



108-0242016-002

Agenda Item No. **5(b)**
Meeting of June 21, 2016

MEMORANDUM

TO: Community Investment and Infrastructure Commissioners

FROM: Tiffany Bohee, Executive Director

SUBJECT: Authorizing a Second Amendment to the Personal Services Contract with Keyser Marston Associates, Inc., a California corporation, in the amount of \$25,000 for an aggregate contract amount not to exceed \$74,500 for real estate consulting services for Transbay Block 1 (160 Folsom Street), Block 5 (250 Howard Street) Block 8 (400 Folsom Street/250 Fremont Street), and Block 9 (500 Folsom Street); Transbay Redevelopment Project Area

EXECUTIVE SUMMARY

The Board of Supervisors of the City and County of San Francisco ("Board of Supervisors") approved the Redevelopment Plan for the Transbay Redevelopment Project Area by Ordinances No. 124-05 (June 21, 2005) and No. 99-06 (May 9, 2006), as amended by Ordinance No. 84-15, (June 18, 2015) ("Redevelopment Plan"). The Transbay Redevelopment Project Area ("Project Area") was adopted with the purpose of redeveloping 10 acres of property owned by the State of California (the "State-Owned parcels") in order to generate funding for the Transbay Joint Powers Authority to construct the new Transbay Transit Center. The Transbay Redevelopment Project Area Implementation Agreement ("Implementation Agreement") is an enforceable obligation that requires the Office of Community Investment and Infrastructure ("OCII"), as the Successor Agency to the former San Francisco Redevelopment Agency ("Former Agency"), to prepare and sell certain State-Owned parcels to third parties. Part of the Project Area approvals includes California Assembly Bill 812, which requires that 35% of all residential units in the Project Area be affordable to low- and moderate-income households (the "Transbay Affordable Housing Obligation").

In furtherance of the Implementation Agreement and the Transbay Affordable Housing Obligation, OCII has already sold several of the State-Owned Parcels: Block 5 (250 Howard Street), Block 6 (299 Fremont Street/280 Beale Street), Block 7 (255 Fremont Street/222 Beale Street), Block 8 (400 Folsom Street/250 Fremont Street), Block 9 (500 Folsom Street), and Block 11A (25 Essex Street/Rene Cazenave Apartments), all as shown on the map of the Project Area attached as Exhibit A. OCII is also in the process of selling Block 1 (160 Folsom), which is not a State-Owned

Edwin M. Lee
MAYOR

Tiffany Bohee
EXECUTIVE DIRECTOR

Mara Rosales
CHAIR

Miguel Bustos
Marily Mondejar
Leah Pimentel
Darshan Singh
COMMISSIONERS

One S. Van Ness Ave.
5th Floor
San Francisco, CA
94103

415 749 2400

www.sfocii.org

Parcel; rather, it was purchased by the Former Agency with tax increment monies in 2003 for the purpose of developing affordable housing.

For each of these transactions, OCII has complied or will comply with Section 33433 of the California Health and Safety Code ("Section 33433"). Section 33433 requires OCII to obtain the approval of the legislative body to sell or lease any real property acquired, in whole or in part, with tax increment funds. Under Section 33433, the Board of Supervisors is the legislative body that must make findings, by resolution after a public hearing, that the consideration for the property constitutes fair market or fair reuse value in light of the covenants, conditions and development costs associated with the sale. While the State-Owned Parcels were not acquired with tax increment funds, the Redevelopment Plan requires that the Board of Supervisors shall approve, under the Section 33433 standards, the sale or lease of any of the State-Owned Parcels.

Consistent with OCII's Purchasing Policy, OCII entered into a Personal Services Contract with Keyser Marston Associates, Inc. ("KMA") effective January 6, 2015 in an amount not to exceed \$35,000 so that KMA could provide assistance with the evaluation of the purchase prices for Blocks 1, 5, 8, and 9, in accordance with the standards and procedures described in Section 33433 ("Original Contract", see Exhibit B). With KMA's assistance, OCII prepared reports for Blocks 9, 5, and 8 consistent with the requirements of Section 33433 that were approved by the Board of Supervisors approved as follows: (i) Block 9 on February 3, 2015 by Resolution No. 23-15, (ii) Block 5 on July 28, 2015 by Resolution No. 312-15, and (iii) Block 8 on July 28, 2015 by Resolution No. 313-15.

On January 25, 2016, OCII and KMA entered into a first amendment to the Original Contract to increase the maximum contract amount by \$14,500 to a total aggregate amount not to exceed \$49,500, so KMA could undertake additional analyses related to the valuation of Block 1 and the public benefits of the proposed development program (the "First Amendment", see Exhibit C). OCII now desires to enter into a "Second Amendment" to the Original Contract to increase the amount payable under the contract by \$25,000 to a total aggregate amount not to exceed \$74,500, so that the KMA can (i) complete the analyses related to the valuation of Block 1, (ii) continue to represent OCII at upcoming public hearings related to Block 1, and (iii) provide general real estate valuation and project feasibility services for each of Transbay Blocks 1, 5, 8, and 9 on an as-needed basis. See Exhibit D. (Together, the Original Contract, the First Amendment, and this Second Amendment comprise the "Contract.") With the proposed Second Amendment, the aggregate amount of the Contract exceeds the expenditure authority of the Executive Director under OCII's Purchasing Policy; therefore, approval of the Second Amendment by the Commission is required.

Staff recommends approval of the Second Amendment to the Original Contract for real estate consulting services for Blocks 1, 5, 8, and 9.

DISCUSSION

In September 2014, the Controller's Office and the Office of Economic and Workforce Development issued a Request for Qualifications for Economic Consulting Services for the purpose of establishing a pre-qualified panel of vendors with demonstrated experience in a wide variety of economic consulting studies, ranging from real estate feasibility analyses, fiscal impact analyses, tax incidence studies, economic impacts of environmental policies, among others. A representative from OCII was on the selection panel. In November

2014, a Notice of Intent was issued to the firms selected to be on the panel, which included KMA. The panel is available for use through November 7, 2016.

Pursuant to Section IXC of OCII's Purchasing Policy, staff may select a contractor from a City panel that was established using the City's competitive selection process. The Purchasing Policy further states that if staff uses a City panel to select a contractor for a contract exceeding the Executive Director's expenditure authority of \$50,000, the Commission must approve the contract. Accordingly, staff selected KMA from the City's panel to provide real estate consulting services for Transbay Blocks 1, 5, 8, and 9 and entered into the Original Contract and the First Amendment under the expenditure authority of the Executive Director. With the proposed Second Amendment, the aggregate amount of the Contract exceeds the expenditure authority of the Executive Director; therefore, approval of the Second Amendment by the Commission is required.

The following are the key terms contained in the Second Amendment, which is attached as Exhibit D:

- **Contract Amount.** The Second Amendment provides up to \$25,000 for additional services, for a total Contract amount not to exceed \$74,500. The source of funds is developer reimbursements;
- **Scope of Services.** In addition to the land valuation services consistent with Section 33433 for each of the blocks and analysis of the public benefits of the Block 1 development program, the scope of services has been updated to include general real estate valuation and project feasibility services for each of Blocks 1, 5, 8, 9 on an as-needed basis; and
- **Term.** The Contract will remain in place until the completion of the Scope of Services.

With the approval of the Second Amendment, KMA can (i) complete the analyses related to the valuation of Block 1, (ii) continue to represent OCII at upcoming public hearings related to Block 1, and (iii) provide general real estate valuation and project feasibility services for each of Transbay Blocks 1, 5, 8, and 9 on an as-needed basis.

KMA has been and is in compliance with the equal opportunity programs in the Contract, including OCII's Nondiscrimination in Contracts and Benefits Policy, Minimum Compensation Policy and Health Care Accountability Policy.

CALIFORNIA ENVIRONMENTAL QUALITY ACT

Authorization of the Second Amendment will facilitate the disposition and development of Blocks 1, 5, 8, and 9 pursuant to the Implementation Agreement and Transbay Affordable Housing Obligation. The activities under the Second Amendment are statutorily exempt from the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines Section 15262, since they are feasibility and planning studies for possible future actions. The activities would not directly cause any significant adverse change in the physical environment.

STAFF RECOMMENDATION

Staff recommends approval of the Second Amendment to the Original Contract to increase the amount payable by \$25,000 to a total aggregate amount not to exceed \$74,500, so that the Contractor can (i) complete the

analyses related to the valuation of Block 1, (ii) continue to represent OCII at upcoming public hearings related to Block 1, and (iii) provide general real estate valuation and project feasibility services for each of Blocks 1, 5, 8, and 9 on an as-needed basis.

(Originated by Christine Maher, Development Services Manager)



Tiffany Boone
Executive Director

Exhibit A:	Map of Project Area
Exhibit B:	Original Contract
Exhibit C:	First Amendment
Exhibit D	Proposed Second Amendment

TRANSBAY REDEVELOPMENT PROJECT AREA



Under-Ramp Park
Acres: 2.5
Construction Start: 2018



Block 9
500 Folsom Street

Developer(s): Essex/ BRIDGE
Market-Rate Units: 436
Affordable Units: 109
AMI: 50% and below
Total Units: 545
Construction Start: 2016
Completion: 2019



Block 11A
25 Essex Street
Rene Cazenave Apartments
Developer(s): BRIDGE/CHP
Affordable Units: 120
AMI: 50% and below
Total Units: 120
Construction Start: 2011
Completion: 2013



Block 8
400 Folsom Street
250 Fremont Street
(OCII Sponsored Affordable project)
Developer(s): Related/TNDC
Market-Rate Units: 396
Affordable Units: 150
AMI: 70 inclusionary units @90%/
80 OCII units @ 50%
Total Units: 546
Construction Start: 2016
Completion: 2019



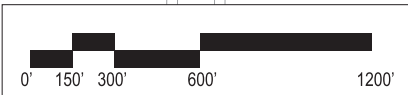
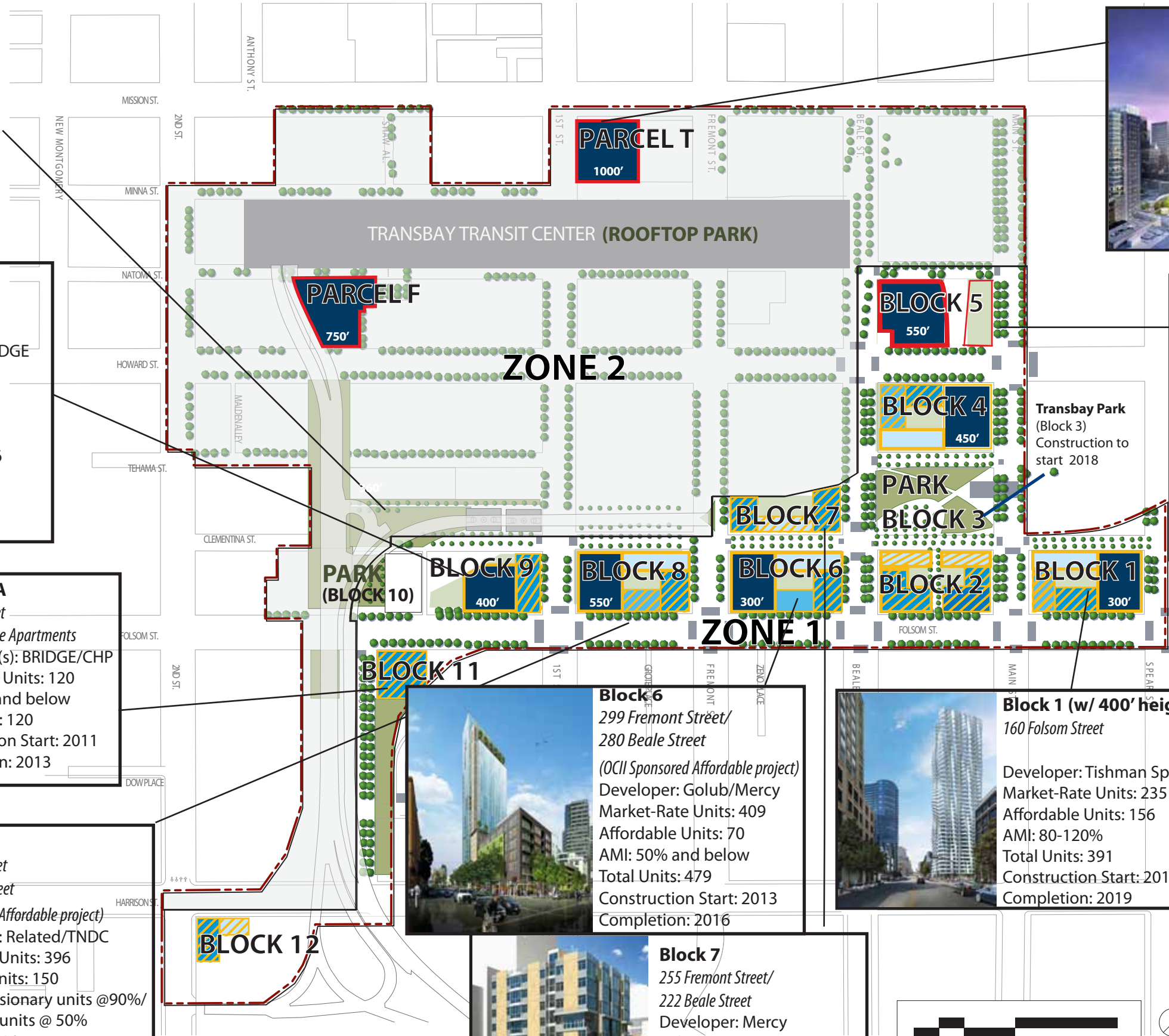
Parcel T
101 First Street
Salesforce Tower

Developer(s): Boston Properties/Hines
Office Sq. Ft.: 1.4 Million
Construction Start: 2014
Completion: 2017



Block 5
250 Howard Street
Park Tower

Developer(s): Golub/ John Buck
Office Sq. Ft.: 767,000
Construction Start: 2015
Completion: 2018



OFFICE OF COMMUNITY INVESTMENT AND INFRASTRUCTURE/
SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO

PERSONAL SERVICES CONTRACT

This PERSONAL SERVICES CONTRACT ("Contract") is effective as of January 6, 2015 (the "Effective Date") by and between the OFFICE OF COMMUNITY INVESTMENT AND INFRASTRUCTURE as the SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO, a public body, corporate and politic ("OCII" or the "Successor Agency"), and Keyser Marston Associates, Inc., a California corporation (the "Contractor").

RECITALS

This Contract is made with reference to the following facts and circumstances:

A. The City and County of San Francisco (the "City") and OCII utilize the services of real estate economics firms on an ongoing basis in connection with major development parcels and complex transactions throughout the City and in all redevelopment project areas.

B. A Request for Qualifications for Economic Consulting Services was issued by the City's Controller's Office and the Office of Economic and Workforce Development on September 25, 2014. A representative from OCII was on the selection panel.

C. On November 7, 2014, a Notice of Intent was issued to the firms selected to be on the pre-qualified real estate analysis panel. The Contractor was one of the firms on the list to provide real estate advisory services.

D. The Contractor was selected from the list of qualified consultants based on a number of factors including: (1) the particular expertise of the firm's available staff to take lead responsibility for the assignment; (2) potential conflicts of interest; and (3) the response time within which the firm can complete the task.

E. OCII has requested that the Contractor provide assistance with its evaluation of the purchase prices for Transbay Blocks 1, 5, 8, and 9 in the Transbay Redevelopment Project Area consistent with the requirements of California Health and Safety Code Section 33433.

F. The Transbay Redevelopment Project Area Implementation Agreement (the "Implementation Agreement") is an enforceable obligation that requires the Successor Agency to "prepare and sell [certain State-owned parcels that OCII is authorized to acquire] to third parties", and to "execute all activities related to the implementation of the Transbay Redevelopment Plan, including but not limited to, activities related to major infrastructure improvements." (Section 2.1 (d) of the Implementation Agreement at p. 4). On April 15, 2013, the California Department of Finance ("DOF") determined "finally and conclusively" that the Implementation Agreement, along with other Transbay-related documents, is an enforceable obligation that will not require additional DOF review in the future.

G. Pursuant to the Implementation Agreement, OCII is preparing to sell Blocks 1, 5, 8, and 9. Prior to the sale of each of these development blocks, the Board of Supervisors must approve the disposition under the standards and procedures described in Section 33433 of the California Health and Safety Code. The Contractor will provide an analysis of the purchase price of each block at the time the purchase offers for each block were received pursuant to a request for proposals issued by OCII.

H. OCII is authorized by the California State Department of Finance to make payments under this Contract pursuant to Line Item No. 115 on the its Recognized Obligation Payment Schedule for the period July to December 2015.

NOW, THEREFORE, the Successor Agency and the Contractor agree as follows:

1. SCOPE OF SERVICES

Contractor shall provide the services described on Attachment A, "Scope of Services".

2. TIME OF COMPLETION

The term of this Contract shall begin on the Effective Date and end on the earlier of the completion of services or termination by either party as provided by the Contract; provided, however, that the insurance and indemnity provisions in this Contract shall continue to remain in effect according to their terms.

3. COMPENSATION AND METHOD OF PAYMENT

A. The maximum amount payable under this Contract is Thirty Five Thousand Dollars (\$35,000). Compensation shall be based upon the mutually agreed upon "Scope of Services" (Attachment A) and billed on a time and materials basis based on the hourly rates listed in Attachment B. All expenses of Contractor are intended to be covered by the compensation paid to Contractor pursuant to the Contract, and no expenses of Contractor shall be reimbursed separately.

B. Method of Payment. Contractor will submit monthly billing invoices to the Successor Agency. The invoices shall include the billing amount, total hours invoiced, hourly billing rate, description of services rendered, supporting documentation and Contractor's signature.

C. Taxes. No payroll or employment taxes of any kind will be withheld or paid by OCII on behalf of Contractor. OCII will not treat Contractor as an employee with respect to the Contract services for any purpose, including federal and state tax purposes. Contractor understands and agrees that it is Contractor's responsibility to pay all taxes required by law, including self-employment social security tax. OCII will issue an IRS 1099 Form, or other appropriate tax-reporting document, to Contractor for the Contract services.

D. Benefits. Contractor will not be eligible for, and will not participate in, any health, pension, or other benefit of OCII which exists solely for the benefit of OCII employees during the Contract Term.

4. NO PERSONAL LIABILITY

No member, official or employee of OCII shall be liable personally to Contractor or any successor in interest in the event of any default or breach by OCII or for any amount which may become due to Contractor or any successor or on any obligation under the terms of this Contract.

5. ASSIGNMENT OF CONTRACT

Contractor shall not assign this Contract, or any part thereof, without the prior express written consent of OCII.

6. INTENTIONALLY OMITTED

7. NON-FEDERAL LABOR STANDARDS

Contractor agrees that any employees performing work or services for Contractor shall be paid not less than the prevailing wage rate and shall be subject to the same hours and working conditions and shall receive the same benefits provided for similar work or services performed in San Francisco. Contractor further agrees that the inclusion of the above provisions in this Contract shall not be construed to relieve Contractor or any subcontractor from the pertinent requirements of any applicable Federal labor standards provisions; and Contractor also agrees that the limitations, if any, in these non-Federal labor standards provisions upon hours per day, per week, or per month which the employees engaged on the work covered by this Contract may be required to work thereon shall not be exceeded. Where minimum rates of pay required under State or local law are higher than the minimum rates of pay required by or set forth in applicable Federal labor standards, said State or local minimum rates shall be the applicable minimum rates of pay for such classifications.

8a. INDEMNIFICATION

To the fullest extent allowable by law, Contractor shall hold harmless, defend at its own expense and indemnify OCII and its respective commissioners, members, officers, agents and employees against any and all liability, claims, losses, damages or expenses, including reasonable attorney's fees, arising directly or indirectly from all Contractor's negligence or willful misconduct in rendering services under this contract; excluding, however, such liability, claims, losses, damages or expenses arising from Agency's negligence or willful acts and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Contractor, its officers, agents or employees. In addition to Contractor's obligation to indemnify Agency, Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend Agency from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Contractor by Agency and continues at all times thereafter. This section does not apply to contracts for construction design services provided by a design professional, as defined in California Civil Code Section 2782.8.

8b. INDEMNIFICATION BY DESIGN PROFESSIONALS

This section applies to any design professional as defined in California Civil Code Section 2782.8 who is or will provide construction design services ("Design Professional") as part of, collateral to, or affecting this Agreement with the Contractor. Each Design Professional who will provide construction

design services shall hold harmless, defend at his or her own expense and indemnify OCII and its respective commissioners, members, officers, agents and employees of and from all claims, loss, damage, injury, actions, causes of action and liability of every kind, nature and description, including reasonable attorney's fees, directly or indirectly that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Design Professional. It is expressly agreed and understood that the duty of indemnification pursuant to this section, including the duty to defend, is to be interpreted broadly, to the greatest extent permitted by law, including but not limited to California Civil Code Section 2782.8.

9. INDEPENDENT CONTRACTOR

Contractor hereby declares that it is engaged in an independent business and agrees to perform its services as an independent contractor and not as the agent or employee of OCII. Contractor has and hereby retains the right to exercise full control and supervision of the services and work to be provided under this Contract and full control over the employment, direction, compensation and discharge of all persons assisting it in the performance of the services and work hereunder. Contractor agrees to be solely responsible for all matters relating to payment of employees, including, but not limited to, compliance with all federal, state and local payroll tax and withholding requirements, workers' compensation requirements and all regulations governing such matters. Contractor agrees to be solely responsible for its own acts and those of its subordinates and employees during the term of the Contract.

10. INSURANCE

A. Contractor must procure and maintain for the duration of the Contract, including any extensions, insurance against claims for injuries to person or damages to property which may arise from or in connection with the performance of the work under this Contract by the Contractor, its agents, representatives, employees or subcontractors. If the Contractor maintains additional coverages and/or higher limits than the minimums shown in this Article 10, OCII requires and shall be entitled to the additional coverage and/or the higher limits maintained by the Contractor.

B. Minimum Scope of Insurance. Coverage must be at least as broad as:

- (1) Insurance Services Office Commercial General Liability coverage (occurrence form CG 00 01).
- (2) Insurance Services Office Automobile Liability coverage, code 1 (form number CA 00 01- any auto).
- (3) Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.
- (4) Professional Liability Insurance appropriate to the Contractor's profession covering all negligent acts, errors and omissions.

C. Minimum Limits of Insurance. Contractor must maintain limits no less than:

- (1) General Liability: \$2,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit must apply separately to this project/location or the general aggregate limit must be twice the required occurrence limit.
- (2) Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.
- (3) Workers' Compensation and Employer's Liability: Workers' Compensation limits as required by the State of California and Employer's Liability limits of \$1,000,000 for bodily injury by accident and \$1,000,000 per person and in the annual aggregate for bodily injury by disease. (Required only if Contractor has employees).
- (4) Professional Liability Insurance: \$1,000,000 per claim and \$2,000,000 in the annual aggregate. If the Contractor's Professional Liability Insurance is "claims made" coverage, these minimum limits shall be maintained by the Contractor for no less than five (5) years beyond completion of the Scope of Services.

D. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by OCII. At the option of OCII, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects to OCII and its respective commissioners, members, officers, agents and employees; or Contractor shall provide a financial guarantee satisfactory to OCII guaranteeing payment of losses and related investigations, claim administration and defense expenses.

E. Other Insurance Provisions. The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

- (1) The "Office of Community Investment and Infrastructure/Successor Agency to the Redevelopment Agency of the City and County of San Francisco and its respective commissioners, members, officers, agents and employees" are to be covered as additional insureds as respects: liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the Contractor; and liability arising out of work or operations performed by or on behalf of the Contractor.
- (2) For any claims related to this Contract, the Contractor's insurance coverage must be primary insurance as respects to OCII and its respective commissioners, members, officers, agents, and employees. Any insurance or self-insurance maintained by OCII, the City and County of San Francisco and their respective commissioners, members, officers, agents or employees shall be in excess of Contractor's insurance and shall not contribute with it.
- (3) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to OCII and its respective commissioners, members, officers, agents or employees.

- (4) Each insurance policy required by this clause must be endorsed to state that coverage will not be suspended, voided, 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 OCII.
- (5) Contractor hereby grants to OCII a waiver of any right to subrogation which any insurer of said Contractor may acquire against OCII by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not OCII has received a waiver of subrogation endorsement from the insurer.
- (6) If any of the required policies provide coverage on a claims-made basis:
 - a. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
 - b. Insurance must be maintained and evidence of insurance must be provided for at least five years after completion of the contract of work.
 - c. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Contractor must purchase "extended reporting" coverage for a minimum of five years after completion of contract work.

F. Acceptability of Insurers. Insurance is to be placed with insurers with a current A. M. Best's rating of no less than A:VII, unless otherwise approved by OCII's Risk Manager.

G. Verification of Coverage. Contractor must furnish OCII with certificates of insurance and with original endorsements evidencing coverage 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. The certificates and endorsements may be on forms provided by OCII. All certificates and endorsements are to be received and approved by OCII before work commences. OCII reserves the right to require complete, certified copies of all required insurance policies, including endorsements demonstrating the coverage required by these specifications at any time.

H. Subcontractors. Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all the requirements stated herein.

11. RECORDS, REPORTS AND AUDITS

A. Records

- (1) Records shall be established and maintained in accordance with Agency requirements, and U.S. Department of Housing and Urban Development ("HUD") requirements if the Contract is funded with HUD Community

Development Block Grant ("CDBG") funds, with respect to all matters covered by this Contract. Except as otherwise authorized by OCII, such records shall be maintained for a period of four years from the date of the termination of the Contract; except that records that are the subject of audit findings shall be retained for four years or until such audit findings have been resolved, whichever is later.

- (2) All costs shall be supported by properly executed payrolls, time records, invoices, contracts, vouchers or other official documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders or other accounting documents pertaining in whole or in part to this Contract shall be clearly identified and readily accessible.

B. Reports and Information

At such times and in such forms as OCII, the City and County of San Francisco or HUD, if the Contract is funded with CDBG funds, may require, there shall be furnished to OCII or its designated representative such statements, records, reports, data and information as OCII, the City and County of San Francisco or HUD may request pertaining to matters covered by this Contract.

C. Audits and Inspections

At any time during normal business hours and as often as OCII, the City and County of San Francisco or HUD, and/or the Comptroller General of the United States, if the Contract is funded with CDBG funds, may deem necessary, there shall be made available to OCII or its representatives for examination all records with respect to all matters covered by this Contract and Contractor will permit OCII, the City and County of San Francisco, HUD and/or the Comptroller General of the United States to audit, examine and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Contract.

12. CONFLICTS

Except for approved eligible administrative or personnel costs, no employee, agent, contractor, officer or official of OCII who exercises any functions or responsibilities with respect to this Contract 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. The term "Contractor" also includes the employees, officers (including board members), agents and subcontractors of a Contractor under this Contract. In order to carry out the purposes of this Section, Contractor shall incorporate, or cause to be incorporated, in all contracts and subcontracts relating to activities pursuant to this Contract, a provision similar to that of this Section.

13. CONTRACTOR'S DUTY OF LOYALTY

Contractor for itself and subcontractors, if any, agrees to abide by OCII's duty of loyalty, which appears at Section IX.H. (Prohibited Activities of Present and Former Employees, Commissioners and Consultants) of OCII's Personnel Policy and which states in part the following: "Unless approved in advance in writing by OCII, no present or former employee, Commissioner or consultant of OCII shall knowingly act for anyone other than OCII in connection with any particular matter in which OCII is a party, or has a direct and substantial interest, and in which he or she participated personally and substantially as an Agency employee, Commissioner or consultant whether through decisions, recommendations, advice, investigation or otherwise. Violation of this section by a present employee, consultant or Commissioner may, in the case of an employee or consultant, be grounds for discharge or termination of the consultant contract, and in the case of a Commissioner, be considered misconduct in office pursuant of California Health and Safety Code Section 33115."

14. LIMITATIONS ON CONTRIBUTIONS

Through execution of this Agreement, Contractor 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 OCII 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. Contractor 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. Contractor further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Additionally, Contractor acknowledges that Contractor must inform each of the persons described in the preceding sentence of the prohibitions contained in section 1.126.

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

15. CONFIDENTIALITY/PROPERTY OF AGENCY

All of the reports, information, data or other materials prepared or assembled by Contractor under this Contract, including Contractor's opinions and conclusions based upon such items, are confidential. Contractor agrees that such reports, information, opinions or conclusions shall not be made available to or discussed with any individual or organization, including the news media, without

the prior written approval of OCII. Unless otherwise stated in the Scope of Services, all such reports, information, data or other materials and work product shall become the property of OCII.

16. COMPLIANCE WITH CALIFORNIA GOVERNMENT CODE

It is understood and agreed that Contractor shall comply with California Government Code Section 7550. California Government Code Section 7550 provides in part that when the total cost for work performed for a local agency by nonemployees of such agency exceeds \$5,000.00, any document or written report prepared in whole or in part by nonemployees for such agency shall contain, in a separate section, the numbers and dollar amount of all contracts and subcontracts relating to the preparation of such document or written report.

17. NONDISCRIMINATION AND EQUAL BENEFITS

A. 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 this Contract. 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 to clients or the general public.

B. Contractor will, in all solicitations or advertisements for employees placed by it or on its behalf, state it is an equal opportunity employer.

C. Contractor will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this Contract so that such provisions will be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

D. Contractor agrees not to discriminate in the provision of benefits between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, and shall comply fully with all provisions of OCII's Nondiscrimination in Contracts Policy ("Policy"), adopted by Agency Resolution No. 175-97, as such Policy may be amended from time to time. The City and County of San Francisco has certified Contractor as being in compliance with Chapter 12B of the San Francisco Administrative Code (the "Equal Benefits Ordinance"). See vendor No. 10582 on list of Vendors that Comply with Chapter 12B Equal Benefits Ordinance, available at <http://sfgsa.org/index.aspx?page=6128>. Accordingly, OCII deems this certification under the Equal Benefits Ordinance as compliance with the Policy.

E. Contractor shall provide all services to the public under this Contract in facilities that are accessible to persons with disabilities as required by state and federal law.

18. COMPLIANCE WITH SMALL BUSINESS ENTERPRISE PROGRAM

OCII implements a Small Business Enterprises ("SBE") Program that was adopted by Agency Resolution No. 82-2009 and that requires consideration in awarding contracts in the following order: 1) Project Area SBEs, 2) San Francisco-based SBEs (outside an Agency Project Area), and 3) All other SBEs. Non San Francisco-based SBEs should be used to satisfy participation goals only if Project Area SBEs or San Francisco-based SBEs are not available, qualified, or if their bids or fees are significantly higher than those of non San Francisco-based SBEs (see **Attachment D** "SBE Agreement").

Under the SBE Program, the Contractor, in awarding subcontracts, must make good faith efforts to achieve SBE participation of 50 % for professional, personal services, and construction contracts; provided, however, that this goal may vary depending on the extent of subcontracting opportunities under OCII contract and the availability of SBE subcontractors capable of providing goods or services required by the contract; and provided further, that OCII has the sole discretion to modify the 50 % SBE participation goal consistent with the SBE Program, as specified in the SBE Agreement.

OCII relies on the information that a business may have provided to qualify under another public entities' business certification program in determining whether that business qualifies as an SBE under OCII's SBE Program. Those other programs include: City and County of San Francisco Local Disadvantaged Business Enterprises (LBE) certification, *information available at* - <http://sfgsa.org/index.aspx?page=5364>; and State of California – Small Business Enterprises certification - <http://www.dgs.ca.gov/pd/Programs/OSDS/GetCertified.aspx>. OCII retains the discretion, however, to determine if the information provided for those other programs meets SBE eligibility under OCII's SBE Program.

19. COMPLIANCE WITH MINIMUM COMPENSATION POLICY AND HEALTH CARE ACCOUNTABILITY POLICY

Contractor agrees; as of the date of this Contract and during the term of this Contract, to comply with the provisions of OCII'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 (See **Attachment E** "Minimum Compensation Policy" and **Attachment F** "Health Care Accountability Policy"). 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 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.

20. TERMINATION

OCII may terminate this Contract at any time without cause upon written Notice of Termination to the Contractor; provided, however, that in the event of such termination, OCII shall compensate the Contractor for work completed to the satisfaction of OCII as of the date of such notice or the date of termination specified in and directed by such notice.

21. MISCELLANEOUS PROVISIONS

A. Notices

All notices, demands, consents or approvals required under this Contract shall be in writing and shall be deemed given when delivered personally or by facsimile transmission or three (3) business days after being deposited in the U.S. Mail, first class postage prepaid, return receipt requested, addressed as follows:

If to OCII: Office of Community Investment and Infrastructure/Successor Agency
to the San Francisco Redevelopment Agency
One South Van Ness Avenue, Fifth Floor
San Francisco, CA 94103
Attention: Executive Director

If to Contractor: Keyser Marston Associates
160 Pacific Avenue, Suite 204
San Francisco, CA 94111
Attention: Timothy C. Kelly

or to such other addresses as the parties may designate by notice as set forth above.

B. Time of Performance

- (1) Time is of the essence in the performance of all the terms and conditions of this Contract.
- (2) All performance and cure periods expire at 5 p.m., San Francisco, California time, on the applicable date.
- (3) A performance or cure date which otherwise would be a Saturday, Sunday or Agency holiday shall be extended to the next Agency working day.

C. Successors and Assigns

This Contract shall be binding upon and inure to the benefit of the successors and assigns of OCII and the Contractor. Where the term "Contractor" or "Agency" is used in this Contract, it shall mean and include their respective successors and assigns; provided, however, that OCII shall have no obligation under this Contract to, nor shall any benefit of this Contract accrue to, any unapproved successor or assign of Contractor where Agency approval of a successor or assign is required by this Contract.

D. Modification, Waiver and Amendment

Any modification, waiver or amendment of any of the provisions of this Contract must be in writing and signed by both OCII and Contractor.

E. Entire Contract

This Contract represents the complete agreement between the parties as to the matters described herein, and there are no oral understandings between Contractor and OCII affecting this Contract not set forth herein. This Contract supersedes all previous negotiations, arrangements, agreements and understandings between Contractor and OCII with respect to the subject matter hereof.

F. Severability

If any provision of this Contract shall be determined to be illegal or unenforceable, such determination shall not affect any other provision and all such other provisions shall remain in full force and effect.

G. Governing Law

This Contract shall be governed by the laws of the State of California. It is the responsibility of Contractor to be informed of local, state and federal laws and requirements applicable to this Contract and to perform all work in compliance with those laws and requirements.

H. Headings

Titles of parts or sections of this Contract are inserted for convenience only and shall be disregarded in construing or interpreting its provisions.

I. Attorneys' Fees

In any action or proceeding arising out of this Contract, the prevailing party shall be entitled to reasonable attorneys' fees and costs.

J. Authority

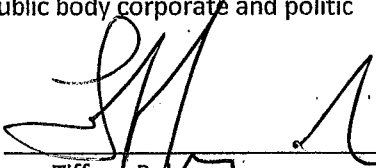
The undersigned represents and warrants that he or she has full power and authority to enter into this Contract and to bind the Contractor in accordance with its terms.

K. Designated Representative

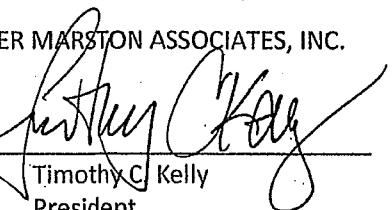
The initial designated representative for OCII for this Contract is Christine Maher, and the OCII representative's phone number is (415) 749-2481. The initial Contractor designated representative for this Contract is Timothy C. Kelly, and the Contractor's designated representatives' phone number is (415) 398-3050.

IN WITNESS WHEREOF the Successor Agency and Contractor have executed this Contract as of the date first above written.

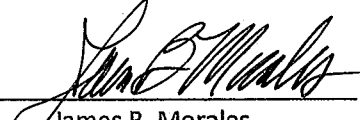
SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO,
a public body corporate and politic

By: 
Tiffany Bohée
Executive Director

KEYSER MARSTON ASSOCIATES, INC.

By: 
Timothy C. Kelly
President

APPROVED AS TO FORM:

By: 
James B. Morales
Agency General Counsel

ATTACHMENTS

- Attachment A: Scope of Services
- Attachment B: Budget
- Attachment C: Intentionally Omitted
- Attachment D: Small Business Enterprise Agreement
- Attachment E: Minimum Compensation Policy Declaration
- Attachment F: Health Care Accountability Policy Declaration

ATTACHMENT A: SCOPE OF SERVICES

Keyser Marston Associates, Inc. ("KMA") will prepare provide separate land valuation reports for each of Transbay Blocks 1, 5, 8, and 9 at its highest and best use allowed under the Redevelopment Plan, consistent with the requirements of California Health and safety Code Section 33433 and based on the following assumptions:

1. The valuation date for each development block will be the date that OCII received responses to the Request for Proposals issued for said development block; and
2. The land value supported by the highest and best use must satisfy zoning, building codes, market condition, and OCII requirement that new investment must occur after conveyance;

KMA will also provide findings that the consideration being paid to OCII for each parcel is reasonable given the value supported at its highest and best use and with the covenants and conditions authorized by the sale.

KMA will attend public hearings as requested by OCII staff.

ATTACHMENT B: BUDGET

The maximum amount payable under this Contract is Thirty Five Thousand Dollars (\$35,000). Compensation shall be made on a time and materials basis based upon the mutually agreed upon "Scope of Services" (Attachment A). All expenses of Contractor are included, and no expenses shall be reimbursed separately.

Contractor's fees and hourly billing rates are as follows:

KEYSER MARSTON ASSOCIATES, INC. PUBLIC SECTOR HOURLY RATES

<u>2014/2015</u>	
A. JERRY KEYSER*	\$280.00
MANAGING PRINCIPALS*	\$280.00
SENIOR PRINCIPALS*	\$270.00
PRINCIPALS*	\$250.00
MANAGERS*	\$225.00
SENIOR ASSOCIATES	\$187.50
ASSOCIATES	\$167.50
SENIOR ANALYSTS	\$150.00
ANALYSTS	\$130.00
TECHNICAL STAFF	\$95.00
ADMINISTRATIVE STAFF	\$80.00

Directly related job expenses not included in the above rates are: auto mileage, parking, air fares, hotels and motels, meals, car rentals, taxies, telephone calls, delivery, electronic data processing, graphics and printing. Directly related job expenses will be billed at 110% of cost.

Monthly billings for staff time and expenses incurred during the period will be payable within thirty (30) days of invoice date.

* Rates for individuals in these categories will be increased by 50% for time spent in court testimony.

ATTACHMENT C

Intentionally Omitted

ATTACHMENT D: 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 Program") 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 Successor Agency to 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 San Francisco-based SBEs before looking outside of San Francisco.

II. **APPLICATION.** The SBE Program applies to all Contractors and their subcontractors seeking work on Agency-Assisted Projects on or after November 17, 2004 and any Amendment to a Pre-existing Contract.

III. **GOALS.** The Agency's SBE Participation Goals are:

CONSTRUCTION	50%
PROFESSIONAL SERVICES	50%
SUPPLIERS	50%

IV. **TRAINEE HIRING GOAL.** In addition to the goals set forth above in Section III, there is a trainee hiring goal for all design professionals (architects, engineers, planners, and environmental consultants) on contracts or subcontracts over \$100,000. The trainee hiring goal requires architects, engineers and other design professionals only to hire qualified San Francisco residents as trainees. The trainee hiring goal is based upon the total amount of the design professional's contract as follows:

<u>Trainees</u>	<u>Design Professional Fees</u>
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

A. Procedures For Trainee Hires

1. Compliance with the Trainee Hiring Goal

Design professionals will be deemed in compliance with this Agreement by meeting or exceeding the trainee hiring goal or by take the following steps in good faith towards compliance.

2. Execution and Incorporation of this Agreement to Sub-agreements

The Agency-Assisted Contractor shall execute this Agreement and shall incorporate by reference or attach this Agreement to its contract(s) with the architects, engineers and other design professionals. Thus, each design professional (regardless of tier) will be obligated to comply with the terms of this Agreement. The Agency-Assisted

Contractor 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

Each design professional shall call the City and County of San Francisco Office of Economic and Workforce Development (OEWD) 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 or OEWD 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) or OEWD may require the design professionals to send a confirming letter or complete its form(s). Each design professional is required to timely provide all of the information requested by the OEWD 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 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 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 San Francisco resident referred by the educational institution(s). The design professional shall notify the educational institution in writing of the hiring decision.

6. Action by Design Professionals When Referrals Unavailable

If after contacting two or more educational institutions the design professional is informed that no 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 Agreement, 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 Section IV 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 IV, 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 Agreement 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 Agreement 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 above.

B. Reporting Requirements For Trainee Hires

1. **Reporting**

Upon completion of the Term of the Agreement or the term of the design professional's contract with the Agency-Assisted Contractor, whichever is less, the design professional (i.e. Employer) shall fax or email a report to the Agency Compliance Officer stating in detail: (1) the names of the San Francisco resident(s) interviewed for trainee positions; (2) the date(s) of each interview; (3) the reasons for not hiring the San Francisco resident(s) interviewed; (4) the name, address, gender and racial/ethnic background of the successful candidate for the trainee position; and (5) the number of San Francisco residents hired as trainees.

2. **Report on Terminations**

In the event a San Francisco resident hired pursuant to this Agreement 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); and (4) whether the design professional replaced the trainee(s).

V. 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 unless another term is specified in the Agency-Assisted Contract or Contract.

VI. 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) San Francisco-based SBEs (outside an Agency Project or Survey Area, but within San Francisco), and (3) Non-San Francisco-based SBEs. Non-San Francisco-based SBEs should be used to satisfy participation goals only if Project Area SBEs or San Francisco-based SBEs are not available, qualified, or if their bids or fees are significantly higher than those of non-San Francisco-based SBEs.

VII. CERTIFICATION. The Agency no longer certifies SBEs but instead relies on the information provided in other public entities' business certifications to establish eligibility for the Agency's program. Only businesses certified by the Agency as SBEs whose certification has not expired and economically disadvantaged businesses that meet the Agency's SBE Certification Criteria will be counted toward meeting the participation goals. The SBE Certification Criteria are set forth in the Policy.

VIII. 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.

IX. DEFINITIONS. Capitalized terms not otherwise specifically defined in this SBE Agreement have the meaning set forth in the Agency's SBE Policy adopted on November 16, 2004 and amended on July 21, 2009 ("**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 SBE Policy shall govern over the Agency-Assisted Contract or Contract which in turn shall govern over this SBE Agreement.

Affiliates means an affiliation with another business concern is based on the power to control, whether exercised or not. Such factors as common ownership, common management and identity of interest (often found in members of the same family), among others, are indicators of affiliation. Power to control exists when a party or parties have 50 percent or more ownership. It may also exist with considerably less than 50 percent ownership by contractual arrangement or when one or more parties own a large share compared to other parties. Affiliated business concerns need not be in the same line of business. The calculation of a concern's size includes the employees or receipts of all affiliates.

Agency-Assisted Contract means, as applicable, the Development and Disposition Agreement (“DDA”), Land Disposition Agreement (“LDA”), Lease, Loan and Grant Agreements, personal services contracts and other similar contracts, and Operations Agreement that the Agency executed with for-profit or non-profit entities.

Agency-Assisted Contractor means any person(s), firm, partnership, corporation, or combination thereof, who is negotiating or has executed an Agency-Assisted Contract.

Amendment to a Pre-existing Contract means a material change to the terms of any contract, the term of which has not expired on or before the date that this Small Business Enterprise Policy (“SBE Policy”) takes effect, but shall not include amendments to decrease the scope of work or decrease the amount to be paid under a contract.

Annual Receipts means “total income” (or in the case of a sole proprietorship, “gross income”) plus “cost of goods sold” as these terms are defined and reported on Internal Revenue Service tax return forms. The term does not include net capital gains or losses; taxes collected for and remitted to a taxing authority if included in gross or total income, such as sales or other taxes collected from customers and excluding taxes levied on the concern or its employees; proceeds from transactions between a concern and its domestic or foreign affiliates; and amounts collected for another by a travel agent, real estate agent, advertising agent, conference management service provider, freight forwarder or customs broker. For size determination purposes, the only exclusions from receipts are those specifically provided for in this paragraph. All other items, such as subcontractor costs, reimbursements for purchases a contractor makes at a customer's request, and employee-based costs such as payroll taxes, may not be excluded from receipts. Receipts are averaged over a concern's latest three (3) completed fiscal years to determine its average annual receipts. If a concern has not been in business for three (3) years, the average weekly revenue for the number of weeks the concern has been in business is multiplied by 52 to determine its average annual receipts.

Arbitration Party means all persons and entities who attend the arbitration hearing pursuant to Section XIII, as well as those persons and entities who are subject to a default award provided that all of the requirements in Section XIII.L. have been met.

Commercially Useful Function means that the business is directly responsible for providing the materials, equipment, supplies or services in the City and County of San Francisco (“City”) as required by the solicitation or request for quotes, bids or proposals. Businesses that engage in the business of providing brokerage, referral or temporary employment services shall not be deemed to perform a “commercially useful function” unless the brokerage, referral or temporary employment services are required and sought by the Agency.

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.

Contractor means any person(s), firm, partnership, corporation, or combination thereof, who is negotiating or has executed a Contract.

Non-San Francisco-based Small Business Enterprise means a SBE that has fixed offices located outside the geographical boundaries of the City.

Office” or “Offices means a fixed and established place(s) where work is performed of a clerical, administrative, professional or production nature directly pertinent to the business being certified. A temporary location or movable property or one that was established to oversee a project such as a construction project office does not qualify as an “office” under this SBE Policy. Work space provided in exchange for services (in lieu of monetary rent) does not constitute an “office.” The office is not required to be the headquarters for the business but it must be capable of providing all the services to operate the business for which SBE certification is sought. An arrangement for the right to use office space on an “as needed” basis where there is no office exclusively reserved for the business does not qualify as an office. The prospective SBE must submit a rental agreement for the office space, rent receipt or cancelled checks for rent payments. If the office space is owned by the prospective SBE, the business must submit property tax or a deed documenting ownership of the office.

Project Area Small Business Enterprise means a business that meets the above-definition of Small Business Enterprise and 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.

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 currently include the Bayview Industrial Triangle, Bayview Hunters Point (Area B), Federal Office Building, Hunters Point Shipyard, Mission Bay (North), Mission Bay (South), Rincon Point/South Beach, South of Market, Transbay Terminal, Yerba Buena Center and Visitacion Valley.

San Francisco-based 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.

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--\$7,000,000; and is (or is in the process of being) certified by the Agency as a SBE and meets the other certification criteria described in the SBE application.

In order to determine whether or not a firm meets the above economic size definitions, the Agency will use the firm’s three most recent business tax returns (i.e., 1040 with Schedule C for Sole Proprietorships, 1065s with K-1s for Partnerships, and 1120 for Corporations). Once a business reaches the 3-year average size threshold for the applicable industry the business ceases to be economically disadvantaged, it is not an eligible SBE and it will not be counted towards meeting SBE contracting requirements (or goals).

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 currently include the Bayview Hunters Point Redevelopment Survey Area C.

X. 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 all of 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 \$5,000 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. (Note that the Agency has a Surety Bond Program that may assist SBEs in obtaining necessary bonding.) 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. **Utilize SBEs as Lower Tier 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. **Maximize Outreach 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 any subcontractor or supplier, the Agency's Contract Compliance Specialist should be notified prior to replacement due to the failure or inability of the subcontractor or supplier to perform the required services or timely delivery the required supplies, then First Consideration should be given to a certified SBE, if available, as a replacement.

XI. **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.

C. **Compliance with Prompt Payment Statute.** Construction contracts and subcontracts awarded for \$5,000 or more shall contain the following provision:

"Amounts for work performed by a subcontractor shall be paid within seven (7) days of receipt of funds by the contractor, pursuant to California Business and Professions Code Section 7108.5 *et seq.* Failure to include this provision in a subcontractor or failure to comply with this provision shall constitute an event of default which would permit the Agency to exercise any and all remedies available to it under contract, at law or in equity."

In addition to and not in contradiction to the Prompt Payment Statute (California Business and Professions Code Section 7108.5 *et seq.*), if a dispute arises which would allow a Contractor to withhold payment to a subcontractor due to a dispute, the Contractor shall only withhold that amount which directly relates to the dispute and shall promptly pay the remaining undisputed amount, if any.

D. **Submission Of Electronic Certified Payrolls.** For any Agency-Assisted Contract which requires the submission of certified payroll reports, the requirements of Section VII of the Agency's Small Business Enterprise Policy shall apply. Please see the Small Business Enterprise Policy for more details.

XII. 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 completed by the SBE owner. However, a SBE that was previously certified by the Agency shall submit only the short SBE Eligibility Statement.

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 San Francisco-based 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 XIII.

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 disagrees 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.

XIII. 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 any 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 fail 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 XIII.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.

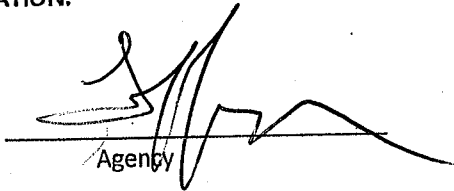
O. **Exculpatory Clause.** Agency-Assisted Contractor or Contractor (regardless of tier) expressly waive any and all claims against the Agency for damages, direct or indirect, including, without limitation, claims relative to the commencement, continuance and completion of construction and/or providing 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

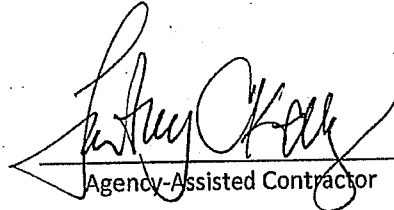
and in determining the times for commencement and completion of the planning, design and construction and/or for providing consulting, professional or personal services.

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.

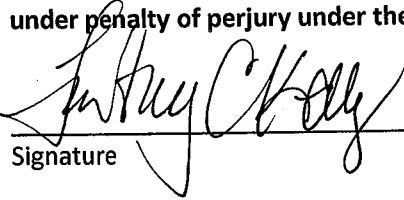
WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION TO NEUTRAL ARBITRATION.


Agency


Agency-Assisted Contractor

XIV. AGREEMENT EXECUTION

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

8/07/15

Date

Timothy C. Kelly

Print Your Name

President

Title

Keyser Marston Associates, Inc. 415-398-3050

Company Name and Phone Number

ATTACHMENT E: MINIMUM COMPENSATION POLICY (MCP) DECLARATION

What the Policy does. The Office of Community Investment and Infrastructure (OCII) (Successor Agency to the San Francisco Redevelopment Agency) 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 OCII contracts and subcontracts for services: for Commercial Business MCP the wage rate is \$13.02 per hour effective January 1, 2015; for Nonprofit MCP the wage rate is \$12.25 per hour for work performed in San Francisco and \$11.03 per hour for work performed outside of San Francisco. The Minimum Compensation rate is adjusted on January 1 each year. In addition, 12 paid days off per year (or cash equivalent) and 10 days off without pay per year shall be offered.

The OCII may require contractors to submit reports on the number of employees affected by the MCP.

Effect on OCII contracting. For contracts and amendments signed on or after September 25, 2001, the MCP will have the following effect:

- ☒ in each contract, the contractor will agree to abide by the MCP and to provide its employees the minimum benefits the MCP requires, and to require its subcontractors subject to the MCP to do the same.
- ☒ if a contractor does not provide the MCP minimum benefits, OCII can award a contract to that contractor only if the contract is exempt under the MCP, or if the contract has received a waiver from OCII.

What this form does. Your signed declaration will help OCII's contracting practice. Sign this form if you can assure OCII that, beginning with the first OCII contract or amendment you receive after September 25, 2001 and until further notice, you will provide the minimum benefit levels specified in the MCP to your covered employees, and will ensure that your subcontractors also subject to the MCP do the same.

If you cannot make this assurance now, please do not return this form.

For more information, please see the complete text of the MCP, available from the OCII's Contract Compliance Department at (415) 749-2400 or <http://www.sfocii.org/index.aspx?page=126>.

Routing. Return this form to: Contract Compliance Department, Office of Community Investment and Infrastructure (Successor to the San Francisco Redevelopment Agency), 1 South Van Ness, Fifth Floor, San Francisco, CA 94103.

Declaration

Effective with the first OCII contract or amendment this company receives on or after September 25, 2001, this company will provide the minimum benefit levels specified in the MCP to our covered employees, and will ensure that our subcontractors also subject to the MCP 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

Timothy C. Kelly
Print Name

Keyser Marston Associates, Inc.
Company Name

Date

8/07/15
Phone

ATTACHMENT F: HEALTH CARE ACCOUNTABILITY POLICY DECLARATION

What the Policy does. The San Francisco Redevelopment Agency adopted the San Francisco Health Care Accountability Policy (the "HCAP"), which became effective on September 25, 2001; the Office of Community Investment and Infrastructure ("OCII") (as Successor Agency to the Redevelopment Agency) continues to enforce the HCAP. The HCAP requires contractors and subcontractors that provide services to OCII, contractors and subcontractors that enter into leases with OCII, and parties providing services to tenants and sub-tenants on OCII property to choose between offering health plan benefits to their employees or making payments to OCII or directly to their employees.

Specifically, contractors can either: (1) offer the employee minimum standard health plan benefits approved by the OCII Commission; (2) pay OCII \$4.25 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 \$170 in any week) and OCII 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 OCII.

The OCII may require contractors to submit reports on the number of employees affected by the HCAP.

Effect on OCII 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, OCII can award a contract to that contractor **only if** the contract is exempt under the HCAP, or if the contract has received a waiver from OCII.

What this form does. Your signed declaration will help OCII's contracting practice. Sign this form if you can assure OCII that, beginning with the first OCII'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.

If you cannot make this assurance now, please do not return this form.

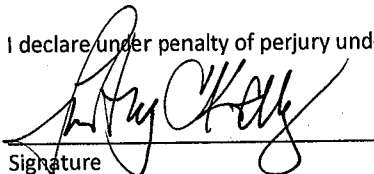
For more information, please see the complete text of the HCAP, available from the OCII's Contract Compliance Department at: (415) 749-2400.

Routing. Return this form to: Contract Compliance Department, Office of Community Investment and Infrastructure (Successor to the San Francisco Redevelopment Agency), 1 South Van Ness Avenue, Fifth Floor, San Francisco, CA 94103.

Declaration

Effective with the first OCII 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

8/07/15
Date

Timothy C. Kelly
Print Name

Keyser Marston Associates, Inc.
Company Name

415-398-3050
Phone

SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO
OFFICE OF COMMUNITY INVESTMENT AND INFRASTRUCTURE

FIRST AMENDMENT TO PERSONAL SERVICES CONTRACT

This First Amendment to Personal Services Contract ("First Amendment") is effective as of January 25, 2016 (the "Effective Date") by and between the Successor Agency to the Redevelopment Agency of the City and County of San Francisco, a public body, corporate and politic, commonly known as the Office of Community Investment and Infrastructure ("Successor Agency" or "OCII"), and Keyser Marston Associates, Inc., a California corporation (the "Contractor").

RECITALS

This First Amendment is made with reference to the following facts and circumstances:

A. The City and County of San Francisco (the "City") and OCII utilize the services of real estate economics firms on an ongoing basis in connection with major development parcels and complex transactions throughout the City and in all redevelopment project areas.

B. A Request for Qualifications for Economic Consulting Services was issued by the City's Controller's Office and the Office of Economic and Workforce Development on September 25, 2014. A representative from OCII was on the selection panel.

C. On November 7, 2014, a Notice of Intent was issued to the firms selected to be on the pre-qualified real estate analysis panel. The Contractor was one of the firms on the list to provide real estate advisory services.

D. OCII and the Contractor entered into a Personal Services Contract effective January 6, 2015 in an amount not to exceed \$35,000 to provide assistance with its evaluation of the purchase prices for Transbay Blocks 1, 5, 8, and 9 in the Transbay Redevelopment Project Area in accordance with the standards and procedures described in Section 33433 of the California Health and Safety Code ("the Contract"). OCII is required to prepare and sell these properties by the Transbay Redevelopment Project Area Implementation Agreement (the "Implementation Agreement"). On April 15, 2013, the California Department of Finance "finally and conclusively" determined that the Implementation Agreement is an enforceable obligation.

E. OCII and the Contractor desire to enter into this First Amendment to increase the maximum contract amount by \$14,500 to a total aggregate amount not to exceed \$49,500, so that the Contractor can undertake additional analyses related to the valuation of Transbay Block 1 and the public benefits of the proposed development program.

F. OCII is authorized by the California State Department of Finance to make payments under this Contract pursuant to Line Item No. 115 on the its Recognized Obligation Payment Schedule for the period January through June 2016.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Successor Agency and Contractor agree as follows:

1. Section 3.A. is deleted in its entirety and replaced with the following:

“A. The maximum amount payable under this Contract is Forty Nine Thousand Five Hundred Dollars (\$49,500). Compensation shall be based upon the mutually agreed upon “Scope of Services” (Attachment A) and billed on a time and materials basis based on the hourly rates listed in Attachment B. All expenses of Contractor are intended to be covered by the compensation paid to Contractor pursuant to the Contract, and no expenses of Contractor shall be reimbursed separately.

2. Attachment A, Scope of Services, is deleted and replaced in its entirety to read as the Attachment A attached hereto and fully incorporated herein.

3. Attachment B, Budget, is deleted and replaced in its entirety to read as the Attachment B attached hereto and fully incorporated herein.

4. The following Miscellaneous provisions apply to this First Amendment:

a. Incorporation. This First Amendment constitutes a part of the Contract and any reference in any document to the Contract shall be deemed to include a reference to such Contract as further amended hereby.

b. Ratification. To the extent of any inconsistency between this First Amendment and the Contract, the provisions contained in this First Amendment shall control. Except as otherwise amended hereby, all terms, covenants, conditions and provisions of the Contract shall remain in full force and effect.

c. Successors and Assigns. This First Amendment shall be binding upon and inure to the benefit of the successors and assigns of the Successor Agency and Contractor, subject to the limitations set forth in the Personal Services Contract.

d. Counterparts. This First Amendment may be executed in any number of counterparts, all of which, together, shall constitute the original agreement.

e. Governing Law; Venue. This First Amendment shall be governed by and construed in accordance with the laws of the State of California. The parties agree that all actions or proceedings arising directly or indirectly under this First Amendment shall be litigated in courts located with the County of San Francisco, State of California.

f. Integration. This First Amendment contains the entire agreement between the parties with respect to the subject matter of this First Amendment. Any prior correspondence, memoranda, agreements, warranties or representations relating to such subject matter are superseded by this First Amendment. No prior drafts of this First Amendment or changes from those drafts to the executed version of this First Amendment shall be introduced as evidence in any litigation or other

dispute resolution proceeding by either party or any other person, and no court or other body shall consider those drafts in interpreting this First Amendment.

g. Effective Date. Each of the modifications set forth in this First Amendment shall be effective on the date first written above.

REMAINDER OF PAGE INTENTIONALLY BLANK

IN WITNESS WHEREOF the Successor Agency and Contractor have executed this Contract as of the date first above written.

SUCCESSOR AGENCY TO THE REDEVELOPMENT
AGENCY OF THE CITY AND COUNTY OF SAN
FRANCISCO, a public body corporate and politic

By: _____

Tiffany Bohee
Executive Director

KEYSER MARSTON ASSOCIATES, INC., a
California corporation

By: _____

Timothy C. Kelly
President

Federal Tax Identification No. 94-2363741

APPROVED AS TO FORM:

By: _____

James B. Morales
Agency General Counsel

ATTACHMENTS

Attachment A: Scope of Services

Attachment B: Budget

ATTACHMENT A: SCOPE OF SERVICES

Keyser Marston Associates, Inc. ("KMA") will prepare provide separate land valuation reports for each of Transbay Blocks 1, 5, 8, and 9 at its highest and best use allowed under the Redevelopment Plan, consistent with the requirements of California Health and safety Code Section 33433 and based on the following assumptions:

1. For Transbay Blocks, 5, 8 and 9, the valuation date will be the date that OCII received responses to the Request for Proposals issued for said development block;
2. For Transbay Block 1, the valuation date will be the date that OCII entered into a negotiations agreement with the developer of the site; and
3. The land value supported by the highest and best use must satisfy zoning, building codes, market condition, and the OCII requirement that new investment must occur after conveyance.

KMA will also provide findings that the consideration being paid to OCII for each parcel is reasonable given the value supported at its highest and best use and with the covenants and conditions authorized by the sale. For Transbay Block 1, these findings will include an analysis of the public benefits that will be generated by the proposed transaction, which includes a 100-foot height increase.

KMA will also assist OCII by providing market information and analysis, and review of OCII-generated information, to compare the Block 1 land price to current land sale comparables.

KMA will attend public hearings as requested by OCII staff.

ATTACHMENT B: BUDGET

The maximum amount payable under this Contract is Forty Nine Thousand Five Hundred Dollars (\$49,500). Compensation shall be made on a time and materials basis based upon the mutually agreed upon "Scope of Services" (Attachment A). All expenses of Contractor are included, and no expenses shall be reimbursed separately.

Contractor's fees and hourly billing rates are as follows:

KEYSER MARSTON ASSOCIATES, INC. PUBLIC SECTOR HOURLY RATES

A. JERRY KEYSER*	\$280.00
MANAGING PRINCIPALS*	\$280.00
SENIOR PRINCIPALS*	\$270.00
PRINCIPALS*	\$250.00
MANAGERS*	\$225.00
SENIOR ASSOCIATES	\$187.50
ASSOCIATES	\$167.50
SENIOR ANALYSTS	\$150.00
ANALYSTS	\$130.00
TECHNICAL STAFF	\$95.00
ADMINISTRATIVE STAFF	\$80.00

Directly related job expenses not included in the above rates are: auto mileage, parking, air fares, hotels and motels, meals, car rentals, taxies, telephone calls, delivery, electronic data processing, graphics and printing. Directly related job expenses will be billed at 110% of cost.

Monthly billings for staff time and expenses incurred during the period will be payable within thirty (30) days of invoice date.

* Rates for individuals in these categories will be increased by 50% for time spent in court testimony.

SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO
OFFICE OF COMMUNITY INVESTMENT AND INFRASTRUCTURE

SECOND AMENDMENT TO PERSONAL SERVICES CONTRACT

This Second Amendment to Personal Services Contract ("**Second Amendment**") is effective as of June 21, 2016 (the "**Effective Date**") by and between the Successor Agency to the Redevelopment Agency of the City and County of San Francisco, a public body, corporate and politic, commonly known as the Office of Community Investment and Infrastructure (the "**Successor Agency**" or "**OCII**"), and Keyser Marston Associates, Inc., a California corporation (the "**Contractor**").

RECITALS

This Second Amendment is made with reference to the following facts and circumstances:

A. The City and County of San Francisco (the "**City**") and OCII utilize the services of real estate economics firms on an ongoing basis in connection with major development parcels and complex transactions throughout the City and in all redevelopment project areas.

B. A Request for Qualifications for Economic Consulting Services was issued by the City's Controller's Office and the Office of Economic and Workforce Development on September 25, 2014. A representative from OCII was on the selection panel.

C. On November 7, 2014, a Notice of Intent was issued to the firms selected to be on the pre-qualified real estate analysis panel. The Contractor was one of the firms on the list to provide real estate advisory services. The panel is available for use through November 7, 2016.

D. The Successor Agency and the Contractor entered into a Personal Services Contract effective January 6, 2015 in an amount not to exceed \$35,000 to provide assistance with its evaluation of the purchase prices for Transbay Blocks 1, 5, 8, and 9 in the Transbay Redevelopment Project Area in accordance with the standards and procedures described in Section 33433 of the California Health and Safety Code (the "**Original Contract**"). The Successor Agency is required to prepare and sell these properties in furtherance of the Transbay Redevelopment Project Area Implementation Agreement (the "**Implementation Agreement**") and California Assembly Bill 812, which requires that 35% of all residential units in the Project Area be affordable to low- and moderate-income households (the "**Transbay Affordable Housing Obligation**"). On April 15, 2013, the California Department of Finance "finally and conclusively" determined that the Implementation Agreement and the Transbay Affordable Housing Obligation are enforceable obligations.

E. On January 25, 2016, the Successor Agency and the Contractor entered into a first amendment to the Original Contract (the "**First Amendment**") to increase the maximum contract amount by \$14,500 to a total aggregate amount not to exceed \$49,500, so the Contractor could undertake additional analyses related to the valuation of Transbay Block 1 and the public benefits of the proposed development program. Together, the Original Contract, the First Amendment, and this Second Amendment comprise the "**Contract**."

F. The Successor Agency and the Contractor now desire to enter into this Second Amendment to increase the amount payable under the Contract by \$25,000 to a total aggregate amount

not to exceed \$74,500, so that the Contractor can (i) complete the analyses related to the valuation of Transbay Block 1, (ii) continue to represent the Successor Agency at upcoming public hearings related to Transbay Block 1, and (iii) provide general real estate valuation and project feasibility services for each of Transbay Blocks 1, 5, 8, and 9 on an as-needed basis.

G. The Successor Agency is authorized by the California State Department of Finance to make payments under this Contract pursuant to Line Item No. 115 on its Recognized Obligation Payment Schedule for the period January through June 2016 and July 2016 through June 2017.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Successor Agency and Contractor agree as follows:

1. Section 3.A. is deleted in its entirety and replaced with the following:

“A. The maximum amount payable under this Contract is Seventy Four Thousand Five Hundred Dollars (\$74,500). Compensation shall be based upon the mutually agreed upon “Scope of Services” (Attachment A) and billed on a time and materials basis based on the hourly rates listed in Attachment B. All expenses of Contractor are intended to be covered by the compensation paid to Contractor pursuant to the Contract, and no expenses of Contractor shall be reimbursed separately.

2. Attachment A, Scope of Services, is deleted and replaced in its entirety to read as the Attachment A attached hereto and fully incorporated herein.

3. Attachment B, Budget, is deleted and replaced in its entirety to read as the Attachment B attached hereto and fully incorporated herein.

4. The following Miscellaneous provisions apply to this Second Amendment:

a. Incorporation. This Second Amendment constitutes a part of the Contract and any reference in any document to the Contract shall be deemed to include a reference to such Contract as further amended hereby.

b. Ratification. To the extent of any inconsistency between this Second Amendment and the Contract, the provisions contained in this Second Amendment shall control. Except as otherwise amended hereby, all terms, covenants, conditions and provisions of the Contract shall remain in full force and effect.

c. Successors and Assigns. This Second Amendment shall be binding upon and inure to the benefit of the successors and assigns of the Successor Agency and Contractor, subject to the limitations set forth in the Personal Services Contract.

d. Counterparts. This Second Amendment may be executed in any number of counterparts, all of which, together, shall constitute the original agreement.

e. Governing Law; Venue. This Second Amendment shall be governed by and construed in accordance with the laws of the State of California. The parties agree that all actions or proceedings arising directly or indirectly under this Second Amendment shall be litigated in courts located with the County of San Francisco, State of California.

f. Integration. This Second Amendment contains the entire agreement between the parties with respect to the subject matter of this Second Amendment. Any prior correspondence, memoranda, agreements, warranties or representations relating to such subject matter are superseded by this Second Amendment. No prior drafts of this Second Amendment or changes from those drafts to the executed version of this Second Amendment shall be introduced as evidence in any litigation or other dispute resolution proceeding by either party or any other person, and no court or other body shall consider those drafts in interpreting this Second Amendment.

g. Effective Date. Each of the modifications set forth in this Second Amendment shall be effective on the date first written above.

REMAINDER OF PAGE INTENTIONALLY BLANK

IN WITNESS WHEREOF the Successor Agency and Contractor have executed this Contract as of the date first above written.

SUCCESSOR AGENCY:

SUCCESSOR AGENCY TO THE REDEVELOPMENT
AGENCY OF THE CITY AND COUNTY OF SAN
FRANCISCO, a public body, corporate and politic

CONTRACTOR:

KEYSER MARSTON ASSOCIATES, INC., a California
corporation

By: _____
Tiffany J. Bohee
Executive Director

By: _____
Timothy C. Kelley
President

Federal Tax ID No: 94-2363741

APPROVED AS TO FORM:

By: _____
James B. Morales
General Counsel

Authorized by Agency Resolution
No. XX-2016, adopted _____, 2016

ATTACHMENTS

Attachment A: Scope of Services

Attachment B: Budget

ATTACHMENT A: SCOPE OF SERVICES

Keyser Marston Associates, Inc. ("KMA") will prepare provide separate land valuation reports for each of Transbay Blocks 1, 5, 8, and 9 at its highest and best use allowed under the Redevelopment Plan, consistent with the requirements of California Health and safety Code Section 33433 and based on the following assumptions:

1. For Transbay Blocks, 5, 8 and 9, the valuation date will be the date that OCII received responses to the Request for Proposals issued for said development block;
2. For Transbay Block 1, the valuation date will be the date that OCII entered into a negotiations agreement with the developer of the site; and
3. The land value supported by the highest and best use must satisfy zoning, building codes, market condition, and the OCII requirement that new investment must occur after conveyance.

KMA will also provide findings that the consideration being paid to OCII for each parcel is reasonable given the value supported at its highest and best use and with the covenants and conditions authorized by the sale. For Transbay Block 1, these findings will include an analysis of the public benefits that will be generated by the proposed transaction, which includes a 100-foot height increase.

KMA will also assist OCII by providing market information and analysis, and review of OCII-generated information, to compare the Block 1 land price to current land sale comparables.

KMA will also provide general real estate valuation and project feasibility services for each of Transbay Blocks 1, 5, 8, 9 on an as-needed basis.

KMA will attend public hearings as requested by OCII staff.

ATTACHMENT B: BUDGET

The maximum amount payable under this Contract is Seventy Four Thousand Five Hundred Dollars (\$74,500). Compensation shall be made on a time and materials basis based upon the mutually agreed upon "Scope of Services" (Attachment A). All expenses of Contractor are included, and no expenses shall be reimbursed separately.

Contractor's fees and hourly billing rates are as follows:

**KEYSER MARSTON ASSOCIATES, INC.
PUBLIC SECTOR HOURLY RATES**

A. JERRY KEYSER*	\$280.00
MANAGING PRINCIPALS*	\$280.00
SENIOR PRINCIPALS*	\$270.00
PRINCIPALS*	\$250.00
MANAGERS*	\$225.00
SENIOR ASSOCIATES	\$187.50
ASSOCIATES	\$167.50
SENIOR ANALYSTS	\$150.00
ANALYSTS	\$130.00
TECHNICAL STAFF	\$95.00
ADMINISTRATIVE STAFF	\$80.00

Directly related job expenses not included in the above rates are: auto mileage, parking, air fares, hotels and motels, meals, car rentals, taxies, telephone calls, delivery, electronic data processing, graphics and printing. Directly related job expenses will be billed at 110% of cost.

Monthly billings for staff time and expenses incurred during the period will be payable within thirty (30) days of invoice date.

* Rates for individuals in these categories will be increased by 50% for time spent in court testimony.