OCII
office of
COMMUNITY INVESTMENT
and INFRASTRUCTURE

108-0382019-002

Agenda Item **No. 5(b)**
Meeting of September 17, 2019

MEMORANDUM

TO: Community Investment and Infrastructure Commissioners

FROM: Nadia Sesay, Executive Director

SUBJECT: Authorizing a Fourth Grant Disbursement Agreement with the Mexican Museum, a California non-profit corporation, and 706 Mission Street Co LLC, a Delaware Limited Liability Company, in an amount not to exceed $1,000,000, for tenant improvements for a new museum facility at the 706 Mission Street Project, pursuant to a December 14, 2010 Grant Agreement between the Museum and the Successor Agency; Former Yerba Buena Center Project Area

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EXECUTIVE SUMMARY

On December 14, 2010, the former San Francisco Redevelopment Agency ("Former Agency") authorized a Grant Agreement with The Mexican Museum, a California 501 (c)(3) non-profit charitable corporation (the "Museum"), for development of a new museum facility (the "Museum Space") associated with a planned mixed-use project on a site at Third and Mission Streets, known as the 706 Mission Street project (the "Project"). The Former Agency and Museum entered into the Grant Agreement to preserve the Museum's access to bond proceeds budgeted for development of the Museum Space, which was located in the Yerba Buena Center Redevelopment Project Area expiring in 2011. The Grant Agreement authorized over a ten year period the disbursement of approximately $10.5 million, consisting substantially of bond proceeds, for predevelopment and construction of tenant improvements for the Museum Space. The Grant Agreement also stipulates that this funding is to be disbursed through one or more future ancillary agreements (the "Grant Disbursement Agreements").

Since approval of the Grant Agreement, state law dissolved the Former Agency and the Office of Community Investment and Infrastructure ("OCII"), as the Successor Agency, assumed administration of the Grant Agreement. Fortunately, the 2010 Grant Agreement

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has served to protect the funds in light of the Redevelopment Dissolution Law, which became effective in June 2011 and sought to capture all unexpended redevelopment funds and transfer them to cities, counties, school districts and other taxing entities. The Grant Agreement met the Redevelopment Dissolution Law's definition of an "enforceable agreement" and has been approved by the California Department of Finance on OCII's Recognized Obligations Payment Schedules. The Grant Disbursement Agreements are "in compliance with an enforceable obligation" and thus meet state standards for a successor agency to enter into new contracts after redevelopment dissolution. Cal. Health & Safety Code §34177.3(a). To date, the Commission has authorized three Grant Disbursement Agreements totaling $2,780,881 and the balance of grant funding remaining is $7,785,119.

The Museum and 706 Mission Street Co LLC, the developer for the Project (the "Developer"), have jointly requested a fourth disbursement in an amount not to exceed $1,000,000 of the Grant Funds (the "Joint Request Letter," see Attachment 1) to be disbursed to the Developer on behalf of the Museum for the purpose of completing design, fabrication and installation of a façade screen for the Museum portion of the Project. This proposed use of funds is consistent with the Grant Agreement's requirements that funds pay for the costs of the Museum Space's Interior Improvements, which are defined as including "tenant improvements and related exterior improvements." Grant Agreement at page 2 (Recital I). The Fourth Grant Disbursement Agreement includes a budget, the roles and responsibilities of each party, mechanisms for the disbursement of funds, default provisions, and compliance with OCII policies (the "Fourth Grant Disbursement Agreement," see Attachment 2).

Staff recommends authorizing the Fourth Grant Disbursement Agreement with the Developer on behalf of the Museum

BACKGROUND

The Museum Space is part of a new mixed-use project being developed by 706 Mission Street Co LLC, an affiliate of Millennium Partners (the "Developer"), at the corner of Third and Mission Streets. The Project, also known as 706 Mission Street, includes a 480-foot high-rise residential tower with 190 units, commercial space, and the Museum Space in the base of the building; it is being built on land the Developer acquired from OCII. In 2008, the Museum formally agreed to become part of the Project in return for the Developer's substantial contribution toward the construction of the Museum Space's core and shell and an endowment for its future operating costs.

In December 2010, the Former Agency approved, by Resolution No. 157-2010 (Dec. 14, 2010), the Grant Agreement with the Museum which required the future disbursement of $10.5 million in certain bond proceeds that had been budgeted for the Museum Space. The Former Agency and the Museum entered into the agreement to preserve the availability of funds for a project authorized under the Yerba Buena Center Redevelopment Plan, which was expiring in January 2011. Specifically, the grant funds were to be used for (1) predevelopment activities, which include preparing and implementing the Museum's predevelopment plan (as approved by the Former Agency Commission on October 18, 2011), operational and organizational planning, designing the Museum Space, hiring museum staff and other consultants, and securing regulatory approvals; and (2) design/construction of the Museum's tenant improvements, which include specialized HVAC/humidity control systems, all fixtures, furniture and equipment, all exhibit spaces, and exterior signage. Disbursement of the funds was to occur through separately-approved Grant Disbursement Agreements that complied with the Grant Agreement.

On January 17, 2012, the Former Agency Commission authorized a Grant Disbursement Agreement with the Museum in an amount not to exceed $750,000 for predevelopment planning, staffing and consultant costs related to the Museum Space (the “First Grant Disbursement Agreement”). On April 15, 2013, the Successor Agency Commission, also known as the Commission on Community Investment and Infrastructure (the “Commission”), authorized a second Grant Disbursement Agreement in an amount not to exceed $1,000,000 for continued predevelopment work (the “Second Grant Disbursement Agreement”). The Commission approved a third Grant Disbursement Agreement in the amount of $1,030,881 on July 15, 2014 for predevelopment and planning work associated with the Museum Space (the “Third Grant Disbursement Agreement”).

On July 16, 2013, the Commission approved a Purchase and Sale Agreement with the Developer and the Museum as a third party beneficiary (the “PSA”). Under the PSA, OCII sold its property, including CB-1-MM (the vacant parcel fronting Jessie Square) and the Jessie Square Garage, for the value of a number of Developer-funded public benefits, which exceeded the appraised value of the land. These public benefits included the Developer’s repayment of bonds in the amount of over $25 million used to construct Jessie Square improvements, construction of the core and shell of the Museum Space estimated at the time to be worth $22.5 million, payment of a $5 million operating endowment for the Museum, payment of a 28% affordable housing fee and other benefits described in the letter from the California Department of Finance approving the sale. Letter, S. Szalay to T. Bohee, Re: Approval of Oversight Board Action (Oct. 4, 2013) (see Attachment 3). The PSA also sets forth the terms and conditions of the Museum’s participation in the project and gave the Museum third party beneficiary rights to enforce certain of those terms and conditions. Under the PSA, the Museum had the right to lease the Museum Space from the City and County of San Francisco (“City”), which will assume the property interests in the condominium space created for the Museum in the Project. In March 2015, the City and Museum entered into a 66 year lease, with an option extension of an additional 33 years, for the Museum Space at a base rent of $1.00 for the term of the lease, provided, however, that the Museum would be responsible for, among other things, any taxes and common area maintenance payments (“Lease”).

The Project received its initial building permits in November 2015, and construction activities started in June 2016. Construction completion is anticipated in 2020, with temporary certificates of occupancy (“TCOs”) for the initial residential condominiums expected to be issued beginning April 2020. The Developer expects to deliver the core and shell of the Museum Space to the City in Summer of 2020. The terms of the City’s Lease with the Museum commences when the City delivers exclusive possession of the space to the Museum.

DISCUSSION

The Project site was originally subject to the land use authority of the Former Agency as provided for in the Yerba Buena Center Redevelopment Plan. When that redevelopment plan expired at the beginning of 2011, the San Francisco Planning Department assumed jurisdiction and the Planning Code established the land use controls for approval of the Project. In 2013, the City approved the

Project. As a result, the Developer had to comply with, among other things, the Public Art Fee of Planning Code Sections 429 et seq., which requires payment of a fee or the provision of public art in an amount equal to one percent of the total construction costs. The amount of the Project's Public Art Fee required under the Planning Code is approximately $2,234,250. The Museum proposed to the Developer that the Public Art Fee be applied to the design, fabrication, and installation of the façade screen, a unique artwork designed by artist Jan Hendrix and fabricator A. Zahner, at an estimated cost of over $3 million. To the extent that the costs of the façade screen exceeded the amount of the Public Art Fee, the Museum agreed to find a source of funds to cover those costs.

In October 2018, the Museum and the Developer submitted to OCII a joint letter of request for disbursement of grant funds to fund the Museum's portion of costs for the façade screen (see Attachment 1). In their request, the Museum and Developer propose that the Developer enter into a Grant Disbursement Agreement with OCII, subject to the terms of the 2010 Grant Agreement, on the Museum's behalf, as the Developer will be responsible for completing the design, construction and installation of the façade screen. In December 2018, OCII staff, the Museum and the Developer worked out the terms of a proposed fourth grant disbursement agreement in which the Museum has agreed to assign and delegate its rights and obligations as Grantee to the Developer for the limited purpose of entering into a fourth grant disbursement agreement for the façade screen, and the Developer has agreed to complete the design, construction and installation of the façade screen (see Attachment 2).

Since December 2018, the Museum has fulfilled financial and organizational compliance obligations under the 2010 Grant Agreement and Third Disbursement Agreement. Additionally, the Developer has finalized design and construction documents for regulatory review and approval by the City. The façade screen is designed and engineered as a unit with the building's curtain wall so that weight and wind loads are engineered and anchored to the structure of the building. The final design, engineering and financing for the façade screen needs to be resolved at this time so that the building construction can stay on schedule. Delaying or separating the façade screen component from the building curtain wall would increase the costs of the façade screen and necessitate some redesign of the building skin if the screen is not able to be fabricated in coordination with construction of the curtain wall.

The façade screen constitutes a design modification to the Project originally approved by the San Francisco Planning Commission in 2013. The façade screen design was reviewed by Planning and has met the requirements for on-site public artwork of Planning Code Section 429 et seq. Memo to Planning Commission, Director's Report, Case No. 2008.1084EHKXRTZ (Jan. 5, 2017). On August 29, 2019, the Planning Department determined that the addition of the façade screen would not result in any new environmental impacts that were not already analyzed in the Project's Final Environmental Impact Report ("FEIR") or any impacts that would be more severe than those identified in the FEIR. Note to File, M. Li, Environmental Planning Division, Re: 706 Mission Street – The Mexican Museum and Residential Tower Project Design Modifications (Aug. 29, 2019).

<u>Compliance with Redevelopment Dissolution Law</u>

The proposed Fourth Grant Disbursement Agreement complies with Redevelopment Dissolution Law. With approval from a successor agency's oversight board and DOF, a successor agency may continue to implement "enforceable obligations" — existing contracts, bonds, leases, etc. — which were executed prior to the suspension of redevelopment agencies' activities on June 28, 2011. The Grant Agreement meets the definition of "enforceable obligation" under Redevelopment Dissolution Law. (Cal. Health & Safety Code Section 34171(d)(1)(E). Redevelopment Dissolution Law also authorizes successor agencies to enter into ancillary agreements if they are "in compliance with an enforceable obligation that existed prior to June 28, 2011." Cal. Health & Safety Code § 34177.5 (a). The 2010 Grant Agreement requires, upon certain terms and conditions, OCII to "disburse Grant Funds to Grantee." Section 3.1 (a) of the Grant Agreement. The Fourth Grant Disbursement Agreement meets those terms and conditions and thus complies with the pre-existing enforceable obligation under the Grant Agreement.

Small Business Enterprise and Workforce Compliance

Under the PSA, the Developer agreed to comply with OCII's equal opportunity program, e.g. small business enterprise and prevailing wage policies, but the PSA also provides that in the event of a conflict between City policies or approvals and Successor Agency policies, the City's standards shall prevail.

The Mexican Museum
The Museum has worked closely with OCII's contract compliance staff to comply with the Small Business Enterprise ("SBE") Program. To date, the Museum has achieved 66.5% SBE participation for professional services consultants. Of the total fees, 59.5% have been awarded to San Francisco-based SBEs, and 30.5% have been awarded to minority- and women-owned business enterprises (M/WBE). During the tenant improvement construction phase of this project, the Museum is committed to meeting equal opportunity requirements of either OCII or the City, subject to further discussions between the City and OCII.

706 Mission Street Co LLC
The Developer has also worked closely with OCII's contract compliance staff to comply with OCII contracting requirements for the Project. For professional services consultants, the Developer has achieved 61.4% SBE participation, with San Francisco-based SBE participation at 60.1% and overall M/WBE participation at 40.6%. For construction, the Developer and its general contractor, Webcor Builders, have made 22.9% of its awards and commitments to SBEs to date, including the fabrication of the façade screen. San Francisco-based SBE and M/WBE participation are 5.5% and 1%, respectively. These lower percentages are expected based on the nature of work and the magnitude of subcontractor trade packages for a high-rise tower construction of this type. The Developer has also complied with other contracting requirements, including working with OCII and the City's Office of Economic and Workforce Development on local hire and paying prevailing wages, and has remained committed to comply with the contracting requirements for all construction contracts going forward.

Environmental Review

OCII acts as a responsible agency under the California Environmental Quality Act ("CEQA") in considering approval of the Fourth Grant Disbursement Agreement. In 2013, the City, through its Planning Department and Commission, as lead agency under CEQA, certified the Project's FEIR, made findings, and established a mitigation monitoring program. More recently, the Planning Department approved the façade screen as a design modification consistent with the original Project approvals.

The OCII Commission will need to adopt findings in accordance with CEQA that the funding of the façade screen under the Fourth Grant Disbursement Agreement is an Implementing Action for the construction of the Project, pursuant to the approvals granted by the Planning Commission. Staff, in making the necessary findings for the Implementing Action contemplated herein, considered and reviewed the FEIR. Documents related to the Implementing Action and the FEIR have been and continue to be available for review by the OCII Commission and the public and are part of the record before the OCII Commission. No major revisions are required due to the involvement of new significant environmental effects or a substantial increase in the severity of significant effects previously identified in the FEIR. No substantial changes have occurred with respect to the circumstances under which the Project analyzed in the FEIR was undertaken that would require major revisions to the FEIR due to the involvement of new significant environmental effects, or a substantial increase in the severity of effects identified in the FEIR. No new information of substantial importance to the Project analyzed in the FEIR has become available which would indicate that (a) the Implementing Action will have significant effects not discussed in the FEIR; (b) significant environmental effects will be substantially more severe; (c) mitigation measures or alternatives found not feasible which would reduce one or more significant effects have become feasible; or (d) mitigation measures or alternatives which are considerably different from those in the FEIR will substantially reduce one or more significant effects on the environment.

NEXT STEPS

Staff recommends approving the Fourth Grant Disbursement Agreement for the purpose of funding the Museum's share of costs for the façade screen improvements. Upon Commission approval, staff will execute the Fourth Grant Disbursement Agreement and coordinate with the Developer on draws for the façade screen. It is anticipated that the grant funds under the Fourth Disbursement Agreement will be expended by June 2020.

(Originated by Hilde Myall, Development Services Manager)

Nadia

Nadia Sesay
Executive Director

Attachment 1: Joint Letter of Request for Disbursement of Grant Funds
Attachment 2: Fourth Grant Disbursement Agreement
Attachment 3: Letter, S. Szalay to T. Bohee, Re: Approval of Oversight Board Action (Oct. 4, 2013)

Attachment 1
Joint Letter of Request for
Disbursement of Grant Funds

October 26, 2018

Nadia Sesay
Executive Director
OCII
One South Van Ness Avenue, 5th Floor
San Francisco, CA 94103

RE: Joint Request for New Disbursement of OCII Grant Funds for the Design, Fabrication and Construction of the Façade Screen

Dear Director Sesay,

Reference is made to that certain Agreement for Purchase and Sale of Real Estate dated as of July 16, 2013, by and among the Successor Agency to the Redevelopment Agency of the City and County of San Francisco, a public body organized and existing under the laws of the State of California ("OCII"), as transferor, 706 Mission Street Co LLC, a Delaware limited liability company ("Developer"), as transferee, and The Mexican Museum, a California nonprofit corporation (the "Museum"), as third party beneficiary, recorded on April 17, 2014 as Instrument No. 2014-J864850 in Official Records of the City and County of San Francisco (the "Purchase Agreement").

Reference is also made to that certain letter agreement regarding "706 Mission Street – The Mexican Museum and Residential Tower Project; Design and Construction of the Exterior Enclosure of the Cultural Component; Use of Public Art Fee for Project" dated May 24, 2016 (the "Exterior Enclosure Letter Agreement"), by and among OCII, Developer, the Museum, and the City and County of San Francisco, acting through its Department of Real Estate, a municipal corporation ("City") and to that partially executed letter agreement regarding "706 Mission Street – The Mexican Museum and Residential Tower Project; Design and Installation of the Façade Screen" dated May 1, 2018 (the "2018 Façade Screen Letter Agreement"), by and among Developer, the Museum, and the City.

In connection with the construction of the Project, the Developer must comply with the Public Art Fee requirements of Planning Code Section 429 et seq., which require payment of a fee or the provision of public art in an amount equal to one percent of the total construction costs. The Developer has submitted project costs to DBI for the "Public Art Fee" required for the Project and such amount is $2,234,250.

The Developer has agreed to support the Museum's proposal that all of the Public Art Fee required for the Project be dedicated to the cost of the Façade Screen, which is being designed by artist Jan Hendrix and fabricator A. Zahner under contracts with the Museum (the "Façade Screen Contracts") at an estimated cost of $2,408,245 with taxes and installation excluded. Installation and other costs are estimated at $750,000, for a total estimated cost of $3,158,245. To the extent that the costs of the Façade Screen exceed the amount of the Public Art Fee, it is the Museum's obligation to find a source of funds to cover those costs.

The 2018 Façade Screen Letter commits the Museum, the Developer, and the City to, in good faith, and using commercially reasonable efforts, agree upon:

(i) the final design direction for the Façade Screen,
(ii) a plan for the ongoing maintenance, care, and repair of the Façade Screen (including sources of funding for the same), and
(iii) a plan for funding the amount by which the anticipated cost of completing the design, fabrication, and installation of the Façade Screen exceeds the amount of Developer's Public Art Fee requirement for the Project.

For OCII's consideration, the Museum and the Developer jointly submit this request for disbursement of $923,995 of the Grant Funds to be disbursed to the Developer on the Museum's behalf for the purpose of completing design, fabrication and installation the Façade Screen. We propose that the Developer enter into a Grant Disbursement Agreement with OCII, subject to the terms of the 2010 Grant Agreement, as the Developer, per the 2018 Façade Screen Letter Agreement, will complete the design, construction and installation of the Façade Screen on the Museum's behalf. The Museum intends to assign and delegate its rights and obligations as Grantee to the Developer for the limited purpose of entering into a fourth grant disbursement agreement for the Façade Screen.

Prior to OCII's consideration of this request, the Museum will supply the following documentation evidencing compliance with the terms of the 2010 Grant Agreement:

- Organizational good-standing
- Current board roster and organizational documents (by-laws and articles of incorporation)
- Current certificates of coverage for required insurance coverage
- Audited financials from 2014 to date
- Documentation of expenditure of the prior 2014 disbursement under the Third Grant Disbursement Agreement

Additionally, the Museum and the Developer propose and agree to the following terms of the requested Fourth Grant Disbursement Agreement:

- Full execution of the 2018 Façade Screen Letter Agreement, including assignment of the Façade Screen Contracts to the Developer
- Submission of a final scope and budget for the design, fabrication and installation of Façade Screen, subject to approval by OCII's Executive Director
- Submission of a plan for ownership and maintenance of the Façade Screen
- Compliance with applicable OCII policies under the Grant Agreement

The undersigned are duly appointed representatives of the Museum and of the Developer authorized to submit this Funding Request on behalf of the Museum.

DEVELOPER:

706 Mission Street Co LLC,
a Delaware limited liability company

By: ______________________

Name: Sean Jeffries

Title: Authorized Officer

MUSEUM:

The Mexican Museum,
a California nonprofit corporation

By: Andrew Kluger 10/26/18

Name: Andrew Kluger

Title: Chair of the Bd

Approved as to Form:

The Mexican Museum 10/26/18

By: Victor M. Marquez

Name: Victor M. Marquez
General Counsel

Attachments

ATTACHMENT 2

FOURTH GRANT DISBURSEMENT AGREEMENT

By and Between

THE SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE

CITY AND COUNTY OF SAN FRANCISCO

and

THE MEXICAN MUSEUM
a California non-profit corporation

and

706 MISSION STREET CO LLC,

a Delaware limited liability company

For the Development of

CB-1-MM (ASSESSOR'S BLOCK 3706, PORTION OF LOT 277)

SAN FRANCISCO, CALIFORNIA

Dated as of ________, 2018

FOURTH GRANT DISBURSEMENT AGREEMENT

This FOURTH GRANT DISBURSEMENT AGREEMENT (the "**Agreement**") dated as of __________, 2018 (the "**Effective Date**"), by and between the Successor Agency to the Redevelopment Agency of the City and County of San Francisco, a public body organized and existing under the laws of the State of California (together with any successor public agency designated by or pursuant to law, the "**Successor Agency**"), The Mexican Museum, a California non-profit corporation (the "**Grantee**" or the "**Museum**") and 706 Mission Street Co LLC, a Delaware limited liability company, (the "**Developer**") (collectively, the "**Parties**"), is entered into based upon the following facts, intentions and understandings of the Parties:

RECITALS

A. On December 14, 2010, by Resolution No. 157-2010, the Redevelopment Agency of the City and County of San Francisco (the "**Former Agency**") approved a Grant Agreement (the "**Grant Agreement**") between the Former Agency and the Museum to commit $10,566,000 of Former Agency funding authorized over a series of budget years to cover a substantial portion of the costs for predevelopment, planning, and tenant improvement work, including exterior signage, related to museum space (the "Museum Space") in a proposed mixed-use project on a site at 706 Mission Street (Assessor's Block 3706, Lot 93) and Former Agency disposition parcel CB-1-MM (Assessor's Block 3706, portion of Lot 277) (the "**Project**"). Except as specifically defined herein, capitalized terms used in this Agreement shall have the meanings assigned to such terms in the Grant Agreement.

B. Pursuant to Article 3 of the Grant Agreement, which requires disbursement of the Grant Funds to the Museum in accordance with one or more Grant Disbursement Agreements, the Former Agency approved a First Grant Disbursement Agreement on January 17, 2012 by Resolution No. 5-2012 (the "**First Disbursement Agreement**"). The First Disbursement Agreement disbursed an amount not to exceed $750,000 to the Museum (the "**First Draw**") for the purpose of funding Predevelopment Activities related to the Museum's sustainable operational and fiscal participation in developing the Museum Space associated with the Project.

C. On February 1, 2012, state law dissolved redevelopment agencies and transferred certain of the former agencies' assets and obligations to successor agencies. Cal. Health & Safety Code Section 34170 et seq. (the "**Redevelopment Dissolution Law**"). As a result, the Former Agency ceased to exist and the Successor Agency, commonly known as the Office of Community Investment and Infrastructure ("**OCII**"), assumed certain obligations of the Former Agency, including those "enforceable obligations" that were entered into prior to the suspension of redevelopment agencies' activities.

D. San Francisco Ordinance No. 215-12 (Oct. 4, 2012) implemented Redevelopment Dissolution Law by establishing, among other things, the Successor Agency Commission, also known as the Commission on Community Investment and Infrastructure (the "**CCII**" or "**Commission**") and delegating to it the authority to take any action that the Redevelopment Dissolution Law requires or authorizes on behalf of the Successor Agency. The Grant Agreement meets the definition of "enforceable obligations" under the Redevelopment Dissolution Law.

E. The Successor Agency approved a Second Grant Disbursement Agreement on April 16, 2013 by Resolution No. 11-2013 (the "**Second Disbursement Agreement**"). The Second Disbursement Agreement disbursed an amount not to exceed $1,000,000 to the Museum (the "**Second Draw**") for the purpose of funding its ongoing predevelopment and planning work.

F. The Successor Agency approved a Third Grant Disbursement Agreement on July 15, 2014 by Resolution No. 58-2014 (the "**Third Disbursement Agreement**"). The Third Disbursement Agreement disbursed an amount not to exceed $1,030,881 to the Museum for the purpose of completing its ongoing predevelopment and planning work related to the Museum's sustainable operational and fiscal participation in developing the Museum Space associated with the Project.

G. The Successor Agency approved that certain Agreement for Purchase and Sale of Real Estate dated as of July 16, 2013, by and among the Successor Agency, as transferor, Developer, as transferee, and the Museum, as third party beneficiary, recorded on April 17, 2014 as Instrument No. 2014-J864850 in Official Records of the City and County of San Francisco (as may be amended from time to time, the "**Purchase Agreement**"), which, among other obligations, establishes the Museum's obligation to design and construct tenant improvements and other improvements related to the Museum Space. Subsequently, the **Oversight Board** and the **Department of Finance** approved the Purchase Agreement.

H. In connection with the construction of the Project, the Developer must comply with the Public Art Fee requirements of Planning Code Section 429 et seq., which require payment of a fee or the provision of public art in an amount equal to one percent of the total construction costs (the "**Public Art Fee**"). Developer estimates that the Public Art Fee required for the Project will be approximately $2,234,250. The Museum and the Developer have agreed that all of the Public Art Fee required for the Project will be dedicated to the cost of the façade screen, a unique artwork designed by artist Jan Hendrix and fabricator A. Zahner under design contracts with the Museum (the "**Façade Screen**").

I. The Museum and the Developer have negotiated the terms under which the Developer will complete the design, construction and installation of the Façade Screen on the Museum's behalf. The Developer may potentially enter into additional contracts to complete the design, fabrication and installation of the Façade Screen.

J. The Museum and the Developer have jointly requested a fourth disbursement of $1,000,000 of the Grant Funds to be disbursed to the Developer on behalf of the Museum for the purpose of completing design, fabrication and installation the Façade Screen, which is a portion of the improvements related to the Museum Space as further defined in this Agreement. Subject to the Museum's and Developer's satisfaction of certain pre-conditions, the Successor Agency agrees to disburse an amount not to exceed $1,000,000 to the Developer on the Museum's behalf (the "**Fourth Draw**") for the purpose of the build-out of the Façade Screen for the Project.

K. Redevelopment Dissolution Law authorizes successor agencies to enter into new agreements if they are "in compliance with an enforceable obligation that existed prior to June 28, 2011." Cal. Health & Safety Code § 34177.5 (a). Under this limited authority, a successor agency may enter into contracts, such as this Agreement, if a pre-existing enforceable obligation requires that action. See also Cal. Health & Safety Code § 34167 (f) (providing that the Redevelopment Dissolution Law does not interfere with an agency's authority under enforceable obligations to "enforce existing covenants and obligations, or . . . perform its obligation."). This Agreement, providing funding for the Museum's tenant improvements, is part of the Successor Agency's compliance with the pre-existing enforceable obligation under the Grant Agreement.

L. To memorialize the disbursement procedures and requirements that apply to the Fourth Draw and facilitate the Museum's progress toward the development of museum space associated with the Project, the Successor Agency, the Museum and the Developer wish to enter into this Agreement.

AGREEMENT

ACCORDINGLY, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Successor Agency, the Museum and the Developer agree as follows:

1. Grantee's Assignment.

Pursuant to Article 4 of the Grant Agreement, the Museum hereby assigns its rights, interests and obligations as Grantee under the Grant Agreement with respect to the Fourth Disbursement Agreement only to the Developer for the limited purpose of entering into this Fourth Grant Disbursement Agreement. The Developer hereby agrees and accepts assignment of same. The Successor Agency consents to the foregoing assignment and acknowledges and agrees that Developer shall not be liable for any breach, default or Event of Default of the Museum with respect to the Grant Agreement, the First Disbursement Agreement, the Second Disbursement Agreement or the Third Disbursement Agreement, and the Successor Agency shall not have the right to refuse to disburse any portion of the Fourth Draw to Developer based upon any such breach, default or Event of Default.

2. Term.

The term of this Agreement will commence on the Effective Date specified in the Preamble, above. Such term shall end at 11:59 p.m. San Francisco time on June 30, 2020, unless terminated earlier as described in Article 12, below (the "**Term**"). Notwithstanding the foregoing, the Term may be extended without further Successor Agency Commission action for one additional six (6) month period, subject to the discretion of the Successor Agency's Executive Director, but in no event shall the term of this Agreement extend beyond the termination date of the Grant Agreement.

3. Use and Disbursement of Fourth Draw.

a. Maximum Amount of Fourth Draw. In no event shall the amount of the Fourth Draw disbursed hereunder exceed ONE MILLION DOLLARS ($1,000,000).

b. Remaining Balance of Grant Funds. After disbursement of the Fourth Draw, the remaining balance of Grant Funds available under the Grant Agreement is SIX MILLION SEVEN HUNDRED EIGHTY FIVE THOUSAND ONE HUNDRED NINETEEN DOLLARS ($6,785,119). The remaining balance shall be used for Interior Improvements to the Museum, as defined in the Grant Agreement.

c. Use of Fourth Draw. The Developer shall use the Fourth Draw pursuant to the terms and conditions of the Grant Agreement and in accordance with the Scope of Work and Budget attached hereto as Exhibit A ("**Scope of Work and Budget**"), and for no other purpose.

d. Disbursement Procedures for Fourth Draw. The Fourth Draw shall be disbursed to the Developer, on the Grantee's behalf, as one or more reimbursement payments for costs incurred by the Developer for the Façade Screen (**"Reimbursement Payments"**) as follows:

i. The Developer shall submit to the Successor Agency, in the manner specified for notices pursuant to Article 15, a document (a "**Reimbursement Request**") substantially in the form attached hereto as Exhibit B for each Reimbursement Payment. With each Reimbursement Request, the Developer shall also submit to the Successor Agency records for the current Reimbursement Request in accordance with Article 6 of this Agreement, including invoices, receipts, and other reasonably detailed documentation sufficient to show the Façade Screen work undertaken and the actual costs thereof. The Successor Agency shall have no obligation to disburse any portion of the Fourth Draw unless and until the Developer submits a Reimbursement Request for each Reimbursement Payment and the records required pursuant to Article 6 that are in all respects acceptable to the Successor Agency.

ii. The Developer shall submit documentation to the Successor Agency, in the manner specified for notices pursuant to Article 15, Developer's certificates of insurance for Workers' Compensation, Commercial General Liability, Automobile General Liability and any other insurance coverage. The Successor Agency shall have no obligation to disburse any portion of the Fourth Draw unless and until the Developer submits documentation that is in all respects acceptable to the Successor Agency.

iii. Upon satisfaction of Sections 3(e)(i) and (ii), above, the Successor Agency shall direct the disbursement of the funding in one or more checks payable to the Developer, sent via U.S. mail in accordance with Article 14.

4. Limitations on Successor Agency's Obligations.

a. The Successor Agency shall not be required to disburse any portion of the Fourth Draw that is not included in the Scope of Work and Budget.

b. The Developer will provide the Successor Agency with a written confirmation of the amount of the Public Art Fee previously expended by Developer toward the design, fabrication, and installation of the Façade Screen and the amount of the Public Art Fee that remains available.

c. The Successor Agency shall not be required to disburse any portion of the Fourth Draw until such time as the Developer has provided, and the Successor Agency has reviewed and approved, written confirmation that the amount of the Public Art Fee has been fully expended.

d. The Successor Agency is not authorized to offer or promise to the Museum or the Developer additional funding for this Agreement that would exceed the maximum amount of funding provided for herein.

e. The Successor Agency shall have no obligation to disburse the Fourth Draw unless and until the Developer has submitted documentation in evidence of payments for the Façade

Screen work performed under the approved Exhibit A - Scope of Work and Budget, and any additional appropriate documentation reasonably requested by the Successor Agency, to the satisfaction of the Successor Agency.

5. Developer Roles and Responsibilities.

a. The Developer shall, in good faith and with diligence, (i) expeditiously administer and implement the Scope of Work/Budget on the terms and conditions set forth in this Agreement, and (ii) fully and faithfully perform all duties and tasks necessary to meet the goals set forth in the Scope of Work/Budget.

b. The Developer shall have the obligation to repay any portion of the Fourth Draw that has been disbursed if the Developer uses such funds in violation of the terms and conditions of this Agreement.

6. Successor Agency Requirements.

a. Successor Agency Purchasing Policy. The Developer shall comply with the Successor Agency's Purchasing Policy, attached hereto as Exhibit C, as such policy may be amended from time to time, to negotiate, secure, and manage all contracts and subcontracts necessary for the provision of services.

b. Nondiscrimination and Equal Benefits.

i. 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 Agreement. The Developer 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.

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

iii. The Developer will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this Agreement 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.

iv. The Developer 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 the Successor Agency's Nondiscrimination in Contracts Policy ("**Policy**"), adopted by Former Agency Resolution No. 175-97, as such Policy may be amended from time to time.

v. The Developer shall provide all services to the public under this Agreement in facilities that are accessible to persons with disabilities as required by state and federal law and execute Exhibit D "Nondiscrimination in Contracts and Benefits Form".

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

d. Compliance with Minimum Compensation Policy and Health Care Accountability Policy. The Developer agrees, as of the date of this Agreement and during the term of this Agreement, to comply with the provisions of the Successor Agency's Minimum Compensation Policy and Health Care Accountability Policy (the "**Policies**"), adopted by Former Agency Resolution 168-2001, as such policies may be amended from time to time (See Exhibit F "Minimum Compensation Policy" and Exhibit G "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.

e. Limitations on Contributions. Through execution of this Agreement, the Developer acknowledges that it is familiar with section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the Successor Agency for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) the Mayor or members of the Board of Supervisors, (2) a candidate for Mayor or Board of Supervisors, or (3) a committee controlled by such office holder or candidate, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. The Developer 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. The Developer further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of the Developer's board of directors; the Developer's chairperson, chief executive officer, chief financial officer and chief operating officer;

any person with an ownership interest of more than 20 percent in the Developer; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by the Developer. Additionally, the Developer acknowledges that the Developer must inform each of the persons described in the preceding sentence of the prohibitions contained in section 1.126.

f. Compliance with Other Laws. Without limiting the scope of any of the preceding sections of this Article 5, the Developer shall keep itself fully informed of all local codes, ordinances and regulations and all state and federal laws, rules and regulations affecting the performance of this Agreement and shall at all times comply with such codes, ordinances, and regulations rules and laws.

g. Purchase Agreement. Notwithstanding anything to the contrary contained in this Agreement, the Successor Agency acknowledges and agrees that if any of the policies required by Article 6 of this Agreement are different from the policies required by the Purchase Agreement, the policies required by the Purchase Agreement shall control.

7. Records and Monitoring.

a. Records. The Developer shall keep and maintain records of all estimates, invoices, receipts, and other reasonably detailed documentation sufficient to show the Façade Screen work undertaken, the actual costs thereof and payments made. Upon completion of the Scope of Work and Budget associated with each Reimbursement Payment, the Developer shall provide such records to the Successor Agency as well as a summary of the date, amount, purpose and payee of all expenditures to the Successor Agency's satisfaction.

b. Monitoring. The Developer understands and agrees that it will be monitored by the Successor Agency from time to time to assure compliance with all terms and conditions in this Agreement and all laws.

8. Taxes.

The Developer shall pay to the appropriate governmental authority, as and when due, any and all taxes, fees, assessments or other governmental charges, including possessory interest taxes and California sales and use taxes, levied upon or in connection with this Agreement, the Fourth Draw, or any of the activities contemplated by this Agreement.

9. Representations and Warranties.

The Developer represents and warrants each of the following as of the Effective Date of this Agreement and at all times throughout the Term:

a. Organization; Authorization. The Developer has duly authorized, by all necessary action, the execution, delivery and performance of this Agreement. When duly executed, this Agreement shall constitute a legal, binding obligation of the Developer, enforceable against the Developer in accordance with the terms hereof.

b. No Misstatements. No document furnished or to be furnished by the Developer to the Successor Agency in connection with this Agreement contains or will contain any untrue statement of material fact or omits or will omit a material fact necessary to make the statements contained therein not misleading, under the circumstances under which any such statement shall have been made.

10. Indemnity.

a. To the fullest extent allowable by law, Developer shall hold harmless, defend at its own expense and indemnify the Successor Agency, the City and County of San Francisco and their 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 acts or omissions to act of Developer or its officers, agents or employees in the performance of this Agreement; excluding, however, such liability, claims, losses, damages or expenses arising from (i) Successor Agency's gross 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 Developer, its officers, agents or employees and (ii) the Museum's negligence, willful acts or breach of this Agreement, the Grant Agreement, the First Disbursement Agreement, the Second Disbursement Agreement or the Third Disbursement Agreement. In addition to Developer's obligation to indemnify Successor Agency, Developer specifically acknowledges and agrees that it has an immediate and independent obligation to defend Successor 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 Developer by Successor 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.

b. 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 Developer. Each Design Professional who will provide construction design services shall hold harmless, defend at his or her own expense and indemnify the Successor Agency, the City and County of San Francisco and their 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.

11. Insurance.

For the duration of the Agreement, including any extensions, Developer shall carry or cause to be carried and maintained, in full force and effect, insurance coverage pursuant to Section 7.21 of the Purchase Agreement against claims for injuries to persons or damage to property that may arise from or in connection with work performed pursuant to this Agreement by the Developer, its representatives, agents, employees, consultants, contractors, subcontractors or joint venture partners, if any.

12. Events of Default and Remedies.

a. Events of Default. The occurrence of one or more of the following events shall constitute an "Event of Default" under this Agreement, giving the Successor Agency the right to declare the Developer in default and to exercise any or all of its remedies, at its sole election and in its reasonable discretion:

i. False Statement. Any statement, representation or warranty contained in this Agreement or in any other document submitted to the Successor Agency under this Agreement is found by the Successor Agency to be materially false or misleading, unless Developer cures such breach within sixty (60) days from the date such statement, representation or warranty was made.

ii. Failure to Comply with Applicable Laws. The Developer fails to perform or breaches any of the terms or provisions of Section 3(c) or Article 6.

iii. Failure to Perform Other Covenants. The Developer fails to perform or breaches any other agreement or covenant of this Agreement to be performed or observed by the Developer as and when performance or observance is due and such failure or breach continues for a period of thirty (30) days after the date on which such performance or observance is due.

iv. Cross Default. The Developer defaults under the Purchase Agreement (after expiration of any notice and grace period expressly stated in the Purchase Agreement).

v. Voluntary Insolvency. The Developer (i) is generally not paying its debts as they become due, (ii) files, or consents by answer or otherwise to the filing against it of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction, (iii) makes an assignment for the benefit of its creditors, (iv) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of the Developer or of any substantial part of the Developer's property, or (v) takes action for the purpose of any of the foregoing.

vi. Involuntary Insolvency. Without consent by the Developer, a court or government authority enters an order, and such order is not vacated within sixty (60) days, (i) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Developer or with respect to any substantial part of Developer's property, (ii) constituting an order for relief or approving a petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction or (iii) ordering the dissolution, winding-up or liquidation of Developer.

b. Remedies of the Successor Agency. The Successor Agency's remedies for an Event of Default are as follows: (i) the Successor Agency may, at its option, terminate this Agreement and all commitments to disburse the Fourth Draw, waive the Event of Default or, without waiving, determine, upon terms and conditions satisfactory to the Successor Agency, to make further disbursements of the Fourth Draw; (ii) the Successor Agency may take any action permitted at law, in equity or under this Agreement at its option to cure or remedy the default; or (iii) the Successor Agency may demand the immediate return of any previously disbursed grant funds that have been claimed or expended by the Developer in breach of the terms of this Agreement, together with interest thereon from the date of disbursement at the maximum rate permitted under applicable law.

13. Termination.

This Agreement will automatically terminate upon the occurrence of either of the following events: (i) the occurrence of an Event of Default, or (ii) the expiration of the Term.

14. Permitted Transfers.

The Developer shall not, either directly or indirectly, assign, transfer, subcontract or delegate all or any portion of this Agreement or any rights, duties or obligations of the Developer hereunder without the prior written consent of the Successor Agency except, in the event that the Developer assigns the Purchase Agreement pursuant to the terms of Section 11 of the Purchase Agreement, the Developer shall have the right to assign this Agreement to any assignee permitted under the Purchase Agreement (including to any mortgagee of Developer) without the consent of the Successor Agency to the extent that such consent is not required under the Purchase Agreement.

15. Notices.

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

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

To Developer: 706 Mission Street Co LLC
7121 Fairway Drive, Suite 410
Palm Beach Gardens, FL 33418

With copies to: 706 Mission Street Co LLC
645 Madison Avenue, 18th Floor
New York, NY 10022
ATTN: General Counsel

706 Mission Street Co LLC
735 Market Street, Suite 302
San Francisco, CA 94103
ATTN: Mark Farrar

With a Copy to: The Mexican Museum
c/o The Marquez Law Group
649 Mission Street, 5th Floor

San Francisco, CA 94105
ATTN: Victor Marquez

or such other address as either party may designate, from time to time, by written notice sent to the other party in like manner.

16. Miscellaneous Provisions.

a. Amendment. No amendment of this Agreement or any part thereof shall be valid unless it is in writing and signed by a person or persons having authority to do so, on behalf of both the Successor Agency and the Developer.

b. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the Successor Agency and Developer, subject to the limitations set forth in this Agreement.

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

d. Governing Law; Venue. This Agreement 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 Agreement shall be litigated in courts located within the County of San Francisco, State of California.

e. Entire Agreement. This Agreement (together with the recitals and referenced or incorporated agreements) sets forth the entire agreement between the Parties with respect to the subject matter of this Agreement. Any prior correspondence, memoranda, agreements, warranties or representations relating to such subject matter are superseded in total by this Agreement. No prior drafts of this Agreement 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 Agreement. The following exhibits are attached to and a part of this Agreement:

Exhibit A, Scope of Work and Budget
Exhibit B, Form of Reimbursement Request
Exhibit C, Successor Agency Purchasing Policy
Exhibit D, Nondiscrimination in Contracts and Benefits Form
Exhibit E, SBE Agreement
Exhibit F, Minimum Compensation Policy
Exhibit G, Health Care Accountability Policy

f. Headings. All section headings and captions contained in this Agreement are for reference only and shall not be considered in construing this Agreement.

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

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

i. Attorneys' Fees. If any lawsuit is commenced to enforce any of the terms of this Agreement, the prevailing party, as determined by a court of competent jurisdiction in a final non-appealable decision, shall have the right to recover its reasonable attorneys' fees and costs of suit from the other party.

j. Incorporation of Successor Agency Requirements. The Developer has reviewed, understands, and is ready, willing, and able to comply with the terms and conditions of Article 6 "Successor Agency Requirements", above.

k. Cooperation. In connection with this Agreement, the Developer and the Successor Agency shall reasonably cooperate with one another to achieve the objectives and purposes of this Agreement. In doing so, the Developer and the Successor Agency shall each refrain from doing anything that would render its performance under this Agreement impossible and shall each do everything that this Agreement contemplates that each party shall do to accomplish the objectives and purposes of this Agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

AGENCY:

Successor Agency to the Redevelopment Agency of the City and County of San Francisco, a public body, organized and existing under the laws of the State of California

By ______________________________

Nadia Sesay
Executive Director

Approved as to Form:

By ______________________________

James B. Morales
General Counsel

Authorized by Former Agency Resolution No. 157-2010, adopted December 14, 2010 and Successor Agency Resolution No. __-2018, adopted _________, 2018.

DEVELOPER:

706 MISSION STREET CO LLC, a Delaware limited liability company

By ______________________________

Name:
Title:

CONSENTED TO:

GRANTEE:

THE MEXICAN MUSEUM, a California non-profit corporation

By _________________________________

Andrew M. Kluger
Chairman, Board of Trustees

Approved as to Form:

By _________________________________

Victor M. Marquez, Esq.
General Counsel

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

AGENCY:

Successor Agency to the Redevelopment Agency of the City and County of San Francisco, a public body, organized and existing under the laws of the State of California

By ______________________________

Nadia Sesay
Executive Director

Approved as to Form:

By ______________________________

James B. Morales
General Counsel

Authorized by Former Agency Resolution No. 157-2010, adopted December 14, 2010 and Successor Agency Resolution No. __-2018, adopted _________, 2018.

DEVELOPER:

706 MISSION STREET CO LLC,
a Delaware limited liability company

By ______________________________

Name: Diego Rico
Title: Vice President

CONSENTED TO:

GRANTEE:

THE MEXICAN MUSEUM, a California non-profit corporation

By ______________________________

Andrew M. Kluger
Chairman, Board of Trustees

Approved as to Form:

By ______________________________

Victor M. Marquez, Esq.
General Counsel

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AGENCY:

Successor Agency to the Redevelopment Agency of the City and County of San Francisco, a public body, organized and existing under the laws of the State of California

By ______________________________
Nadia Sesay
Executive Director

Approved as to Form:

By ______________________________
James B. Morales
General Counsel

Authorized by Former Agency Resolution No. 157-2010, adopted December 14, 2010 and Successor Agency Resolution No. __-2018, adopted _________, 2018.

DEVELOPER:

706 MISSION STREET CO LLC,
a Delware limited liability company

By ______________________________
Name:
Title:

Approved as to Form:

By ______________________________
Name:
Title:

CONSENTED TO:

GRANTEE:

THE MEXICAN MUSEUM, a California non-profit corporation

By Andrew M. Kluger
Andrew M. Kluger
Chairman, Board of Trustees

Approved as to Form:

By Victor M. Marquez
Victor M. Marquez, Esq.
General Counsel

EXHIBIT A: SCOPE OF WORK AND BUDGET
706 Mission – Mexican Museum
Façade Screen Public Artwork

All funds disbursed under the Fourth Grant Disbursement Agreement will be used for activities consistent with Section 3.2(b) of the Grant Agreement as further specified in this Exhibit.

Sources	**Budget Amount**	
Developer Contribution (Public Art Fee)	$	2,588,641
4th Grant Disbursement Agreement funds	$	1,000,000
Sub-Total Sources:	**$**	**3,588,641**
Uses		
Fabrication and Delivery of Façade Screen (A. Zahner contract)	$	2,811,104
Installation and related costs of Façade Screen	$	777,237
Sub-Total Uses:	**$**	**3,588,341**

EXHIBIT B: FORM OF REIMBURSEMENT REQUEST

REIMBURSEMENT REQUEST

[DATE]

Executive Director
Successor Agency to the San Francisco Redevelopment Agency
One South Van Ness Avenue, Fifth Floor
San Francisco, CA 94103

Re: Request for Disbursement of Grant Funds (Fourth Draw)

Pursuant to Section 3(e)(i) of the Fourth Grant Disbursement Agreement (the "**Agreement**"), dated as of ______, 2018 between the undersigned ("**Developer**") and the Successor Agency to the Redevelopment Agency of the City and County of San Francisco ("**Successor Agency**"), the Developer hereby requests a disbursement of the Grant Funds as follows:

Beginning Balance of Grant Funds (Grant Agreement, Section 1.1) [A]:		$7,785,119
Fourth Grant Disbursement Agreement Encumbrance and Beginning Balance [B]:	$1,000,000	
Request for Disbursement of Grant Funds (____Installment) [C]:		
Ending Balance of Fourth Grant Disbursement Agreement [D = B - C]:		
Remaining balance of Grant Funds after Fourth Grant Disbursement(s) [E= A - B + D]:		

The Developer certifies that:

(a) The total amount of the _________ Installment requested pursuant to this Reimbursement Request has been used to pay for items set forth on the attached Scope of Work and Budget, as evidenced by the attached invoices, receipts, and other reasonably detailed documentation sufficient to show the Façade Screen work undertaken and the actual costs thereof;

(b) After giving effect to the disbursement requested pursuant to this Reimbursement Request, the Fourth Draw disbursed as of the date of this disbursement will not exceed the maximum amount set forth in Section 2(a) of the Agreement;

(c) The representations and warranties made by Developer in the Agreement are true and correct in all material respects as if made on the date hereof;

(d) No Event of Default under the Agreement has occurred and is continuing as of the date hereof; and

The undersigned is a duly appointed representative of the Developer authorized to execute this Reimbursement Request on behalf of the Developer.

706 Mission Street Co LLC,
a Delaware limited liability company

By ______________________________

EXHIBIT C: SUCCESSOR AGENCY PURCHASING POLICY

SAN FRANCISCO

REDEVELOPMENT AGENCY

PURCHASING POLICY

Adopted: April 19, 1994
Amended: November 22, 1994
Amended: August 13, 2002
Amended: April 29, 2003
Amended: August 19, 2003
Amended: November 16, 2004
Amended: July 21, 2009
Amended : November 15, 2011

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I. INTRODUCTION

This San Francisco Redevelopment Agency Purchasing Policy ("**Purchasing Policy**") establishes the policies and standards for the purchase of: (1) goods (including catering and printing), materials, products, items, supplies, commodities and equipment ("**Goods**") and (2) personal and/or professional services ("**Services**") for the Redevelopment Agency of the City and County of San Francisco ("**Agency**"). These standards ensure that the Agency obtains Goods and Services efficiently, economically and fairly in compliance with various legal requirements. This Purchasing Policy also includes a description of purchasing procedures and the delegated expenditure approval authority and corresponding responsibilities associated with certain expenditure types. As used in this Purchasing Policy, the term "**Contractor**" shall include, as applicable, all contractors, developers, suppliers, consultants, vendors, organizations, firms, companies (whether for profit or nonprofit) and/or individuals who seek or obtain a contract to provide Goods or Services for or on behalf of the Agency. .

The Agency is acutely aware of the many challenges that small businesses face when contracting with public entities. Furthermore, the Agency recognizes that discrimination in contracting still exists. The Agency intends to eliminate discriminatory obstacles that may exist and to provide an environment of open and fair competition that is free of any discrimination against any person, or group of persons, on account of race, color, religion, creed, national origin, ancestry, sex, gender identity, age, marital or domestic partner status, sexual orientation or disability (including HIV or AIDS status) or other protected class status in the award or performance of any Agency contract. The mission of the Agency includes economic development in Project Areas and accordingly this document establishes the Small Business Enterprise ("SBE") Policy, which will provide, among other things, First Consideration to project area SBEs for contracting opportunities with the Agency or through its developers.

II. DEFINITIONS

"**Construction Work**" means any work of grading, clearing, demolition or construction undertaken by the Agency if the cost of that work exceeds the lesser of $5,000 or the limit set forth in Public Contract Code Section 20162, as amended from time to time. (See generally Public Contract Code Section 20688.2)

"**Contractor**" means and includes, as applicable, all contractors, developers, suppliers, consultants, vendors, organizations, firms, companies (whether for profit or nonprofit) and/or individuals who seek or obtain a contract to provide Goods or Services for or on behalf of the Agency.

"**Responsible**" means "a bidder who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity, and experience to satisfactorily perform the public works contract." (Public Contract Code Section 1103). Typically, for Agency contract, this means that the Contractor represents that it can perform the work, obtain the necessary insurance, agree to the indemnification language contained in the Agency contract, and obtain payment and performance bonds, if required.

"**Responsive**" means a bidder whose bid which contains an unconditional offer to provide the goods and services that are being bid upon, and that complies with all of the bid terms, conditions, and procedures required in the bid documents or applicable law.

"Small Business Enterprise (SBE)" means a small business enterprise certified by the Agency Contract Compliance Division pursuant to the standards described in the Small Business Enterprise Policy.

III. PURCHASING POLICY

A. Maximum Competition

1. All purchasing transactions (purchases of Goods and Services), regardless of the method of procurement and without regard to dollar value, shall be conducted in a nondiscriminatory manner that provides maximum open and free competition consistent with this Purchasing Policy. Purchasing procedures shall not restrict or eliminate competition. Examples of what is considered restrictive of competition include, but are not limited to: (i) placing unreasonable requirements on firms in order for them to qualify to do business; (ii) applying noncompetitive practices among firms; (iii) organizational conflicts of interest; and (iv) unnecessary experience, insurance and bonding requirements. Solicitation of offers regardless of the method of procurement shall:

a. Incorporate a clear and accurate description of the technical requirements for the material, product or service to be purchased, which does not, in competitive purchases, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be purchased and, when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use.

b. Clearly set forth all requirements which Contractors must fulfill and all other factors to be used in evaluating bids or proposals.

2. Awards shall be made only to Responsive, Responsible Contractors that possess the ability to perform successfully under the terms and conditions of a proposed purchase. Appropriate consideration shall be given to such matters as Contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

3. On-going services or multi-year contracts shall not normally exceed a three-year period without the purchasing process occurring again.

B. Contract Cost Analysis and Limitations

1. The Agency shall perform some form of cost or price analysis in connection with every purchase action, including contract modifications. All Agency contracts shall specify a fixed or not-to-exceed dollar amount.

C. Compliance with Agency's Policies

1. The Agency's purchase of goods and services shall comply with all applicable Agency policies, including but not limited to, the Small Business Enterprise Policy, as amended from time to time.

D. Conflict of Interest

1. In reviewing and awarding Agency contracts, the Agency's officers, employees, Commissioners, and agents shall follow all financial disclosure and disqualification t provisions of conflict of interest laws and policies, including but not limited to: the California Political Reform Act, Cal. Gov't Code § 87100 *et seq*., 2 Cal. Code Regulations. § 18700 *et seq*.; Section 1090 of the California Government Code; the Community Redevelopment Law, Cal. Health & Safety Code § 33130, the Agency's Statement of Incompatible Activities (July 30,

2004); and the Employee's Responsibility provisions of the Agency's Personnel Policy, Section X. This Purchasing Policy incorporates the requirements of these laws and policies, including, but not limited to, the following:

a. No employee, officer, Commissioner or agent of the Agency shall participate in the selection or in the award or administration of an Agency contract if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when the employee, officer, Commissioner or agent, or any member of his or her immediate family, or those with whom any of the above referenced persons has, or intends to have, a business or employment relationship, has a financial or other interest in the firm selected for award or whose contract is to be administered.

b. In reference to contractors, the Agency Policy states that no present or former consultant shall knowingly act for anyone other than the Agency in connection with any particular matter in which the Agency is a party, or has a direct and substantial interest, and in which the consultant participated personally and substantially as a consultant for the Agency. Agency Policy also provides that the Agency Commission may waive this requirement through written approval prior to the consultant's work for another party.

c. Violation of these standards of conduct by the Agency's officers, employees, Commissioners or agents, or by its contractors or their agents may result in penalties, sanctions or other disciplinary actions.

IV. ANTI-DISCRIMINATION PROVISIONS IN ALL CONTRACTS

A. <u>Nondiscrimination Provisions</u>

1. Agency contractors are subject to various non-discrimination laws and policies. To ensure nondiscrimination in the performance of any contract, the Agency shall require that contracts subject to this Purchasing Policy include the following provisions:

a. The contractor agrees that there shall be no discrimination against or segregation of any person, or group of persons, on account of any basis listed in Section 12940 of the California Government Code and in Section 12B.2 of the San Francisco Administrative Code. Contractor will ensure that applicants are employed, and that employees are treated during employment, without regard to their protected class status as described in Section 12940 of the California Government Code and in Section 12B.2 of the San Francisco Administrative Code. 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 paid for in whole or in part by the Agency 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 the Agency's Nondiscrimination in Contracts Policy ("Nondiscrimination Policy"), adopted by Agency Resolution No. 175-97, as such policy may be amended from time to time.

e. To the extent required by law, Contractor shall provide all services to the public under an Agency contract in facilities that are accessible to persons with disabilities.

f. Contracts shall require contractors to appoint a senior manager as the individual responsible for the firm's equal opportunity efforts and as the liaison between the firm and the Agency.

B. <u>Contract Termination</u>

1. If the Agency's Executive Director concludes that a Contractor is not complying with the Agency's Nondiscrimination Policy, the Executive Director or his/her designee will meet and confer with the Contractor . If, as a result of the meeting, the Executive Director finds that a violation of the Nondiscrimination Policy has occurred, the violation shall be considered a material breach of the contract and the Executive Director may terminate the contract. The Executive Director's determination that a violation has occurred and his/her decision to terminate the contract shall be final and not subject to review.

V. DOCUMENTATION OF OUTREACH TO SBEs

1. When Agency staff seeks contract authorization, staff shall document and report to the Executive Director and/or the Agency Commission that the Agency has provided outreach to SBEs consistent with the SBE Policy, including but not limited to the following:

a. Whether the Contract Compliance Division provided a list of potential SBEs to be invited for the scope of work being considered.

b. Where appropriate, how the potential work was divided into small contracts to ensure that the scope of work was not too large for an SBE to bid or submit a proposal or how potential SBEs were encouraged to joint venture.

c. That specific items of the contract that may be performed by SBE subcontractors were identified and prospective SBEs were identified for the bidder(s).

d. On all construction related contracts (including construction consultant services contracts) that are estimated to cost $5,000 or more, that prospective SBEs were invited to a pre-bid and/or pre-solicitation meeting for the purpose of answering questions about the process, the bonding and insurance requirements, the specifications and other requirements.

e. What outreach efforts including advertisements or notifications to trade associations or other groups were made as part of attempts to reach potential SBE candidates.

VI. NOTICE OF PUBLIC HEARING

1. Except for solicitations under the Competitive Sealed Bids – Public Contract Code Method, which have their own “protest period", all potential Contractors who have submitted a proposal or bid will be notified in writing by letter or email of the proposed action no later than seventy-two (72) hours prior to the Commission meeting on the proposed action and will have an opportunity to be heard by the full Commission during public comment when the item comes up on the agenda.

VII. PURCHASING RECORDS

1. The Agency shall maintain records sufficient to detail the significant history of a purchase. These records shall include, but are not necessarily limited to, information pertinent to the following: rationale for the method of purchase, selection of contract type, Contractor selection or rejection, and the basis for the cost or price. In some instances, the terms and conditions of a grant or agreement with a public agency will have specific record retention obligations that the Agency shall follow.

VIII. SIZE AND ECONOMY OF PURCHASES

1. Consideration is to be given to consolidation or breaking out of Goods and Services to obtain a more economical purchase. Where appropriate, an analysis shall be made of lease versus purchase alternatives and any other appropriate analysis to determine which approach would be the most economical. To foster greater economy and efficiency, the Agency shall consider entry into State and local intergovernmental agreements for purchase or use of Goods and Services.

IX. FOUR METHODS OF SELECTING A CONTRACTOR (SERVICES)

1. Contractors shall be selected by one of the following methods: (1) 3+ Contractor Telephone Solicitation Method; (2) Competitive Sealed Bids – Public Contract Code Method; (3) RFP/RFQ Method; and (4) Sole Source Method. The four methods are described in detail below. Regardless of the method of purchase, an applicant’s public statements on matters of public concern, that are protected under the First Amendment to the United States Constitution and unrelated to the contract, shall not be considered by the Agency in the evaluation and selection of the applicant for the contract. In addition, every effort should be made to assemble a list of qualified SBE suppliers or contractors from the Agency's Contract Compliance Division.

A. The 3+ Contractor Telephone Solicitation Method

1. The 3+ Contractor Telephone Solicitation Method is appropriate for those relatively simple purchases of short term duration (generally no longer than twelve (12) months), for Goods and Services, costing in the aggregate not more than $50,000. Notwithstanding anything to the contrary contained in this Purchasing Policy, the Executive Director may authorize, under the 3+ Contractor Telephone Solicitation Method, the same Contractor to receive separate contracts that individually do not exceed the Executive Director’s expenditure authority, but that collectively exceed no more than $150,000; provided, however, that each

contract provides Goods or Services that are distinctly different from those provided under the other contracts by the same Contractor during any 12 month period.

2. If the 3+ Contractor Telephone procedure is used for a purchase, the price or rate quotations shall be obtained by telephone, email or in writing from an adequate number of qualified potential contractors, generally at least three (3). Whenever possible, at least three of the quotations shall be solicited from SBEs.

3. Agency staff shall choose the lowest, Responsive, Responsible bidder as to price, except that in the interest of standardization or inability to meet the required delivery schedule, the purchase may be made from a Responsive, Responsible bidder other than the lowest bidder in price.

4. The Responsive, Responsible Contractor chosen by Agency staff must also: (a) meet the Agency's insurance and indemnification requirements, as determined by the Agency's Risk Manager; (b) comply with all applicable Agency's policies; (c) be licensed to do business in the State of California; and (d) not be on the debarment list of the City and County of San Francisco ("**City**"), the State of California or the United States of America.

5. The Purchasing Policy Procedures Manual provides additional standards on the procurement of Goods and Services using the 3+ Contractor Telephone Solicitation Method.

B. Competitive Sealed Bids – Public Contract Code Method

1. The Competitive Sealed Bid Method is appropriate to be used when: (a) a complete, adequate and realistic specification or purchase description is available; and (b) the purchase lends itself to a firm fixed-price contract, and selection of the successful bidder can appropriately be made, principally on the basis of price.

2. The Competitive Sealed Bid Method must be used when (a) the Agency seeks to obtain construction services for a "Public Project" **or** "Construction Work" as those terms are defined by the California Public Contract Code ("Code") or the Purchasing Policy Procedures Manual; **and** 2) the Agency seeks a contract that is otherwise subject to state or federal law requiring this method of procurement.

3. In general, the Competitive Sealed Bids Method requires the Agency: (a) to publicly solicit sealed bids using the current approved Construction Documents – Bid Specifications Template ("bid packet"); (b) to open publicly the bids at a time and place designated in the bid packet in the presence of all bidders who attend; (c) to evaluate the bids based on the requirements and specifications described in the bid packet; (d) to award a firm fixed-price contract (lump sum or unit price) to the lowest, Responsive, Responsible bidder whose bid conforms to all the material terms and conditions of the invitation for bids; and (e) to provide a bid protest period for unsuccessful bidders to challenge the award. The Code or other state and federal laws may specify the terms, conditions, and procedures required under this method of procurement.

4. The Purchasing Policy Procedures Manual provides additional standards on the procurement of Goods and Services using the Competitive Sealed Bids – Public Contract Code Method.

C. Request For Proposals / Request For Qualifications ("RFP/RFQ") Method

1. The RFP/RFQ Method is appropriate for soliciting proposals from a number of prospective sources where the services sought are widely available. The RFP/RFQ Method allows staff to conduct a competitive solicitation and consider qualifications other than the lowest price. The resulting contract may be either a flat fee for services or cost reimbursable.

2. Agency staff may utilize the RFP/RFQ Method for the selection of developers for Agency projects or for the procurement of personal or professional services including but not limited to the following: accounting, architectural, engineering, environmental, legal or planning whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation.

3. The RFP/RFQ shall specify evaluation criteria for selection of a Contractor and shall reserve the right to reject or cancel the RFP/RFQ in whole or in part. The RFP/RFQ shall state that the Agency will not consider an applicant's public statements on matters of public concern, that are protected under the First Amendment to the United States Constitution and unrelated to the contract, in the evaluation and selection of the applicant for the contract.

4. Agency staff shall also use the RFP/RFQ Method for establishing and maintain a list (or Contractor panel) from which the Agency will select, on an as-needed basis, qualified contractors, consultants or vendors for future contracts,. The Agency Commission shall approve the formation of the panel if the future contracts may exceed the Executive Director's expenditure authority. Typically, the Agency will establish a panel for a set duration (no longer than three (3) years) and for a not-to-exceed aggregate amount that can be contracted.

5. In addition, Agency staff may select a Contractor from a City panel that was established using the City's competitive selection process, to the same extent that Agency staff may select a Contractor from an Agency panel authorized under this Purchasing Policy. If the Agency staff uses a City panel to select a Contractor for a contract exceeding the Executive Director's expenditure authority, the Agency Commission must approve the contract.

6. The Purchasing Policy Procedures Manual provides additional standards on the procurement of Goods and Services using the RFP/RFQ Method.

D. Sole Source Method

1. In the Sole Source Method, a proposal is solicited from only one source. Circumstances under which a contract may be awarded by the Sole Source Method are limited to one of the following:

a. The Goods or Services are available only from a **single** source or Contractor;

b. An emergency situation exists where a fire, flood or an immediate threat of personal injury, death or property damage has occurred (or is likely to occur) and where the urgency of the situation will not permit the delay needed to complete the 3+ Contractor Telephone Solicitation Method, the Competitive Sealed Bid Method or the RFP/RFQ Method, as determined by the Agency Executive Director ("**Emergency Conditions**");

c. After solicitation of a number of sources using the RFP/RFQ method described above, the Executive Director determines that the competition is inadequate;

d. The proposed Contractor has previously provided the needed Goods or Services to the Agency and, in doing so, has performed satisfactorily and gained specific information and experience making the proposed Contractor uniquely qualified to provide the needed Goods or Services; or

e. Although Emergency Conditions do not exist, the Agency's business assets or financial investments are at risk and the urgency of the requirement will not permit the delay needed to complete the 3+ Contractor Telephone Solicitation Method, the Competitive Sealed Bid Method or the RFP/RFQ Method, as determined by the Agency Executive Director.

2. Notwithstanding anything to the contrary contained in this Purchasing Policy, the Executive Director may authorize, under the Sole Source Method, the same Contractor to receive separate contracts that individually do not exceed the Executive Director's expenditure authority, but that collectively exceed no more than $150,000; provided, however, that each contract provides Goods or Services that are distinctly different from those provided under the other contracts by the same Contractor during any 12 month period.

3. The Purchasing Policy Procedures Manual provides additional standards for the procurement of Goods and Services using the Sole Source Method.

X. COMPLETING A PURCHASE

1. Except as noted in Section X.E (Emergency Conditions) below, all purchases of Goods shall be effective only by issuance of a valid purchase order in the form provided by the Agency. Employees from the various divisions shall not confirm an order with the vendor for the purchase of any Goods until a purchase order has been prepared by the Finance and Administrative Services Division ("**Finance Division**").

2. A Personal Services Contract is normally required when personal services are being purchased, regardless of the cost of the services. Requests to waive this requirement and substitute a purchase requisition may be made to the Legal Division. The waiver will only be granted when to do so would cause little risk to the Agency.

3. The Purchasing Policy Procedures Manual provides additional standards for completing the purchase of Goods and Services, including but not limited to the single purchase of Goods.

A. <u>Multiple Purchases of Goods</u>

1. Vendors and Contractors from whom the Agency has a continuing need for small purchases/services (e.g., reproduction, office supplies, etc.) may be given a blanket purchase order periodically.

B. Ongoing Building Maintenance Services

Purchase orders are not required for each invoice received for rent, utilities or other continuing services such as maintenance contracts on equipment. However, such services shall be initiated by issuance of blanket purchase orders at the beginning of the original contract through the end of the fiscal year of the contract's origin. Subsequently, a purchase requisition for the total amount expected to be paid during the fiscal year should be forwarded to the Finance Division at the beginning of each fiscal year. Services other than building maintenance services should be done through a personal services contract and not as a purchase requisition, unless approved by the Legal Division pursuant to Section X.2 above.

C. Contracts for Construction, Personal or Professional Services

1. In accordance with the established contract approval procedures, services under a construction, personal or professional services contract should not be allowed to commence until the contract has been signed by the Contractor, the Agency General Counsel, and the Executive Director (or his/her designee).. Moreover, services should not commence until the Finance Division has confirmed that funds are available. Prior to the contract being signed, the unsigned contract and Contractor's insurance certificates should be routed to the Administrative Services Manager for review of insurance provisions and to the Contract Compliance Division for review of contract compliance requirements.

2. After the contract is signed, a contract package should be forwarded to the Finance Division. The package shall include a purchase requisition for the total contract amount, the signed original contract, Contractor's certificates of insurance, and the approved Agency resolution authorizing the contract, when applicable.

3. Finance Division will check for available funds, encumber the budget for the contract amount (except in the case of service contracts applying to all Redevelopment Areas), and establish tracking for the contract.

4. The Contractor should be instructed to commence services by written notice to proceed, which, in the case of professional service contracts, should outline the specific scope of work, and the Project budget as appropriate. A copy of the notice should be forwarded to Finance for addition to the permanent file.

5. Contractor invoices should be inspected for adherence to contract provisions, budgets, and documentation by the division and the amounts adjusted when appropriate prior to forwarding them to Finance for payment.

D. Purchases from Petty Cash

1. When single purchases are made locally of a value of $20.00 or less, exclusive of sales and other taxes and delivery and handling charges, and where such purchases are not in a continuing series of similar purchases or made from a vendor with whom the Agency does business on a regular and continuing monthly basis, consideration may be given to making the purchases from petty cash rather than by purchase order. Employees required to frequently attend meetings or do other Agency business outside the office and pay for parking at these times

shall not normally be reimbursed from petty cash, but shall submit a Local Mileage and Expense Report for such parking periodically.

E. Emergency Conditions

1. Where an emergency condition exists, which has or will result in fire, flood or an immediate threat of personal injury, death or property damage where the urgency of the requirement will not permit the delay needed to complete the 3+ Contractor Telephone Solicitation Method, the Competitive Sealed Bid Method or the RFP/RFQ Method, as determined by the Agency Executive Director ("Emergency Condition"), the following shall be observed:

2. The Executive Director, Deputy Executive Director, Division Manager or Project Manager/Coordinator or their designees, in order of availability, shall have the authority to solicit bids by telephone, or otherwise, awarding the order to the lowest Responsive, Responsible bidder for immediate delivery. Only in an Emergency Condition shall an order be placed without soliciting bids.

3. A confirming requisition shall be prepared immediately by the originating Division and a purchase order shall be sent to the vendor.

XI. EXPENDITURE AUTHORITY

Note: This Section addresses expenditure authority only. Selection of a Contractor must follow one of the four methods set forth in Section IX regardless of who has the authority to authorize the contract. Also See Quick Reference Chart-Exhibit I for expenditure authority information.

A. Administrative Budgets - Recurring Purchases

1. Except as otherwise provided below, purchases within approved administrative budgets of Goods or Services necessary to do business, which are recurring in nature (e.g., subscriptions, postage, supplies, equipment lease and/or maintenance, local mileage, etc.) shall be the responsibility of the individual Division or Project Manager for his or her area of responsibility, and may be made without approval of the Agency Commission following budgetary approval. Expenses need not be in the same amounts every month to be considered recurring.

B. Administrative Budgets - Non-Recurring Purchases

1. Non-recurring purchases within approved administrative budgets shall be the responsibility of the individual Division or Project Manager for his or her area of responsibility for purchases between $0 and $999, but shall require the final approval of the Deputy Executive Director, Finance and Administration or the Executive Director for purchases between $1,000 and $50,000, and the Agency Commission in amounts over $50,000. Examples of non-recurring expenses are purchases of personal computers and software, furniture and equipment, and temporary help. Attendance at seminars, training sessions, and conferences is not considered a non-recurring expense for purposes of this Purchasing Policy, but is covered under Section XI.E. below.

C. Service and Construction Contracts

1. Personal or professional services contracts within approved administrative or project budgets and prime construction contracts within approved project budgets shall be the responsibility of the individual Division or Project Manager for his or her area of responsibility, subject to the procurement and bidding procedures described in Section IX. above. Pursuant to Section 20612 of the California Public Contract Code, prime construction contracts over $5,000 must be competitively bid. After review and approval as to form by the Agency General Counsel, contracts up to $5,000 may be executed by the Division or Project Manager and, contracts between $5,000 and $50,000 may be executed by the Executive Director or the Deputy Executive Director, Finance and Administration without approval of the Agency Commission.

D. Property Management

1. Property Management work shall be provided by a licensed contractors that are selected in advance by the procedures described in Section IX above. The selected Contractor (whether time and material or flat fee based) shall comply with the Agency's equal opportunity practices, Agency prevailing wage policy, liability insurance and bonding requirements contained in a contract in a form approved by the Agency General Counsel. The bid process shall be repeated no less than every three years.

E. Travel and Conferences

1. Out-of-town travel, meals and lodging and conference registration fees (regardless of conference location) within administrative budgets must be approved in advance by the Deputy Executive Director, Finance and Administration or the Executive Director in amounts up to $3000. Amounts over $3,000 require the advance approval of the Agency Commission.

F. Line Item Transfers

1. Under the California Community Redevelopment Law (Health & Safety Code Section 33606), the Agency Commission and Board of Supervisors must approve the Agency's annual budget and any amendments to the budget. Any changes to the approved budget that results in a ten percent change in any line item of the approved budget shall require the approvals of the Agency Commission and Board of Supervisors.

2. Line item transfers of budgeted Salary and Fringe Benefits to any other administrative expense shall not be permitted without the approval of the Deputy Executive Director for Finance and Administration. The Accounting Supervisor may request line item transfers within administrative budgets or within project budgets when the intended use is compatible with the original funding source, and when justified by circumstances, which could not be foreseen. Funds may not be transferred from project budgets to administrative budgets or vice versa.3. As part of the budget process, Agency managers also submit a more detailed budget to the Finance Division and Executive Director regarding proposed expenditures for the new fiscal year. These budgets are approved administratively and serve as the basis for preparing the annual budget that is submitted to the Agency Commission, Mayor's Office, and Board of Supervisors. In some instances, the reprogramming of funds within these more detail

budgets may result in line item changes that would trigger the above-described approval by the Board of Supervisors.

3. Accordingly, line item transfers will be approved by the Deputy Executive Director for Finance and Administration to ensure such transfers are: (i) compatible with the original funding source; (ii) would not trigger approval by the Board of Supervisors (or if triggered, that Board of Supervisor approval is obtained prior to approval of the line item transfer); and (iii) in compliance with the Community Redevelopment Law and City policy.

XII. RESPONSIBILITY

1. The Deputy Executive Director for Finance and Administration is responsible for recommending administrative and project budgets to the Agency Commission.

2. The Agency Commission is responsible for review, modification and approval of the recommended budgets, for the approval of all contracts in excess of $50,000 and for the approval of travel and/or conference costs in excess of $3,000.

3. The individual Division Managers are responsible for implementing this Purchasing Policy in their respective Divisions and keeping records of vendors contacted and quotations received. Each Division is required to plan its work so that necessary Goods and Services can be purchased in advance and in accordance with standard purchasing policy.

4. The Accounting Supervisor is responsible for verifying the availability of funds, timely payment of vendors, enforcing line item transfer provisions, and the periodic review of this policy.

5. The Administrative Services Manager is responsible for acting as purchasing agent, coordinating the ordering and distribution of office supplies used Agency-wide, and in any other circumstances when group purchasing improves coordination and/or results in additional volume discounts. The Administrative Services Manager is responsible for identifying and implementing opportunities to realize Agency-wide savings through group purchasing of supplies.

6. The Executive Director is responsible for assuring that proper negotiating and contracting procedures are adhered to when authorizing contracts up to $50,000 and when recommending larger contracts to the Agency Commission for approval. In addition, the Executive Director shall have the authority to promulgate, from time to time, purchasing procedures which are consistent with the Purchasing Policy without the need of further action by the Agency Commission. The purchasing procedures may be in the form of a procedures manual or in any other form deemed appropriate by the Executive Director.

XIII. SEVERABILITY

1. The provisions of this Purchasing Policy are declared to be separate and severable. The invalidity or unenforceability of any one or more provisions of this Purchasing Policy shall in no way affect the validity of the remainder.

EXHIBIT I

SAN FRANCISCO REDEVELOPMENT AGENCY

EXPENDITURE AUTHORIZATION

		DEPUTIES AND MANAGERS	EXECUTIVE DIRECTOR OR DEPUTY EXECUTIVE DIRECTOR	VOTE OF COMMISSIONERS
1.	Regular, recurring operating Expenses within Administrative Budgets (i.e., rent, utilities maintenance, local mileage)	Any Amount	Any Amount	Budgetary Approval
2.	Non-Recurring purchases within Administrative Budgets (i.e., Computers, furniture, etc.)	Up to $1,000	Up to $50,000	Over $50,000
3.	Personal or Professional Services Contracts (including Property Management)	Up to $5,000	Up to $50,000	Over $50,000
4.	Prime Construction Contracts	Up to $5,000	Up to $50,000	Over $50,000
5.	Out of Town Travel / meals / lodging: Local or out of town conference registration fees within Administrative Budgets	No Authority	Up to $3,000	Over $3,000

Section A
Is your company/organization currently certified by the City and County of San Francisco in compliance with Administrative Code 12B Equal Benefits Ordinance and will your company/organization ensure nondiscrimination in contracts and benefits pursuant to 12B on OCII contracts? If yes, please indicate below, skip Section B, and execute the Declaration in Section C. If no, please skip Section A and complete Sections B and C.

- My company/organization is certified and compliant with the 12B Equal Benefits Ordinance of the City and County of San Francisco and there has been no change in our 12B Declaration since certification. My company/organization agrees to ensure nondiscrimination in contracts and benefits pursuant to 12B on OCII contracts. (Please check box to affirm, if applicable)

Section B
1. Nondiscrimination—Protected Classes

a. Is it your company/organization's policy that you will not discriminate against your employees, applicants for employment, employees of the Office of Community Investment and Infrastructure (successor to the San Francisco Redevelopment Agency) (Agency), or City and County of San Francisco (City), or members of the public for the following reasons:

· Race	q Yes	q No
· color	q Yes	q No
· Creed	q Yes	q No
· Religion	q Yes	q No
· ancestry	q Yes	q No
· national origin	q Yes	q No
· Age	q Yes	q No
· sex	q Yes	q No
· sexual orientation	q Yes	q No
· gender identity	q Yes	q No
· marital status	q Yes	q No
· domestic partner status	q Yes	q No
· Disability	q Yes	q No
· AIDS or HIV status	q Yes	q No

b. Do you agree to insert a similar nondiscrimination provision in any subcontract you enter into for the performance of a substantial portion of the contract that you have with the Agency or the City?

q Yes q No

If you answered "no" to any part of Question 1a or 1b, the Agency or the City cannot do business with you.

2. Nondiscrimination—Equal Benefits (Question 2 does not apply to subcontracts or subcontractors)

a. Do you provide, or offer access to, any benefits to employees with spouses or to spouses of employees?

q Yes q No

b. Do you provide, or offer access to, any benefits to employees with domestic partners (Partners) or to domestic partners of employees?

q Yes q No

If you answered "no" to both Questions 2a and 2b, skip 2c and 2d, and sign, date and return this form. If you answered "yes" to Question 2a or 2b, continue to 2c.

c. If "yes," please indicate which ones. This list is not intended to be exhaustive. Please list any other benefits you provide (even if the employer does not pay for them).

Benefit	Yes, for Spouses	Yes, for Partners	No
· Medical (health, dental, vision)	q	q	q
· Pension	q	q	q
· Bereavement	q	q	q
· Family leave	q	q	q
· Parental leave	q	q	q
· Employee assistance programs	q	q	q
· Relocation and travel	q	q	q
· Company discounts, facilities, events	q	q	q
· Credit union	q	q	q
· Child care	q	q	q
· Other ______________________	q	q	q
· Other ______________________	q	q	q

d. If you answered "yes" to Question 2a or 2b, and in 2c indicated that you do not provide equal benefits, you may still comply with the Policy if you have taken all reasonable measures to end discrimination in benefits, have been unable to do so, and now provide employees with a cash equivalent.

(1) Have you taken all reasonable measures? q Yes q No

(2) Do you provide a cash equivalent? q Yes q No

3. Documentation for Nondiscrimination in Benefits (Questions 2c and 2d only)

If you answered "yes" to any part of Question 2c or Question 2d, you must attach to this form those provisions of insurance policies, personnel policies, or other documents you have which verify your compliance with Question 2c or Question 2d. Please include the policy sections that list the benefits for which you indicated "yes" in Question 2c. If documentation does not exist, attach an explanation, e.g., some of your personnel policies are unwritten. If you answered "yes" to Question 2d(1) complete and attach form SFRA/CC-103, "Nondiscrimination in Benefits—Reasonable Measures Affidavit," which is available from the Agency. You need not document your "yes" answer to Question 1a or Question 1b.

Section C

I declare (or certify) under penalty of perjury that the foregoing is true and correct, and that I am authorized to bind this entity contractually.

Executed this _____ day of __________________, 20____, at ________________________________, __________.
(City) (State)

Name of Company/Organization: ____________________________

Doing Business As (DBA): ____

Also Known As (AKA): ____

General Address: ____

Remittance Address (if different from above): ____

Name of Signatory: ______________________________ Title:_________________

(Please Print)

Signature: ____

Phone Number:__________________ Federal Tax Identification Number: _________________

Approximate number of employees in the U.S.:______ Vendor Number:______________________

(if known)

q Check here if your address has changed.

q Check here if your organization is a non-profit.

q Check here if your organization is a governmental entity.

THIS FORM MUST BE RETURNED WITH THE ORIGINAL SIGNATURE

Please return this form to: Office of Community Investment and Infrastructure (successor to the San Francisco Redevelopment Agency), One South Van Ness Avenue, 5th Floor, San Francisco, CA 94103

EXHIBIT D: NONDISCRIMINATION IN CONTRACTS AND BENEFITS

A. What is the Nondiscrimination in Contracts Policy?

The Office of Community Investment and Infrastructure (successor agency to the San Francisco Redevelopment Agency) ("Agency") has adopted a Nondiscrimination in Contracts Policy ("Policy") which requires companies or organizations providing products or services to, or leasing a real property from, the Agency to agree not to discriminate against groups who are protected from discrimination under the Policy, and to include a similar provision in subcontracts and other agreements. Those provisions are the subjects of this form. The Policy is posted on the Web at: http://sfocii.org/policies-and-procedures.

If you do not comply with the Policy, the Agency cannot do business with you, except under certain very limited circumstances.

B. What Agency contracts are covered by the Policy?

- Contracts or purchase orders where the Agency purchases products, services or construction with contractors/vendors whose total amount of business with the Agency exceeds a cumulative amount of $5,000 in a 12-month period.
- Leases of property owned by the Agency for a term of 30 days or more. In these cases, the Agency is the landlord. The Policy also applies to leases for a term of 30 days or more where the Agency is the tenant.

C. What are the groups protected from discrimination under the Policy?

You may not discriminate against:

- your employees
- an applicant for employment
- any employee of the Agency or the City and County of San Francisco
- a member of the public having contact with you.

D. What are prohibited types of discrimination?

You may not discriminate against the specified groups for the following reasons (see Question 1a on the declaration form).

- race
- creed
- ancestry
- age
- sexual orientation
- marital status
- disability
- color
- religion
- national origin
- sex
- gender identity
- domestic partner status
- AIDS/HIV status

In the provision of benefits, you also may not discriminate between employees with spouses and employees with domestic partners, or between the spouses and domestic partners of employees, subject to the conditions listed in F.2 below.

E. How are subcontracts affected?

For any subcontract, sublease, or other subordinate agreement you enter into which is related to a contract you have with the Agency, you must include a nondiscrimination provision (See Question 1b on the Declaration Form). The subcontracting provision need not include nondiscrimination in benefits as part of the nondiscrimination requirements. If you're unsure whether a contract qualifies as a subcontract, contact the

Agency division administering your contract with the Agency. “Subcontract” also includes any subcontract of your subcontractor for performance of 10% or more of the subcontract.

INSTRUCTIONS FOR DECLARATION FORM
Nondiscrimination in Contracts and Benefits

F. Nondiscrimination in benefits for spouses and domestic partners

1. Who are domestic partners?

If your employee and another person are currently registered as domestic partners with a state, county or city that authorizes such registration, then those two people are domestic partners. It doesn’t matter where the domestic partners now live or whether they are a same-sex couple or an opposite sex couple. A company/organization may also institute its own domestic partnership registry (contact the Agency for more information).

2. What is nondiscrimination in benefits?

You must provide the same benefits to employees with spouses and employees with domestic partners, and to spouses and domestic partners of employees, subject to the following qualifications (See Question 2c on the Declaration Form).

- If your cost of providing a benefit for an employee with a domestic partner exceeds that of providing it for an employee with a spouse, or vice versa, you may require the employee to pay the excess cost.
- If you are unable to provide the same benefits, despite taking all reasonable measures to do so, you must provide the employee with a cash equivalent. This qualification is intended to address situations where your benefits provider will not provide equal benefits and you are unable to find an alternative source or state or federal law prohibit the provision of equal benefits. (See Question 2d on the Declaration form).
- The Policy does not require any benefits be offered to spouses or domestic partners. It does require, however, that whatever benefits are offered to spouses be offered equally to domestic partners, and vice versa.

3. Examples of benefits

The law is intended to apply to all benefits offered to employees with spouses and employees with domestic partners. A sample list appears in Question 2c on the Declaration Form.

G. Form required

Complete the Declaration Form to tell the Agency whether you comply with the Policy. All parties to a Joint Venture must submit separate Declarations.

Please submit an original of the Declaration Form and keep a copy for your records. If an Agency division should ask you to complete the form again, you may submit a copy of the form you originally submitted (if the information has not changed), unless you are advised otherwise.

H. Attachments

If you provide equal benefits, as indicated by your answers to Question 2c on the Declaration form, **YOU MUST ATTACH DOCUMENTATION TO THIS FORM,** unless such documentation does not exist. See item 3, “Documentation for Nondiscrimination in Benefits.” If documentation does not exist, attach an explanation (e.g., some of your policies are unwritten).

I. If your answers change

If, after you submit the Declaration, your company/organization’s nondiscrimination policy or benefits change such that the information you provided to the Agency is no longer accurate, you must advise the Agency promptly by submitting a new Declaration.

EXHIBIT E: 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:

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

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. **<u>Execution and Incorporation of this Agreement to Sub-agreements</u>**

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. **<u>Contact Educational Institutions</u>**

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 <u>minimum</u> 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. **<u>Response from Educational Institutions</u>**

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. **<u>Action by Design Professionals When Referrals Available</u>**

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. **<u>Action by Design Professionals When Referrals Unavailable</u>**

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. **<u>Action by Design Professional When No Response From Educational Institutions</u>**

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. <u>ASSOCIATIONS AND JOINT VENTURES (JV).</u> OCII will recognize JVs and Associations between non-SBE firms and SBE firms where the SBE partner performs at least 35% of the work defined in the JV or Association agreement, and receives at least 35% (or a proportionate share, whichever is higher) of the dollars to be earned by the JV or Association. Under this arrangement, OCII will deem the JV or Association to be an SBE for the purposes of meeting the SBE goal. Due to the technical nature of the disciplines and the various standards of each industry, OCII will not require a standardized agreement. However, each JV and Association agreement must be in writing and contain, at a minimum, the following terms:

- Define the management of the agreement between the parties;
- Define the technical and managerial responsibilities of each party;
- Define the scope of work to be performed by each party, and where possible identify the percentage and break-down of scope of work for each party;
- Identify any additional subcontractors or consultants that will perform the work under the agreement;
- Define the schedule, duration, and deliverable of the agreement;
- Detail the fee schedule, fee breakdown, or division of compensation;
- Specify insurance requirements and/or if each party shall maintain its own insurance;
- Specify how additional work or changes in scope shall be negotiated or determined and which party shall be responsible for notifying OCII of the changes;
- Specify how claims and disputes will be resolved.

A copy of the JV or Association agreement must be provided to OCII for approval in order for the JV or Association to be recognized.

VIII. <u>CERTIFICATION.</u> 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 SBE Policy.

IX. <u>INCORPORATION.</u> 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.

X. <u>DEFINITIONS.</u> 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.

<u>Affiliates</u> 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.

Agency-Assisted Contract means, as applicable, the Development and Disposition Agreement ("**DDA**"), Land Disposition Agreement ("**LDA**"), Lease, Loan and Grant Agreements, and other similar contracts, and 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.

Agency Contract means personal services contracts, purchase requisitions, and other similar contracts and operations agreements that the Agency executes with for-profit or non-profit entities.

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.

Association means an agreement between two parties established for the purpose of completing a specific task or project. The associate agreement shall provide the SBE associate a significant project management role and the SBE associate shall be recognized in marketing and collateral material. The Association shall be distinguished from traditional subcontracting arrangements via a written Association agreement that defines the management of the agreement, technical and managerial responsibilities of the parties, and defined scopes and percentages of work to be performed by each party with its own resources and labor force. Unlike the more formal Joint Venture, an Association does not require formation of a new business enterprise between the parties. The Associate agreement shall contain, at a minimum, provisions required by Section VII and be subject to OCII approval.

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.

Joint Venture means an entity established between two parties for the purposes of completing a venture or project. The Joint Venture agreement typically creates a separate business entity and requires acquisition of additional insurance for the newly created joint business entity. The Joint Venture agreement shall contain, at a minimum, provisions required by Section VII and be subject to OCII approval.

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), Hunters Point Shipyard, Mission Bay (North), Mission Bay (South), Rincon Point/South Beach, South of Market, and Transbay.

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:

Industry	OCII SBE Size Standard
Construction Contractors	$20,000,000
Specialty Construction Contractors	$14,000,000
Suppliers (goods/materials/ equipment and general services)	$10,000,000
Professional Services	$2,500,000
Trucking	$3,500,000

In addition, an economically disadvantaged business shall meet the other certification criteria described in Exhibit I of the SBE Policy in order to be considered an SBE by the Agency.

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 1120s for Corporations) to calculate the firm's three year average annual gross receipts. In addition, the calculation of a firm's size shall include the receipts of all affiliates.

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).

Specialty Construction Contractor means a contractor licensed by the Contractors State License Board under the "C" classification license pursuant to California Business and Professions Code Section 7058.

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.

XI. 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.

XII. 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.

XIII. 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.

XIV. 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. **<u>California Law Applies</u>.** 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. **<u>Arbitration Remedies and Sanctions</u>.** 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. **<u>Arbitrator's Decision</u>.** 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. **<u>Default Award; No Requirement to Seek an Order Compelling Arbitration</u>.** 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. **<u>Arbitrator Lacks Power to Modify</u>.** 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

XV. 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	Date
______________________________	______________________________
Print Your Name	Title
______________________________	
Company Name and Phone Number	

EXHIBIT F: 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 contractors with employees performing work in San Francisco, the Commercial Business MCP wage rate shall be no less than $17.00 per hour effective November 11, 2018. The Nonprofit MCP wage rate is $15.00 per hour effective July 1, 2018. The Minimum Compensation rate is adjusted on January 1 each year. Furthermore, 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://sfocii.org/policies-and-procedures.

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 Date

____
Print Name

______________________________ ______________________
Company Name Phone

EXHIBIT G: HEALTH CARE ACCOUNTABILITY POLICY (HCAP) DECLARATION

What the Policy does. The Office of Community Investment and Infrastructure ("OCII") (as Successor Agency to the Redevelopment Agency) adopted the San Francisco Health Care Accountability Policy (the "HCAP"), which became effective on September 25, 2001. The HCAP requires contractors and subcontractors that provide services to 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 $5.15 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 $206 in any week) and OCII will appropriate the money for staffing and other resources to provide medical care for the uninsured (rates and amounts effective July 1, 2017 and subject to annual change).

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: Contact 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 Date

____

Print Name

______________________________ __________________________

Company Name Phone

ATTACHMENT 3

DEPARTMENT OF FINANCE

EDMUND G. BROWN JR. • GOVERNOR

915 L STREET ■ SACRAMENTO CA ■ 95814-3706 ■ WWW.DOF.CA.GOV

October 4, 2013

Ms. Tiffany Bohee, Executive Director
City and County of San Francisco
One South Van Ness Avenue, Fifth Floor
San Francisco, CA 94103

Dear Ms. Bohee:

Subject: Approval of Oversight Board Action

The City and County of San Francisco Successor Agency (Agency) notified the California Department of Finance (Finance) of its July 22, 2013 Oversight Board (OB) Resolution on July 22, 2013. Pursuant to Health and Safety Code (HSC) section 34179 (h), Finance has completed its review of the OB action.

Based on our review and application of the law, OB Resolution 8-2013 approving a Purchase and Sale Agreement (Agreement) with 706 Mission Co., LLC and with The Mexican Museum as a third party beneficiary, for the disposition and use of three properties, is approved. It is our understanding that Resolution 8-2013 does the following:

- In exchange for the property, developer has agreed to pay off all debt related to Jessie's Square Garage, including the 2003 Series B (non-housing portion) and 2003 Series C Tax Allocation Bonds, as well as the Agency's obligation to the City of San Francisco (City) in connection with the 2003 Cooperation and Tax Reimbursement Agreement. These amounts were estimated at $25,284,468 as of June 1, 2013, approximately $9 million greater than the appraised value of the property.
- In addition to payment of the related debt, the developer will make payments to the Agency including, but not limited to:
  - Up to $18.6 million to be applied toward future requirements for existing housing enforceable obligations.
  - Approximately $12.3 million from Transfer Payment Fees upon sale of the residential condominium units, a one-time Open Space Fee, and annual Open Space Fees.
- Provides additional public benefits to the Affected Taxing Entities (ATE), including but not limited to:
  - Developer responsibility for the cost of development of the Core and Shell of the Mexican Museum, estimated at $22.5 million.
  - Payment of $5 million for an operating endowment for the Mexican Museum.
  - Approximately $511,000 in annual payment to be applied toward operations and support for the Yerba Buena Gardens, providing an estimated future value of $41 million.
  - Developer payment of approximately $9.5 million toward additional items such as artwork, street upgrades, and pedestrian improvements.

- All Agency costs related to the on-going Agency obligations for the Core and Shell of the Mexican Museum reimbursed by developer, resulting in no future costs to the Agency.
- With the agreement of the City, upon completion of the project, the cultural portion of the project, The Mexican Museum will be conveyed to the City at no cost.
- A potential increase in annual property tax allocations of over twenty percent (estimated to increase from $66,346 to $1,445,475 annually) when comparing current use to the proposed mixed-use project.

This resolution is in compliance with HSC section 34181 (e) as it reflects the Agency renegotiating existing arrangements in order to reduce liabilities and increase net revenues to the ATEs. In addition, the above benefits to the Agency and the ATEs are consistent with HSC section 34181 (a), reflecting that the Agency is disposing of assets in a manner aimed at maximizing value.

The Purchase and Sale Agreement provides the Agency on-going review and approval rights pertaining to construction of the core and shell of the cultural component, which decisions shall be final and conclusive. Although the Agency has no future financial responsibility, the retention of that right is incongruous with HSC section 34177 (h) as it will inhibit Agency's ability to expeditiously wind down its affairs. Section 7.22 of the Agreement allows the Agency to assign its rights and obligations to the City or other governmental entity designees. As the intent of all parties is to convey the cultural component to the City upon completion of the improvements, Finance recommends that the Oversight Board consider assigning those rights and obligations to the City upon conveyance of the cultural component to the Developer. This would further assist in the expeditious winding down by alleviating the need for further Agency involvement, as well as placing the review and approval authority on the appropriate party – the intended owner.

This is our determination with respect to the OB action taken.

Please direct inquiries to Wendy Griffe, Supervisor, or Jenny DeAngelis, Lead Analyst at (916) 445-1546.

Sincerely,

STEVE SZALAY
Local Government Consultant

cc: Ms. Sally Oerth, Deputy Director, City and County of San Francisco
Mr. James Whitaker, Property Tax Manager, San Francisco County
Mr. Steven Mar, Bureau Chief, Local Government Audit Bureau, California State Controller's Office
California State Controller's Office