

COMMISSION ON COMMUNITY INVESTMENT AND INFRASTRUCTURE

RESOLUTION NO. 17 – 2023

Adopted May 2, 2023

AUTHORIZING, AT A PUBLIC HEARING UNDER SECTION 33431 OF THE HEALTH AND SAFETY CODE, AN OPTION AGREEMENT WITH F4 TRANSBAY PARTNERS LLC, A DELAWARE LIMITED LIABILITY COMPANY, FOR THE OPTION TO PURCHASE BLOCK 4 OF ZONE ONE OF THE TRANSBAY REDEVELOPMENT PROJECT AREA AND ADJACENT FUTURE TEHAMA STREET RIGHT OF WAY; PROVIDING NOTICE THAT THIS ACTION IS WITHIN THE SCOPE OF THE TRANSBAY REDEVELOPMENT PROJECT APPROVED UNDER THE TRANSBAY TERMINAL/CALTRAIN DOWNTOWN EXTENSION/REDEVELOPMENT PROJECT FINAL ENVIRONMENTAL IMPACT STATEMENT/ENVIRONMENTAL IMPACT REPORT (“FEIS/EIR”), A PROGRAM EIR, AND IS ADEQUATELY DESCRIBED THEREIN FOR PURPOSES OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (“CEQA”); AND ADOPTING ENVIRONMENTAL FINDINGS PURSUANT TO CEQA; TRANSBAY REDEVELOPMENT PROJECT AREA

- WHEREAS, In furtherance of the objectives of the California Community Redevelopment Law (Health and Safety Code, section 33000 et seq. the “Community Redevelopment Law”), the Redevelopment Agency of the City and County of San Francisco (“Former Agency”) undertook programs for the redevelopment of blighted areas in the City and County of San Francisco (“City”), including the Transbay Redevelopment Project Area (“Project Area”); and,
- WHEREAS, The Board of Supervisors of the City and County of San Francisco (“Board of Supervisors”) approved the Redevelopment Plan for the Transbay Redevelopment Project Area by Ordinance No. 124-05 (June 21, 2005) and by Ordinance No. 99-06 (May 9, 2006), as amended by Ordinance No. 84-15 (June 18, 2015) and Ordinance No. 62-16 (April 28, 2016) (“Redevelopment Plan”); and,
- WHEREAS, The Redevelopment Plan divides the Project Area into two subareas: Zone One in which the Redevelopment Plan and the Development Controls and Design Guidelines for the Transbay Redevelopment Project (“Development Controls”) define and regulate land uses, and Zone Two in which the San Francisco Planning Code applies. The Successor Agency solely administers and enforces land use entitlements for property and projects in Zone One and has delegated its authority over projects that do not require Successor Agency action in Zone Two to the San Francisco Planning Department pursuant to that certain Delegation Agreement between the Former Agency and the Planning Department for the Transbay Redevelopment Project Area (May 3, 2005); and,
- WHEREAS, 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, 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 (as defined in the Pledge Agreement) include portions or the entirety of the development sites on Transbay Blocks 2 through 9, 11, and 12, and Parcels F, M, and T; and,

WHEREAS, California Public Resources Code Section 5027.1 requires that 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”); and,

WHEREAS, 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 the Former Agency to prepare and sell the formerly State-Owned Parcels and to implement the Redevelopment Plan, including, among other things, the construction and funding of new infrastructure improvements (such as parks and streetscapes) and compliance with the Transbay Affordable Housing Obligation. 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 describes the process for the transfer of certain of these parcels to the Former Agency to facilitate the sale of the parcels and provide the TJPA with the Gross Sales Proceeds for funding of the Transbay Transit Center. The 2008 Option Agreement defines Gross Sales Proceeds as the final purchase price based on “consideration of Transbay Redevelopment Plan development restrictions, environmental contamination, legally required affordable housing, and other conditions which reasonably effect [sic] the fair market value.”; and,

WHEREAS, On February 1, 2012, the State of California dissolved all redevelopment agencies including the Former Agency and required the transfer of certain of the Former Agency's assets and obligations to the Successor Agency to the Redevelopment Agency of the City and County of San Francisco (“Successor Agency”), commonly known as the Office of Community Investment and Infrastructure (“OCII”). Cal. Health & Safety Code §§ 34170 et seq. (“Redevelopment Dissolution Law”). On June 27, 2012, the Redevelopment Dissolution Law was amended to clarify that successor agencies are separate public entities from the city or county that had originally established a redevelopment agency and they succeed to the organizational status of the former redevelopment agency to complete any work related to an approved enforceable obligation. Cal. Health & Safety Code § 34173 (g); and,

WHEREAS, The Board of Supervisors, acting as the legislative body of the Successor Agency, adopted Ordinance No. 215-12 (Oct. 4, 2012), which, among other matters: (a) acknowledged and confirmed that the Successor Agency is a separate legal entity from the City, and (b) established this Successor Agency Commission (“Commission”) and delegated to it the authority to (i) implement, modify, enforce and complete the Former Redevelopment Agency’s enforceable obligations; (ii) approve all contracts and actions related to the assets transferred to or retained by OCII, including, without limitation, the authority to exercise land use, development, and design approval, consistent with the applicable enforceable obligations; and (iii) take any action that the Redevelopment Dissolution Law requires or authorizes on behalf of the Successor Agency and any other action that the Commission deems appropriate, consistent with the Redevelopment Dissolution Law, to comply with such obligations; and,

WHEREAS, On April 15, 2013, the California Department of Finance (“DOF”) finally and conclusively determined, under Cal. Health & Safety Code § 34177.5(i), that the Pledge Agreement, Implementation Agreement, and Transbay Affordable Housing Obligation are continuing enforceable obligations of the Successor Agency under the Redevelopment Dissolution Law; and,

WHEREAS, Redevelopment Dissolution Law authorizes successor agencies to enter into new agreements if they are “in compliance with an enforceable obligation that existed prior to June 28, 2011.” Cal. Health & Safety Code § 34177.5(a). This resolution authorizes the execution of a disposition and development agreement providing for the transfer of certain Successor Agency property to a third party, the development of market-rate and affordable housing, and the payment of proceeds to the TJPA, as part of Successor Agency’s compliance with the pre-existing enforceable obligations under the Implementation Agreement and the Transbay Affordable Housing Obligation. DOF has confirmed that “any sale, transfer, or conveyance of property related to [the Transbay Final and Conclusive Determination] is authorized.” Email from Justyn Howard, Assistant Program Budget Manager, DOF, to Tiffany Bohee, Executive Director, Successor Agency (Sep. 10, 2013, 09:17 am); and,

WHEREAS, Redevelopment Dissolution Law requires successor agencies to prepare a long range property management plan (“PMP”) to dispose of its properties (Cal Health & Safety Code § 34191.5). The PMP must include an inventory of all successor agency properties, with information about date of acquisition, purpose of acquisition, parcel data, current value, revenue generation, environmental contamination, potential for transit-oriented development, and previous development proposals for each property. The PMP must also categorize each property by one of four permissible uses: (1) retention for governmental use; (2) retention for future development; (3) disposition; or (4) use of the property to fulfill an enforceable obligation. OCII’s PMP includes disposition plans for certain assets that OCII has retained to fulfill enforceable obligations, but that are proposed for transfer or sale. Accordingly, OCII’s PMP categorizes a portion of Block 4 as follows: “Acquire and sell at market value to third-party developers pursuant to the Transbay Implementation Agreement,” and, with respect to future ownership of certain other portions of Block 4, “Acquire and retain to fulfill Transbay enforceable obligations (i.e., to ensure these parcels are developed into affordable housing to meet the state-mandated 35% affordable housing requirement in Transbay).” The PMP was approved by Oversight Board Resolution Nos. 12-2013 (adopted November 25, 2013) and 14-2015 (adopted November 23, 2015), and finally approved by DOF in late 2015; and,

WHEREAS, 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 operated until the completion and occupancy of the Transit Center (“Temporary Terminal”), (vi) a bus ramp connecting the Bay Bridge to the Transit Center, and (vii) permanent bus storage facilities; and,

WHEREAS, Under the Cooperative Agreement, the TJPA acquired State-Owned Parcels O, O’, and O” (collectively, former Lot 008 of Assessor’s Block 3739) subject to a power of termination vested in Caltrans (“Caltrans Power of Termination”). These parcels comprise the majority of the city block bounded by Beale, Howard, Main, and Folsom Streets in San Francisco, California, which the TJPA used to operate the Temporary Terminal. The property being Lot 10 of Assessor’s Block 3739 and constituting approximately the northern third of the Temporary Terminal site, is

identified as Block 4 under the Redevelopment Plan (and referred to herein as “Block 4” or the “Site”), which will be developed pursuant to the DDA (defined below) together with the property being Lot 10 of Assessor's Block 3739 constituting the future public right of way immediately adjacent to the south of the Site (the “Tehama Parcel”). In 2015, the TJPA secured a loan for Transit Center construction with a lien on Block 4 and other property. Subsequently, the loan was repaid and Caltrans relinquished the Caltrans Power of Termination as it encumbered Block 4, pursuant to that certain document recorded on January 22, 2015 in the Official Records as document no. 2015-K010430-00; and,

WHEREAS, Under the 2008 Option Agreement, Successor Agency (as the successor to the Former Agency) has the exclusive and irrevocable option to acquire the entirety of Block 4 from the TJPA and/or to approve a transfer of Block 4 to a developer consistent with the terms of the 2008 Option Agreement. On January 15, 2021, the TJPA conveyed Block 4 and the Tehama Parcel to the Successor Agency in accordance with the 2008 Option Agreement; and,

WHEREAS, F4 Transbay Partners LLC, a Delaware limited liability company (“Developer”) entered into an Agreement of Purchase and Sale for Real Estate dated March 3, 2016 with the TJPA (“Parcel F PSA”) to acquire a formerly State-Owned Parcel in Zone Two of the Project Area (herein referred to as “Parcel F”). The Parcel F PSA was contingent on approval by the Commission and the Board of Supervisors of an option to purchase Block 4. Developer requested that the Successor Agency enter into a sole source option agreement for the purchase of Block 4 based, in part, on the Developer’s qualifications and its proposal to develop Block 4 with a high level of affordable housing that met or exceeded 45 percent of the total number of residential units on the site; and,

WHEREAS, Pursuant to 65864 *et seq.* of the California Government Code, an affiliate of the Developer has entered into a development agreement with the City for the development of Parcel F. Under the that certain Development Agreement by and between the City and Parcel F Owner, LLC Relative to the Development Known as 542-550 Howard Street (Transbay Parcel F) Development Project, dated September 30, 2021 and adopted by the Planning Commission (Resolution No. 2084 dated January 28, 2021) and Board of Supervisors (Ordinance No. 42-21 dated March 23, 2021) (“Parcel F Development Agreement”), the Developer is required, upon the satisfaction of certain conditions, to pay an Affordable Housing Fee (as that term is defined in the Development Agreement) to the Successor Agency to fund the Successor Agency’s obligation to fulfill the Transbay Affordable Housing Obligation. The Parties to the Parcel F Development Agreement intend that the Affordable Housing Fee be used to subsidize the construction of affordable units at Block 4 through a low-interest loan from Successor Agency. To allow Successor Agency to provide commitments for the Successor Agency loan for Block 4, the Parcel F Development Agreement obligates the Developer to provide an enforceable letter of credit (the “Letter of Credit”) in the amount of the Affordable Housing Fee to Successor Agency within 30 days of the Effective Date of the DDA for Block 4 (as defined below); and,

WHEREAS, On June 22, 2016, Successor Agency, as optionor, and Developer, as optionee, entered into an Agreement for Option to Purchase Block 4 that was authorized by the Commission on April 19, 2016 (Commission Resolution No. 18-2016) and approved, under Cal. Health and Safety Code Section 33433, by the Board of Supervisors on May 27, 2016 (Board Resolution No. 195-16), as evidenced by that certain Memorandum of Option Agreements recorded June 22, 2016, in the Official Records of the City as Document No. 2016-K277787-00, as amended by that First Amendment to Agreement for Option to Purchase Block 4, dated for reference purposes as of September 16, 2019 and authorized by the Commission on September 18, 2018 (Resolution No. 38-2018), and approved by the TJPA Board on August 8, 2019 (Resolution No. 021-2019), and as further amended by that

Second Amendment to Agreement for Option to Purchase Block 4, dated for reference purposes as of December 15, 2020 and authorized by the Commission on the same date by Resolution No. 42-2020 and approved by the TJPA Board on January 14, 2021, by Resolution No. 004-2021, as further amended by that Third Amendment to Agreement for Option to Purchase Block 4, dated for reference purposes as of July 1, 2021 and authorized by the Commission on June 15, 2021, by Resolution No. 23-2021 and approved by the TJPA Board on July 22, 2021, by Resolution No. 022-2021, and as further amended by that Fourth Amendment to Agreement for Option to Purchase Block 4, dated for reference purposes as of October 1, 2021 and authorized by the Commission on September 21, 2021, by Resolution No. 31-2021 and approved by the TJPA Board on October 14, 2021, by Resolution No. 033-2021 (together as amended “Prior Option Agreement”); and,

WHEREAS, Based on the Prior Option Agreement and the term sheet attached thereto, OCII staff negotiated the terms of a disposition and development agreement (“DDA”) with the Developer and Transbay Block 4 Housing Partnership, L.P., a California limited partnership, for the sale of Block 4 and conveyance of the Tehama Parcel to Developer and construction of a mixed-use residential development project with associated improvements on the Site and Tehama Parcel (the “DDA Project”); and,

WHEREAS, Developer requested amendments to the Redevelopment Plan (the “Plan Amendment”) and the Development Controls (the “Development Controls Amendment”) to allow the DDA Project to be constructed in accordance with the design proposed by the Developer and described in detail in the DDA. The Plan Amendment must be reviewed and recommended by the San Francisco Planning Commission (“Planning Commission”) and reviewed and approved the Board of Supervisors of the City and County of San Francisco (“Board of Supervisors”), the effectiveness of such approval by the Board of Supervisors being a condition to the effectiveness of the DDA; and,

WHEREAS, On June 21, 2022, the Successor Agency Commission took a series of actions to approve the DDA Project, consisting of: (1) approval of the Plan Amendment, (2) approval of the Development Controls amendment, (3) Authorization to enter into the DDA, (4) conditional approval of Schematic Designs, and (5) recommendations of related actions to agencies responsible therefor, including but not limited to the General Plan Amendment (defined below), Zoning Map Amendment (defined below), Plan Amendment, and approval of the sale of the Site by the Board of Supervisors of the for the purpose of compliance with Section 4.7.2 of the Redevelopment Plan, which applies Section 33433 of the California Health and Safety Code to this Site (collectively, items 1 through 5 together with related actions of responsible agencies are the “DDA Project Approval Actions”); and,

WHEREAS, Developer had applied to the San Francisco Planning Department requesting amendments to (i) the height classification for Block 4 in the Transit Center District Plan, a Sub Area Plan of the Downtown Plan (the “General Plan Amendment”) and (ii) the height classification for Block 4 in the Planning Code’s Height Map (the “Zoning Map Amendment”). The General Plan Amendment and the Zoning Map Amendment will provide for consistency between the General Plan, Planning Code, and the Redevelopment Plan and Development Controls (as amended), and will allow the DDA Project to be constructed in accordance with the design proposed by the Developer and described in detail in the DDA. The General Plan Amendment and Zoning Map Amendment must be reviewed and approved by the Planning Commission and the Board of Supervisors, the effectiveness of such approval being a condition to the effectiveness of Commission Resolution No. 22-2022 and the DDA approved thereunder; and,

- WHEREAS, On July 28, 2022, the Planning Commission approved the Zoning Map Amendment by Resolution No. 21152, approved the General Plan Amendment by Resolution No. 21153, and made general plan findings and recommended approval of the Redevelopment Plan Amendment by the Board of Supervisors by Motion No. 21154; and,
- WHEREAS, Shortly thereafter, Developer informed Successor Agency that development of Parcel F had stalled due economic conditions existing nationally as well as within the real estate market in downtown San Francisco, and thus the Developer could not provide the Letter of Credit in the amount of the Parcel F Affordable Housing Fee to Successor Agency. Without the Letter of Credit or payment of the Parcel F Affordable Housing Fee and in turn the funding commitment from the Successor Agency for Block 4, the Developer could not secure financing for the DDA Project. Therefore, the Developer was not prepared to execute the DDA, complete the Close of Escrow (as defined in the DDA), and develop the Improvements contemplated under the DDA within the applicable timeframes established in the Schedule of Performance; and,
- WHEREAS, As a result, Developer and Successor Agency requested that the Board of Supervisors postpone the Plan Amendment and related legislation allowing the Improvements to proceed under the DDA; and,
- WHEREAS, The Board of Supervisors was required to act on the General Plan Amendment within 90 days of the Planning Commission's approval. Thus, the General Plan Amendment was recommended for disapproval by the Board of Supervisors and will need to be reinstated with the Planning Commission should the DDA Project proceed; and,
- WHEREAS, On November 1, 2022, the Board of Supervisors disapproved the General Plan Amendment and referred the Redevelopment Plan Amendment, DDA, and Zoning Amendment to the Board of Supervisors Land Use and Transportation Committee to be held to the call of the chair; and,
- WHEREAS, The Developer put forth proposals to the Successor Agency to modify the DDA terms to address the impacts of the delayed development of Parcel F and otherwise modify DDA Project delivery obligations and responsibilities with the intent of improving the viability of the DDA Project for Successor Agency consideration. Proposals were described in an informational memorandum to the Commission on December 6, 2022; and,
- WHEREAS, Subsequent to the informational memorandum, real estate market conditions continued to deteriorate with increases to interest rates and construction costs, and a lack of available investment capital. In light of these conditions, the Developer informed Successor Agency staff that it was not prepared to proceed with the DDA Project, even with proposed modifications to the DDA. Because of this, Successor Agency staff and the Developer agree that it is not advisable or productive to pursue DDA modifications at this time; and,
- WHEREAS, Successor Agency and Developer now wish to enter into a new option agreement preserving the DDA as approved by the Commission for a period that will allow Successor Agency staff and the Developer to monitor the real estate financing market to determine whether conditions exist to allow the Close of Escrow and development of the DDA Project to proceed in accordance with the terms of the previously approved DDA and its Schedule of Performance (the "Option Agreement"); and,

WHEREAS, The Option Agreement attached to this Resolution as Exhibit A would grant the Developer the exclusive right to purchase and develop Block 4 in accordance with the terms described in the previously approved DDA by reinitiating required remaining DDA Project Approval Actions, exercising the Option, and entering into the DDA. In exchange, the Developer will provide a payment as consideration and will provide quarterly reports to Successor Agency regarding financial market conditions; and,

WHEREAS, On June 21, 2022, the Commission adopted Resolution No. 18-2022 by which the Commission adopted findings that the DDA Project Approval Actions, including the DDA and construction of the DDA Project thereunder, are in compliance with California Environmental Quality Act ("CEQA"). Said findings, which are on file with the Commission Secretary, are in furtherance of the actions contemplated in this Resolution and made part of this Resolution by reference herein; now therefore be it

RESOLVED, That, for the purposes of compliance with CEQA, the Commission hereby adopts the findings and determinations set out in Resolution No. 18-2022, that the DDA and construction of the DDA Project thereunder is within the scope of the project analyzed by the Transbay Terminal/Caltrain Downtown Extension/Redevelopment Project Final Environmental Impact Statement/Environmental Impact Report and its Addendum No. 9 and is in compliance with CEQA; and, be it further

RESOLVED, That, concurrently with adopting this Resolution, the Commission has, pursuant to Cal. Health and Safety Code Section 33431, held a public hearing to consider its proposal to enter into the Option Agreement for the sale of property within the Project Area without public bidding therefore, and be it further

RESOLVED, The Commission hereby authorizes the Executive Director to execute the Option Agreement with F4 Transbay Partners LLC, a Delaware limited liability company, substantially in the form approved by the Successor Agency's General Counsel and attached hereto as Exhibit A.

I hereby certify that the foregoing resolution was adopted by the Successor Agency Commission at its meeting of May 2, 2023.



Commission Secretary

EXHIBIT A: Option Agreement (Transbay Block 4)

OPTION AGREEMENT

Transbay Block 4

This OPTION AGREEMENT (the “**Agreement**”) is entered into as of _____, 2023 (“**Effective Date**”), by and between the SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO, a public body organized and existing under the laws of the State of California, commonly known as the Office of Community Investment and Infrastructure (“**Successor Agency**” or “**Optionor**”), F4 TRANSBAY PARTNERS LLC, a Delaware limited liability company (“**Developer**” or “**Optionee**”) (each a “**Party**” and collectively, the “**Parties**”). The Parties enter into this Agreement in accordance with the following:

A. Under the authority of California Health and Safety Code Sections 34170 *et seq.* (“**Redevelopment Dissolution Law**”) and under San Francisco Ordinance No. 215-12 (Oct. 4, 2012) (establishing the Successor Agency Commission (“**Commission**”) and delegating to it state authority under the Redevelopment Dissolution Law), the Successor Agency is administering the enforceable obligations of the former Redevelopment Agency of the City and County of San Francisco, including those obligations finally and conclusively determined to exist regarding the Transbay Redevelopment Project Area (the “**Project Area**”) and the Redevelopment Plan for the Project Area (as finally amended as of the Effective Date, the “**Redevelopment Plan**”) by the California Department of Finance by letter to the Successor Agency dated April 15, 2012.

B. On June 22, 2016, in accordance with its role under Redevelopment Dissolution Law, the Successor Agency, as optionor, entered into an Agreement for Option to Purchase Transbay Block 4 with Developer, as optionee, originally authorized by the Commission on April 19, 2016 (Commission Resolution No. 18-2016), approved by the Transbay Joint Powers Authority (“**TJPA**”), and approved by the Board of Supervisors on May 27, 2016 (Board Resolution No. 195-16) pursuant to Section 33433 of the Health and Safety Code (and as amended as of June 21, 2022, the “**Prior Option Agreement**”).

C. Pursuant to the terms of the Prior Option Agreement, the Parties negotiated a disposition and development agreement for the sale and subsequent development of Transbay Block 4 (as approved by the Commission on June 21, 2022 (Commission Resolution No. 22-2022), the “**DDA**,” the recitals and defined terms of which are incorporated herein by reference unless otherwise noted).

D. The Prior Option Agreement terminated according to its terms on or about July 21, 2022. Shortly thereafter, Developer informed Successor Agency that due to uncertain economic conditions existing nationally as well as within the commercial and residential real estate market in downtown San Francisco, Developer was not prepared to execute the DDA, complete the Close of Escrow and develop the Improvements contemplated under the DDA within the applicable timeframes established in the Schedule of Performance.

EXHIBIT A

E. As a result, Developer and Successor Agency requested that the Board of Supervisors postpone the Plan Amendment and related legislation (collectively, "**Legislative Amendments**") allowing the Improvements to proceed under the DDA.

F. The Parties now wish to enter into a new option agreement preserving the terms of the DDA and with a term that will allow the Parties to monitor the national and local real estate financing market to determine whether conditions exist to allow the Close of Escrow and development of the Improvements to proceed in accordance with the DDA and its Schedule of Performance.

G. Given the Parties' efforts and experience in negotiating a complex DDA over a six-year period, the Successor Agency has determined that entering into a new option agreement with the Developer to preserve the DDA's high level of affordable housing and other benefits is in the public interest and accordingly has followed the requirements for notice of a public hearing by newspaper publication described in Section 33431 of the California Health and Safety Code.

ACCORDINGLY, the Parties hereby agree to the following:

1. Grant of Option. Optionor grants to Optionee the option to purchase the real property described in Attachments 2 and 3 of the DDA (the "**Property**") on the terms and conditions set forth in this Agreement. Exercise of the option is described in Section 6 of this Agreement. The purchase and sale of the Property on exercise of this option shall be on the terms and conditions set forth in the DDA, attached as Exhibit A.

2. Term of Agreement. The "**Term**" of this Agreement shall begin on the Effective Date and shall terminate either (i) six months from the Effective Date (the "**Option Period**") or, (ii) upon expiration of the Option Period as extended in accordance with Section 3, unless earlier terminated in accordance with the terms herein. Upon expiration of the Term, 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.

3. Extension.

A. Discretionary Extensions. Prior to its expiration, the Option Period may be extended, upon Optionee's request and in the sole and absolute discretion of the Executive Director, by two additional periods of up to six months each (for a cumulative Option Period of up to 18 months). Optionee may request an extension no sooner than one month prior to the expiration of the Option Period (as extended), and Optionor will respond in writing no later than two weeks prior to expiration, provided that Optionor's failure to respond does not result in an automatic extension of the Option Period. If Optionor fails to respond to a request for extension prior to the expiration of the Option Period, this Agreement shall terminate.

B. Automatic Extension(s). If Optionee in good faith submits to the San Francisco Planning Department ("**SF Planning**") a complete General Plan Referral application for development in accordance with the DDA, then on the date SF Planning deems said application complete, an additional three months shall be included in the Option Period ("**Application Extension**"). Prior to the expiration of the Application Extension, the Executive Director may, in his or her sole and absolute discretion, extend the Option Period by an additional three (3) month

period, as reasonably necessary for Optionee to obtain approval of the Legislative Amendments. Such extension(s) shall be in addition to any extensions granted under Section 3(A), above.

4. Option Payment. Optionee shall pay to Optionor a payment of One Hundred Fifteen Thousand Three Hundred Eighty-Five dollars (\$115,385) upon execution of this Agreement and shall make an additional payment to the Optionor of One Hundred Fifteen Thousand Three Hundred Eighty Four dollars (\$115,384) upon Optionor's approval of each six-month extension granted under Section 3(A) (or portion of said dollar amount prorated to the duration of the granted extension) (collectively, the "**Option Payment**"). The Option Payment is nonrefundable to Optionee and is to be retained by the Optionor as consideration for Optionee's rights hereunder. The Option Payment is separate from and in addition to the Purchase Price for the Property established in the DDA. Optionee shall have no obligation during the Term of this Agreement to pay or reimburse "Successor Agency Costs" as defined in the DDA.

5. Exclusive Right to Develop. During the Term, Optionee shall have the exclusive right to develop the Property in accordance with the DDA, including completing a General Plan Referral application to SF Planning, exercising the Option, and entering into the DDA. During the Term, Optionor will not solicit proposals from other parties or enter into a letter of intent, negotiate any agreement or term sheet for development of the Property with other parties; provided that nothing herein shall be construed as prohibiting Optionor from (i) providing information to, or receiving information from, other parties about development of the Property; or (ii) preparing and compiling information (including engagement of economic, real estate or similar consultants) about feasible development at the Property that maximizes affordable housing and that may be used in an offering of the Property upon termination of this Agreement. Upon Optionee's request, Optionor will provide any specific written proposals it has received to date regarding development of the Property by a developer other than Optionee, provided that failure to comply with this obligation shall not be a breach of Optionee's rights under this Section 5 or give rise to a right to object to any future agreements for development with parties other than Optionee.

6. Exercise of Option. On or within 30 days after the date of the Board of Supervisor's final adoption of the Legislative Amendments, if Optionee is not then in default under this Agreement and all conditions herein to the exercise of the Option are satisfied or are waived in writing by Optionor, Optionee may exercise the Option in accordance with this section and in no other manner. The Option shall be exercised by delivering to Optionor a DDA fully executed by Optionee and the Affordable Developer. Failure to execute the DDA within the foregoing time period shall result in termination of this Agreement.

7. Expiration; Reservation of Rights Following Termination. This Agreement shall terminate and be of no further force or effect upon the earlier to occur of expiration of the Term or termination of this Agreement according to its terms. Upon termination, Optionee shall have no further rights hereunder, including to enter into the DDA or to exclusively negotiate with Optionor for the purchase of the Property. Optionor reserves the right, upon termination of this Agreement, to negotiate with another buyer or buyers for the long-term development of the Property, or to undertake other efforts to develop the Property, including, but not limited to, issuing a request for proposals.

8. Quarterly Reporting. During the Term, the Optionee agrees to monitor conditions of the national and local real estate financing market. Every three months during the Term, Optionee shall provide to Optionor a summary of then-existing conditions within the national and local commercial and residential real estate development market, their effects on the ability to proceed with the Close of Escrow and development of the Improvements under the DDA in accordance with the Schedule of Performance, as well as (a) any proposed modifications to the Schedule of Performance in light of then-existing market conditions, and/or (b) potential modifications to the DDA that, in the reasonable opinion of Optionee, would facilitate more immediate development of the Property (“**Quarterly Report**”); provided, however, the Optionor retains the sole and absolute discretion to accept any such proposed modifications.

9. Responsibility for Regulatory Approvals, Development, Costs.

A. The DDA governs all matters related to the disposition and development of the Property. Optionee assumes all risks of entitlements, development, and costs (other than Successor Agency Costs during the Term, as described in Section 4) for the Improvements, including, but not limited to, affordable housing requirements, fees for its attorneys, architects, engineers, consultants and other professionals related to or arising from this Agreement or the DDA, and all costs associated with or complying with all permit and processing fees related to the Improvements and any necessary Regulatory Approval granted to Optionee.

B. Optionor will have no obligations concerning risks of Regulatory Approvals, development, and costs for the Improvements, including affordable housing requirements imposed thereon, except for any public contribution established in the DDA for the number of affordable units or the affordability levels on the Property. Optionee shall not have any claim against Optionor for reimbursement for any of Optionee's costs and expenses irrespective of whether Optionee exercises its Option hereunder, or whether Optionee is able to secure other Regulatory Approvals.

C. Optionee 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 Optionee, and Optionor shall have no liability, monetary or otherwise, for said fines and penalties.

D. Optionee 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 Optionor related to the Property, to any Optionor employee or official or to any contracting consultant hired by Optionor for purposes of development of the Property. By entering into this Agreement, Optionee certifies to Optionor 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 Optionor related to the Property, to any Optionor employee or official or to any contracting consultant hired by Optionor for purposes of development of the Property.

E. Optionee acknowledges and agrees that, except in accordance with this Agreement, Optionor 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 Optionee, approve any land use entitlements or undertake any other acts or activities relating to the subsequent independent exercise of discretion by Optionor or any agency, commission or

department of the City and County of San Francisco (“City”). Except as expressly provided herein, this Agreement is not intended to create any legally binding obligations on the part of Optionor with respect to the disposition and development of the Property.

F. The term "**Regulatory Approvals**" as used in this Agreement shall mean all discretionary approvals, permits, entitlements, licenses, consents, waivers, exemptions, variances, plan amendments and other governmental authorizations necessary or required to commence construction of the Improvements, including demolition, site and building permits, and any required CEQA authorization (meaning 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 Improvements).

10. Release of Claims. Optionee hereby waives, releases, acquits, and forever discharges Optionor to the maximum extent permitted by law, of and from any and all claims, actions, causes of action, demands, rights, liabilities, damages, losses, costs, expenses, or compensation whatsoever, direct or indirect, known or unknown, foreseen or unforeseen, that it now has because of or in any way growing out or connected with (a) the Prior Option Agreement, including the Parties’ negotiation of the DDA under the Prior Option Agreement; (b) the Optionor’s prior recommendation of approval and the Commission’s prior approval of the DDA on June 21, 2022; (c) the Parties’ discussions of the status of the DDA from the date of the Commission’s prior approval of the DDA on June 21, 2022 to the Effective Date.

OPTIONEE EXPRESSLY WAIVES ITS RIGHTS GRANTED UNDER CALIFORNIA CIVIL CODE § 1542, AND ANY OTHER PROVISION OF LAW, THAT PROVIDES AS FOLLOWS:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE OPTIONEE OR RELEASING PARTY DOES NOT KNOW OR EXPECT TO EXIST IN ITS FAVOR AT THE TIME OF EXECUTING THE RELEASE, AND THAT IF KNOWN TO IT WOULD HAVE MATERIALLY AFFECTED ITS AGREEMENT TO RELEASE OPTIONOR.

BY PLACING ITS INITIALS BELOW, OPTIONEE SPECIFICALLY ACKNOWLEDGE AND CONFIRM THE VALIDITY OF THE RELEASES MADE ABOVE AND THE FACT THAT OPTIONEE WAS REPRESENTED BY COUNSEL WHO EXPLAINED, AT THE TIME THIS AGREEMENT WAS MADE, THE CONSEQUENCES OF THE ABOVE RELEASES.

SUCCESSOR AGENCY:_____ DEVELOPER:_____

11. Optionor’s Representations and Warranties. Optionor represents and warrants to Optionee, to the best of Optionor's actual knowledge, as of the Effective Date as follows:

A. Authority. Optionor 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

EXHIBIT A

Agreement and the DDA. Optionor is the legal and equitable owner of the Property. Persons signing this Agreement for Optionor have all requisite power and legal authority to do so.

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

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 Optionor to enter into and perform all of the terms and covenants of this Agreement. Optionor 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. There are no pending or, to Optionor's knowledge, threatened proceedings or undischarged judgments affecting Optionor before any court, governmental agency, or arbitrator which might materially adversely affect the enforceability of this Agreement, Optionor or the ability of Optionor to perform the transactions contemplated by this Agreement. Optionor makes the representation in this Section 11(C) solely for purposes of the Option, and no breach of this Section 11(C) shall give rise to any liability of Optionor for damages under this Agreement. This representation does not affect in any way Optionor's rights under Section 3.

D. 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 Optionor is a party or by which Optionor may be bound or affected, or (B) any law, statute, ordinance, regulation applicable to Optionor. Optionor makes the representation in this Section 11(D) solely for purposes of the Option, and no breach of this Section 11(D) shall give rise to any liability of Optionor for damages under this Agreement. This representation does not affect in any way Optionor's rights under Section 10 above.

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

F. Continued Accuracy. If at any time prior to the exercise of the option under Section 6 of this Agreement any event or circumstance occurs that would render inaccurate or misleading in any material respect any of the foregoing representations or warranties, Optionor shall immediately notify Optionee.

12. Optionee's Representations and Warranties. Optionee represents and warrants to Optionor, to the best of Optionee's actual knowledge, as of the Effective Date as follows:

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

B. Valid Existence; Good Standing; Joint Venture Relationships. Optionee 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.

EXHIBIT A

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 Optionee to enter into and perform all of the terms and covenants of this Agreement. Neither Optionee nor any member of Optionee 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 Optionee of this Agreement or any of the terms and covenants contained in this Agreement. There are no pending or, to Optionee's knowledge, threatened suits or proceedings or undischarged judgments affecting Optionee or any member of Optionee before any court, governmental agency, or arbitrator that might materially adversely affect the enforceability of this Agreement, the ability of Optionee to perform the transactions contemplated by this Agreement, or the business, operations, assets or condition of Optionee or any member of Optionee.

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

E. Regulatory Approvals. Optionee agrees and acknowledges that Optionor has made no representation or warranty that the Regulatory Approvals for the Improvements can be obtained. Optionee further agrees and acknowledges that there is no guarantee, nor a presumption, that any of the Regulatory Approvals required for the development of the Improvements will be issued.

F. 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 Optionee or any member of Optionee is a party or by which Optionee or a member of Optionee may be bound or affected, (B) any law, statute, ordinance, regulation, or (C) the articles of organization or the operating agreement of Optionee, and (ii) do not and will not result in the creation or imposition of any lien or other encumbrance upon the assets of Optionee or any member of Optionee.

G. Meeting Financial Obligations; Material Adverse Change. Optionee and any member of Optionee are meeting their respective current liabilities as they mature that would reasonably be expected to have a material adverse effect on Optionee's ability to perform its obligations under this Agreement. Optionee shall, within three (3) business days, notify Optionor of any material adverse change in the financial condition of Optionee or any member of Optionee that would prevent performance of Optionee's obligations under this Agreement.

H. Conflicts of Interest. Optionee is familiar with and does not know of any facts that constitute a violation of Section 15.103 of the San Francisco Charter, Chapter 2 of the City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and 1090 et seq. of the California Government Code, and other applicable ethics laws, regulations, and policies and warrants that it does not know of any facts which would constitute a violation of said provisions, and agrees that if Optionee becomes aware of any such fact during the term of this Agreement, Optionee shall immediately notify Optionor.

EXHIBIT A

I. Skill. Optionee and the members of Optionee collectively have the skill to acquire and develop the Property consistent with this Agreement. Optionee shall employ or contract with such persons as may be necessary or appropriate to enable Optionee to perform its obligations under this Agreement in a timely manner.

J. Not Prohibited from Doing Business. Neither Optionee nor any member of Optionee 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 the Property.

K. Business Licenses. Optionee 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.

L. No Claims. As of the Effective Date, Optionee does not have any claim against Optionor, the TJPA, the City, or the State.

M. 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, Optionee shall immediately notify Optionor.

13. Remedies for Default

A. Optionee's Default. Upon the occurrence of a default by Optionee and after giving 15 days' prior written notice and opportunity to cure, Optionor may, in its sole and absolute discretion, (i) terminate this Agreement and retain as liquidated damages any and all of the Option Payment already paid by Optionee to Optionor; and (ii) seek to enforce Optionee'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. Except as provided herein, Optionee shall not be liable to Optionor for damages caused by any default by Optionee, including general, special, or consequential damages. The remedies described in this Section 13(A) shall be the sole remedies for any default by Optionee. If Optionee breaches any obligation of this Agreement that survives the termination of this Agreement, Optionor shall have all remedies at law or equity for such breach.

B. Optionor's Default. If Optionor breaches the Optionee's right of exclusive negotiations established in Section 5, above, Optionee shall have all equitable remedies to remedy Optionor's default. Neither Optionor nor the City shall be liable to Optionee for damages caused by any Event of Default by Optionor, including general, special, or consequential damages.

C. Damages. The Parties have agreed that Optionor's actual damages due to an Optionee's default or inability to enter into the DDA prior to the expiration of the Term 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 Payment under Section 3, and any other payments already paid by Optionee to Optionor, as herein provided, is a reasonable estimate of the damages that Optionor would incur in such event. IN THE EVENT OF OPTIONEE'S DEFAULT UNDER THIS AGREEMENT, THEN OPTIONOR SHALL BE ENTITLED TO RETAIN THE AMOUNT OF THE OPTION DEPOSIT AND ANY OTHER PAYMENTS ALREADY PAID BY OPTIONEE TO OPTIONOR AS LIQUIDATED

DAMAGES PURSUANT TO CALIFORNIA CIVIL CODE SECTIONS 1671, 1676 AND 1677. **NOTHING IN THIS AGREEMENT WILL, HOWEVER, BE DEEMED TO LIMIT OPTIONEE'S LIABILITY TO OPTIONOR FOR DAMAGES OR INJUNCTIVE RELIEF FOR BREACH OF OPTIONEE'S INDEMNITY OBLIGATIONS UNDER SECTION 15, FOR ANY OPTIONEE FRAUD, OR FOR ANY OPTIONEE MISREPRESENTATION OF ONE OF OPTIONEE'S EXPRESS REPRESENTATIONS AND WARRANTIES IN SECTION 11.** 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.

SUCCESSOR AGENCY: _____ DEVELOPER: _____

14. Non-liability of Successor Agency Commission Members, Officials and Employees; Optionee's Members, Officers and Employees. Notwithstanding anything to the contrary in this Agreement, no member of Optionor's Commission, or officer, employee or agent of Optionor shall be personally liable to Optionee, its successors and assigns, in the event of any breach or default by Optionor or for any amount which may become due to Optionee, its successors and assigns, or for any obligation of Optionor under this Agreement. Notwithstanding anything to the contrary in this Agreement, none of Optionee's Members, officers, employees or agents shall be personally liable to Optionor or its respective successors and assigns, in the event of any breach or default by Optionee for any amount which may become due to Optionor, its successors and assigns, or for any obligation of Optionee under this Agreement.

15. Indemnity. Optionee shall indemnify, defend, and hold harmless Optionor, the TJPA, and the City (collectively, "**Indemnatee 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 any challenge or any filing of any kind related to any Regulatory Approvals sought by Optionee pursuant to this Agreement, or directly or indirectly caused by any acts or omissions of Optionee, 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 Optionor may require that Optionee defend the Indemnatee Parties against claims under this Section until it is established that such claims are Indemnity Exclusions. Optionee's obligations under this Section shall survive the termination of this Agreement.

16. Cooperation.

EXHIBIT A

A. Mutual Cooperation. During the Term of this Agreement, the Parties shall use their good faith efforts to meet their respective obligations hereunder, and shall reasonably cooperate with each other to fulfill the intent of this Agreement, including to achieve the conditions precedent to exercising the option and to exercise the option under this Agreement.

B. Optionor's Cooperation. Optionor agrees that, subject to Optionee's responsibilities hereunder, it will respond promptly to requests for coordination, consultation and scheduling of meetings regarding the Property, including but not limited to matters relating to the processing and obtaining of Regulatory Approvals where Optionor is the co-applicant.

C. No Limitation of Police Powers. Nothing contained herein shall be deemed to limit or otherwise constrain Optionor's discretion, powers and duties as a regulatory agency with certain police powers.

D. Disclosure of Confidential Information. The parties acknowledge that Optionor is subject to the California Public Records Act ("CPRA") and Optionor 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 Optionor 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.

17. Optionor Requirements. Optionor shall comply with Article 10 of the DDA (incorporated herein by this reference) as applicable to this Agreement.

A.

18. General Provisions.

A. Amendment. This Agreement and the rights hereunder may not be assigned or amended without the prior written approval of the Parties.

B. 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 Optionor or Optionee 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.

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C. 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 signed by the waiving Party.

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

E. Successors and Assigns. This Agreement shall inure to the benefit of and bind the respective successors and assign of Optionor and Optionee, subject to the limitations on assignment by Optionee set forth in Section 18(D), above. This Agreement is for the exclusive benefit of the Parties hereto and not for the benefit of any other person.

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

G. 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 Optionor 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 Optionor's attorneys' services were rendered who practice in the City of San Francisco, notwithstanding Optionor'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.

H. Interpretation of Agreement.

1. 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.

2. 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.

3. Words of Inclusion. The use of the terms "including," "such as" or the like 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.

4. References. Wherever reference is made to any provision, term or matter "in this Agreement," "herein" or "hereof" or the like, 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.

5. 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.

6. 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.

I. 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

EXHIBIT A

proceeding by either Party or any other person and no court or other body shall consider those drafts in interpreting this Agreement.

J. Time of Performance.

1. All dates for performance (including cure dates) shall expire at 5:00 p.m. (San Francisco, California time) on the performance or cure date.
2. A performance date which falls on a Saturday, Sunday or Successor Agency or national holiday is automatically extended to the next day which is not a Saturday, Sunday or Successor Agency or national holiday.
3. Time is of the essence with respect to each provision of this Agreement.

K. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and all such counterparts shall constitute one and the same instrument.

L. 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) Optionor under this Agreement shall be made by Optionor's Executive Director and (ii) Optionee under this Agreement shall be made by Daniel Esdorn ("**Optionee's Representative**") or such other employee or agent of Optionee as Optionee may designate to act as Optionee Representative for a particular matter. Approval by either Party 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.

M. 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 Optionor a partner in Optionee's business, or joint venture or member in any joint enterprise with Optionee.

N. Notices. Any notice, demand or other communication required or permitted to be given under this Agreement by either party to the other party shall be sufficiently given or delivered if transmitted by (i) certified United States mail, postage prepaid, (ii) personal delivery, or (iii) nationally recognized private courier services, in every case addressed as follows:

If to Optionor: Successor Agency to the Redevelopment Agency of the City
and County of San Francisco
One South Van Ness Avenue, Fifth Floor
San Francisco, California 94103
Attention: Executive Director

With a copy to:

James Morales
Optionor General Counsel

EXHIBIT A

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:
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

If to Optionee:

F4 Transbay Partners, LLC
c/o Hines
101 California Street, Suite 1000
San Francisco, CA 94111
Attn: Daniel Esdorn

With copies to:

Charles J. Higley
Farella Braun & Martel LLP
One Bush Street
San Francisco, CA 94104

Any such notice, demand or other communication transmitted by certified United States mail, postage prepaid, shall be deemed to have been received seventy-two (72) hours after mailing (unless it is never delivered), and any notice, demand or other communication transmitted by personal delivery, or nationally recognized private courier service shall be deemed to have been

given when received by the recipient. Any Party may change its address for notices under this section by written notice given to the other Party in accordance with the provisions hereof.

O. Notification of Limitations on Contributions. Through its execution of this Agreement, Optionee 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 Successor Agency for the selling or leasing of any land or building to or from the City or Successor Agency, whenever such transaction would require approval by a board on which a City elective officer or member of the Commission sits, from making any campaign contribution to the City elective officer or a member of the Successor Agency 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 Successor Agency.

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 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 a Commission member. Negotiations are completed when a contract is finalized and signed by the City and/or Successor Agency and the contractor. Negotiations are terminated when City and/or Successor Agency and/or the prospective contractor end the negotiation process before a final decision is made to award the contract.

P. Survival. The following provisions shall survive a termination of this Agreement: Section 7 (Reservation of Rights Following Termination); Section 15 (Indemnity); Section 16(D) (Disclosure of Confidential Information); and the general provisions of Section 18 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.

[REMAINDER OF PAGE LEFT BLANK]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

SUCCESSOR AGENCY (OPTIONOR):

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

By: _____
Thurston Kaslofsky
Executive Director

DEVELOPER (OPTIONEE):

F4 TRANSBAY PARTNERS LLC,
a Delaware limited liability company

By: _____
Name: _____
Its: _____

APPROVED AS TO FORM:

By: _____
James B. Morales
General Agency Counsel

Exhibit A

DDA

