEQA Guidelines"), and Chapter 31 of the San Francisco Administrative Code ("Chapter 31").

This document is organized as follows:

Article 2 describes the Project.

Article 3 describes the actions to be taken by the Planning Commission at this time.

Article 4 provides the basis for approval of the Project, a description of each alternative, and the economic, legal, social, technological, and other considerations that lead to the rejection of alternatives as infeasible that were not incorporated into the Project.

Article 5 sets forth Findings as to the disposition of each of the mitigation measures proposed in the FEIR.

Article 6 identifies the unavoidable, significant adverse impacts of the Project that have not been mitigated to a level of insignificance by the adoption of mitigation measures as provided in Article 5.

Article 7 contains a Statement of Overriding Considerations, setting forth specific reasons in support of the Planning Commission's approval actions for the Project in light of the significant unavoidable impacts discussed in Article 6.

Exhibit 1, attached, contains the Mitigation Monitoring and Reporting Program required by CEQA Section 21081.6 and CEQA Guidelines Section 15091. It provides a table setting forth each mitigation measure listed in Chapter IV of the FEIR that is required to reduce or avoid a significant adverse impact. Exhibit 1 also specifies the agency or entity responsible for implementation of each measure, establishes monitoring actions and a monitoring schedule.

Finally, Chapter IV of the FEIR also contains a few measures that are not required to avoid or reduce significant adverse impacts but will reduce less than significant impacts. These measures are listed in Exhibit 1 as Improvement Measures. The Project Sponsor intends to implement these measures as part of the Project implementation. Exhibit 1 explains how the Planning Department will ensure that these measures are implemented during the development of the Project.

2. PROJECT DESCRIPTION

2.1 Project Approvals

The San Francisco Housing Authority (SFHA) and Hunters View Associates, L.P. (Project Sponsor), assisted by the San Francisco Redevelopment Agency (Agency) and the Mayor's Office of Housing, propose the Hunters View Redevelopment Project, in San Francisco's Bayview Hunters Point neighborhood.

The Project Sponsor is Hunters View Associates L.P., a California limited partnership.

The City and County of San Francisco will be taking various approval actions related to the Project (collectively, the "Project Approvals"). The Project requires the following major permits and approvals, and related and collateral actions by the Planning Commission:

2.1.2 Adoption of CEQA Findings, including a Statement of Overriding Considerations, mitigation measures, and a mitigation monitoring and reporting program.

2.1.3 Certification of the FEIR by the Planning Commission.

2.1.4 Adoption by the Planning Commission of Motion No. ___, approving the Conditional Use/Planned Unit Development authorization for the Project, including General Plan consistency/Planning Code § 101.1 findings.

2.1.5 Adoption by the Planning Commission of Resolution No. ___, recommending approval by the Board of Supervisors of Ordinance No. ___, adding Planning Code Section 249.39 to create the HOPE SF Hunters View Special Use District.

2.1.6 Adoption by the Planning Commission of Resolution No. ___, recommending approval by the Board of Supervisors of Ordinance No. ___, adding Planning Code Section 263.20 to create the HOPE SF Hunters View SUD and 40/65-X Height and Bulk District.

2.1.7 Adoption by the Planning Commission of Resolution No. ___, recommending approval by the Board of Supervisors of Ordinance No. ___, amending the Zoning Map of the City and County of San Francisco.

2.2 Project Description's Relationship to the FEIR

The Project, described in detail below, is based on the Project Description contained in Chapter II of the FEIR.

2.3 Public Review of FEIR

The City's Planning Department ("Planning Department") determined that an EIR was required for the initial proposal to redevelop Hunters View and provided public notice of that determination by publication in a newspaper of general circulation on November 17, 2007.

On March 1, 2008, the Planning Department published the Draft Environmental Impact Report (hereinafter "DEIR ") on the Hunters View Redevelopment Project and provided public notice in a newspaper of general circulation of the availability of the DEIR for public review and comment and of the date and time of the Planning Commission public hearing on the DEIR; this notice was mailed to the Planning Department's list of persons requesting such notice.

Notices of availability of the DEIR and of the date and time of the public hearing were posted near the project site by the Project Sponsor on March 1, 2008.

On March 1, 2008, copies of the DEIR were mailed or otherwise delivered to a list of persons requesting it, to those noted on the distribution list in the DEIR, and to government agencies, the latter both directly and through the State Clearinghouse.

Notice of Completion was filed with the State Secretary of Resources via the State Clearinghouse on February 29, 2008.

The Planning Commission held a duly advertised public hearing on the DEIR on April 3, 2008, at which opportunity for public comment was given, and public comment was received on the DEIR. The period for acceptance of written comments ended on April 14, 2008.

The Planning Department prepared responses to comments on environmental issues received at the public hearing and in writing during the 45-day public review period for the DEIR, prepared revisions to the text of the DEIR in response to comments received or based on additional information that became available during the public review period, and corrected errors in the DEIR. This material was presented in a "Draft Summary of Comments and Responses," published on May 29, 2008, was distributed to the Planning Commission and to all parties who commented on the DEIR, and was available to others upon request at the Planning Department offices.

2.4 FEIR Certification

The Planning Commission has reviewed and considered the FEIR and found that the contents of said report and the procedures through which the FEIR was prepared, publicized and reviewed comply with the provisions of CEQA, the CEQA Guidelines and Chapter 31.

The Planning Commission further finds that the FEIR reflects the independent judgment and analysis of the City and County of San Francisco as the lead agency under CEQA.

By this Motion [TBD], the Planning Commission hereby adopts findings pursuant to CEQA, including mitigation measures, a mitigation monitoring and reporting program and a statement of overriding considerations.

3. PLANNING COMMISSION ACTIONS

The Planning Commission is considering various actions ("Actions") in furtherance of the Project, which include the following:

3.1 Adoption of these CEQA Findings, including a Statement of Overriding Considerations, mitigation measures, and a mitigation monitoring and reporting program; and

3.2 Certification of the FEIR.

3.2.1 Adoption by the Planning Commission of Motion No. ___, approving the Conditional Use/Planned Unit Development authorization for the Project, including General Plan consistency/Planning Code § 101.1 findings.

3.2.2 Adoption by the Planning Commission of Resolution No. ___, recommending approval by the Board of Supervisors of Ordinance No. ___, adding Planning Code Section 249.39 to create the HOPE SF Hunters View Special Use District.

3.2.3 Adoption by the Planning Commission of Resolution No. ___, recommending approval by the Board of Supervisors of Ordinance No. ___, adding Planning Code Section 263.20 to create the HOPE SF Hunters View SUD and 40/65-X Height and Bulk District.

3.2.4 Adoption by the Planning Commission of Resolution No. ___, recommending approval by the Board of Supervisors of Ordinance No. ___, amending the Zoning Map of the City and County of San Francisco.

4. CONSIDERATION OF PROJECT ALTERNATIVES

This Article describes the Project as well as rejected Project Alternatives. Included in these descriptions are the reasons for selecting or rejecting the alternatives. This Article also outlines the Project's purposes and provides a context for understanding the reasons for selecting or rejecting alternatives, and describes the project alternative components analyzed in the FEIR. The Project's FEIR presents more details on selection and rejection of alternatives.

4.1 Summary of Alternatives Analyzed in the FEIR

The FEIR for the Hunters View Redevelopment Project analyzed the Project proposal and three alternatives:

- No Project Alternative
- Reduced-Project Alternative
- No Re-Zoning Alternative: Proposed Project with No Change in Height and Bulk Controls

The Project is expected to yield 800 residential units (267 replacement units for public housing, 83 affordable rental units and up to 450 for sale units), 6,400 square feet of commercial space, 21,600 square feet of community space, and approximately 58,300 square feet of neighborhood parks.

4.2 Overview of the Project

The Project will be developed on two adjacent parcels. The San Francisco Housing Authority property currently contains 267 public housing units in 50 buildings located on approximately 20.5 acres while the San Francisco Redevelopment Authority property is vacant. The 267 residential units contain approximately 325,000 square feet of space, and there is an additional 7,000 square feet of community serving and storage space on the site. The buildings range in height from one to three stories (or 16 to 28 feet) and currently there are no off-street parking spaces.

The redevelopment of Hunters View will include the demolition of all of the existing public housing units and other community facilities on the site. The redevelopment of Hunters View will result in a mixed-income community that will include between 650 and 800 new residential units and provide one-for-one replacement of the existing 267 public housing units. While subject to adjustment based on further feasibility analysis, the current project proposal includes up to 800 total units, including a total of 350 affordable rental units (267 of which will be the replacement public housing units) and up to 450 home ownership units, of which 10-15% will be affordable and 17 of those will be developed by Habitat for Humanity. This new mixed-income development will result in a range of resident incomes from less than 10% to well over 120% of Adjusted Median Income (AMI). Additionally, the net proceeds from the sale of the market-rate for-sale units will serve as the financial engine of the project by cross-subsidizing a portion of the development costs of the public housing replacement units and affordable rental units.

The Project will also include new roads and walkways that maximize the site's development capacity and enhance resident safety and community connectivity; infrastructure improvements that ensure all residents are adequately served; positioning of buildings and open spaces to maximize the site's long-neglected "million dollar" views for all residents; new community facilities with potential uses such as a teen center, a computer learning facility, a childcare/Head Start center and children's play areas; and comprehensive supportive service programming that will assist residents through every stage of their life cycle. Additionally, the Project will be based on sustainable "green" building technologies and is one of the projects selected for the pilot program in Leadership in Energy and Environmental Design for Neighborhood Design (LEED-ND).

The Project includes up to 800 housing units located in multiple buildings comprising 21 blocks (18 developed and three landscaped parks). The Project includes approximately 6,400 square feet of neighborhood serving retail space, and approximately 21,600 square feet of community serving space and storage. It also includes approximately 58,300 square feet of park space to be developed at three sites. The buildings will range in size from two to seven stories or 20 to 65 feet. There will be up to 816 off-street parking spaces, although the current proposal calls for approximately 672 off-street parking spaces.

4.3 Project Need, Purpose and Objectives

The Project Sponsor's primary objective is to build a high quality, well-designed, cost efficient and affordable mixed-income community that includes units for singles, families and seniors and community facilities that equally serve all residents.

Specific Objectives of the Project include:

- Develop up to 800 units of mixed-income housing;
- Replace all current public housing units, on a one-for-one basis, with high quality comparably affordable units;
- Minimize off-site relocation of residents during construction;
- Provide unit types to best meet the needs of the current and future residents;
- Continue to provide affordable housing opportunities yet decrease the concentration of public housing units by adding additional mixed-income units;
- Create affordable and market rate home ownership opportunities;
- Utilize the sales proceeds from the market rate home ownership component in order to help finance the construction of the public housing units;
- Realign the streets and placement of buildings to result in more typical San Francisco neighborhood and to maximize views for all residents;
- Create greater connectivity to the broader community by adding street and walkway connections where feasible;
- Provide supportive services for residents;
- Remediate the physical hazards of the existing Hunters View;
- Blend the design of the new buildings into the surrounding community;
- Base construction on healthy and green principles;
- Improve public housing facilities, amenities, security, and Americans with Disabilities Act (ADA) access at the site; and

- Create a stable mixed-income community that serves both existing residents as well as new residents.

4.4 Reasons for Selection of the Hunters View Redevelopment Project

The Project is selected because it will achieve all of the Project Objectives and promote achievement of the following goals, which would not be achieved by either the No Project Alternative, the Reduced-Project Alternative, or the No Re-Zoning Alternative:

Increased Affordable Housing and Market Rate Housing – The Project will provide more affordable housing units and more market rate units than any of the alternatives, thus helping to address San Francisco's significant shortfall in housing, especially affordable housing.

Increased Economic and Business Vitality – The Project will provide more resources for economic revitalization efforts in the Hunters View neighborhood.

4.5 Overview of Other Project Alternatives Considered

The following section presents an overview of the other Project Alternatives analyzed in the FEIR. A more detailed description of each alternative can be found in Chapter VI (Alternatives to the Proposed Project) of the FEIR.

Rejected Alternative: No Project Alternative

Under the No Project Alternative, no physical land use changes would occur at the site. The existing 267 unit Hunters View public housing development would remain in its current configuration and overall condition.

Rejected Alternative: Reduced-Project Alternative

Under the Reduced-Project Alternative, only 260 units would be developed at the site. This change would result in 540 fewer housing units than were proposed for the Project.

Rejected Alternative: No-Rezoning Alternative

The No-Rezoning Alternative would have the same uses as the Project but would not propose a text and map amendment to rezone the Project Site from 40-X to 40/65-X. This alternative would create a total of about 670 residential units, compared to up to 800 units with the proposed Project.

4.6 Reasons for Rejection of Other Project Alternatives

Rejected Alternative: No Project Alternative

The No Project Alternative is rejected for the following reasons:

Reduced Housing – The No Project Alternative would provide less affordable housing than the proposed Hunters View Redevelopment Project and no market rate housing. This alternative would be inconsistent with the goals of the *Bayview Hunters Point Redevelopment Plan*, which include "encourage construction of new affordable and market rate housing at locations and density levels that enhance the overall residential quality of Bayview Hunters Point."

Reduced Economic and Business Vitality – The No Project Alternative will provide fewer resources for economic revitalization efforts along the blighted corridors along Third Street and include less direct resources for neighborhood businesses than the Project.

This alternative would not meet any of the Project Objectives.

For the economic, legal, social, technological, and other considerations reasons set forth herein and in the FEIR, the No Project Alternative is rejected as infeasible.

Rejected Alternative: Reduced-Project Alternative

The Reduced-Project Alternative would be partially consistent with the *Bayview Hunters Point Redevelopment Plan*, but would not respond fully to the goals to "encourage construction of new affordable and market rate housing at locations and density levels that enhance the overall residential quality of Bayview Hunters Point" because it would develop only 260 units at the site.

This alternative would have other characteristics similar to those of the proposed Project, and its potential environmental effects would be similar to those described for the proposed Project, except for traffic impacts where the Project's contribution to significant unavoidable project level and cumulative impacts would be eliminated.

This alternative would limit the ability of the Project Sponsor to meet many of the Project objectives: to develop up to 800 units of mixed-income housing; to provide unit types to best meet the needs of current and future residents; to continue to provide affordable housing opportunities yet decrease the concentration of public housing units by adding additional mixed-income units; to create affordable and market-rate home ownership opportunities; to use the sales proceeds from the market-rate home ownership component to help finance the construction of the public housing units. It would not result in a one to one replacement of the 267 public housing units.

For the economic, legal, social, technological, and other considerations reasons set forth herein and in the FEIR, the No Reduced-Project Alternative is rejected as infeasible.

Rejected Alternative: No-Rezoning Alternative

The No-Rezoning Alternative would be generally consistent with the *Bayview Hunters Point Redevelopment Plan*, but would not respond fully to the goals to "encourage construction of new affordable and market rate housing at locations and density levels that enhance the overall residential quality of Bayview Hunters Point" because it would result in fewer affordable and market-rate housing units at the site.

This alternative would have other characteristics similar to those of the proposed Project, and its potential environmental effects would be similar to those described for the proposed Project. Urban design and visual quality effects of this alternative would differ from those of the proposed Project, as there would be no buildings greater than 40 feet in height.

This alternative would limit the ability of the Project Sponsor to meet many of the Project Objectives without the necessary zoning changes.

For the economic, legal, social, technological, and other considerations reasons set forth herein and in the FEIR, the No Rezoning Alternative is rejected as infeasible.

5. FINDINGS REGARDING MITIGATION MEASURES

The California Environmental Quality Act (CEQA) requires agencies to adopt mitigation measures that would avoid or substantially lessen a project's identified significant impacts or potential significant impacts if such measures are feasible.

The findings in this section concern mitigation measures set forth in the FEIR. These findings discuss mitigation measures as proposed in the FEIR and recommended for adoption by the Planning Commission, which can be implemented by the Project Sponsor [**and City agencies or departments, including, but not limited to, the Department of City Planning ("Planning Department"), the Department of Public Works ("DPW"), the Municipal Transportation Agency ("MTA"), the Department of Building Inspection ("DBI"), the Department of Public Health ("DPH") and the Department of Parking and Traffic ("DPT").**]

Primary responsibility for implementation of mitigation measures will be shared by the Project Sponsor and the Planning Department.

As explained previously, **Exhibit 1**, attached, contains the Mitigation Monitoring and Reporting Program required by CEQA Section 21081.6 and CEQA Guidelines Section 15091. It provides a table setting forth each mitigation measure listed in Chapter IV of the FEIR that is required to reduce or avoid a significant adverse impact. Exhibit 1 also specifies the entity and/or agency responsible for implementation of each measure, establishes monitoring actions and a monitoring schedule.

The Planning Commission finds that, based on the record before it, the mitigation measures proposed for adoption in the FEIR, other than Mitigation Measures D-1 through D-6, are feasible, and that they can and should be carried out by the identified entity and/or agencies at the designated time. This Planning Commission urges other agencies to adopt and implement applicable mitigation measures set forth in the FEIR that are within the jurisdiction and responsibility of such entities. The Planning Commission acknowledges that if such measures are not adopted and implemented, the Project may result in additional significant unavoidable impacts. For this reason, and as discussed in Article 6, the Planning Commission is adopting a Statement of Overriding Considerations as set forth in Article 7.

The Findings in this section concern mitigation measures set forth in the FEIR. All feasible mitigation measures identified in the FEIR that will reduce or avoid significant adverse environmental impacts are proposed for adoption and are set forth in Exhibit 1, in the Mitigation Monitoring and Reporting Program. Mitigation Measures D-1, D-2 and D-6 set forth in the FEIR require further analysis to determine their feasibility and are proposed for adoption if found feasible. Mitigation Measures D-3, D-4 and D-5 set forth in the FEIR are rejected as infeasible and therefore are not included in the Mitigation Monitoring and Reporting Program. None of the other mitigation measures set forth in the FEIR that are needed to reduce or avoid significant adverse environmental impacts is rejected.

5.1 Mitigation Measures Recommended by the Planning Commission for Adoption As Proposed For Implementation by City Departments and the Agency.

The Planning Commission finds that the following measures presented in the FEIR will mitigate, reduce, or avoid the significant environmental effects of the Project. They are hereby recommended for adoption and implementation by the City departments with applicable jurisdiction in the approval of the Project, as set forth below.

Air Quality

Mitigation Measure E-1.A: Construction Dust Control

Construction activities would generate airborne dust that could temporarily adversely affect the surrounding area. The principal pollutant of concern would be PM10. Because construction-related PM10 emissions primarily affect the area surrounding a project site, the BAAQMD recommends that all dust control measures that the BAAQMD considers feasible, depending on the size of the project, be implemented to reduce the localized impact to the maximum extent. To reduce particulate matter emissions during project excavation and construction phases, the Project Sponsor shall comply with the dust control strategies developed by the BAAQMD. The Project Sponsor shall include in construction contracts the following requirements or other measures shown to be equally effective.

- Cover all truck hauling soil, sand, and other loose construction and demolition debris from the site, or require all such trucks to maintain at least two feet of freeboard;
- Water all exposed or disturbed soil surfaces in active construction areas at least twice daily;
- Use watering to control dust generation during demolition of structures or break-up of pavement;
- Pave, apply water three times daily, or apply(non-toxic) soil stabilizers on all unpaved parking areas and staging areas;
- Sweep daily (with water sweepers) all paved parking areas and staging areas;
- Provide daily clean-up of mud and dirt carried onto paved streets from the site;
- Enclose, cover, water twice daily or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc.);
- Limit traffic speeds on unpaved roads to 15mph;
- Install sandbags or other erosion control measures to prevent silt runoff to public roadways;
- Replant vegetation in disturbed areas as quickly as possible;
- Hydroseed or apply(non-toxic) soil stabilizers to inactive construction areas (previously graded areas inactive for ten days or more);
- Install wheel washers for all existing trucks, or wash off the tires or tracks of all trucks and equipment leaving the site;
- Install windbreaks at the windward side(s) of construction areas;
- Suspend excavation and grading activity when winds (instantaneous gusts) exceed 25 miles per hour over a 30-minute period or more; and
- To the extent possible, limit the area subject to excavation, grading, and other dust-generating construction activity at any one time.

Mitigation Measure E-1.B: Construction Equipment Emissions

Reduce emissions from heavy-duty diesel-powered equipment. The Project Sponsor shall implement measures to reduce the emissions of pollutants generated by heavy-duty diesel-powered equipment operating at the Project Site during project excavation and construction phases. The Project Sponsor shall include in construction contracts the following requirements or other measures shown to be equally effective.

- Keep all construction equipment in proper tune in accordance with manufacturer's specifications;
- Use late model heavy-duty diesel-powered equipment at the project site to the extent that

it is readily available in the San Francisco Bay Area;

- Use diesel-powered equipment that has been retrofitted with after-treatment products (e.g., engine catalysts) to the extent that it is readily available in the San Francisco Bay Area;
- Use low-emission diesel fuel for all heavy-duty diesel-powered equipment operating and refueling at the project site to the extent that it is readily available and cost effective in the San Francisco Bay Area (this does not apply to diesel-powered trucks traveling to and from the site);
- Utilize alternative fuel construction equipment (i.e., compressed natural gas, liquid petroleum gas, and unleaded gasoline) to the extent that the equipment is readily available and cost effective in the San Francisco Bay Area;
- Limit truck and equipment idling time to five minutes or less;
- Rely on the electricity infrastructure surrounding the construction sites rather than electrical generators powered by internal combustion engines to the extent feasible.

Mitigation Measure E-2: Naturally Occurring Asbestos Control

The Project Site is known to have serpentine rock that contains naturally occurring asbestos, disturbance to which could result in potentially significant impacts to air quality. The Project Sponsor will be responsible for compliance with Toxic Control Measures for Construction, Grading, Quarrying, and Surface Mining Operation as enforced by CARB. These measures require that are as greater than one acre that have any portion of the area to be disturbed located in a geographic ultramafic rock unit or has naturally occurring asbestos, serpentine, or ultramafic rock as determined by the sponsor or an Air Pollution Control Officer shall not engage in any construction or grading operation on property where the area to be disturbed is greater than one acre unless an Asbestos Dust Mitigation Plan for the operation has been:

- Submitted to and approved by the district before the start of any construction or grading activity; and
- The provisions of that dust mitigation plan are implemented at the beginning and maintained throughout the duration of the construction or grading activity.

Compliance with these dust control measures would reduce air quality impacts to a less-than-significant level.

Noise

Mitigation Measure F-1: Construction Noise

To the extent feasible, the Project Sponsor shall limit construction activity to the hours of 7:00a.m. to 6:00 p.m. on weekdays, and 7:00 a.m. to 5:00 p.m. on Saturdays and Sundays. If nighttime construction is required, the Project Sponsor shall apply for, and abide by the terms of, a permit from the San Francisco Department of Public Works. The Project Sponsor shall require contractors to comply with the City Noise Ordinance.

Construction contractors shall implement appropriate additional noise reduction measures that include using noise-reducing mufflers and other noise abatement devices, changing the location of stationary construction equipment, where possible, shutting off idling equipment, and notifying adjacent residences and businesses in advance of construction work. In addition, the Project Sponsor shall require the posting of signs prior to construction activities with a phone number for residents to call with noise complaints.

Mitigation Measure F-2: Construction Vibration

The Project Sponsor shall provide notification to the closest receptors, at least ten days in advance, of construction activities that could cause vibration levels above the threshold.

The Project Sponsor shall require construction contractors to conduct demolition, earthmoving, and ground-impacting operations so as not to occur in the same time period.

The Project Sponsor shall require construction contractors to, where possible, and financially feasible, select demolition methods to minimize vibration (e.g., sawing masonry into sections rather than demolishing it by pavement breakers)

The Project Sponsor shall require construction contractors to operate earth moving equipment on the construction site as far away from vibration sensitive sites as possible. The construction contractor shall implement methods to reduce vibration, including, but not limited to, sound attenuation barriers, cut off trenches and the use of smaller hammers.

Mitigation Measure F-3: Mechanical Equipment

The proposed Project is zoned as Residential-1 zone, which is prohibited by *San Francisco Police Code Section 2909*, to have a fixed source noise that exceeds 50 dBA, at the property line, between 10:00 p.m. and 7:00 a.m. The proposed Project's mechanical equipment could exceed 50 dBA at the property line. The Project sponsor shall provide shielding to minimize noise from stationary mechanical equipment, including ventilation units, such that noise levels from the equipment at the nearest property line would be below 50 dBA.

The incorporation of Mitigation Measures F-1, F-2 and F-3 would reduce construction and operational noise and vibration impacts to less than significant levels.

Biological Resources

Mitigation Measure G-1: Bird Nest Pre-Construction Survey

Given that the presence of mature eucalyptus trees *(Eucalyptus* sp.) on the Project Site could potentially provide nesting habitat for raptors (i.e., birds of prey) such as red-tailed hawk and American kestrel, among others, tree removal associated with the proposed Project could result in "take" caused by the direct mortality of adult or young birds, nest destruction, or disturbance of nesting native bird species (including migratory birds and other special-status species) resulting in nest abandonment and/or the loss of reproductive effort. Bird species are protected by both state (CDFG Code Sections 3503 and 3513) and federal (Migratory Bird Treaty Act of 1918) laws. Disruption of nesting birds, resulting in the abandonment of active nests, or the loss of active nests through structure removal would be a potentially significant impact.

The Project Sponsor shall retain a qualified biologist to conduct preconstruction breeding-season surveys (approximately March 15 through August 30) of the Project Site and immediate vicinity during the same calendar year that construction is planned to begin, in consultation with the City of San Francisco and CDFG.

- If phased construction procedures are planned for the proposed Project, the results of the above survey shall be valid only for the season when it is conducted.
- A report shall be submitted to the City of San Francisco, following the completion of the bird nesting survey that includes, at a minimum, the following information:

- A description of methodology including dates of field visits, the names of survey personnel with resumes, and a list of references cited and persons contacted.
- A map showing the location(s) of any bird nests observed on the Project Site.

If the above survey does not identify any nesting bird species on the project site, no further mitigation would be required. However, should any active bird nests be located on the Project Site, the following mitigation measure shall be implemented.

Mitigation Measure G-2: Bird Nest Buffer Zone

The Project Sponsor, in consultation with the City and County of San Francisco and California Department of Fish and Game (CDFG), shall delay construction in the vicinity of active bird nest sites located on or adjacent to the Project Site during the breeding season (approximately March 15 through August 30) while the nest is occupied with adults and/or young. If active nests are identified, construction activities should not occur within 500 ft of the nest. A qualified biologist, determined by the Environmental Review Officer, shall monitor the active nest until the young have fledged, until the biologist determines that the nest is no longer active, or if it is reasonable that construction activities are not disturbing nesting behaviors. The buffer zone shall be delineated by highly visible temporary construction fencing.

Implementation of Mitigation Measures G-1 and G-2 will avoid significant adverse effects on bird species.

Mitigation Measure G-3: Serpentine Grassland Pre-Construction Measures on the PG&E Property

Remaining examples of serpentine grass land are extremely rare in the Bay Area; each remnant lost contributes to the overall decline of biodiversity within the region. Many of the native plant species associated with serpentine grass lands are endemic (i.e., locally restricted) to this habitat type. If the Project Sponsor can obtain site control for an easement on the PG&E property, construction of the proposed pedestrian walkway from the Hunters View site could impact remnants of serpentine grassland on the PG&E site. Any loss of serpentine grassland could represent a potentially adverse impact to this community type.

Due to the presence of steep slopes, all construction activities associated with the pedestrian route on the PG&E property, if it is developed, shall occur during the dry season (typically from the end of May to mid-October) to limit the likelihood of soil erosion and to minimize the need to install erosion-control barriers (e.g., silt fencing, wattles) that may impact existing serpentine bunchgrass remnants from their placement along slope contours.

Prior to the initiation of any construction activities on the PG&E property, the Project Sponsor shall prepare a detailed plan showing proposed construction-related activities on the PG&E site. A qualified botanist familiar with serpentine bunchgrass communities shall conduct a pre-construction survey of the PG&E property, during the portion of the growing season when most native vascular plant species previously documented as occurring on the site are evident and readily identifiable. Any areas containing remnants of serpentine bunchgrass habitat outside the proposed footprint for the walkway (including access routes), but within 20 feet of these areas shall be clearly delineated by appropriate avoidance markers (e.g., orange construction fencing, brightly colored flagging tape on lath stakes). An appropriate access route to and from the walkway area shall be developed, utilizing existing service roads and/or concrete building pads to avoid remnants of serpentine bunchgrass. Staging areas for this construction shall be limited to areas where remnants of serpentine bunchgrass do not occur.

The Project Sponsor shall conduct Worker Environmental Awareness Program (WEAP) training for construction crews (primarily crew and construction foreman) and City inspectors before construction activities begin. The WEAP shall include a brief review of the serpentine bunchgrass resource that occurs on the PG&E site. The program shall also cover all mitigation measures, and proposed Project plans, such as BMPs and any other required plans. During WEAP training, construction personnel shall be informed of the importance of avoiding ground-disturbing activities outside of the designated work area. The designated biological monitor shall be responsible for ensuring that construction personnel adhere to the guidelines and restrictions. WEAP training sessions shall be conducted as needed for new personnel brought onto the job during the construction period.

Mitigation Measure G-4: Serpentine Habitat Avoidance on the PG&E Property

Best Management Practices (BMPs) shall be employed during all construction activities on the PG&E site (e.g., all fueling of equipment within designated areas, containment of hazardous materials in the advent of accidental spills).

Mitigation Measure G-5: Serpentine Habitat Post-Construction Clean-Up on the PG&E Property

After construction is complete, all trash shall be removed from within the PG&E site.

Mitigation Measure G-6: Serpentine Habitat Replanting on the PG&E Property

After construction is complete, all areas of identified serpentine bunchgrass habitat on the PG&E property impacted by construction activities shall be restored to a level equal to, or exceeding the quality of habitat that existed before impacts to these habitats occurred. Mitigation shall be achieved by implementation of the following planting plan:

• Installation of transplants and/or planting of locally-collected seeds from native plant species associated with serpentine grassland habitats into areas impacted by the proposed Project. The frequency, density, and distribution of native species used within the mitigation plantings shall be determined through consultation with appropriate resource agencies, organizations, and practitioners. Installation shall be supervised by a qualified horticulturalist or botanist. Measures to reduce transplant mortality may include, but are not limited to the following:

- Placement of cages, temporary fences, or other structures to reduce small mammal access, until transplants are sufficiently established;
- Any weeding around transplants to reduce competition from non-native species shall be done manually;
- Placement of a temporary irrigation system or periodic watering by mobile equipment sources for the first two years until transplants are sufficiently established.

General success of the mitigation plantings shall be measured by the following criteria:

Periodically assess the overall health and vigor of transplants during the growing season for the first three years; no further success criteria is required if transplants within the mitigation plantings have maintained a 70 percent or greater success rate by the end of the third year. If transplant success rate is below 70 percent by the end of the third year, a contingency plan to replace transplants due to mortality loss (e.g., foraging by small mammals, desiccation) shall be implemented.

Implementation of Mitigation Measures BIO.3 through BIO.6 will avoid significant adverse effects on serpentine grassland habitat.

Mitigation Measure G-7: Significant trees

The Project will comply with Article 16 of the Public Works Code for protection for significant trees. "Significant trees" are defined as trees within 10 feet of a public right-of-way, and also meet one of the following size requirements:

- 20 feet or greater in height;
- 15 feet or greater in canopy width; or
- 12 inches or greater diameter of trunk measured at 4.5 feet above grade.

Street trees are also protected by the City's Urban Forestry Ordinance and both require a permit for removal. Some tree species within the Project Site meet the criterion of "Significant Tree" status; before construction occurs within any portions of the Project Site that could contain "Significant Trees," a tree survey shall be performed by a qualified arborist, and a map shall be prepared showing the genus and species, location, and drip line of all trees greater than 36 inches in diameter at breast height (DBH) or greater that are proposed to be altered, removed, or relocated. Any removal of these trees associated with the proposed Project will require a permit review, and replacement of affected "significant" trees as specified in the ordinance. Adherence to the ordinance will avoid the potential impact on the loss of significant trees.

Mitigation Measure H-1: Archaeological Resources

Based on the reasonable potential that archaeological resources may be present within the project site, the following measures shall be undertaken to avoid any potentially significant adverse effect from the proposed Project on buried or submerged historical resources. The Project Sponsor shall retain the services of a qualified archaeological consultant having expertise in California prehistoric and urban historical archeology. The archaeological consultant shall undertake an archaeological monitoring program during construction activities in Blocks 13, 18, and 19 (as shown on Figure 2 in the FEIR). The archaeological consultant shall first undertake a geoarchaeological study of this project sub-area to determine if any buried land surfaces available for prehistoric occupation are present. All plans and reports prepared by the consultant as specified herein shall be submitted first and directly to the ERO for review and comment, and shall be considered draft reports subject to revision until final approval by the ERO. Archaeological monitoring and/or data recovery programs required by this measure could suspend construction of the proposed Project for up to a maximum of four weeks. At the direction of the ERO, the suspension of *construction* can be extended beyond four weeks only if such a suspension is the only feasible means to reduce to a less-than-significant level potential effects on a significant archaeological resource as defined in CEQA Guidelines Sect. 15064.5 (a)(c).

Archaeological monitoring program (AMP). The archaeological monitoring program shall at a minimum include the following provisions:

- The archaeological consultant, Project Sponsor, and ERO shall meet and consult on the scope of the AMP reasonably prior to any project-related soils disturbing activities commencing. The ERO in consultation with the project archeologist shall determine what project activities shall be archaeologically monitored. In most cases, any soils disturbing activities, such as demolition, foundation removal, excavation, grading, utilities installation, foundation work, driving of piles (foundation, shoring, etc.), site remediation, etc., shall require archaeological monitoring because of the potential risk these activities pose to archaeological resources and to their depositional context;

- The archaeological consultant shall advise all project contractors to be on the alert for evidence of the presence of the expected resource(s), of how to identify the evidence of the expected resource(s), and of the appropriate protocol in the event of apparent discovery of an archaeological resource;
- The archaeological monitor(s) shall be present on the project site according to a schedule agreed upon by the archaeological consultant and the ERO until the ERO has, in consultation with the archaeological consultant, determined that project construction activities could have no effects on significant archaeological deposits;
- The archaeological monitor shall record and be authorized to collect soil samples and artifactual/ecofactual material as warranted for analysis;
- If an intact archaeological deposit is encountered, all soils disturbing activities in the vicinity of the deposit shall cease. The archaeological monitor shall be empowered to temporarily redirect demolition/excavation/pile driving/construction crews and heavy equipment until the deposit is evaluated. If in the case of pile driving activity (foundation, shoring, etc.), the archaeological monitor has cause to believe that the pile driving activity may affect an archaeological resource, the pile driving activity shall be terminated until an appropriate evaluation of the resource has been made in consultation with the ERO. The archaeological consultant shall immediately notify the ERO of the encountered archaeological deposit. The archaeological consultant shall, after making a reasonable effort to assess the identity, integrity, and significance of the encountered archaeological deposit, present the findings of this assessment to the ERO.

If the ERO in consultation with the archaeological consultant determines that a significant archaeological resource is present and that the resource could be adversely affected by the proposed Project, at the discretion of the Project Sponsor either:

- The proposed Project shall be re-designed so as to avoid any adverse effect on the significant archaeological resource; or
- An archaeological data recovery program shall be implemented, unless the ERO determines that the archaeological resource is of greater interpretive than research significance and that interpretive use of the resource is feasible.

  If an archaeological data recovery program is required by the ERO, the archaeological data recovery program shall be conducted in accord with an archaeological data recovery plan (ADRP). The project archaeological consultant, Project Sponsor, and ERO shall meet and consult on the scope of the ADRP. The archaeological consultant shall prepare a draft ADRP that shall be submitted to the ERO for review and approval. The ADRP shall identify how the proposed data recovery program will preserve the significant information the archaeological resource is expected to contain. That is, the ADRP will identify what scientific/historical research questions are applicable to the expected resource, what data classes the resource is expected to possess, and how the expected data classes would address the applicable research questions. Data recovery, in general, should be limited to the portions of the historical property that could be adversely affected by the proposed Project. Destructive data recovery methods shall not be applied to portions of the archaeological resources if nondestructive methods are practical.

The scope of the ADRP shall include the following elements:

- *Field Methods and Procedures*. Descriptions of proposed field strategies, procedures, and operations.
- *Cataloguing and Laboratory Analysis*. Description of selected cataloguing system and artifact analysis procedures.

- *Discard and Deaccession Policy.* Description of and rationale for field and post-field discard and deaccession policies.
- *Interpretive Program.* Consideration of an on-site/off-site public interpretive program during the course of the archaeological data recovery program.
- *Security Measures.* Recommended security measures to protect the archaeological resource from vandalism, looting, and non-intentionally damaging activities.
- *Final Report.* Description of proposed report format and distribution of results.
- *Curation.* Description of the procedures and recommendations for the curation of any recovered data having potential research value, identification of appropriate curation facilities, and a summary of the accession policies of the curation facilities.
- *Human Remains, Associated or Unassociated Funerary Objects.* The treatment of human remains and of associated or unassociated funerary objects discovered during any soils disturbing activity shall comply with applicable State and Federal Laws, including immediate notification of the Coroner of the City and County of San Francisco and in the event of the Coroner's determination that the human remains are Native American remains, notification of the California State Native American Heritage Commission (NAHC) who shall appoint a Most Likely Descendant (MLD) (Pub. Res. Code Sec. 5097.98). The archaeological consultant, Project Sponsor, and MLD shall make all reasonable efforts to develop an agreement for the treatment of, with appropriate dignity, human remains and associated or unassociated funerary objects (CEQA Guidelines. Sec. 15064.5(d)). The agreement should take into consideration the appropriate excavation, removal, recordation, analysis, curation, possession, and final disposition of the human remains and associated or unassociated funerary objects.
- *Final Archaeological Resources Report.* The archaeological consultant shall submit a Draft Final Archaeological Resources Report (FARR) to the ERO that evaluates the historical significance of any discovered archaeological resource and describes the archaeological and historical research methods employed in the archaeological testing/monitoring/data recovery program(s) undertaken. Information that may put at risk any archaeological resource shall be provided in a separate removable insert within the draft final report.

Copies of the Draft FARR shall be sent to the ERO for review and approval. Once approved by the ERO copies of the FARR shall be distributed as follows: California Archaeological Site Survey Northwest Information Center (NWIC) shall receive one (1) copy and the ERO shall receive a copy of the transmittal of the FARR to the NWIC. The Major Environmental Analysis division of the Planning Department shall receive three copies of the FARR along with copies of any formal site recordation forms (CA DPR 523 series) and/or documentation for nomination to the National Register of Historic Places/California Register of Historical Resources. In instances of high public interest or interpretive value, the ERO may require a different final report content, format, and distribution than that presented above.

Compliance with this mitigation measure would reduce impacts to undiscovered cultural resources to a less-than-significant level.

Mitigation Measure H-2: Hazardous Building Materials Survey

Given the age of the buildings to be demolished it is likely that Hazardous Building Materials are present. Improper disposal of these materials could result in a potentially significant impact to the environment.

Therefore, prior to demolition of existing buildings, light fixtures and electrical components that contain PCBs or mercury should be identified, removed and disposed of in accordance with the Department of Toxic Substances Controls "universal waste" procedures. Compliance with these procedures would reduce impacts to a less-than-significant level.

Mitigation Measure H-3: Contaminated Soil Identification

Lead contaminated soil was identified in several locations on the Project Site. The improper handling or disposal of lead contaminated soil would constitute a significant impact.

Therefore, prior to issuance of a grading permit a Phase II analysis should be conducted on the Project Site. The Phase II shall include comprehensive soil sampling and laboratory analysis with the goal of identifying lead, chromium and contaminated soils. The scope of this Phase II analysis should be developed in cooperation with the San Francisco Department of Public Health.

If the results of this Phase II analysis indicate that contaminated soils is, in fact present on the site, Mitigation Measure H~4, below, shall also be incorporated.

Mitigation Measure H-4: Contaminated Soil Disposal

Based on the findings of the Phase II analysis conducted under Mitigation Measure H~3, a soil remediation and disposal plan shall be developed that includes a plan for on-site reuse or disposal of contaminated soils. In the event that soils are contaminated beyond DTSC thresholds, load-and-go procedures should be identified as well as the Class I landfill for disposal.

Incorporation of Mitigation Measures H-3 and H-4 would reduce impacts that result from handling and disposal of contaminated soils to a less-than-significant level.

5.2 Mitigation Measures Requiring Further Analysis to Determine Their Feasibility

The following Mitigation Measures set forth in the FEIR require further analysis to determine their feasibility. They are proposed for adoption if determined to be feasible and therefore are conditionally adopted. If the Mitigation Measures are determined to be unfeasible, the impacts will remain significant and unavoidable.

Mitigation Measure D-1: Third Street/Evans Avenue

The signalized Third Street/Evans Avenue intersection would degrade from LOS D (average delay of 35.7 seconds per vehicle) to LOS E (average delay of 60.9 seconds per vehicle) with the addition of the project-generated traffic to baseline conditions. The intersection is actuated by video detection equipment and accommodates pedestrians, bicycles, vehicles, and the T-Third Street MUNI line. The T-Third Street MUNI line occupies the center median and makes several trips during the PM peak period. The northbound and southbound through movements are coordinated. The proposed Project would add 324 vehicles per hour to the intersection during the PM peak period. The most significant traffic volume increase would occur at the southbound left turn movement (83 vehicles per hour) which is already projected to operate at LOS F during the PM peak hour in the Baseline Conditions.

The project impacts at the Third Street/Evans Avenue intersection could be mitigated by adjusting the maximum allowable southbound left turn green time. In the Baseline plus Project Conditions, the southbound left turn movement is projected to have an allotted green time of 11 seconds per 100-second cycle (LOS F) and the opposing northbound through movement is projected to have an allotted green time of 37 seconds per 100-second cycle (LOS B). To

mitigate the impact caused by the proposed Project, the southbound left turn green time could be increased to 16 seconds per 100-second cycle and the opposing northbound through movement green time could be decreased to 32 seconds per 100-second cycle.

With the signal timing modification, the intersection is expected to operate at LOS D with an average delay of 37.1 seconds per vehicle. It should also be noted that the implementation of the proposed mitigation measure would be dependent upon an assessment of transit and traffic coordination along Third Street and Evans Avenue to ensure that the changes would not substantially affect MUNI transit operations, signal progressions, pedestrian minimum green time requirements, and programming limitations of signals.

While the mitigation measure described above would reduce the significant Project impacts, further analysis is required to determine feasibility. Therefore, the Project would contribute to a significant unavoidable adverse impact at this intersection.

Mitigation Measure D-2: Third Street/25th Street

The signalized Third Street/25thStreet intersection would degrade from LOS B (average delay of 18.9 seconds per vehicle) to LOS E (average delay of 76.6 seconds per vehicle) with 2025 Cumulative Conditions. The intersection would be actuated by video detection equipment and accommodate pedestrians, bicycles, vehicles, and the T-Third Street light rail line. The T-Third Street light rail line occupies the center median. Additionally, light rail tracks will occupy the westbound approach to the intersection to access the Metro East MUNI maintenance facility which is currently under construction. Light rail vehicles are not expected to use these tracks during the PM peak period. The northbound and southbound vehicle through movements would be coordinated. The proposed Project would add 280 vehicles per hour to the intersection during the PM peak period –a contribution of 9.9 percent to the overall growth.

A substantial amount of the delay at the Third Street/25thStreet intersection would be caused by the permitted eastbound and westbound through and right-turn movements. 25th Street would have one all-movement lane in each direction. To the west of the intersection, 25th Street is approximately 40 feet wide and accommodates on-street parking. To the east of the intersection, 25th Street is approximately 30 feet wide and does not accommodate on-street parking. With the removal of the on-street parking to the west of the Third Street/25thStreet intersection, the eastbound approach would have sufficient width to accommodate a through- left lane and an exclusive right turn lane. The eastbound right turn lane could include an overlap phase to coincide with the northbound left-turn phase, with U-turns from northbound Third Street prohibited. With this modification, the intersection steady demand green time splits could be recalculated, while maintaining a 100-second cycle length. The green time allotted to the T-Third trains and intersection offset would not be modified with the implementation of this mitigation measure. With the re-striping of the eastbound approach, the removal of on-street parking, addition of an eastbound right-turn overlap phase, and recalculation of the signal timing steady demand green time splits, the Third Street/25thStreet intersection would operate at LOS D with an average delay of 35.9 seconds per vehicle.

While mitigation has been identified to reduce impacts, further analysis of some of the measures is required to determine feasibility. Therefore, the Project would contribute to a significant unavoidable cumulative adverse impact at this intersection.

Mitigation Measure D-6: Middle Point Road/Evans Avenue

The all-way stop-controlled Middle Point Road/Evans Avenue intersection would degrade from LOS A (average delay of 8.4 seconds per vehicle) to LOS F (average delay of more than 50.0 seconds per vehicle) in the 2025 Cumulative Conditions. The intersection would accommodate

pedestrians, bicycles, and vehicles. The proposed Project would add 580 vehicles per hour to the intersection during the PM peak period – a contribution of 22.3 percent to the overall growth.

A substantial amount of the delay at the Middle Point Road/Evans Avenue intersection would be caused by the southbound and westbound approaches. The southbound Middle Point Road/Jennings Street approach would have one all-movement lane. The westbound Evans Avenue approach would have one left-turn lane, one through lane, and one through-right-turn lane.

The expected traffic volumes at the all-way stop-controlled Middle Point Road/Evans Avenue intersection, would meet signal warrants and signalization would be required. With the existing geometry, the intersection would continue to operate at an unacceptable level (LOS F), even with signalization.

Removal of the on-street parking on Middle Point/Jennings to the north of the Middle Point Road/Evans Avenue intersection, would allow the southbound approach to provide an exclusive left-turn lane and a shared left-through-right lane.

With the installation of an actuated-uncoordinated traffic signal, southbound and westbound approach lane reconfiguration, and removal of on-street parking, the Middle Point Road/Evans Avenue intersection would operate at LOS D, with an average delay of 53.1 seconds per vehicle.[122] Implementation of the proposed mitigation measure would be dependent upon an assessment of traffic coordination along Evans Avenue to ensure that the changes would not substantially affect signal progressions, pedestrian conditions requirements, and programming limitations of signals.

While mitigation has been identified to reduce impacts, further analysis is required to determine its feasibility. Therefore, the Project would contribute to a significant unavoidable cumulative adverse impact at this intersection.

5.3 Mitigation Measures Rejected by the Planning Commission As Infeasible

The Following Mitigation Measures set forth in the FEIR are rejected as infeasible.

Mitigation Measure D-3: Third Street/Cesar Chavez Street

The signalized Third Street/Cesar Chavez Street intersection would degrade from LOS C (average delay of 32.0 seconds per vehicle) to LOS F (average delay of more than 80.0 seconds per vehicle) with 2025 Cumulative Conditions. The intersection would be fully actuated by video detection equipment and accommodate pedestrians, bicycles, vehicles, and the T-Third Street light rail line. The T-Third Street light rail line occupies the center median. Additionally, light rail tracks will occupy the westbound approach of the intersection to the Metro East MUNI maintenance facility which is currently under construction. Light rail vehicles are not expected to use these tracks during the PM peak period. The northbound and southbound vehicle through movements would be coordinated. The proposed Project would add 343 vehicles per hour to the intersection during the PM peak period – a contribution of 11.3 percent to the overall growth.

A substantial amount of the delay at the Third Street/Cesar Chavez Street intersection would be caused by the permitted eastbound and westbound through and right-turn movements. The westbound Cesar Chavez approach would consist of one all-movement lane in the 2025 Cumulative Conditions. The eastbound Cesar Chavez approach would consist of two left-turn lanes, one through lane, and one exclusive right turn lane in the 2025 Cumulative Conditions. All intersection approaches would be geometrically constrained by existing structures and the T-Third Street light rail line in the center median. Cycle length at this intersection would be

constrained because the signal would be part of the Third Street signal system with a maximum100-second cycle length to allow priority for the Third Street light rail operations.

Given the exclusive eastbound right-turn lane and the northbound left-turn phase, the eastbound right-turn lane could include an overlap phase to coincide with the northbound left- turn phase. With the addition of an eastbound right-turn overlap phase, the Third Street/Cesar Chavez intersection would continue to operate at LOS F with an average delay greater than 80.0 seconds per vehicle.

Changes in signal timing and phasing would not mitigate intersection conditions. To mitigate the intersection to an acceptable level of service, major modifications to the intersection geometry would be required. Due to the constraints on Third Street and Cesar Chavez Street, including existing structures that would have to be acquired, such intersection modifications are not considered feasible. The Project's contribution to 2025 Cumulative Conditions at the Third Street/Cesar Chavez Street intersection would be a significant and unavoidable impact.

Mitigation Measure D-4: Illinois Street/Cargo Way/Amador Street

The signalized Illinois Street/Cargo Way/Amador Street intersection would degrade from LOS C (average delay of 26.9 seconds per vehicle) to LOS F (average delay of more than 80.0 seconds per vehicle) in the 2025 Cumulative Conditions. The intersection would accommodate pedestrians, bicycles, vehicles, and a significant amount of heavy truck traffic. Additionally, Union Pacific Railroad tracks will pass through the intersection and the two-lane Illinois Street Bridge to provide rail freight access for local industrial uses. Rail traffic is not expected to use these tracks during the PM peak-period. The proposed Project would add 332 vehicles per hour to the intersection during the PM peak period – a contribution of 18.9 percent to the overall growth.

A substantial amount of the delay at the Illinois Street/Cargo Way/Amador Street intersection would be caused by the protected southbound left-and westbound right-turn movements. The southbound Illinois Street approach would consist of one all-movement lane in the 2025 Cumulative Conditions. The westbound Cargo Way approach would consist of one through lane and one through-right-turn lane in the 2025 Cumulative Conditions. All intersection approaches are geometrically constrained by existing structures and the two-lane Illinois Street Bridge. Cycle length at this intersection would be constrained because the signal would be part of the Third Street signal system with a maximum 100-second cycle length to allow priority for the Third Street light rail operations.

The westbound through and right-turn traffic volumes are expected to be similar in the 2025 Cumulative Conditions. Therefore, the westbound approach lanes could be divided into two independent movements – one through lane and one exclusive right-turn lane. Given the exclusive westbound right-turn lane and the southbound left-turn phase, the westbound right-turn lane could include an overlap phase to coincide with the southbound left-turn phase.

With the westbound approach lane reconfiguration, the Illinois Street / Cargo Way / Amador Street intersection would operate at LOS E with an average delay of 56.0 seconds per vehicle in 2025 Cumulative Conditions. To mitigate the intersection to an acceptable level of service, major modifications to the network geometry would be required. Due to the physical constraints at the intersection, particularly on the Illinois Street Bridge, geometric modifications would be infeasible, and the cumulative effects would be significant and unavoidable. Therefore, the Project would contribute to a significant unavoidable cumulative impact at this intersection.

Mitigation Measure D-5: Third Street/Evans Avenue

The signalized Third Street/Evans Avenue intersection would degrade from LOS E (average delay of 60.9 seconds per vehicle) to LOS F (average delay of more than 80.0 seconds per vehicle) in the 2025 Cumulative Conditions. The intersection would be actuated by video detection equipment and accommodate pedestrians, bicycles, vehicles, and the T-Third Street light rail line. The T-Third Street light rail line occupies the center median. The proposed Project would add 324 vehicles per hour to the intersection during the PM peak period – a contribution of 9.8 percent to the overall growth.

Substantial delays are expected at all intersection movements; specifically, the southbound left-turn movement and the conflicting northbound through movement. All intersection approaches would be constrained by existing structures and the T-Third Street light rail line in the center median.

Based on the heavy traffic volumes and site constraints, signal phasing and signal timing changes would not improve the Third Street/Evans Avenue operations to acceptable levels. The intersection would continue to operate at LOS F. Therefore, the Project would contribute to a significant unavoidable cumulative impact at this intersection.

5.4 Findings on Adoption of a Mitigation Monitoring and Reporting Program

The Planning Commission finds that the Mitigation Monitoring and Reporting Program attached hereto as Exhibit 1 (the "Program"), is designed to ensure compliance during Project implementation. The Planning Commission further finds that the Program presents measures that are appropriate and feasible for adoption and the Program should be adopted and implemented as set forth herein and in Exhibit 1.

5.5 Improvement Measures

In addition to the mitigation measures contained in Exhibit 1, Chapter IV of the FEIR contains a few measures that are not required to avoid or reduce significant adverse impacts but will reduce less than significant impacts. These measures are referred to here and in Exhibit 1 as Improvement Measures. CEQA does not require the Planning Department or other implementing agencies to adopt these measures. Exhibit 1 explains how the Planning Department will ensure that each of these measures is implemented during the Project.

Improvement Measure D.1: Construction Traffic. Any construction traffic occurring between 7:00 a.m. and 9:00 a.m. or between 3:30 p.m. and 6:00 p.m. would coincide with peak hour traffic and could temporarily impede traffic and transit flow, although it would not be considered a significant impact. Limiting truck movements to the hours between 9:00 a.m. and 3:30 p.m. (or other times, if approved by SFMTA) would minimize disruption of the general traffic flow on adjacent streets during the AM and PM peak periods. In addition, the Project Sponsor and construction contractor(s) would meet with the Traffic Engineering Division of the SFMTA, the Fire Department, MUNI, and the Planning Department to determine feasible measures to reduce traffic congestion. Including transit disruption and pedestrian circulation impacts during construction of the proposed Project.

Improvement Measure G-1: Native Species Replanting. Once construction activities are completed a long-term program could be implemented to enhance and restore the existing serpentine bunchgrass habitat on the PG&E site and/or create "native habitat" areas on the Project Site. This Improvement Measure would create "native habitat" areas on some portions of the Project Site that are planned for landscaping or open space as part of the Project. Implementation of this Improvement Measure on the PG&E property would be the responsibility of PG&E.

- Seeds of locally-collected native species could be collected from valid reference sites within the surrounding area. From these seeds, transplants could be raised by local gardening clubs, science classes from local public schools, etc. Installation would be supervised by a qualified horticulturalist and/or botanist.
- On-going community programs undertaken by local citizen groups to remove trash and rehabilitate degraded portions of the PG&E site to expand higher-quality serpentine grassland habitat could be conducted.
- Management of invasive, non-native herbaceous and woody species would include reseeding of native plants and manual removal (e.g., by hand, loppers, chainsaws),and possibly some selective chemical applications to control highly competitive exotic species. Invasive, non-native tree species such as eucalyptus[1] could be systematically removed after any pre-construction nesting surveys for bird species have been conducted.
- A long-term monitoring program could be implemented by enlisting the support from science educators from local public schools and community colleges. Permanent transects could be established to document the changes in floristic composition in terms of the frequency, density, and distribution of native plant species throughout the PG&E site.

The incorporation of Mitigation Measures G-1, G-2 and G-7 would reduce impacts to biological resources that could result from the proposed Project to a less-than-significant level. If the Project Sponsor obtains control over a small portion of the PG&E site via easement or other agreement with PG&E, and chooses to pursue the construction of a pedestrian walkway across that site, the incorporation of Mitigation Measures G-3, G-4, G-5, and G-6 would reduce impacts from construction on the PG&E site to a less-than-significant level. In addition to Mitigation Measures G-3–G-6, Improvement Measure G-1 could also be incorporated to further enhance habitat on the PG&E site, and/or create "native habitat" on the Project Site if the Project Sponsor so chooses.

Improvement Measure: An interpretive display is generally considered an on-site, publicly accessible display/exhibit area which includes interpretive materials. The display could be an outdoor all-weather plaque or a permanent collection of materials displayed in a public area, such as in the community building.

For Hunters View, interpretive materials could document the history of the San Francisco Housing Authority, history of the Hunters View Housing Development, photographs, architectural drawings and site plans, and/or oral and written histories documenting the lives of, and events associated with, past and present occupants of the Hunters View Housing Development. It is recommended that the Project Sponsor install an exterior interpretive plaque, not smaller than two by four feet, near the entrance of the community center. A recommended enhancement to the interpretive display would be an interior interpretive display in the community center containing a timeline and a collection of photographs and/or artifacts.

The Project Sponsor could also document the existing Hunters View and the new development site via site photography and this collection of photographs (before and after) could also serve as an interpretive display for this project.

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[1] Blue gum *(Eucalyptus globulus)* and red gum *(Eucalyptus camaldulensis)* are both recognized by the California Invasive Plant Council(Cal-IPC) as invasive pest plant species in the state of California. Eucalyptus trees produce several volatile and water-soluble toxins in their tissues (including leaf and bark litter) that are all elopathic (i.e., they release chemicals in the soil that inhibits the growth and/or establishment of surrounding vegetation, including native herbaceous plant species). Although eucalyptus trees benefit from this form of "chemical warfare," the herbaceous ground layer is often depauperate and provides extremely limited habitat opportunities for local wildlife populations.

5.6 Location and Custodian of Record

The public hearing transcript, a copy of all letters regarding the FEIR received during the public review period, the administrative record, and background documentation for the FEIR are located at the Planning Department, 1650 Mission Street, San Francisco. The Planning Commission Secretary, Linda Avery, is the custodian of records for the Planning Department and Planning Commission.

6. SIGNIFICANT UNAVOIDABLE ENVIRONMENTAL IMPACTS

All impacts of the Project would either be less than significant or could be mitigated to less than significant levels, with the exception of the project specific and 2025 cumulative transportation impacts described in more detail below. The significant traffic impacts at Third Street/Evans Avenue, Third Street/25th Street, and Middle Point Road/Evans Avenue would be reduced to less than significant levels if Mitigation Measures D-1, D-2 and D-6 respectively are determined to be feasible and are implemented. However, because the feasibility of these Mitigation Measures remains uncertain, these impacts are considered to be significant and unavoidable for purposes of these Findings.

6.1 Traffic

Mitigation Measure D-1: Third Street/Evans Avenue

The signalized Third Street/Evans Avenue intersection would degrade from LOS D (average delay of 35.7 seconds per vehicle) to LOS E (average delay of 60.9 seconds per vehicle) with the addition of the project-generated traffic to baseline conditions. The intersection is actuated by video detection equipment and accommodates pedestrians, bicycles, vehicles, and the T-Third Street MUNI line. The T-Third Street MUNI line occupies the center median and makes several trips during the PM peak period. The northbound and southbound through movements are coordinated. The proposed Project would add 324 vehicles per hour to the intersection during the PM peak period. The most significant traffic volume increase would occur at the southbound left turn movement (83 vehicles per hour) which is already projected to operate at LOS F during the PM peak hour in the Baseline Conditions.

The project impacts at the Third Street/Evans Avenue intersection could be mitigated by adjusting the maximum allowable southbound left turn green time. In the Baseline plus Project Conditions, the southbound left turn movement is projected to have an allotted green time of 11 seconds per 100-second cycle (LOS F) and the opposing northbound through movement is projected to have an allotted green time of 37 seconds per 100-second cycle (LOS B). To mitigate the impact caused by the proposed Project, the southbound left turn green time could be increased to 16 seconds per 100-second cycle and the opposing northbound through movement green time could be decreased to 32 seconds per 100-second cycle.

With the signal timing modification, the intersection is expected to operate at LOS D with an average delay of 37.1 seconds per vehicle. It should also be noted that the implementation of the proposed mitigation measure would be dependent upon an assessment of transit and traffic coordination along Third Street and Evans Avenue to ensure that the changes would not substantially affect MUNI transit operations, signal progressions, pedestrian minimum green time requirements, and programming limitations of signals.

While the mitigation measure described above would reduce the significant Project impacts, further analysis is required to determine feasibility. Therefore, the Project would contribute to a significant unavoidable adverse impact at this intersection.

Mitigation Measure D-2: Third Street/25th Street

The signalized Third Street/25thStreet intersection would degrade from LOS B (average delay of 18.9 seconds per vehicle) to LOS E (average delay of 76.6 seconds per vehicle) with 2025 Cumulative Conditions. The intersection would be actuated by video detection equipment and accommodate pedestrians, bicycles, vehicles, and the T-Third Street light rail line. The T-Third Street light rail line occupies the center median. Additionally, light rail tracks will occupy the westbound approach to the intersection to access the Metro East MUNI maintenance facility which is currently under construction. Light rail vehicles are not expected to use these tracks during the PM peak period. The northbound and southbound vehicle through movements would be coordinated. The proposed Project would add 280 vehicles per hour to the intersection during the PM peak period –a contribution of 9.9 percent to the overall growth.

A substantial amount of the delay at the Third Street/25thStreet intersection would be caused by the permitted eastbound and westbound through and right-turn movements. 25th Street would have one all-movement lane in each direction. To the west of the intersection, 25th Street is approximately 40 feet wide and accommodates on-street parking. To the east of the intersection, 25th Street is approximately 30 feet wide and does not accommodate on-street parking. With the removal of the on-street parking to the west of the Third Street/25thStreet intersection, the eastbound approach would have sufficient width to accommodate a through- left lane and an exclusive right turn lane. The eastbound right turn lane could include an overlap phase to coincide with the northbound left-turn phase, with U-turns from northbound Third Street prohibited. With this modification, the intersection steady demand green time splits could be recalculated, while maintaining a 100-second cycle length. The green time allotted to the T-Third trains and intersection offset would not be modified with the implementation of this mitigation measure. With the re-striping of the eastbound approach, the removal of on-street parking, addition of an eastbound right-turn overlap phase, and recalculation of the signal timing steady demand green time splits, the Third Street/25thStreet intersection would operate at LOS D with an average delay of 35.9 seconds per vehicle.

While mitigation has been identified to reduce impacts, further analysis of some of the measures is required to determine feasibility. Therefore, the Project would contribute to a significant unavoidable cumulative adverse impact at this intersection.

Mitigation Measure D-3: Third Street/Cesar Chavez Street

The signalized Third Street/Cesar Chavez Street intersection would degrade from LOS C (average delay of 32.0 seconds per vehicle) to LOS F (average delay of more than 80.0 seconds per vehicle) with 2025 Cumulative Conditions. The intersection would be fully actuated by video detection equipment and accommodate pedestrians, bicycles, vehicles, and the T-Third Street light rail line. The T-Third Street light rail line occupies the center median. Additionally, light rail tracks will occupy the westbound approach of the intersection to the Metro East MUNI maintenance facility which is currently under construction. Light rail vehicles are not expected to use these tracks during the PM peak period. The northbound and southbound vehicle through movements would be coordinated. The proposed Project would add 343 vehicles per hour to the intersection during the PM peak period – a contribution of 11.3 percent to the overall growth.

A substantial amount of the delay at the Third Street/Cesar Chavez Street intersection would be caused by the permitted eastbound and westbound through and right-turn movements. The westbound Cesar Chavez approach would consist of one all-movement lane in the 2025 Cumulative Conditions. The eastbound Cesar Chavez approach would consist of two left-turn lanes, one through lane, and one exclusive right turn lane in the 2025 Cumulative Conditions. All intersection approaches would be geometrically constrained by existing structures and the T-Third Street light rail line in the center median. Cycle length at this intersection would be

constrained because the signal would be part of the Third Street signal system with a maximum100-second cycle length to allow priority for the Third Street light rail operations.

Given the exclusive eastbound right-turn lane and the northbound left-turn phase, the eastbound right-turn lane could include an overlap phase to coincide with the northbound left- turn phase. With the addition of an eastbound right-turn overlap phase, the Third Street/Cesar Chavez intersection would continue to operate at LOS F with an average delay greater than 80.0 seconds per vehicle.

Changes in signal timing and phasing would not mitigate intersection conditions. To mitigate the intersection to an acceptable level of service, major modifications to the intersection geometry would be required. Due to the constraints on Third Street and Cesar Chavez Street, including existing structures that would have to be acquired, such intersection modifications are not considered feasible. The Project's contribution to 2025 Cumulative Conditions at the Third Street/Cesar Chavez Street intersection would be a significant and unavoidable impact.

Mitigation Measure D-4: Illinois Street/Cargo Way/Amador Street

The signalized Illinois Street/Cargo Way/Amador Street intersection would degrade from LOS C (average delay of 26.9 seconds per vehicle) to LOS F (average delay of more than 80.0 seconds per vehicle) in the 2025 Cumulative Conditions. The intersection would accommodate pedestrians, bicycles, vehicles, and a significant amount of heavy truck traffic. Additionally, Union Pacific Railroad tracks will pass through the intersection and the two-lane Illinois Street Bridge to provide rail freight access for local industrial uses. Rail traffic is not expected to use these tracks during the PM peak-period. The proposed Project would add 332 vehicles per hour to the intersection during the PM peak period – a contribution of 18.9 percent to the overall growth.

A substantial amount of the delay at the Illinois Street/Cargo Way/Amador Street intersection would be caused by the protected southbound left-and westbound right-turn movements. The southbound Illinois Street approach would consist of one all-movement lane in the 2025 Cumulative Conditions. The westbound Cargo Way approach would consist of one through lane and one through-right-turn lane in the 2025 Cumulative Conditions. All intersection approaches are geometrically constrained by existing structures and the two-lane Illinois Street Bridge. Cycle length at this intersection would be constrained because the signal would be part of the Third Street signal system with a maximum 100-second cycle length to allow priority for the Third Street light rail operations.

The westbound through and right-turn traffic volumes are expected to be similar in the 2025 Cumulative Conditions. Therefore, the westbound approach lanes could be divided into two independent movements – one through lane and one exclusive right-turn lane. Given the exclusive westbound right-turn lane and the southbound left-turn phase, the westbound right-turn lane could include an overlap phase to coincide with the southbound left-turn phase.

With the westbound approach lane reconfiguration, the Illinois Street / Cargo Way / Amador Street intersection would operate at LOS E with an average delay of 56.0 seconds per vehicle in 2025 Cumulative Conditions. To mitigate the intersection to an acceptable level of service, major modifications to the network geometry would be required. Due to the physical constraints at the intersection, particularly on the Illinois Street Bridge, geometric modifications would be infeasible, and the cumulative effects would be significant and unavoidable. Therefore, the Project would contribute to a significant unavoidable cumulative impact at this intersection.

Mitigation Measure D-5: Third Street/Evans Avenue

The signalized Third Street/Evans Avenue intersection would degrade from LOS E (average delay of 60.9 seconds per vehicle) to LOS F (average delay of more than 80.0 seconds per vehicle) in the 2025 Cumulative Conditions. The intersection would be actuated by video detection equipment and accommodate pedestrians, bicycles, vehicles, and the T-Third Street light rail line. The T-Third Street light rail line occupies the center median. The proposed Project would add 324 vehicles per hour to the intersection during the PM peak period – a contribution of 9.8 percent to the overall growth.

Substantial delays are expected at all intersection movements; specifically, the southbound left-turn movement and the conflicting northbound through movement. All intersection approaches would be constrained by existing structures and the T-Third Street light rail line in the center median.

Based on the heavy traffic volumes and site constraints, signal phasing and signal timing changes would not improve the Third Street/Evans Avenue operations to acceptable levels. The intersection would continue to operate at LOS F. Therefore, the Project would contribute to a significant unavoidable cumulative impact at this intersection.

Mitigation Measure D-6: Middle Point Road/Evans Avenue

The all-way stop-controlled Middle Point Road/Evans Avenue intersection would degrade from LOS A (average delay of 8.4 seconds per vehicle) to LOS F (average delay of more than 50.0 seconds per vehicle) in the 2025 Cumulative Conditions. The intersection would accommodate pedestrians, bicycles, and vehicles. The proposed Project would add 580 vehicles per hour to the intersection during the PM peak period – a contribution of 22.3 percent to the overall growth.

A substantial amount of the delay at the Middle Point Road/Evans Avenue intersection would be caused by the southbound and westbound approaches. The southbound Middle Point Road/Jennings Street approach would have one all-movement lane. The westbound Evans Avenue approach would have one left-turn lane, one through lane, and one through-right-turn lane.

The expected traffic volumes at the all-way stop-controlled Middle Point Road/Evans Avenue intersection, would meet signal warrants and signalization would be required. With the existing geometry, the intersection would continue to operate at an unacceptable level (LOS F), even with signalization.

Removal of the on-street parking on Middle Point/Jennings to the north of the Middle Point Road/Evans Avenue intersection, would allow the southbound approach to provide an exclusive left-turn lane and a shared left-through-right lane.

With the installation of an actuated-uncoordinated traffic signal, southbound and westbound approach lane reconfiguration, and removal of on-street parking, the Middle Point Road/Evans Avenue intersection would operate at LOS D, with an average delay of 53.1 seconds per vehicle. Implementation of the proposed mitigation measure would be dependent upon an assessment of traffic coordination along Evans Avenue to ensure that the changes would not substantially affect signal progressions, pedestrian conditions requirements, and programming limitations of signals.

While mitigation has been identified to reduce impacts, further analysis is required to determine its feasibility. Therefore, the Project would contribute to a significant unavoidable cumulative adverse impact at this intersection.

7. STATEMENT OF OVERRIDING CONSIDERATIONS

Notwithstanding the significant effects noted above, pursuant to CEQA Section 21081(b) and the CEQA Guidelines Section 15093, the Planning Commission finds, after considering the FEIR and based on substantial evidence in said documents, the administrative record and as set forth herein, that specific overriding economic, legal, social, and other considerations outweigh the identified significant effects on the environment. In addition, the Planning Commission finds, in addition to the specific reasons discussed in Article 4 above, that those Project Alternatives rejected above are also rejected for the following specific economic, social, or other considerations resulting from Project approval and implementation:

7.1 Project implementation will alleviate blight and encourage revitalization of the Project area.

7.2 Project implementation will improve residential conditions and encourage residential activity through the creation, retention and rehabilitation of housing affordable by low-income and moderate-income persons.

7.3 Project implementation will promote the one-for-one replacement of 267 units of public housing.

7.4 Project implementation will help address the City's housing shortage.

7.5 Project implementation will promote the development of neighborhood-serving retail space that will lead to increased business activity in the Project area.

7.6 Project implementation will lead to improved housing opportunities and economic conditions in the Project area.

7.7 Project implementation will promote enhanced quality of life in the Project area.

7.8 Project implementation will promote enhanced social services for Project residents.

7.9 Project implementation will enhance the infrastructure in the Project area.

7.10 The Project will create hundreds of construction jobs over the next six to eight years.

7.11 The Project will be the pilot project for HOPE SF Program.

Having considered these Project benefits, including the benefits and considerations discussed in Article 4 above, the Planning Commission finds that the Project's benefits outweigh the unavoidable adverse environmental effects, and that the adverse environmental effects are therefore acceptable.

0227010757-DP

FREE RECORDING PURSUANT TO GOVERNMENT CODE §27383 AT THE REQUEST OF THE SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO

WHEN RECORDED RETURN TO:
The Successor Agency to the Redevelopme Agency of the City and County of San Francisco, One South Van Ness Avenue, 5th Floor, San Francisco, California 94103

San Francisco Assessor-Recorder
Carmen Chu, Assessor-Recorder
DOC- 2015-K006782-00
Check Number 6498
Friday, JAN 16, 2015 13:00:49
Ttl Pd $0.00 Rcpt # 0005085096
odm/DM/1-8

14

Space above for Recorder

(Assessor's Block 4624, Lot 51+52

DECLARATION OF RESTRICTIONS
227-229 West Point Road, Bayview Hunters Point

THIS DECLARATION OF RESTRICTIONS ("Declaration") is made as of December 16, 2014, by HV PARTNERS 2, LP, a California limited partnership, ("Borrower"), in favor of the SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO, hereafter referred to as the Office of Community Investment and Infrastructure, a public body, organized and existing under the laws of the State of California ("OCII", including any successors or assigns)

112 Middle Point Road

RECITALS

A. OCII is disbursing funds (the "Disbursement") to Borrower to finance costs associated with the development of the real property described in **Exhibit A** attached hereto and incorporated herein by reference (the land and the leasehold interest, the "Property") as low-income housing (the " Phase IIA(1) Project"). The Disbursement is evidenced by, among other documents, a Disbursement Agreement amongst OCII, Hunters View Associates, L.P., and Borrower dated as of January 7, 2014, as it may be amended from time to time (the "Agreement"). The Agreement is incorporated by reference in this Declaration as though fully set forth in this Declaration. Definitions and rules of interpretation set forth in the Agreement apply to this Declaration.

B. Pursuant to the Agreement, Borrower has agreed to comply with certain affordability and other use and occupancy restrictions contained herein commencing on the date on which a certificate of occupancy is issued for the Phase IIA(1) Project, and continuing for fifty-five (55) years (the "Compliance Term"), even if the Disbursement is repaid or otherwise satisfied or the Deed of Trust is reconveyed.

AGREEMENT

Now, therefore, in consideration of the City's providing the Disbursement in accordance with the OCII Documents, Borrower agrees as follows:

1. Borrower must comply with the following regulatory obligations contained in this Section 1 (the "Regulatory Obligations") through the expiration of the Compliance Term, regardless of any reconveyance of the Deed of Trust. Specifically, Borrower agrees as follows, subject to additional terms as set forth in the Agreement:

(a) With the exception of the manager's unit, Units in the Phase IIA(1) Project will at all times be rented only to tenants who qualify as Qualified Tenants at initial occupancy, specifically:

Unit Size	Proposed Public Housing Replacement Units (Max Inc Level 80% Median Income)	Proposed Public Housing Replacement Units (Max Inc Level 50% Median Income)	Proposed Additional Affordable Units (Max Inc Level 50% Median Income)	Manager's Units	Total
1 bdrm	0	22	8		30
2 bdrm	1	22	8	1	32
3 bdrm	0	26	8		34
4 bdrm	0	9	2		11
5 bdrm	0	0	0		0
Total	**1**	**79**	**26**	**1**	**107**

(b) The total amount for rent and utilities (with the maximum allowance for utilities determined by the San Francisco Housing Authority) charged to a Qualified Tenant may not exceed:

(i) thirty percent (30%) of the applicable Median Income set forth above, adjusted for household size; or

(ii) the fair market rent established by the San Francisco Housing Authority for Qualified Tenants holding Section 8 vouchers or certificates.

2. During the Compliance Term OCII may rely on the Deed of Trust and/or this Declaration, in OCII's discretion, to enforce any of OCII's rights under the OCII Documents.

3. This Declaration and the Regulatory Obligations constitute covenants running with the land, including the leasehold interest, and bind successors and assigns of Borrower and any non-borrower owner and lessee of the Property. In the event that Borrower fails to comply with the Regulatory Obligations to OCII's satisfaction, in its sole discretion, within thirty (30) days of Borrower's receipt of written notice from OCII to so comply, or, if such cure cannot reasonably be completed within such thirty (30) day period, fails to commence such cure or having commenced, does not prosecute such cure with diligence and dispatch to completion within a reasonable time period therafter, provided that such time period does not exceed one hundred twenty (120) days, OCII at its option may exercise any rights available at equity or in law, including, without limitation, institute an action for specific performance. Borrower shall pay OCII's costs in connection with OCII's enforcement of the terms of this Declaration, including, without limitation, OCII's reasonable attorneys' fees and costs. Borrower's Investor Limited Partner shall have the right, but not the obligation, to cure any Borrower failure to comply with the Regulatory Obligations. A cure by the Investor Limited Partner of any such failure to comply shall be deemed a cure by Borrower. A copy of all notices sent by OCII to Borrower pursuant to this Declaration shall also be sent to the following address:

Wells Fargo Affordable Housing
Community Development Corporation
MAC D1053-170
301 South College Street, 17th Floor
Charlotte, NC 28288
Attention: Director of Asset Management

(document continues on following page)

Borrower has executed this Declaration as of the date first written above.

"BORROWER"

HV Partners 2, LP,
a California limited partnership

By: HV HPAH Phase II LLC,
a California limited liability company
Its Managing General Partner

By: Hunters Point Affordable Housing, Inc., a California nonprofit public benefit corporation,
Its Managing Member

By: _____
Larry B. Hollingsworth
President

By: HV Ustawi LLC,
a California limited liability company
Its Co-General Partner

By: Devine & Gong, Inc.,
a California corporation,
Its Managing Member

By: _____
Richard J. Devine
President

By: JSCo Hunters View 2, LLC,
a California limited liability company
Its Administrative General Partner

By: John Stewart Company,
a California corporation,
Its Manager

By: _____
Jack D. Gardner
President

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT **CIVIL CODE § 1189**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of San Francisco)

On January 5. 2015 before me, L. Marquez, 'Notary Public',
Date *Here Insert Name and Title of the Officer*

personally appeared Jack D. Gardner
Name(s) of Signer(s)

,

who proved to me on the basis of satisfactory evidence to be the person~~(s)~~ whose name~~(s)~~ is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity~~(ies)~~, and that by his/~~her/their~~ signature~~(s)~~ on the instrument the person(s), or the entity upon behalf of which the person~~(s)~~ acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

L. MARQUEZ
Commission # 1935111
Notary Public - California
San Francisco County
My Comm. Expires Jun 2, 2015

Signature L. Marquez
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____ Document Date: _____

Number of Pages: _____ Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Individual ☐ Attorney in Fact
☐ Trustee ☐ Guardian or Conservator
☐ Other: _____
Signer Is Representing: _____

Signer's Name: _____
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Individual ☐ Attorney in Fact
☐ Trustee ☐ Guardian or Conservator
☐ Other: _____
Signer Is Representing: _____

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CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT **CIVIL CODE § 1189**

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State of California)
County of San Francisco)

On January 5, 2015 before me, L. Marquez, 'Notary Public'
Date *Here Insert Name and Title of the Officer*

personally appeared Larry B. Hollingsworth
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person~~(s)~~ whose name~~(s)~~ is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(~~ies~~); and that by his/~~her/their~~ signature~~(s)~~ on the instrument the person~~(s)~~, or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

L. MARQUEZ
Commission # 1935111
Notary Public - California
San Francisco County
My Comm. Expires Jun 2, 2015

Signature L. Marquez
Signature of Notary Public

Place Notary Seal Above

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☐ Partner — ☐ Limited ☐ General
☐ Individual ☐ Attorney in Fact
☐ Trustee ☐ Guardian or Conservator
☐ Other: _____
Signer Is Representing: _____

Signer's Name: _____
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☐ Partner — ☐ Limited ☐ General
☐ Individual ☐ Attorney in Fact
☐ Trustee ☐ Guardian or Conservator
☐ Other: _____
Signer Is Representing: _____

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CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT **CIVIL CODE § 1189**

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State of California)
County of San Francisco)

On January 5, 2015 before me, L. Marquez, 'Notary Public',
Date *Here Insert Name and Title of the Officer*

personally appeared Richard J. Deurr
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(~~s~~) whose name(~~s~~) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(~~ies~~), and that by his/~~her/their~~ signature(~~s~~) on the instrument the person(s), or the entity upon behalf of which the person(~~s~~) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

L. MARQUEZ
Commission # 1935111
Notary Public - California
San Francisco County
My Comm. Expires Jun 2, 2015

Signature _____
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

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Signer's Name: _____	Signer's Name: _____
☐ Corporate Officer — Title(s): _____	☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General	☐ Partner — ☐ Limited ☐ General
☐ Individual ☐ Attorney in Fact	☐ Individual ☐ Attorney in Fact
☐ Trustee ☐ Guardian or Conservator	☐ Trustee ☐ Guardian or Conservator
☐ Other: _____	☐ Other: _____
Signer Is Representing: _____	Signer Is Representing: _____

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EXHIBIT A
(Legal Description of the Property)

A LEASEHOLD INTEREST IN THE FOLLOWING LAND SITUATED IN THE CITY OF SAN FRANCISCO, COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

Lots 1 and 2 as shown on Final Map No. 7545, filed for record in the Office of the Recorder of the City and County of San Francisco, State of California on November 21, 2014 in Book FF of Survey Maps at Pages 16-20, inclusive.

Assessor's Lots 51 and 52 (formerly portions of Lots 29 and 31); Block 4624

Street Address:
112 Middle Point Road – Phase IIA(1)