EXCLUSIVE NEGOTIATION AGREEMENT

THIS EXCLUSIVE NEGOTIATION AGREEMENT (the “Agreement” or the “ENA”), dated as of July 16, 2013, 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 (the “Successor Agency”), Block 9 Transbay LLC, a Delaware limited liability company, of which Avant Housing LLC, a Delaware limited liability company, and Essex Portfolio L.P., a California limited partnership, or their affiliates, are the members (the “Lead Developer”), and BRIDGE Housing Corporation (the “Affordable Developer” or “BRIDGE”) (collectively, the “Development Team”). Each of Lead Developer and BRIDGE or Affordable Developer is sometimes referred to as a “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 (the “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 (the “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 (the “Redevelopment Plan”). Said Redevelopment Plan was filed in the Office of the Recorder of the City and County of San Francisco (the “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 (the “Pledge Agreement”) between the Former Agency, the Transbay Joint Powers Authority (the “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 (the “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, M 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 (the “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 2006, the TJPA and the Former Agency entered into the Transbay Redevelopment Project Implementation Agreement (the “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 (the “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 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 the “Redevelopment Dissolution Law.”)

G. 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 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.

H. 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, AB 812 and Option Agreement meet the definition of “enforceable obligations” under the Redevelopment Dissolution Law.

I. 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.

J. On April 15, 2013, the State Department of Finance (“DOF”) issued a Final and Conclusive Determination for the Tax Increment Sales Proceeds Pledge Agreement, the Implementation Agreement, and the Affordable Housing Program funded by LMIHF for Transbay.
K. On September 12, 2012, pursuant to the Implementation Agreement, the Successor Agency issued a Request for Proposals (Exhibit A, the “Original RFP”) from development teams to design and develop a high-density, mixed-income residential project on Block 9, also identified as Lot 120, Assessor’s Block 3736, in the Project Area. Block 9 is shown on the Site Plan attached as Exhibit B and is a 31,564-square-foot parcel on Folsom Street between First and Essex Streets, two blocks south of the future Transbay Transit Center. Block 9, or Lot 120 of Assessor’s Block 3736, is in the process of being transferred from the State to the TJPA pursuant to the Cooperative Agreement.

L. The development program for Block 9, which conforms to the goals and requirements of the Redevelopment Plan, the Development Controls and Design Guidelines for the Transbay Redevelopment Project (the “Development Controls”), and the Transbay Redevelopment Project Area Streetscape and Open Space Concept Plan (the “Streetscape Plan”), includes a market-rate residential project consisting of approximately 452 residential units (the “Market-Rate Project”) and an affordable project with approximately 113 residential units (the “Affordable Project”), (together, the “Project”), allocated in a 400-foot tower and 85-foot mid-rise structure which includes townhouses along Clementina Alley. The development program also includes an open space parcel on the ground floor of the block; a single, shared underground parking facility; streetscape improvements; ground-floor retail spaces along the Folsom Boulevard frontage; and a minimum LEED Gold level of certification.

M. Three proposals were received and deemed to meet the minimum threshold requirements defined in the Original RFP. Based on evaluation of the written proposals, as well as interviews with each team, the proposal from Avant Housing LLC and BRIDGE Housing Corporation, Skidmore, Owings & Merrill LLP (”SOM”), and Fougeron Architecture 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 $43,320,000 payable at the transfer of title of Block 9 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 Deeds by which the State deeded the Site to the City and the TJPA. This proposal selected a variation (approved by the Successor Agency and MOH) of the Joint Development Project Alternative, which, as described in the Original RFP, provided that a market-rate developer and a nonprofit affordable housing developer could “jointly develop the project” with a single building in which the lower floors will be developed as 100 percent affordable units and the upper floors will be developed with market-rate units and including as many affordable units as necessary to meet the Project’s overall affordability requirement. RFP at p. 1.1.

N. The Lead Developer will be responsible for delivering the Affordable Project in its entirety, including paying a per unit subsidy (which contribution is referred to as the “Affordable Housing Fee or Gap Financing”) to the Successor Agency to, in turn, fund a loan to the Affordable Developer to help pay the cost of constructing the Affordable Project. The affordable units on Block 9 shall satisfy the inclusionary housing requirement in the Redevelopment Plan. The Lead Developer shall be responsible for providing the subsidy required to develop the Affordable Housing in the amount required to complete the Affordable Project after the Lead Developer has secured all non-City affordable housing funding sources. All funding sources used by the Affordable Developer, other than the Affordable Housing Fee (as funded through an affordable housing loan from the Successor Agency which is deemed to be consistent with all applicable policies), must be compatible with the Successor Agency’s and MOHCD’s underwriting guidelines and policies related to affordable housing financing and operation. Other than the Loan to the Affordable Developer funded from the payment of the Affordable Housing Fee, there will be no subsidy from MOHCD or the Successor Agency. Any additional subsidy
required to be provided by the Lead Developer will not affect the purchase price for the land. The Affordable Developer will work in conjunction with the Lead Developer under the terms of a separate agreement between them to develop the Affordable Project, subject to the review of the Successor Agency and MOHCD for compliance with the RFP, this Agreement, and the Term Sheet, as attached to this Agreement (the “Developers’ Agreement”). Nothing in the Developers’ Agreement or any other agreement shall limit the Lead Developer’s responsibility to deliver the Affordable Project in its entirety.

O. Concurrently with the close of construction financing for the Market Rate Project and the Affordable Project and the conveyance of the remainder of the Site to Lead Developer, Successor Agency will enter into a lease (the “Air Rights Lease”) of the Air Rights Parcel with the Affordable Developer. When construction is complete and the Successor Agency has issued a certificate of completion, the title to the Air Rights Parcel and the lessor’s interest in the Air Rights Lease will be assigned to and assumed by MOHCD.

P. 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.

Q. 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”).

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, the “Transaction Documents”). The Successor Agency grants to the Development Team the right to negotiate any Transaction Documents related to the Market-Rate Project and to the Affordable Project (the “Exclusive Right”) during the term of this Agreement. All negotiations and the exercise of the Exclusive Right shall be between the Successor Agency and the Development Team pursuant to the Developers’ Agreement. 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 the Development Team, which consent may be granted or withheld by each of the Lead Developer or the Affordable Developer in its sole and absolute discretion.

Each of 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. 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 (the “Term”) will commence on the date this Agreement is executed by the parties, as indicated on the signature page (the “Commencement Date”) and will expire on the earlier of (i) mutual execution of the DDA approved by the Commission or (ii) a period of twelve (12) months from 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 six (6) month periods, subject to the discretion of the Successor Agency’s Executive Director, which discretion shall be exercised on a reasonable basis.

B. **Termination**

Exclusive Negotiations shall automatically terminate upon the occurrence of any of the following events: (i) the expiration of the Exclusive Negotiation Period; or (ii) the mutual execution by the parties of the DDA approved by the Commission, and no party shall have any further rights or obligations except with respect to those matters that survive termination under Section 27.Q.

This Agreement may terminate upon the occurrence of any of the following events:

(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; and provided further that provisions of this Agreement that are intended to survive termination shall remain in effect.

(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 and no party shall have any further rights or obligations to the others under this Agreement except as provided herein; or

(iii) In the event either Lead Developer or Affordable Developer fails to perform or abide by any material provision of this Agreement, and such failure is not cured within sixty (60) days after the Successor Agency has given written notice to the parties (which the Successor Agency shall specify in reasonable detail the basis for the determination of the default) (“Developer Event of Default”), the Successor Agency may terminate this Agreement upon written notice to the parties and no party shall have any further rights or obligations to the others under this Agreement except as provided herein; provided, however, that if the Developer Event of Default cannot reasonably be cured within sixty (60) days, each of Lead Developer and Affordable Developer shall not be in default of this Agreement (and therefore the Successor Agency cannot exercise its right to
terminate) if it commences to cure the Developer Event of Default within the sixty (60) day period and diligently and in good faith continues to seek to cure the Developer Event of Default provided, however, that the Successor Agency shall not be required to return the ENA Deposit, as described below; and provided further that provisions of this Agreement that are intended to survive termination shall remain in effect; or

(iv) In the event the Successor Agency fails to perform or abide by any material provision of this Agreement, and such failure is not cured within sixty (60) days after Lead Developer or Affordable Developer has given written notice to the Agency (which Avant or BRIDGE shall specify in reasonable detail the basis for the determination of the default) (“Successor Agency Event of Default”), the Lead Developer or Affordable Developer may terminate this Agreement upon written notice to the Successor Agency and no party shall have any further rights or obligations to the others under this Agreement except as provided herein; 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 (and therefore Avant or BRIDGE cannot exercise its right to terminate) 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.

C. Developers’ Risk

Each of Affordable Developer and Lead Developer acknowledges and agrees it is proceeding at its own risk and expense without any assurance that the Transaction Documents will be approved.

3. Developer Payment

A. Payment for the Exclusive Right

Within thirty (30) days of 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 (the “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 reasonable discretion for staffing, legal fees, and third party costs related to the Project.

B. Retention of Payments by Successor Agency. The Successor Agency shall retain any payments actually paid by Lead Developer, in the event this Agreement is terminated for any reason.

C. Legal Fees

Beginning on the Effective Date of this ENA, Lead Developer shall be responsible for the costs of retaining legal counsel to represent the Successor Agency during the negotiations period. The cost for these services is $60,000 and is funded by the ENA Deposit amount under Section 3.A.; provided, however, that the Lead Developer shall reimburse the Successor Agency for legal fees in excess of this amount, up to an additional $40,000. All payments made pursuant to this section shall be non-refundable.
4. **Term Sheet**

Attached hereto as Exhibit C is a term sheet (the “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 D (the “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. 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 that do not materially increase the obligations, burdens or risks of a party. Lead Developer and Affordable Developer’s respective compliance with the advisory Performance Benchmarks shall not alter or reduce their respective obligations to comply with any other provision of this Agreement. Any failure of each of Lead Developer or Affordable Developer to meet the advisory Performance Benchmarks for reasons beyond their respective control, as reasonably determined by the Successor Agency, shall not be an Event of Default (as defined below).

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

At the reasonable discretion of the Successor Agency’s Executive Director, Successor Agency staff may waive or extend the date for the performance of any item set forth in the Performance Benchmarks, Exhibit D, from time to time, without the necessity for further Commission action, so long as the cumulative extensions of a particular Performance Benchmark does not exceed a total aggregate of twelve (12) months from the date being extended in the Performance Benchmarks, Exhibit D; 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 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 disposition and development agreement.

C. **Quarterly Reporting**

Developer shall submit to the Successor Agency written reports no later than the first day of 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 (and with additional Performance Benchmarks, if any).
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 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 and the City’s Board of Supervisors. The Transaction Documents shall provide for mutually agreed-upon closing conditions, including without limitation, title insurance, receipt of final approval of all regulatory approvals required for the Project upon terms and conditions reasonably acceptable to all parties, 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.

Each of the Developers acknowledges and agrees that under this Agreement the Successor Agency is not committing itself or agreeing to enter into the Transaction Documents or undertake any exchange or transfer of real property, any disposition of any real property interests to the Developers, approve any land use entitlements or undertake any other acts or activities that the Successor Agency or any agency, commission or department of the City may take in its sole and absolute discretion, subject to compliance with applicable law. This Agreement does not constitute the disposition of property or exercise of control by the Successor Agency over property.
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 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) Lead Developer shall diligently and in good faith pursue obtaining all regulatory approvals for the Market-Rate Project and the Affordable Project. The Affordable Developer shall diligently and in good faith assist the Lead Developer in pursuing all regulatory approvals for the Affordable Project; [Deleted text is inconsistent with Lead Developer’s responsibility for delivering the Affordable Project in its entirety. See Recital N.

(b) As between it and Successor Agency, Lead Developer shall be solely responsible for all costs and expenses (including, but not limited to, fees for its 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, which it incurs. 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) Lead Developer shall pay the Successor Agency the amount of $43,320,000 in consideration for the transfer of the Site (the “Purchase Price”) as more specifically described in the attached Term Sheet. Lead Developer shall also pay all costs associated with the transfer of the Site, including title insurance and escrow fees.

(f) Lead Developer shall be solely responsible to pay, based on direction from the Successor Agency, the Affordable Housing Fee as more specifically described in the Recitals and the attached Term Sheet, **Exhibit C**.

(g) Lead Developer and/or Affordable Developer, in accordance with the Developers’ Agreement, 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;

(h) 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 affordable housing.

(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 non-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 TJPA (collectively, the “Indemnitee Parties”) and their respective members, officers, agents and employees from and against any and all losses, costs, claims, damages, liabilities and causes of action (including reasonable attorney’s fees and court costs) arising out of (a) this Agreement, including with respect to any challenge or any filing of any kind related to any regulatory Approvals, 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 done thereon or 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) due primarily to gross negligence or willful misconduct of the person or party seeking to be indemnified, or its respective agents, employees or contractors or (ii) arising out of any default under this Agreement of 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. Developers’ obligations under this Section shall survive the termination of this Agreement.

[Allocation of risk between Lead Developer and Affordable Developer should be matter that they work out between themselves. The Agency and other Indemnitee Parties should have indemnification rights from the Development Team. See RFP at p. 6.5 “From the time of approval of the ENA, the selected development team shall defend, hold harmless and indemnify the Successor Agency, the City, and their respective commissioner, members, officers, agents and employees of and from all claims . . . directly or indirectly arising out of or connected with the performance of the ENA . . .” [emphasis added]]

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:** $2,000,000 limit per occurrence and $4,000,000 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, the “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) [intentionally omitted.]

(d) 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.

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

(f) [intentionally omitted.]

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 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**

A. **Successor Agency’s Obligations**

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;

(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 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 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 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, each shall give prior written notice to the Successor Agency of any such entry and shall, if the Successor Agency so requires, obtain a
permit to enter from the Successor Agency for such entry and comply with the insurance and indemnification requirements contained in Sections 10 and 12 of this Agreement; provided further, however, each shall not be responsible or liable for any act or omission of the Successor Agency or the Successor Agency’s agents, representatives, employees, contractors, subcontractors or consultants or for any adverse condition or defect on or affecting the Site not negligently caused by itself, its employees, consultants, contractors or subcontractors, but discovered during such inspections (collectively, “Excluded Claims”), but further provided that the Successor Agency may require that each of Lead Developer and Affordable Developer defend the Successor Agency against claims arising from entry by the Developers pursuant to Section 10 of this Agreement until it is established that such claims are Excluded Claims. In the case of invasive tests under any permit to enter granted by the Successor Agency, the Successor Agency may impose such insurance, indemnification, guaranty and other requirements as the Successor Agency determines appropriate, in its reasonable discretion. 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 or to undertake other efforts 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 (the “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. Notwithstanding the foregoing, each Developer may, with Successor Agency consent, which consent shall not be unreasonably withheld, conditioned or delayed, assign its interest in this Agreement to an entity in which such Developer is a general partner or manager [or to its affiliate] [Define affiliate or delete].
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, and after the Successor Agency gives notice of the 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 pay any sums due under this Agreement within thirty (30) days after written notice has been given by the Successor Agency.

(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 are waived or extended in accordance with Section 5 hereof, if such failure is not cured within sixty (60) days after notice has been given by the Successor Agency.

(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) business days after it becomes aware of the material breach and commences to cure such inaccuracy within sixty (60) days from the date on which it was obligated to notify the Successor Agency (or if such inaccuracy cannot reasonably be cured within such sixty (60) days, Lead Developer or Affordable Developer shall not be in default of this Agreement if it commences to cure such inaccuracy within the sixty (60) day period and diligently and in good faith continues to seek to cure such inaccuracy).

(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.

(f) Failure to procure or maintain any of the insurance coverage required hereunder so that there is a lapse in required coverage.

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 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.
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 (the “Breaching Developer”), the Developer which is not in breach (the “Performing Developer”) may, within thirty (30) days following the end of the period in which such breach may be cured, request that Successor Agency consent to the substitution of another entity, including the Performing Developer, for the Breaching Developer (the “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, or any other Substitute Developer subsequently proposed, is not acceptable as a substitute to the Successor Agency. The Successor Agency may also propose a Substitute Developer to the Performing Developer, who shall have the right to approve of the Substitute Developer. If Successor Agency and the Performing Developer both consent to the proposed Substitute Developer, the Substitute Developer shall enter into an agreement with 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

(a) Failure to perform or abide by any material provision of this Agreement, if such failure is not cured within sixty (60) days after written notice (which shall specify in reasonable detail the basis for the determination of the default) has been given to the Successor Agency, shall constitute an event of default by Successor Agency (“Successor Agency Event of Default”); 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 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 Successor Agency notifies the Developer within five (5) business days of the material breach and commences to cure such inaccuracy within sixty (60) days from the date on which Successor Agency was obligated to notify Lead Developer and Affordable Developer (or if such inaccuracy cannot reasonably be cured within such sixty (60) days, Successor Agency shall not be in default of this Agreement if 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 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 previously paid to Successor Agency as Liquidated Damages in accordance with Section 19 hereof; (ii) seek to recover any funds due and owing to the Successor
Agency under this Agreement; and (iii) seek to enforce Lead Developer and Affordable Developer’s indemnity obligations. 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 breach or default by Lead Developer or Affordable Developer, including, without limitation, loss of bargain, special, punitive, compensatory or consequential damages.

B. Developer’s Remedies

In the event of a Successor Agency Event of Default, each of Lead Developer and Affordable Developer shall have the right, as their respective sole and exclusive remedy at law or in equity, to terminate this Agreement by delivery of written notice of termination to Successor Agency, whereupon the ENA Deposit, less staff costs, legal fees, and third party costs related to the Project incurred by the Agency to the date of the giving of such notice of termination shall be returned by Agency to Developer and all parties shall each be released from all liability under this Agreement (except for those provisions which recite that they 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 Successor Agency’s default under or breach of this Agreement. 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 on account of any such breach or default by 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 default by Lead Developer or Affordable Developer 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 any payments previously paid by Avant or BRIDGE to 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 DEFAULT BY AVANT OR BRIDGE UNDER THIS AGREEMENT, THEN-THE SUCCESSOR AGENCY SHALL BE ENTITLED TO RETAIN ANY PAYMENTS PREVIOUSLY PAID BY AVANT OR BRIDGE TO SUCCESSOR AGENCY AS LIQUIDATED DAMAGES. NOTHING IN THIS AGREEMENT WILL, HOWEVER, BE DEEMED TO LIMIT THE DEVELOPER'S LIABILITY TO AGENCY FOR DAMAGES OR INJUNCTIVE RELIEF FOR BREACH OF DEVELOPER'S INDEMNITY OBLIGATIONS UNDER SECTION 10 OR FOR ANY DEVELOPER FRAUD AND MISREPRESENTATION IN THE MAKING OF THIS AGREEMENT. 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 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(e).

(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 in clause (i), 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: PES Environmental, Martin M Ron Associates, Treadwell & Roll, a Langan Co., Divis Consulting, Monica Wilson, Skidmore, Owings & Merrill LLP, Fougeron. 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. Nothing herein shall limit the provisions of subsection (a) above regarding conflicts of interest.

(j) Not Prohibited from Doing Business. Neither Lead Developer nor Affordable Developer nor any of their respective members or affiliates have been debarred or 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 (other than potential claims arising from any default by the Successor Agency), 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, 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:**

Block 9 Transbay LLC  
c/o Avant Housing  
100 Bush Street, Floor 22  
San Francisco, CA 94104  
Attention: Eric Tao  
Telephone: (415) 775-7005  
Facsimile: (415) 775-7002

with a copy to:

Richard M. Shapiro  
Farella Braun + Martel  
235 Montgomery Street  
San Francisco, California 94104  
Telephone: (415) 954-4934

and

Essex Portfolio L.P.  
925 East Meadow Drive  
Palo Alto, CA 94303  
Attention John D. Eudy  
Telephone: (650) 849-1640
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 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 Eric Tao (“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 Tom Earley (“Affordable Developer’s Representative”) or such other employee or agent of BRIDGE as it may designate to act as BRIDGE’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, 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, 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 Gewertz
Deputy City Attorney

Project Manager Approval:

By: __________________________
Michael J. Grisso
Senior Project Manager

CITY ACKNOWLEDGMENT
Mayor’s Office of Housing

By: __________________________
Olson M. Lee
Director

BLOCK 9 TRANSBAY LLC
a Delaware limited liability company

By: Avant Housing LLC
a Delaware limited liability company

By: __________________________
Name: _______________________
Title: _______________________

BRIDGE HOUSING CORPORATION
a California non-profit mutual benefit corporation

By: __________________________
Name: _______________________
Title: _______________________
A. Terms Related to the Project

1. **The Site.** The Site on which the Project will be built consists of Block 9 in the Transbay Redevelopment Project Area, which is a 31,564-square-foot parcel on Folsom Street between First and Essex Streets, two blocks south of the future Transbay Transit Center. Lot 120 of Assessor’s Block 3736 will be transferred from the State to the Successor Agency, through the City and the TJPA, 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 residential project consisting of approximately 452 residential units on floors eight through forty-three (the “Market-Rate Project”); (b) an affordable project with approximately 113 residential units on floors two through seven (the “Affordable Project”) affordable to households earning up to 50% of Area Median Income as determined by the City and County of San Francisco’s Mayor’s Office of Housing and Community Development (“MOHCD”); (c) streetscape improvements; (d) ground-floor retail spaces along the Folsom Street frontage; (e) a shared 2,400-square-foot mid-block open space; and (f) shared underground parking with up to 485 stalls, including the required parking for the Affordable Project which will require 1 parking stall for every four (4) units. 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.

3. **Proposed Districts.**
   a. **Community Benefit District.** The Market-Rate Project and the Affordable Project shall be subject to the provisions of the proposed Rincon Hill Community Benefit District, once established, in order to help finance community services and the maintenance of public improvements in the Project Area. While the rates for the CBD have not yet been determined, they are anticipated to be within the ranges set forth in the RFP.
   
   b. **Mello-Roos Community Facilities District.** The Market-Rate Project shall be subject to the provisions of the proposed Transbay Center District Plan Mello-Roos Community Facilities District (“CFD”), once established, to help pay the costs of constructing the new Transbay Transit Center. The special tax rate has not been determined, but will be equivalent to a tax of 0.55% on total assessed value, above the standard property tax rate.

   c. **Combined Heat and Power District.** The City intends to establish an energy efficient district heating and power network within the Transbay neighborhood to help achieve its Climate Change Action Plan and carbon reduction goals. Accordingly, Lead Developer and Affordable Developer shall design and construct the Project with a hydronic heating system in a manner that is compatible with and maximizes the benefits of such a district utility system if and when it becomes available.

4. **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.
5. **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, equal benefits, minimum compensation, healthcare accountability, and prevailing wages, as well as City policies as applicable.

6. **Environmental Review.** An Environmental Impact Statement/Environment Impact Report (the “EIS/EIR”) for the Transbay Terminal/Caltrain Downtown Extension/Redevelopment Project, which covers Block 9, was certified in 2004. Lead Developer agrees to prepare any additional impact studies that may be required for review and approval by the Successor Agency in accordance with the time frames set forth in Exhibit D of the ENA.

7. **Developer Responsibility.** The Development Team shall be responsible for construction of the on-site improvements for the Project according to the Successor Agency and MOHCD-approved construction documents, and in accordance with all applicable building codes. 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. Excepting 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 Successor Agency or third party costs, including but not limited to, title insurance, escrow fees, surveys, environmental review, parcel mapping, lot line adjustments, permits, and inspections. Successor Agency 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.

8. **Transaction Documents.** In accordance with the timeframes set forth in Exhibit D of the ENA, the Successor Agency 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.

B. **Terms Related to Lead Developer**

1. **ENA Deposit.** Within five (5) days of the effective date of the ENA, Lead Developer shall pay to the Successor Agency the ENA Deposit of Five Hundred Thousand Dollars ($500,000), as described in the Original RFP.

2. **Legal Fees.** Beginning on the Effective Date of this ENA, Lead Developer shall be responsible for the costs of retaining legal counsel to represent the Successor Agency during the negotiations period. The cost for these services is $60,000 and is covered by the ENA Deposit amount under Section 3.A; provided, however, that the Lead Developer shall reimburse the Successor Agency for legal fees in excess of this amount up to an additional $40,000. All payments made pursuant to this section shall be non-refundable.

3. **DDA Deposit.** Within thirty (30) days of the effective date of the DDA, Lead Developer shall deposit two million dollars ($2,000,000) into a trust account established by the TJPA (the “Trust Account”) to be credited against the purchase price, as defined below.
4. **Purchase Price.** At or prior to close of escrow, Lead Developer agrees to deposit the amount of $43,320,000 into the Trust Account in consideration for the Site. Lead Developer shall also pay all third-party costs associated with the conveyance of the Site, including title insurance and escrow fees.

5. **Conveyance.** Lead Developer shall apply for a tentative parcel or subdivision map subdividing the Site into at least two parcels, Air Rights Parcel and the remainder of the Site. At the closing, Successor Agency shall lease the Air Rights Parcel to the Affordable Developer and shall convey fee title to the remainder of the Site to Lead Developer.

6. **Conveyance on an “as-is” Basis.** The Site shall be delivered by the Successor Agency to Lead Developer in an as-is condition. The Successor Agency shall be released by the Developers from any and all environmental, construction and other ongoing liabilities for the Site.

7. **Affordable Housing.** The affordable units on Block 9 shall satisfy the inclusionary housing requirement in the Redevelopment Plan. The Lead Developer shall be responsible for providing the subsidy required to develop the Affordable Housing by payment of the Affordable Housing Fee in the amount required to complete the Affordable Project after all non-City affordable housing funding sources have been secured (“Gap Financing”). All funding sources used by the Affordable Developer, other than the Affordable Housing Fee (as funded through an affordable housing loan from the Successor Agency or MOHCD which is deemed to be consistent with all applicable policies), must be compatible with the Successor Agency’s or MOHCD’s underwriting guidelines and policies related to affordable housing financing and operation. Other than the Loan to the Affordable Developer funded from the payment of the Affordable Housing Fee, there will be no subsidy from MOHCD or the Successor Agency. Any additional subsidy required will not affect the land price.

The Lead Developer, with input from Affordable Developer pursuant to the terms of a joint development agreement to be executed by the Lead Developer and Affordable Developer and approved by the Successor Agency and MOHCD (“Developers’ Agreement”), shall direct the development process for Block 9, including but not limited to forming and hiring the design and construction teams in compliance with applicable laws, rules and regulations; 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; providing clarification to the general contractor for the Market–Rate 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 Market Rate 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 Market-Rate Project; 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 Market-Rate Project. Affordable Developer shall perform the same functions with respect to the design and construction of the Affordable Project. Notwithstanding anything to the contrary, to the extent there are separate design and construction contracts for the Market Rate Project or Affordable Project, the contracting party shall have the authority to exercise its rights under such contracts. Nothing in the Developers’ Agreement or any other agreement shall limit the Lead Developer’s responsibility to deliver the Affordable Project in its entirety.
8. **Building Structure.** Consistent with the Development Controls and the Original RFP, Lead Developer agrees to design and construct at its sole expense a residential tower of up to 400 feet in height with a mid-rise residential component of up to 85 feet which shall include residential townhouses along Clementina Alley all with ground floor retail uses along Folsom Street. The Lead Developer and the Affordable Developer with approval by the Successor Agency and MOHCD shall create a plan to proportionally allocate design and construction costs for the Affordable Project and the Market-Rate Project.

9. **Shared Underground Parking Garage.** Lead Developer shall be responsible for coordinating the design and construction of the shared parking garage underneath Block 9 as part of the Market-Rate Project. The garage shall include no more than 485 stalls, including the required parking for 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 for 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 for the Affordable Project.

10. **Streetscape Improvements.** The Market-Rate Project includes design and construction of all the streetscape improvements described in the Streetscape Plan relative to Block 9. The RFP provided for reimbursement of all these costs by the Successor Agency.

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, the Successor Agency 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 $1 million, which acceptance and reimbursement will not be unreasonably delayed. [Note: Use of public funds for construction of public improvements may trigger Public Contract Code bidding requirements]

The costs of maintaining the streetscape improvements shall be the sole responsibility of the Market-Rate Project. However both the Affordable Project and Market-Rate Projects must pay into the CBD, which will among other things, contribute towards the cost of maintaining the streetscape improvements.

11. **Shared Open Space.** Each of Lead Developer and Affordable Developer shall pay its pro-rata share of the design, construction, and ongoing maintenance costs of the shared open space on Block 9. For the purposes of this section, the Lead Developer’s pro-rata share of costs shall be determined at a later date based on either residential square footage or number of units. Lead Developer shall advance Affordable Developer’s share of open space design costs until closing, at which time Affordable Developer shall reimburse Lead Developer for the Affordable Project’s pro-rata share of design costs previously paid by Affordable Developer and shall thereafter pay Affordable Project’s pro-rata share of construction costs when and as due under the applicable construction contract. Costs of ongoing maintenance of the shared open space shall be allocated between the Affordable Project and the Market-Rate Project, based on the pro-rata distribution in this Section and as set forth in a reciprocal easement agreement recorded upon conveyance of the Site. Lead Developer shall advance Affordable
Developer’s share of maintenance costs and Affordable Developer shall reimburse Lead Developer for the Affordable Project’s pro-rata share of maintenance costs based on the pro-rata distribution in this Section and as set forth in the reciprocal easement agreement.

12. **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 the Successor Agency and other regulatory bodies. The Successor Agency 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.

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

1. **Conveyance of the Air Rights Parcel.** The Successor Agency will enter into an Air Rights Lease with the Affordable Developer at close of construction financing. When construction is complete and the Successor Agency has issued a certificate of completion, the interest of Successor Agency 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 an initial term of 55-70 years, with an option to extend to a total of 99 years. At the end of the 99 year term, the ownership of the Affordable Project improvements will revert back to MOHCD. The annual base lease payment will be $15,000 and should be considered an “above the line” operating expense, with residual and/or contingent rents (to be defined in the Air Rights Lease) to come from surplus cash, if any.

2. **Air Rights Parcel.** Consistent with the Development Controls and, unless otherwise stated, Affordable Developer agrees to design and construct at its sole expense the Affordable Project with approximately 113 residential units on floors two through eight.

3. **Affordable and Market Rate Project Cost Distinction.** The Affordable Developer and the Lead Developer with approval by the Successor Agency and MOHCD shall create a plan to proportionally allocate operating and maintenance costs for the Affordable Project and the Market-Rate Project.

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

5. **Original RFP.** To the extent not inconsistent with the terms of this ENA, Affordable Developer shall conform to all assumptions related to the financing, development, operation, and ownership structure of the Affordable Project described in the Original RFP.
Exhibit D
Performance Benchmarks
Exhibit D
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 E, Design Review and Document Approval Procedure, but will be revised pursuant to the terms of Section 5 of the ENA.]

<table>
<thead>
<tr>
<th>Task</th>
<th>Target Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Submission to Successor Agency – Supplemental Environmental Studies for Project</td>
<td>September 2013</td>
</tr>
<tr>
<td>Approval by Successor Agency – Supplemental Environmental Studies for Project</td>
<td>Within 30 days of submission of the Supplemental Environmental Studies</td>
</tr>
<tr>
<td>Submission to Successor Agency – Schematic Design Documents for Project</td>
<td>November 2013</td>
</tr>
<tr>
<td>Approval of Schematic Design Documents for Project – Successor Agency and MOH staff</td>
<td>Completeness check within 7 working days of submittal. Approval within 60 days from the date Schematic Design is determined to be complete.</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>January 2014</td>
</tr>
<tr>
<td>Board of Supervisors’ Hearing re: Section 33433 Findings for Market-Rate Project</td>
<td>March/April 2014</td>
</tr>
<tr>
<td>Board of Supervisors’ Hearing re: Air Rights Lease for Affordable</td>
<td>March/April 2014</td>
</tr>
<tr>
<td>Submission to Successor Agency – Design Development Documents</td>
<td>May 2014</td>
</tr>
<tr>
<td>Approval by Successor Agency and MOH staff – Design Development Documents</td>
<td>Completeness check within 7 working days of submittal. Approval within 49 days from the date Design Development Documents are determined to be complete.</td>
</tr>
<tr>
<td>Submission to Successor Agency – Final Construction Documents</td>
<td>Concurrent with submittal to DBI</td>
</tr>
<tr>
<td>Approval by Successor Agency and MOH staff – Final Construction Documents</td>
<td>Within 30 days of submission of the Final Construction Documents</td>
</tr>
<tr>
<td>Payment of Purchase Price and Close of Escrow</td>
<td>August 1, 2014</td>
</tr>
<tr>
<td>Commencement of Construction</td>
<td>Within 18 months of Effective Date of DDA</td>
</tr>
<tr>
<td>Completion of Construction</td>
<td>Within 48 months of Effective Date of DDA</td>
</tr>
</tbody>
</table>
Exhibit E
Design Review and Document Approval Procedure
EXHIBIT E

BLOCK 9 DESIGN REVIEW AND DOCUMENT APPROVAL PROCEDURE

BACKGROUND

This Transbay 9 Design Review and Document Approval Procedure ("DRDAP") sets forth the procedure for design submittals of the plans and specifications for the developments of Block 9 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
OCII staff shall review the Design Development Documents for completeness and general consistency with the schematic design and shall advise the applicant in writing of any deficiencies within fifteen (15) working days after the receipt of the Design Development Documents. In the event OCII staff does not so advise the applicant, the Design Development Documents shall be deemed complete. The time limit for OCII staff’s review shall be sixty (60) days from the date the Design Development Documents were determined to be complete. OCII staff shall take such reasonable measures necessary to comply with the time periods set forth herein. If the Design Development deviates significantly from the approved schematic design, does not meet the conditions outlined in the schematic approval, or extensive revisions or clarifications to the Design Development are required, the time limit may be extended at OCII Executive Director’s discretion.

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

Document Submittals

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

FINAL CONSTRUCTION DOCUMENT REVIEW

Scope

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

Document Submittals

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

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

OCII Review Of City Permits

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

Subdivision Map Review

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

Temporary and Interim Uses

OCII staff shall review applications for temporary and interim uses.

Site Permits

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

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

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

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

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

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

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

GOVERNMENT REQUIRED PROVISIONS, CHANGES

OCII and the applicant acknowledge and agree that neither one will delay or withhold its review or approval of those elements of or changes in the Schematic Design, Design Development Documents or Final Construction Documents which are required by any City agency, including the City's Department of Building Inspection, the Fire Marshall, or any other government agency having jurisdiction; provided, however, that (i) the party whose review or approval is sought shall have been afforded a reasonable opportunity to discuss such element of, or change in, documents with the governmental authority requiring such element or change and with either the applicant's or OCII's architect, as the case may be, and (ii) the applicant or OCII shall have reasonably cooperated with the other and such governmental authority in seeking such reasonable modifications of such required element or change as the other shall deem necessary or desirable. The applicant and OCII each agrees to use its diligent, good faith efforts to obtain the other's approval of such elements or changes, and its request for reasonable modifications to such required elements or changes, as soon as reasonably possible.
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 show 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.
Exhibit F
Small Business Enterprise Agreement
Exhibit F

Small Business Enterprise Agreement

The company or entity executing this Small Business Enterprise Agreement, by and through its duly authorized representative, hereby agrees to use good faith efforts to comply with all of the following:

I. PURPOSE. The purpose of entering into this Small Business Enterprise Program agreement (“SBE Program”) is to establish a set of Small Business Enterprise (“SBE”) participation goals and good faith efforts designed to ensure that monies are spent in a manner which provides SBEs with an opportunity to compete for and participate in contracts by or at the behest of the Successor Agency to the San Francisco Redevelopment Agency (“Agency”) and/or the Agency-Assisted Contractor. A genuine effort will be made to give First Consideration to Project Area SBEs and San Francisco-based SBEs before looking outside of San Francisco.

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

III. GOALS. The Agency’s SBE Participation Goals are:

   CONSTRUCTION      50%
   PROFESSIONAL SERVICES  50%
   SUPPLIERS          50%

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:

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<th>Trainees</th>
<th>Design Professional Fees</th>
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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 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.** The Agency no longer certifies SBEs but instead relies on the information provided in other public entities’ business certifications to establish eligibility for the Agency’s program. Only businesses certified by the Agency as SBEs whose certification has not expired and economically disadvantaged businesses that meet the Agency’s SBE Certification Criteria will be counted toward meeting the participation goals. The SBE Certification Criteria are set forth in the Policy (as defined in Section VII below).

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

VIII. **DEFINITIONS.** Capitalized terms not otherwise specifically defined in this SBE Agreement have the meaning set forth in the Agency’s 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 Area where a commercially useful function is performed; (b) is listed in the Permits and License Tax Paid File with a Project Area 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 for at least six months preceding its application for certification as a SBE; and (e) has a Project Area office in which business is transacted that is appropriately equipped for the type of business for which the enterprise seeks certification as a SBE. Post office box numbers of residential addresses alone shall not suffice to establish a firms’ location in a Project Area.

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

**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 Areas and provide written notice to all of them of the opportunity to bid for contracts and to attend a pre-bid or pre-solicitation meeting to learn about contracting opportunities.

**B. Pre-Solicitation Meeting.** For construction contracts estimated to cost $5,000 or more, hold a pre-bid meeting for all interested contractors not less than 15 days prior to the opening of bids or the selection of contractors for the purpose answering questions about the selection process and the specifications and requirements. Representatives of the Contract Compliance Department will also participate.
C. **Follow-up.** Follow up initial solicitations of interest by contacting the SBEs to determine with certainty whether the enterprises are interested in performing specific items involved in work.

D. **Subdivide Work.** Divide, to the greatest extent feasible, the contract work into small units to facilitate SBE participation, including, where feasible, offering items of the contract work which the Contractor would normally perform itself.

E. **Provide Timely and Complete Information.** The Agency-Assisted Contractor or Contractor shall provide SBEs with complete, adequate and ongoing information about the plans, specifications and requirements of construction work, service work and material supply work. This paragraph does not require the Agency-Assisted Contractor or Contractor to give SBEs any information not provided to other contractors. This paragraph does require the Agency Assisted Contractor and Contractor to answer carefully and completely all reasonable questions asked by SBEs and to undertake every good faith effort to ensure that SBEs understand the nature and the scope of the work.

F. **Good Faith Negotiations.** Negotiate with SBEs in good faith and demonstrate that SBEs were not rejected as unqualified without sound reasons based on a thorough investigation of their capacities.

G. **Bid Shopping Prohibited.** Prohibit the shopping of the bids. Where the Agency-Assisted Contractor or Contractor learns that bid shopping has occurred, it shall treat such bid shopping as a material breach of contract.

H. **Other Assistance.** Assist SBEs in their efforts to obtain bonds, lines of credit and insurance. (Note that the Agency has a Surety Bond Program that may assist SBEs in obtaining necessary bonding.) The Agency-Assisted Contractor or Contractor(s) shall require no more stringent bond or insurance standards of SBEs than required of other business enterprises.

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

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

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

L. **Replacement of SBE.** If during the term of this SBE Agreement, it becomes necessary to replace any subcontractor or supplier, the Agency's Contract Compliance Specialist should be notified prior to replacement due to the failure or inability of the subcontractor or supplier to perform the required services or timely delivery the required supplies, then First Consideration should be given to a certified SBE, if available, as a replacement.

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.

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

> “Amounts for work performed by a subcontractor shall be paid within ten (10) days of receipt of funds by the contractor, pursuant to California Business and Professions Code Section 7108.5 et seq. Failure to include this provision in a subcontract or failure to comply with this provision shall constitute an event of default which would permit the Agency to exercise any and all remedies available to it under contract, at law or in equity.”

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

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

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 Agency's Notice of Non-Compliance, the Agency-Assisted Contractor or Contractor may request arbitration pursuant to this SBE Agreement.

XII. **ARBITRATION OF DISPUTES.**

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

B. **Demand for Arbitration.** Where the Agency-Assisted Contractor or Contractor disagrees with the Agency's Notice of Non-Qualification or Notice of Non-Compliance, the Agency-Assisted Contractor or Contractor shall have seven (7) business days, in which to file a Demand for Arbitration, unless otherwise stipulated by the parties. The Demand for Arbitration shall contain at a minimum: (1) a cover letter demanding arbitration under this provision and identifying any entities believed to be involved in the dispute; (2) a copy of the Notice of Non-Qualification or Notice of Non-Compliance; and (3) any written response to the Notice of Non-Qualification or Notice of Non-Compliance. If the Agency-Assisted Contractor and Contractor fails to file a timely Demand for Arbitration, the Agency-Assisted Contractor and Contractor shall be deemed to have accepted and to be bound by the finding of Non-Qualification or the findings and recommendations contained in the Notice of Non-Compliance.

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

D. **Agency Request to AAA.** Within seven (7) business days after service of a Demand for Arbitration, the Agency shall transmit to AAA a copy of the Demand for Arbitration, the Notice of Non-Qualification or Notice of Non-Compliance, and any written response thereto from the affected party. Such material shall be made part of the arbitration record.
E. Selection of Arbitrator. One arbitrator shall arbitrate the dispute. The arbitrator shall be selected from the panel of arbitrators from AAA by the parties to the arbitration in accordance with the AAA rules. The parties shall act diligently in this regard. If the Arbitration Parties fail to agree on an arbitrator within seven (7) days from the receipt of the panel, AAA shall appoint the arbitrator. A condition to the selection of any arbitrator shall be that person's agreement to render a decision within ninety (90) days from the arbitrator's fulfillment of the disclosure requirements set forth in California Code of Civil Procedure Section 1281.9.

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

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

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

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

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

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

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

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

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

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

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

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

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

O. **Exculpatory Clause.** Agency-Assisted Contractor or Contractor (regardless of tier) expressly waive any and all claims against the Agency for damages, direct or indirect, including, without limitation, claims relative to the commencement, continuance and completion of construction and/or providing professional and consulting services (“the Work”). Agency-Assisted Contractor or Contractor (regardless of tier) acknowledge and agree that the procedures set forth herein for dealing with alleged breaches or failure to comply with the obligations and requirements of this SBE Agreement are reasonable and have been anticipated by the parties in securing financing, in inviting, submitting and receiving bids and proposals for the planning, design and construction of the improvements and in determining the times for commencement and completion of the planning, design and construction and/or for providing consulting, professional or personal services.

P. **Severability.** The provisions of this SBE Agreement are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this SBE Agreement or the invalidity of the application thereof to any person or circumstance shall not affect the validity of the remainder of this SBE Agreement or the validity of their application to other persons or circumstances.

Q. **Arbitration Notice:** BY INITIALING IN THE SPACE BELOW YOU ARE 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

____________________________ ______________________________
Print Your Name Title

____________________________ ______________________________
Company Name Phone Number