EXCLUSIVE NEGOTIATION AGREEMENT

THIS EXCLUSIVE NEGOTIATION AGREEMENT ("Agreement" or "ENA"), dated as of June 17, 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 ("Successor Agency" or "OCII"), Related California Urban Housing, LLC ("Related Lead Developer"), and Tenderloin Neighborhood Development Corporation ("TNDC" or "Affordable Developer") (Lead Developer and Affordable Developer are collectively referred to as "Development Team" and each of Lead Developer and Affordable Developer is sometimes referred to as "Developer" and both Developers are referred to as "Developers"). 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"). Said 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. Per 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 the Successor Agency, 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 sets forth the process for the transfer of certain of these parcels to the Former Agency, and now to the Successor Agency, to facilitate the sale of the parcels to private developers.

F. On January 1, 2010, TJPA entered a TIFIA 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 the Successor Agency. 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 Successor Housing Agency under Health and Safety Code Section 34176. The Redevelopment Plan, Development Controls (defined below), and other relevant Project Area documents remain in effect and the Successor Agency 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, 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 § 34167 (f) (providing that the Redevelopment Dissolution Law does not interfere with an agency’s authority under enforceable obligations to “enforce existing covenants and obligations, or . . . perform its obligation.”). This Agreement, providing for the transfer of certain State-owned parcels to third parties, with the payment of the proceeds to the TJPA, resulting in the development of market-rate and
affordable housing, is part of the Successor Agency’s compliance with the pre-existing enforceable obligations under the Implementation Agreement, AB 812 and the Option Agreement.

K. On April 15, 2013, the State Department of Finance (“DOF”) issued a Final and Conclusive Determination for the Pledge Agreement, the Implementation Agreement, and the Affordable Housing Program funded by the Low- and Moderate-Income Housing Fund for Transbay.

L. On November 20, 2013, pursuant to the Implementation Agreement, the Successor Agency issued a Request for Proposals (“RFP”) from development teams to design and develop a high-density, mixed-income residential project on the parcels known as “Block 8” or the “Site,” also identified as Lots 005, 012, and 027, Assessor’s Block 3737 (referred to in the Cooperative Agreement as Parcel C”) plus a portion of the State’s operating right of way, in the Project Area. Block 8 is shown on the Site Plan attached as Exhibit A and is an about 42,625-square-foot parcel on Folsom Street between First and Fremont Streets, two blocks south of the future Transbay Transit Center. The parcels (or portions thereof) that make up Block 8 will be transferred from the State to the City and County of San Francisco pursuant to the Cooperative Agreement.

M. The development program for Block 8, which conforms to the goals and requirements of the Redevelopment Plan, the Development Controls and Design Guidelines for the Transbay Redevelopment Project (“Development Controls”), and the Transbay Redevelopment Project Area Streetscape and Open Space Concept Plan (“Streetscape Plan”), includes: (a) a market-rate for-sale residential component consisting of approximately 162 residential units on floors thirty-three to fifty-six of the tower (“Market-Rate Condo Project”); (b) an “80/20” mixed-income component consisting of 314 market-rate rental units and 79 affordable rental units affordable to households earning no more than 40% and 50% of Area Median Income (“AMI”) for the life of the Project but in no event less than 55 years on floors two through thirty-two of the tower, in which the lower floors will be developed as affordable units and the upper floors will be developed with market-rate units, unless a different configuration is agreed to by all parties (“80/20 Project”); (c) an affordable project with 98 rental residential units, of which no less than 30% shall be three or more bedrooms, in podium buildings located on Folsom and Fremont Streets, and townhouses along Clementina Street (“Affordable Project”) 100% of which shall be affordable to households earning up to 50% of AMI; (d) streetscape improvements including the extension of Clementina Street on the northern edge of the Site and the 25-foot wide Folsom Street sidewalk; (e) ground-floor and possible basement level retail spaces along Folsom Street; (f) a shared 7,647-square-foot mid-block open space and paseo; and (g) shared underground parking with up to 422 stalls, with at least 24 stalls exclusively dedicated to the Affordable Project (1 parking stall for every four (4) units). Items (a) through (g) are collectively referred to as the “Project.”

N. Three proposals were received and deemed to meet 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 Related, TNDC, Office of Metropolitan Architecture (“OMA”), Conger Moss Guillard Landscape Architecture (“CMG”), and Fougeron Architecture (“Fougeron”) was scored the highest by a selection panel comprised of Successor Agency staff, City staff, and a member of the Transbay Citizens Advisory Committee. This proposal included a purchase price of $72,000,000 payable at the transfer of title of Block 8 to the Development Team into the trust account established by the TJPA (“Trust Account”), which complies with Section III, Subsection G of the Cooperative Agreement and with the Director’s Deed by which the State shall deed Parcel C” to the City. This proposal achieves the
affordability goals set out in the RFP of 27 percent of the total units affordable, with 17 percent subsidized by OCII and 10 percent subsidized by the Developer.

O. The Development Team proposal was conditioned on a March 31, 2016 closing date and the assumption that the Development Team would be unable to obtain permits and a construction loan that would allow Developer to begin construction until March 31, 2016. To commit to close on the Successor Agency’s preferred closing date of October 1, 2015, rather than March 31, 2016, the Lead Developer will use commercially reasonable good faith efforts to obtain permits and a construction loan before October 1, 2015. Developer, however, expects that it cannot obtain permits and a construction loan until March 31, 2016 and would be required to secure a six month bridge loan to bridge the period of time between closing and the date on which permits can be approved and a construction loan can be obtained (the “Bridge Loan”). Bridge loans are potentially perceived by lenders to be considerably riskier than construction or conventional mortgage financing and accordingly may entail more conservative underwriting requirements, including lower loan-to-value ratios and, as a result, a greater equity commitment that, because of the same risks potentially perceived by investors, command higher rates of preferred and other return (such Bridge Loan and the related equity investment are defined collectively as the “Interim Financing”). The Interim Financing transaction, if required, would be in addition to Lead Developer’s construction loan and would not be necessary if the Development Team was able to close escrow on March 31, 2016, when Lead Developer expects permits could be obtained. The Lead Developer expects that the extraordinary cost of the Interim Financing will exceed $2,000,000. The Development Team is willing to commit to close on October 1, 2015 if the purchase price for the land is reduced by the actual cost to the developer (up to $2,000,000) of the necessary Interim Financing (such reduction, the “Purchase Price Reduction”). OCII is willing to accept the Purchase Price reduction if the Interim Financing is necessary (with the acknowledgement that the Interim Financing will be necessary if permits have not been obtained) and the amount of the Purchase Price Reduction does not exceed $2,000,000 and does not exceed the actual Extraordinary Cost (as defined in Section 9(e) below) to Lead Developer of the Interim Financing, subject to Lead Developer’s obligation to reimburse OCII the amount (if any) by which the actual Extraordinary Cost is less than the Purchase Price Reduction as a result of the Development Team’s ability to begin construction of the Project earlier than April 1, 2016, as more particularly provided in Section B(5) of the Term Sheet attached hereto as Exhibit B.

P. Lead Developer agrees to design and construct all of the streetscape improvements described in the Streetscape Plan relative to Block 8 and to pay all costs associated with the design and construction of the streetscape improvements with no reduction to the purchase price, provided that, upon completion of the Project, OCII agrees, after acceptance of those improvements by the City, to reimburse Lead Developer for the actual cost of the design and construction of the streetscape improvements up to $2 million, which acceptance and reimbursement will not be unreasonably delayed.

Q. Consistent with the Development Controls and, unless otherwise stated, the Development Team agrees to design and construct the Affordable Project with 98 residential units in the podium building on Folsom and Fremont Streets and the townhouses along Clementina Street and maintain their affordability for 99 years. OCII will provide a subsidy of up to $200,000 per unit for the 98 units in the Affordable Project. Any additional subsidy required to complete these units after all non-OCII affordable housing funding sources have been secured (“Gap Financing”) must be funded by the Lead Developer. OCII uses MOHCD’s Underwriting Guidelines on all affordable housing projects, therefore the financing for the Affordable Project must be compatible with those Underwriting Guidelines and policies related to affordable housing financing and operation. Any additional subsidy required from Lead Developer will not affect the land price.
R. Lead Developer shall apply for a tentative parcel or subdivision map subdividing the Site into at least two parcels: an Affordable Air Rights Parcel for the Affordable Project, and the remainder of the Site. If the parcelization of the Site is complete prior to close of escrow, the Successor Agency shall retain the Affordable Air Rights Parcel and only convey the remainder of the Site at the close of escrow. If the parcelization of the Site is not complete prior to close of escrow, the Successor Agency shall convey the entire Site at close of escrow and the Development Team will convey the Affordable Air Rights Parcel back to the Successor Agency promptly following completion of the parcelization.

S. Following parcelization of the Site into the Market-Rate Condo Project, the 80/20 Project, and the Affordable Project, the Successor Agency will enter into a lease (“Air Rights Lease”) of the Affordable Project Air Rights Parcel with the Affordable Developer. When construction is complete and the Successor Agency has issued a certificate of completion, OCII will assign the title to the Air Rights Parcel and the lessor’s interest in the Air Rights Lease to MOHCD.

T. Successor Agency authorization of this Agreement is statutorily exempt from 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.

U. The purpose of this ENA is to outline the terms and conditions under which Successor Agency and the Development Team will negotiate a Disposition and Development Agreement for the purchase and development of the Site (“DDA”) and the Air Rights Lease. This Agreement is entered into with the understanding that the final terms and conditions of the DDA and Air Rights Lease negotiated during the term of this Agreement will be subject to approval by the Successor Agency’s Commission on Community Investment and Infrastructure (“Commission”). Based on the requirements and obligations under the Pledge Agreement, Option Agreement, TIFIA Loan, and other agreements of the Successor Agency and the TJPA, time is of the essence in the closing of the transfer of the Site and payment of the purchase price for the land, 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 Air Rights Lease and any necessary associated agreements leading to the conveyance of the Site and development of the Project (collectively, “Transaction Documents”). The Successor Agency grants to the Development Team the exclusive right to negotiate any Transaction Documents related to the Market-Rate Condo Project, the 80/20 Project, and the Affordable Project (“Exclusive Right”) during the term of this Agreement. During the term of the ENA, the Successor Agency 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 both members of the Development
Team, which consent may be granted or withheld by either Lead Developer or Affordable Developer in its sole and absolute discretion.

Lead Developer and Affordable Developer acknowledge and agree that under this Agreement the Successor Agency 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 Lead Developer or Affordable Developer, (iii) approval of any land use entitlements, or (iv) any other acts or activities relating to the subsequent independent exercise of discretion by the Successor Agency 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 the Successor Agency 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 expire on the earlier of (i) mutual execution of the DDA approved by the Commission, which is expected in March 2015, or (ii) a period of nine (9) months after the Commencement Date, unless earlier terminated pursuant to Section 2.B below. Notwithstanding the foregoing, the Term may be extended without further Commission action for two additional three (3) month periods, subject to the discretion of the Successor Agency’s Executive Director, which discretion shall be exercised on a reasonable basis. Such exercise of discretion by the Successor Agency to extend the Term of the ENA, shall not operate to automatically extend other performance benchmarks; in particular, the Successor Agency does not expect to agree to extend the time period for the execution of the DDA, close of escrow, or start and completion of construction of the Project.

B. **Termination**

This Agreement shall automatically terminate upon the expiration of the Term.

This Agreement may terminate earlier than the expiration of the Term upon the occurrence of any of the following events (none of the following provisions, however, shall operate to extend the Term beyond the period specified in Section 2.A above):

(i) Upon notice from both Lead Developer and Affordable Developer that they desire to cease negotiations, which shall not be deemed a “Developer Event of Default” (as defined below); provided, however, that the Successor Agency shall not be required to return the ENA Deposit, as described below; or

(ii) In the event of an impasse on material terms during the Term of this Agreement, any party may provide written notice to the other parties of the impasse. After written notice is given, the parties agree to work diligently and in good faith to resolve the impasse. If the parties are unable to resolve the impasse sixty (60) days after written notice, any party may, in its sole discretion, terminate this Agreement upon written notice to the other parties. Successor Agency shall not be required to return the ENA Deposit, as described below; or
(iii) In the event either Lead Developer or Affordable Developer fails to cure a Developer Event of Default within the time periods specified in Section 17.A, the Successor Agency may terminate this Agreement upon written notice to the parties. Successor Agency shall not be required to return the ENA Deposit, as described below; or

(iv) In the event the Successor Agency fails to cure a Successor Agency Event of Default within the time periods specified in Section 17.B, Lead Developer or Affordable Developer may terminate this Agreement upon written notice to the Successor Agency, in which event Lead Developer and Affordable Developer shall have the remedies specified in Section 18.B.

Upon termination of this Agreement, no party shall have any further rights or obligations except with respect to those matters that survive termination as described in Section 27.Q.

3. Developer Payment

A. Payment for the Exclusive Right

Within thirty (30) days after the Effective Date of this Agreement, Lead Developer shall deposit with the Successor Agency a total of Five Hundred Thousand Dollars ($500,000) in cash (“ENA Deposit”), in consideration of the Successor Agency’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 the Successor Agency 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 the Site; the ENA Deposit shall not be deducted from or credited toward the purchase price the Developer must pay at closing on the purchase-sale of the Site.

B. Retention of Payments by Successor Agency. The Successor Agency shall retain any payments actually paid by Lead Developer, including the ENA Deposit, to the extent provided by and consistent with Section 2.B and Section 18.

C. Legal Fees

Beginning on the Effective Date of this ENA, Lead Developer shall be responsible for the costs of OCII to retain legal counsel to represent OCII during the Term. The cost for these services is estimated to be $60,000 and is covered by the ENA Deposit amount; provided, however, that Lead Developer shall reimburse OCII for 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 B is a term sheet (”Term Sheet”) related to the Project, which represents 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 and Air Rights Lease. The Term Sheet shall serve as a non-binding guide in the negotiation of the Transaction Documents, although the parties acknowledge that review of additional information and further discussion may lead
to refinement and revision of the Term Sheet and changes in the Project. Such changes in the Project may result in changes to the Term Sheet if the parties agree that the changes are necessary to support Project feasibility.

5. **Performance Benchmarks**

**A. Satisfaction of Performance Benchmarks**

During the Term of this Agreement, all parties shall, in good faith, work expeditiously on, and diligently pursue to completion, the advisory performance benchmarks set forth in the attached Exhibit C ("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; provided, however, that the close of escrow on or before October 1, 2015 (unless extended by OCII pursuant to Section 9(e)), shall be mandatory rather than advisory. Each of Lead Developer and Affordable Developer, on one hand, and Successor Agency, on the other, shall consider in good faith during the Term of this Agreement, any feasible additional 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. Lead Developer and Affordable Developer’s respective compliance with the Performance Benchmarks shall not alter or reduce their respective obligations to comply with any other provision of this Agreement. During the Term of the ENA, any failure of each of Lead Developer or Affordable Developer to meet the advisory Performance Benchmarks for reasons beyond their respective control shall not be a Developer Event of Default.

**B. Waiver or Extension of Performance Benchmarks**

At the reasonable discretion of the Successor Agency’s Executive Director, the Successor Agency may waive or extend the date for the performance of any item set forth in the Performance Benchmarks, Exhibit C, from time to time, without the necessity for further Commission action, so long as (1) close of escrow is not extended past October 1, 2015 and (2) the cumulative extensions of a particular Performance Benchmark do not exceed a total aggregate of twelve (12) months from the date extended in the Performance Benchmarks, Exhibit C; provided, however, that any such waiver or extension shall not release any of Lead Developer or Affordable Developer’s respective obligations nor constitute a waiver of the Successor Agency’s rights with respect to any other term, covenant or condition of this Agreement. The parties acknowledge that during the term of the ENA the Performance Benchmarks are advisory and that it is the intent of the parties to update and clarify the Performance Benchmarks for inclusion in the DDA.

**C. Quarterly Reporting**

Developer shall submit to the Successor Agency 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. Each of Lead Developer and Affordable Developer agree and acknowledge that the Successor Agency’s obligation to “negotiate in good faith” is limited to the actions of Successor Agency 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. The Transaction Documents shall provide for mutually agreed-upon closing conditions, including without limitation, completion of the CalTrans off-ramp reconfiguration work on the Site, title insurance in form and with exceptions satisfactory to the Lead Developer and Affordable Developer, and the ability of Lead Developer and Affordable Developer to obtain financing on commercially reasonable terms and conditions.

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 shall comply with the Term Sheet and that the terms of the Transaction Documents and any redesign of the Project shall be in accordance with the Term Sheet, provided, however, such terms are subject to change in accordance with Sections 4 hereof or otherwise by mutual written agreement of the parties. The parties acknowledge that the Term Sheet sets forth general principles for negotiation, and that any binding Transaction Documents shall be subject to review and approval by the parties, their respective legal counsel and the Commission.

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 the Successor Agency to the extent of its express obligations under this Agreement.

B. No Representation or Warranty; Exculpation

Development Team agrees and acknowledges that the Successor Agency 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. **Developers’ Obligations During the Term of the ENA**

During the Term of this Agreement, Lead Developer shall be responsible for meeting or causing to be met, all obligations related to the Project, including those that will be completed by the Affordable Developer. Accordingly, Lead Developer and Affordable Developer agree that during the Term of this Agreement:

(a) Notwithstanding Lead Developer’s proposal to obtain regulatory approvals and a construction loan and start construction by March 31, 2016, Lead Developer shall use commercially reasonable efforts to diligently and in good faith pursue obtaining all regulatory approvals and a construction loan for the Market-Rate Condo Project, 80/20 Project, and the Affordable Project to allow Lead Developer to close and start construction on or before October 1, 2015. Affordable Developer shall diligently and in good faith assist Lead Developer in pursuing all regulatory approvals for the Affordable Project;

(b) As between Lead Developer and Successor Agency, Lead Developer shall be solely responsible for all of Lead Developer’s and Affordable Developer’s costs and expenses (including, but not limited to, fees for their respective 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. Neither Developer shall have any claim against the Successor Agency 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) Lead 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 Developers;

(d) Lead 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 Developers, and the Successor Agency shall have no liability, monetary or otherwise, for said fines and penalties;

(e) Subject to the last sentence of this Section 9(e), the close of escrow date shall be October 1, 2015, instead of the March 31, 2016 date in Lead Developer’s original proposal. At or prior to Close of Escrow, Lead Developer shall pay the Successor Agency the amount of $72,000,000 ("Purchase Price"), reduced by the Good Faith Deposit and reduced by a not-to-exceed amount of $2,000,000 ("Purchase Price Reduction"), in consideration for the transfer of the Site as more specifically described in the attached Term Sheet. The Purchase Price Reduction shall be the actual Extraordinary Cost to the Lead Developer of the Interim Financing, up to a maximum amount of $2,000,000, as documented to the reasonable satisfaction of OCII and TJPA staff, provided that such review by OCII and TJPA shall be (A) informed by the statements in Recital O and will take into account the nature of the Interim Financing (including the potential that lenders and investors would perceive the financing as risky and that as a result, such financing would command higher interest rates and/or returns, and higher origination and other transaction fees) and its impact on costs, and (B) limited to a determination by OCII and the TJPA as to whether any claimed Extraordinary Costs are accurately included within the definition of Extraordinary Cost in this Section 9. “Extraordinary Cost” shall mean the Lead Developer’s actual, documented “Extraordinary Carry Cost” and “Extraordinary Fixed Cost”, each as defined below.

“Extraordinary Carry Cost” shall mean all interest paid to lender(s), and all preferred and other return paid to equity investors, in each case in connection with the Interim Financing and for the period of time from the actual Close of Escrow until March 31, 2016. Notwithstanding the foregoing, if OCII agrees to a
Development Team request to Close Escrow on a date that is earlier than October 1, 2015 ("Developer’s Preferred Closing Date"), any costs that would otherwise be characterized as Extraordinary Carry Cost for the period from the Developer’s Preferred Closing Date until October 1, 2015 shall be excluded from the Purchase Price Reduction.

“Extraordinary Fixed Cost” shall mean all other out-of-pocket costs and expenses incurred in connection with or related to the Interim Financing, or otherwise incurred in order to finance and otherwise achieve Close of Escrow on the by October 1, 2015 Date rather than March 31, 2016, including, without limitation, the following:

(i) All application, origination, documentation and other fees paid to the lender in connection with the Interim Financing,
(ii) All appraisal, inspection, underwriting, due diligence and legal costs paid or reimbursed to the lender, any equity investor, or any other third party in connection with or related to the Interim Financing,
(iii) Escrow and title insurance fees and costs and all other closing costs in connection with or related to the Interim Financing, and
(iv) Attorneys’ fees and costs related to the Interim Financing.

Notwithstanding the foregoing, Lead Developer and OCII shall reasonably cooperate to determine which Extraordinary Fixed Costs are duplicative of costs Lead Developer would otherwise have been required to incur to obtain a construction loan (for example, if any third party reports required by the bridge lender or equity investors will also satisfy requirements of the construction lender) then such costs shall be excluded from the Purchase Price Reduction.

In the event the Development Team begins construction of the Project earlier than April 1, 2016 and the Lead Developer’s actual Extraordinary Carry Cost is thereby reduced, Lead Developer shall reimburse to the Successor Agency a portion of the Purchase Price Reduction determined as provided in Section B(5) of the Term Sheet. Lead Developer shall also pay all costs associated with the transfer of the Site, including title insurance and escrow fees. OCII, in consultation with TJPA, reserves the right to delay the closing date until March 31, 2016, in which case the Purchase Price shall be $72,000,000 with no Purchase Price Reduction and all references to the October 1, 2015 date herein and in the exhibits shall be changed to March 31, 2016, provided that any decision to delay the closing date shall be made, if at all, no later than the date of execution of the DDA and will only be valid and binding on the parties if documented in the DDA executed by all parties.

(f) Lead Developer and Affordable Developer have provided to OCII a predevelopment budget associated with the Developer provided $1.5 million predevelopment loan, as indicated in the RFP submittal, including all anticipated predevelopment expenses attributable to the OCII-subsidized affordable units through construction loan closing and payment of the purchase price.

(g) Lead Developer shall be solely responsible to pay any additional subsidy required to complete the 98 OCII-subsidized affordable units after the $200,000 per unit subsidy and all non-City affordable housing funding sources have been secured, as more specifically described in the Recitals and the attached Term Sheet, Exhibit B. The OCII subsidy will be in the form of a construction loan to the Affordable Developer, subject to OCII underwriting and MOHCD Underwriting Guidelines, and approval
by the Citywide Affordable Housing Loan Committee and Office of Community Investment and Infrastructure Commission.

(h) Lead Developer and Affordable Developer, in accordance with the Developers’ Agreement (as defined in the Term Sheet), shall undertake and complete its “due diligence” review of the Site and, if requested by the Successor Agency, provide copies of all non-privileged, non-proprietary reports regarding the Site to the Successor Agency, 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 the Successor Agency, without representation or warranty of any kind;

(i) Lead Developer and Affordable Developer shall conform, in all material respects, with all MOHCD or Successor Agency policies related to the financing, development, and operation of the Affordable Project;

(j) Lead 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;

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

(l) [reserved]

(m) Neither Developer shall pay, or agree to pay, any fee or commission, or any other thing of value contingent on the entering of this Agreement, any other Transaction Document, or any other agreement with the Successor Agency related to the Project, to any Successor Agency employee or official or to any contracting consultant hired by the Successor Agency for purposes of the Project. By entering into this Agreement, each of Lead Developer and Affordable Developer certifies to the Successor Agency 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, any other Transaction Document, or any other agreement with the Successor Agency related to the Project, to any Successor Agency employee or official or to any contracting consultant hired by the Successor Agency for purposes of the Project;

(n) During the term of this Agreement, each Developer shall comply with, in all material respects, the requirements of all applicable laws, including Successor Agency ordinances, resolutions, regulations, 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 Transbay Redevelopment Plan and Development Controls and Design Guidelines and the Streetscape and Open Space Plan and any amendments thereto, the Successor Agency’s Small Business Enterprise Program (including the selection of consultants during the pre-development period);

(o) The Developers 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

(p) In making any entry onto the Site, the Developers shall not cause a Release of any Hazardous Substance and shall not cause the Incidental Migration of any Hazardous Substance.
(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.

10. Indemnity

Developers shall indemnify, defend, and hold harmless the Successor Agency, the City, including but not limited to MOHCD, and the TJPA (collectively, “Indemnitee Parties”) and their respective members, officers, agents and employees from and against any and all losses, claims, damages, liabilities and causes of action (including reasonable attorney’s fees and court costs) arising out of (a) any challenge or any filing of any kind related to any regulatory approvals sought by Developers 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 Developers, 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 or related to any acts or omissions of CalTrans, its employees, agents, contractors or representatives, in connection with the off-ramp reconfiguration work or any other work or activity on or adjacent to the Site; or (iii) 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 the Successor Agency may require that Developers defend the Indemnitee Parties against claims pursuant to this Section until it is established that such claims are Indemnity Exclusions; provided, the Successor Agency and Indemnitee Parties shall
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reimburse Developers such defense costs in proportion to the degree of the negligence or fault of such parties. Developers’ obligations under this Section shall survive the termination of this Agreement.

11. [Intentionally Omitted]

12. Insurance

A. Developers’ Insurance

Without in any way limiting Developers’ indemnification obligations under this Agreement, and subject to reasonable approval by the Successor Agency of the insurers and policy forms, each Developer shall obtain and maintain, or cause to be obtained and maintained at no cost to the Successor Agency, 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 form approved by the Successor Agency

(b) Insurance Services Office Automobile Liability coverage, code 1 (form number CA 00 01 – “any auto”) or other form approved by the Successor Agency

(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 the Successor Agency with copies of consultants’ insurance certificates showing such coverage.

C. Minimum Limits of Insurance. Each of Lead Developer and Affordable 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 the Successor Agency. In the event such deductibles or self-insured retentions are in excess of $50,000, at the reasonably exercised option of the Successor Agency, either: (a) the insurer shall reduce such deductibles or self-insured retentions as respects the Successor Agency, 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 the Successor Agency 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: “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” (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 Developers’ insurance and will not contribute with it.

(c) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Successor Agency, 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 the Successor Agency.

(e) Developer hereby grants to the Successor Agency a waiver of any right to subrogation which any insurer of said Contractor may acquire against the Agency 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 the Agency 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 contract or the beginning of contract work.

i. Insurance must be maintained and evidence of insurance must be provided for at least five years after completion of the contract work.

ii. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Contractor must purchase “extended reporting” coverage for a minimum of five years after completion of contract work.

F. Acceptability of Insurers

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

G. Verification of Coverage

Each of Lead Developer and Affordable Developer must furnish the Successor Agency with respective certificates of insurance and additional endorsements effecting coverage required by this Section 12 prior to any commencement of work at the Site. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements are to be received and approved by the Successor Agency before work commences. The Successor Agency 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

Development Team’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. Development Team 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 the Successor Agency’s Risk Manager. Development Team must furnish Agency 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 the Successor Agency for adequacy if and when the Term of this Agreement is extended. The Successor Agency may require each of Lead Developer and Affordable 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. **Successor Agency’s Obligations and Rights During the Term of the ENA**

A. **Successor Agency’s Obligations**

During the Term of this Agreement, Successor Agency agrees that, subject to Section 8 above, it will;

(a) reasonably cooperate with Developers 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 the Successor Agency’s ability, approval of the site permit application and the closing;

(b) to the extent required by law, join with Developers 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 the Successor Agency is the co-applicant; and

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

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

The Successor Agency shall also reasonably cooperate with Developers 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, Caltrans currently holds title to the Site and Developer’s access to the Site is subject to Caltrans’s terms and at Caltrans’s sole discretion; provided, further that if Developers are unable to timely obtain access to the Site at any time reasonably necessary to complete Developers’ due diligence on the Site and requested by Developers in writing to Successor Agency, and if Successor Agency is unable to cause CalTrans to provide any such requested access within 15 days after written notice from Developers notifying Successor Agency of such lack of access, then such delay shall be deemed force majeure as described in Section 27(N). Nothing herein shall limit or restrict Lead Developer or Affordable Developer’s right and ability to access the Site to the extent that the general public may access the Site.

B. **Rights Reserved**

If negotiations with Developers under this Agreement are unsuccessful and do not lead to approval of the Transaction Documents within the Term of this Agreement, the Successor Agency 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 8, including, but not limited to, issuing a request for proposals.

C. **Disclosure of Confidential Information**
The parties acknowledge that the Successor Agency is subject to the California Public Records Act ("CPRA") and the Successor Agency 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 the Successor Agency 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

The parties acknowledge and agree that the Successor Agency is entering into this Agreement and granting the Exclusive Right to each of Lead Developer and Affordable Developer on the basis of the particular experience, financial capacity, skills and capabilities of itself and its members. This Agreement is personal to each of Lead Developer and Affordable Developer and is non-assignable without the prior written consent of the Successor Agency, which may be withheld in the Successor Agency’s sole and absolute discretion, provided that the DDA will include mutually acceptable provisions allowing for either Developer to assign the DDA and/or the right to acquire the Site and/or complete other components of the transactions contemplated to entities affiliated with one or both Developers. Notwithstanding the foregoing, each Developer may assign its interest in this Agreement, with the approval of the Successor Agency, to an entity in which such Developer owns an equity interest, or to an entity owned, controlled or managed, directly or indirectly, by such Developer or any of the officers, significant shareholders or principals of such 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 contain the name, address, telephone number, facsimile number and contact person for the assignee.

17.  Default

A.  Developers’ Event of Default

The occurrence of any of the following (each, a “Developer Event of Default”) shall constitute a default by each of Lead Developer and Affordable Developer after the Successor Agency 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 thirty (30) days after the Successor Agency gives notice to the Developer.

(b)  Failure to perform or abide by any material provision of this Agreement, including the Performance Benchmarks (other than any failures to meet the Performance Benchmarks that are outside the control of Developers, as reasonably determined by the Successor Agency), as such may be waived or extended in accordance with Section 5 hereof, if such failure is not cured within sixty (60) days after the Successor Agency gives notice to the Developer.
(c) Either (i) the filing by Lead Developer or Affordable 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 Lead Developer or Affordable Developer for the benefit of creditors; or (ii) the filing by or against Lead Developer or Affordable 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 the its assets.

(d) Any material breach of any representation and warranty contained in Section 20.A, or any other provision of this Agreement, unless Lead Developer or Affordable Developer notifies the Successor Agency within ten (10) days after the Developer becomes aware of the material breach and commences to cure such inaccuracy within sixty (60) days after the date on which it was obligated to notify the Successor Agency.

(e) The debarment or prohibition of Lead Developer or Affordable Developer from doing business with any federal, state or local governmental agency, or any debarment or prohibition of any affiliate of Lead Developer or Affordable 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 the Successor Agency gives notice to the Developer.

If a Developer Event of Default cannot reasonably be cured within the applicable time period set forth in this Section 17.A, each of Lead Developer and Affordable 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. Notwithstanding the foregoing, however, no cure period or extension of such cure period shall operate to extend the Term beyond the period specified in Section 2.A above.

If there is a Developer Event of Default resulting from or caused by a breach of this Agreement by either of Lead Developer or Affordable Developer ("Breaching Developer"), the Developer which is not in breach ("Performing Developer") may, within thirty (30) days following the end of the period in which such breach may be cured, if any, request that Successor Agency consent to the substitution of another entity, including the Performing Developer, for the Breaching Developer ("Substitute Developer"). Such request shall be accompanied by such information regarding the proposed Substitute Developer as was required to be submitted in response to the RFP. Successor Agency shall consider the proposed Substitute Developer in the same manner in which it considered proposals in response to the RFP and shall not terminate this Agreement with respect to the Performing Developer unless and until Successor Agency has determined, in its sole and absolute discretion, that the proposed Substitute Developer is not acceptable as a substitute to the Successor Agency, and the Successor Agency informs the Performing Developer that it will not consider any further proposed Substitute Developer. The Successor Agency may also propose a Substitute Developer to the Performing Developer, who shall have the right to approve the Substitute Developer in its sole discretion. If the Successor Agency and the Performing Developer both consent to the proposed Substitute Developer, the Substitute Developer shall enter into an agreement with the Successor Agency and the Performing Developer in the form of
this Agreement and shall cure any breach of this Agreement not otherwise cured by the joinder of the Substitute Developer.

B. **Successor Agency’s Event of Default**

The occurrence of any of the following (each, a “**Successor Agency Event of Default**”) shall constitute a default by Successor Agency 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 sixty (60) days after the Developer gives written notice (which shall specify in reasonable detail the basis for the determination of the default) to the Successor Agency; provided, however, that if the Successor Agency Event of Default cannot reasonably be cured within sixty (60) days, the Successor Agency shall not be in default of this Agreement if the Successor Agency commences to cure the Successor Agency Event of Default within the sixty (60) day period and diligently and in good faith continues to seek to cure the Successor Agency Event of Default.

(b) Any material breach of any Successor Agency representation and warranty contained in Section 20.B, or any other provision of this Agreement, unless the Successor Agency notifies the Developer within ten (10) days after it becomes aware of the material breach and commences to cure such inaccuracy within sixty (60) days from the date on which the Successor Agency was obligated to notify Lead Developer and Affordable Developer (or if such inaccuracy cannot reasonably be cured within such sixty (60) days, the Successor Agency shall not be in default of this Agreement if the Successor Agency commences to cure such inaccuracy within the sixty (60) day period and diligently and in good faith continues to seek to cure such inaccuracy).

18. **Remedies**

A. **Successor Agency’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, the Successor Agency shall have the option, as its sole and exclusive remedy at law or in equity, to (i) terminate this Agreement upon written notice to Lead Developer and Affordable Developer, sent in accordance with Section 25, and retain any payments already paid by the Developers to the Successor Agency, including the ENA Deposit, as Liquidated Damages in accordance with Section 19 hereof; and (ii) seek to recover any reimbursement for legal fees pursuant to Section 3(C) that is then due and owing to the Successor Agency under this Agreement; and (iii) seek to enforce Lead Developer and Affordable Developer’s indemnity obligations and all other provisions which survive termination. The Successor Agency 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.

B. **Developer’s Remedies**

If a Successor Agency Event of Default remains uncured after the expiration of the applicable cure period, each of Lead Developer and Affordable 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 the
Successor Agency, sent in accordance with Section 25, whereupon the ENA Deposit, less staff costs, legal fees incurred up to a maximum allowable under Section 3(c), and third party costs related to the Project incurred by the Successor Agency to the date of the giving of such notice of termination, shall be returned by the Successor Agency to the Developers 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 Lead Developer and Affordable Developer at law or in equity in the event of a Successor Agency Event of Default. Lead Developer and Affordable Developer hereby waive any and all rights it may now or hereafter have to pursue any other remedy or recover any other damages from the Successor Agency or TJPA on account of any such breach or default by the Successor Agency, including, without limitation, loss of bargain, special, punitive, compensatory or consequential damages.

C. **Developer’s Risk**

Subject to the foregoing provisions of this Section 18, each of Lead Developer and Affordable 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 the Successor Agency’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 Developers to the Successor Agency, as herein provided, is a reasonable estimate of the damages that the Successor Agency 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 THE SUCCESSOR AGENCY SHALL BE ENTITLED TO RETAIN THE AMOUNT OF THE ENA DEPOSIT, LEGAL FEES, AND ANY OTHER PAYMENTS ALREADY PAID BY DEVELOPERS TO THE SUCCESSOR AGENCY AS LIQUIDATED DAMAGES. **NOTHING IN THIS AGREEMENT WILL, HOWEVER, BE DEEMED TO LIMIT THE DEVELOPERS’ LIABILITY TO THE SUCCESSOR AGENCY FOR DAMAGES OR INJUNCTIVE RELIEF FOR BREACH OF THE DEVELOPERS’ INDEMNITY OBLIGATIONS UNDER SECTION 10 OR FOR ANY DEVELOPER FRAUD AND MISREPRESENTATION IN THE MAKING OF THIS AGREEMENT, SUBJECT, HOWEVER, TO THE SUCCESSOR AGENCY’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: Successor Agency ________ Lead Developer ________ Affordable Developer ________
20. **Representations and Warranties**

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

Each of Lead Developer and Affordable 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.** Each of Lead Developer and Affordable 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. Each of Lead Developer and Affordable Developer has all requisite power and authority to own its property and conduct its business as presently conducted. Each of Lead Developer and Affordable Developer has made all legally required filings and is in good standing in the jurisdiction of the State of California.

(b) **Authority.** Each of Lead Developer and Affordable 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 Developers’ articles of organization or any other agreement or law in any way prohibits, limits or otherwise affects the right or power of Lead Developer or Affordable Developer to enter into and perform all of the terms and covenants of this Agreement. Each of Lead Developer and Affordable 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 Lead Developer or Affordable 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 Lead Developer or Affordable Developer before any court, governmental agency, or arbitrator which might materially adversely affect the enforceability of this Agreement, the ability of Lead Developer or Affordable Developer to perform the transactions contemplated by this Agreement or the respective business, operations, assets or condition of Lead Developer or Affordable Developer.

(d) **Valid Execution.** The execution and delivery of this Agreement by each of Lead Developer and Affordable Developer has been duly and validly authorized by all necessary action. This Agreement will be a legal, valid and binding obligation of Lead Developer and Affordable 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 either Lead Developer and Affordable Developer may be bound or affected, (ii) any law, statute, ordinance, regulation, or (iii) the articles of organization or the operating agreement of either Lead Developer or Affordable Developer.

(f) **Meeting Financial Obligations; Material Adverse Change.** Each of Lead Developer and Affordable Developer and its members are meeting their current liabilities as they mature; no federal or state tax liens have been filed against them; and each of Lead Developer and Affordable Developer and
its members are not in default or claimed default under any agreement for borrowed money. Each of Lead Developer and Affordable Developer shall during the Term of this Agreement immediately notify the Successor Agency 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, subject to the cure and remedy provisions of Section 17.A(c).

(g) **Conflicts of Interest.** Each of Lead Developer and Affordable Developer is familiar with (i) Section 87100 et seq. of the California Government Code, which provides that no member, official or employee of the Successor Agency, 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) the Successor Agency’s Personnel Policy, which prohibits former Successor Agency employees and consultants from working on behalf of another party on a matter in which they have participated personally and substantially unless the Successor Agency 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 Successor Agency employees after termination by the Successor Agency; and (iv) Section 1090 of the Government Code, which provides that no member, official or employee of the Successor Agency shall be financially interested in any contract made by them in their official capacity. As to the provisions referred to above, neither Lead Developer nor Affordable Developer knows of any facts that constitute a violation of such provisions.

(h) **Skill and Capacity.** Each of Lead Developer and Affordable 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 date of this Agreement, Lead Developer and Affordable Developer have hired the following consultant(s) in connection with the proposed redevelopment of the Site: OMA, Fougeron, and CMG. Each of Lead Developer and Affordable Developer shall promptly notify the Successor Agency of the termination of any consultant previously approved by the Successor Agency, and shall, to the extent required to fulfill its obligations under this Agreement, replace such consultant with a new consultant reasonably approved by the Successor Agency. In addition, each of Lead Developer and Affordable Developer shall promptly notify the Successor Agency of the addition of any new consultant associated with the Project.

(j) **Not Prohibited from Doing Business.** Neither Lead Developer nor Affordable Developer nor any of their respective members or affiliates have been debarred or are otherwise prohibited from doing business with any local, state or federal governmental agency.

(k) **Business Licenses.** Each of Lead Developer and Affordable 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 the Successor Agency.

(l) **No Claims.** Neither Lead Developer nor Affordable Developer has any claim, and shall not make any claim, against the Successor Agency or TJPA (other than potential claims arising from any Successor Agency Event of Default), or against the Site, or any present or future interest of the Successor Agency 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 the Successor Agency or any of its officers, commissioners, employees or agents with regard to the Site or any aspect of the negotiations under this Agreement; and (iii) the Successor Agency’s exercise of discretion, decision and judgment set forth in this Agreement, so long as such actions are not capricious or arbitrary.

B. Successor Agency’s Representations and Warranties

The Successor Agency represents, warrants and covenants as follows:

(a) Authority. The Successor Agency 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 the Successor Agency have been duly and validly authorized by all necessary action. This Agreement will be a legal, valid and binding obligation of the Successor Agency, 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. The Successor Agency has provided to the Development Team a written resolution of the Commission authorizing the execution of this Agreement.

21. Cooperation with Successor Agency on Design

Each of Lead Developer and Affordable Developer agrees to work collaboratively with the Successor Agency with respect to the design of the Project.

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

Each of Lead Developer and Affordable 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 the Successor Agency 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.

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

**Lead Developer:**
Related California Urban Housing, LLC  
18201 Von Karman Ave, Suite 900  
Irvine, CA 92612  
Attention: William A. Witte, President  
Telephone: (949) 660-7272  
Facsimile: (949) 660-7273

with a copy to:

SSL Law Firm, LLP  
575 Market Street, Suite 2700  
San Francisco, CA 94105  
Attention: Jodi B. Fedor  
Telephone: (415) 243-2087  
Facsimile: (650) 240-1831
26. **Successor Agency Requirements**

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

(a) Developers covenant and agree 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) Developers 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) Developers do 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 the Successor Agency’s Non-Discrimination in Contracts and Benefits Policy, adopted September 9, 1997, as amended February 4, 1998.

B. **Small Business Enterprise Program**

The Successor Agency has adopted a Small Business Enterprise (“SBE”) Program, which provides for the Successor Agency’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 Successor Agency Project or Survey Area, but within San Francisco), and (3) Non-local SBEs (outside of San Francisco). Non-local SBEs should be used to satisfy participation goals only if Project Area SBEs or Local SBEs are not available, qualified, or if their bids or fees are significantly higher than those of non-local SBEs. 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 the Successor Agency or the equivalent through other public entities' business certifications as approved by the Successor Agency 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 effective 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 F.

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 the Successor Agency entering into this Agreement, each of Lead Developer and Affordable Developer agrees that all actions or proceedings arising directly or indirectly under this Agreement may, at the sole option of the Successor Agency, be litigated in courts located within the County of San Francisco, State of California, unless Successor Agency 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.

(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 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 the Successor Agency will be personally liable to Lead Developer or Affordable Developer, or any successor in interest (if and to the extent permitted under this Agreement), in an event of default by the Successor Agency or for any amount that may become due to Lead Developer or Affordable Developer or successors or on any obligations under the terms of this Agreement. No director, officer, agent or employee of Lead Developer or Affordable Developer will be personally liable to the Successor Agency in an event of default by Lead Developer or Affordable Developer or for any amount that may become due to the Successor Agency 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 each of Lead Developer and Affordable Developer signs as a corporation, limited liability company or a partnership, each of the persons executing this Agreement on behalf of the Development Team 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 Successor Agency’s request, each of Lead Developer and Affordable Developer shall provide Successor Agency with evidence reasonably satisfactory to Successor Agency 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) the Successor Agency under this Agreement shall be made by the Successor Agency’s Executive Director or his or her designee, (ii) Lead Developer under this Agreement shall be made by William A. Witte ("Lead Developer’s Representative") or such other employee or agent of Lead Developer as it may designate to act as Lead Developer’s Representative for a particular matter, and (iii) Affordable Developer under this Agreement shall be made by Donald S. Falk ("Affordable Developer’s Representative") or such other employee or agent of TNDC as it may designate to act as TNDC’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 Successor Agency 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, except that each milestone set forth in the attached Schedule of Performance is advisory as further described in Section 5 above.

M. Successors and Assigns

This Agreement shall inure to the benefit of and bind the respective successors and assigns of the Successor Agency and Developers, subject to the limitations on assignment by Lead Developer and Affordable 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 Lead Developer or Affordable 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 the Successor Agency nor each of Lead Developer and Affordable 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 the Successor Agency, Lead Developer and Affordable 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 Successor Agency, Lead Developer or Affordable 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 any and all 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 Successor Agency Requirements**

Each of Lead Developer and Affordable 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 the Successor Agency a partner in the Developers’ respective business, or joint venture partner or member in any joint enterprise with either Lead Developer or Affordable 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 date first above written.

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

By: __________________________
Tiffany J. Bohee
Executive Director, Successor Agency

Approved as to Form:
DENNIS J. HERRERA,
City Attorney

By: __________________________
Heidi J. Gewertz
Deputy City Attorney

CITY ACKNOWLEDGMENT
Mayor’s Office of Housing and Community Development

By: __________________________
Olson M. Lee
Director

RELATED CALIFORNIA URBAN HOUSING, LLC,
a California limited liability company

By: The Nicholas Company, Inc.,
a Delaware corporation,
Its Non-Member Manager

By: __________________________
William A. Witte, President

TENDERLOIN NEIGHBORHOOD DEVELOPMENT CORPORATION,
a California non-profit public benefit corporation

By: __________________________
Name: _______________________
Title: ________________________
Exhibit A:
Site Plan

Block 8

FOLSOM ST.

FIRST ST.

12' Lane
12' Lane
12' Lane
4' Shoulder
10' Lane
10' Lane
6' Sidewalk

PLAZA/COMMON AREA

FOLSOM ST.

14' Sidewalk
12' Lane
10' Sidewalk
13' Lane
11.5' Lane
11' Lane
7' Parking Lane

Existing Bridge Footing
Existing MSE Wall/Barrier
New Retaining Wall/Barrier
This Term Sheet represents 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 and Air Rights Lease. The Term Sheet shall serve as a non-binding guide in the negotiation of the Transaction Documents, although the parties acknowledge that review of additional information and further discussion may lead to refinement and revision of the Term Sheet and changes in the Project. Such changes in the Project may result in changes to the Term Sheet if the parties agree that the changes are necessary to support Project feasibility. 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 Block 8 in the Transbay Redevelopment Project Area, which is an approximately 42,625-square-foot parcel on Folsom Street between First and Fremont Streets, two blocks south of the future Transbay Transit Center. The Site consists of Lots 005, 012, and 027 of Assessor’s Block 3737 (referred to in the Cooperative Agreement as Parcel C”) plus a portion of the State’s operating right of way. The parcels (or portions thereof) that make up Block 8 will be transferred from the State to the City and County of San Francisco, then to the Successor Agency, and then to the Lead Developer, pursuant to the Cooperative Agreement, the Implementation Agreement, and the Option Agreement.

2. The Project. The Project, which shall be constructed on the Site, shall be consistent with the Redevelopment Plan, the Development Controls, the Streetscape Plan and all other Plan Documents and shall consist of the following: (a) a market-rate for-sale residential component consisting of approximately 162 residential units on floors 33 through 56 of the tower (the “Market-Rate Condo Project”); (b) an “80/20” mixed-income component consisting of 314 market-rate rental units and 79 affordable rental units that are affordable to households earning up to 40% to 50% of Area Median Income (“AMI”) for the life of the Project but in no event less than 55 years on floors 2 through 32 of the tower, in which the lower floors will be developed as affordable units and the upper floors will be developed with market-rate units unless a different configuration is agreed to by all parties (the “80/20 Project”); (c) an affordable project with 98 rental residential units, of which no less than 30% shall be three or more bedrooms, in podium buildings located on Folsom and Fremont Streets, and townhouses along Clementina Street (the “Affordable Project”) 100% of which shall be affordable to households earning up to 50% of AMI; (d) streetscape improvements including the extension of Clementina Street on the northern edge of the Site and the 25-foot wide Folsom Street sidewalk; (e) ground-floor retail space along Folsom Street of approximately 10,000 square feet and a possible 22,000 square-foot grocery store on the basement level, for a total of approximately 32,000 square feet of retail; (f) a shared 7,647-square-foot mid-block open space and paseo; and (g) shared underground parking with up to 422 stalls, with at least 24 stalls exclusively dedicated to the Affordable Project, (1 parking stall for every four (4) units).

3. Affordable Housing. The Affordable Project on Block 8 coupled with the affordable units in the 80/20 Project shall satisfy the on-site affordable housing requirement in the Redevelopment Plan. The Lead Developer shall be solely responsible for development of the Market-Rate Condo Project and the 80/20 Project. The Lead Developer shall partner with the Affordable Developer to build and operate the Affordable Project on Block 8 (together, the Lead Developer and Affordable Developer are referred to as the “Development Team”). Upon issuance of a Certificate of
Completion for the Affordable Project and in accordance with the Air Rights Lease with the Affordable Developer, the air rights related to the Affordable Project (the “Air Rights Parcel”), will be transferred to the City and County of San Francisco acting by and through MOHCD.

4. Building Structure. Consistent with the Development Controls and the RFP, Lead Developer and Affordable Developer agree to design and construct a residential tower of up to 550 feet in height with a mid-rise residential component of between 50 to 85 feet that shall include residential townhouses along Clementina Street, all with ground floor retail uses along Folsom Street. The Development Team shall, with approval by OCII, create a plan to proportionally allocate design and construction costs for the Affordable Project, 80/20 Project, and the Market-Rate Condo Project.

5. Proposed Districts.
   a. Community Benefit District (CBD). The Market-Rate Condo Project, the 80/20 Project, and the Affordable Project shall be subject to the provisions of the proposed Greater Rincon Hill Community Benefit District, once established, in order to help finance community services and the maintenance of public improvements in the Project Area. Both market rate and affordable units will be required to pay into the CBD. While the rates for the CBD have not yet been determined, they are anticipated to be the amounts set forth in the RFP. The Lead Developer shall support a CBD that requires the Lead 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 Lead Developer shall pay the Lead 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. 2013-1 (Transbay Transit Center) (“CFD”), once established, to help pay the costs of constructing the new Transbay Transit Center. The CFD does not apply to the affordable units in the Project. The special tax rate has not been determined, but will be equal to or less than those set forth in the RFP. If the Project is not subject to a CFD that will help pay the costs of constructing the new Transbay Transit Center on the date that a Final C of O is issued to the Lead Developer, then the Lead Developer will be required to pay to the Successor Agency for transmittal to the TJPA consistent with the Pledge Agreement 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 negotiate the terms and conditions under which Lead Developer will pay to the Successor Agency the estimated CFD taxes amount that would otherwise be due but for Lead Developer’s delay in the completion of construction of the Project past the date indicated in the performance benchmarks. The “amount that would otherwise be due” shall be based on the CFD Rate and Method of Apportionment (“RMA”) attached to the ENA as Exhibit E, 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.
6. **Sustainable Design.** Lead Developer and Affordable Developer shall design and construct the Project in accordance with applicable provisions of the San Francisco Building Code and Administrative Bulletin AB-093.

7. **Compliance with Successor Agency Policies.** The Transaction Documents will require each of the Developers to comply with applicable Successor Agency policies and programs, including, but not limited to, policies regarding small business enterprises, construction workforce, permanent workforce hires, equal benefits, minimum compensation, healthcare accountability, and prevailing wages, as well as City policies including MOHCD’s Underwriting Guidelines and other policies related to the development and operation of affordable housing as applicable.

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 8 based on certain assumptions about the development. Lead Developer agrees to prepare any additional environmental review that may be required for review and approval by the Successor Agency, 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 C of the ENA.

9. **Developer Responsibility for Construction.** The Lead Developer shall be responsible for construction of the on-site improvements for the Project according to the Successor Agency-approved construction documents, all applicable building codes, and the Performance Benchmarks. Notwithstanding anything to the contrary, the Lead Developer shall be responsible for any changes from existing conditions, including site remediation, the constructions of underground utilities, street lighting, curbs, gutters, street trees, and sidewalks.

10. **Developer Responsibility for Transaction Costs.** Except in the preparation of the Transaction Documents, Lead Developer also agrees to be solely responsible for all transactional costs and closing requirements, either directly or through reimbursement of any related OCI or third party costs, including but not limited to, title insurance, escrow fees, surveys, environmental review, parcel mapping, lot line adjustments, permits, and inspections. OCI shall be responsible for taking such actions as may be required in order for it to be in a position to deliver marketable title, acceptable to the Developers, to the Site.

11. **Joint Development Agreement.** The Lead Developer and Affordable Developer shall negotiate and execute, subject to OCII staff review and reasonable approval, a joint development agreement (“Developers’ Agreement”), which shall direct the development process for Block 8. For the 80/20 and Market Rate Projects, the Developer’s Agreement shall describe the Lead Developer’s responsibilities related to, among other things, forming and hiring the design and construction teams in compliance with applicable laws, rules, regulations, and Successor Agency policies as described in Section 7 above; providing the design team with the development program, information and timely decisions to facilitate creation of a design responsive to the project requirements; causing the securing of all necessary public approvals and permits; causing compliance with the Successor Agency policies, particularly the Small Business Enterprise Policy and workforce requirements, by each of the Developers, their contractors, and subcontractors; providing clarification to the general contractor for the Project regarding construction scope to facilitate construction in conformance with the design documents; approving and processing
necessary or Lead Developer-initiated changes to the work for the Project; administering the draw process to pay consultants and contractors in a timely and well-documented manner; coordinating with pertinent public agencies throughout design and construction to secure required approvals, including Certificates of Occupancy; monitoring the progress of the Project components; and monitoring and facilitating the retail leasing and common area property management activities to open the building in a manner that optimizes occupancy and ongoing success within the financial goals of the Project.

The Developer’s Agreement shall also describe the assignment of responsibility between the Affordable Developer and Lead Developer related to all the above actions, among others, for the Affordable Development. However, notwithstanding anything to the contrary that may be included in the Developer’s Agreement, the Lead Developer shall bear full responsibility for the completion of the Affordable Development.

12. **Performance Benchmarks.** The parties shall, in good faith, work expeditiously on, and diligently pursue to completion, certain Performance Benchmarks. The parties’ current expectations of the Performance Benchmarks are set forth in Exhibit C of the ENA. The Successor Agency shall use its good faith efforts to meet its obligations, including drafting of transaction documents and reviewing schematic and design development documents, under the Performance Benchmarks. Any failure of the Successor Agency to meet the deadlines under the Performance Benchmarks will allow for an extension of the date of the close of escrow commensurate with the period of delay to the extent that the failure materially impaired the Development Team’s ability to timely close and the Development Team provided the Successor Agency at least 5 business days notice an opportunity to cure such delay. The parties currently expect Close of Escrow to occur no later than October 1, 2015 ("Close of Escrow"), subject to extension for Successor Agency delay as noted above, or for force majeure as described in Section 27.N of the Exclusive Negotiation Agreement, or due to Successor Agency Event of Default (as defined in the ENA) or the Developer shall be subject to a daily penalty in an amount of $11,000 per day past the Close of Escrow.

13. **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 Board of Supervisors.

14. **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) Lead 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 Lead 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) Successor Agency shall record a deed restriction for the term of the TIFIA Loan that the Site, with the exception of the Affordable Units, 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.
15. **Title.** At Close of Escrow, Successor Agency shall convey fee simple title to the Site to Lead Developer. Successor Agency shall not have any responsibility for resolving any title exceptions prior to Close of Escrow, provided that it shall be a condition to Close of Escrow that all unresolved title exceptions are acceptable to Developers. 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.

16. **Due Diligence.** The Successor Agency 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, Caltrans currently holds title to the Site and Developer's access to the Site is subject to Caltrans's terms and at Caltrans's sole discretion.

**B. Terms Related to Lead Developer**

1. **ENA Deposit.** Within thirty (30) days after the Effective Date of the ENA, Lead Developer shall deposit with Successor Agency the ENA Deposit of Five Hundred Thousand Dollars ($500,000) in cash, in consideration of the Successor Agency’s grant of the Exclusive Right during the Term. The ENA Deposit may be used by the Successor Agency in its discretion for staff costs, legal fees, and third party costs related to the Project. The ENA Deposit will not be credited against the land payment. All payments made pursuant to this section shall be non-refundable, except as otherwise provided in the ENA.

2. **Legal Fees.** Beginning on the Effective Date of the ENA, Lead Developer shall be responsible for the cost of OCII to retain legal counsel to represent OCII during the Term. The cost for these services is estimated to be $60,000 and is covered by the ENA Deposit amount; provided, however, that the Lead Developer shall reimburse OCII for all 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.

3. **Affordable Project Predevelopment Expenses.** Prior to the execution of the ENA, Lead Developer and Affordable Developer shall provide to OCII a predevelopment budget associated with the Developer provided $1.5 million predevelopment loan, as indicated in the RFP submittal, including all anticipated predevelopment expenses attributable to the OCII-subsidized affordable units through construction loan closing and payment of the purchase price.

4. **DDA Deposit.** Within thirty (30) days after the effective date of the DDA, Lead 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 purchase-sale of the Site, 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 OCII or TJPA default or failure of a condition benefiting Developer, or (b) fails to close due to an uncured event of default by Developer.

5. **Purchase Price; Closing and Transaction Costs.** Subject to the second to last sentence of this Section B(5), and subject to the Lead Developer’s obligation to use commercially reasonable efforts to
diligently and in good faith pursue obtaining all regulatory approvals and a construction loan for the Market-Rate Condo Project, 80/20 Project, and the Affordable Project to allow Lead Developer to close and start construction on or before October 1, 2015, the Close of Escrow date shall be October 1, 2015, instead of the March 31, 2016 date in Lead Developer’s original proposal. At or prior to Close of Escrow, Lead Developer agrees to deposit the amount of $72,000,000 ("Purchase Price"), less the Good Faith Deposit and reduced by a not-to-exceed amount of $2,000,000 ("Purchase Price Reduction"), in cash or immediately available funds, in consideration for the transfer of the Site.

The Purchase Price Reduction shall be equal to the actual Extraordinary Cost (as defined in the ENA) to Lead Developer of the Interim Financing, up to a maximum of $2,000,000, as documented to the reasonable satisfaction of OCII and TJPA staff, provided that such review by OCII and TJPA shall be (A) informed by the statements in Recital O of the ENA and will take into account the nature of the Interim Financing (including the potential perception by lenders and investors that the Interim Financing poses greater risks than construction financing and the potential result that lenders and investors of will demand higher interest rates and/or returns and higher origination and other lender fees) and its impact on costs, and (B) limited to a determination by OCII and the TJPA as to whether any claimed Extraordinary Costs are accurately included within the definition of Extraordinary Cost in the ENA. After Closing, in the event the Development Team begins construction of the Project earlier than April 1, 2016 and the Lead Developer’s actual Extraordinary Carry Cost is thereby reduced, Lead Developer shall reimburse to the Successor Agency a portion of the Purchase Price Reduction calculated as follows, to the extent such calculation results in a positive number: (i) subtract the Extraordinary Fixed Cost from the Purchase Price Reduction taken at Close of Escrow, and (ii) subtract from the resulting amount the Extraordinary Carry Cost prorated to match the number of days that elapse between the actual Close of Escrow and the actual start of construction of the Project.

OCII, in consultation with TJPA, reserves the right to delay the closing date until March 31, 2016, in which case the Purchase Price shall be $72,000,000 with no Purchase Price Reduction and all references to the October 1, 2015 date herein shall be changed to March 31, 2016, provided that any decision to delay the closing date shall be made, if at all, no later than the date of execution of the DDA and will only be valid and binding on the parties if documented in the DDA executed by all parties.

Lead Developer shall also pay all costs associated with the conveyance of the Site from OCII to Developer, including title insurance, escrow fees, surveys, environmental review, parcel mapping, lot line adjustments, quiet title actions, permits, and inspections.

6. **Parcelization; Conveyance.** Lead Developer shall apply for a tentative parcel or subdivision map subdividing the Site into at least two parcels prior to construction commencement, Affordable Air Rights Parcels for the Affordable Project and the remainder of the Site. If the parcelization of the Site is complete prior to close of escrow, the Successor Agency shall retain the Affordable Air Rights Parcel and only convey the remainder of the Site at the close of escrow. If the parcelization of the Site is not complete prior to close of escrow, the Successor Agency shall convey the entire Site at close of escrow and the Development Team will convey the Affordable Air Rights Parcel back to the Successor Agency promptly following completion of the parcelization. Immediately following parcelization of the Site into the Market-Rate Condo Project, the 80/20 Project, and the Affordable Project, OCII shall lease the Affordable Air Rights Parcel to the Affordable Developer and shall convey fee title to the remainder of the Site to the Lead Developer.
7. **Conveyance on an “as-is” Basis.** The Site shall be delivered by OCII to Lead Developer, and Lead 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 ENA or DDA. At the Close of Escrow, the Successor Agency, TJPA, and City shall be released by Developers from and against any and all environmental, construction and other ongoing liabilities relating to the Site to the extent they originate or accrue from and after the Close of Escrow.

8. **Shared Underground Parking Garage.** Lead Developer shall be responsible for coordinating the design and construction of the shared parking garage, including the basement level retail. The garage shall include no more than 422 stalls, including the required parking exclusively dedicated to the Affordable Project (which will require 1 parking stall for every four (4) units), with a minimum of two publicly accessible car share spaces. With the exception of the car share spaces, which shall be designed and constructed at Lead Developer’s sole expense, the cost for designing, constructing, and operating the garage shall be shared by Lead Developer and Affordable Developer based on the number of parking spaces exclusively dedicated to the Affordable Project and in accordance with a separate agreement between them. Such agreement shall address the timing of payment of any contribution which may be made by Affordable Developer as the Affordable Project’s share of the construction costs of the garage based on the number of parking spaces exclusively dedicated to the Affordable Project.

9. **Streetscape Improvements.** Lead Developer must design and construct all of the streetscape improvements described in the Streetscape Plan relative to Block 8. Lead 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, to reimburse Lead Developer for the actual cost of the design and construction of the streetscape improvements up to $2,000,000, which acceptance and reimbursement will not be unreasonably delayed. The costs of maintaining the streetscape improvements shall be shared by the Market Rate Condo Project, the 80/20 Project, and the Affordable Project on a pro rata basis according to the residential square footage in each project type or in a manner acceptable to Lead Developer, Affordable Developer, OCII and MOHCD, each acting reasonably.

10. **Shared Open Space.** Each of Lead Developer and Affordable Developer shall negotiate the allocation of the design, construction, and ongoing maintenance costs of the shared open space on Block 8 between Market-Rate Condo Project, the 80/20 Project and the Affordable Project. Costs of ongoing maintenance of the shared open space shall be allocated between the Market-Rate Condo Project, the 80/20 Project, and the Affordable Project on a pro rata basis according to the residential square footage in each project type or in a manner acceptable to Lead Developer and Affordable Developer and OCII and MOHCD, each acting reasonably, as set forth in a reciprocal easement agreement recorded upon conveyance of the Site to Lead Developer.

11. **Design and Construction Documents.** In accordance with Exhibit D of the ENA, Lead 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 Lead Developer to review such documents pursuant to the advisory timeframes set forth in Exhibit D, which shall be updated and attached to the disposition and development agreement.
12. **Evidence of Financing and Project Commitments.** Prior to Close of Escrow, Lead Developer shall submit to Successor Agency for it review and approval certain evidence of financing and project commitments.

13. **RFP.** Lead Developer shall conform to all assumptions related to the Project described in the RFP, except to the extent the ENA or DDA expressly provide otherwise.

**C. Terms Related to the Affordable Project**

1. **Affordable Project.** Consistent with the Development Controls and as their roles and responsibilities are further defined in the Developer’s Agreement, Affordable Developer and Lead Developer agree to design and construct the Affordable Project with 98 residential units in the podium building on Folsom and Fremont and the townhouses along Clementina Street. OCII will provide a subsidy of up to $200,000 per unit for the 98 units of stand-alone affordable housing. Any additional subsidy required to complete these units and maintain their affordability in compliance with the DDA after all non-OCII affordable housing funding sources have been secured (“Gap Financing”) must be funded by Lead Developer. All funding sources used by the Affordable Developer must be compatible with OCII’s or MOHCD’s underwriting guidelines and policies related to affordable housing financing and operation. Any additional subsidy required from Lead Developer will not affect the land price.

2. **Conveyance of the Air Rights Parcel.** OCII will enter into an Air Rights Lease with Affordable Developer at close of construction financing. Nothing in the Air Rights Lease shall diminish the responsibility of Lead Developer to complete the Affordable Project. When construction is complete and OCII has issued a certificate of completion, the interest of OCII as owner of the Air Rights Parcel and lessor under the Air Rights Lease will be conveyed to MOHCD. The Air Rights Lease will have a 99-year term, which may be separated into an initial term and options to extend as provided in the DDA. At the end of the 99-year term, all right, title, and interest in the Affordable Project improvements will revert to MOHCD.

3. **Affordable and Market Rate Project Cost Distinction.** Affordable Developer and Lead Developer, with approval by OCII and MOHCD in their reasonable discretion, shall create a plan to allocate operating and maintenance costs among the Market-Rate Condo Project, 80/20 Project, and Affordable Project based on the residential square footage in each project type. The cost-sharing plan must provide Affordable Developer with the ability to reasonably control operating and maintenance costs related to the Affordable Project.

4. **OCII and MOHCD Policies.** Affordable Developer and Lead Developer shall comply with the applicable OCII and MOHCD policies related to the financing, development and operation of affordable housing.

5. **RFP.** Affordable Developer shall conform to all assumptions related to the financing, development, operation, and ownership structure of the Affordable Project described in the RFP, except to the extent the ENA or DDA expressly provide otherwise.
**Exhibit C**  
**Performance Benchmarks**  
[All capitalized terms shall have the meaning given to them in the Agreement]

[NOTE: These Performance Benchmarks represent the best understanding of the Parties as to the desired timeframes for performance based on Exhibit D, Design Review and Document Approval Procedure, but will be revised pursuant to the terms of Section 5 of the ENA. These Performance Benchmarks refer to all three project types: Market-Rate Condos, 80/20, and Affordable Projects. However upon execution of the DDA and parcelization of the Site, each project type will have different milestones and schedules.]

<table>
<thead>
<tr>
<th>Task</th>
<th>Time Frame</th>
<th>Target Date</th>
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</thead>
<tbody>
<tr>
<td>Submission by Successor Agency to Developer - Conceptual Design Comments</td>
<td>ENA approved</td>
<td>June 2014</td>
</tr>
<tr>
<td>Payment of ENA Deposit</td>
<td>Within 30 days after ENA approved</td>
<td>July 2014</td>
</tr>
<tr>
<td>Submission by Successor Agency to Developer – Draft DDA</td>
<td></td>
<td>September 2014</td>
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<tr>
<td>Submission to Successor Agency – Supplemental Environmental Studies for Project</td>
<td></td>
<td>December 2014</td>
</tr>
<tr>
<td>Approval by Successor Agency – Supplemental Environmental Studies for Project</td>
<td>Within 30 days after submission of the Supplemental Environmental Studies</td>
<td>January 2015</td>
</tr>
<tr>
<td>Approval of Schematic Design Documents for Project – Successor Agency and MOH staff</td>
<td>Completeness check within 7 working days after submittal. Approval within 45 days after the date Schematic Design is determined to be complete.</td>
<td>February 2015</td>
</tr>
<tr>
<td>Successor Agency Commission Hearing to consider approval of DDA and Schematic Design Documents for Project (separate Design Workshop if necessary); execute DDA</td>
<td>Within 9 months after approval of the ENA; Successor Agency discretion to extend for 2 3-month periods but without automatic extension of other benchmarks</td>
<td>March 2015</td>
</tr>
<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>Event</td>
<td>Date</td>
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<tr>
<td>Board of Supervisors’ Hearing re: Section 33433 Findings for Market-Rate Project</td>
<td>April 2015</td>
<td></td>
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<tr>
<td>Board of Supervisors’ Hearing re: Air Rights Lease for Affordable Project</td>
<td>April 2015</td>
<td></td>
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<tr>
<td>Apply for Bond/Tax Credits for Affordable Project</td>
<td>Estimated May 2015</td>
<td></td>
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<tr>
<td>Approval by Successor Agency and MOH staff – Design Development Documents</td>
<td>September 2015</td>
<td></td>
</tr>
<tr>
<td>Payment of Purchase Price and Close of Escrow, subject to Successor Agency’s election to delay closing.</td>
<td>October 1, 2015</td>
<td></td>
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<tr>
<td>Submission to Successor Agency – Final Construction Documents</td>
<td>February 2016</td>
<td></td>
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<td></td>
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<td>March 31, 2016</td>
<td></td>
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<tr>
<td>Commencement of Construction</td>
<td>April 2016</td>
<td></td>
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<tr>
<td>Completion of Construction, not including a reasonable period of time before penalties or additional costs (to be negotiated in the DDA) apply.</td>
<td>May 2019</td>
<td></td>
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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 8 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

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**
OCI 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 OCI staff does not so advise the applicant, the Design Development Documents shall be deemed complete. The time limit for OCI staff’s review shall be sixty (60) days from the date the Design Development Documents were determined to be complete. OCI 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 OCI Executive Director’s discretion.

The applicant and OCI staff may agree to any extension of time necessary to allow revisions of submittals prior to a decision by OCI architectural staff. OCI architectural staff shall review all such revisions as expeditiously as possible, within the time frame of the extension agreed to by OCI 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. OCI staff may waive certain document submittal requirements if OCI 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 OCI architectural staff or their designee. Provided the applicant’s Final Construction Documents are delivered to OCI architectural staff concurrently with submittal to the Department of Building Inspection, Final Construction Documents shall be reviewed by OCI architectural staff within thirty (30) days following OCI 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 OCI staff, OCI 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.
EXHIBIT 1:
DOCUMENTS TO BE SUBMITTED FOR PROJECT APPROVALS

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.
A Special Tax applicable to each Assessor’s Parcel of Developed Property in the City and County of San Francisco Community Facilities District No. 2013-1 (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 Developed Property, as described below. All Developed Property in CFD No. 2013-1 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:

“**Accessory Parking**” means parking 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 or is replacing parking spaces that had existed elsewhere, as determined by the Zoning Authority.

“**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. 2013-1 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, costs of an MAI-certified appraiser for determination of the Pre-COO Adjustment Factor, 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 CFD No. 2013-1.

“**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 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 CFD No. 2013-1 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 Parcel upon issuance of a Certificate of Occupancy and Tax Commencement Authorization 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 Parcel in the CFD in future Fiscal Years.

“Below Market Rate Units” or “BMR Units” means all Residential Units within CFD No. 2013-1 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. 2013-1.

“Bonds” means bonds or other debt (as defined in the Act), whether in one or more series, issued, incurred, or assumed by CFD No. 2013-1 related to the Authorized Facilities.

“Building Height” means the number of Stories in a building, which shall be determined based on the highest Story that is occupied by a Land Use. If there is any question as to the Building Height of any structure 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 within a Conditioned Project 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 Developed Property if the building is, or is part of, a Conditioned Project on the Parcel(s).

“CFD” or “CFD No. 2013-1” means the City and County of San Francisco Community Facilities District No. 2013-1 (Transbay Transit Center).

“Child Care Square Footage” means, collectively, the Initial Child Care Square Footage and Subsequent Child Care Square Footage within a building in the CFD.

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

“Conditioned Project” means a Development Project that, pursuant to Section 424 of the Planning Code, is required to participate in funding Authorized Facilities through the CFD and, therefore, is subject to the levy of the Special Tax when buildings within the Development Project become Developed Property.

“Condominium Conversion Building” means, in any Fiscal Year, a building that had been an Apartment Building and subsequently one or more Residential Units within the building are sold to buyers other than the entity that owns the Rental Units that remain within the building.

“Condominium Conversion Unit” means, in any Fiscal Year, an individual Market Rate Unit within a Condominium Conversion 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 the entity that owns all of the Rental Units that remain in the building.

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

“Development Project” means a residential, non-residential, or mixed-use development that includes one or more buildings that are planned and entitled in a single application to the City.

“Developed Property” means, in any Fiscal Year, all Parcels within Conditioned Projects in the CFD for which Certificates of Occupancy were issued and Tax Commencement Authorizations were received by the Administrator on or prior to June 30 of the preceding Fiscal Year. If, in any Fiscal
Year, a Special Tax is levied on only Net New Square Footage in a building in the CFD, that Net New Square Footage shall be the “Developed Property” on the Parcel for purposes of calculating and levying the Special Tax pursuant to this RMA.

“Downtown Area” means:

To determine the Pre-COO Adjustment Factor for office, hotel, and retail land uses, the area included within the following boundaries: Kearny Street/3rd Street on the west, Washington Street on the north, The Embarcadero on the east, and Folsom Street on the south, or such broader area, as determined by an MAI-certified appraiser, needed to compile a sufficient number of applicable transactions to establish the Pre-COO Adjustment Factor for office, hotel, and/or retail land uses.

To determine the Pre-COO Adjustment Factor for residential land uses, the area included within the following boundaries: 2nd Street on the west, Mission Street on the north, The Embarcadero on the east, and King Street on the south, or such broader area, as determined by an MAI-certified appraiser, needed to compile a sufficient number of applicable transactions to establish the Pre-COO Adjustment Factor for residential land uses.

“Excess Parking Square Footage” means Square Footage of parking in a building that is determined by the Zoning Authority not to be Accessory Parking.

“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, based on a condominium plan or Certificate of Occupancy, will be part of a For-Sale Unit. The Zoning Authority shall make the determination as to the For-Sale Residential Square Footage within a 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 building that is not a Condominium Conversion Building: a Market Rate Unit that has been, or is available or expected to be, sold, and (ii) in a Condominium Conversion Building, a Condominium Conversion 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. 2013-1 Bonds are issued, as modified, amended, and/or supplemented from time to time, and any instrument replacing or supplementing the same.

“Initial Child Care Square Footage” means Square Footage within a 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.

“Initial Square Footage” means, for any 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, or hotel 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.

“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 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 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, based on the Certificate of Occupancy, will 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 Residential Square Footage or Retail Square Footage, including space used for cultural, educational, recreational, religious, or social service facilities that is not Public Property, (iii) Subsequent Child Care Square Footage for which no prepayment has been received to release or reduce the Special Tax lien on the Parcel on which such Square Footage is located, (iv) Square Footage in a residential care facility that is staffed by licensed medical professionals, and (v) any other Square Footage within a building that is not Public Property and 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, based on the Certificate of Occupancy, will 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.

“Pre-COO Adjustment Factor” means an annual adjustment factor that will be determined by June 30 of each Fiscal Year by an MAI-certified appraiser selected by the City. The Pre-COO Adjustment Factor will provide an estimate of the average percentage increase or decrease in values of retail, office, hotel and residential properties in the Downtown Area from April 30 of one year to April 30 of the following year. The Pre-COO Adjustment Factor applicable to each Land Use will be used to adjust the Base Special Tax for such Land Use pursuant to Section D.1 below, which shall be used to determine the Maximum Special Tax for Parcels upon issuance of a Certificate of Occupancy and Tax Commencement Authorization. After a Certificate of Occupancy and Tax Commencement Authorization have been issued and a Maximum Special Tax has been assigned to a Parcel, such Maximum Special Tax will be subject to an escalator pursuant to Section D.2 of this RMA.

“Proportionately” means, for Developed Property that is not Taxable Public Property, 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 Assessor’s Parcels of Developed Property that are not Taxable Public Property. For Taxable Public Property, “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 Parcels of Taxable Public Property.

“Public Property” means any property within the boundaries of CFD No. 2013-1 that is owned by the federal government, the State of California, the City, or other public agency.

“Rental Residential Square Footage” or “Rental Residential Square Foot” means Square Footage that is or, based on a condominium plan or Certificate of Occupancy, will 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 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 Condominium Conversion 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 Excess 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 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 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 which 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; (iv) cure any delinquencies in the payment of principal or interest on Bonds which have occurred in prior Fiscal Years or, based on existing delinquencies in the payment of Special Taxes, are expected to occur in the Fiscal Year in which the tax will be collected; (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 CFD No. 2013-1 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 the following:

For-Sale Units: the gross square footage of the Residential Unit as identified on the condominium plan, certificate of occupancy, or building permit for the building or unit.

Rental Residential Square Footage: the net leasable square footage within a building used by, or designated for, all Residential Uses in the building other than For-Sale Units as reflected on a condominium plan, site plan, building permit for new construction. The Rental Residential Square Footage may be reduced each Fiscal Year in a Condominium Conversion Building due to the sale of Condominium Conversion Units.
**Office/Hotel and Retail Land Uses:** the net leasable square footage used by or designated for each Land Use within the building as reflected on a condominium plan, site plan, building permit for new construction, Certificate of Occupancy, or other such document.

**Excess Parking Square Footage:** the gross square footage of the building that is determined to be Excess Parking Square Footage.

If, for any Land Use in the building, the Square Footage shown on a site plan or condominium plan is inconsistent with the Square Footage reflected on the building permit, the Administrator shall use the Square Footage from the building permit to calculate the Maximum Special Tax for that Land Use pursuant to Section C below. If, at any time during which a Parcel is being taxed as Developed Property, a building permit is issued to increase the Square Footage of a building(s) on the Parcel, the Administrator shall, in the first Fiscal Year after the final building permit inspection has been conducted in association with such expansion, recalculate (i) the Square Footage of each Land Use on each Parcel, and (ii) the Maximum Special Tax for each Parcel based on the increased Square Footage. The final determination of Square Footage for each Land Use on each Parcel of Developed Property 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.

**“Subsequent Child Care Square Footage”** means the amount of Square Footage determined by subtracting the Initial Child Care Square Footage for a building from the total net leasable square footage within a building that is used for licensed child care facilities.

**“Tax Commencement Authorization”** means a written authorization issued by the Administrator upon the recommendation of the IPIC in order to initiate the levy of the Special Tax on a Conditioned Project that has been issued a COO.

**“Taxable Public Property”** means any Parcel of Public Property that had been taxed as Developed Property in a prior Fiscal Year, and for which the Special Tax obligation was not prepaid when the public agency took ownership of the Parcel.

**“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 about July 1 of each Fiscal Year, the Administrator shall identify the current Assessor’s Parcel numbers for all Parcels of Developed Property. In order to identify Parcels of Developed Property, the Administrator shall determine which Parcels in the CFD have been issued both a Tax Commencement Authorization and a COO.

The Administrator shall also determine: (i) the Building Height for each building on Parcels of Developed Property, (ii) the For-Sale Residential Square Footage, Rental Residential Square Footage, Office/Hotel Square Footage, Child Care Square Footage, and Retail Square Footage on each Parcel of Developed Property, (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, (v) whether there is Taxable Public Property in the CFD, and (vi) the Special Tax Requirement for the Fiscal Year. If there is determined to be Child Care Square Footage in the building, the Administrator shall further identify the Subsequent Child Care Square Footage and determine whether a prepayment has been received releasing the Special Tax lien associated with the Subsequent Child Care Square Footage from the Parcel on which it is located. 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 CFD No. 2013-1 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), (ii) the Assessor does not yet recognize the newly-created parcels, and (iii) one or more of the newly-created parcels meets the definition of Developed Property, the Administrator shall calculate the Special Tax for the property affected by recordation of the map or plan by determining 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 building on a Parcel of Developed Property have been identified, the Base Special Tax to be used for calculation of the Maximum Special Tax for the Parcel shall be determined based on reference to the applicable table(s) below:
### For-Sale 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>$4.71 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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<td>11 – 15 Stories</td>
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<tr>
<td>16 – 20 Stories</td>
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<td>21 – 25 Stories</td>
<td>$4.73 per Rental Residential Square Foot</td>
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<td>26 – 30 Stories</td>
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<tr>
<td>31 – 35 Stories</td>
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<tr>
<td>36 – 40 Stories</td>
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<tr>
<td>41 – 45 Stories</td>
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<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>
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<tr>
<td>11 – 15 Stories</td>
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<tr>
<td>16 – 20 Stories</td>
<td>$4.14 per Office/Hotel Square Foot</td>
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<tr>
<td>21 – 25 Stories</td>
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<tr>
<td>26 – 30 Stories</td>
<td>$4.36 per Office/Hotel Square Foot</td>
</tr>
<tr>
<td>31 – 35 Stories</td>
<td>$4.47 per Office/Hotel Square Foot</td>
</tr>
<tr>
<td>36 – 40 Stories</td>
<td>$4.58 per Office/Hotel Square Foot</td>
</tr>
<tr>
<td>41 – 45 Stories</td>
<td>$4.69 per Office/Hotel Square Foot</td>
</tr>
<tr>
<td>46 – 50 Stories</td>
<td>$4.80 per Office/Hotel Square Foot</td>
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<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.

2. **Determining the Maximum Special Tax for Developed Property**

Upon issuance of a Tax Commencement Authorization and the first Certificate of Occupancy for a building within a Conditioned Project, the Administrator shall apply the appropriate subsection of this Section C.2 to determine the Maximum Special Tax for the next succeeding Fiscal Year for the Parcel(s) of Developed Property:

2a. **Buildings With Residential Units on Separate Airspace Parcels**

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

   **Step 2.** Determine the For-Sale Residential Square Footage or Rental Residential Square Footage for each Market Rate Unit, and the Office/Hotel Square Footage and Retail Square Footage on each Parcel. If there are other Residential Uses in the building besides Market Rate Units, determine the Rental Residential Square Footage for such other Residential Uses on each Parcel.
Step 3. For each Parcel designated for a Market Rate Unit, determine whether such unit is a Rental Unit or a For-Sale Unit. Then, multiply the For-Sale Residential Square Footage or Rental Residential Square Footage, as applicable, of the Residential Unit by the applicable Base Special Tax from Section C.1 to determine the Maximum Special Tax for the Parcel.

Step 4. For each 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 Parcel.

Step 5. For each 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 Parcel.

Step 6. For each 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 Parcel.

Step 7. For 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 Parcel for the first succeeding Fiscal Year.

2b. Buildings With No Market Rate Units on Separate Airspace Parcels

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

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

Step 3. Multiply the For-Sale Residential Square Footage and Rental Residential Square Footage from Step 2 by the applicable Base Special Tax from Section C.1, and:

If there are no other Land Uses on the same Parcel as the For-Sale Residential Square Footage or Rental Residential Square Footage, this amount shall be the Maximum Special Tax for the Parcel for the first succeeding Fiscal Year.
If there are other Land Uses on the same Parcel as the For-Sale Residential Square Footage and/or Rental Residential Square Footage, multiply the Office/Hotel Square Footage and/or Retail Square Footage on the Parcel by the applicable Base Special Tax, and add this amount to the amount calculated for the residential Square Footage to determine the total Maximum Special Tax for the Parcel for the first succeeding Fiscal Year.

**Step 4.** If there is Office/Hotel Square Footage and/or Retail Square Footage on Parcels that do not include residential Square Footage, determine the Square Footage of each Land Use on each Parcel. Then, separately for each Land Use on the Parcel, multiply the Square Footage for that Land Use by the applicable Base Special Tax to determine the Maximum Special Tax associated with that Land Use. If there is only one Land Use on the Parcel, the amount calculated shall be the Maximum Special Tax for the Parcel. If there are multiple Land Uses on the Parcel, the sum of the amounts determined for each Land Use shall be the Maximum Special Tax for the Parcel for the first succeeding Fiscal Year.

**2c. Buildings With No For-Sale or Rental Residential Square Footage**

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

**Step 2.** Determine the Office/Hotel Square Footage and/or Retail Square Footage on each Parcel.

**Step 3.** Separately for each Land Use on each Parcel, multiply the Square Footage from Step 2 by the applicable Base Special Tax from Section C.1 to determine the Maximum Special Tax associated with that Land Use. If there is only one Land Use on the Parcel, the amount calculated shall be the Maximum Special Tax for the Parcel. If there are multiple Land Uses on the Parcel, the sum of the amounts determined for each Land Use shall be the Maximum Special Tax for the 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 Pre-COO Adjustment Factor that is determined on or before June 30 of the prior Fiscal Year. The Base Special Tax rates shall be used to calculate the Maximum Special Tax for each Parcel for the first Fiscal Year in which the Parcel is Developed Property, 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 Parcel of Developed Property pursuant to Section C.2, 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 taxed as Developed Property, and each July 1 thereafter, by two percent (2%) of the amount in effect in the prior Fiscal Year.

3. **Condominium Conversion Buildings**

If an Apartment Building in the CFD becomes a Condominium Conversion 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 Condominium Conversion Unit within a 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 the first Condominium Conversion Unit, as well as all other current and future Condominium Conversion Units within that building. This Base Maximum Special Tax, as well as the Maximum Special Tax for all 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. 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 Parcel**

If any Square Footage that had been taxed as For-Sale Residential Square Footage, Rental Residential Square Footage, Office/Hotel Square Footage, 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 Parcel of Developed Property 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 building or project within the CFD that had been subject to the levy of Special Taxes in any prior Fiscal Year becomes 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.

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. 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 Subsequent 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 the Subsequent Child Care Square Footage which shall remain exempt in all Fiscal Years after the prepayment has been received. No Special Tax shall be levied on any Parcel that has made a prepayment pursuant to Section H, below, unless and until Net New Square Footage is added on the Parcel, at which time a Maximum Special Tax shall be assigned to such Net New Square Footage. 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.

E. METHOD OF LEVY OF THE SPECIAL TAX

Each Fiscal Year, the Special Tax shall be levied according to the steps outlined below:

Step 1: The Special Tax shall be levied Proportionately on each Parcel of Developed Property within CFD No. 2013-1 that is not Taxable Public Property up to 100% of the Maximum Special Tax for each Parcel for such Fiscal Year until the amount levied on Developed Property that is not Taxable Public Property is equal to the Special Tax Requirement;

Step 2: If additional revenue is needed after Step 1 in order to meet the Special Tax Requirement, the Special Tax shall be levied Proportionately on each Assessor’s Parcel of Taxable Public Property, up to 100% of the Maximum Special Tax assigned to each Parcel.
F. COLLECTION OF SPECIAL TAX

The Special Taxes for CFD No. 2013-1 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 Developed Property 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) Public Property, except Taxable Public Property, (ii) Square Footage on Parcels for which a prepayment has been received and a Certificate of Exemption issued, (iii) Below Market Rate Units except as otherwise provided in Sections D.3 and D.4, (iv) 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, (v) Initial Child Square Footage, (vi) Subsequent Child Care Square Footage for which a prepayment was made to release the Special Tax lien associated with such Square Footage and a Certificate of Exemption was issued, and (vii) Parcels in the CFD that are not yet Developed Property.

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 Developed Property, and (ii) there are no delinquent Special Taxes with respect to such Assessor’s Parcel at the
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 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. No such application may challenge the determination of the Pre-COO Adjustment Factor by the MAI-certified appraiser selected by the City, which shall be final and conclusive.

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.
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>
</tr>
</thead>
<tbody>
<tr>
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<td>$ 0 – $99,000</td>
</tr>
<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>
</tr>
<tr>
<td>4</td>
<td>$1,000,000 – $1,499,999</td>
</tr>
<tr>
<td>5</td>
<td>$1,500,000 – $1,999,999</td>
</tr>
<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>
</tr>
<tr>
<td>8</td>
<td>$8,000,000 – or more</td>
</tr>
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</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 firm’s 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 businesses 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, provided however, that the Agency-Assisted Contractor or Contractor made an initial timely Demand for Arbitration pursuant to Section XII.B. above.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

___________________________________  ______________________________
Agency                                      Agency-Assisted Contractor

**XIII. AGREEMENT EXECUTION**

**Note:** 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