

COMMISSION ON COMMUNITY INVESTMENT AND INFRASTRUCTURE

RESOLUTION NO. 18 - 2016

Adopted April 19, 2016

AUTHORIZING AN OPTION AGREEMENT WITH F4 TRANSBAY PARTNERS LLC, A DELAWARE LIMITED LIABILITY COMPANY, FOR THE PURCHASE OF BLOCK 4 LOCATED IN THE TRANSBAY REDEVELOPMENT PROJECT AREA ON THE NORTHERN ONE-THIRD OF THE BLOCK BOUNDED BY BEALE, HOWARD, MAIN, AND FOLSOM STREETS, ASSESSOR'S PARCEL NO. 3739, PORTION OF LOT 008; TRANSBAY REDEVELOPMENT PROJECT AREA

BASIS FOR RESOLUTION

- WHEREAS, The Successor Agency to the Redevelopment Agency of the City and County of San Francisco (commonly known as the Office of Community Investment and Infrastructure) (the "Successor Agency" or "OCII") is completing the enforceable obligations of the Redevelopment Agency of the City and County of San Francisco (the "Former Agency") in the Transbay Redevelopment Project Area (the "Project Area") under the authority of the California Community Redevelopment Law, Cal. Health & Safety Code §§ 33000 et seq., as amended by the Redevelopment Dissolution Law, Cal. Health & Safety Code §§ 34170 et seq.; and,
- WHEREAS, Under Assembly Bill No. 812 (Chapter 99, Statutes of 2003, codified at California Public Resources Code Section 5027.1) ("AB 812"), any redevelopment plan adopted to finance, in whole or in part, the demolition of the Transbay Terminal building and the construction of a new terminal, including its associated vehicle ramps, shall ensure that at least 25 percent of all dwelling units developed within the project area shall be available at affordable housing cost to, and occupied by, persons and families whose incomes do not exceed 60 percent of the area median income, and that at least an additional 10 percent of all dwelling units developed within the project area shall be available at affordable housing cost to, and occupied by, persons and families whose incomes do not exceed 120 percent of the area median income (the "Transbay Affordable Housing Obligation"); and,
- WHEREAS, The City and County of San Francisco (the "City") approved, by Ordinance No. 124-05 and Ordinance No. 99-06, the Redevelopment Plan (the "**Redevelopment Plan**") for the Transbay Redevelopment Project (the "Redevelopment Project"). The Redevelopment Plan provides for the redevelopment, rehabilitation, and revitalization of the area generally bounded by Mission, Main, Second, and Folsom Streets in downtown San Francisco, and containing approximately forty (40) acres of land (the "Project Area"). The Redevelopment Plan also provides for the financing of the Transbay Terminal Project and thus triggered the Transbay Affordable Housing Obligation, which is explicitly incorporated into Section 4.9.2 of the Redevelopment Plan and into binding agreements; and,
- WHEREAS, Approximately ten (10) acres of land in the Project Area were publicly owned land, including the former Transbay Terminal building and its bus access ramps (the "State-Owned Parcels"). The State of California (the "State"), acting by and through its

Department of Transportation (“Caltrans”), the City, and the Transbay Joint Powers Authority (the “TJPA”) entered into that certain Cooperative Agreement, dated as of July 11, 2003 (the “Cooperative Agreement”), pursuant to which the State has or will transfer the State-Owned Parcels to the City and the TJPA subject to certain terms and conditions, including the use of the State-Owned Parcels for the construction, or funding of the construction, of the Transbay Terminal Project (the “TTP”); and,

WHEREAS, Among the State-Owned Parcels included in the Cooperative Agreement are Parcel F (Block 3721, Lot 015A), and Parcel O (portion of Block 3739, Lot 008), Parcel O’ (portion of Block 3739, Lot 008), and Parcel O” (portion of Block 3739, Lot 008) (together the northern about one-third of Parcels O, O’ and O” and generally depicted on Exhibit 4 to the Redevelopment Plan are referred to as “Block 4”), in San Francisco, CA. Parcel F is located on the block between Natoma and Howard Streets and First and Second Streets; Block 4 is located at the northern one-third of the block bounded by Beale, Howard, Main, and Folsom Streets; and,

WHEREAS, Pursuant to the Cooperative Agreement, the State has a Power of Termination with respect to any State-Owned Parcel transferred to the TJPA or to the City (the “Power of Termination”) that permits the State to re-take title to such State-Owned Parcel under certain terms and conditions specified in the Cooperative Agreement. The Cooperative Agreement obligates the State to release such Power of Termination over a State-Owned Parcel, however, if it is sold to a third party and the Gross Sales Proceeds (defined in the Cooperative Agreement as the proceeds that are the result of a “good faith effort to obtain the fair market value . for such State-owned Parcels”) are deposited in a trust account accessible only by the TJPA for the purpose of paying capital costs associated with the development of the TTP; and,

WHEREAS, Consistent with, and in furtherance of, the Cooperative Agreement, the Redevelopment Plan, and the Redevelopment Project, the City, TJPA, and the Former Agency entered into that certain Transbay Redevelopment Project Tax Increment Allocation and Sales Proceeds Pledge Agreement (the “Pledge Agreement”), dated as of January 31, 2008, pursuant to which the parties provided for the irrevocable pledge of Net Tax Increment, as defined in the Pledge Agreement, to TJPA for construction and design of the TTP. Also in furtherance of the Cooperative Agreement, the Redevelopment Plan and Redevelopment Project, the TJPA and the Former Agency entered into that certain Transbay Redevelopment Project Implementation Agreement, dated as of January 20, 2005 (the “Implementation Agreement”), which requires, among other things, the Former Agency to prepare and sell the Agency Transfer Parcels to third parties, deposit the Gross Sales Proceeds in the account dedicated to payments for the cost of constructing the TTP, and execute all activities related to the implementation of the Redevelopment Plan, including the Transbay Affordable Housing Obligation; and,

WHEREAS, On April 15, 2013, the California Department of Finance (“DOF”) determined finally and conclusively that the Pledge Agreement, the Implementation Agreement, and the Transbay Affordable Housing Obligation are enforceable obligations under Redevelopment Dissolution Law and will not be subject to further DOF review except to determine if future Agency expenditures are consistent with those obligations. Letter, S. Szalay, DOF Local Government Consultant, to T. Bohee, Agency Executive Director (April 15, 2012[sic]) (the “Transbay Final and Conclusive Obligations”); and,

WHEREAS, To implement the Transbay Final and Conclusive Obligations, the City, TJPA, and the Former Agency entered into the Option Agreement for the Purchase and Sale of Real Property (“2008 Option Agreement”) dated as of January 31, 2008. The 2008 Option

Agreement granted the Former Agency the option to take title to certain currently or formerly State-owned parcels (the “Agency Transfer Parcels”), subject to certain limitations; and,

WHEREAS, The 2008 Option Agreement is an “enforceable obligation” under Redevelopment Dissolution Law because it is a legally binding contract that existed prior to June 28, 2011, the date on which the Redevelopment Dissolution became effective, and it complies with the Transbay Final and Conclusive Obligations. Under the 2008 Option Agreement, Section 2.1, the Successor Agency holds an exclusive and irrevocable option to purchase (the “Option”) the Agency Transfer Parcels, including, among others, Parcel F and Block 4 on the terms and conditions of the Option Agreement. One of the conditions of the 2008 Option Agreement prohibits the Agency from selling an Agency Transfer Parcel to a third party unless the sales price is equal to or greater than the Baseline Valuation, as defined in the Option Agreement, for that Agency Transfer Parcel. Baseline Valuation is the minimum price that Agency can accept for the sale of an Agency Transfer Parcel and is determined by an appraisal that includes consideration of Redevelopment Plan development restrictions, environmental contamination, legally required affordable housing, and other conditions which reasonably affect the fair market value; and,

WHEREAS, The development of Block 4 must comply with the Development Controls and Design Guidelines for the Redevelopment Project set forth in the Redevelopment Plan (the “Development Controls”), which govern private projects in Zone One of the Redevelopment Plan and require, among other things, the parcelization and assembly of land into blocks and lots that are suitable for development. Under the Transbay Final and Conclusive Obligations, the Successor Agency plans to prepare Block 4 for disposition and development as residential use. Under the current projections of housing units that will be built in the Project Area, over fifty percent (50%) of the units on Redevelopment Block 4, may need to be affordable units to comply with the Transbay Affordable Housing Obligation; and,

WHEREAS, Under the 2008 Option Agreement, Section 4.1(a), the Successor Agency may first exercise the Option only after certain conditions have been satisfied, including, relative to Block 4, only after the TJPA no longer uses the site for the temporary terminal facility. TJPA currently expects its use of Block 4 for this purpose will end in late 2017, although the schedule is subject to change. Thus, TJPA and the Agency do not expect that the conditions precedent to the Agency’s ability to exercise its rights under the 2008 Option Agreement for Block 4 will be satisfied until late 2017 or later. The Successor Agency’s ability to complete its work under the Transbay Final and Conclusive Obligations relative to Block 4 and wind down its affairs are facilitated by TJPA’s timely completion of construction of Phase 1 of the TTP; and,

WHEREAS, In 2010, TJPA entered into a \$171.0 million loan under the Transportation Infrastructure Finance and Innovation Act (the “TIFIA Loan”) to fund a portion of the TTP costs and pledged certain revenues, including tax increment from State-Owned Parcels, to repay the loan. Disbursement conditions under the TIFIA Loan, however, delayed TJPA’s receipt of proceeds; and,

WHEREAS, To obtain interim cash flow funding necessary for the TTP, pending TJPA’s satisfaction of the remaining disbursement conditions under the TIFIA Loan, TJPA entered into a bridge loan in the amount of approximately \$171.0 million (the “Bridge Loan”) arranged by Goldman Sachs Bank USA (“Goldman Sachs”). Additional security was required for the Bridge Loan and the TJPA, with the approval of the City, OCII, the Oversight Board

and the Department of Finance, placed certain liens on Parcel F and Block 4. In addition, Caltrans relinquished its Power of Termination with respect to Parcel F and Block 4 in exchange for the deposit of a portion of the Bridge Loan proceeds into the account dedicated to the payment of capital costs for the TTP; and,

WHEREAS, In mid-2015, the TJPA requested that OCII cancel its option rights to Parcel F under the Option Agreement so that the TJPA could offer, on an expedited basis, Parcel F in a public solicitation, sell it for fair market value, and use the proceeds to repay some or all of the Bridge Loan. Releasing OCII's option rights for Parcel F also was consistent with the land use jurisdiction over Parcel F, which is subject to the Planning Code under the jurisdiction of the Planning Department and is not directly subject to OCII's land use approval. In August 2015, OCII released its option rights to Parcel F; and,

WHEREAS, By late 2015, the TJPA's public solicitation process for the sale of Parcel F did not result in acceptable offers. Subsequently, one of the bidders, Urban Pacific Development LLC, joined with Hines Interests Limited Partnership, and Goldman Sachs (the "Developer" or "F4 Transbay Partners, LLC) and submitted an offer to the TJPA to acquire Parcel F for the development of a mixed use project consisting of office, residential and hotel uses and to acquire Block 4 for the development of a market rate and affordable residential project; and

WHEREAS, On March 10, 2016, the TJPA Board of Directors approved a Purchase and Sale Agreement for Parcel F with the Developer for \$160 million. The Developer has deposited \$10 million in escrow as a good faith deposit towards its closing on Parcel F. The sale of Parcel F allows the TJPA to pay off its \$171 million Bridge Loan with Goldman Sachs, and also allows the TJPA to immediately draw down on a \$171 Million federal TIFIA loan, which is critically important to the TJPA's and City's ability to finance the construction of the TTC; and,

WHEREAS, A condition of the Parcel F sale is the approval of an option agreement between OCII and the Developer for Block 4 (the "Block 4 Option"). Under the 2008 Option Agreement, OCII has the exclusive and irrevocable option to acquire the entirety of Block 4 from the TJPA. OCII has discretion, consistent with the terms of the 2008 Option Agreement, to approve a transfer of Block 4 to a developer; and,

WHEREAS, OCII staff has negotiated the proposed terms and conditions of the Block 4 Option with the Developer and the TJPA, which has agreed to be bound by its terms; and,

WHEREAS, The Block 4 Option provides for a right to exclusive negotiations between OCII and the Developer for a Disposition and Development Agreement ("DDA"), and if a DDA is approved, the Developer would purchase Block 4 for (1) \$45 million, or (2) a price determined by negotiation with OCII after the parties have agreed on all terms of the DDA (the "Negotiation Option"), or (3) the fair market value of Block 4 subject to the terms of the DDA as determined by an appraisal process (the "Appraisal" Option); and,

WHEREAS, If all other conditions to the closing of Block 4 have been met by June 30, 2018, but OCII is not prepared to transfer possession of Block 4 by that date for any reason, the applicable purchase price shall be reduced by \$3,000,000 (the "Block 4 Extension Discount"); and,

WHEREAS, The Purchase Price of \$45,000,000 or the price resulting from Buyer's election of the Negotiation Option or the Appraisal Option, subject to the Block 4 Extension Discount, will be the Purchase Price included in the DDA presented to the OCII Commission. If the Purchase Price is \$45,000,000 or greater, the OCII Commission and Board of Supervisors will have previously approved the price; and,

- WHEREAS, If the purchase price is determined through the Developer's election of the Negotiation Option or the Appraisal Option, subject to the Block 4 Extension Discount, if any, the Board of Supervisors will be required to make, in the future, a separate finding under Health and Safety Code Section 33433 that the resulting Block 4 purchase price is not less than the "fair market value" or "fair reuse value" for Block 4; and,
- WHEREAS, Consistent with the Transbay Final and Conclusive Obligations, the proceeds of the sale of Block 4 would be transmitted to the TJPA for the TTC construction. The Block 4 Option also provides that the Developer would subsidize at least 45% of the units as affordable units, without any OCII subsidy. OCII will have sole and absolute discretion to determine the total number and type of affordable units on the Block 4 as well as all other terms in the DDA, including various community benefits, except for sales price; and,
- WHEREAS, The Block 4 Option emphasizes that OCII has the sole and absolute discretion to consider all terms and conditions, other than price, in the DDA, including, but not limited to, the following: (i) the affordable housing program for Block 4, including the percentage of affordable housing units required for a housing development project on Block 4, the types and affordability levels for the units, the tenure of the units, and all other terms of the affordability of the units; (ii) OCII's selection of a qualified non-profit housing developer to partner with the Buyer, or develop on its own, some or all of the affordable units required for Block 4; (iii) a community benefits program designed to implement effectively the requirements and objectives of the Redevelopment Plan, including the provision of housing for households displaced by the previous actions of the Redevelopment Agency, the adoption and implementation of programs that meet or exceed City policies regarding workforce development, contracting opportunities and equal opportunity, particularly for economically disadvantaged San Francisco residents and businesses, and the provision of community-serving space and commercial space that is available to local non-profit organizations and businesses at below-market rates; (iv) a schedule of performance and outside dates for completion; (v) design of the Block 4 Project consistent with the Redevelopment Plan, the Transbay Development Controls and Design Guidelines, and the Transbay Affordable Housing Obligation; (vi) conditions of closing; (vii) insurance and indemnification requirements; and (viii) the remedies of the parties; and,
- WHEREAS, The Block 4 Option provides that the Developer shall deposit, within thirty days after its effective date, Five Hundred Thousand Dollars (\$500,000) in cash (the "Option Deposit") for use by "OCII in its discretion for the reasonable fees and costs of OCII's legal counsel to represent OCII, reasonable staffing costs, and third party costs on all matters related to the implementation of this Agreement and the negotiations and consideration of approval for a DDA." Section 1.3 of Block 4 Option. The Developer has agreed and acknowledged that an appropriate cost under the Option Deposit is OCII's enhancement of its marketing and outreach program for those persons who were displaced by the activities of the Former Agency and are eligible for priority consideration in affordable housing under the Certificate of Preference Program (Oct. 1, 2008), including a survey of Certificate of Preference Holders to aid OCII in evaluating how best to meet Certificate Holder needs; and,
- WHEREAS, In considering approval of the Block 4 Option, which contemplates a sole source sale of Block 4 to the Developer, OCII has complied with the procedural requirements for notice and public hearing required by Section 33431 of the Health and Safety Code; and,

WHEREAS, OCII authorization of the Block 4 Option is statutorily exempt from the California Environmental Quality Act (“CEQA”) as a feasibility and planning study, pursuant to CEQA Guidelines Section 15262. The Block 4 Option will authorize OCII and the Developer to enter into exclusive negotiations for the design of a project that will be subsequently reviewed and considered for approval in the sole and absolute discretion of OCII. The Block 4 Option will not independently result in significant physical effects on the environment; and, now, therefore, be it

RESOLVED, by the Commission on Community Investment and Infrastructure that the Executive Director is authorized to enter into the Agreement for Option to Purchase Block 4 with F4 Transbay Partners LLC, a Delaware Limited Liability Co., that is substantially in the form attached to this Resolution and that is subject to review and approval by the Board of Supervisors of the City and County of San Francisco for the purpose of compliance with Section 33433 of the California Health and Safety Code, and furthermore that the Executive Director is authorized to enter into any and all ancillary documents or take any additional actions necessary to consummate the transaction, including the hiring of third parties with funds provided by the Developer; provided, however, that the final executable version of the Block 4 Option shall specify that only the Commission on Community Investment and Infrastructure shall be authorized to consent to any assignment under the terms and conditions of Section 5 of the Block 4 Option; and, be it further

RESOLVED, by the Commission on Community Investment and Infrastructure that the Executive Director is authorized to enter into negotiations for a Disposition and Development Agreement that shall explore including, among other things, a community benefits program that is designed to implement effectively the requirements and objectives of the Redevelopment Plan, including the provision of housing for households displaced by the previous actions of the Redevelopment Agency; services for affordable housing residents to ensure housing stability and access to neighborhood and citywide services; the adoption and implementation of programs that meet or exceed City policies regarding workforce development, contracting opportunities and equal opportunity, particularly for economically disadvantaged San Francisco residents and businesses, including programs to mitigate small business challenges inherent in large multi-use high-rise developments; and the provision of community-serving space and commercial space that is available to local non-profit organizations or small businesses at below-market rates, with a focus on tenanting for entities that aid in creating a diverse and inclusive neighborhood, which may include entities that serve or reflect impacted or displaced communities, affordable artist studio or gallery space, or retail opportunities that provide affordable goods and products serving a wide ranging population.

I hereby certify that the foregoing resolution was adopted by the Commission at its meeting of April 19, 2016.

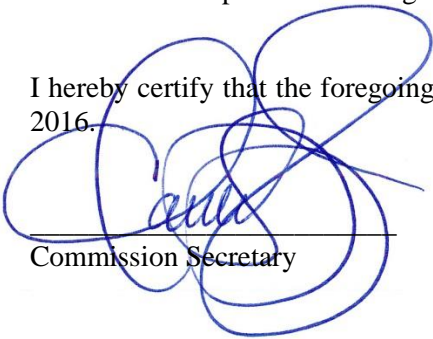

Commission Secretary

Exhibit 1: Block 4 Option Agreement

AGREEMENT FOR OPTION TO PURCHASE BLOCK 4

by and between

THE SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY
OF THE CITY AND COUNTY OF SAN FRANCISCO,

as Optionor,

and

F4 TRANSBAY PARTNERS LLC, a Delaware Limited Liability Company

as Optionee,

For an option to purchase

Portions of former State Parcels O, O', and O'' (APN 3739-008)

San Francisco, California

April __, 2016

TABLE OF CONTENTS

	Page
1. OPTION TO PURCHASE BLOCK 4	6
1.1 Exercise of Option; Closing	6
1.2 Property Included in Sale	8
1.3 Option Deposit	9
2. PURCHASE PRICE	9
2.1 Purchase Price	9
2.2 Payment	11
2.3 Title, Escrow, and Closing Costs	11
2.4 Pre-Development and Post-Closing Costs	12
3. BUYER RESPONSIBILITY FOR REGULATORY APPROVALS	12
3.1 Definition of Regulatory Approvals	12
3.2 Responsibility for Regulatory Approvals, Development, and Costs	12
3.3 Affordability of Residential Units	14
4. REPRESENTATIONS AND WARRANTIES	14
4.1 Representations and Warranties of OCII	14
4.2 Representations and Warranties of Buyer	15
4.3 Continued Accuracy	17
5. ASSIGNMENT	17
6. BUYER'S DEFAULT	17
6.1 Events of Default by Buyer	17
6.2 Events of Default by OCII	18
6.3 Remedies for Default	18
6.4 Non-liability of OCII Commission Members, TJPA Board Members, Officials, and Employees, and Buyer's Members, Officers and Employees	19
7. INDEMNITY	19
8. INSURANCE	20
8.1 Buyer's Insurance	20

8.2	Minimum Scope of Insurance	20
8.3	Minimum Limits of Insurance.....	20
8.4	Deductibles and Self-Insured Retentions	21
8.5	Other Insurance Provisions	21
8.6	Acceptability of Insurers	22
8.7	Verification of Coverage	22
8.8	Design Professionals, Subcontractors and Consultants Insurance	23
8.9	Review.....	23
9.	OCII'S OBLIGATIONS.....	23
9.1	Cooperation	23
9.2	No Limitation of Police Powers	23
9.3	Entry to Block 4	23
9.4	Reservation of Rights Following Termination.....	24
9.5	Disclosure of Confidential Information	24
10.	OCII REQUIREMENTS	24
10.1	Non-Discrimination and Equal Benefits	24
10.2	Small Business Enterprise Program	25
10.3	Compliance with Minimum Compensation Policy and Health Care Accountability Policy	26
11.	GENERAL PROVISIONS	26
11.1	Amendments.....	26
11.2	Severability.....	26
11.3	Non-Waiver	26
11.4	Successors and Assigns	27
11.5	Governing Law.....	27
11.6	Attorneys' Fees and Costs.....	27
11.7	Interpretation of Agreement.....	27
11.8	Entire Agreement	28
11.9	Time for Performance	28
11.10	Counterparts	29
11.11	Approvals and Consents.....	29

11.12 Real Estate Commissions.....	29
11.13 Relationship of the Parties.....	29
11.14 Defined Terms.....	30
11.15 Notices.....	30
11.16 Conflicts of Interest.....	31
11.17 Notification of Limitations on Contributions.....	32
11.18 Survival	32
11.19 Effective Date.....	32
11.20 Covenants Running With the Land	32

AGREEMENT FOR OPTION TO PURCHASE BLOCK 4

(Portions of former State Parcels O, O', and O'' (APN 3739-008), San Francisco, California)

THIS AGREEMENT FOR OPTION TO PURCHASE BLOCK 4 (“**Agreement**”) dated for reference purposes only as of March __, 2016 is by and between the Successor Agency to the Redevelopment Agency of the City and County of San Francisco, also known as Office of Community Investment and Infrastructure (“**Successor Agency**” or “**OCII**”), and F4 TRANSBAY PARTNERS LLC, a Delaware limited liability company (“**Buyer**”) (OCII and Buyer each a “**Party**” and collectively the “**Parties**”).

RECITALS

THIS AGREEMENT IS MADE WITH REFERENCE TO THE FOLLOWING FACTS AND CIRCUMSTANCES:

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

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

C. On December 13, 2006, and in furtherance of the Redevelopment Plan, the Former Agency caused a Declaration of Restrictions affecting all of the Project Area to be recorded in the Official Records, as Document No. 2006-I224839 (“**Project Area Declaration of Restrictions**”).

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

E. Under Assembly Bill No. 812 (Chapter 99, Statutes of 2003, codified at California Public Resources Code Section 5027.1) (“**AB 812**”), any redevelopment plan adopted to finance, in whole or in part, the demolition of the Transbay Terminal building and the construction of a new terminal, including its associated vehicle ramps, shall ensure that at least 25% of all dwelling

units developed within the project area shall be available at affordable housing cost to, and occupied by, persons and families whose incomes do not exceed 60% of the area median income, and that at least an additional 10% of all dwelling units developed within the project area shall be available at affordable housing cost to, and occupied by, persons and families whose incomes do not exceed 120% of the area median income. Application of this project area objective may require that particular publicly-owned parcels will have to be developed with a greater percentage of affordable housing units than 35% (“**Transbay Affordable Housing Obligation**”).

F. In 2003, the TJPA, the City, and the State, acting by and through its Department of Transportation (“**Caltrans**”), entered into a Cooperative Agreement, which sets forth the process for the transfer of the State-owned parcels to the City and the TJPA (“**Cooperative Agreement**”). In 2005, the TJPA and the Former Agency entered into the Transbay Redevelopment Project Implementation Agreement (“**Implementation Agreement**”) which requires OCII, as successor in interest to the Former Agency, to prepare and sell the formerly State-owned parcels and to implement the Redevelopment Plan, including the construction and funding of new infrastructure improvements (such as parks and streetscapes), meeting the Transbay Affordable Housing Obligation, and fulfilling other objectives of the Redevelopment Plan. Subsequently, in 2008, the TJPA, the City and the Former Agency entered into an Option Agreement for the Purchase and Sale of Real Property (“**2008 Option Agreement**”), which sets forth the process for the transfer of certain of these parcels to the Former Agency, and now to OCII, to facilitate the sale of the parcels to private developers.

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

H. 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**”) 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 primarily codified in sections 34170 et seq. of the California Health and Safety Code, which sections, as amended from time to time, are referred to as the “Redevelopment Dissolution Law.”)

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

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

K. On April 15, 2013, DOF finally and conclusively determined that the Pledge Agreement, Implementation Agreement, and Transbay Affordable Housing Obligation are continuing enforceable obligations of the OCII under the Redevelopment Dissolution Law.

L. AB 1484 authorizes successor agencies to enter into new agreements, such as this Agreement, if they are "in compliance with an enforceable obligation that existed prior to June 28, 2011." Cal. Health & Safety Code § 34177.5 (a). This Agreement, providing for an option to transfer a certain State-owned parcel to a third party, with the payment of the proceeds to the TJPA, resulting in the development of market-rate and affordable housing, complies with the Implementation Agreement.

M. The TJPA is responsible for implementing the Transbay Transit Center Program, which includes, among other things, (i) on the site of the former Transbay Terminal, the construction of a new Transit Center building ("**Transit Center**"), (ii) a rail tunnel and rail systems to extend Caltrain service from Fourth and King Streets to the Transit Center and to accommodate California High Speed Rail trains in the future, (iii) a new underground Fourth and Townsend Street Caltrain Station, (iv) modifications to the existing surface station at Fourth and King Streets, (v) a temporary bus terminal ("**Temporary Terminal**"), (vi) a bus ramp connecting the Bay Bridge to the Transit Center, and (vii) permanent bus storage facilities. The construction of the Transit Center started in 2010 and is on schedule to be completed in the fourth quarter of 2017.

N. The TJPA is the owner of the northern one-third of the block bounded by Beale, Howard, Main, and Folsom Streets in San Francisco, a portion of former State Parcels O, O', and O'' (APN 3739-008), generally known as 200 Main Street, and also known as Block 4 under the Redevelopment Plan, as more particularly described in Exhibit A ("**Block 4**"). The TJPA is currently using Block 4 for the Temporary Terminal. The TJPA will close the Temporary Terminal when the Transit Center is completed and bus traffic is transferred to the Transit Center. Following closure of the Temporary Terminal, Block 4 is planned for residential development under the Redevelopment Plan. Redevelopment Plan Block 2 ("**Block 2**"), proposed for affordable housing under the Redevelopment Plan, occupies the southern one-third of the Temporary Terminal site. Redevelopment Plan Block 3 ("**Block 3**"), planned for a public park under the Redevelopment Plan, lies between Blocks 2 and 4 on the Temporary Terminal site.

O. Under the 2008 Option Agreement, OCII has the exclusive and irrevocable option to acquire portions of Blocks 2 and 3, and the entirety of Block 4 from the TJPA. OCII has

discretion, consistent with the terms of the 2008 Option Agreement, to approve a transfer of Blocks 2 and 4 to a developer and to cause Block 3 to be developed for a public park. Developments of Blocks 2 and 4 must comply with the Redevelopment Plan, the Transbay Development Controls and Design Guidelines, and the terms of a Disposition and Development Agreement (“**DDA**”) to be approved by the OCII Commission.

P. On May 21, 2015, the TJPA publicly distributed a notice that the TJPA would offer for sale portions of former State Parcel F, 75 Natoma, 546 Howard, 564 Howard, and 77-79 Natoma; the TJPA subsequently determined that it would also offer for sale a portion of 568 Howard assembled with the parcels identified above (collectively, “**Parcel F**”).

Q. To participate in the Parcel F offering (“**Parcel F Procurement**”), each potential bidder was required to meet certain pre-qualification requirements. Urban Pacific Development, LLC, a California limited liability corporation (“**Urban Pacific**”) submitted an application for prequalification. The TJPA determined that Urban Pacific met the prequalification requirements. Prior to execution of this Agreement, Hines F4 Associates Limited Partnership (“**Hines**”) and Broad Street Principal Investments, L.L.C. (“**Broad Street**”) each signed a prequalification application.

R. On September 4, 2015, the TJPA solicited written proposals from the prequalified bidders in the Parcel F Procurement, subject to certain parameters established by the TJPA. On September 25, 2015, Urban Pacific and Hines submitted a written proposal. On October 26, 2015, the TJPA solicited best and final offers from certain of the bidders.

S. Following submission of an initial offer by Urban Pacific and Hines to purchase Parcel F, Urban Pacific, Hines, and Broad Street submitted a second offer to purchase Parcel F and Block 4. Following submission of that offer, Urban, Hines, and Broad Street formed Buyer, a single purpose entity, to purchase Parcel F and Block 4. Urban, Hines, and Broad Street are members of Buyer (“**Buyer’s Members**”). On March [___], 2016, the TJPA and Buyer entered into an Agreement of Purchase and Sale for Real Estate by and between Transbay Joint Powers Authority, as Seller, and Buyer, for the purchase and sale of Parcel F (“**Parcel F PSA**”). Under the Parcel F PSA, Buyer has agreed to purchase Parcel F for cash and other consideration, contingent on approval by the OCII Commission and the Board of Supervisors of an option to purchase Block 4 in the form of this Agreement.

T. This Agreement contemplates a sole source sale of Block 4 to Buyer. As a commitment to sell Block 4 without a public bid, OCII’s approval of this Agreement will follow the procedural requirements for notice and public hearing in Section 33431 of the California Health and Safety Code. Moreover, to the extent that this Agreement establishes the consideration that OCII will receive for the sale of Block 4, OCII may enter into this Agreement only after the OCII Commission and the Board of Supervisors determine that the Purchase Price, as established under Section 2.1 of this Agreement, meets or exceeds the standards for “fair market value” or “fair reuse value” in Cal. Health & Safety Code Section 33433, as incorporated into the Redevelopment Plan § 4.7.2 subject to adjustment as set forth in the Block 4 Extension Discount under Section 2.1.

U. This Agreement provides that if Buyer is able to negotiate a DDA for Block 4 with OCII including the terms set forth herein, which is approved by the OCII Commission in its sole discretion, and Buyer exercises the option to purchase Block 4 under this Agreement, Buyer shall (i) construct a residential building on Block 4, together with related structures and improvements on the property (collectively, “**Block 4 Project**”); (ii) include a minimum number of below-market-rate (“**BMR**”) housing units in the Block 4 Project necessary to meet the Transbay Affordable Housing Obligation; (iii) pay \$45,000,000 to the TJPA for Block 4, unless Buyer elects to negotiate a fair market price with OCII or an appraisal process to determine the Purchase Price for Block 4, as set forth in Section 2.1 of this Agreement; and (iv) be solely responsible for and will bear all risk for obtaining all Regulatory Approvals as defined in Section 3.1, including, but not limited to, a DDA approved by the OCII Commission.

V. Buyer acknowledges that any DDA for Block 4 must be consistent with the Transbay Affordable Housing Obligation. Accordingly, this Agreement obligates Buyer to enter into a DDA for the Block 4 Project that includes an amount of BMR units sufficient to ensure that OCII meets the Transbay Affordable Housing Obligation in light of anticipated development elsewhere in the Project Area. OCII retains sole discretion to determine the affordability requirements for Parcel F and Buyer’s financial obligations to fund those requirements, and OCII retains sole discretion to determine the affordability requirements for the Block 4 Project and Buyer’s financial obligations to fund those requirements to meet the Transbay Affordable Housing Obligation. Buyer will include, at no cost to OCII, the TJPA, or the City, at least forty-five percent (45%) BMR units on Block 4 plus any additional units that are attributable to an increase in the number of housing units in the Parcel F Project above 200 units or the transfer of affordable units required on Parcel F by the Redevelopment Plan and Planning Code in effect as of the date of this Agreement onto Block 4 (“**Buyer’s Inclusionary Obligation**”). This Agreement contemplates that, should OCII require the percentage of BMR units in the Block 4 Project to exceed 45% and such excess is not attributable to an increase in the number of housing units in the Parcel F Project above 200 units or the transfer of affordable units required on Parcel F by the Redevelopment Plan and Planning Code in effect as of the date of this Agreement onto Block 4, Buyer may request that OCII provide a subsidy to Buyer to account for such additional BMR units. However, this Agreement creates no obligation for OCII to do so.

W. The following recitals pertain to the condition of title for Block 4:

(i) The Cooperative Agreement sets forth the terms and conditions under which Caltrans would transfer certain state-owned parcels to the City and the TJPA. By that certain deed recorded on December 16, 2008 in the Official Records of the City and County of San Francisco, document no. 2008-1694633, Caltrans conveyed State-owned Parcel O to the TJPA. By that certain deed recorded on October 31, 2008 in the Official Records of the City and County of San Francisco, document no. 2008-1673663, Caltrans conveyed State-owned Parcel O’ to the City. By that certain deed recorded on December 16, 2008 in the Official Records of the City and County of San Francisco, document no. 2008-1694634, Caltrans conveyed State-owned Parcel O” to the City. By that certain quitclaim deed recorded on October 31, 2008 in the Official Records of the City and County of San Francisco, document no. 2008-1673664, the City conveyed former State-owned Parcel O’ to the TJPA. By that certain quitclaim deed recorded on December 16, 2008 in the Official Records of the City and County of San Francisco, document

no. 2008-1694635, the City conveyed former State-owned Parcel O” to the TJPA. In connection with the transfer of Parcels O, O’, and O”, the northernmost portion of which is Block 4 under the Redevelopment Plan, Caltrans retained a right to terminate the transfer and re-take title to the property if certain conditions were not met following the transfer of such property to the TJPA (“**Power of Termination**”);

(ii) In an agreement for a TIFIA Loan of \$171 million between the TJPA and the Federal Transportation Administration, the TJPA pledged certain property tax increment revenue attributable to certain former state-owned parcels (“**Net Tax Increment**”), including Block 4, as security for the payment of a loan under the federal TIFIA program for the Transbay Program. In 2014, the TJPA and the TIFIA Loan lender entered into two amendments to the TIFIA Loan. The interim financing among the TJPA, as borrower, and Goldman Sachs Bank USA (“**Goldman Sachs**”) and Wells Fargo Securities LLC (“**Wells Fargo**”), as lenders, dated January 22, 2015 (“**Interim Financing**”), is on parity with the TIFIA Loan. The Interim Financing is secured, in part, by (a) the Net Tax Increment, (b) the Note dated January 22, 2015 with TJPA as Borrower and Goldman Sachs as Payee (“**GS Note**”) and the Note dated January 22, 2015 with TJPA as Borrower and Wells Fargo Bank, National Association as Payee (“**WF Note**”), (c) the Deed of Trust, Assignment of Leases and Rents, and Security Agreement on former State Parcel F, 75 Natoma, and 546 Howard, dated January 22, 2015 pertaining to Parcel F (“**Deed of Trust**”), and (d) the Agreement Not to Encumber or Transfer Property dated January 22, 2015 pertaining to Block 4 (“**Negative Pledge Agreement**”). In connection with the Interim Financing, on January 22, 2015 Caltrans relinquished its Power of Termination over Block 4 pursuant to that certain document recorded on January 22, 2015 in the Official Records of the City and County of San Francisco, document no. 2015-K010430-00 (“**Relinquishment of Power of Termination**”).

X. OCII and Buyer now wish to enter into this Agreement to set forth the terms and conditions under which OCII will grant an option to purchase Block 4 to Buyer (“**Option**”).

ACCORDINGLY, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the TJPA and Buyer agree as follows:

1. OPTION TO PURCHASE BLOCK 4

1.1 Exercise of Option; Closing

(a) OCII agrees to grant Buyer the Option to purchase Block 4 under the terms, covenants, and conditions set forth in this Agreement.

(b) Buyer may not exercise the Option prior to the later of the date on which (i) the TJPA has complied with the terms and conditions under which OCII may exercise its option for Block 4 in the 2008 Option Agreement (except for such terms and conditions, if any, as are to be complied with by TJPA only upon the closing of the Block 4 transfer) and OCII has provided the TJPA with written notice of its intent to exercise its option; (ii) the TJPA has provided OCII and Buyer with notice of the start of regular public bus service at the Transit Center and the TJPA’s closure of the Temporary Terminal under Section 1.1(d) (“**Temporary Terminal**

Closure Date”), and (ii) the OCII Commission has approved, in its sole and absolute discretion, a DDA for the Block 4 Project including the terms set forth herein.

(c) To exercise the Option, Buyer shall give the Notice of Exercise of Option in the form attached as Exhibit B under Section 11.15. The date on which Buyer gives notice of the exercise of the Option to OCII shall be the “Option Exercise Date.”

(d) The TJPA shall give written notice to OCII and Buyer within ten (10) days after the Temporary Terminal Closure Date. The TJPA covenants and agrees for the benefit of Buyer that, following OCII’s exercise of the option for Block 4 in accordance with the 2008 Option Agreement, the TJPA shall comply with its obligation under the 2008 Option Agreement to convey Block 4 to OCII.

(e) The Option and this Agreement shall terminate and the Parties shall have no further rights or obligations under this Agreement except with respect to those matters that survive termination as described in Section 11.18, upon the occurrence of any of the following events:

(i) if Buyer fails to exercise the Option within thirty (30) days after the later to occur of the following: (A) TJPA gives OCII and Buyer written notice of the Temporary Terminal Closure Date, and (B) the OCII Commission approves a DDA for the Block 4 Project.

(ii) if the OCII Commission has not approved a DDA for the Block 4 Project by August 15, 2018 (“Outside Option Exercise Date”), provided that the Parties’ failure to reach agreement on a DDA after attempting to negotiate the same in good faith, or Buyer’s failure to obtain necessary Regulatory Approvals, will not be a breach of this Agreement by either Party; provided further, however, that if the Temporary Terminal Closure Date has not occurred on or before August 15, 2018, then the Outside Option Exercise Date shall be extended day-for-day by the number of days between August 15, 2018 and the date on which the Temporary Terminal Closure Date occurs.

(iii) if the Closing for Block 4 and transfer of possession of Block 4 to Buyer has not occurred on or before October 31, 2018; provided, however, that if the Temporary Terminal Closure Date has not occurred on or before August 15, 2018, then the requirement to close by October 31, 2018 shall be extended day-for-day by the number of days between August 15, 2018 and the date on which the Temporary Terminal Closure Date occurs.

(iv) upon the transfer by the TJPA of fee title to OCII in response to OCII’s exercise of the option for Block 4 under the 2008 Option Agreement and the mutual execution and delivery by the Parties of the DDA approved by the Commission.

(v) upon notice from Buyer that it desires to cease negotiations for a DDA, which shall not be deemed an “Event of Default by Buyer” as defined in Section 6.1; provided.

(vi) In the event Buyer fails to cure an Event of Default by Buyer within the time periods specified in Section 6.1, OCII may terminate this Agreement upon written notice to Buyer.

(vii) if the Parcel F PSA is terminated without Closing.

(f) The period after the Effective Date of this Agreement as defined in Section 12.19 and the termination of this Agreement shall be defined as the “Term.” During the Term, OCII will not solicit proposals from other developers to purchase Block 4 or negotiate with any other developer to purchase or develop Block 4 (“**Buyer’s Right of Exclusive Negotiations**”).

(g) The Temporary Terminal Closure Date shall occur no later than August 15, 2018 (“Outside Temporary Terminal Closure Date”). In the event the Temporary Terminal Closure Date does not occur on or before the Outside Temporary Terminal Closure Date, then the applicable provisos in Sections 1.1(e)(ii) and 1.1(e)(iii) shall apply.

(h) Buyer’s right to exercise the Option is conditioned on Buyer and OCII having negotiated and, following approval by the OCII Commission, entered into a DDA for Block 4. The OCII Commission shall have sole and absolute discretion to approve a Block 4 DDA. OCII shall have no obligation to submit a Block 4 DDA with Buyer to the OCII Commission or to recommend approval of a Block 4 DDA to the OCII Commission.

(h) If OCII and Buyer have entered into an approved DDA for Block 4, the TJPA has transferred fee title to OCII in response to OCII’s Exercise Option for Block 4 under the 2008 Option Agreement, and Buyer has timely exercised the Option under this Section 1.1, OCII agrees to sell and convey Block 4 to Buyer, and Buyer agrees to purchase Block 4 from OCII, at the Purchase Price as defined below to the TJPA, subject to the terms, covenants, and conditions set forth in this Agreement, the 2008 Option Agreement, and the DDA.

(i) The Closing of the sale of Block 4 to Buyer (“Closing Date”) shall occur no later than thirty (30) days after the Option Exercise Date, but in no event later than October 31, 2018 (subject to extension as provided in Section 1.1(e)(iii)) (“**Outside Closing Date**”).

1.2 Property Included in Sale

(a) Subject to Section 1.2 (b), Block 4 consists of the Agency Transfer Parcel that the TJPA has provided to OCII in response to its Exercise Notice under the 2008 Option Agreement and includes the following:

(i) the land consisting of approximately forty five thousand three hundred seventy seven (45,377) square feet of land, consisting of the northern one-third of the block bounded by Beale, Howard, Main, and Folsom Streets in San Francisco, commonly known as 200 Main Street, also commonly known as portions of former State Parcels O, O’, and O”, located in the City and County of San Francisco, as more particularly described in Exhibit A to this Agreement (collectively, “**Block 4 Land**”);

(ii) all improvements and fixtures located on or in the Block 4 Land, including any and all buildings and structures located on or in the Land (collectively, “**Block 4 Improvements**”); and

(iii) any and all of the rights, privileges, and easements incidental or appurtenant to the Block 4 Land or Improvements, including any and all minerals, oil, gas, and other hydrocarbon substances on and under the Block 4 Land, as well as any and all development rights, air rights, water, water rights, riparian rights, and water stock relating to the Block 4 Land, and any and all easements, rights-of-way or other appurtenances used in connection with the beneficial use and enjoyment of the Block 4 Land or Improvements (collectively, “**Appurtenances**”).

(b) Notwithstanding the foregoing, to the extent that OCII agrees to fund affordable units on Block 4, the DDA may require that those units be developed in a stand-alone podium building on a portion of the Block 4 site where the improvements are owned by a joint venture of Buyer, a non-profit housing developer, and/or OCII, and title to a portion of the Block 4 Land and the air rights in the podium site are held by OCII.

1.3 Option Deposit

(a) Within thirty (30) days after the Effective Date, Buyer shall deposit with OCII a total of Five Hundred Thousand Dollars (\$500,000) in cash (“**Option Deposit**”). The Option Deposit is separate from and in addition to the Purchase Price for Block 4. The Option Deposit will be used by OCII in its discretion for the reasonable fees and costs of OCII’s legal counsel to represent OCII, reasonable staffing costs, and third party costs on all matters related to the implementation of the this Agreement and the negotiations and consideration of approval for a DDA for Block 4. If OCII’s costs exceed the initial \$500,000 Option Deposit, OCII will give notice to Buyer that Buyer shall deposit an additional \$100,000 for OCII’s negotiation costs (“**Increased Option Deposit**”). Within thirty (30) days after receiving notice from OCII to increase the Option Deposit, Buyer shall deposit with OCII the Increased Option Deposit. After termination of this Agreement under Section 1.1(e), OCII will return to Buyer any funds remaining in the Option Deposit or the Increased Option Deposit.

2. PURCHASE PRICE

2.1 Purchase Price

(a) Buyer’s Election. After the Parties have negotiated all terms of a DDA except the purchase price for Block 4, and before the OCII Commission approves a DDA for Block 4, Buyer shall elect to pay a purchase price for Block 4 based on the following options: (i) Forty-Five Million Dollars (\$45,000,000.00), (ii) the price determined through negotiation of a fair market price for Block 4 with OCII as provided in Section 2.1(b)(i), or (iii) the price determined through an appraisal process as provided in Sections 2.1(b)(ii) through (vi) (the method specified in Section 2.1(b), the “**Negotiation/Appraisal Option**”) (any of (i), (ii) or (iii), the “**Purchase Price**”). If all other conditions to the Closing for Block 4 have been met by June 30, 2018, but OCII is not prepared to transfer possession of Block 4 to Buyer by that date for any reason, the applicable Purchase Price for Block 4 shall be reduced by Three Million Dollars

(\$3,000,000.00) (the “**Block 4 Extension Discount**”). The Purchase Price shall be a term of the DDA.

(b) Negotiation/Appraisal Option. If Buyer elects the Negotiation/Appraisal Option:

(i) Buyer will provide notice to OCII staff (“**Election Notice**”). Within sixty (60) days after the Election Notice, the Parties will attempt to agree on a fair market value for Block 4 based on the terms that the OCII Staff requires in the DDA (“**Negotiation Period**”). For clarity, at any time during the Negotiation Period, Buyer may elect to terminate the negotiations and pay a purchase price equal to \$45,000,000.

(ii) If the Parties cannot agree on a fair market value before the expiration of the Negotiation Period, (A) the Parties may agree to extend the Negotiation Period, or (B) if the Parties do not agree to extend the Negotiation Period, then at any time after the expiration of the 60-day Notice Period (as the same may have been previously extended), either Party may give the other Party notice that the Negotiation Period has expired (“**Negotiation Period Expiration Notice**”). Within thirty (30) days after the Negotiation Period Expiration Notice, each Party will select an MAI appraiser (“**Party Appraiser**”).

(iii) The two Party Appraisers will appraise Block 4 based on the terms of the DDA, other than the purchase price, negotiated by the Parties, provided, however, that the appraisals shall take into account the negative effect on value caused by the presence of affordable housing units at the Block 4 project; provided, however, that the appraisals shall disregard the negative effect on value caused by any affordable housing units to be built on Block 4 that are necessary to achieve compliance with the Transbay Affordable Housing Obligation and result from (A) an increase in housing units at Parcel F beyond 200 units or (B) the transfer to Block 4 of affordable housing units required on Parcel F by the Redevelopment Plan and Planning Code in effect as of the date of the Purchaser Option Agreement to Block 4 (“**Buyer Affordable Units**”). To disregard the negative effect on value of the Buyer Affordable Units, the appraisers shall assume that the Buyer Affordable Units are market-rate units.

(iv) The two Party Appraisers will exchange appraisals on an agreed date and at an agreed time within forty-five (45) days after the both appraisers have been selected.

(v) If the lower appraisal is at least ninety percent (90%) of the higher appraisal, the Purchase Price will be the average of the two appraisals, whether higher or lower than \$45,000,000 but in any event subject to the Block 4 Extension Discount if applicable.

(vi) If the lower appraisal is less than 90% of the higher appraisal, within ten (10) days after the Party Appraisers exchange appraisals, the Party Appraisers will select a neutral MAI appraiser, who is not, and has not within the last ten (10) years been, an employee of, or the immediate family member of an employee of, any of OCII, the City and County of San Francisco, Buyer or any of Buyer’s Members (a “**Neutral Appraiser**”). Within ten (10) days after the Party Appraisers select the Neutral Appraiser, the Neutral Appraiser will select one or the other of the Party appraisals as the most reasonable purchase price, and such

Party appraisal price, whether higher or lower than \$45,000,000 but in any event subject to the Block 4 Extension Discount if applicable, shall constitute the Purchase Price hereunder.

(c) Buyer will bear the cost of its Party Appraiser and shall pay the cost of the Neutral Appraiser; OCII's costs of its Party Appraiser are payable from the Option Deposit.

(d) The City's Board of Supervisors will need to make a finding under Health & Safety Code Section 33433, as incorporated in Section 4.7.2 of the Redevelopment Plan and Section 5.4 of the 2008 Option Agreement, that the Purchase Price established under Section 2.1(a)-(b) is not less than the "fair market value" or "fair reuse value" for Block 4.

(e) The Purchase Price of \$45,000,000 or the price resulting from Buyer's election of the Negotiation/Appraisal Option, subject to the Block 4 Extension Discount, will be the Purchase Price included in the DDA presented to the OCII Commission. If the Purchase Price is \$45,000,000 or greater, the OCII Commission and Board of Supervisors will have previously approved the price and such Purchase Price will not be grounds for the OCII Commission to disapprove the DDA. Following a determination of the Purchase Price resulting from Buyer's election of the Negotiation/Appraisal Option, subject to the Block 4 Extension Discount, if any, and after the OCII Commission's approval of the DDA, the City's Board of Supervisors will be required to make a finding under Health & Safety Code Section 33433 that the Block 4 Purchase Price Adjustment will result in a Purchase Price that is not less than the "fair market value" or "fair reuse value" for Block 4.

2.2 Payment

At the closing of the sale of Block 4 to Buyer ("**Closing**"), Buyer shall pay the Purchase Price to the TJPA consistent with the terms and conditions of the 2008 Option Agreement and the Block 4 DDA.

2.3 Title, Escrow, and Closing Costs

(a) Buyer shall bear all cost and responsibility for all title, escrow, and closing fees and costs, including, but not limited to, the cost of any transfer taxes, surveys, environmental review, title policy premium and endorsements, escrow, and recording fees.

(b) Fees, costs, expenses, taxes, and liabilities relating to Block 4 shall be apportioned as of 12:01 a.m. (Pacific Time) on the Closing Date, so that the TJPA bears all expenses and has the benefit of all income with respect to Block 4 through and including the date immediately preceding the Closing Date, and Buyer bears all expenses and has the benefit of all income with respect to Block 4 on and after the Closing Date. No contracts or leases will be assigned to Buyer at Closing, and therefore no rent or expenditure proration relating to the same.

(c) OCII and Buyer shall jointly prepare a preliminary closing adjustment on the basis of any apportionments or adjustments to be made based on payments or expenses, and shall deliver such computation to Escrow Agent prior to Closing. The Parties shall not object to actual, reasonable payments or expenses consistent with this Agreement.

(d) If any of the foregoing proration cannot be calculated accurately on the Closing Date, they shall be calculated as soon after the Closing Date as feasible, but not later than

ninety (90) days after Closing. Any Party owing the other Party a sum of money based on such subsequent prorations shall promptly pay such sum to the other Party.

2.4 Pre-Development and Post-Closing Costs

After Closing, any costs associated with the security, maintenance/repair, or demolition of any existing structures on Block 4 will be the sole and absolute responsibility of Buyer. The cost of Regulatory Approvals (as defined below), permitting, inspections, parcel mapping, quiet title actions, and other pre-development costs shall be the sole and absolute responsibility of Buyer. The cost of construction and development of Block 4 shall be the sole and absolute responsibility of Buyer.

3. BUYER RESPONSIBILITY FOR REGULATORY APPROVALS

3.1 Definition of Regulatory Approvals

The term “Regulatory Approvals” as used in this Agreement shall mean all DDAs, discretionary approvals, permits, entitlements, licenses, consents, waivers, exemptions, variances, plan amendments and other governmental authorizations (including any CEQA Authorization) necessary or required to commence construction of a development project, including demolition, site and building permits.. As used in this Section 3.1, “**CEQA Authorization**” shall mean any authorization, finding, approval or other action, including, but not limited to, the preparation and certification of an environmental review document such as a Negative Declaration or Environmental Impact Report necessary or required pursuant to CEQA to commence construction of the Block 4 Project.

3.2 Responsibility for Regulatory Approvals, Development, and Costs

(a) The OCII Commission retains sole and absolute discretion to determine the terms and conditions of the Block 4 DDA. The Block 4 DDA will govern all matters related to the disposition and development of Block 4, with the exception of the Purchase Price. Matters governed by the DDA include, without limitation, (i) the affordable housing program for Block 4, including the percentage of affordable housing units required for a housing development project on Block 4, the types and affordability levels for the units, the tenure of the units, and all other terms of the affordability of the units; (ii) OCII’s selection of a qualified non-profit housing developer to partner with the Buyer, or develop on its own, some or all of the affordable units required for Block 4; (iii) a community benefits program designed to implement effectively the requirements and objectives of the Redevelopment Plan, including the provision of housing for households displaced by the previous actions of the Redevelopment Agency, the adoption and implementation of programs that meet or exceed City policies regarding workforce development, contracting opportunities and equal opportunity, particularly for economically disadvantaged San Francisco residents and businesses, and the provision of community-serving space and commercial space that is available to local non-profit organizations and businesses at below-market rates; (iv) a schedule of performance and outside dates for completion; (v) design of the Block 4 Project consistent with the Redevelopment Plan, the Transbay Development Controls and Design Guidelines, and the Transbay Affordable Housing Obligation; (vi) conditions of closing; (vii) insurance and indemnification requirements; and (viii) the remedies of the parties. Buyer

assumes all risks of entitlements, development, and costs for the Block 4 Project, including, but not limited to, affordable housing requirements and exceptions from current law or policy regarding any affordable housing required on-site for Parcel F and Block 4, fees for their attorneys, architects, engineers, consultants and other professionals related to or arising from this Agreement or the negotiation of the DDA, and all costs associated with or complying with all permit and processing fees related to the Block 4 Project and any necessary Regulatory Approval granted to Buyer.

(b) OCII will have no obligations concerning risks of Regulatory Approvals, development, and costs for the Block 4 Project, including affordable housing requirements imposed on the Block 4 Project, except for any public contribution agreed to by OCII in the DDA to increase the number of affordable units or the affordability levels on Block 4. To the extent that OCII agrees to fund affordable units on Block 4, it may require that those units be developed in a stand-alone podium building on a portion of the Block 4 site where the improvements are owned by a joint venture of Buyer, a non-profit housing developer, and/or OCII, and title to the air rights is held by OCII. Buyer shall not have any claim against OCII for reimbursement for any of Buyer's costs and expenses irrespective of whether Buyer is able to negotiate the terms of a DDA with OCII staff, a DDA is approved by the OCII Commission, or whether Buyer is able to secure other Regulatory Approvals.

(c) Buyer 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 Buyer, and OCII shall have no liability, monetary or otherwise, for said fines and penalties.

(d) Buyer shall not pay, or agree to pay, any fee or commission, or any other thing of value contingent on the entering of this Agreement or any other agreement with OCII related to the Block 4 Project, to any OCII employee or official or to any contracting consultant hired by OCII for purposes of the Block 4 Project. By entering into this Agreement, Buyer certifies to OCII that it has not paid, nor agreed to pay, any fee or commission, or any other thing of value contingent on the entering of this Agreement or any other agreement with OCII related to the Block 4 Project, to any OCII employee or official or to any contracting consultant hired by OCII for purposes of the Block 4 Project.

(e) Buyer acknowledges and agrees that under this Agreement OCII is not committing itself or agreeing to enter into the DDA or undertake any exchange or transfer of real property, and disposition of any real property interests to the Buyer, approve any land use entitlements or undertake any other acts or activities relating to the subsequent independent exercise of discretion by OCII or any agency, commission or department of the City. Except for the obligation to negotiate exclusively with Buyer as provided in this Agreement and to accept a Purchase Price based on the process described in Section 2.1, and any other obligations expressly provided herein, this Agreement is not intended to create any legally binding obligations on the part of OCII with respect to the disposition and development of Block 4, and no such legal obligation will exist unless and until the parties have negotiated, executed and delivered mutually acceptable agreements based upon information produced from the environmental review process and upon other public review and hearing processes and subject to all applicable governmental approvals, including without limitation, the approval of OCII and the City in their respective sole and absolute discretion, subject to compliance with applicable laws.

3.3 Affordability of Residential Units

(a) To ensure compliance with the Transbay Affordable Housing Obligation, the total number of residential units and the number of BMR units constructed on Block 4 shall be subject to OCII's approval, in its sole discretion, in a DDA to be negotiated between Buyer and OCII.

(b) Buyer acknowledges that the Project Area must be developed with a sufficient number of units of affordable housing necessary to meet the requirements of the Transbay Affordable Housing Obligation. Accordingly, Buyer shall comply with the Buyer's Inclusionary Obligation and any additional affordability requirements determined in the course of negotiating the DDA. Buyer acknowledges that the City and OCII retain sole discretion to determine the affordability requirements for Parcel F and Buyer's financial obligations to fund those requirements, and Buyer acknowledges that OCII retains sole discretion to determine the affordability requirements for the Block 4 Project and Buyer's financial obligations to fund those requirements.

4. REPRESENTATIONS AND WARRANTIES

4.1 Representations and Warranties of OCII

OCII represents and warrants to Buyer, to the best of OCII's actual knowledge, as of the Effective Date as follows:

(a) Authority. OCII is organized and existing under the laws of California, in good standing in California and has all requisite power and authority to execute and deliver this Agreement and the agreements attached as exhibits to this Agreement. OCII is the legal and equitable owner of an option to acquire title to Block 4 under the 2008 Option Agreement, with full right to exercise its option to acquire title to Block 4 and convey the same, subject to the TJPA's compliance with the 2008 Option Agreement, and OCII has not granted any option, right of first refusal or first opportunity or similar right to any third party to acquire any interest in any of Block 4. Persons signing this Agreement for OCII have all requisite power and legal authority to do so.

(b) Valid Execution. The execution and delivery of this Agreement by OCII has been duly and validly authorized by all necessary action. This Agreement is a legal, valid, and binding obligation of OCII.

(c) Regulatory Approvals. Buyer agrees and acknowledges that OCII has made no representation or warranty that the Regulatory Approvals for the Block 4 Project can be obtained. Buyer further agrees and acknowledges that there is no guarantee, nor a presumption, that any of the Regulatory Approvals required for the development of the Block 4 Project will be issued.

(d) No Limitation on Ability to Perform. Other than the requirement that the Board of Supervisors approve this Agreement under Health & Safety Code Section 33433 ("Board of Supervisors Approval"), there is no operating agreement, organization document, or

any other agreement or law that in any way prohibits, limits, or otherwise affects the right or power of OCII to enter into and perform all of the terms and covenants of this Agreement. OCII is not a party to or bound by any contract, agreement, indenture, trust agreement, note, obligation or other instrument that could prohibit, limit, or otherwise affect the same. Other than Board of Supervisors Approval, 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 the TJPA of this Agreement or any of the terms and covenants contained in this Agreement. There are no pending or, to OCII's knowledge, threatened proceedings or undischarged judgments affecting OCII before any court, governmental agency, or arbitrator which might materially adversely affect the enforceability of this Agreement, OCII or the ability of OCII to perform the transactions contemplated by this Agreement. OCII makes the representation in this Section 4.1(d) solely for purposes of the Option, and no breach of this Section 4.1(d) shall give rise to any liability of OCII for damages under this Agreement. This representation does not affect in any way OCII's rights under Section 3.

(e) Defaults. Subject to the Board of Supervisors Approval, the execution, delivery, and performance of this Agreement (i) do not and will not violate or result in a violation of, contravene or conflict with, or constitute a default under (A) any agreement, document or instrument to which OCII is a party or by which OCII may be bound or affected, or (B) any law, statute, ordinance, regulation applicable to OCII. OCII makes the representation in this Section 4.1(e) solely for purposes of the Option, and no breach of this Section 4.1(e) shall give rise to any liability of OCII for damages under this Agreement. This representation does not affect in any way OCII's rights under Section 3.

(f) FIRPTA. To OCII's actual knowledge, OCII is not a "foreign person" within the meaning of Section 1445(f)(3) of the Federal Tax Code.

4.2 Representations and Warranties of Buyer

Buyer represents and warrants to OCII, to the best of Buyer's actual knowledge, as of the Effective Date as follows:

(a) Authority. Buyer has all requisite power and authority to execute and deliver this Agreement and carry out and perform all of the terms and covenants of this Agreement. Persons signing this Agreement for Buyer have all requisite power and legal authority to do so.

(b) Valid Existence; Good Standing; Joint Venture Relationships. Buyer is duly organized and validly existing under the laws of the state under which it was formed, and has made all filings and is in good standing in the State of California to the extent required by applicable law.

(c) No Limitation on Ability to Perform. There is no operating agreement, organization document, or any other agreement or law that in any way prohibits, limits, or otherwise affects the right or power of Buyer to enter into and perform all of the terms and covenants of this Agreement. Neither Buyer nor any member of Buyer is a party to or bound by

any contract, agreement, indenture, trust agreement, note, obligation or other instrument that 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 Buyer of this Agreement or any of the terms and covenants contained in this Agreement. There are no pending or, to Buyer's knowledge, threatened suits or proceedings or undischarged judgments affecting Buyer or any member of Buyer before any court, governmental agency, or arbitrator which might materially adversely affect the enforceability of this Agreement, the ability of Buyer to perform the transactions contemplated by this Agreement, or the business, operations, assets or condition of Buyer or any member of Buyer.

(d) Valid Execution. The execution and delivery of this Agreement Buyer has been duly and validly authorized by all necessary action. This Agreement is a legal, valid, and binding obligation of Buyer.

(e) Defaults. The execution, delivery, and performance of this Agreement (i) do not and will not violate or result in a violation of, contravene or conflict with, or constitute a default under (A) any agreement, document or instrument to which Buyer or any member of Buyer is a party or by which Buyer or a member of Buyer may be bound or affected, (B) any law, statute, ordinance, regulation, or (C) the articles of organization or the operating agreement of Buyer, and (ii) do not and will not result in the creation or imposition of any lien or other encumbrance upon the assets of Buyer or any member of Buyer.

(f) Meeting Financial Obligations; Material Adverse Change. Buyer and any member of Buyer are meeting their respective current liabilities as they mature and no federal or state tax liens have been filed against any of them that are currently in effect and that would reasonably be expected to have a material adverse effect on Buyer's ability to perform its obligations under this Agreement. Buyer shall, within three (3) business days, notify OCII of any material adverse change in the financial condition of Buyer or any member of Buyer that would prevent performance of Buyer's obligations under this Agreement.

(g) Conflicts of Interest. Buyer is familiar with and does not know of any facts that constitute a violation of Sections 87100 *et seq.* of the California Government Code, which provides that no member, official or employee of OCII, may have any personal interest, direct or indirect, in this Agreement nor shall any such member, official, or employee participate in any decision relating to this Agreement which affects her or his personal interest or the interests of any corporation, partnership, or association in which she or he is interested directly or indirectly.

(h) Skill and Capacity. Buyer and the members of Buyer collectively have the skill, resources, and financial capacity to acquire and develop the Block 4 consistent with this Agreement. Buyer shall employ or contract with such persons as may be necessary or appropriate to enable Buyer to perform its obligations under this Agreement in a timely manner.

(i) Not Prohibited from Doing Business. Neither Buyer nor any member of Buyer have been debarred or otherwise prohibited from doing business with any local, state or federal governmental agency to the extent such debarment or prohibition would prevent acquisition of Block 4.

(j) Business Licenses. Buyer 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 City.

(k) No Claims. As of the Effective Date, Buyer does not have any claim against OCII, the TJPA, the City, or the State.

4.3 Continued Accuracy

If at any time prior to the Option Exercise Date any event or circumstance occurs that would render inaccurate or misleading in any material respect any of the foregoing representations or warranties, the party making the representation shall immediately notify the other party thereof.

5. ASSIGNMENT

The Parties acknowledge and agree that OCII is entering into this Agreement and granting the Option to Buyer on the basis of the particular experience, financial capacity, skills and capabilities of itself and its Members. This Agreement is non-assignable without the prior written consent of OCII, which may be withheld in OCII's sole and absolute discretion; provided, however, that Buyer may assign this Agreement and its rights hereunder, without OCII's approval, to an entity controlled by Buyer or one or more of Buyer's Members.

6. BUYER'S DEFAULT

6.1 Events of Default by Buyer

The occurrence of any of the following shall constitute an "Event of Default" if not cured within the periods specified, if any:

(a) Failure to Pay the Option Deposit. Buyer's failure to pay the Option Deposit within thirty (30) days after the Effective Date or to pay the Increased Option Deposit within thirty (30) days after notice from OCII shall be an immediate Event of Default by Buyer without the requirement that the OCII give an opportunity to cure to Buyer.

(b) Assignment. Any assignment or attempted assignment in violation of Section 5 if such assignment is not cured within fifteen (15) days after the OCII gives written notice to Buyer.

(c) Insolvency. Either (i) the filing by Buyer of a petition to be or have any member of Buyer 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 Buyer for the benefit of creditors, or (ii) the filing by or against Buyer 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 Buyer or any substantial part of the assets of Buyer, if such petition is not dismissed within the earlier of: (x) sixty (60) days after the date filed, or (y) the Option Exercise Date.

(d) Other Material Breaches. Buyer's breach of any other term, covenant, condition, representation, warranty or provision of this Agreement, if such breach is not cured within the earlier of (x) fifteen (15) days after OCII gives written notice to Buyer and (y) the Option Exercise Date, shall be an Event of Default. If Buyer cures its breach, Buyer shall give written notice to the OCII promptly that the breach has been cured. If the breach cannot reasonably be cured within the period specified, then no Event of Default by Buyer under this Agreement shall arise if Buyer commences to cure the breach within the period specified and diligently and in good faith continues to cure the breach and the breach is ultimately cured by Buyer, the Option Exercise Date shall be extended for a reasonable time, if necessary, to permit Buyer to cure the breach; provided that in no event shall the cure period extend beyond the Outside Option Exercise Date.

6.2 Events of Default by OCII

OCII's breach of the Buyer's Right of Exclusive Negotiations or any other term, covenant, condition, representation, warranty or provision of this Agreement, if such breach is not cured within the earlier of (x) fifteen (15) days after Buyer gives written notice to OCII, or (y) the Option Exercise Date, shall be an Event of Default by OCII. If OCII cures its breach, OCII shall give written notice to the Buyer promptly that the breach has been cured. If the breach cannot reasonably be cured within the period specified, then no Event of Default by OCII under this Agreement shall arise if OCII commences to cure the breach within the period specified and diligently and in good faith continues to cure the breach and the breach is ultimately cured by OCII, the Option Exercise Date shall be extended for a reasonable time, if necessary, to permit OCII to cure the breach; provided that in no event shall the cure period extend beyond the Outside Option Exercise Date.

6.3 Remedies for Default

(a) Buyer's Default. Upon the occurrence of an Event of Default by Buyer, OCII may, at its sole option and upon written notice to Buyer following the expiration of any applicable notice and cure period under this Agreement, (i) terminate this Agreement as its sole and exclusive remedy, and retain any payments already paid by Buyer to OCII, including the Option Deposit, as Liquidated Damages; and (ii) seek to enforce Buyer's indemnity obligations. Upon any such termination, neither Party shall have any further rights or obligations to the other under this Agreement, except those expressly stated to survive termination of this Agreement. Buyer shall not be liable to OCII for damages caused by any default by Buyer, including general, special, or consequential damages. The remedies described in this Section 6.3 shall be the sole remedies for any Event of Default by Buyer. If Buyer breaches any obligation of this Agreement that survives the termination of this Agreement, OCII shall have all remedies at law or equity for such breach.

(b) OCII's Default. If OCII breaches the Buyer's Right of Exclusive Negotiations under Section 1.1(e), Buyer shall have all equitable remedies to remedy OCII's default. Neither OCII nor the TJPA shall be liable to Buyer for damages caused by any Event of Default by OCII, including general, special, or consequential damages.

(c) Damages. The Parties have agreed that OCII's actual damages due to a Buyer's Event of Default would be extremely difficult or impracticable to determine. After negotiation, the Parties have agreed that, considering all the circumstances existing on the date of this Agreement, the amount of the Option Deposit under Section 1.3, and any other payments already paid by Buyer to OCII, as herein provided, is a reasonable estimate of the damages that OCII would incur in such event.

IN THE EVENT OF BUYER'S DEFAULT UNDER THIS AGREEMENT, THEN OCII SHALL BE ENTITLED TO RETAIN THE AMOUNT OF THE OPTION DEPOSIT AND ANY OTHER PAYMENTS ALREADY PAID BY BUYER TO OCII AS LIQUIDATED DAMAGES.

NOTHING IN THIS AGREEMENT WILL, HOWEVER, BE DEEMED TO LIMIT BUYER'S LIABILITY TO OCII FOR DAMAGES OR INJUNCTIVE RELIEF FOR BREACH OF BUYER'S INDEMNITY OBLIGATIONS UNDER SECTION 7, FOR ANY BUYER FRAUD, OR FOR ANY BUYER MISREPRESENTATION OF ONE OF BUYER'S EXPRESS REPRESENTATIONS AND WARRANTIES IN SECTION 4.2, SUBJECT, HOWEVER, TO BUYER'S WAIVER OF CONSEQUENTIAL, PUNITIVE, AND CERTAIN OTHER DAMAGES IN SECTION 6.3. BY PLACING THEIR RESPECTIVE INITIALS BELOW, EACH PARTY SPECIFICALLY CONFIRMS THE ACCURACY OF THE STATEMENTS MADE ABOVE AND THE FACT THAT EACH PARTY WAS REPRESENTED BY COUNSEL WHO EXPLAINED, AT THE TIME THIS AGREEMENT WAS MADE, THE CONSEQUENCES OF THIS LIQUIDATED DAMAGES PROVISION. THIS PROVISION SURVIVES TERMINATION OF THIS AGREEMENT.

INITIALS: OCII _____ Buyer _____

6.4 Non-liability of OCII Commission Members, TJPA Board Members, Officials, and Employees, and Buyer's Members, Officers and Employees

Notwithstanding anything to the contrary in this Agreement, no OCII Commission member, TJPA Board member, officer, employee or agent of OCII or TJPA shall be personally liable to Buyer, its successors and assigns, in the event of any Event of Default by OCII or breach by OCII or for any amount which may become due to Buyer, its successors and assigns, or for any obligation of OCII under this Agreement. Notwithstanding anything to the contrary in this Agreement, none of Buyer's Members, officers, employees or agents shall be personally liable to OCII or TJPA or their respective successors and assigns, in the event of any Event of Default by Buyer or breach by Buyer or for any amount which may become due to OCII or TJPA, their respective successors and assigns, or for any obligation of Buyer under this Agreement.

7. INDEMNITY

Buyer shall indemnify, defend, and hold harmless OCII, the TJPA, and the City (collectively, "**Indemnitee Parties**") and their respective members, officers, agents and employees from and against any and all actual losses, costs, claims, damages, liabilities and causes of action (including reasonable attorney's fees and court costs) arising out of (a) any challenge or any filing of any kind related to any Regulatory Approvals sought by Buyer pursuant to this Agreement, or (b) in any way connected with the death of or injury to any person or damage to any property occurring on or adjacent to Block 4 and directly or indirectly caused by

any acts or omissions of Buyer, its respective agents, employees or contractors; provided, however, that the foregoing indemnity shall not apply to any losses, costs, claims, damages, liabilities or causes of action (including reasonable attorneys' fees and court costs) (i) to the extent the same are due to the gross negligence or willful misconduct of the person or party seeking to be indemnified, or its respective agents, employees or contractors, (ii) arising out of any default under this Agreement by the person or party seeking to be indemnified, or its respective agents, employees or contractors; or (iii) to the extent the same are or may be consequential damages or losses (collectively "**Indemnity Exclusions**"); but further provided that OCII may require that Buyer defend the Indemnitee Parties against claims under this Section until it is established that such claims are Indemnity Exclusions. Buyer's obligations under this Section shall survive the termination of this Agreement.

8. INSURANCE

8.1 Buyer's Insurance

Without in any way limiting Buyer's indemnification obligations under this Agreement, and subject to reasonable approval by OCII of the insurers and policy forms, Buyer shall obtain and maintain, or cause to be obtained and maintained at no cost to OCII, the following insurance upon the execution and delivery of a DDA for the Block 4 Project following OCII Commission's approval thereof and the Board of Supervisors' approval of the Purchase Price under Health & Safety Code Section 33433, if such approval is required:

8.2 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 OCII

(b) Insurance Services Office Automobile Liability coverage, code 1 (form number CA 00 01 – "any auto") or other form approved by OCII

(c) Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance (if and only if Buyer has any employees).

(d) Professional Liability Insurance: Buyer must require that all architects, engineers, and surveyors that it directly contracts with for the Block 4 Project have liability insurance covering their negligent acts, errors and omissions. Buyer must provide OCII with copies of consultants' insurance certificates showing such coverage.

8.3 Minimum Limits of Insurance

Buyer shall maintain limits no less than:

(a) General Liability: \$5,000,000 limit per occurrence and \$10,000,000 annual aggregate for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general

aggregate limit must apply separately to this development or the general aggregate limit must be twice the required occurrence limit.

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

(c) Workers' Compensation and Employer's Liability (if and only if Buyer has any employees): 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.

8.4 Deductibles and Self-Insured Retentions

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

8.5 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: "OCII to the San Francisco Redevelopment Agency, the City and County of San Francisco, and the Transbay Joint Powers Authority and their respective commissioners, members, officers, agents, and employees" (collectively, "**Additional Insureds**") shall be named as additional insureds, as their interests may appear, with respects: liability arising out of activities performed by or on behalf of Buyer; products and completed operations of Buyer, premises owned, occupied or used by Buyer; and automobiles owned, leased, hired or borrowed by or on behalf of Buyer in connection with the Block 4 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, Buyer'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 Buyer's insurance and will not contribute with it.

(c) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to OCII, the City and County of San Francisco, the TJPA, and their respective commissioners, members, officers, agents or employees.

(d) Each insurance policy required by this clause must be endorsed to state that coverage will not be suspended, voided, canceled by either party, or reduced in coverage or in limits except after (30) thirty days prior written notice by certified mail, return receipt requested, has been given to OCII.

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

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

(g) Workers' Compensation and Employers Liability Coverage (if and only if Buyer has any employees): The insurer shall agree to waive all rights of subrogation against the "Successor Agency to the San Francisco Redevelopment Agency, the City and County of San Francisco, and the Transbay Joint Powers Authority and their respective commissioners, members, officers, agents, and employees" for losses arising from or in connection with the Block 4 Project.

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

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

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

8.6 Acceptability of Insurers

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

8.7 Verification of Coverage

Buyer must furnish OCII with respective certificates of insurance and additional endorsements effecting coverage required by this Section 8. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements are to be received and approved by OCII before work commences. In the event of a claim on any insurance policy described in this Section 8, OCII or its designated agent shall have the right to inspect a complete copy of each applicable required insurance policy, including endorsements demonstrating the coverage required by these

specifications at any time, at a San Francisco office of Broad Street, its affiliate, or its designated agent, as specified by Buyer (but shall not have the right to photocopy or otherwise replicate any such policy).

8.8 Design Professionals, Subcontractors and Consultants Insurance

Buyer's architects, engineers and surveyors shall maintain professional liability insurance with minimum limits of \$1,000,000 per claim and \$2,000,000 in the annual aggregate covering all professional negligent acts, errors and omissions. Buyer shall cause its general contractor and all subcontractors and consultants to maintain workers compensation, automobile liability, and commercial general liability insurance in the amounts and in accordance with the requirements listed above, as applicable, unless otherwise approved by OCII's Risk Manager. Buyer must furnish OCII with general contractor's, architects' and engineers' certificates of insurance and original endorsements effecting coverage required by this Section 8.8.

8.9 Review

The insurance coverage required under this Section shall be periodically evaluated by OCII for adequacy. OCII may require Buyer to 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.

9. OCII'S OBLIGATIONS

9.1 Cooperation

During the Term of this Agreement, OCII agrees that, subject to Section 3, it will;

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

(b) use its good faith efforts to meet its obligations, including negotiating a DDA including the terms set forth in this Agreement and reviewing schematic and design development documents.

9.2 No Limitation of Police Powers

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

9.3 Entry to Block 4

Prior to the Option Exercise Date, Buyer's entry to Block 4 shall be subject to a permit to enter Block 4 executed by Buyer and the TJPA or otherwise with the TJPA's approval. After the Option Exercise Date, the TJPA and OCII shall reasonably cooperate with Buyer in obtaining access to the Site for the purpose of performing tests, surveys and inspections, and obtaining data necessary or appropriate to negotiate the DDA; provided, however, Buyer shall give prior written

notice to the TJPA and OCII of any such entry and shall obtain a permit to enter from the TJPA and/or OCII for such entry and comply with the insurance and indemnification requirements contained in Sections 7 and 8; provided further, however, Buyer shall not be responsible or liable for any act or omission of the TJPA or OCII or the TJPA's or OCII's agents, representatives, employees, contractors, subcontractors or consultants or for any adverse condition or defect on or affecting Block 4 not caused by itself, its employees, consultants, contractors or subcontractors, but discovered during such inspections (collectively, "**Excluded Claims**"), but further provided that OCII may require that Buyer defend the TJPA and OCII against claims arising from entry by the Buyer pursuant to Section 7 until it is established that such claims are Excluded Claims. In the case of invasive tests under any permit to enter granted by OCII, OCII may impose such insurance, indemnification, guaranty and other requirements as are consistent with the Permit to Enter attached as Exhibit W to the Parcel F PSA. Nothing herein shall limit or restrict Buyer's right and ability to access Block 4 to the extent that the general public may access the property.

9.4 Reservation of Rights Following Termination

If negotiations with Buyer under this Agreement are unsuccessful and do not lead to approval of a DDA within the Term, OCII reserves the right, after the termination of this Agreement without an approval of a DDA, to negotiate with another buyer or buyers for the long-term development of Block 4, or to undertake other efforts to develop Block 4, including, but not limited to, issuing a request for proposals.

9.5 Disclosure of Confidential Information

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

10. OCII REQUIREMENTS

10.1 Non-Discrimination and Equal Benefits

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

(b) Buyer will, in all solicitations or advertisements for employees placed by it or on its behalf, state it is an equal opportunity employer.

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

(d) Buyer agrees not to discriminate in the provision of benefits between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, and shall comply fully with all provisions of OCII's Nondiscrimination in Contracts Policy ("**Nondiscrimination Policy**"), adopted by Agency Resolution No. 175-97, as such Nondiscrimination Policy may be amended from time to time.

(e) Buyer shall provide all services to the public under this Agreement in facilities that are accessible to persons with disabilities as required by state and federal law.

10.2 Small Business Enterprise Program

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

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

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

Buyer has agreed that if Buyer intends to utilize consultants in the provision of services during the predevelopment phase, then from and after the Effective Date, it must make good faith efforts to comply with the provisions of the Small Business Enterprise Program Agreement.

10.3 Compliance with Minimum Compensation Policy and Health Care Accountability Policy

Buyer agrees, as of the Effective Date and during the Term, to comply with the provisions of OCII's Minimum Compensation Policy and Health Care Accountability Policy, adopted by Agency Resolution 168-2001, as such policies may be amended from time to time and Health Care Accountability Policy. Such compliance includes providing all "Covered Employees," as defined under Section 2.7 of the policies, a minimum level of compensation and offering health plan benefits to such employees or to make payments to the City and County of San Francisco's Department of Public Health, or to participate in a health benefits program developed by the City and County of San Francisco's Director of Health.

11. GENERAL PROVISIONS

11.1 Amendments

This Agreement may be amended or modified only by a written instrument executed by OCII and Buyer.

11.2 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, if 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. But if such amendment, modification, or suspension would deprive OCII or Buyer 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 Party. In the event of such termination, neither Party shall have any further rights or obligations under this Agreement.

11.3 Non-Waiver

No waiver made by either Party with respect to the performance, or manner or time of performance, or any obligation of the other Party or any condition to its own obligation under this Agreement will be considered a waiver with respect to the particular obligation of the other Party or condition to its own obligation beyond those expressly waived to the extent of such waiver, or a waiver in any respect in regard to any other rights of the Party making the waiver or any other obligations of the other Party. Any waiver must be in writing, and signed by the waiving Party (and the TJPA if OCII is the waiving Party).

11.4 Successors and Assigns

This Agreement shall inure to the benefit of and bind the respective successors and assigns of OCII and Buyer, subject to the limitations on assignment by Buyer set forth in Section 5. This Agreement is for the exclusive benefit of the Parties hereto and not for the benefit of any other person except the TJPA and shall not be deemed to have conferred any rights, express or implied, upon or duties to any other person except the TJPA.

11.5 Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of California. OCII and Buyer agree that all actions or proceedings arising directly or indirectly under this Agreement shall be litigated in courts located within the County of San Francisco, State of California, United States and Buyer 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 Buyer wherever Buyer may then be located, or by certified or registered mail directed to Buyer at the address set forth in this Agreement.

11.6 Attorneys' Fees and Costs

If either Party fails to perform any of its respective obligations under this Agreement or if any dispute arises between the Parties hereto concerning the meaning or interpretation of any provision of this Agreement, then the defaulting Party 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 on account of such default or in enforcing or establishing its rights under this Agreement, including court costs and reasonable Attorneys' Fees and Costs. Any such Attorneys' Fees and Costs incurred by either 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 several 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 for OCII 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 the OCII's attorneys' services were rendered who practice in the City of San Francisco, notwithstanding the OCII's use of its own attorneys or the City Attorney. "**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, exhibit preparation, courier, postage, facsimile, long-distance and communications expenses, court costs and the costs and fees arising as a result of any other legal, administrative or alternative dispute resolution proceeding, fees and costs associated with execution upon any judgment or order, and costs on appeal.

11.7 Interpretation of Agreement

(a) Exhibits. Whenever an "Exhibit" is referenced, it means an attachment to this Agreement unless otherwise specifically identified. All such Exhibits are incorporated herein by reference. In the event of any conflict or inconsistency between the exhibits and any of the provisions of this Agreement, the provisions of this Agreement shall prevail.

(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 terms “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 language of non-limitation is used. 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 interpreted in a reasonable manner to effect the purposes of the parties and this Agreement.

11.8 Entire Agreement

This Agreement (including the Exhibits) contains all the representations and the entire agreement between the Parties with respect to the subject matter of this Agreement and may not be contradicted by evidence of any prior or contemporaneous oral or written agreements or understandings. Any prior correspondence, memoranda, agreements, warranties or representations relating to such subject matter are superseded in total by this Agreement. No prior drafts of this Agreement 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 either Party or any other person and no court or other body shall consider those drafts in interpreting this Agreement.

11.9 Time for Performance

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

(b) Weekends and Holidays. A performance date that falls on a Saturday, Sunday or City 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, including each milestone set forth in this Agreement.

(e) Force Majeure. All milestones set forth in this Agreement shall be subject to the effects of Force Majeure, to be postponed one day for each day the accomplishment of the milestone is delayed by a Force Majeure.

11.10 Counterparts

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

11.11 Approvals and Consents

Unless this Agreement otherwise expressly provides or unless the law requires, all approvals, consents or determinations to be made by or on behalf of (i) OCII under this Agreement shall be made by OCII's Executive Director and (ii) Buyer under this Agreement shall be made by Cameron Falconer and/or Chris Collins ("**Buyer Representative**") or such other employee or agent of Buyer as Buyer may designate to act as Buyer Representative for a particular matter. Approval by Buyer or the TJPA to or of any act or request by the other shall not be deemed to waive or render unnecessary approval to or of any similar or subsequent acts or requests.

11.12 Real Estate Commissions

Neither party has had any contact or dealings regarding the subject matter of this transaction through any licensed real estate broker or other person who could claim validly against the other party a right to a commission or finder's fee in connection with the purchase and sale contemplated herein. In the event that any broker or finder perfects a claim for a commission or finder's fee based upon any such contact, dealings or communication, the party through whom the broker or finder makes his or her claim shall be responsible for such commission or fee and shall indemnify and hold harmless the other party from all claims, costs, and expenses (including reasonable attorneys' fees and disbursements) incurred by the indemnified party in defending against the same.

11.13 Relationship of the Parties

The subject of this Agreement is a private development with neither party acting as the agent of the other party in any respect. None of the provisions in this Agreement shall be deemed to render OCII a partner in Buyer's business, or joint venture or member in any joint enterprise with Buyer.

11.14 Defined Terms

Initially capitalized terms shall have the meaning given such terms in this Agreement.

11.15 Notices

(a) Addresses for Notices. A notice or communication under this Agreement by either party to the other shall be sufficiently given or delivered if personally delivered or if dispatched by registered or certified mail, postage prepaid, return receipt requested or reputable overnight courier service and addressed as follows:

To OCII. In the case of a notice or communication to OCII:

Office of Community Investment and Infrastructure
One South Van Ness Avenue, Fifth Floor
San Francisco, CA 94103
Attn: Executive Director
Telephone: (415) 749-2588

With a copy to:

James Morales
OCII General Counsel
One South Van Ness Avenue, Fifth Floor
San Francisco, CA 94103
Telephone: (415) 749-2454
And to:

Office of the City Attorney
Room 234, City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102
Attn: Charles Sullivan
Telephone: (415) 554-4735

And to:

Transbay Joint Powers Authority
201 Mission Street, Suite 2100
San Francisco, CA 94105
Attn: Executive Director
Telephone: (415) 597-4620

And to:

Shute, Mihaly & Weinberger LLP
396 Hayes Street

San Francisco, CA 94102
Attn: William J. White
Telephone: (415) 552-7272

To Buyer. And in the case of a notice or communication sent to Buyer:

Attn: Urban Pacific Development LLC
6335 El Camino Del Teatro
La Jolla, CA 92037-6334
Attn: Michael Kriozere
Telephone: (858) 551-5850

With a copy to:

Dentons US, LLP
600 West Broadway, Suite 2600
San Diego, CA 92101
Attn: Stephen T. Toohill
Telephone: (619) 699-2404

And a copy to:

Steven L. Vettel
Farella Braun & Martel LLP
Russ Building
235 Montgomery Street
17th Floor
San Francisco, CA 94104
Telephone: (415) 954-44902

Notice shall be deemed given when received or delivery is first refused.

(b) Change of Address. 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 before the effective date of the change. All notices under this Agreement shall be deemed given, received, made, or communicated on the date the notice is actually delivered to the office of the person to whom it is addressed or, if mailed or sent by overnight courier service, on the delivery date or attempted delivery date shown on the return receipt. The effective time of a notice shall not be affected by the receipt, before receipt of the original, of a copy of the notice.

11.16 Conflicts of Interest

Through its execution of this Agreement, Buyer acknowledges that it is familiar with the provisions of Section 15.103 of the San Francisco Charter, Article III, Chapter 2 of the City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts

which would constitute a violation of said provision, and agrees that if Buyer becomes aware of any such fact during the term of this Agreement, Buyer shall immediately notify OCII.

11.17 Notification of Limitations on Contributions

Through its execution of this Agreement, Buyer acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City or OCII for the selling or leasing of any land or building to or from the City or OCII, whenever such transaction would require approval by a board on which a City elective officer or member of the OCII Commission sits, from making any campaign contribution to the City elective officer or a member of the OCII Commission at any time from the commencement of negotiations for such contract until either (i) the termination of negotiations for such contract, or (ii) three (3) months has elapsed from the date the contract is approved by the City or OCII.

San Francisco Ethics Commission Regulation 1.126-1 provides that negotiations are commenced when a prospective contractor first communicates with a City elective officer or a member of the OCII Commission about the possibility of obtaining a specific contract. This communication may occur in person, by telephone or in writing, and may be initiated by the prospective contractor or a City elective officer or an OCII Commission member. Negotiations are completed when a contract is finalized and signed by the City and/or OCII and the contractor. Negotiations are terminated when City and/or OCII and/or the prospective contractor end the negotiation process before a final decision is made to award the contract.

11.18 Survival

The following provisions shall survive a termination of this Agreement: Sections 2.3 (Title, Escrow, and Closing Costs), Section 2.4 (Pre-Development and Post-Closing Costs); Section 3.2 (Responsibility for Regulatory Approvals, Development, and Costs); Section 3.3 (Affordability of Residential Units); Section 4 (Representations and Warranties); Section 5 (Assignment); Section 7 (Indemnity); Section 8 (Insurance); Section 9.3 (Entry to Block 4); Section 9.4 (Reservation of Rights Following Termination); Section 9.5 (Disclosure of Confidential Information); and the general provisions of Section 11 to the extent they may apply to the foregoing surviving provisions. Any defined terms or other pertinent provisions of this Agreement not found in the foregoing surviving provisions shall survive only if and to the extent necessary to give meaning to the foregoing provisions.

11.19 Effective Date

As used in this Agreement, the term “**Effective Date**” shall mean the date on which the OCII Commission and Board of Supervisors approve this Agreement and both Parties have executed this Agreement.

11.20 Covenants Running With the Land

It is the intent of the Parties that each and all of the covenants, obligations, conditions, and restrictions set forth in this Agreement are for the mutual benefit of Blocks 2, 3, and 4

(collectively, the “Parcels”). Each and all of the covenants, obligations, conditions, and restrictions set forth in this Agreement touches and concerns and shall affect, relate to, and run with the land of each of the Parcels and every portion of each thereof, and shall apply to and bind the respective successor owners of each of the Parcels and every portion of each thereof, for the benefit of each of the other Parcels and every portion of each thereof (except to the extent otherwise stated herein). Each and all of the covenants, obligations, conditions, and restrictions set forth in this Agreement are imposed on each portion of and interest in each of the Parcels as mutual equitable servitudes in favor of each and all other portions of and interests in the Parcels and constitute covenants running with the land pursuant to applicable law, including, without limitation, Section 1468 of the Civil Code of the State of California.

[Signatures begin on next page.]

BUYER:

F4 TRANSBAY PARTNERS LLC, a Delaware
limited liability company

By: _____

Name: _____

Its: _____

Date: _____

[CONTINUED ON FOLLOWING PAGE]

OFFICE OF COMMUNITY INVESTMENT AND INFRASTRUCTURE:

By: _____

Tiffany Bohee
Executive Director

Date: _____

APPROVED AS TO FORM:

Counsel for OCII

The Transbay Joint Powers Authority, a joint powers authority created under California Government Code Sections 6500 et seq., approves this Agreement and agrees to be bound by its terms.

TRANSBAY JOINT POWERS AUTHORITY: By: _____

Maria Ayerdi-Kaplan
Executive Director

Date: _____

APPROVED AS TO FORM:

Counsel for TJPA

Chicago Title Insurance Company agrees to act as Escrow Agent in accordance with the terms of this Agreement and to act as the “reporting person” for the transaction pursuant to Section 6045(e) of the Federal Tax Code and the regulations promulgated thereunder. Chicago Title Insurance Company’s failure to execute below shall not invalidate this Agreement between the TJPA and Buyer.

ESCROW AGENT:

CHICAGO TITLE INSURANCE COMPANY

By: _____

Its: _____

Date: _____

BLOCK 4 OPTION AGREEMENT

LIST OF EXHIBITS

Exhibit A	Legal Description
Exhibit B	Notice of Exercise of Option

EXHIBIT A

LEGAL DESCRIPTION

[see attached]

EXHIBIT B

NOTICE OF EXERCISE OF OPTION

[see attached]

759967.22