EXCLUSIVE NEGOTIATION AGREEMENT

THIS EXCLUSIVE NEGOTIATION AGREEMENT (“Agreement” or “ENA”), dated as of September 2, 2014, is entered into 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, also known as the Office of Community Investment and Infrastructure (“Successor Agency” or “OCII”), and MA West LLC (“MA West” or “Developer”), a limited liability company, a joint venture between Golub Real Estate Corp. (“Golub”), an Illinois corporation and The John Buck Company (“John Buck”), a limited liability company. This Agreement is entered into based upon the following facts, intentions and understandings of the parties:

RECITALS

A. In furtherance of the objectives of the Community Redevelopment Law of the State of California, the Redevelopment Agency of the City and County of San Francisco (“Former Agency”) undertook a program to redevelop and revitalize blighted areas in San Francisco and in connection therewith adopted a redevelopment project area known as the Transbay Redevelopment Project Area (“Project Area”).

B. The Former Agency, acting through the Board of Supervisors of the City and County of San Francisco (“Board of Supervisors”), approved a Redevelopment Plan for the Project Area by Ordinance No. 124-05, adopted on June 21, 2005, and by Ordinance No. 99-06, adopted on May 9, 2006 (“Redevelopment Plan”). The Redevelopment Plan was filed in the Office of the Recorder of the City and County of San Francisco (“Official Records”).

C. On December 13, 2006, and in furtherance of the Redevelopment Plan, the Former Agency caused a Declaration of Restrictions affecting all of the Project Area to be recorded in the Official Records, in Book B-103 of Official Records at page 210, as Document No. P-30087 (“Project Area Declaration of Restrictions”).

D. Under the Redevelopment Plan and the Transbay Redevelopment Project Tax Increment and Sales Proceeds Pledge Agreement (“Pledge Agreement”) between the Former Agency, the Transbay Joint Powers Authority (“TJPA”), and the City and County of San Francisco (the “City”), land sale and net tax increment revenue generated by the parcels in the Project Area that are currently or formerly owned by the State of California (“State”) has been pledged to the TJPA to help pay the cost of building the Transbay Transit Center. The State-owned parcels include the development sites on Blocks 2 through 9, 11, and 12, and Parcels F and T.

E. In 2003, the TJPA, the City, and the State, acting by and through its Department of Transportation (“Caltrans”), entered into a Cooperative Agreement, which sets forth the process for the transfer of the State-owned parcels to the City and the TJPA (“Cooperative Agreement”). Also in 2003, the California Legislature enacted Assembly Bill No. 812 (Statutes 2003, chapter 99), codified at Cal. Public Resources Code § 5027.1 (“AB 812”), which required that thirty-five percent (35%) of new housing developed in the Project Area shall be affordable to low- and moderate-income households. In 2005, the TJPA and the Former Agency entered into the Transbay Redevelopment Project Implementation Agreement (“Implementation Agreement”) which requires OCII, as successor in interest to the Former Agency, to prepare and sell the formerly State-owned parcels and to construct and fund new infrastructure improvements (such as parks and streetscapes) and to meet affordable...
housing obligations. Subsequently, in 2008, the TJPA, the City and the Former Agency entered into an Option Agreement for the Purchase and Sale of Real Property (“Option Agreement”), which establishes the process for the transfer of certain of these parcels to the Former Agency, and now to OCII, to facilitate the sale of the parcels to private developers.

F. On January 1, 2010, the TJPA entered into a Transportation Infrastructure Finance and Innovation Act Loan Agreement with the United States Department of Transportation (“TIFIA Loan”), which pledges certain property tax increment revenue attributable to certain State-owned parcels as security for the payment of the TIFIA Loan.

G. On February 1, 2012, the Former Agency was dissolved pursuant to the provisions of California State Assembly Bill No. 1X 26 (Chapter 5, Statutes of 2011-12, First Extraordinary Session) (“AB 26”), codified in relevant part in California’s Health and Safety Code Sections 34161 – 34168 and upheld by the California Supreme Court in California Redevelopment Assoc. v. Matosantos, No. S194861 (Dec. 29, 2011). On June 27, 2012, AB 26 was subsequently amended in part by California State Assembly Bill No. 1484 (Chapter 26, Statutes of 2011-12) (“AB 1484”). (Together, AB 26 and AB 1484 are referred to as “Redevelopment Dissolution Law.”)

H. Pursuant to the Redevelopment Dissolution Law, all of the Former Agency’s assets (other than specified housing assets) and obligations were transferred to OCII. Some of the Former Agency’s housing assets, related to projects that were either completed or had no continuing enforceable obligation, were transferred to the City, acting by and through the Mayor’s Office of Housing and Community Development (“MOHCD”) which is the City’s designated Housing Successor under Health and Safety Code Section 34176. The Redevelopment Plan, Development Controls (defined below), and other relevant Project Area documents remain in effect and OCII retains all affordable housing obligations in the Project Area.

I. Under the Redevelopment Dissolution Law, with approval from a successor agency’s oversight board and the State of California’s Department of Finance (“DOF”), a successor agency may continue to implement “enforceable obligations”—existing contracts, bonds, leases, etc.—which were in place prior to the suspension of redevelopment agencies’ activities on June 28, 2011, the date that AB 26 was approved. Redevelopment Dissolution Law defines “enforceable obligations” to include bonds, loans, judgments or settlements, and any “legally binding and enforceable agreement or contract that is not otherwise void as violating the debt limit or public policy,” (Cal. Health & Safety Code Section 34171(d)(1)(E)) as well as certain other obligations, including but not limited to requirements of state law and agreements made in reliance on pre-existing enforceable obligations. The Implementation Agreement, Pledge Agreement, and AB 812 meet the definition of “enforceable obligations” under the Redevelopment Dissolution Law.

J. AB 1484 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 ENA, if a pre-existing enforceable obligation requires that action. See also Cal. Health & Safety Code § 34177(c) (requiring successor agencies to “perform obligations required pursuant to any enforceable obligation”). This Agreement, providing for the transfer of certain State-owned parcels to third parties, with the payment of the proceeds to the TJPA is part of OCII’s compliance with the pre-existing enforceable obligations.
K. On April 15, 2013, DOF issued a Final and Conclusive Determination that the Pledge Agreement, the Implementation Agreement, and the Affordable Housing Program funded by the Low- and Moderate-Income Housing Fund for Transbay are enforceable obligations under Redevelopment Dissolution Law. Letter, S. Szalay, DOF Local Government Consultant, to T. Bohee, Successor Agency, Executive Director (April 15, 2013). 

L. On April 2, 2014, pursuant to the Implementation Agreement, OCII issued a Request for Proposals (“RFP”) for development of a 550-foot-tall office tower on a portion of the parcel known as “Block 5”, also identified as a portion of Lot 025, Assessor’s Block 3718 (referred to in the Cooperative Agreement as Parcels N and N’), plus open space on a portion of Lots 025 and 027, Assessor’s Block 3718, in the Project Area. The office tower site, also known as “Parcel N1”, is shown on the Site Map attached as Exhibit A and is an approximately 26,300-square-foot parcel on Howard and Beale Streets, adjacent to the future Transbay Transit Center. Parcel N1 will be transferred from the TJPA to OCII pursuant to the Option Agreement, and then transferred to Developer, in accordance with a Disposition and Development Agreement (“DDA”), as required under the Implementation Agreement. The parcels that will be made available to the Developer for the required open space are shown as “Parcel M1” and “Parcel N3” on Exhibit A, which are owned by the TJPA. The Developer shall build and maintain the required open space on Parcels M1 and N3, under an agreement with the TJPA. Parcels N1, M1 and N3 are collectively referred to as the “Site.”

M. The proposed development program for Block 5, as described in detail below, will require an amendment to the Redevelopment Plan (“Plan Amendment”) to provide bulk controls that are appropriate for a commercial office building and consistent with the San Francisco Planning Code. The Draft Plan Amendment is included as Exhibit B to this ENA. The Development Controls and Design Guidelines for the Transbay Redevelopment Project (“Development Controls”) will also be amended to remain consistent with the Redevelopment Plan as amended.

N. The proposed development Program for Block 5 which conforms to the goals and requirements of the Redevelopment Plan, as amended, the Development Controls and Design Guidelines for the Transbay Redevelopment Project, as amended (“Development Controls”), and the Transbay Redevelopment Project Area Streetscape and Open Space Concept Plan (“Streetscape Plan”), includes: (a) an approximately 800,000 gross-square-foot office building, including mechanical and parking, or approximately 675,000 rentable square feet; (b) ground-floor retail space of approximately 4,650 square feet; (c) streetscape improvements, including the extension of Natoma Street from Beale to Main Streets, and Beale and Howard Street improvements; (d) 14,892 square feet of public open space on Parcel M1 and Parcel N3; and (e) one level of underground parking with up to 117 stalls in mechanical parking lifts and stackers. Items (a) through (e) are collectively referred to as the “Project.”

O. OCII received four proposals that met the minimum threshold requirements defined in the RFP. Based on evaluation of the written proposals, as well as interviews with each team, the proposal from the Developer was scored the highest by a selection panel comprised of OCII staff, City staff, TJPA appointee, and a member of the Transbay Citizens Advisory Committee. This proposal included a purchase price of $172,500,000, payable at the transfer of title of Parcel N1 to the Developer, into the trust account established by the TJPA (“Trust Account”), which complies with Section III, Subsection G of the Cooperative Agreement, the Director’s Deeds by which the State deeded Parcel N to the TJPA and Parcel N’ to the City, and the Quitclaim Deed by which the City deeded Parcel N’ to the TJPA.
P. The purpose of this ENA is to outline the terms and conditions under which OCII and the Developer will negotiate a DDA for the purchase of Parcel N1, and development of the Site. This Agreement is entered into with the understanding that the final terms and conditions of the DDA negotiated during the term of this Agreement will be subject to approval by the Commission on Community Investment and Infrastructure (“Commission”).

Q. OCII authorization of this Agreement is statutorily exempt from California Environmental Quality Act (“CEQA”) as a non-binding feasibility and planning study, pursuant to CEQA Guidelines Section 15262. This Agreement will facilitate completion of the design of the proposed Project and will not independently result in significant physical effects on the environment.

R. Based on the requirements and obligations under the Pledge Agreement, Option Agreement, TIFIA Loan, and other agreements of OCII and the TJPA, time is of the essence in the closing of the transfer of and payment of the purchase price for Parcel N1, and the start and completion of construction of the Project and the flow of tax increment from the Project.

NOW, THEREFORE, in consideration of the mutual promises contained herein, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereby agree as follows:

AGREEMENT

1. Exclusive Negotiations

Subject to the terms and conditions of this Agreement, the parties, acknowledging that time is of the essence, agree to negotiate diligently and in good faith with each other to enter into the DDA and any necessary associated agreements leading to the conveyance of Parcel N1 and development of the Project (collectively, “Transaction Documents”). OCII grants to the Developer the exclusive right to negotiate the Transaction Documents (“Exclusive Right”) during the term of this Agreement. During the term of the ENA, OCII agrees not to solicit or consider any other proposals or negotiate with any other developers with respect to the subject of the negotiations set forth herein without the prior written consent of the Developer, which consent may be granted or withheld by Developer in its sole and absolute discretion.

Developer acknowledges and agrees that under this Agreement OCII is not committing itself or agreeing to enter into the Transaction Documents or undertake (i) any exchange or transfer of real property, (ii) any disposition of any real property interests to the Developer, (iii) approval of any land use entitlements, or (iv) any other acts or activities relating to the subsequent independent exercise of discretion by OCII or any agency, commission or department of the City, other than the Exclusive Right. This Agreement does not constitute the disposition of property or exercise of control by OCII over property.

2. Term, Termination and Developer’s Risk

A. Term

The term of this Agreement (“Term”) will commence on the date this Agreement is executed by the last party whose signature is required, as indicated on the signature page (“Commencement Date”), and will
3. **Developer Payment**

A. **Payment for the Exclusive Right**

Within thirty (30) days after the Effective Date of this Agreement, Developer shall deposit with OCII a total of Five Hundred Thousand Dollars ($500,000) in cash ("ENA Deposit"), in consideration of OCII’s grant of the Exclusive Right during the Term.
The ENA Deposit shall be non-refundable except as otherwise provided in this Agreement, and may be used by OCII in its discretion for staffing costs, legal fees, and third party costs related to the Project.

The ENA Deposit is a sum due from Developer separate from and in addition to the purchase price for Parcel N1; the ENA Deposit shall not be deducted from or credited toward the purchase price the Developer must pay at closing on Parcel N1.

B. **Retention of Payments by** OCII. OCII shall retain any payments actually paid by Developer, including the ENA Deposit, except as provided in Section 18.B. In the event this Agreement terminates, any amounts owed to OCII but not paid at the time of termination shall be immediately due.

C. **Legal Fees**

Beginning on the Effective Date of this ENA, Developer shall be responsible for the costs of OCII to retain legal counsel to represent OCII during the Term. The first $60,000, which is the estimated cost for these services, shall be paid out of the ENA Deposit amount. Developer shall directly reimburse OCII for any legal fees incurred in excess of this amount, up to an additional $40,000. All payments made pursuant to this section shall be non-refundable.

4. **Term Sheet**

Attached hereto as [Exhibit C](#) is a term sheet ("Term Sheet") related to the Project, which represents terms identified in the RFP, terms included in Developer’s proposal submitted in response to the RFP, and the results of recent discussions between the parties and their preliminary consensus on the scope of the Project and the responsibilities of each party to be more fully described in the DDA. Subject to the Commission’s reservation of discretion under the California Environmental Quality Act, the Term Sheet sets forth the basic terms and conditions on which OCII and Developer will negotiate the Transaction Documents. The parties agree to negotiate diligently and in good faith with each other to negotiate the Transaction Documents that are materially consistent with the Term Sheet, together with such additional terms as may be mutually acceptable to the parties.

5. **Performance Benchmarks**

A. **Satisfaction of ENA Performance Benchmarks**

During the Term of this Agreement, all parties shall, in good faith, work expeditiously on, and diligently pursue to completion, the “ENA Performance Benchmarks” set forth in the attached [Exhibit D](#) ("ENA Performance Benchmarks") in the manner and in the times set forth therein, and any additional Performance Benchmarks mutually agreed-upon in writing by the parties. Developer, on one hand, and OCII, on the other, shall consider in good faith during the Term of this Agreement, any feasible additional ENA Performance Benchmarks proposed by the other party, provided that a party will not be deemed in bad faith if it rejects an additional Performance Benchmark that materially increases the obligations, burdens or risks of such party. Developer’s compliance with the Performance Benchmarks shall not alter or reduce their respective obligations to comply with any other provision of this Agreement.

B. **Waiver or Extension of Performance Benchmarks**
OCII’s Executive Director, in her sole and absolute discretion and subject to such terms and conditions as she deems reasonable in exchange for granting a waiver or extension, may waive or extend the date for the performance of any item set forth in the ENA Performance Benchmarks, Exhibit D, from time to time, without the necessity for further Commission action, if reasonably required due to circumstances beyond Developer’s control, Developer has in good faith worked expeditiously on pursuing the benchmarks, and the waiver or extension will not compromise the parties’ ability to execute the DDA within the Term or close escrow by September 1, 2015 (“Close of Escrow”). Any such waiver or extension shall not release Developer’s obligations nor constitute a waiver of OCII’s rights with respect to any other term, covenant or condition of this Agreement. No extension or waiver of a benchmark shall operate to extend the Term, which may only be extended in accordance with Section 2.A.

It is the intent of the parties that the “DDA Performance Benchmarks” set forth in Exhibit D (“DDA Performance Benchmarks”) will be incorporated into the DDA and may be revised and clarified as appropriate in light of additional information and circumstances that arise in the course of negotiations; provided, however, that the parties agree to include in the DDA a Close of Escrow on or before September 1, 2015.

C. Quarterly Reporting

Developer shall submit to OCII written reports no later than the fifteenth (15th) day of the calendar month immediately following each full calendar quarter during the Term of this Agreement, setting forth a description of the status of Developer’s compliance with the Performance Benchmarks as of the end of the preceding calendar quarter (and with additional Performance Benchmarks, if any).

6. [Intentionally Omitted]

7. Negotiation of Transaction Documents

A. Negotiation of Transaction Documents

The parties shall diligently meet, negotiate in good faith and seek to complete the Transaction Documents in a form that is approved by legal counsel for each party, incorporating specific terms, including without limitation the responsibilities of each party, the economic parameters, development standards and requirements, and a performance schedule. Developer agrees and acknowledges that OCII’s obligation to “negotiate in good faith” is limited to the actions of OCII staff and that the foregoing obligation does not apply to, or bind, any other regulatory body other than the Commission. The Transaction Documents are subject to Commission approval in compliance with applicable law. The Transaction Documents may also be subject to review and approval by the Oversight Board of the City and County of San Francisco, the City’s Board of Supervisors, and the TJPA Board of Directors.

B. Basis for Negotiations

Subject to Section 4 above and Section 8.A below, the parties agree to the material terms set forth in the Term Sheet. By entering into this Agreement, the parties agree that they will negotiate the specific terms of the Transaction Documents, and any redesign of the Project, in accordance with the Term Sheet, subject to OCII’s reserved discretion described in Section 4 hereof. The parties acknowledge that the Term Sheet sets forth general principles for negotiation, and that any binding Transaction
8. **Regulatory Approvals; No Representation or Warranty**

A. **Regulatory Approvals**

The parties acknowledge that various regulatory approvals are required for the development of the Project. This Agreement does not supersede applicable law or bind the independent regulatory discretion of the agencies having jurisdiction over the development of the Project, other than OCII to the extent of its express obligations under this Agreement.

B. **No Representation or Warranty; Exculpation**

Developer agrees and acknowledges that OCII has made no representation or warranty that the necessary regulatory approvals for the Project can be obtained. Each further agrees and acknowledges that there is no guarantee, nor a presumption that any of the regulatory approvals required for the development of the Project will be issued.

9. **Developer’s Obligations During the Term of the ENA**

During the Term of this Agreement, Developer shall be responsible for meeting or causing to be met, all obligations related to the development of the Project. Accordingly, Developer agrees that during the Term of this Agreement:

(a) Developer shall diligently and in good faith pursue obtaining all regulatory approvals, a construction loan, and all other requirements so that Developer can sign a DDA, achieve Close of Escrow, and target a construction start date and a certificate of occupancy by the dates set forth in the ENA Performance Standards;

(b) As between Developer and OCII, Developer shall be solely responsible for all of Developer’s costs and expenses (including, but not limited to, fees for attorneys, architects, engineers, consultants and other professionals) related to or arising from this Agreement or the negotiation and execution of any of the Transaction Documents. Developer shall not have any claim against OCII for reimbursement for any such costs and expenses irrespective of whether any of the Transaction Documents are approved by the Commission, or whether regulatory approvals are secured;

(c) Developer shall bear all costs associated with or complying with all permit and processing fees related to the Project and any necessary regulatory approval granted to Developer;

(d) Developer shall pay and discharge any fines or penalties imposed as a result of its failure to comply with the terms and conditions of any regulatory approval granted to Developer, and OCII shall have no liability, monetary or otherwise, for said fines and penalties;

(e) Developer shall undertake and complete its “due diligence” review of the Site and, if requested by OCII, provide copies of all non-privileged, non-proprietary reports regarding the Site to OCII, prepare financial projections and complete concept plans and schematic design plans for the Project, including, but not limited to, floor plans, elevations and renderings, as set forth in the Performance Benchmarks,
copies of which shall be provided to OCII, without representation or warranty of any kind;

(f) Developer shall conform, in all material respects, with all OCII policies related to the financing, development, and operation of the Project;

(g) Developer shall submit in a timely manner to any regulatory body having approval over the Project, all specifications, descriptive information, studies, reports, disclosures and any other information required to satisfy the application filing requirements of those agencies;

(h) Developer shall diligently pursue completion of all Performance Benchmarks and additional Performance Benchmarks, if any, allocated to that Developer in a timely fashion;

(i) [reserved]

(j) Developer shall not pay, or agree to pay, any fee or commission, or any other thing of value contingent on the entering of this Agreement, the DDA, the Transaction Document, or any other agreement with OCII related to the Project, to any OCII employee or official or to any contracting consultant hired by OCII for purposes of the Project. By entering into this Agreement, Developer certifies to OCII that it has not paid, nor agreed to pay, any fee or commission, or any other thing of value contingent on the entering of this Agreement, the DDA, the Transaction Document, or any other agreement with OCII related to the Project, to any OCII employee or official or to any contracting consultant hired by OCII for purposes of the Project;

(k) During the term of this Agreement, Developer shall comply with, in all material respects, the requirements of all applicable laws, including City and OCII ordinances, resolutions, policies, plans, development controls, or other regulatory approvals in all aspects (planning, design, construction, management and occupancy) of developing the Site, including, without limitation, the terms of the Redevelopment Plan and Development Controls and the Streetscape Plan and any amendments thereto, OCII’s Small Business Enterprise Program (including the selection of consultants during the pre-development period), and an allocation of office space under the Office Development Annual Limit, S.F. Planning Code, §§ 321 et seq;

(l) Developer shall commit reasonably sufficient financial and personnel resources required to undertake and to fulfill its obligations under this Agreement in a reasonably expeditious fashion; and

(m) To the extent Developer requires entry to the Site to conduct due diligence, Developer shall secure the advanced written permission of the TJPA, which permission TJPA may reasonably condition on Developer’s agreement regarding matters such as the date, time, and duration of Developer’s entry; the disturbance of soils, improvements, or personal property on the Site; insurance; indemnification; safety; compliance with law; and return of any disturbed soil, improvement, or personal property on the Site to its condition prior to Developer’s entry. In entering the Site, Developer shall not cause a Release of any Hazardous Substance and shall not cause the Incidental Migration of any Hazardous Substance, both as defined below. With regard to Developer’s performing geotechnical and environmental due diligence of the Site, Developer intends to remove soil at the test boring locations set forth on the Site Plan prepared by Goetttsch Partners previously delivered to TJPA or otherwise mutually agreed upon. Developer shall use its best efforts to perform such work without the need to relocate trailers presently situated on the Site. If Developer, after using its best efforts, cannot reasonably avoid such relocation, the TJPA will cooperate with Developer to relocate the trailers within the earliest reasonable timeframe,
provided that Developer satisfies the foregoing requirements in this subsection (m) and Developer incurs or reimburses the TJPA for all costs and/or expenses (to Webcor or otherwise) in connection with such relocation (including the costs of relocating and reconnecting utilities, moving the contents of the trailers, and other actions necessary to ensure that the functionality of the trailers is maintained and disruption is minimized). Developer understands that, based on current information, the TJPA anticipates that relocation of the trailers would require at least 6 to 8 months to complete.

(i) For purposes of this Section 9, the term “Hazardous Substance” shall have the meaning set forth in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended as of the date of this Agreement, 42 U.S.C. §9601(14), and in addition shall include, without limitation, petroleum (including crude oil or any fraction thereof) and petroleum products, asbestos, asbestos-containing materials, polychlorinated biphenyls (“PCBs”), PCB-containing materials, all hazardous substances identified in the California Health & Safety Code §25316 and 25281(d), all chemicals listed pursuant to the California Health & Safety Code §25249.8, and any substance deemed a hazardous substance, hazardous material, hazardous waste, or contaminant under Environmental Law. The foregoing definition shall not include substances that occur naturally on the Site.

(ii) The term “Environmental Law” shall include all federal, state and local laws, regulations and ordinances governing hazardous waste, wastewater discharges, drinking water, air emissions, Hazardous Substance releases or reporting requirements, Hazardous Substance use or storage, and employee or community right-to-know requirements related to the work being performed under this Agreement.

(iii) For purposes of this Section, the term “Release” shall mean any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discharging of barrels, containers, and other closed receptacles containing any Hazardous Substance).

(iv) For purposes of this Section, the term “Incidental Migration” shall mean any negligent activation, migration, mobilization, movement, relocation, settlement, stirring, passive migration, passive movement, and/or other incidental transport of any Hazardous Substance existing at, on or under the Site prior to the effective date of this Agreement.

(n) Prior to the execution of the DDA, the Developer is required to seek and obtain approval of the Plan Amendment included as Exhibit B to this ENA and an amendment to the Development Controls to remain consistent with the Redevelopment Plan as amended. The Developer, in consultation with OCII, will be responsible for identifying and obtaining the approval of the Plan Amendment by the required public agencies, boards and commissions with jurisdiction over the Plan Amendment. The Developer is required to reimburse OCII and the City up to a maximum of $100,000 for costs associated with approval of the Plan Amendment and other confirming amendments to the Redevelopment Plan and Development Controls, including but not limited to staff costs incurred by the San Francisco Planning Department. The Developer’s reimbursement to OCII and the City shall be in addition to the ENA Deposit and any payments that may be required under the DDA, including the Good Faith Deposit and the Purchase Price.
10. **Indemnity**

Developer shall indemnify, defend, and hold harmless OCII, the City, and the TJPA (collectively, **“Indemnitee Parties”**) and their respective members, officers, agents and employees from and against any and all losses, costs, claims, damages, liabilities and causes of action (including reasonable attorney’s fees and court costs) arising out of (a) any acts, or omissions to act, of the development team or its officers, agents or employees connected with the performance of this Agreement, including but not limited to any filing of any kind related to any regulatory approvals sought by Developer pursuant to this Agreement, or (b) in any way connected with the death of or injury to any person or damage to any property occurring on or adjacent to the Site and directly or indirectly caused by any acts or omissions of Developer, their respective agents, employees or contractors; provided, however, that the foregoing indemnity shall not apply to any losses, costs, claims, damages, liabilities or causes of action (including reasonable attorneys’ fees and court costs) (i) to the extent the same are due to the gross negligence or willful misconduct of the person or party seeking to be indemnified, or its respective agents, employees or contractors; (ii) arising out of any default under this Agreement by the person or party seeking to be indemnified, or its respective agents, employees or contractors (collectively **“Indemnity Exclusions”**); but further provided that OCII may require that Developer defend the Indemnitee Parties against claims pursuant to this Section until it is established that such claims are Indemnity Exclusions; provided, OCII and Indemnitee Parties shall reimburse Developer such defense costs in proportion to the degree of the negligence or fault of such parties. Developer’s obligations under this Section shall survive the termination of this Agreement.

11. [Intentionally Omitted]

12. **Insurance**

A. **Developer’s Insurance**

Without in any way limiting Developer’s indemnification obligations under this Agreement, and subject to reasonable approval by OCII of the insurers and policy forms, Developer shall obtain and maintain, or cause to be obtained and maintained at no cost to OCII, the following insurance during the Term, unless otherwise provided in this Agreement:

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

(a) Insurance Services Office Commercial General Liability coverage (occurrence form CG 00 01 01) or other equivalent coverage.

(b) Insurance Services Office Automobile Liability coverage, code 1 (form number CA 00 01 – “any auto”) or other equivalent coverage.

(c) Workers’ Compensation insurance as required by the State of California and Employer’s Liability Insurance.

(d) Professional Liability Insurance: Developer must require that all architects, engineers, and surveyors that it directly contracts with for the Project have liability insurance covering their negligent acts, errors and omissions. Developer must provide OCII with copies of consultants’ insurance certificates showing such coverage.
C. **Minimum Limits of Insurance.** Each Developer shall maintain limits no less than:

(a) **General Liability:** $5,000,000 limit per occurrence and $10,000,000 annual aggregate for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit must apply separately to this development or the general aggregate limit must be twice the required occurrence limit.

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

(c) **Workers’ Compensation and Employer’s Liability:** Workers’ Compensation limits as required by the State of California and Employers Liability limits of $1,000,000 for bodily injury by accident and $1,000,000 per person and in the annual aggregate for bodily injury by disease.

D. **Deductibles and Self-Insured Retentions**

Any deductibles or self-insured retentions over $50,000 must be declared to and reasonably approved by OCII. In the event such deductibles or self-insured retentions are in excess of $50,000, at the reasonably exercised option of OCII, either: (a) the insurer shall reduce such deductibles or self-insured retentions as respects OCII, the City and County of San Francisco, and their respective commissioners, members, officers, agents, and employees to $50,000 or less; or (b) the Developer shall procure a financial guarantee reasonably satisfactory to OCII guaranteeing payment of losses and related investigations, claim administration and defense expenses.

E. **Other Insurance Provisions**

The policies are to contain, or be endorsed to contain, the following provisions:

(a) The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions: “Successor Agency to the San Francisco Redevelopment Agency, the TJPA and the City and County of San Francisco and their respective commissioners, members, officers, agents, and employees” (collectively, “Additional Insureds”) shall be named as additional insureds as respects: liability arising out of activities performed by or on behalf of the Developer; products and completed operations of the Developer, premises owned, occupied or used by the Developer; and automobiles owned, leased, hired or borrowed by or on behalf of the Developer in connection with the Project. The coverage shall contain no special limitations on the scope of protection afforded to the Additional Insureds.

(b) For any claims related to this Project, Developer’s insurance coverage must be primary insurance as respects to the Additional Insureds. Any insurance or self-insurance maintained by the Additional Insureds must be in excess of Developer’s insurance and will not contribute with it.

(c) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to OCII, the City and County of San Francisco, the TJPA, and their respective commissioners, members, officers, agents or employees.
(d) Each insurance policy required by this clause must be endorsed to state that coverage will not be suspended, voided, canceled by either party, or reduced in coverage or in limits except after (30) thirty days prior written notice by certified mail, return receipt requested, has been given to OCII.

(e) Developer hereby grants to OCII a waiver of any right to subrogation which any insurer of Developer may acquire against OCII by virtue of the payment of any loss under such insurance. Developer agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not OCII has received a waiver of subrogation endorsement from the insurer.

(f) Developer’s insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer’s liability.

(g) Workers’ Compensation and Employers Liability Coverage: The insurer shall agree to waive all rights of subrogation against the “Successor Agency to the San Francisco Redevelopment Agency, the TJPA, and the City and County of San Francisco and their respective commissioners, members, officers, agents, and employees” for losses arising from or in connection with the Project.

(h) If any of the required policies provide coverage on a claims-made basis: The retroactive date must be shown and must be before the date of the Agreement.

i. Insurance must be maintained and evidence of insurance must be provided for at least five years after expiration or termination of the Agreement.

ii. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the date of the Agreement, Developer must purchase “extended reporting” coverage for a minimum of five years after expiration or termination of the Agreement.

F. Acceptability of Insurers

Insurance is to be placed with insurers with a current A. M. Best’s rating of no less than A:VII, unless otherwise approved by OCII.

G. Verification of Coverage

Developer must furnish OCII with respective certificates of insurance and additional endorsements effecting coverage required by this Section 12 prior to any entry onto the Site by Developer. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements are to be received and approved by OCII before any entry onto the Site by Developer. OCII reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.

H. Design Professionals, Subcontractors and Consultants Insurance

Developer’s architects, engineers and surveyors shall maintain professional liability insurance with minimum limits of $1,000,000 per claim and $2,000,000 in the annual aggregate covering all
professional negligent acts, errors and omissions. Developer shall cause its general contractor and all subcontractors and consultants to maintain workers compensation, automobile liability, and commercial general liability insurance in the amounts and in accordance with the requirements listed above, as applicable, unless otherwise approved by OCII’s Risk Manager. Developer must furnish OCII with general contractor’s, architects’ and engineers’ certificates of insurance and original endorsements effecting coverage required by this paragraph H.

I. Review

The insurance coverage required under this Section shall be evaluated by OCII for adequacy if the Term of this Agreement is extended. OCII may require Developer to respectively increase the insurance limits and/or forms of coverage in its reasonable discretion provided that such limits and/or coverage is generally available at commercially reasonable rates.

13. [Intentionally omitted]

14. OCII’s Obligations and Rights During the Term of the ENA

A. OCII’s Obligations

During the Term, OCII agrees that, subject to Section 8 above, it will;

(a) reasonably cooperate with Developer in filing for, processing and obtaining all regulatory approvals and coordinate with the San Francisco Department of Building Inspection in order to expedite, to the best of OCII’s ability, approval of the site permit application and the closing;

(b) to the extent required by law, join with Developer as co-applicants in filing for such approvals that are necessary for the development of the Project on the Site and are consistent with this Agreement;

(c) respond promptly to requests for coordination, consultation and scheduling of meetings regarding the Project, including but not limited to matters relating to the processing and obtaining of regulatory approvals where OCII is the co-applicant; and

(d) use its good faith efforts to meet its obligations, including drafting of the Transaction Documents and reviewing schematic and design development documents, under the Performance Benchmarks.

Nothing contained herein shall be deemed to limit or otherwise constrain OCII’s discretion, powers and duties as a regulatory agency with certain police powers.

OCII shall also reasonably cooperate with Developer in obtaining access to the Site for the purpose of performing tests, surveys and inspections, and obtaining data necessary or appropriate to negotiate the Transaction Documents; provided, however, TJPA currently holds title to the Site and Developer’s access to the Site is subject to TJPA’s terms and at TJPA’s sole discretion; provided, further that if Developer is unable to timely obtain access to the Site at any time reasonably necessary to complete Developer’s due diligence on the Site and requested by Developer in writing to OCII, and if OCII is unable to cause TJPA to provide any such requested access within 15 days after written notice from Developer notifying OCII of such lack of access, then such delay shall be deemed force majeure as described in Section 27(N).
B. Rights Reserved

If negotiations with Developer under this Agreement are unsuccessful and do not lead to approval of the Transaction Documents within the Term, OCII reserves the right, after the expiration or termination of this Agreement, to negotiate with another developer for the long-term development of the Site, to seek to terminate its rights and obligations under the Option Agreement and Implementation Agreement, or to undertake other efforts to develop Block 5, including, but not limited to, issuing a request for proposals.

C. Disclosure of Confidential Information

The parties acknowledge that OCII is subject to the California Public Records Act (“CPRA”) and OCII Public Records Policy, as approved per Resolution No. 182-2005 (Nov. 1, 2005) (“Policy”). The CPRA and Policy generally provide that written documents retained by OCII are subject to disclosure upon the request of any third party except for specific limited exceptions provided for in the CPRA and Policy.

15. [Intentionally Omitted]

16. Non Assignment

(a) The parties acknowledge and agree that OCII is entering into this Agreement and granting the Exclusive Right to Developer on the basis of the particular experience, financial capacity, skills and capabilities of itself and its members. This Agreement is personal to Developer and is non-assignable without the prior written consent of OCII’s Executive Director, in her sole and absolute discretion and subject to such terms and conditions as she deems reasonable in exchange for granting such consent.

(b) Notwithstanding the foregoing, Developer may assign its interest in this Agreement, with the approval of OCII’s Executive Director, in her reasonable discretion, to an Affiliate with similar skills and resources as Developer, provided, to be valid (i) any such assignment must be in writing, (ii) the assignee will have agreed in such written assignment to assume all of the obligations of such Developer under this Agreement, (iii) any such assignment will be an assignment of all of such Developer’s rights and interests under this Agreement, (iv) a copy of the written assignment will be delivered to OCII promptly following execution, and (v) the written assignment will contain the name, address, telephone number, facsimile number and contact person for the assignee.

(c) For purposes of this agreement, the term “Affiliate” shall mean Golub or John Buck (each a “Member”), or an entity that directly or indirectly controls, is controlled by, or is under common control with Developer or a Member. The term “control” shall mean the power to direct the day-to-day management and operation of the controlled entity through voting rights and/or ownership.

(d) The membership interests of Members in Developer shall not be reduced without the prior written notice and consent of OCII’s Executive Director, in her sole and absolute discretion. Notwithstanding the foregoing,

   (i) Developer may admit one or more equity partners as a member of Developer (“Investor”), or Developer may assign its interest in this agreement to a new joint venture that includes one or more Investors, provided that Golub and John Buck (or their assignees as may be permitted by the other provisions of this section) remain members of Developer or new joint venture, and OCII’s Executive
Director has determined, in her reasonable discretion, that the modified ownership interests in Developer or new joint venture will not adversely affect the performance of Developer’s obligations under this agreement, and

(ii) a Member’s interest in Developer may be transferred to an Affiliate with similar skills and resources as Member, with the approval of the Executive Director in her reasonable discretion.

(e) Developer shall provide OCII notice of any proposed assignment at least 30 days prior to the assignment, together with information about the details of the assignment and the skill, capability, net worth and experience of the assignee. Failure to provide the required notice, or to provide information demonstrating to the Executive Director’s satisfaction that the assignee has sufficient experience, financial capacity, skills and capabilities to complete Developer’s obligations under the ENA and DDA shall be reasonable grounds for withholding approval of the assignment. For purposes of this paragraph, the term “assignment” includes a reduction in membership interests in Developer, or an assignment of Developer’s interests to a new joint venture, pursuant to paragraph (d), and “assignee” includes an Investor.

17. **Default**

A. **Developer’s Event of Default**

The occurrence of any of the following (each, a “**Developer Event of Default**”) shall constitute a default by Developer after OCII gives the notice of the default stated below for each Event of Default specifying in reasonable detail the basis for the determination of the default and after the expiration of the applicable cure period specified for each Event of Default, if any (notwithstanding any notice and cure provisions described below, nothing herein shall operate to extend the Term beyond the period specified in Section 2.A above):

(a) Failure to pay any sums due under this Agreement within fifteen (15) days after OCII gives notice to the Developer.

(b) Failure to perform or abide by any material provision of this Agreement, including the obligation to negotiate diligently or in good faith to achieve the ENA Performance Benchmarks (as such may be waived or extended in accordance with Section 5 hereof), if such failure is not cured within (15) days after OCII gives notice to the Developer.

(c) Either (i) the filing by Developer of a petition to have itself adjudicated insolvent and unable to pay its debts as they mature or a petition for reorganization or arrangement under any bankruptcy or insolvency law, or a general assignment by Developer for the benefit of creditors; or (ii) the filing by or against Developer of any action seeking reorganization, arrangement, liquidation, or other relief under any law relating to bankruptcy, insolvency, or reorganization or seeking appointment of a trustee, receiver, or liquidator of itself or any substantial part of its assets.

(d) Any material breach of any representation and warranty contained in Section 20.A, or any other provision of this Agreement, unless Developer notifies OCII within ten (10) days after the Developer becomes aware of the material breach, and Developer cures such inaccuracy within thirty (30) days after the date on which it discovered or was given notice of the breach.
exclusive negotiation agreement

(e) The debarment or prohibition of Developer from doing business with any federal, state or local governmental agency, or any debarment or prohibition of any affiliate of Developer from doing business with any federal, state or local governmental agency to the extent such debarment or prohibition of the affiliate could affect the redevelopment of the Site as contemplated hereby. This Event of Default shall be incurable.

(f) Failure to procure or maintain any of the insurance coverage required hereunder so that there is a lapse in required coverage, if such failure is not cured within ten (10) days after OCII gives notice to the Developer.

(g) An assignment or transfer of the Developer’s interest in this Agreement that is not permitted under Section 16.

If a Developer Event of Default (other than a Developer Event of Default under paragraph (e)) cannot reasonably be cured within the applicable time period set forth in this Section 17.A, Developer shall not be in default of this Agreement (and a Developer Event of Default shall not be deemed to have occurred) if it commences to cure the Developer Event of Default within the applicable time period and diligently and in good faith continues to seek to cure the Developer Event of Default, provided that in no event shall the cure period extend beyond the earlier of (i) sixty (60) days after the notice of default was given or Developer became aware of the default or (ii) the expiration or termination of the Agreement. No cure period or extension of such cure period shall operate to extend the Term beyond the period specified in Section 2.A above.

B. OCII’s Event of Default

The occurrence of any of the following (each, an “OCII Event of Default”) shall constitute a default by OCII after Developer gives the notice of the default stated below for each Event of Default specifying in reasonable detail the basis for the determination of the default and after the expiration of the applicable cure period, if any:

(a) Failure to perform or abide by any material provision of this Agreement, if such failure is not cured within thirty (30) days after the Developer gives written notice (which shall specify in reasonable detail the basis for the determination of the default) to OCII; provided, however, that if OCII Event of Default cannot reasonably be cured within thirty (30) days, OCII shall not be in default of this Agreement if OCII commences to cure OCII Event of Default within the thirty (30) day period and diligently and in good faith continues to seek to cure OCII Event of Default.

(b) Any material breach of any OCII representation and warranty contained in Section 20.B, or any other provision of this Agreement, unless OCII notifies the Developer within ten (10) days after it becomes aware of the material breach and commences to cure such inaccuracy within thirty (30) days from the date on which OCII became aware of the inaccuracy, (or if such inaccuracy cannot reasonably be cured within such thirty (30) days, OCII shall not be in default of this Agreement if OCII commences to cure such inaccuracy within the thirty (30) day period and diligently and in good faith continues to seek to cure such inaccuracy.
18. Remedies

A. OCII’s Remedies

If a Developer Event of Default remains uncured after the expiration of the applicable cure period or is deemed to be an incurable default, OCII shall have the option, as its sole and exclusive remedy at law or in equity, to (i) terminate this Agreement upon written notice to Developer, sent in accordance with Section 25, and retain any payments already paid by the Developer to OCII, including the ENA Deposit, as Liquidated Damages in accordance with Section 19 hereof; (ii) seek to recover any funds due and owing to OCII under this Agreement, including, without limitation, any unpaid portion of the ENA Deposit and any unpaid reimbursement for legal fees pursuant to Section 3(C); and (iii) seek to enforce Developer’s indemnity obligations and all other provisions which survive termination. OCII hereby waives any and all rights it may now or hereafter have to pursue any other remedy or recover any other damages on account of any Developer Event of Default, including, without limitation, loss of bargain, special, punitive, compensatory or consequential damages, excepting attorneys’ fees and costs as provided in Section 27.P.

B. Developer’s Remedies

If an OCII Event of Default remains uncured after the expiration of the applicable cure period, Developer shall have the option, as their respective sole and exclusive remedy at law or in equity, to terminate this Agreement upon written notice to OCII, sent in accordance with Section 25, whereupon the ENA Deposit, less staff costs, legal fees incurred (including fees reasonably incurred in excess of those reimbursed directly by Developer under Section 3(c)), and third party costs related to the Project incurred by OCII to the date of the giving of such notice of termination, shall be promptly returned by OCII to the Developer and all parties shall each be released from all liability under this Agreement (except for those provisions which survive termination). The foregoing are the exclusive rights and remedies available to Developer at law or in equity in the event of an OCII Event of Default. Developer hereby waives any and all rights it may now or hereafter have to pursue any other remedy or recover any other damages from OCII, City or TJPA on account of any such breach or default by OCII, including, without limitation, loss of bargain, special, punitive, compensatory or consequential damages, excepting attorneys’ fees and costs as provided in Section 27.P.

C. Developer’s Risk

Subject to the foregoing provisions of this Section 18, Developer acknowledges and agrees that it is proceeding at its own risk and expense until such time as the Transaction Documents are approved and without any assurance that the Transaction Documents will be approved.

19. Damages

The parties have agreed that OCII’s actual damages in the event of a failure to approve, execute and deliver the Transaction Documents due to a Developer Event of Default would be extremely difficult or impracticable to determine. After negotiation, the parties have agreed that, considering all the circumstances existing on the date of this Agreement, the amount of the ENA Deposit, legal fees under Section 3.C, and any other payments already paid by the Developer to OCII, as herein provided, is a reasonable estimate of the damages that OCII would incur in such event.
IF THE PARTIES DO NOT REACH AGREEMENT ON THE TRANSACTION DOCUMENTS OR THE TRANSACTION DOCUMENTS ARE NOT APPROVED, EXECUTED AND DELIVERED AS CONTEMPLATED HEREBY DUE, IN EITHER INSTANCE, TO ANY DEVELOPER EVENT OF DEFAULT UNDER THIS AGREEMENT, THEN OCII SHALL BE ENTITLED TO RETAIN THE AMOUNT OF THE ENA DEPOSIT, LEGAL FEES, AND ANY OTHER PAYMENTS ALREADY PAID BY DEVELOPER TO OCII AS LIQUIDATED DAMAGES. NOTHING IN THIS AGREEMENT WILL, HOWEVER, BE DEEMED TO LIMIT THE DEVELOPER’S LIABILITY TO OCII FOR DAMAGES OR INJUNCTIVE RELIEF FOR BREACH OF THE DEVELOPER’S INDEMNITY OBLIGATIONS UNDER SECTION 10 OR FOR ANY DEVELOPER FRAUD AND MISREPRESENTATION IN THE MAKING OF THIS AGREEMENT, SUBJECT, HOWEVER, TO OCII’S WAIVER OF CONSEQUENTIAL, PUNITIVE AND CERTAIN OTHER DAMAGES IN THE LAST SENTENCE OF SECTION 18.A. BY PLACING THEIR RESPECTIVE INITIALS BELOW, EACH PARTY SPECIFICALLY CONFIRMS THE ACCURACY OF THE STATEMENTS MADE ABOVE AND THE FACT THAT EACH PARTY WAS REPRESENTED BY COUNSEL WHO EXPLAINED, AT THE TIME THIS AGREEMENT WAS MADE, THE CONSEQUENCES OF THIS LIQUIDATED DAMAGES PROVISION. THIS PROVISION SURVIVES TERMINATION OF THIS AGREEMENT.

INITIALS: OCII __________ Developer __________

20. **Representations and Warranties**

A. **Developer’s Representations and Warranties**

Developer represents, warrants and covenants, for itself and not for the other, as of the Commencement Date as follows:

(a) **Valid Existence; Good Standing; Joint Venture Relationships.** Developer and any of the entities which are constituents of such Developer, if applicable, are duly organized and validly existing entities under the laws of the states of their incorporation. Developer has all requisite power and authority to own its property and conduct its business as presently conducted. Developer has made all legally required filings and is in good standing in the jurisdiction of the State of California.

(b) **Authority.** Developer has all requisite power and authority to execute and deliver this Agreement, and the Transaction Documents and to carry out and perform all of the terms and covenants of this Agreement.

(c) **No Limitation on Ability to Perform.** Neither Developer’s articles of organization nor any other agreement or law in any way prohibits, limits or otherwise affects the right or power of Developer to enter into and perform all of the terms and covenants of this Agreement. Developer is not a party to or bound by any contract, agreement, indenture, trust agreement, note, obligation or other instrument, which could prohibit, limit or otherwise affect the same. No consent, authorization or approval of, or other action by, and no notice to or filing with, any governmental authority, regulatory body or any other person or entity is required for the due execution, delivery and performance by Developer of this Agreement or any of the terms and covenants contained in this Agreement. There are no pending or threatened suits or proceedings or undischarged judgments affecting Developer before any court, governmental agency, or arbitrator which might materially adversely affect the enforceability of this Agreement, the ability of Developer to perform the transactions contemplated by this Agreement or the respective business, operations, assets or condition of Developer.
(d) **Valid Execution.** The execution and delivery of this Agreement by Developer has been duly and validly authorized by all necessary action. This Agreement will be a legal, valid and binding obligation of Developer, enforceable against each in accordance with its terms, subject to usual qualifications related to the effects of laws relating to bankruptcy, insolvency and the limitations imposed by equitable considerations.

(e) **Defaults.** The execution, delivery and performance of this Agreement do not and will not violate or result in a violation of, contravene or conflict with, or constitute a default under (i) any agreement, document or instrument to which Developer may be bound or affected, (ii) any law, statute, ordinance, regulation, or (iii) the articles of organization or the operating agreement of Developer.

(f) **Meeting Financial Obligations; Material Adverse Change.** Developer and its members are meeting their current liabilities as they mature; no federal or state tax liens have been filed against them; and Developer and its members are not in default or claimed default under any agreement for borrowed money. Developer shall during the Term of this Agreement immediately notify OCII of any material adverse change in the financial condition of itself and its members and such material adverse change shall constitute a Developer Event of Default under this Agreement if the material adverse change in the financial condition of itself and its members materially affects the Developer’s ability to meet its obligations under this Agreement.

(g) **Conflicts of Interest.** Developer is familiar with (i) Section 87100 et seq. of the California Government Code, which provides that no member, official or employee of OCII, may have any personal interest, direct or indirect, in this Agreement nor shall any such member, official or employee participate in any decision relating to this Agreement which affects her or his personal interest or the interests of any corporation, partnership or association in which she or he is interested directly or indirectly; (ii) OCII’s Personnel Policy, which prohibits former OCII employees and consultants from working on behalf of another party in a matter in which they have participated personally and substantially unless OCII consents to such scope of work; (iii) Section 3.234 of the San Francisco Campaign and Government Conduct Code, which restricts employment and communication for OCII employees after termination by OCII; and (iv) Section 1090 of the Government Code, which provides that no member, official or employee of OCII shall be financially interested in any contract made by them in their official capacity. As to the provisions referred to above, Developer does not know of any facts that constitute a violation of such provisions.

(h) **Skill and Capacity.** Developer has the skill, resources and financial capacity to acquire, manage and fully redevelop the Site consistent with the provisions of this Agreement.

(i) **Consultants.** As of the Commencement Date of this Agreement, Developer has hired the following consultant(s) in connection with the proposed redevelopment of the Site: Goettsch Partners (“Goettsch”), Solomon Cordwell Buenz (“SCB”), and Butler Enterprise Group (“Butler”). Developer shall promptly notify OCII of the termination of any consultant previously approved by OCII, and shall, to the extent required to fulfill its obligations under this Agreement, replace such consultant with a new consultant reasonably approved by OCII. In addition, Developer shall promptly notify OCII of the addition of any new consultant associated with the Project.

(j) **Not Prohibited from Doing Business.** Developer and any of its respective members or affiliates have not been debarred or are otherwise prohibited from doing business with any local, state or federal governmental agency.
(k) **Business Licenses.** Developer has obtained all licenses required to conduct its business in San Francisco and is not in default of any fees or taxes due to OCII or the City.

(l) **No Claims.** Developer does not have any claim, and shall not make any claim, against OCII or TJPA (other than potential claims arising from any OCII Event of Default), or against the Site, or any present or future interest of OCII or TJPA therein, directly or indirectly, by reason of: (i) the entry into this Agreement or the termination of this Agreement; (ii) any statements, representations, acts or omissions made by OCII or TJPA or any of their respective officers, commissioners, employees or agents with regard to the Site or any aspect of the negotiations under this Agreement; and (iii) OCII’s exercise of discretion, decision and judgment set forth in this Agreement, so long as such actions are not capricious or arbitrary.

B. **OCII’s Representations and Warranties**

OCII represents, warrants and covenants as follows:

(a) **Authority.** OCII has all requisite power and authority to execute and deliver this Agreement and to carry out and perform all of the terms and covenants of this Agreement.

(b) **Valid Execution.** The execution and delivery of this Agreement by OCII have been duly and validly authorized by all necessary action. This Agreement will be a legal, valid and binding obligation of OCII, but does not supersede applicable law or bind the independent regulatory discretion of the agencies having jurisdiction over the development of the Project, as described in Section 8 of the Agreement. OCII has provided to the Developer a written resolution of the Commission authorizing the execution of this Agreement.

21. **Cooperation with OCII on Design**

Developer agrees to work collaboratively with OCII with respect to the design of the Project, in accordance with the Design Review and Document Approval Procedure ("DRDAP") included as Exhibit E to this ENA. Developer has received comments, included as Exhibit F to this ENA on the Conceptual Designs submitted in response to the RFP. Developer acknowledges that significant conceptual design revisions will be required in order to respond to OCII and the San Francisco Planning Department concerns, and that Developer must resubmit revised Conceptual Designs, for review by OCII and the Planning Department by the Date in the ENA Performance Benchmarks in Exhibit D.

22. **Press Releases; Press Conferences**

During the term of this Agreement, each party hereby covenants and agrees that it shall not issue any press release or hold any press conference with respect to the Project or this Agreement, except to the extent required by applicable law, without the prior written consent of the other parties, which approval shall not be unreasonably withheld, conditioned or delayed. If any party is required by applicable law to issue such a release, such party shall, at least five (5) business days prior to the issuance of the same, deliver a copy of the proposed release to the other parties for review.
23. **Ballot Measures**

Developer expressly agrees and acknowledges that it shall not initiate, promote, support or pursue, or authorize any other person or party to initiate, promote, support or pursue, any ballot measure relating to the Project without the prior consent of OCII by resolution.

24. **[Intentionally Omitted]**

25. **Notices**

Any notice given under this Agreement shall be in writing and given by delivering the notice in person, by commercial courier, express delivery service, or by sending it by registered or certified mail, or express mail, return receipt requested, with postage prepaid, to the mailing address listed below or any other address, notice of which is given.

Any mailing address may be changed at any time by giving written notice of such change in the manner provided above at least ten (10) days prior to the effective date of the change. All notices under this Agreement shall be deemed given, received, made or communicated on the date personal receipt actually occurs or, if mailed, on the delivery date or attempted delivery date shown on the return receipt. A party may not give official or binding notice by facsimile. The effective time of a notice shall not be affected by the receipt of the original or mailed copy of the notice.

**OCII:**

Successor to the San Francisco Redevelopment Agency, Office of Community Investment and Infrastructure
1 South Van Ness Avenue, 5th Floor
San Francisco, CA  94103
Attention:  Executive Director
Telephone:  (415) 749-2400

**Developer:**

Golub Real Estate Corp.
625 North Michigan Avenue, Suite 2000
Chicago, IL 60611
Attention: Lee Golub
Telephone: (312)440-8701
email: lgolub@goco.com

with copies to:

The John Buck Company
One North Wacker Drive, Suite 2400
Chicago, IL  60606
Attention: Ben Kochalski
Telephone: _____________
Facsimile: _____________
26. **OCII Requirements**

**A. Non-Discrimination and Equal Benefits**

(a) Developer covenants and agrees not to discriminate on the basis of the fact or perception of a person’s race, color, creed, religion, national origin, ancestry, sex, marital status, familial status, lawful source of income (as defined in Section 3304 of the San Francisco Police Code), sexual orientation or disability against any of its employees or applicants for employment, in any of its operations within the United States, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations that it operates.

(b) Developer shall include in all subcontracts relating to this Agreement a non-discrimination clause applicable to such subcontractor in substantially the form of Subsection (a) above.

(c) Developer does not as of the date of this Agreement, nor will during the Term of this Agreement, in any of its operations or in San Francisco or with respect to its operations under this Agreement elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in OCII’s Non-Discrimination in Contracts and Benefits Policy, adopted September 9, 1997, as amended February 4, 1998.

**B. Small Business Enterprise Program**

OCII has adopted a Small Business Enterprise ("SBE") Program, which provides for OCII’s certification of a small business enterprise as an SBE and first consideration of SBEs in the award of contracts in the following order: (1) SBEs located in a redevelopment project area located within San Francisco ("Project Area SBEs"), (2) Local SBEs (outside an OCII Project or Survey Area, but within San Francisco), and (3) Non-local SBEs (outside of San Francisco). Non-local SBEs should be used to satisfy participation goals only if Project Area SBEs or Local SBEs are not available, qualified, or if their bids or fees are significantly higher than those of non-local SBEs. The Developer agrees to make good faith efforts to achieve the goals of the SBE Program, which are 50% SBE participation for professional, personal services, and construction contracts for consultants and contractors. SBEs must be certified with OCII or the
equivalent through other public entities’ business certifications as approved by OCII in order to satisfy participation goals. The Developer has agreed that if the Developer intends to utilize consultants in the provision of services during the predevelopment phase, then from and after the Commencement Date of this Agreement, it must make good faith efforts to comply with the provisions of the Small Business Enterprise Program Agreement, which is attached as Exhibit G.

27. **Miscellaneous Provisions**

A. **Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of the State of California, without regard to any choice of law principles. As part of the consideration for OCII entering into this Agreement, Developer agrees that all actions or proceedings arising directly or indirectly under this Agreement may, at the sole option of OCII, be litigated in courts located within the County of San Francisco, State of California, unless OCII is legally required only to participate in actions in Sacramento County, in which event venue shall be in such county, and each expressly consents to the jurisdiction of any such local, state or federal court, and consents that any service of process in such action or proceeding may be made by personal service upon itself wherever it may then be located, or by certified or registered mail directed to the address set forth in this Agreement.

B. **Interpretation of Agreement**

(a) **Exhibits.** Whenever an “Exhibit” is referenced, it means an exhibit to this Agreement unless otherwise specifically identified. The following exhibits are attached to this Agreement and are fully incorporated here in:

- Exhibit A: Site Plan
- Exhibit B: Plan Amendment
- Exhibit C: Term Sheet
- Exhibit D: Performance Benchmarks
- Exhibit E: DRDAP
- Exhibit F: Conceptual Design Comments
- Exhibit G: SBE Agreement

(b) **Captions.** Whenever a section, article or paragraph is referenced, it refers to this Agreement unless otherwise specifically identified. The captions preceding the articles and sections of this Agreement have been inserted for convenience of reference only. Such captions shall not define or limit the scope or intent of any provision of this Agreement.

(c) **Words of Inclusion.** The use of the term “including,” “such as”, or words of similar import when following any general term, statement or matter shall not be construed to limit such term, statement or matter to the specific items or matters, whether or not language of non-limitation is used with reference thereto. Rather, such terms shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such statement, term or matter.

(d) **References.** Wherever reference is made to any provision, term or matter “in this Agreement,” “herein” or “hereof” or words of similar import, the reference shall be deemed to refer to any and all

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Exclusive Negotiation Agreement
Golub/John Buck
Transbay Block 5
provisions of this Agreement reasonably related thereto in the context of such reference, unless such reference refers solely to a specific numbered or lettered, section or paragraph of this Agreement or any specific subdivision thereof.

(e) **Recitals.** In the event of any conflict or inconsistency between the recitals and any of the remaining provisions of this Agreement, the remaining provisions of this Agreement shall prevail.

(f) **No Presumption Against Drafter.** This Agreement has been negotiated at arm’s length and between persons sophisticated and knowledgeable in the matters dealt with herein. In addition, each party has been represented by experienced and knowledgeable legal counsel. Accordingly, any rule of law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Agreement against the party that has drafted it is not applicable and is waived. The provisions of this Agreement shall be construed as a whole according to their common meaning and not strictly for or against any party in order to achieve the objectives and purposes of the parties. The provisions of this Agreement shall be interpreted in a reasonable manner to effect the purposes of the parties and this Agreement.

C. **Entire Agreement; Conflict**

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

D. **Non-Liability**

No member, official, agent or employee of OCII will be personally liable to Developer, or any successor in interest (if and to the extent permitted under this Agreement), in an event of default by OCII or for any amount that may become due to Developer or successors or on any obligations under the terms of this Agreement. No director, officer, agent or employee of Developer will be personally liable to OCII in an event of default by Developer or for any amount that may become due to OCII or on any obligations under the terms of this Agreement.

E. **Amendments**

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 all parties.

F. **Severability**

If any provision of this Agreement, or its application to any person or circumstance, is held invalid by any court, the invalidity or inapplicability of such provision shall not affect any other provision of this Agreement or the application of such provision to any other person or circumstance, and the remaining portions of this Agreement shall continue in full force and effect, unless enforcement of this Agreement as so modified by and in response to such invalidation would be unreasonable or grossly inequitable.
under all of the circumstances or would frustrate the fundamental purposes of this Agreement. Without limiting the foregoing, in the event that any applicable federal or state law prevents or precludes compliance with any material term of this Agreement, the parties shall promptly modify, amend or suspend this Agreement, or any portion of this Agreement, to the extent necessary to comply with such provisions in a manner which preserves to the greatest extent possible the benefits to each of the parties to this Agreement before such conflict with federal or state law. However, if such amendment, modification or suspension would deprive any of the parties of the substantial benefits derived from this Agreement or make performance unreasonably difficult or expensive, then the affected party may terminate this Agreement upon written notice to the other parties. In the event of such termination, and none of the parties shall have any further rights or obligations under this Agreement except as otherwise provided herein.

G. **Counterparts**

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

H. **Singular, Plural, Gender**

Whenever required by the context, the singular shall include the plural and vice versa, and the masculine gender shall include the feminine or neuter genders, and vice versa.

I. **Authority**

If Developer signs as a corporation, limited liability company or a partnership, each of the persons executing this Agreement on behalf of the Developer does hereby covenant and warrant that it is a duly authorized and existing entity, that it has and is qualified to do business in California, that it has full right and authority to enter into this Agreement, and that each and all of the persons signing on its behalf are authorized to do so. Upon OCII’s request, Developer shall provide OCII with evidence reasonably satisfactory to OCII confirming the foregoing representations and warranties.

J. **Approvals and Consents**

Unless this Agreement otherwise expressly provides or unless applicable law requires, all approvals, consents or determinations to be made by or on behalf of (i) OCII under this Agreement shall be made by OCII’s Executive Director or his or her designee, and (ii) Developer under this Agreement shall be made by Lee Golub ("Developer’s Representative") or such other employee or agent of Developer as it may designate to act as Developer’s Representative for a particular matter. Unless otherwise herein provided, whenever approval, consent or satisfaction is required of a party pursuant to this Agreement, it shall not be unreasonably withheld, conditioned or delayed. The reasons for disapproval shall be stated in reasonable detail in writing. Approval by the any of the parties to or of any act or request by the other in accordance with this Section 27.J shall not be deemed to waive or render unnecessary approval to or of any similar or subsequent acts or requests.

K. **Waiver**

No failure by any party to insist upon the strict performance of any obligation of the other parties under this Agreement or to exercise any right, power or remedy arising out of a breach thereof, irrespective of
the length of time for which such failure continues, and no acceptance of any full or partial payment during the continuance of any such breach shall constitute a waiver of such breach or of such party's rights to demand strict compliance with such term, covenant or condition. Any party's consent to or approval of any act by another party requiring the consenting party's consent or approval shall not be deemed to waive or render unnecessary the consenting party's consent to or approval of any subsequent act by the other party. Any waiver by any party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

L. **Time for Performance**

   (a) **Expiration.** All performance dates, including cure dates, expire at 5:00 p.m., San Francisco, California time, on the performance or cure date.

   (b) **Weekends and Holidays.** A performance date which falls on a Saturday, Sunday, or national, state, City, or OCII holiday is deemed extended to the next working day.

   (c) **Days for Performance.** All periods for performance specified in this Agreement in terms of days shall be calendar days, and not business days, unless otherwise expressly provided in this Agreement.

   (d) **Time of the Essence.** Time is of the essence with respect to each provision of this Agreement.

M. **Successors and Assigns**

This Agreement shall inure to the benefit of and bind the respective successors and assigns of OCII and Developer, subject to the limitations on assignment by Developer set forth in Section 16 above. This Agreement is for the exclusive benefit of the parties hereto and not for the benefit of any other person and shall not be deemed to have conferred any rights, express or implied, upon any other person.

N. **Force Majeure**

Whenever performance is required of a party hereunder (including, without limitation, with respect to the Performance Benchmarks), that party shall use all due diligence and take all necessary measures in good faith to perform, but if completion of performance is delayed by reasons of floods, earthquakes or other acts of God, war, civil commotion, riots, strikes, picketing, or other labor disputes, damage to work in progress by casualty, any administrative, judicial, or referenda challenges or proceedings, or by other cause without fault and beyond the reasonable control of the party, excepting Developer’s inability to obtain financing, then the specified time for performance shall be extended by the amount of the delay actually so caused.

O. **Broker**

Neither OCII nor Developer will pay a finder’s or broker’s fee in connection with this Agreement or upon execution of any of the Transaction Documents. Each of OCII and Developer agrees to indemnify and hold the others harmless from any claim and costs and expenses, including attorneys’ fees, incurred by any party in conjunction with any such claim or claims of any broker or brokers to a commission in connection with this Agreement, or any of the Transaction Documents as a result of the actions of OCII or Developer.
P. **Attorneys’ Fees and Costs**

If any action arising out of a dispute relating to the meaning or interpretation of any provision of this Agreement or the performance of a party of its obligations under this Agreement, the party determined to be in default or the party not prevailing in such dispute, as the case may be, shall pay all reasonable costs and expenses incurred by the other party or parties on account of such default or in enforcing or establishing its rights under this Agreement, including, without limitation, court costs and reasonable Attorneys’ Fees and Costs (as defined below). Any such Attorneys’ Fees and Costs incurred by any party in enforcing a judgment in its favor under this Agreement shall be recoverable separately from and in addition to any other amount included in such judgment, and such Attorneys’ Fees and Costs obligation is intended to be severable from the other provisions of this Agreement and to survive and not be merged into any such judgment. For purposes of this Agreement, the reasonable fees of attorneys shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the City Attorney’s Office. “Attorneys’ Fees and Costs” means any and all attorneys’ fees, costs, expenses and disbursements, including, but not limited to, expert witness fees and costs, travel time and associated costs, transcript preparation fees and costs, document copying, attachment preparation, courier, postage, facsimile, long-distance and communications expenses, court costs and the costs and fees associated with any other legal, administrative or alternative dispute resolution proceeding, fees and costs associated with execution upon any judgment or order, and costs on appeal.

Q. **Survival**

Notwithstanding anything to the contrary in this Agreement, the indemnification obligations and those other obligations that specifically survive and that arise and were not satisfied before termination shall survive any termination of this Agreement. In addition, the representations and warranties in Section 20 shall survive any termination of this Agreement for a period of one (1) year.

R. **Incorporation of OCII Requirements**

Developer has reviewed, understands, and is ready, willing, and able to comply with the terms and conditions of Section 26 above. The terms and conditions of Section 26 above shall be incorporated into the Transaction Documents and will apply to all contractors and subcontractors, as applicable.

S. **Relationship of the Parties**

The subject of this Agreement is a private development with none of the parties acting as the agent of the other parties in any respect. None of the provisions in this Agreement shall be deemed to render OCII a partner in the Developer’s respective business, or joint venture partner or member in any joint enterprise with Developer.

T. **Cooperation**

In connection with this Agreement, the parties shall reasonably cooperate with one another to achieve the objectives and purposes of this Agreement. In so doing, the parties shall each refrain from doing anything that would render its performance under this Agreement impossible and shall each use
commercially reasonable efforts to do everything that this Agreement contemplates that each party shall do to accomplish the objectives and purposes of this Agreement.

WHEREFORE, this Agreement was executed by the parties on the dates as shown below, the last date being the Commencement Date of this Agreement.

SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO, OFFICE OF COMMUNITY INVESTMENT AND INFRASTRUCTURE, a public body organized and existing under the laws of the State of California

SUCCESSOR AGENCY:

By: __________________________ Date: _________________________
Tiffany J. Bohee
Executive Director, OCII

Approved as to Form:
JAMES B. MORALES,
Interim General Counsel

By: __________________________
James B. Morales

DEVELOPER:

MA WEST, LLC, a limited liability corporation, a joint venture between

GOLUB REAL ESTATE CORP., an Illinois Corporation

By: __________________________
Lee Golub
Its: ______________

THE JOHN BUCK COMPANY, a limited liability company

By: __________________________
John Buck
Its: ______________
Exhibit A
Site Plan

Assessor's Block 3718

3.2 DEVELOPMENT OPPORTUNITY

Block 5: Transbay Redevelopment Project Area
3.5  ZONE ONE DEVELOPMENT PLAN

3.51  Open Space and Street Layout

The Zone One Plan Map illustrates the open space to be provided and street layout in Zone One. Clementina, Tehama and Natoma Streets shall be extended to create new streets in Zone One. A new public park shall be created in Zone One between Clementina, Tehama, Main and Beale Streets.

3.5.2  Height and Size of Buildings

The Zone One Plan Map illustrates the heights for buildings in Zone One. The table and text below illustrate the heights and floor plate sizes permitted for residential buildings in Zone One.

<table>
<thead>
<tr>
<th>Building Height (feet)</th>
<th>Maximum Floor Plate Size (square feet)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 85</td>
<td>8,500</td>
</tr>
<tr>
<td>85 – 250</td>
<td>10,000</td>
</tr>
<tr>
<td>251 – 300</td>
<td>10,500</td>
</tr>
<tr>
<td>301 – 350</td>
<td>11,000</td>
</tr>
<tr>
<td>401 – 450</td>
<td>11,500</td>
</tr>
<tr>
<td>451 – 500</td>
<td>12,000</td>
</tr>
<tr>
<td>501 – 550</td>
<td>13,000</td>
</tr>
</tbody>
</table>

For residential towers above 500 feet in total height, the average floor plate size of the portion of the tower above 350 feet must not exceed 12,000 square feet.

The bulk controls for residential buildings prescribed in this section have been carefully considered in relation to the objectives and policies for Zone One of the Project Area. The maximum average floor plate size above 350 feet for residential towers with heights of 501-550 feet has been written to conform to the San Francisco Downtown Area Plan. There may be some exceptional cases in which the maximum average floor plate above 350 feet for residential towers with heights of 501-550 feet could be permitted to be exceeded. The Agency Commission may approve exceptions to this control provided that the project sponsors demonstrate that all of the design guidelines for towers in the Development Controls and Design Guidelines are incorporated into the tower design. In no case shall residential tower floor plates exceed 13,000 square feet.

For general office buildings in Zone One, the maximum floor plate sizes shall be those permitted by the Planning Code as it now exists or as it may be amended from time to time in the future for the C-3-O District (Downtown Office), including Sections 270 (Bulk Limits: Measurement) and 272 (Bulk Limits: Special Exceptions in C-3 Districts).
3.5.3 Type and Number of Buildings

Zone One of the Project Area shall be developed with a mix of tower, mid-rise, podium, and townhouse buildings. Each block of Zone One shown on the Zone One Plan Map shall have no more than one tower with a height greater than 250 feet, if heights of greater than 250 feet are permitted on the block. In addition, any buildings other than the tower on Block 5 in Zone One shall be set back a minimum of 20 feet from the Block 5 tower.
Exhibit C
Term Sheet

This Term Sheet represents terms identified in the RFP, terms included in Developer’s proposal submitted in response to the RFP, and the results of recent discussions between the parties and their preliminary consensus on the scope of the Project and the responsibilities of each party to be more fully described in the DDA. Subject to the Commission’s reservation of discretion under the California Environmental Quality Act, the Term Sheet sets forth the basic terms and conditions on which OCII and Developer will negotiate the Transaction Documents. The parties agree to negotiate diligently and in good faith with each other on the terms of a DDA that is materially consistent with the Term Sheet, together with such additional terms as may be mutually acceptable to the parties. All capitalized terms are as defined in the ENA.

A. Terms Related to the Project

1. **The Site.** The Site on which the Project will be built consists of an approximately 26,300-square-foot parcel on the corner of Howard and Beale Streets (Parcel N1), together with additional parcels (Parcel M1 and Parcel N3) made available for construction and maintenance of the required public open space. Parcels N1 and N3 comprise a portion of Lot 025 of Assessor’s Block 3718 (Lot 25 is referred to in the Cooperative Agreement as Parcels N and N’); Parcel M1 is a portion of Lot 027 of Block 3718 (Lot 27 is referred to in the Cooperative Agreement as Parcel M). Parcel N1 will be transferred from the Transbay Joint Powers Authority (TJPA) to OCII, and then to the Developer, pursuant to the Cooperative Agreement, the Implementation Agreement, and the Option Agreement. The parcels that will be made available for the required open space will remain in TJPA ownership, but Developer shall have the obligation to design and construct open space improvements thereon and to maintain those improvements under an agreement with the TJPA.

2. **The Project.** The Project, which shall be constructed on the Site, shall be consistent with the Redevelopment Plan and the Development Controls as amended, and the Streetscape Plan and shall consist of the following: (a) an approximately 800,000-gross-square-foot office building, including mechanical and parking, or approximately 675,000 rentable square feet; (b) ground-floor retail space of approximately 4,650 square feet; (c) streetscape improvements including the extension of Natoma Street from Beale to Main Streets, and Beale and Howard Street improvements; (d) 14,892 square feet of public open space on Parcel M1 and Parcel N3; and (e) one level of underground parking with up to 117 stalls in mechanical parking lifts and stackers.

3. **Building Structure.** Consistent with the Development Controls as amended and the RFP, Developer agrees to design and construct a commercial office tower of up to 550 feet in height conforming to the San Francisco Planning Department Bulk Controls for C-3-O (SD). The Project will include approximately 664,000 rentable square feet on 43 floors and an underground parking garage. The garage shall include no more than 3.5% of the gross floor area of the building as prescribed in Section 151.1 of the San Francisco Planning Code. The garage shall include one level of parking with approximately 117 parking spaces, achieved through the use of mechanical parking lifts and stackers. Developer agrees to pay all costs associated with the design and construction of the building structure with no reduction to the Purchase Price.

4. **Streetscape Improvements.** Developer must design and construct all of the streetscape improvements described in the Streetscape Plan relative to Block 5, including improvements to Howard, Main and
Beale Streets and the creation of a portion of Natoma Street. Developer agrees to pay all costs associated with the design and construction of the streetscape improvements with no reduction to the Purchase Price. Upon completion of the Project, OCII agrees, after acceptance of those improvements by the City, OCII will reimburse, subject to appropriation and approval by the City and OCII’s governing bodies, Developer for the actual cost of the design and construction of the streetscape improvements up to $2,500,000, which acceptance and reimbursement will not be unreasonably delayed. While the Natoma Street extension will remain under TJPA ownership, the cost of maintaining the roadway will be the responsibility of Developer. Any costs incurred to complete the streetscape improvements as provided under the Streetscape Plan in excess of $2,500,000 shall be the sole responsibility of the Developer.

5. **Open Space.** Developer shall design, construct, and maintain the required open space on Parcels M1 and N3. Developer’s obligation to construct and maintain the open space, and its right to access the open space parcels for those purposes, shall be memorialized and made to run with the land through restrictive covenants, reciprocal easements, or other suitable instruments. At the election of OCII and TJPA, some or all of the open space may be relocated to other parcels provided that such relocation will satisfy the Project conditions of approval and will not materially increase the cost to Developer.

6. **Proposed Districts.**
   a. **Community Benefit District.** The Project shall be subject to the provisions of the proposed Greater Rincon Hill Community Benefit District (“CBD”), once established, in order to help finance community services and the maintenance of public improvements in the Project Area. While the rates for the CBD have not yet been determined, they are anticipated to be the amounts set forth in the RFP. The Developer shall support a CBD that requires the Developer to pay its Fair Share of Costs as defined below. If no such CBD is applicable to the Project on or before the date the City issues the Final Certificate of Occupancy (“Final C of O”) for the Project, then the Developer shall pay the Developer’s Fair Share of Costs to help finance community services and the maintenance of public improvements in the Project Area for the period from the issuance of a Final C of O for the Improvements until a CBD is imposed for that purpose. “Fair Share of Costs” shall be as required in Proposition 218, meaning a portion of the costs to finance community services and the maintenance of public improvements in the Project Area that reflects a fair and equitable allocation of all such costs amongst properties within the zone of special benefit of the public improvements in the Project Area.

   b. **Mello-Roos Community Facilities District.** The Project shall be subject to the provisions of the proposed City and County of San Francisco Transbay Center District Plan [Mello-Roos] Community Facilities District No. 2014-1 (Transbay Transit Center) (“CFD”), once established, to help pay the costs of constructing the new Transbay Transit Center, the Downtown Rail Extension (“DTX”), and other improvements in the Transit Center District Plan area. The special tax rate has not been established, but will be equal to or less than those set forth in the RFP.

      i. If the Project is not subject to a CFD that will help pay the costs of constructing the new Transbay Transit Center, the DTX, and other improvements in the Transit Center District Plan area on the date that a Final C of O is issued to the Developer, then the Developer will be required to pay to OCII for transmittal to the TJPA and the City the estimated CFD taxes amount that would otherwise be due to the San Francisco Office of the Assessor-Recorder (“Assessor-Recorder”) if the CFD had been established.
The parties shall also negotiate the terms and conditions under which Developer will pay to OCI the estimated CFD taxes amount that would otherwise be due but for Developer’s delay in the completion of construction of the Project past the date indicated in the DDA performance benchmarks.

The “amount that would otherwise be due” under b.i. above shall be based on the CFD Rate and Method of Apportionment (“RMA”) attached to the Term Sheet as Exhibit 1, calculated as if the Project were subject to the RMA from the date of issuance of the Final C of O until the Project is subject to the CFD.

If no CFD has been established by the date on which title to the Site is transferred to the Developer and if the City proposes a CFD covering the Site, Developer shall cast its vote in favor of the CFD, provided that the tax rates are not substantially different from the Base Special Tax rates in the RMA attached as Exhibit 1 to this Term Sheet.

7. **Sustainable Design.** Developer shall design and construct the Project in accordance with applicable provisions of the San Francisco Building Code and Administrative Bulletin AB-093.

8. **Environmental Review.** An Environmental Impact Statement/Environmental Impact Report (the “EIS/EIR”) for the Transbay Terminal/Caltrain Downtown Extension/Redevelopment Project was certified in 2004. The EIS/EIR addressed the environmental impacts of a proposed development on Block 5 based on certain assumptions about the development. Developer agrees to prepare and be solely responsible for any additional environmental review that may be required for review and approval by OCI, including analysis related to wind, vehicle ingress and egress and pedestrian and bicycle safety, and shadows, in accordance with the time frames set forth in Exhibit D of the ENA.

9. **Due Diligence.** OCI shall reasonably cooperate with Developer in obtaining and providing access to the Site for the purpose of performing tests, surveys and inspections, and obtaining data necessary or appropriate to negotiate the Transaction Documents; provided, however, TJPA currently holds title to the Site and Developer’s access to the Site is subject to TJPA’s terms and at TJPA’s sole discretion.

10. **Subdivision.** Prior to closing, Developer shall secure the subdivision necessary to divide Assessor’s Block 3718 Lot 025 into the portion to be conveyed to Developer (Parcel N1) and the portion to be retained by the TJPA (Parcel N2 and N3), and any subdivision necessary for TJPA to make the public open space on Parcel M1 and N3 available to Developer.

11. **Alternative Development Scenario.** If the Developer is able to acquire either all or portions of the two privately owned adjacent parcels, Assessor’s Block 3718 Lots 12 and 26 in a timeframe OCI deems reasonable, OCI will work with the Developer to refine the designs to accommodate an expanded lot size.

**B. Terms Related to Developer**

1. **DDA Deposit.** Within thirty (30) days after the effective date of the DDA, and provided that approval of the Plan Amendment and finalization of the Prop M Allocation have occurred, Developer shall pay a non-refundable good faith deposit in the amount of two million dollars ($2,000,000) (“Good Faith Deposit”) into a trust account established by the TJPA (the “Trust Account”). If the parties close on the transfer of the Site to the Developer, the Good Faith Deposit shall be applied to the Purchase
Price. Developer shall forfeit the Good Faith Deposit and any right to application of the Good Faith Deposit to the Purchase Price if Developer either (a) fails to close the transaction in accordance with the DDA that is not due to an OCII or TJPA default, or (b) fails to close due to an uncured event of default by Developer.

2. **Purchase Price; Closing and Transaction Costs.** At or prior to Close of Escrow, Developer agrees to deposit the amount of $172,500,000 (“**Purchase Price**”), less the Good Faith Deposit into the Trust Account in consideration for Parcel N1. Developer shall also pay all third party costs associated with the conveyance of Parcel N1 from OCII to Developer, including title insurance, escrow fees, surveys, environmental review, parcel mapping, lot line adjustments, quiet title actions, permits, and inspections.

3. **Transaction Documents.** In accordance with the timeframes set forth in Exhibit D of the ENA, OCII agrees to draft all Transaction Documents for approval by the Commission on Community Investment and Infrastructure (and, if necessary, by the Oversight Board and State Department of Finance) and any documents required as part of the review and approval process, if any, by the San Francisco Planning Commission and Board of Supervisors (“**Transaction Documents**”).

4. **Performance Benchmarks.** The parties shall, in good faith, work expeditiously on, and diligently pursue to completion, the DDA Performance Benchmarks. The parties’ current expectations of the DDA Performance Benchmarks are set forth in **Exhibit D** of the ENA. OCII shall use its good faith efforts to meet its obligations, including drafting of Transaction Documents and reviewing schematic and design development documents, under the DDA Performance Benchmarks. Close of Escrow shall occur no later than September 1, 2015 (“**Close of Escrow**”), or the Developer shall be subject to a daily penalty.

5. **Conveyance on an “as-is” Basis.** Parcel N1 shall be delivered by OCII to Developer, and Developer shall accept the Site at Close of Escrow, in an “as-is” condition, subject only to any representations, warranties and covenants of OCII contained in the DDA. At the Close of Escrow, Developers shall release from liability and shall indemnify OCII, TJPA, and City for any and all environmental, construction and other ongoing liabilities relating to Parcel N1 to the extent that they originate or accrue from and after the Close of Escrow.

6. **TIFIA Loan.** Consistent with the TIFIA Loan: (a) Developer shall not object to any conclusion that the assessed value of the Site shall be the greater of: (i) the existing assessed value of the Site as determined by the County Assessor, or (ii) the sum of: (x) the purchase price for the Site, plus (y) the cost of the building(s) constructed pursuant to the DDA; (b) Developer shall agree to apply fire and casualty property insurance proceeds to the restoration of the Site if, in the reasonable judgment of the TJPA, the funds available to Developer in the event of all or partial destruction of the Project are sufficient to restore the Site to its prior use and condition; and (c) OCII shall record a deed restriction for the term of the TIFIA Loan that the Site will not be used, in whole or in part, by any entity or for a purpose that will result in an exemption from the payment of real estate taxes being granted in any amount, without the prior written consent of the lender under the TIFIA Loan. The parties will work together to obtain clarification as to the meaning of the term “cost of the building(s) constructed” for inclusion in the DDA.

7. **Title.** At Close of Escrow, OCII shall convey fee simple title to Parcel N1 to Developer. OCII shall not have any responsibility for resolving any title exceptions prior to Close of Escrow except as may be
negotiated and specifically provided in the DDA. Developer shall bear all cost and responsibility for any required compliance with the Subdivision Map Act, the Destroyed Land Records Relief Law (the McEnerney Act), the San Francisco Building and Fire Codes, and all other federal, state, and local laws related to development of the Site.

8. **Design and Construction Documents.** In accordance with Exhibit E of the ENA, Developer agrees to prepare and submit all design and construction documents for the Project to OCII and other regulatory bodies. OCII agrees to work cooperatively with Developer to review such documents pursuant to the timeframes set forth in Exhibit D, which shall be updated and attached to the DDA. Developer agrees to pay all costs associated with the design and construction of the building structure with no reduction to the Purchase Price.

9. **Seismic Requirements.** In building the Project, Developer shall be responsible for compliance with the seismic requirements for the TJPA’s proposed extension of the Train Box of the Transit Center along the north side of the Project as set forth in Attachment 3 to the RFP.

10. **Evidence of Financing and Project Commitments.** Prior to Close of Escrow, Developer shall submit to OCII for review and approval evidence of financing and project commitments as reasonably required by OCII.

11. **Developer Responsibility for Construction.** The Developer shall be responsible for construction of the on-site improvements for the Project according to OCII-approved construction documents, all applicable building codes, and the DDA Performance Benchmarks. Developer shall be responsible for any changes from existing conditions required for construction of the Project, including site remediation, construction of underground utilities, street lighting, curbs, gutters, street trees, and sidewalks.

12. **Property Tax In-Lieu Payment.** Should completion of construction not occur within the times specified in the DDA Performance Benchmarks for reasons other than allowable delays, the terms of which shall be established in the DDA, Developer shall be required to pay to OCII the estimated property tax increment that would otherwise be due to the Assessor–Recorder until issuance of the Final C of O. Developer shall not receive a credit of any kind with the Assessor–Recorder for any payments to OCII made pursuant to this term.

13. **Compliance with OCII Policies.** Developer shall comply with applicable OCII and City policies and programs. These policies include but are not limited to: The Small Business Enterprise Program; Nondiscrimination in Contracts and Benefits; Minimum Compensation Policy; Health Care Accountability Policy; Construction Workforce Agreement; First Source Hiring Agreement For Permanent Workforce; and the Prevailing Wage Policy.

14. **RFP.** Developer shall conform to all terms and conditions for the Project described in the RFP, except to the extent that the ENA or DDA expressly provide otherwise.
EXHIBIT 1 to the Term Sheet

CITY AND COUNTY OF SAN FRANCISCO
COMMUNITY FACILITIES DISTRICT NO. 2014-1
(TRANSBAY TRANSIT CENTER)

AMENDED AND RESTATE D RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAX

A Special Tax applicable to each Taxable Parcel in the City and County of San Francisco Community Facilities District No. 2014-1 (Transbay Transit Center) shall be levied and collected according to the tax liability determined by the Administrator through the application of the appropriate amount or rate for Square Footage within Taxable Buildings, as described below. All Taxable Parcels in the CFD shall be taxed for the purposes, to the extent, and in the manner herein provided, including property subsequently annexed to the CFD unless a separate Rate and Method of Apportionment of Special Tax is adopted for the annexation area.

A. DEFINITIONS

The terms hereinafter set forth have the following meanings:

“Act” means the Mello-Roos Community Facilities Act of 1982, as amended, being Chapter 2.5, (commencing with Section 53311), Division 2 of Title 5 of the California Government Code.

“Administrative Expenses” means any or all of the following: the fees and expenses of any fiscal agent or trustee (including any fees or expenses of its counsel) employed in connection with any Bonds, and the expenses of the City and TJPA carrying out duties with respect to CFD No. 2014-1 and the Bonds, including, but not limited to, levying and collecting the Special Tax, the fees and expenses of legal counsel, charges levied by the City Controller’s Office and/or the City Treasurer and Tax Collector’s Office, costs related to property owner inquiries regarding the Special Tax, costs associated with appeals or requests for interpretation associated with the Special Tax and this RMA, amounts needed to pay rebate to the federal government with respect to the Bonds, costs associated with complying with any continuing disclosure requirements for the Bonds and the Special Tax, costs associated with foreclosure and collection of delinquent Special Taxes, and all other costs and expenses of the City and TJPA in any way related to the establishment or administration of the CFD.

“Administrator” means the Director of the Office of Public Finance who shall be responsible for administering the Special Tax according to this RMA.

“Affordable Housing Project” means a residential or primarily residential project, as determined by the Zoning Authority, within which all Residential Units are Below Market Rate Units. All Land Uses within an Affordable Housing Project are exempt from the Special Tax, as provided in Section G and are subject to the limitations set forth in Section D.4 below.
“Airspace Parcel” means a parcel with an assigned Assessor’s Parcel number that constitutes vertical space of an underlying land parcel.

“Apartment Building” means a residential or mixed-use Building within which none of the Residential Units have been sold to individual homebuyers.

“Assessor’s Parcel” or “Parcel” means a lot or parcel, including an Airspace Parcel, shown on an Assessor’s Parcel Map with an assigned Assessor’s Parcel number.

“Assessor’s Parcel Map” means an official map of the County Assessor designating Parcels by Assessor’s Parcel number.

“Authorized Facilities” means those public facilities authorized to be funded by the CFD as set forth in the CFD formation proceedings.

“Base Special Tax” means the Special Tax per square foot that is used to calculate the Maximum Special Tax that applies to a Taxable Parcel pursuant to Sections C.1 and C.2 of this RMA. The Base Special Tax shall also be used to determine the Maximum Special Tax for any Net New Square Footage added to a Taxable Building in the CFD in future Fiscal Years.

“Below Market Rate Units” or “BMR Units” means all Residential Units within the CFD that have a deed restriction recorded on title of the property that (i) limits the rental price or sales price of the Residential Unit, (ii) limits the appreciation that can be realized by the owner of such unit, or (iii) in any other way restricts the current or future value of the unit.

“Board” means the Board of Supervisors of the City, acting as the legislative body of CFD No. 2014-1.

“Bonds” means bonds or other debt (as defined in the Act), whether in one or more series, issued, incurred, or assumed by the CFD related to the Authorized Facilities.

“Building” means a permanent enclosed structure that is, or is part of, a Conditioned Project.

“Building Height” means the number of Stories in a Taxable Building, which shall be determined based on the highest Story that is occupied by a Land Use. If only a portion of a Building is a Conditioned Project, the Building Height shall be determined based on the highest Story that is occupied by a Land Use regardless of where in the Building the Taxable Parcels are located. If there is any question as to the Building Height of any Taxable Building in the CFD, the Administrator shall coordinate with the Zoning Authority to make the determination.

“Certificate of Exemption” means a certificate issued to the then-current record owner of a Parcel that indicates that some or all of the Square Footage on the Parcel has prepaid the Special Tax obligation or has paid the Special Tax for thirty Fiscal Years and, therefore, such Square Footage shall, in all future Fiscal Years, be exempt from the levy of Special Taxes in the CFD. The Certificate of Exemption shall identify (i) the Assessor’s Parcel number(s) for the Parcel(s)
on which the Square Footage is located, (ii) the amount of Square Footage for which the exemption is being granted, (iii) the first and last Fiscal Year in which the Special Tax had been levied on the Square Footage, and (iv) the date of receipt of a prepayment of the Special Tax obligation, if applicable.

“Certificate of Occupancy” or “COO” means the first certificate, including any temporary certificate of occupancy, issued by the City to confirm that a Building or a portion of a Building has met all of the building codes and can be occupied for residential and/or non-residential use. For purposes of this RMA, “Certificate of Occupancy” shall not include any certificate of occupancy that was issued prior to January 1, 2013 for a Building within the CFD; however, any subsequent certificates of occupancy that are issued for new construction or expansion of the Building shall be deemed a Certificate of Occupancy and the associated Parcel(s) shall be categorized as Taxable Parcels if the Building is, or is part of, a Conditioned Project and a Tax Commencement Letter has been provided to the Administrator for the Building.

“CFD” or “CFD No. 2014-1” means the City and County of San Francisco Community Facilities District No. 2014-1 (Transbay Transit Center).

“Child Care Square Footage” means, collectively, the Exempt Child Care Square Footage and Taxable Child Care Square Footage within a Taxable Building in the CFD.

“City” means the City and County of San Francisco.

“Conditioned Project” means a Development Project that is required to participate in funding Authorized Facilities through the CFD.

“Converted Apartment Building” means a Taxable Building that had been designated as an Apartment Building within which one or more Residential Units are subsequently sold to a buyer that is not a Landlord.

“Converted For-Sale Unit” means, in any Fiscal Year, an individual Market Rate Unit within a Converted Apartment Building for which an escrow has closed, on or prior to June 30 of the preceding Fiscal Year, in a sale to a buyer that is not a Landlord.

“County” means the City and County of San Francisco.

“CPC” means the Capital Planning Committee of the City and County of San Francisco, or if the Capital Planning Committee no longer exists, “CPC” shall mean the designated staff member(s) within the City and/or TJPA that will recommend issuance of Tax Commencement Authorizations for Conditioned Projects within the CFD.

“Development Project” means a residential, non-residential, or mixed-use development that includes one or more Buildings, or portions thereof, that are planned and entitled in a single application to the City.
“Exempt Child Care Square Footage” means Square Footage within a Taxable Building that, at the time of issuance of a COO, is determined by the Zoning Authority to be reserved for one or more licensed child care facilities. If a prepayment is made in association with any Taxable Child Care Square Footage, such Square Footage shall also be deemed Exempt Child Care Square Footage beginning in the Fiscal Year following receipt of the prepayment.

“Exempt Parking Square Footage” means the Square Footage of parking within a Taxable Building that, pursuant to Sections 151.1 and 204.5 of the Planning Code, is estimated to be needed to serve Land Uses within a building in the CFD, as determined by the Zoning Authority. If a prepayment is made in association with any Taxable Parking Square Footage, such Square Footage shall also be deemed Exempt Parking Square Footage beginning in the Fiscal Year following receipt of the prepayment.

“Fiscal Year” means the period starting July 1 and ending on the following June 30.

“For-Sale Residential Square Footage” or “For-Sale Residential Square Foot” means Square Footage that is or is expected to be part of a For-Sale Unit. The Zoning Authority shall make the determination as to the For-Sale Residential Square Footage within a Taxable Building in the CFD. For-Sale Residential Square Foot means a single square-foot unit of For-Sale Residential Square Footage.

“For-Sale Unit” means (i) in a Taxable Building that is not a Converted Apartment Building: a Market Rate Unit that has been, or is available or expected to be, sold, and (ii) in a Converted Apartment Building, a Converted For-Sale Unit. The Administrator shall make the final determination as to whether a Market Rate Unit is a For-Sale Unit or a Rental Unit.

“Indenture” means the indenture, fiscal agent agreement, resolution, or other instrument pursuant to which CFD No. 2014-1 Bonds are issued, as modified, amended, and/or supplemented from time to time, and any instrument replacing or supplementing the same.

“Initial Annual Adjustment Factor” means, as of July 1 of any Fiscal Year, the Annual Infrastructure Construction Cost Inflation Estimate published by the Office of the City Administrator’s Capital Planning Group and used to calculate the annual adjustment to the City’s development impact fees that took effect as of January 1 of the prior Fiscal Year pursuant to Section 409(b) of the Planning Code, as may be amended from time to time. If changes are made to the office responsible for calculating the annual adjustment, the name of the inflation index, or the date on which the development fee adjustment takes effect, the Administrator shall continue to rely on whatever annual adjustment factor is applied to the City’s development impact fees in order to calculate adjustments to the Base Special Taxes pursuant to Section D.1 below. Notwithstanding the foregoing, the Base Special Taxes shall, in no Fiscal Year, be increased or decreased by more than four percent (4%) of the amount in effect in the prior Fiscal Year.

“Initial Square Footage” means, for any Taxable Building in the CFD, the aggregate Square Footage of all Land Uses within the Building, as determined by the Zoning Authority upon issuance of the COO.
“IPIC” means the Interagency Plan Implementation Committee, or if the Interagency Plan Implementation Committee no longer exists, “IPIC” shall mean the designated staff member(s) within the City and/or TJPA that will recommend issuance of Tax Commencement Authorizations for Conditioned Projects within the CFD.

“Land Use” means residential, office, retail, hotel, parking, or child care use. For purposes of this RMA, the City shall have the final determination of the actual Land Use(s) on any Parcel within the CFD.

“Landlord” means an entity that owns at least twenty percent (20%) of the Rental Units within an Apartment Building or Converted Apartment Building.

“Market Rate Unit” means a Residential Unit that is not a Below Market Rate Unit.

“Maximum Special Tax” means the greatest amount of Special Tax that can be levied on a Taxable Parcel in the CFD in any Fiscal Year, as determined in accordance with Section C below.

“Net New Square Footage” means any Square Footage added to a Taxable Building after the Initial Square Footage in the Building has paid Special Taxes in one or more Fiscal Years.

“Office/Hotel Square Footage” or “Office/Hotel Square Foot” means Square Footage that is or is expected to be: (i) Square Footage of office space in which professional, banking, insurance, real estate, administrative, or in-office medical or dental activities are conducted, (ii) Square Footage that will be used by any organization, business, or institution for a Land Use that does not meet the definition of For-Sale Residential Square Footage Rental Residential Square Footage, or Retail Square Footage, including space used for cultural, educational, recreational, religious, or social service facilities, (iii) Taxable Child Care Square Footage, (iv) Square Footage in a residential care facility that is staffed by licensed medical professionals, and (v) any other Square Footage within a Taxable Building that does not fall within the definition provided for other Land Uses in this RMA. Notwithstanding the foregoing, street-level retail bank branches, real estate brokerage offices, and other such ground-level uses that are open to the public shall be categorized as Retail Square Footage pursuant to the Planning Code. Office/Hotel Square Foot means a single square-foot unit of Office/Hotel Square Footage.

For purposes of this RMA, “Office/Hotel Square Footage” shall also include Square Footage that is or is expected to be part of a non-residential structure that constitutes a place of lodging, providing temporary sleeping accommodations and related facilities. All Square Footage that shares an Assessor’s Parcel number within such a non-residential structure, including Square Footage of restaurants, meeting and convention facilities, gift shops, spas, offices, and other related uses shall be categorized as Office/Hotel Square Footage. If there are separate Assessor’s Parcel numbers for these other uses, the Administrator shall apply the Base Special Tax for Retail Square Footage to determine the Maximum Special Tax for Parcels on which a restaurant, gift shop, spa, or other retail use is located or anticipated, and the Base Special Tax for Office/Hotel Square Footage shall be used to determine the Maximum Special Tax for Parcels on
which other uses in the building are located. The Zoning Authority shall make the final determination as to the amount of Office/Hotel Square Footage within a building in the CFD.

“Planning Code” means the Planning Code of the City and County of San Francisco, as may be amended from time to time.

“Proportionately” means that the ratio of the actual Special Tax levied in any Fiscal Year to the Maximum Special Tax authorized to be levied in that Fiscal Year is equal for all Taxable Parcels.

“Rental Residential Square Footage” or “Rental Residential Square Foot” means Square Footage that is or is expected to be used for one or more of the following uses: (i) Rental Units, (ii) any type of group or student housing which provides lodging for a week or more and may or may not have individual cooking facilities, including but not limited to boarding houses, dormitories, housing operated by medical institutions, and single room occupancy units, or (iii) a residential care facility that is not staffed by licensed medical professionals. The Zoning Authority shall make the determination as to the amount of Rental Residential Square Footage within a Taxable Building in the CFD. Rental Residential Square Foot means a single square-foot unit of Rental Residential Square Footage.

“Rental Unit” means (i) all Market Rate Units within an Apartment Building, and (ii) all Market Rate Units within a Converted Apartment Building that have yet to be sold to an individual homeowner or investor. “Rental Unit” shall not include any Residential Unit which has been purchased by a homeowner or investor and subsequently offered for rent to the general public. The Administrator shall make the final determination as to whether a Market Rate Unit is a For-Sale Unit or a Rental Unit.

“Retail Square Footage” or “Retail Square Foot” means Square Footage that is or, based on the Certificate of Occupancy, will be Square Footage of a commercial establishment that sells general merchandise, hard goods, food and beverage, personal services, and other items directly to consumers, including but not limited to restaurants, bars, entertainment venues, health clubs, laundromats, dry cleaners, repair shops, storage facilities, and parcel delivery shops. In addition, all Taxable Parking Square Footage in a Building, and all street-level retail bank branches, real estate brokerages, and other such ground-level uses that are open to the public, shall be categorized as Retail Square Footage for purposes of calculating the Maximum Special Tax pursuant to Section C below. The Zoning Authority shall make the final determination as to the amount of Retail Square Footage within a Taxable Building in the CFD. Retail Square Foot means a single square-foot unit of Retail Square Footage.

“Residential Unit” means an individual townhome, condominium, live/work unit, or apartment within a Building in the CFD.

“Residential Use” means (i) any and all Residential Units within a Taxable Building in the CFD, (ii) any type of group or student housing which provides lodging for a week or more and may or may not have individual cooking facilities, including but not limited to boarding houses,
dormitories, housing operated by medical institutions, and single room occupancy units, and (iii) a residential care facility that is not staffed by licensed medical professionals.

“RMA” means this Rate and Method of Apportionment of Special Tax.

“Special Tax” means a special tax levied in any Fiscal Year to pay the Special Tax Requirement.

“Special Tax Requirement” means the amount necessary in any Fiscal Year to: (i) pay principal and interest on Bonds that are due in the calendar year that begins in such Fiscal Year; (ii) pay periodic costs on the Bonds, including but not limited to, credit enhancement, liquidity support and rebate payments on the Bonds, (iii) create and/or replenish reserve funds for the Bonds to the extent such replenishment has not been included in the computation of the Special Tax Requirement in a previous Fiscal Year; (iv) cure any delinquencies in the payment of principal or interest on Bonds which have occurred in the prior Fiscal Year; (v) pay Administrative Expenses; and (vi) pay directly for Authorized Facilities. The amounts referred to in clauses (i) and (ii) of the preceding sentence may be reduced in any Fiscal Year by: (i) interest earnings on or surplus balances in funds and accounts for the Bonds to the extent that such earnings or balances are available to apply against such costs pursuant to the Indenture; (ii) in the sole and absolute discretion of the City, proceeds received by the CFD from the collection of penalties associated with delinquent Special Taxes; and (iii) any other revenues available to pay such costs as determined by the Administrator.

“Square Footage” means, for any Taxable Building in the CFD, the net saleable or leasable square footage of each Land Use on each Taxable Parcel within the Building, as determined by the Zoning Authority. If a building permit is issued to increase the Square Footage on any Taxable Parcel, the Administrator shall, in the first Fiscal Year after the final building permit inspection has been conducted in association with such expansion, work with the Zoning Authority to recalculate (i) the Square Footage of each Land Use on each Taxable Parcel, and (ii) the Maximum Special Tax for each Taxable Parcel based on the increased Square Footage. The final determination of Square Footage for each Land Use on each Taxable Parcel shall be made by the Zoning Authority.

“Story” or “Stories” means a portion or portions of a Building, except a mezzanine as defined in the City Building Code, included between the surface of any floor and the surface of the next floor above it, or if there is no floor above it, then the space between the surface of the floor and the ceiling next above it.

“Taxable Building” means, in any Fiscal Year, any Building within the CFD that is, or is part of, a Conditioned Project, and for which a Certificate of Occupancy was issued and a Tax Commencement Authorization was received by the Administrator on or prior to June 30 of the preceding Fiscal Year. If only a portion of the Building is a Conditioned Project, as determined by the Zoning Authority, that portion of the Building shall be treated as a Taxable Building for purposes of this RMA.
“Tax Commencement Authorization” means a written authorization issued by the Administrator upon the recommendations of the IPIC and CPC in order to initiate the levy of the Special Tax on a Conditioned Project that has been issued a COO.

“Taxable Child Care Square Footage” means the amount of Square Footage determined by subtracting the Exempt Child Care Square Footage within a Taxable Building from the total net leasable square footage within a Building that is used for licensed child care facilities, as determined by the Zoning Authority.

“Taxable Parcel” means, within a Taxable Building, any Parcel that is not exempt from the Special Tax pursuant to law or Section G below. If, in any Fiscal Year, a Special Tax is levied on only Net New Square Footage in a Taxable Building, only the Parcel(s) on which the Net New Square Footage is located shall be Taxable Parcel(s) for purposes of calculating and levying the Special Tax pursuant to this RMA.

“Taxable Parking Square Footage” means Square Footage of parking in a Taxable Building that is determined by the Zoning Authority not to be Exempt Parking Square Footage.

“TJPA” means the Transbay Joint Powers Authority.

“Zoning Authority” means either the City Zoning Administrator, the Executive Director of the San Francisco Office of Community Investment and Infrastructure, or an alternate designee from the agency or department responsible for the approvals and entitlements of a project in the CFD. If there is any doubt as to the responsible party, the Administrator shall coordinate with the City Zoning Administrator to determine the appropriate party to serve as the Zoning Authority for purposes of this RMA.

B. DATA FOR CFD ADMINISTRATION

On or after July 1 of each Fiscal Year, the Administrator shall identify the current Assessor’s Parcel numbers for all Taxable Parcels in the CFD. In order to identify Taxable Parcels, the Administrator shall confirm which Buildings in the CFD have been issued both a Tax Commencement Authorization and a COO.

The Administrator shall also work with the Zoning Authority to confirm: (i) the Building Height for each Taxable Building, (ii) the For-Sale Residential Square Footage, Rental Residential Square Footage, Office/Hotel Square Footage, and Retail Square Footage on each Taxable Parcel, (iii) if applicable, the number of BMR Units and aggregate Square Footage of BMR Units within the Building, (iv) whether any of the Square Footage on a Parcel is subject to a Certificate of Exemption, and (v) the Special Tax Requirement for the Fiscal Year. In each Fiscal Year, the Administrator shall also keep track of how many Fiscal Years the Special Tax has been levied on each Parcel within the CFD. If there is Initial Square Footage and Net New Square Footage on a Parcel, the Administrator shall separately track the duration of the Special Tax levy in order to ensure compliance with Section F below.
In any Fiscal Year, if it is determined by the Administrator that (i) a parcel map or condominium plan for a portion of property in the CFD was recorded after January 1 of the prior Fiscal Year (or any other date after which the Assessor will not incorporate the newly-created parcels into the then current tax roll), and (ii) the Assessor does not yet recognize the newly-created parcels, the Administrator shall calculate the Special Tax that applies separately to each newly-created parcel, then applying the sum of the individual Special Taxes to the Assessor’s Parcel that was subdivided by recordation of the parcel map or condominium plan.

C. DETERMINATION OF THE MAXIMUM SPECIAL TAX

1. Base Special Tax

Once the Building Height of, and Land Use(s) within, a Taxable Building have been identified, the Base Special Tax to be used for calculation of the Maximum Special Tax for each Taxable Parcel within the Building shall be determined based on reference to the applicable table(s) below:

<table>
<thead>
<tr>
<th>Building Height</th>
<th>Base Special Tax Fiscal Year 2013-14*</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 – 5 Stories</td>
<td>$4.71 per For-Sale Residential Square Foot</td>
</tr>
<tr>
<td>6 – 10 Stories</td>
<td>$5.02 per For-Sale Residential Square Foot</td>
</tr>
<tr>
<td>11 – 15 Stories</td>
<td>$6.13 per For-Sale Residential Square Foot</td>
</tr>
<tr>
<td>16 – 20 Stories</td>
<td>$6.40 per For-Sale Residential Square Foot</td>
</tr>
<tr>
<td>21 – 25 Stories</td>
<td>$6.61 per For-Sale Residential Square Foot</td>
</tr>
<tr>
<td>26 – 30 Stories</td>
<td>$6.76 per For-Sale Residential Square Foot</td>
</tr>
<tr>
<td>31 – 35 Stories</td>
<td>$6.88 per For-Sale Residential Square Foot</td>
</tr>
<tr>
<td>36 – 40 Stories</td>
<td>$7.00 per For-Sale Residential Square Foot</td>
</tr>
<tr>
<td>41 – 45 Stories</td>
<td>$7.11 per For-Sale Residential Square Foot</td>
</tr>
<tr>
<td>46 – 50 Stories</td>
<td>$7.25 per For-Sale Residential Square Foot</td>
</tr>
<tr>
<td>More than 50 Stories</td>
<td>$7.36 per For-Sale Residential Square Foot</td>
</tr>
</tbody>
</table>
### Rental Residential Square Footage

<table>
<thead>
<tr>
<th>Building Height</th>
<th>Base Special Tax Fiscal Year 2013-14*</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 – 5 Stories</td>
<td>$4.43 per Rental Residential Square Foot</td>
</tr>
<tr>
<td>6 – 10 Stories</td>
<td>$4.60 per Rental Residential Square Foot</td>
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<tr>
<td>11 – 15 Stories</td>
<td>$4.65 per Rental Residential Square Foot</td>
</tr>
<tr>
<td>16 – 20 Stories</td>
<td>$4.68 per Rental Residential Square Foot</td>
</tr>
<tr>
<td>21 – 25 Stories</td>
<td>$4.73 per Rental Residential Square Foot</td>
</tr>
<tr>
<td>26 – 30 Stories</td>
<td>$4.78 per Rental Residential Square Foot</td>
</tr>
<tr>
<td>31 – 35 Stories</td>
<td>$4.83 per Rental Residential Square Foot</td>
</tr>
<tr>
<td>36 – 40 Stories</td>
<td>$4.87 per Rental Residential Square Foot</td>
</tr>
<tr>
<td>41 – 45 Stories</td>
<td>$4.92 per Rental Residential Square Foot</td>
</tr>
<tr>
<td>46 – 50 Stories</td>
<td>$4.98 per Rental Residential Square Foot</td>
</tr>
<tr>
<td>More than 50 Stories</td>
<td>$5.03 per Rental Residential Square Foot</td>
</tr>
</tbody>
</table>

### Office/Hotel Square Footage

<table>
<thead>
<tr>
<th>Building Height</th>
<th>Base Special Tax Fiscal Year 2013-14*</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 – 5 Stories</td>
<td>$3.45 per Office/Hotel Square Foot</td>
</tr>
<tr>
<td>6 – 10 Stories</td>
<td>$3.56 per Office/Hotel Square Foot</td>
</tr>
<tr>
<td>11 – 15 Stories</td>
<td>$4.03 per Office/Hotel Square Foot</td>
</tr>
<tr>
<td>16 – 20 Stories</td>
<td>$4.14 per Office/Hotel Square Foot</td>
</tr>
<tr>
<td>21 – 25 Stories</td>
<td>$4.25 per Office/Hotel Square Foot</td>
</tr>
<tr>
<td>26 – 30 Stories</td>
<td>$4.36 per Office/Hotel Square Foot</td>
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<tr>
<td>31 – 35 Stories</td>
<td>$4.47 per Office/Hotel Square Foot</td>
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<tr>
<td>36 – 40 Stories</td>
<td>$4.58 per Office/Hotel Square Foot</td>
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<tr>
<td>41 – 45 Stories</td>
<td>$4.69 per Office/Hotel Square Foot</td>
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<tr>
<td>46 – 50 Stories</td>
<td>$4.80 per Office/Hotel Square Foot</td>
</tr>
<tr>
<td>More than 50 Stories</td>
<td>$4.91 per Office/Hotel Square Foot</td>
</tr>
</tbody>
</table>

### Retail Square Footage

<table>
<thead>
<tr>
<th>Building Height</th>
<th>Base Special Tax Fiscal Year 2013-14*</th>
</tr>
</thead>
<tbody>
<tr>
<td>N/A</td>
<td>$3.18 per Retail Square Foot</td>
</tr>
</tbody>
</table>

* The Base Special Tax rates shown above for each Land Use shall escalate as set forth in Section D.1 below.

2. **Determining the Maximum Special Tax for Taxable Parcels**

Upon issuance of a Tax Commencement Authorization and the first Certificate of Occupancy for a Taxable Building within a Conditioned Project that is not an Affordable Housing Project, the
Administrator shall coordinate with the Zoning Authority to determine the Square Footage of each Land Use on each Taxable Parcel. The Administrator shall then apply the following steps to determine the Maximum Special Tax for the next succeeding Fiscal Year for each Taxable Parcel in the Taxable Building:

**Step 1.** Determine the Building Height for the Taxable Building for which a Certificate of Occupancy was issued.

**Step 2.** Determine the For-Sale Residential Square Footage and/or Rental Residential Square Footage for all Residential Units on each Taxable Parcel, as well as the Office/Hotel Square Footage and Retail Square Footage on each Taxable Parcel.

**Step 3.** *For each Taxable Parcel that includes only For-Sale Units,* multiply the For-Sale Residential Square Footage by the applicable Base Special Tax from Section C.1 to determine the Maximum Special Tax for the Taxable Parcel.

**Step 4.** *For each Taxable Parcel that includes only Rental Units,* multiply the Rental Residential Square Footage by the applicable Base Special Tax from Section C.1 to determine the Maximum Special Tax for the Taxable Parcel.

**Step 5.** *For each Taxable Parcel that includes only Residential Uses other than Market Rate Units,* net out the Square Footage associated with any BMR Units and multiply the remaining Rental Residential Square Footage (if any) by the applicable Base Special Tax from Section C.1 to determine the Maximum Special Tax for the Taxable Parcel.

**Step 6.** *For each Taxable Parcel that includes only Office/Hotel Square Footage,* multiply the Office/Hotel Square Footage on the Parcel by the applicable Base Special Tax from Section C.1 to determine the Maximum Special Tax for the Taxable Parcel.

**Step 7.** *For each Taxable Parcel that includes only Retail Square Footage,* multiply the Retail Square Footage on the Parcel by the applicable Base Special Tax from Section C.1 to determine the Maximum Special Tax for the Taxable Parcel.

**Step 8.** *For Taxable Parcels that include multiple Land Uses,* separately determine the For-Sale Residential Square Footage, Rental Residential Square Footage, Office/Hotel Square Footage, and/or Retail Square Footage. Multiply the Square Footage of each Land Use by the applicable Base Special Tax from Section C.1, and sum the individual amounts to determine the aggregate Maximum Special Tax for the Taxable Parcel for the first succeeding Fiscal Year.
D. CHANGES TO THE MAXIMUM SPECIAL TAX

1. Annual Escalation of Base Special Tax

The Base Special Tax rates identified in Section C.1 are applicable for fiscal year 2013-14. Beginning July 1, 2014 and each July 1 thereafter, the Base Special Taxes shall be adjusted by the Initial Annual Adjustment Factor. The Base Special Tax rates shall be used to calculate the Maximum Special Tax for each Taxable Parcel in a Taxable Building for the first Fiscal Year in which the Building is a Taxable Building, as set forth in Section C.2 and subject to the limitations set forth in Section D.3.

2. Adjustment of the Maximum Special Tax

After a Maximum Special Tax has been assigned to a Parcel for its first Fiscal Year as a Taxable Parcel pursuant to Section C.2 and Section D.1, the Maximum Special Tax shall escalate for subsequent Fiscal Years beginning July 1 of the Fiscal Year after the first Fiscal Year in which the Parcel was a Taxable Parcel, and each July 1 thereafter, by two percent (2%) of the amount in effect in the prior Fiscal Year. In addition to the foregoing, the Maximum Special Tax assigned to a Taxable Parcel shall be increased in any Fiscal Year in which the Administrator determines that Net New Square Footage was added to the Parcel in the prior Fiscal Year.

3. Converted Apartment Buildings

If an Apartment Building in the CFD becomes a Converted Apartment Building, the Administrator shall rely on information from the County Assessor, site visits to the sales office, data provided by the entity that is selling Residential Units within the Building, and any other available source of information to track sales of Residential Units. In the first Fiscal Year in which there is a Converted For-Sale Unit within the Building, the Administrator shall determine the applicable Base Maximum Special Tax for For-Sale Residential Units for that Fiscal Year. Such Base Maximum Special Tax shall be used to calculate the Maximum Special Tax for all Converted For-Sale Units in the Building in that Fiscal Year. In addition, this Base Maximum Special Tax, escalated each Fiscal Year by two percent (2%) of the amount in effect in the prior Fiscal Year, shall be used to calculate the Maximum Special Tax for all future Converted For-Sale Units within the Building. Solely for purposes of calculating Maximum Special Taxes for Converted For-Sale Units within the Converted Apartment Building, the adjustment of Base Maximum Special Taxes set forth in Section D.1 shall not apply. All Rental Residential Square Footage within the Converted Apartment Building shall continue to be subject to the Maximum Special Tax for Rental Residential Square Footage until such time as the units become Converted For-Sale Units. The Maximum Special Tax for all Taxable Parcels within the Building shall escalate each Fiscal Year by two percent (2%) of the amount in effect in the prior Fiscal Year.

4. BMR Unit/Market Rate Unit Transfers

If, in any Fiscal Year, the Administrator determines that a Residential Unit that had previously been designated as a BMR Unit no longer qualifies as such, the Maximum Special Tax on the
new Market Rate Unit shall be established pursuant to Section C.2 and adjusted, as applicable, by Sections D.1 and D.2. If a Market Rate Unit becomes a BMR Unit after it has been taxed in prior Fiscal Years as a Market Rate Unit, the Maximum Special Tax on such Residential Unit shall not be decreased unless: (i) a BMR Unit is simultaneously redesignated as a Market Rate Unit, and (ii) such redesignation results in a Maximum Special Tax on the new Market Rate Unit that is greater than or equal to the Maximum Special Tax that was levied on the Market Rate Unit prior to the swap of units. If, based on the Building Height or Square Footage, there would be a reduction in the Maximum Special Tax due to the swap, the Maximum Special Tax that applied to the former Market Rate Unit will be transferred to the new Market Rate Unit regardless of the Building Height and Square Footage associated with the new Market Rate Unit.

5. Changes in Land Use on a Taxable Parcel

If any Square Footage that had been taxed as For-Sale Residential Square Footage, Rental Residential Square Footage, Office/Hotel Square Footage, or Retail Square Footage in a prior Fiscal Year is rezoned or otherwise changes Land Use, the Administrator shall apply the applicable subsection in Section C.2 to calculate what the Maximum Special Tax would be for the Parcel based on the new Land Use(s). If the amount determined is greater than the Maximum Special Tax that applied to the Parcel prior to the Land Use change, the Administrator shall increase the Maximum Special Tax to the amount calculated for the new Land Uses. If the amount determined is less than the Maximum Special Tax that applied prior to the Land Use change, there will be no change to the Maximum Special Tax for the Parcel. Under no circumstances shall the Maximum Special Tax on any Taxable Parcel be reduced, regardless of changes in Land Use or Square Footage on the Parcel, including reductions in Square Footage that may occur due to demolition, fire, water damage, or acts of God. In addition, if a Taxable Building within the CFD that had been subject to the levy of Special Taxes in any prior Fiscal Year becomes all or part of an Affordable Housing Project, the Parcel(s) shall continue to be subject to the Maximum Special Tax that had applied to the Parcel(s) before they became part of the Affordable Housing Project. All Maximum Special Taxes determined pursuant to Section C.2 shall be adjusted, as applicable, by Sections D.1 and D.2.

6. Prepayments

If a Parcel makes a prepayment pursuant to Section H below, the Administrator shall issue the owner of the Parcel a Certificate of Exemption for the Square Footage that was used to determine the prepayment amount, and no Special Tax shall be levied on the Parcel in future Fiscal Years unless there is Net New Square Footage added to a Building on the Parcel. Thereafter, a Special Tax calculated based solely on the Net New Square Footage on the Parcel shall be levied for up to thirty Fiscal Years, subject to the limitations set forth in Section F below. Notwithstanding the foregoing, any Special Tax that had been levied against, but not yet collected from, the Parcel is still due and payable, and no Certificate of Exemption shall be issued until such amounts are fully paid. If a prepayment is made in order to exempt Taxable Child Care Square Footage on a Parcel on which there are multiple Land Uses, the Maximum Special Tax for the Parcel shall be recalculated based on the exemption of this Child Care Square Footage which shall, after such prepayment, be designated as Exempt Child Care Square Footage and remain exempt in all Fiscal Years after the prepayment has been received.
E. **METHOD OF LEVY OF THE SPECIAL TAX**

Each Fiscal Year, the Special Tax shall be levied Proportionately on each Taxable Parcel up to 100% of the Maximum Special Tax for each Parcel for such Fiscal Year until the amount levied on Taxable Parcels is equal to the Special Tax Requirement.

F. **COLLECTION OF SPECIAL TAX**

The Special Taxes for CFD No. 2014-1 shall be collected in the same manner and at the same time as ordinary ad valorem property taxes, provided, however, that prepayments are permitted as set forth in Section H below and provided further that the City may directly bill the Special Tax, may collect Special Taxes at a different time or in a different manner, and may collect delinquent Special Taxes through foreclosure or other available methods.

The Special Tax shall be levied and collected from the first Fiscal Year in which a Parcel is designated as a Taxable Parcel until the principal and interest on all Bonds have been paid, the City’s costs of constructing or acquiring Authorized Facilities from Special Tax proceeds have been paid, and all Administrative Expenses have been paid or reimbursed. Notwithstanding the foregoing, the Special Tax shall not be levied on any Square Footage in the CFD for more than thirty Fiscal Years, except that a Special Tax that was lawfully levied in or before the final Fiscal Year and that remains delinquent may be collected in subsequent Fiscal Years. After a Building or a particular block of Square Footage within a Building (i.e., Initial Square Footage vs. Net New Square Footage) has paid the Special Tax for thirty Fiscal Years, the then-current record owner of the Parcel(s) on which that Square Footage is located shall be issued a Certificate of Exemption for such Square Footage. Notwithstanding the foregoing, the Special Tax shall cease to be levied, and a Release of Special Tax Lien shall be recorded against all Parcels in the CFD that are still subject to the Special Tax, after the Special Tax has been levied in the CFD for seventy-five Fiscal Years.

Pursuant to Section 53321 (d) of the Act, the Special Tax levied against Residential Uses shall under no circumstances increase more than ten percent (10%) as a consequence of delinquency or default by the owner of any other Parcel or Parcels and shall, in no event, exceed the Maximum Special Tax in effect for the Fiscal Year in which the Special Tax is being levied.

G. **EXEMPTIONS**

Notwithstanding any other provision of this RMA, no Special Tax shall be levied on: (i) Square Footage for which a prepayment has been received and a Certificate of Exemption issued, (ii) Below Market Rate Units except as otherwise provided in Sections D.3 and D.4, (iii) Affordable Housing Projects, including all Residential Units, Retail Square Footage, and Office Square Footage within buildings that are part of an Affordable Housing Project, except as otherwise provided in Section D.4, and (iv) Exempt Child Care Square Footage.
H. PREPAYMENT OF SPECIAL TAX

The Special Tax obligation applicable to Square Footage in a building may be fully prepaid as described herein, provided that a prepayment may be made only if (i) the Parcel is a Taxable Parcel, and (ii) there are no delinquent Special Taxes with respect to such Assessor’s Parcel at the time of prepayment. Any prepayment made by a Parcel owner must satisfy the Special Tax obligation associated with all Square Footage on the Parcel that is subject to the Special Tax at the time the prepayment is calculated. An owner of an Assessor’s Parcel intending to prepay the Special Tax obligation shall provide the City with written notice of intent to prepay. Within 30 days of receipt of such written notice, the City or its designee shall notify such owner of the prepayment amount for the Square Footage on such Assessor’s Parcel. Prepayment must be made not less than 75 days prior to any redemption date for Bonds to be redeemed with the proceeds of such prepaid Special Taxes. The Prepayment Amount for a Taxable Parcel shall be calculated as follows:

Step 1: Determine the Square Footage of each Land Use on the Parcel.

Step 2: Determine how many Fiscal Years the Square Footage on the Parcel has paid the Special Tax, which may be a separate total for Initial Square Footage and Net New Square Footage on the Parcel. If a Special Tax has been levied, but not yet paid, in the Fiscal Year in which the prepayment is being calculated, such Fiscal Year will be counted as a year in which the Special Tax was paid, but a Certificate of Exemption shall not be issued until such Special Taxes are received by the City’s Office of the Treasurer and Tax Collector.

Step 3: Subtract the number of Fiscal Years for which the Special Tax has been paid (as determined in Step 2) from 30 to determine the remaining number of Fiscal Years for which Special Taxes are due from the Square Footage for which the prepayment is being made. This calculation would result in a different remainder for Initial Square Footage and Net New Square Footage within a building.

Step 4: Separately for Initial Square Footage and Net New Square Footage, and separately for each Land Use on the Parcel, multiply the amount of Square Footage by the applicable Maximum Special Tax that would apply to such Square Footage in each of the remaining Fiscal Years, taking into account the 2% escalator set forth in Section D.2, to determine the annual stream of Maximum Special Taxes that could be collected in future Fiscal Years.

Step 5: For each Parcel for which a prepayment is being made, sum the annual amounts calculated for each Land Use in Step 4 to determine the annual Maximum Special Tax that could have been levied on the Parcel in each of the remaining Fiscal Years.
Step 6. Calculate the net present value of the future annual Maximum Special Taxes that were determined in Step 5 using, as the discount rate for the net present value calculation, the true interest cost (TIC) on the Bonds as identified by the Office of Public Finance. If there is more than one series of Bonds outstanding at the time of the prepayment calculation, the Administrator shall determine the weighted average TIC based on the Bonds from each series that remain outstanding. The amount determined pursuant to this Step 6 is the required prepayment for each Parcel. Notwithstanding the foregoing, if at any point in time the Administrator determines that the Maximum Special Tax revenue that could be collected from Square Footage that remains subject to the Special Tax after the proposed prepayment is less than 110% of debt service on Bonds that will remain outstanding after defeasance or redemption of Bonds from proceeds of the estimated prepayment, the amount of the prepayment shall be increased until the amount of Bonds defeased or redeemed is sufficient to reduce remaining annual debt service to a point at which 110% debt service coverage is realized.

Once a prepayment has been received by the City, a Certificate of Exemption shall be issued to the owner of the Parcel indicating that all Square Footage that was the subject of such prepayment shall be exempt from Special Taxes.

I. INTERPRETATION OF SPECIAL TAX FORMULA

The City may interpret, clarify, and revise this RMA to correct any inconsistency, vagueness, or ambiguity, by resolution and/or ordinance, as long as such interpretation, clarification, or revision does not materially affect the levy and collection of the Special Taxes and any security for any Bonds.

J. SPECIAL TAX APPEALS

Any taxpayer who wishes to challenge the accuracy of computation of the Special Tax in any Fiscal Year may file an application with the Administrator. The Administrator, in consultation with the City Attorney, shall promptly review the taxpayer’s application. If the Administrator concludes that the computation of the Special Tax was not correct, the Administrator shall correct the Special Tax levy and, if applicable in any case, a refund shall be granted. If the Administrator concludes that the computation of the Special Tax was correct, then such determination shall be final and conclusive, and the taxpayer shall have no appeal to the Board from the decision of the Administrator.

The filing of an application or an appeal shall not relieve the taxpayer of the obligation to pay the Special Tax when due.

Nothing in this Section J shall be interpreted to allow a taxpayer to bring a claim that would otherwise be barred by applicable statutes of limitation set forth in the Act or elsewhere in applicable law.
### Exhibit D
Performance Benchmarks
[All capitalized terms shall have the meaning given to them in the Agreement]

<table>
<thead>
<tr>
<th>Task</th>
<th>Time Frame</th>
<th>Target Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>ENA signed by Developer</td>
<td></td>
<td>August 2014</td>
</tr>
<tr>
<td>ENA approved by Commission on Community Investment and Infrastructure (“CCII”)</td>
<td></td>
<td>September 2, 2014</td>
</tr>
<tr>
<td>Payment of ENA Deposit</td>
<td>Within 30 days after ENA approved</td>
<td>September 2014</td>
</tr>
<tr>
<td>Resubmission of Basic Conceptual Design with revisions responding to OCII and Planning Department Concerns (separate Design Workshop with CCII if necessary)</td>
<td></td>
<td>October 2014</td>
</tr>
<tr>
<td>Notification Period for Proposed Plan Amendment</td>
<td></td>
<td>TBD</td>
</tr>
<tr>
<td>CCII Hearing To Consider Proposed Plan Amendment</td>
<td></td>
<td>TBD</td>
</tr>
<tr>
<td>Plan Amendment General Plan Consistency Finding at Planning Commission</td>
<td></td>
<td>TBD</td>
</tr>
<tr>
<td>Board of Supervisors to Hear Proposed Plan Amendment</td>
<td></td>
<td>TBD</td>
</tr>
<tr>
<td>Submission to OCII – Supplemental Environmental Studies for Project</td>
<td></td>
<td>January 2015</td>
</tr>
<tr>
<td>Submission to OCII – Schematic Design Documents for Project</td>
<td></td>
<td>January 2015</td>
</tr>
<tr>
<td>Approval by OCII – Supplemental Environmental Studies for Project</td>
<td>Within 30 days after submission of the Supplemental Environmental Studies</td>
<td>February 2015</td>
</tr>
<tr>
<td>Approval of Schematic Design Documents for Project – OCII</td>
<td>Completeness check within 7 working days after submittal. Approval within 60 days after the date Schematic Design is determined to be complete.</td>
<td>March 2015</td>
</tr>
<tr>
<td>Approval of Plan Amendment</td>
<td></td>
<td>March 2015</td>
</tr>
<tr>
<td>Planning Commission Hearing re: Prop M Allocation and Finalization of Allocation</td>
<td></td>
<td>March 2015</td>
</tr>
<tr>
<td>CCII Hearing to consider approval of DDA and Schematic Design Documents for Project (separate Design Workshop if necessary); execute DDA</td>
<td>No later than expiration of ENA term; OCII discretion to extend per Section 2.A of the ENA.</td>
<td>March 31, 2015</td>
</tr>
</tbody>
</table>

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## DDA Performance Benchmarks

<table>
<thead>
<tr>
<th>Task</th>
<th>Time Frame</th>
<th>Target Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Developer pays the $2,000,000 Good Faith Deposit</td>
<td>Within 30 days after effective date of the DDA</td>
<td>April 2015</td>
</tr>
<tr>
<td>Board of Supervisors’ Hearing re: Section 33433 Findings for Project</td>
<td></td>
<td>April 2015</td>
</tr>
<tr>
<td>Submission to OCII – Design Development Documents</td>
<td></td>
<td>August 2015</td>
</tr>
<tr>
<td>Payment of Purchase Price and Close of Escrow</td>
<td></td>
<td>September 1, 2015</td>
</tr>
<tr>
<td>Approval by OCII Staff – Design Development Documents</td>
<td>Completeness check within 7 working days after submittal. Approval within 49 days after the date Design Development Documents are determined to be complete.</td>
<td>October 2015</td>
</tr>
<tr>
<td>Commencement of Construction</td>
<td></td>
<td>April 2016</td>
</tr>
<tr>
<td>Submission to OCII – Final Construction Documents</td>
<td>Concurrent with submittal to DBI</td>
<td>July 2016</td>
</tr>
<tr>
<td>Approval by OCII staff – Final Construction Documents</td>
<td>Within 30 days of submission of the Final Construction Documents</td>
<td>August 2016</td>
</tr>
<tr>
<td>Completion of Construction and obtain certificate of occupancy</td>
<td>Within 38 months after start of construction</td>
<td>May 2019</td>
</tr>
</tbody>
</table>
BACKGROUND

This Transbay Design Review and Document Approval Procedure ("DRDAP") sets forth the procedure for design submittals of the plans and specifications for the developments of Block 5 of Zone 1 of the Transbay Redevelopment Project Area ("Project Area") and their review and consideration for approval by the Office of Community Investment and Infrastructure ("OCII"), as Successor Agency to the former San Francisco Redevelopment Agency (the “Former Agency”). The development will include a mixed use residential and commercial project, new streetscape designs, public and private open spaces, and other permanent structures. Other departments and agencies of the City and County of San Francisco ("City Agencies") will review plans and specifications for compliance with applicable City and County of San Francisco ("City") regulations.

Documents for Project Approval

Project Approval documents shall consist of three components or stages:

- Schematic Design Documents,
- Design Development Documents, and
- Final Construction Documents.

Detailed submission requirements are outlined in Exhibit 1.

Scope Of Review

OCII in consultation with the San Francisco Planning Department and the San Francisco Department of Building Inspection (DBI), and other City Agencies shall review and approve Schematic Design plans, Design Development Documents and Final Construction Documents, each as defined below, for conformity with any prior approvals, the Redevelopment Plan for the Project Area ("Redevelopment Plan") and accompanying Plan Documents, including but not limited to the Transbay Development Controls and Design Guidelines ("Development Controls") and the Transbay Redevelopment Project Area Streetscape and Open Space Concept Plan ("Streetscape Plan"). The Planning Department’s review will be in accordance with the Delegation Agreement dated May 3, 2005. OCII's review shall include consideration of such items as the architectural design, site planning and landscape design as applicable and appropriate to each submittal.

Timing

The redevelopment of Zone 1 of the Project Area established by the Redevelopment Plan and the Development Controls is a priority project for the City and OCII. OCII shall review all applications for project approvals as expeditiously as possible. OCII staff shall keep the applicant informed of OCII's review and comments, as well as comments by City Agencies, other government agencies, or community organizations consulted by OCII, and shall provide applicant opportunities to meet and
confer with OCII and City staff prior to the Commission on Community Investment and Infrastructure ("CCII") hearing, to review the specific application for project approval.

**Other Project Approval Requirements**

*Resubmission of Basic Conceptual Designs*

The applicant shall submit a revised design concept responding to feedback received from OCII. The submission shall include pre-schematic level drawings in color, including a site plan, sections, select floor plans, building elevations, and perspective sketches.

*Mitigation Monitoring Report*

The applicant shall submit a report regarding compliance with the Mitigation Monitoring and Reporting Program previously adopted by the Former Agency pursuant to the California Environmental Quality Act (CEQA). The mitigation measures are a part of the Final Environmental Impact Statement/Environmental Impact Report for the Project Area (EIS/EIR). The mitigation measures are intended to reduce the major impacts of this development on the environment. OCII shall review such report to ensure compliance with the CEQA and the adopted Mitigation Monitoring and Reporting Program.

*Pre-Submission Conference(s)*

Prior to filing an application for any project approval, the applicant or applicants may submit to OCII project review staff preliminary maps, plans, design sketches and other data concerning the proposed project and request a pre-submission conference. Within fifteen (15) days after the receipt of such request and material, OCII staff shall hold a conference with the applicant to discuss the proposed application.

*Cooperation by Applicant*

In addition to the required information set forth in Exhibit 1 attached hereto, the applicant shall submit materials and information as OCII staff may reasonably request which are consistent with the type of documents listed in Exhibit 1 and which are required to clarify a submittal provided pursuant to this DRDAP. Additionally, the applicant shall cooperate with, and participate in, design review presentations to the CCII and to the public through the Transbay Citizens Advisory Committee ("CAC").

*Community Review of Design Submittals*

OCII staff will provide the CAC, its designee, or successor, with regular updates on the design review process. Once a submittal is deemed complete, OCII staff will schedule CAC meetings to allow adequate review by CAC and community members before further approvals.

Before bringing Schematic Design proposals to the CCII for consideration, the Developer shall bring their design proposal before the CAC, its designee, or successor for a recommendation to the CCII. The Developer shall provide the CAC with sufficient presentation materials to fully describe design submittals, using the submission materials described in Exhibit 1 and/or other presentations materials as determined by OCII staff.
SCHEMATIC DESIGN REVIEW

Schematic Design Documents shall be submitted to the OCII for review and consideration. Schematic Design Documents shall relate to schematic design level of detail for a specific project.

Timing

OCII staff shall review the Schematic Design for completeness and advise the applicant in writing of any deficiencies within fifteen (15) working days following receipt of the applicant’s Schematic Design submittal. In the event OCII staff does not so advise the applicant, the application for Schematic Design shall be deemed complete. The time limit for OCII staff’s review shall be within sixty (60) days from the date the Schematic Design has been determined to be complete. OCII shall take such reasonable measures necessary to comply with the time periods set forth herein.

The CCII shall review and approve, conditionally approve or disapprove the application for Schematic Design. If the CCII disapproves the Schematic Design in whole or in part, the CCII shall set forth the reasons for such disapproval in the resolution adopted by the CCII. If the CCII conditionally approves the Schematic Design, such approval shall set forth the concerns and/or conditions on which the CCII is granting approval. If the CCII disapproves an application in part or approves the application subject to specified conditions, then, in the sole discretion of the CCII, the CCII may delegate approval of such resubmitted or corrected documents to OCII design review staff.

The applicant and OCII may agree to any extension of time necessary to allow revisions of submittals. OCII shall review all revisions as expeditiously as possible. If revisions are made within an existing review period, the revisions shall permit up to fifteen (15) days of additional review within the original timeframe of review or within a revised time frame of the extension agreed to by OCII and the applicant. If revisions made after an original design approval by the CCII, and the revisions are determined to be required to be resubmitted to the CCII, the CCII shall either approve or disapprove such resubmitted or corrected documents as soon as practicable.

Document Submittals

The applicant shall submit Schematic Design Documents, which plans shall include the documents and information listed in Exhibit 1 attached hereto. OCII staff may waive certain document submittal requirements if OCII staff determines such documents are not necessary for the specific application.

DESIGN DEVELOPMENT REVIEW

Design Development Documents shall be submitted for review and either approval, conditional approval, or disapproval by OCII architectural staff, following approval of the Schematic Design.

Scope

OCII staff shall review the Design Development Documents for consistency with earlier approved documents, the Redevelopment Plan and other Plan Documents, including the Development Controls and the Streetscape Plan. Design Development Documents will relate to design development level of detail for a specific project. The purpose of this submittal is to expand and develop the Schematic
Design incorporating changes resulting from resolution of comments and concerns during the Schematic Design phase and to prepare drawings and other documents as to architectural, structural, mechanical and electrical systems.

**Timing**

OCII staff shall review the Design Development Documents for completeness and general consistency with the schematic design and shall advise the applicant in writing of any deficiencies within fifteen (15) working days after the receipt of the Design Development Documents. In the event OCII staff does not so advise the applicant, the Design Development Documents shall be deemed complete. The time limit for OCII staff’s review shall be sixty (60) days from the date the Design Development Documents were determined to be complete. OCII staff shall take such reasonable measures necessary to comply with the time periods set forth herein. If the Design Development deviates significantly from the approved schematic design, does not meet the conditions outlined in the schematic approval, or extensive revisions or clarifications to the Design Development are required, the time limit may be extended at OCII Executive Director’s discretion.

The applicant and OCII staff may agree to any extension of time necessary to allow revisions of submittals prior to a decision by OCII architectural staff. OCII architectural staff shall review all such revisions as expeditiously as possible, within the time frame of the extension agreed to by OCII architectural staff and the applicant.

**Document Submittals**

The applicant shall submit Design Development Documents, which submittal shall include the documents and information listed in Exhibit 1 attached hereto. OCII staff may waive certain document submittal requirements if OCII staff determines such documents are not necessary for the specific application.

**FINAL CONSTRUCTION DOCUMENT REVIEW**

**Scope**

Final Construction Documents will relate to the construction documents’ level of detail for a specific project. The purpose of this submittal is to expand and develop the Design Development Documents to their final form, prepare drawings and specifications in sufficient detail to set forth the requirements of construction of the project and to provide for permitting. Final Construction Documents may be divided and submitted in accordance with an addenda schedule for the project approved in writing in advance by the City’s Department of Building Inspection and OCII architectural staff or their designee. Provided the applicant’s Final Construction Documents are delivered to OCII architectural staff concurrently with submittal to the Department of Building Inspection, Final Construction Documents shall be reviewed by OCII architectural staff within thirty (30) days following OCII staff’s receipt of such documents from and approved by the Department of Building Inspection and any other appropriate City Agencies with jurisdiction. In the event that the applicant’s Final Construction Documents are not delivered concurrently to OCII staff, OCII staff shall review the Final Construction Documents as expeditiously as possible.

**Document Submittals**
Documents submitted at this stage in the design review will relate to the construction documents level of detail for a specific project. The Final Construction Documents submittal shall include the information specified for the Design Development Documents in Exhibit 1 attached hereto.

**COMPLIANCE WITH OTHER LAWS AND PERMITS**

No OCII or CCII review will be made or approval given as to the compliance of the Design Development Documents or Final Construction Documents with any building codes and standards, including building engineering and structural design, or compliance with building codes or regulations, or any other applicable state or federal law or regulation relating to construction standards or requirements, including, without limitation, compliance with any local, state or federal law or regulation related to the suitability of the improvements for use by persons with physical disabilities.

**OCII Review Of City Permits**

No demolition, new construction, tenant improvement, alteration, or signage permit shall be issued by the Department of Building Inspection unless OCII has reviewed and approved the permit application.

**Subdivision Map Review**

The review and approval of Design and Construction Documents by OCII pursuant to this DRDAP are in addition to and do not waive the requirements for subdivision review and approval as specified in the Subdivision Map Act. The processing of a subdivision map may occur concurrently with or independently of a project approval.

**Temporary and Interim Uses**

OCII staff shall review applications for temporary and interim uses.

**Site Permits**

The applicant may apply for a Site Permit and addenda from the Department of Building Inspection upon OCII staff’s determination that the Design Development Documents are approved or conditionally approved and generally consistent with the Schematic Design Documents. The applicant however may not obtain an approved Site Permit until the Design Development documents have been approved or conditionally approved by OCII staff. Applicant may apply for a Site Permit after approval of the Schematic Design Documents but prior to approval of the Design Development Documents or the Final Construction Documents at its own risk.

Notwithstanding the foregoing, the applicant may also apply for City permits related to grading and excavation activities prior to OCII architectural staff's approval of the Design Development Documents, provided that OCII architectural staff approves such activities prior to issuance of any City permits. Grading and excavation are often the first two addenda to site permits.

Pursuant to such site permit process, the Final Construction Documents may be divided and submitted to the Department of Building Inspection in accordance with an addenda schedule for the project approved in writing in advance by OCII architectural staff and the Department of Building Inspection.
Construction may proceed after the appropriate Site Permit addenda have been issued, including, for example, and without limitation, addenda for foundations, superstructure, and final building build-out. In no case shall construction deviate from, or exceed the scope of, the issued addenda.

MODIFICATIONS AND AMENDMENTS TO PROJECT APPROVAL

OCII staff may, by written decision, approve project applications which amend or modify the previously approved project, provided that OCII the following determinations are made:

(1) the project approval requested involves a deviation that does not constitute a material change;
(2) the requested project approval will not be detrimental to the public welfare or injurious to the property or improvements in the vicinity of the project; and
(3) the granting of the project approval will be consistent with the general purposes and intent of the Transbay Redevelopment Plan, Development Standards and Design Guidelines, and other Plan Documents.

In the event that OCII determines that the project application deviates materially from the project already approved by OCII, OCII may require submittal of an amended project application, as appropriate, for review by the CCII and City Agencies in accordance with the provisions herein.

Major amendments and modifications will be processed in accordance with this DRDAP.

GOVERNMENT REQUIRED PROVISIONS, CHANGES

OCII and the applicant acknowledge and agree that neither one will delay or withhold its review or approval of those elements of or changes in the Schematic Design, Design Development Documents or Final Construction Documents which are required by any City agency, including the City's Department of Building Inspection, the Fire Marshall, or any other government agency having jurisdiction; provided, however, that (i) the party whose review or approval is sought shall have been afforded a reasonable opportunity to discuss such element of, or change in, documents with the governmental authority requiring such element or change and with either the applicant's or OCII's architect, as the case may be, and (ii) the applicant or OCII shall have reasonably cooperated with the other and such governmental authority in seeking such reasonable modifications of such required element or change as the other shall deem necessary or desirable. The applicant and OCII each agrees to use its diligent, good faith efforts to obtain the other's approval of such elements or changes, and its request for reasonable modifications to such required elements or changes, as soon as reasonably possible.
During each stage of the project design review process, OCII architectural staff and the applicant shall agree upon the scale of the drawings for project submissions. OCII staff and the applicant shall also discuss and agree upon the scope of the subsequent project submissions recognizing that each project is unique and that all documents outlined herein may not be required for each project.

Design Development Documents and other Construction Documents to be submitted shall be prepared by an architect licensed to practice in and by the State of California.

The applicant shall submit a report outlining compliance with the adopted Mitigation and Monitoring Program with each stage of design review.

**SCHEMATIC DESIGN**

Six (6) hard copies of the Schematic Design Documents shall be submitted to OCII, as well as one digital file (PDF). Documents submitted at this stage in the design review will relate to schematic design level of detail for a specific project. The program of uses, the height of buildings or other factors in the proposed project may trigger some variation in the submittal requirements in order to illustrate consistency with standards and guidelines in the Transbay Redevelopment Plan, Development Controls, the Streetscape Plan, the EIS/EIR and other Plan Documents. Schematic Designs will illustrate building height, building bulk, block development, streetscape installation, public infrastructure and schematic park designs. A Schematic Design submittal will include the following documents.

**Written Statement**

Each submittal shall include a written statement of the design strategy and the proposed land use program; conformance with the Development Standards and Design Guidelines and sustainability measures to be implemented by the proposed development; descriptions of the structural system and principal building materials; and floor area calculations.

**Data Charts**

Data charts submitted should provide information for the project being proposed, including:

1) Program of uses and approximate square footage of each use
2) Approximate square footage of all proposed parcels
3) Housing unit count including affordable units
4) Number of on and off-street automobile parking, bike parking and loading spaces, including car share spaces (if any).

**Schematic Design Drawings**
Vicinity Plan

In addition to the site plan for the immediate area of the project under review, a diagrammatic vicinity plan should be submitted showing this project in the context of planned and existing:

1) Land uses, particularly retail facilities;
2) Vehicular, transit bicycle and pedestrian circulation; and
3) Public open space and community facilities

Infrastructure Plans

Infrastructure Plans should be submitted showing this project in the context of planned and/or existing:

1) Proposed roadway and streetscape improvements (including pathways) and the dimensions thereof;
2) Off-site transportation measures required as part of the Mitigation and Monitoring program (if any); and
3) Utilities, including water, wastewater, and dry utilities.

Site Plan

The Site Plan will pertain to the total area of development and improvement included in this project which may include required streets, open space and other existing infrastructure improvements. A Site Plan or Plans as needed (at a scale of 1" = 40'-0" or another appropriate scale as agreed to by OCII staff), should indicate the location of uses; the general location, scale, relationship, and orientation of buildings; the general site circulation and relationship of ground floor uses, and:

1) Phasing (if any), proposed parcel boundaries and dimensions
2) Building footprints and proposed uses
3) Massing of future buildings including height and bulk measurements, illustrated in plans, sections and three dimensional figures
4) Planned public open space areas
5) Private open space areas
6) Setback areas
7) Diagram of proposed roads, sidewalks, and pedestrian connections
8) Parking and loading facilities (including interim facilities)
9) Circulation diagram including entry locations for pedestrians, autos, bikes, and service vehicles
**Phasing Plan**

Within the project, any anticipated phasing of construction or temporary improvements, including temporary or interim parking facilities, construction staging areas, and interim infrastructure, if any, shall be indicated.

**Site sections** showing height relationships of those areas noted above. Scale: minimum 1" = 40'-0" (or another appropriate scale as agreed to by OCII staff).

**Building plans, elevations and sections** sufficient to describe the development proposal, the general architectural character, and materials proposed at appropriate scale to fully explain the concept. Scale: minimum 1/16"=1 '0 (or another appropriate scale as agreed to by OCII staff)

**Landscape plans and elevations** sufficient to describe the development proposal, the general landscape and open space character, and materials proposed at appropriate scale to fully explain the concept. Scale: minimum 1/16"=1 '0 (or another appropriate scale as agreed to by OCII staff)

**Model**

A model shall be submitted to OCII which shall be prepared at an appropriate scale indicating the exterior building design including façade articulation and texture of materials.

**Perspectives, Sketches and Renderings**

Perspectives, sketches, and renderings, (and other appropriate illustrative materials acceptable to OCII) as necessary to indicate the architectural character of the project and its relationship to the pedestrian level shall be submitted to OCII.

**Materials Board**

Samples of proposed materials and exterior colors for both buildings and landscapes shall be submitted to OCII in a manner to allow reviewing staff and members of the public to understand where materials are to be used and how they relate to each other.

**DESIGN DEVELOPMENT DOCUMENTS**

Documents submitted at the design development stage in design review will relate to design development level of detail for a specific project. The purpose of this submittal is to expand and develop the Schematic Design incorporating changes resulting from resolution of comments and concerns during the Schematic Design phase and to prepare drawings and other documents as to architectural, structural, mechanical and electrical systems.

The Design Development Document submission for a specific project should generally be consistent with the Schematic Design approval.

**Site plans showing where applicable:**
• Building relationships to landscaped areas, parking facilities, loading facilities, roads, sidewalks, mid-block connections, any transit facilities, and both public and private open space areas. All land uses within the subject parcel shall be designated. Streets and points of vehicular and pedestrian access shall be shown, indicating proposed new paving, planting and lighting if applicable.

• All utilities or service facilities which are a part of or link this project to the public infrastructure shall be shown.

• Grading plans depicting proposed finish site elevations.

• Site drainage and roof drainage.
  Required connections to existing and proposed utilities.

• All existing structures adjacent the site.

• Building floor plans and elevations including structural system, at an appropriate scale (1/8" to 1' minimum, or another appropriate scale as agreed to by OCII staff).

• Building sections showing typical cross sections at an appropriate scale, and in particular indicating street walls and adjacent open spaces, relationship of ground floor uses to pedestrian outdoor areas, and including mechanical equipment.

• Landscape design plans showing details of landscape elements including walls, fences, planting, outdoor lighting, ground surface materials. Appropriate reference to improvements in the City’s right of way shall be shown.

• Drawings showing structural, mechanical and electrical systems.

• Materials and colors samples as they may vary from those submitted for Schematic Design approval.

• Sign locations and design.

• Outline specifications for materials and methods of construction.

• Roof plan showing location of and screen design for all rooftop equipment; and roof drainage.

• Wall sections illustrating exterior cladding systems, store fronts, canopies, etc. at an appropriate scale (1/8" minimum).

• Design details of all primary exterior conditions sufficient to establish baseline for Final Construction Documents.

FINAL CONSTRUCTION DOCUMENTS

Documents submitted at this stage in the design review will relate to the construction documents level of detail for a specific project. The purpose of this submittal is to expand and develop the Design Development Documents, prepare drawings and specifications in sufficient detail to set forth the requirements of construction of the project and to provide for permitting.

The Final Construction Documents shall generally be consistent with the approved Design Development Documents. The Final Construction Documents shall comply with the requirements of the City's Department of Building Inspection, including Site Plans and Construction Drawings and Specifications
ready for bidding. In addition, the applicant shall submit a presentation of all exterior color schedules including samples, if appropriate, and design drawings for all exterior signs and graphics prior to completed construction. OCII architectural staff and applicant shall continue to work to resolve any outstanding design issues, as necessary.
Architectural concept
The proposed project does not establish an overall compelling logic, invention, or narrative that generates opportunities for unique design. The project designers should strengthen the design concept as it will foster greater character, programmatic, public interface, or material benefits. For a project of this prominence, the project concept should respond to the context of the city and address its time and place as a future historic artifact.

Massing & Cladding
The proposed massing and cladding systems are two primary design drivers that together miss an opportunity for superior design. The building form consists of conjoined and extruded masses pushed to different heights to align with the required height and bulk floor plate requirements. The cladding is homogenous from top to bottom, except the ground level, and consists of a seemingly conventional curtainwall system with vertical fins and horizontal markers every five floors. The result is a set of masses without clear definition wrapped in an overly consistent skin.

The project should define itself or its parts with a clear formal logic. Some examples of this might include: as a tower with a base; a continuously shaped form that modulates between a horizontal base and slender tower; or as a set of elements that have an identifiable relationship either through a formal operation (rotation, offset, intersection, etc.) or through detailing (reveals, corners, framing of smaller elements, etc.).

As a partner to the massing system, the cladding might introduce another type or shift to support a change in form, adjust a consistent system in density, material, or rhythm, or modulate through a medium-scale articulation. The cladding currently does not respond or reflect the façade orientation, height, and does so minimally at the ground level. As cladding is such a dominant feature of high-rise design, designers should consider creative materials choices, textures, and configurations to respond to the architectural concept, enclosure system requirements, and code demands. The ground and top of the building should be exceptional and identifiable from pedestrian and remote distances respectively. The base and upper base should have a more refined, detailed, and identifiable presence that brings the scale of the building to the street. The project should add operable windows where possible, particularly in the base to promote active interfaces with the street. The entries should be hierarchically pronounced with canopies or other architectural-scaled elements.

Ground Floor
The ground floor will need significant reconfiguration in both program and architectural character to satisfying active use goals. The office lobby sides that dominate the overall interface at the Howard and Beale Street sides are currently longer than the 40’ or 25% maximum permitted by city planning code. Reducing the lobby interface at the street would allow for additional active retail use with openings relating to all public realm areas including the existing corner POPOS. The architectural character of the ground level should be more variable in material and form to provide interest to pedestrians. The number and size of loading bays on Natoma are excessive should be located underground and accessible from the parking garage entry or minimally present to the street.

Landscape / Terraces
The current landscape design for M1 and N3 have no clear identity, use or program, or strong landscape architectural idea. M1 currently presents its back to the building; while the driveway will not in the near future be a physically accessible space, designers should explore ways that they may be visually inviting and connected.

The six prominent building terraces are a unique expression in the project must be thoughtfully considered and designed to work successfully. Wind and structural requirements may make them experientially or aesthetically unappealing. Without those features, the building has little visual interest or identity.
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 Office of Community Investment & Infrastructure (“Successor 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:

<table>
<thead>
<tr>
<th>Category</th>
<th>Goal</th>
</tr>
</thead>
<tbody>
<tr>
<td>CONSTRUCTION</td>
<td>50%</td>
</tr>
<tr>
<td>PROFESSIONAL SERVICES</td>
<td>50%</td>
</tr>
<tr>
<td>SUPPLIERS</td>
<td>50%</td>
</tr>
</tbody>
</table>

A. Trainee Hiring Goal. In addition to the goals set forth above in Section III, there is a trainee hiring goal for architects, designers and other professional services consultants as follows:

<table>
<thead>
<tr>
<th>Trainees</th>
<th>Design Professional Fees</th>
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<tbody>
<tr>
<td>0</td>
<td>$0 – $99,000</td>
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<tr>
<td>1</td>
<td>$100,000 – $249,999</td>
</tr>
<tr>
<td>2</td>
<td>$250,000 – $499,999</td>
</tr>
<tr>
<td>3</td>
<td>$500,000 – $999,999</td>
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<td>4</td>
<td>$1,000,000 – $1,499,999</td>
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<tr>
<td>5</td>
<td>$1,500,000 – $1,999,999</td>
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<tr>
<td>6</td>
<td>$2,000,000 – $4,999,999</td>
</tr>
<tr>
<td>7</td>
<td>$5,000,000 – $7,999,999</td>
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<tr>
<td>8</td>
<td>$8,000,000 – or more</td>
</tr>
</tbody>
</table>

IV. TERM. The obligations of the Agency-Assisted Contractor and/or Contractor(s) with respect to SBE Program shall remain in effect until completion of all work to be performed by the Agency-Assisted Contractor in connection with the original construction of the site and any tenant improvements on the site performed by or at the behest of the Agency-Assisted Contractor unless another term is specified in the Agency-Assisted Contract or Contract.
V. **FIRST CONSIDERATION.** First consideration will be given by the Agency or Agency-Assisted Contractor in awarding contracts in the following order: (1) Project Area SBEs, (2) 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.

VI. **CERTIFICATION.** Only businesses certified by the Agency as SBEs will be counted toward meeting the participation goals. The SBE Certification Criteria are set forth in the Policy (as defined in Section VII below).

VII. **INCORPORATION.** Each contract between the Agency, Agency-Assisted Contractor or Contractor on the one hand, and any subcontractor on the other hand, shall physically incorporate as an attachment or exhibit and make binding on the parties to that contract, a true and correct copy of this SBE Agreement.

VIII. **DEFINITIONS.** Capitalized terms not otherwise specifically defined in this SBE Agreement have the meanings set forth in the Agency’s SBE Policy adopted on November 16, 2004 and amended on July 21, 2009 (“Policy”) or as defined in the Agency-Assisted Contract or Contract. In the event of a conflict in the meaning of a defined term, the SBE Policy shall govern over the Agency-Assisted Contract or Contract which in turn shall govern over this SBE Agreement.

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

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

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

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

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

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

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

**Contract** means any agreement between the Agency and a person(s), firm, partnership, corporation, or combination thereof, to provide or procure labor, supplies or services to, for, or on behalf of the Agency.

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

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

**Office** or **Offices** means a fixed and established place(s) where work is performed of a clerical, administrative, professional or production nature directly pertinent to the business being certified. A temporary location or movable property or one that was established to oversee a project such as a construction project office does not qualify as an “office” under this SBE Policy. Work space provided in exchange for services (in lieu of monetary rent) does not constitute an “office.” The office is not required to be the headquarters for the business but it must be capable of providing all the services to operate the business for which SBE certification is sought. An arrangement for the right to use office space on an “as needed” basis where there is no office exclusively reserved for the business does not qualify as an office. The prospective SBE must submit a rental agreement for the office space, rent receipt or cancelled checks for rent payments. If the office space is owned by the prospective SBE, the business must submit property tax or a deed documenting ownership of the office.
**Project Area Small Business Enterprise** means a business that meets the above-definition of Small Business Enterprise and that: (a) has fixed offices located within the geographical boundaries of a Redevelopment Project or Survey Area where a commercially useful function is performed; (b) is listed in the Permits and License Tax Paid File with a Project Area or Survey Area business street address; (c) possesses a current Business Tax Registration Certificate at the time of the application for certification as a SBE; (d) has been located and doing business in a Project Area or Survey Area for at least six months preceding its application for certification as a SBE; and (e) has a Project Area or Survey Area office in which business is transacted that is appropriately equipped for the type of business for which the enterprise seeks certification as a SBE. Post office box numbers of residential addresses alone shall not suffice to establish a firms’ location in a Project Area or Survey Area.

**Project Area** means an area of San Francisco that meets the requirements under Community Redevelopment Law, Health and Safety Code Section 33320.1. These areas currently include the Bayview Industrial Triangle, Bayview Hunters Point (Area B), Federal Office Building, Hunters Point Shipyard, Mission Bay (North), Mission Bay (South), Rincon Point/South Beach, South of Market, Transbay Terminal, Yerba Buena Center and Visitacion Valley.

**San Francisco-based Small Business Enterprise** means a SBE that: (a) has fixed offices located within the geographical boundaries of the City where a commercially useful function is performed; (b) is listed in the Permits and License Tax Paid File with a San Francisco business street address; (c) possesses a current Business Tax Registration Certificate at the time of the application for certification as a SBE; (d) has been located and doing business in the City for at least six months preceding its application for certification as a SBE; and (e) has a San Francisco office in which business is transacted that is appropriately equipped for the type of business for which the enterprise seeks certification as a SBE. Post office box numbers or residential addresses alone shall not suffice to establish a firm’s status as local.

**Small Business Enterprise (SBE)** means an economically disadvantaged business that: is an independent and continuing business for profit; performs a commercially useful function; is owned and controlled by persons residing in the United States or its territories; has average gross annual receipts in the three years immediately preceding its application for certification as a SBE that do not exceed the following limits: (a) construction--$14,000,000; (b) professional or personal services--$2,000,000 and (c) suppliers--$7,000,000; and is (or is in the process of being) certified by the Agency as a SBE and meets the other certification criteria described in the SBE application.

In order to determine whether or not a firm meets the above economic size definitions, the Agency will use the firm’s three most recent business tax returns (i.e., 1040 with Schedule C for Sole Proprietorships, 1065s with K-1s for Partnerships, and 1120s for Corporations). Once a business reaches the 3-year average size threshold for the applicable industry the business ceases to be economically disadvantaged, it is not an eligible SBE and it will not be counted towards meeting SBE contracting requirements (or goals).
Survey Area means an area of San Francisco that meets the requirements of the Community Redevelopment Law, Health and Safety Code Section 33310. These areas currently include the Bayview Hunters Point Redevelopment Survey Area C.

IX. GOOD FAITH EFFORTS TO MEET SBE GOALS Compliance with the following steps will be the basis for determining if the Agency-Assisted Contractor and/or Consultant has made good faith efforts to meet the goals for SBEs:

A. Outreach. Not less than 30 days prior to the opening of bids or the selection of contractors, the Agency-Assisted Contractor or Contractor shall:

   1. Advertise. Advertise for SBEs interested in competing for the contract, in general circulation media, trade association publications, including timely use of the Bid and Contract Opportunities newsletter published by the City and County of San Francisco Purchasing Department and media focused specifically on SBE businesses such as the Small Business Exchange, of the opportunity to submit bids or proposals and to attend a pre-bid meeting to learn about contracting opportunities.

   2. Request List of SBEs. Request from the Agency’s Contract Compliance Department a list of all known SBEs in the pertinent field(s), particularly those in the Project and Survey Areas and provide written notice to them of the opportunity to bid for contracts and to attend a pre-bid or pre-solicitation meeting to learn about contracting opportunities.

B. Pre-Solicitation Meeting. For construction contracts estimated to cost $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. The Agency-Assisted Contractor or Contractor(s) shall require no more stringent bond or insurance standards of SBEs than required of other business enterprises.

I. **Delivery Scheduling.** Establish delivery schedules which encourage participation of SBEs.

J. **Encouragement to Subcontractors.** The Agency-Assisted Contractor and its Contractor(s) shall encourage and assist higher tier subcontractors in undertaking good faith efforts to utilize SBEs as lower tier subcontractors.

K. **Use of Other Resources.** Use the services of SBE associations, federal, state and local SBE assistance offices and other organizations that provide assistance in the recruitment and placement of SBEs, including the Small Business Administration and the Business Development Agency of the Department of Commerce. However, only SBEs certified by the Agency shall count towards meeting the participation goal.

L. **Replacement of SBE.** If during the term of this SBE Agreement, it becomes necessary to replace an SBE due to the failure or inability of the SBE to perform the required services or timely delivery the required supplies, then First Consideration should be given to another certified SBE, if available, as a replacement.

X. **ADDITIONAL PROVISIONS**

A. **No Retaliation.** No employee shall be discharged or in any other manner discriminated against by the Agency-Assisted Contractor or Contractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or relating to enforcement of this Agreement.

B. **No Discrimination.** There shall be no discrimination against or segregation of any person, or group of persons, on account of race, color, religion, creed, national origin or ancestry, sex, gender identity, age, marital or domestic partner status, sexual orientation or disability (including HIV or AIDS status) in the performance of an Agency-Assisted Contract or Contract. The Agency-Assisted Contractor or Contractor will ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, creed, national origin or ancestry, sex, gender identity, age, marital or domestic partner status, sexual orientation or disability (including HIV or AIDS status) or other protected class status. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay.
or other forms of compensation; selection for training, including apprenticeship; and provision of any services or accommodations.

XI. PROCEDURES

A. Notice to Agency. The Agency-Assisted Contractor or Contractor(s) shall provide the Agency with the following information within 10 days of awarding a contract or selecting subconsultant:

1. the nature of the contract, e.g. type and scope of work to be performed;
2. the dollar amount of the contract;
3. the name, address, license number, gender and ethnicity of the person to whom the contract was awarded; And
4. SBE status of each subcontractor or subconsultant.

B. Affidavit. If the Agency-Assisted Contractor or Contractor(s) contend that the contract has been awarded to a SBE, the Agency-Assisted Contractor or Contractor(s) shall, at the same time also submit to the Agency a SBE Application for Certification and its accompanying Affidavit 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 XII.
G. **Agency Investigation.** Where the Agency-Assisted Contractor or Contractor makes a Submission and, as a result, the Agency has cause to believe that the Agency-Assisted Contractor or Contractor has failed to undertake good faith efforts, the Agency shall conduct an investigation, and after affording the Agency-Assisted Contractor or Contractor notice and an opportunity to be heard, shall recommend such remedies and sanctions as it deems necessary to correct any alleged violation(s). The Agency shall give the Agency-Assisted Contractor or Contractor a written Notice of Non-Compliance setting forth its findings and recommendations. If the Agency-Assisted Contractor or Contractor disagree with the findings and recommendations of the Agency as set forth in the Notice of Non-Compliance, the Agency-Assisted Contractor or Contractor may request arbitration pursuant to this SBE Agreement.

XII. **ARBITRATION OF DISPUTES.**

A. **Arbitration by AAA.** Any dispute regarding this SBE Agreement shall be determined by arbitration through the American Arbitration Association, San Francisco, California office ("AAA") in accordance with the Commercial Rules of the AAA then applicable, but subject to the further revisions thereof. The arbitration shall take place in the City and County of San Francisco.

B. **Demand for Arbitration.** Where the Agency-Assisted Contractor or Contractor disagrees with the Agency's Notice of Non-Qualification or Notice of Non-Compliance, the Agency-Assisted Contractor or Contractor shall have seven (7) business days, in which to file a Demand for Arbitration, unless otherwise stipulated by the parties. The Demand for Arbitration shall contain at a minimum: (1) a cover letter demanding arbitration under this provision and identifying 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 fails to file a timely Demand for Arbitration, the Agency-Assisted Contractor and Contractor shall be deemed to have accepted and to be bound by the finding of Non-Qualification or the findings and recommendations contained in the Notice of Non-Compliance.

C. **Parties’ Participation.** The Agency and all persons or entities who have a contractual relationship affected by the dispute shall be made an Arbitration Party. Any such person or entity not made an Arbitration Party in the Demand for Arbitration may intervene as an Arbitration Party and in turn may name any other such person or entity as an Arbitration Party, provided however, that the Agency-Assisted Contractor or Contractor made an initial timely Demand for Arbitration pursuant to Section XII.B. above.

D. **Agency Request to AAA.** Within seven (7) business days after service of a Demand for Arbitration, the Agency shall transmit to AAA a copy of the Demand for Arbitration, the Notice of Non-Qualification or Notice of Non-Compliance, and any written response thereto from the affected party. Such material shall be made part of the arbitration record.

E. **Selection of Arbitrator.** One arbitrator shall arbitrate the dispute. The arbitrator shall be selected from the panel of arbitrators from AAA by the parties to the arbitration in accordance with the AAA rules. The parties shall act diligently in this regard. If the Arbitration Parties fail to agree on an arbitrator within seven (7) days from the receipt of the panel, AAA
shall appoint the arbitrator. A condition to the selection of any arbitrator shall be that person's agreement to render a decision within ninety (90) days from the arbitrator's fulfillment of the disclosure requirements set forth in California Code of Civil Procedure Section 1281.9.

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

G. Discovery. In arbitration proceedings hereunder, discovery shall be permitted in accordance with Code of Civil Procedure §1283.05.

H. Burden of Proof. The burden of proof with respect to SBE status and/or Good Faith Efforts shall be on the Agency-Assisted Contractor and/or Contractor. The burden of proof as to all other alleged breaches by the Agency-Assisted Contractor and/or Contractor shall be on the Agency.

I. California Law Applies. Except where expressly stated to the contrary in this SBE Agreement, California law, including the California Arbitration Act, Code of Civil Procedure §§ 1280 through 1294.2, shall govern all arbitration proceedings.

J. Arbitration Remedies and Sanctions. The arbitrator may impose only the remedies and sanctions set forth below:

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

2. Require any Arbitration Party to refrain from entering into new contracts related to work covered by the Agency-Assisted Contract or this SBE Agreement, or from granting extensions or other modifications to existing contracts related to services covered by the Agency-Assisted Contract or this SBE Agreement, other than those minor modifications or extensions necessary to enable compliance with this SBE Agreement.

3. Direct any Arbitration Party to cancel, terminate, suspend or cause to be cancelled, terminated or suspended, any contract or portion(s) thereof for failure of any party to the arbitration to comply with any of the SBE Program requirements in the Agency-Assisted Contract or this SBE Agreement. Contracts may be continued upon the condition that a program for future compliance is approved by the Agency.

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

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

K. **Arbitrator’s Decision.** The arbitrator shall make his or her award within twenty (20) days after the date that the hearing is completed; provided that where a temporary restraining order is sought, the arbitrator shall make his or her award not later than twenty-four (24) hours after the hearing on the motion. The arbitrator shall send the decision by certified or registered mail to each Arbitration Party.

L. **Default Award; No Requirement to Seek an Order Compelling Arbitration.** The arbitrator may enter a default award against any person or entity who fails to appear at the hearing, provided that: (1) said person or entity received actual notice of the hearing; and (2) the complaining party has a proof of service for the absent person or entity. In order to obtain a default award, the complaining party need not first seek or obtain an order to arbitrate the controversy pursuant to Code of Civil Procedure §1281.2.

M. **Arbitrator Lacks Power to Modify.** Except as otherwise provided, the arbitrator shall have no power to add to, subtract from, disregard, modify or otherwise alter the terms of the Agency-Assisted Contract, this SBE Agreement or any other agreement between the Agency, the Agency-Assisted Contractor or Contractor or to negotiate new agreements or provisions between the parties.

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

O. **Exculpatory Clause.** Agency-Assisted Contractor or Contractor (regardless of tier) expressly waive any and all claims against the Agency for damages, direct or indirect, including, without limitation, claims relative to the commencement, continuance and completion of construction and/or providing professional and consulting services (“the Work”). Agency-Assisted Contractor or Contractor (regardless of tier) acknowledge and agree that the procedures set forth herein for dealing with alleged breaches or failure to comply with the obligations and requirements of this SBE Agreement are reasonable and have been anticipated by the parties in securing financing, in inviting, submitting and receiving bids and proposals for the planning, design and construction of the improvements and in determining the times for commencement and completion of the planning, design and construction and/or for providing consulting, professional or personal services.
P. **Severability.** The provisions of this SBE Agreement are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this SBE Agreement or the invalidity of the application thereof to any person or circumstance shall not affect the validity of the remainder of this SBE Agreement or the validity of their application to other persons or circumstances.

Q. **Arbitration Notice:** BY INITIALING IN THE SPACE BELOW YOU ARE AGREING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS SUCH RIGHTS ARE SPECIFICALLY INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

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

___________________________________  ______________________________
Agency  Agency-Assisted Contractor

XIII. **AGREEMENT EXECUTION**

**Note:** If you are seeking Agency certification as a SBE, you should fill out the “Application for SBE Certification”. If you are already an Agency certified SBE, you should execute the “SBE Eligibility Statement”.

I, hereby certify that I have authority to execute this SBE Agreement on behalf of the business, organization or entity listed below and that it will use good faith efforts to comply with the Agency’s 50% SBE Participation Goals. I declare under penalty of perjury under the laws of the State of California that the above statement is true and correct.

___________________________________  ______________________________
Signature  Date