

COMMISSION ON COMMUNITY INVESTMENT AND INFRASTRUCTURE

RESOLUTION NO. 26-2023

AUTHORIZING A HORIZONTAL GROUND LEASE WITH TRANSBAY 2 FAMILY LLC, A CALIFORNIA LIMITED LIABILITY COMPANY, TO FACILITATE AND FUND, IN AN AMOUNT NOT TO EXCEED \$2,333,653, SITE WORK ON TRANSBAY BLOCK 2 TO PREPARE FOR THE CONSTRUCTION OF 335 AFFORDABLE RENTAL UNITS IN TWO PROJECTS, ONE AT TRANSBAY BLOCK 2 EAST FOR 184 AFFORDABLE RENTAL HOUSING UNITS AND ONE AT TRANSBAY BLOCK 2 WEST FOR 151 AFFORDABLE RENTAL HOUSING UNITS; AND PROVIDING NOTICE THAT THIS ACTION IS WITHIN THE SCOPE OF THE TRANSBAY TERMINAL/CALTRAIN DOWNTOWN EXTENSION/REDEVELOPMENT PROJECT FINAL ENVIRONMENTAL IMPACT STATEMENT/ENVIRONMENTAL IMPACT REPORT, A PROGRAM EIR, AND IS ADEQUATELY DESCRIBED THEREIN FOR PURPOSES OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT; 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 16, 2015), Ordinance No. 62-16 (April 26, 2016) and Ordinance No. 009-23 (January 24, 2023) (“Redevelopment Plan”); and,

WHEREAS, The Redevelopment Plan establishes the land use controls for the Project Area and 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 land uses, and Zone Two, in which the Planning Code applies. The Successor Agency to the Former Redevelopment Agency of the City and County of San Francisco (“Successor Agency”), commonly known as the Office of Community Investment and Infrastructure (“OCII”), solely administers and enforces land use entitlements for property and projects in Zone One; and,

WHEREAS, In 2003, the Transbay Joint Powers Authority (“TJPA”), the City and County of San Francisco (“City”), and the State of California (“State”) entered into a Cooperative Agreement setting forth the process for the transfer of certain State-owned parcels in the Project Area to the City and TJPA. Also in 2003, the California Legislature enacted Assembly Bill No. 812 (Statute 2003, chapter 99), codified at Cal. Public Resources Code § 5027.1, which requires that thirty-five percent (35%) of new housing developed in the Project Area shall be affordable to low- and moderate-income households (the “Transbay Affordable Housing Obligation”). In

2005, the TJPA and Former Agency entered into the Transbay Redevelopment Project Implementation Agreement (“Implementation Agreement”) which incorporates the Transbay Affordable Housing Obligation and requires Successor Agency to prepare and sell certain formerly State-owned parcels and to construct and fund new infrastructure improvements (such as parks and streetscapes) and to meet affordable housing obligations; and,

WHEREAS, On February 1, 2012, the State of California dissolved all redevelopment agencies including the Former Agency, by operation of law pursuant to California Health and Safety Code Section 34170 et seq. (“Redevelopment Dissolution Law”). Under the authority of Redevelopment Dissolution Law and San Francisco Ordinance No. 215-12 (October 4, 2012) (establishing the Successor Agency Commission (“Commission”) and delegating to it state authority under Redevelopment Dissolution Law), the Successor Agency is administering the enforceable obligations of the Former Agency. The Redevelopment Plan, Development Controls, and other relevant Project Area documents remain in effect and the Successor Agency retains all affordable housing obligations in the Project Area; 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). On April 15, 2013, the California Department of Finance (“DOF”) finally and conclusively determined that the Implementation Agreement and its incorporation of the Transbay Affordable Housing Obligation are continuing enforceable obligations of the Successor Agency under Redevelopment Dissolution Law. DOF 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 (September 10, 2013, 09:17am); and,

WHEREAS, On January 11, 2021, in accordance with the Cooperative Agreement, the TJPA conveyed to Successor Agency certain parcels of land within the Project Area and thereafter, the Board of Supervisors, by Motion M21-098 adopted June 22, 2021, approved Final Transfer Map 10327, which consolidated and resubdivided said parcels for purposes of financing and conveyancing (as said map was recorded on July 1, 2021 in Book 2 of Final Maps at Pages 6 through 8 inclusive of the Official Records, the “Transfer Map”); and,

WHEREAS, In accordance with its obligations under the Redevelopment Plan and the Implementation Agreement, Successor Agency intends to fund the development of affordable housing on Transfer Map Lot 5, being all of Redevelopment Plan Block 2 (“Block 2”) by further subdividing Block 2 into two development parcels of roughly equal size (referred to herein as “Block 2 East” and “Block 2 West,” respectively), ground leasing these parcels to affordable housing developers, and providing a subsidy for development and operation of two affordable housing developments thereon. Successor Agency anticipates that its subsidy will facilitate additional public and private financing necessary to make the development and operation of Block 2 financially feasible; and,

WHEREAS, On April 6, 2021, pursuant to Resolution No. 09-2021, the Successor Agency entered into an exclusive negotiations agreement ("ENA") with Transbay 2 Family, L.P., a California limited partnership, an affiliate of Mercy Housing California ("Mercy"), and Transbay 2 Senior, L.P., a California limited partnership, an affiliate of Chinatown Community Development Center, Inc. ("CCDC"), as "Co-Developers" for the demolition of existing improvements and related predevelopment activities on Block 2 (the "Horizontal Project"), and construction, pursuant to a subsequent amended and restated ground lease or leases for vertical development of a mixed-use affordable rental housing project serving families and families experiencing homelessness on Block 2 East to be owned and operated by Mercy (the "Block 2 East Vertical Project") and a separate mixed-use affordable rental housing project serving seniors and senior households experiencing homelessness on Block 2 West to be owned and operated by CCDC (the "Block 2 West Vertical Project"), plus a mid-block pedestrian mews and related streetscape improvements (collectively, the "Block 2 Project"). Mercy's role under the ENA also includes overall site coordination for development of Block 2; and,

WHEREAS, In compliance with the ENA, on March 30, 2021, the Co-Developers entered into a Joint Development Agreement "to coordinate the development of their respective [p]rojects to maximize efficiencies and economies of scale, including jointly selecting consultants, coordinating designs, and, to the extent feasible, synchronizing construction timing, in accordance therewith (the "JDA"). Under the JDA, Mercy is designated as the lead party to coordinate the performance of the Horizontal Project work, including obtaining permission to enter Block 2 to perform such work; and,

WHEREAS, Also on April 6, 2021, pursuant to Resolution No. 10-2021, the Successor Agency entered into a loan agreement with Mercy to fund predevelopment activities associated with development of the Block 2 East Vertical Project, and pursuant to Resolution 11-2021, the Successor Agency entered into a loan agreement with CCDC to fund predevelopment activities associated with development of the Block 2 West Vertical Project (as amended on May 2, 2023 by Resolution No. 16-2023; and,

WHEREAS, In accordance with the tasks established in the ENA Schedule of Performance, the Co-Developers submitted schematic design drawings for the Block 2 Vertical Project for Successor Agency review and approval. On November 1, 2022, by Resolution Nos. 39-2022 through 43-2022, the Commission approved schematic design drawings and related actions to approve the Block 2 Vertical Project to include a total of approximately 335 affordable residential units and approximately 11,351 square feet of commercial space, plus a mid-block pedestrian mews and related streetscape improvements. On February 3, 2023, by Ordinance No. 09-23, the City adopted amendments to the Redevelopment Plan effectuating the scope for the Block 2 Project; and,

WHEREAS, The Co-Developers have determined that, to maximize the ability of the Block 2 Vertical Project to obtain an allocation of affordable housing bund funds and Low-Income Housing Tax Credits ("LIHTC"), the Horizontal Project should be performed by an affiliate of Mercy under a horizontal ground lease in advance of the Block 2 Project. And, in fulfillment of its obligations under the Redevelopment Plan and Implementation Agreement to commence and construct affordable

housing, Successor Agency is proposing to enter into a Horizontal Ground Lease substantially in the form of Exhibit A hereto with Transbay 2 Family LLC (the “Lessee”), an affiliate of Mercy, for the performance of the Horizontal Project and related obligations established thereunder; and,

WHEREAS, Under the Horizontal Ground Lease, Successor Agency will reimburse the Lessee for the cost of the Horizontal Project in an amount of up to \$2,333,653; and,

WHEREAS, On January 25, 2023, by Resolution No. 02-2023, the Successor Agency Oversight Board approved an expenditure for funding in an amount of up to \$72,972,179 for affordable housing on Block 2 East, through Item No. 416 of the Recognized Obligation Payment Schedule (“ROPS”) for the period of July 1, 2023 through June 30, 2024. DOF provided final approval of the expenditure through its letter dated April 14, 2023; and,

WHEREAS, Concurrently with this request, Mercy is seeking a commitment from the Commission (by Resolution No. 24-2023) for permanent gap loan funding for the Block 2 East Vertical Project. This commitment is necessary to demonstrate that the Mercy has secured local funds for purposes of its September 2023 application for affordable housing bond funds and LIHTC, a critical financing source for the Block 2 East Vertical Project; and,

WHEREAS, Additionally, concurrently with this request, Mercy is seeking Commission authorization (by Resolution No. 25-2023) for a First Amendment to the Loan Agreement to increase the predevelopment loan for the Block 2 East Vertical Project by an amount of \$4,500,000 to fund further predevelopment activities to advance development; and,

WHEREAS, On August 4, 2023, the Citywide Affordable Housing Loan Committee recommended approval of OCII subsidy for the Block 2 in a total aggregate amount of up to \$72,972,179, which includes the requested funding for the Horizontal Project, as well as financing for the Block 2 East Vertical Project; and,

WHEREAS, On April 20, 2004, the Commission of the Former Redevelopment Agency of the City and County of San Francisco (“Former Agency Commission”) adopted Resolution No. 45-2004, certifying the Final Environmental Impact Statement/Environmental Impact Report (the “FEIS/EIR”) for the Transbay Terminal/Caltrain Downtown Extension/Redevelopment Project, which included the Redevelopment Plan. On January 25, 2005, the Former Agency Commission adopted Resolution No. 11-2005, adopting findings under CEQA, a Statement of Overriding Considerations and a Mitigation Monitoring and Reporting Program in connection with the adoption of the Redevelopment Plan. The Board of Supervisors and the City Planning Commission adopted similar findings; and,

WHEREAS, The FEIS/EIR includes by reference a number of addenda. A total of ten addenda to the FEIS/EIR were adopted by the Commission between June 2, 2006 and November 1, 2022. The tenth addendum to the FEIS/EIR, adopted by the Commission by Resolution No. 39-2022 specifically analyzed the environmental effects of the Block 2 Project; and,

WHEREAS, OCII staff has reviewed the requested Horizontal Ground Lease and has found it to be within the scope of the project analyzed in the FEIS/EIR and its subsequent addenda; and,

WHEREAS, Copies of the FEIS/EIR and supporting documentation is on file with the Commission Secretary and is incorporated into this Resolution by reference; now therefore be it

RESOLVED, That the Commission finds the authorization of the Horizontal Ground Lease within the scope of the project analyzed in the FEIS/EIR and requires no additional environmental review pursuant to CEQA Guidelines sections 15180, 15168, 15162, 15163, and 15164 for the following reasons:

- (1) Implementation of the commitment for permanent gap funding does not require major revisions to the FEIS/EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant impacts; and,
- (2) No substantial changes have occurred with respect to the circumstances under which the project analyzed in the FEIS/EIR will be undertaken that would require major revisions to the FEIS/EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of effects identified in the FEIS/EIR; and,
- (3) No new information of substantial importance to the project analyzed in the FEIS/EIR has become available which would indicate that (i) implementation of the commitment for permanent gap funding will have significant effects not discussed in the FEIS/EIR; (ii) significant environmental effects will be substantially more severe; (iii) mitigation measures or alternatives found not feasible, which would reduce one or more significant effects, have become feasible; or (iv) mitigation measure or alternatives, which are considerably different from those in the FEIS/EIR will substantially reduce one or more significant effects on the environment that would change the conclusions set forth in the FEIS/EIR; and be it further

RESOLVED, The Commission authorizes the Executive Director to (i) enter into the Horizontal Ground Lease with Transbay 2 Family LLC, a California limited liability company, substantially in the form of the document attached hereto as Exhibit A, to facilitate and fund site work on Transbay Block 2; and (ii) to enter into any and all ancillary documents or to take any additional actions necessary to consummate the transaction contemplated by this Resolution.

I hereby certify that the foregoing resolution was adopted by the Successor Agency Commission at its meeting of August 15, 2023.

Commission Secretary

Exhibit A: Horizontal Ground Lease (Transbay Block 2)

HORIZONTAL GROUND LEASE

By and Between

**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

and

Transbay 2 Family LLC

for

Transbay Block 2

Dated as of _____, 2023

TABLE OF CONTENTS

RECITALS	4
1. DEFINITIONS.....	7
2. LEASEHOLD PROPERTY	9
3. TERM.....	9
4. RENT	10
5. LESSEE COVENANTS.....	10
6. CONDITION OF LEASEHOLD PARCELS—"AS IS"	11
7. PERMITTED AND PROHIBITED USES.....	11
8. HORIZONTAL PROJECT	Error! Bookmark not defined.
9. ASSIGNMENT, SUBLEASE, OR OTHER CONVEYANCE	19
10. TAXES	19
11. UTILITIES.....	20
12. MAINTENANCE AND SECURITY	20
13. LIENS.....	20
14. GENERAL REMEDIES	21
15. DAMAGE TO PERSON OR PROPERTY; HAZARDOUS SUBSTANCES; INDEMNIFICATION	24
16. INSURANCE.....	27
17. COMPLIANCE WITH LEASEHOLD PARCELS-RELATED AND LEGAL REQUIREMENTS.....	27
18. ENTRY.....	28
19. CONDEMNATION AND TAKINGS	29
20. ESTOPPEL CERTIFICATE.....	30
21. SURRENDER AND QUITCLAIM.....	31
22. EQUAL OPPORTUNITY.....	32
23. SUCCESSOR AGENCY LABOR STANDARDS PROVISIONS.....	32
24. SUCCESSOR AGENCY MINIMUM COMPENSATION AND HEALTH CARE ACCOUNTABILITY POLICY.....	32
25. ARTICLE 34 CONFLICT OF INTEREST	32
26. ARTICLE 35 NO PERSONAL LIABILITY	32
27. JOINT AND SEVERAL LIABILITY.....	33
28. ENERGY CONSERVATION.....	33

29.	WAIVER	33
30.	LESSEE RECORDS	33
31.	REPRESENTATIONS AND WARRANTIES	33
32.	NOTICES AND CONSENTS	34
33.	HEADINGS	35
34.	SUCCESSORS AND ASSIGNS	35
35.	TIME	35
36.	PARTIAL INVALIDITY	35
37.	APPLICABLE LAW	35
38.	THIRD-PARTY BENEFICIARIES; CLAIMS BY THIRD PARTIES	35
39.	ARTICLE 45 ATTORNEYS' FEES	36
40.	EXECUTION IN COUNTERPARTS	36
41.	BROKERS	36
42.	RECORDATION OF MEMORANDUM OF GROUND LEASE	36
43.	SURVIVAL	37
44.	TRANSFER; PARTNERSHIP INTERESTS IN LESSEE	37
45.	COMPLETE AGREEMENT	37
46.	AMENDMENTS	37
47.	FURTHER ASSURANCES	38
48.	CONSENT	38
49.	COUNTERPARTS	Error! Bookmark not defined.
50.	LESSEE'S PERSONNEL	38
51.	WORKS FOR HIRE	38
52.	EXHIBITS	39

EXHIBITS

1. Legal Description of Leasehold Parcel
2. Schedule of Performance
3. Horizontal Project Budget
4. Reimbursement Request Form
5. Lobbying/Debarment Form

6. Insurance Requirements
7. Assignment of Work Product and Engineer's Consent to Assignment of Work Product
8. Contract Compliance Policies

HORIZONTAL GROUND LEASE

(Transbay Block 2)

This Horizontal Ground Lease ("**Lease**") is entered into as of _____ 2023 (the "**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 and commonly referred to as the Office of Community Investment and Infrastructure ("**Successor Agency**" or "**Lessor**"), and Transbay 2 Family LLC, a California limited liability company ("**Lessee**").

RECITALS

- A. In furtherance of the objectives of the Community Redevelopment Law of the State of California ("**CRL**"), the Redevelopment Agency of the City and County of San Francisco (the "**Former Agency**") undertook a program to redevelop and revitalize blighted areas in San Francisco and in connection therewith adopted a redevelopment project area known as the Transbay Redevelopment Project Area (the "**Project Area**").
- B. The 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, filed in the Office of the Recorder of the City and County of San Francisco ("**Official Records**") as Document No. 2006-I224836, as amended by Ordinance No. 84-15 (June 16, 2015) as Document No. 2015-K135871, as amended by Ordinance No. 62-16 (April 26, 2016) as Document No. 2016-K333253, and as amended by Ordinance No. 09-23 (January 24, 2023) as Document No. 2023041529, and as it may be amended from time to time ("**Redevelopment Plan**").
- C. The Redevelopment Plan establishes the land use controls that Successor Agency applies in the Project Area. 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 (2005) ("**Development Controls**") define land uses, and Zone Two in which the San Francisco Planning Code applies.
- D. In 2003, the Transbay Joint Powers Authority ("**TJPA**"), the City and County of San Francisco ("**City**"), and the State of California ("**State**"), entered into a Cooperative Agreement setting forth the process for the transfer of certain State-owned parcels in the Project Area to the City and the TJPA. Also in 2003, the California Legislature enacted Assembly Bill No. 812 (Statutes 2003, chapter 99), codified at Cal. Public Resources Code § 5027.1 ("**AB 812**"), which requires that thirty-five percent (35%) of new housing

developed in the Project Area shall be affordable to low- and moderate-income households. In 2005, the TJPA and the Former Agency entered into the Transbay Redevelopment Project Implementation Agreement (“**Implementation Agreement**”) which incorporates the affordable housing requirements of AB 812 and requires Successor Agency to prepare and sell certain formerly State-owned parcels, to construct and fund new infrastructure improvements (such as parks and streetscapes), and to meet affordable housing obligations.

- E. On February 1, 2012, the State of California dissolved all redevelopment agencies including the Former Agency, by operation of law pursuant to California Health and Safety Code Section 34170 et seq. (“**Dissolution Law**”). The Board of Supervisors, acting as the legislative body of the Successor Agency, adopted Ordinance No. 215-12 (Oct. 4, 2012), which delegated to the Successor Agency Commission (“**Commission**”) the authority, consistent with the Dissolution Law, to (i) act in the place of the Former Agency Commission to, among other matters, implement, modify, enforce and complete the Former Agency’s enforceable obligations, except for material changes to obligations to provide affordable housing, which require Board of Supervisors’ approval; (ii) approve all contracts and actions related to the assets transferred to or retained by the Successor Agency, consistent with the applicable enforceable obligations; and (iii) take any actions that the Dissolution Law requires or authorizes on behalf of the Successor Agency and other action that the Commission deems appropriate, consistent with the Dissolution Law, to comply with such obligations. The Redevelopment Plan, Development Controls (defined below), and other relevant Project Area documents remain in effect and Successor Agency retains all affordable housing obligations in the Project Area.
- F. The 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). On April 15, 2013, the California Department of Finance (“**DOF**”) finally and conclusively determined that the Implementation Agreement is a continuing enforceable obligation of the Successor Agency under the Dissolution Law. 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 (September 10, 2013, 09:17 am).
- G. On January 11, 2021, in accordance with the Cooperative Agreement, the TJPA conveyed to Successor Agency certain parcels of land within the Project Area and thereafter, the Board of Supervisors, by Motion M21-098 adopted June 22, 2021, approved Final Transfer Map 10327, which consolidated and resubdivided said parcels for purposes of financing and conveyancing (as said map was recorded on July 1, 2021 in Book 2 of Final Maps at Pages 6 through 8 inclusive of the Official Records, the “**Transfer Map**”).
- H. In accordance with its obligations under the Redevelopment Plan and the Implementation Agreement, Successor Agency intends to fund the development of affordable housing on Transfer Map Lot 5, being all of Redevelopment Plan Block 2 and as further described in Exhibit 1, “**Block 2**,” by further subdividing Block 2 into two development parcels of roughly equal size (referred to herein as “**Block 2 East**” and “**Block 2 West**,” respectively), ground leasing these parcels to affordable housing developers, and providing a subsidy for

development and operation of two affordable housing developments thereon. Successor Agency anticipates that its subsidy will facilitate additional public and private financing necessary to make the development and operation of Block 2 financially feasible.

- I. On April 6, 2021, pursuant to Commission Resolution No. 09-2021, the Successor Agency entered into an exclusive negotiations agreement ("**ENA**") with Transbay 2 Family, L.P., a California limited partnership (whose general partner is Lessee (which consists of Mercy Housing Calwest as sole member/manager), ("**Mercy**")) and Transbay 2 Senior, L.P., a California limited partnership (whose general partner is CCDC Transbay 2 LLC (which consists of Chinatown Community Development Center, Inc. ("**CCDC**")) as "**Co-Developers**," for the demolition of existing improvements and related predevelopment activities on Block 2 (as further described in Section 7.A below, the "**Horizontal Project**"), and construction, pursuant to a subsequent amended and restated ground lease or leases for vertical development, of approximately 254 affordable rental housing units and approximately 11,650 square feet of commercial space in two separate buildings on Block 2, plus a mid-block pedestrian mews and related streetscape improvements (as further revised as stated in Recital L below, the "**Vertical Project**", and collectively, the "**Block 2 Project**"). Mercy's role under the ENA also includes overall site coordination for development of Block 2.
- J. In compliance with the ENA, on March 30, 2021, the Co-Developers entered into a Joint Development Agreement "to coordinate the development of their respective [p]rojects to maximize efficiencies and economies of scale, including jointly selecting consultants, coordinating designs, and, to the extent feasible, synchronizing construction timing, in accordance therewith (the "**JDA**"). Under the JDA, Mercy is designated as the lead party to coordinate the performance of the Horizontal Project work, including obtaining permission to enter Block 2 to perform such work.
- K. Also on April 6, 2021, pursuant to Commission Resolution No. 10-2021, the Successor Agency entered into a loan agreement with Mercy to fund predevelopment activities associated with development of the portion of the Block 2 Project to be located on Block 2 East (the "**Mercy Predevelopment Loan**"), and pursuant to Commission Resolution 11-2021 the Successor Agency entered into a loan agreement with CCDC to fund predevelopment activities associated with development of the portion of the Block 2 Project to be located on Block 2 West (as amended on May 2, 2023 pursuant to Commission Resolution No. 16-2023, the "**CCDC Predevelopment Loan**").
- L. In accordance with the tasks established in the ENA Schedule of Performance, the Co-Developers submitted schematic design drawings for the Block 2 Project for Successor Agency review and approval. On November 1, 2022, by Resolution Nos. 39-2022 through 44-2022, the Commission approved schematic design drawings and related actions modifying the scope of development for the Block 2 Project to include a total of approximately 335 affordable residential units and approximately 11,351 square feet of commercial space in two separate buildings on Block 2, plus a mid-block pedestrian mews and related streetscape improvements. On February 3, 2023, by Ordinance No. 09-23, the City adopted amendments to the Redevelopment Plan effectuating the modified scope for the Block 2 Project.

- M. Co-developers have determined that, to maximize the ability of the Vertical Project to obtain an allocation of State affordable housing bond funds and Low Income Housing Tax Credits, the Horizontal Project should be performed by an affiliate of Mercy under a horizontal ground lease in advance of the Vertical Project. And, in fulfillment of its obligations under the Redevelopment Plan and Implementation Agreement to commence and construct affordable housing, Successor Agency is proposing to enter into this Lease with Lessee, an affiliate of Mercy, for the performance of the Horizontal Project and related obligations established hereunder.
- N. On August __, 2023, the Citywide Affordable Housing Loan Committee (the “**Loan Committee**”) reviewed Successor Agency staff’s evaluation of the request for funding and recommended that Successor Agency provide a total subsidy of (\$ _____) to the Block 2 Project, which includes \$ _____ to fund Lessee’s obligations under this Lease and \$ _____ to fund vertical development on Block 2 East.
- O. On August __, 2023, the Commission approved Resolution No. __-2023, authorizing the Executive Director to enter into this Lease and approving up to \$ _____ in funding therefor, to be disbursed in accordance with this Lease.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth in this Lease, the parties agree as follows:

1. DEFINITIONS

“**Approved Plans and Specifications**” has the meaning established in Section 8(D).

“**Block 2**” has the meaning established in Recital H.

“**Block 2 Leasehold**” has the meaning established in Section 2.

“**Block 2 Project**” has the meaning established in Recital I.

“**Budget**” has the meaning established in Section 8(B)(1).

“**Co-Developers**” means Transbay 2 Family, L.P., a California limited partnership and Transbay 2 Senior, L.P., a California limited partnership, as further defined in Recital I.

“**Completion Date**” has the meaning established in Section 8(I).

“**Construction Contract**” has the meaning established in Section 8(D).

“**CRL**” has the meaning established in Recital A.

“**Disburse**”, “**Disbursement**” and other derivatives thereof means the disbursement of all or a portion of the Reimbursement Amount by OCII as described in Section 8(B).

“**Early Retention Release Contractors**” has the meaning established in Section 8(B)(5).

“Effective Date” means the date established in the first paragraph of this Lease.

“ENA” has the meaning set out in Recital I.

“Environmental Law” has the meaning established in Section 15(B)(2)(b).

“Excess Funds” means Reimbursement Amount remaining after payment of all Expenditure Requests.

“Expenditure Request” means a written request by Lessee for a Disbursement from the Reimbursement Amount, which must certify that the Horizontal Project costs covered by the Expenditure Request have been paid or incurred by Lessee.

“Funds” means the monies to be disbursed by OCII under this Lease.

“Hazardous Substances” has the meaning established in Section 15(B)(2)(a).

“Horizontal Project” has the meaning established in Recital I.

“Indemnified Party or Parties” has the meaning set forth in Section 15.

“Laws” means all statutes, laws, ordinances, regulations, rules, orders, writs, judgments, injunctions, decrees, or awards of the United States or any state, county, municipality, or governmental agency.

“Lease” means this Ground Lease, as it may be amended from time to time.

“Leasehold Parcel” has the meaning established in Section 2.

“Lessor” or **“Successor Agency”** means 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.

“Mitigation Monitoring and Reporting Program” means the Transbay Terminal/Caltrain Downtown Extension/Redevelopment Project EIS/EIR Mitigation Monitoring and Reporting Program dated June 2007.

“Notice to Proceed” has the meaning established in Section 8(I)(2).

“Permitted Uses” has the meaning established in Section 7(A).

“Personal Property” means all fixtures, furniture, furnishings, equipment, machinery, supplies, software and other tangible personal property that is located in, on, or about the Leasehold Parcel and that can be removed from the Leasehold Parcel without substantial economic loss to the Leasehold Parcel or substantial damage to the Leasehold Parcel and that is incident to the ownership, development, or operation of the Horizontal Project or the Leasehold Parcel, belonging to Lessee, any sublessee, or any contractors or invitees of the Leasehold Parcel and/or in which Lessee, sublessee, or any contractors or invitees has an ownership interest, together with all present and future attachments, replacements, substitutions, and additions thereto or therefor.

“**Publication**” means any report, article, educational material, handbook, brochure, pamphlet, press release, public service announcement, webpage, audio or visual material or other communication for public dissemination, which relates to all or any portion of the Horizontal Project or is paid for in whole or in part using the Reimbursement Amount.

“**Redevelopment Plan**” has the meaning set forth in Recital B.

“**Redevelopment Requirements**” means Redevelopment Plan and Plan Documents (as defined therein).

“**Reimbursement Amount**” has the meaning established in Section 8(B)(1).

“**Rent**” has the meaning established in Section 4.

“**Retention**” has the meaning established in Section 8(B)(5).

“**Schedule of Performance**” means the Schedule of Performance attached hereto as Exhibit 2 as said Exhibit may be amended from time to time in accordance with the provisions of this Lease.

“**Successor Agency Documents**” means the ENA, Mercy Predevelopment Loan and CCDC Predevelopment Loan.

“**Term**” has the meaning established in Section 3.

“**Vertical Project**” has the meaning established in Recital I.

“**Work Product**” has the meaning established in Section 51.

2. LEASEHOLD PROPERTY

Successor Agency hereby leases Block 2 to Lessee (referred to herein as the “**Block 2 Leasehold**”). The parties acknowledge that Successor Agency and the Co-Developers intend to subdivide Block 2 into two parcels during the term of this Lease (as so subdivided as further described in Recital H above, each parcel is referred to herein as a “**Leasehold Parcel**” but collectively remain the Block 2 Leasehold), and if this Lease is terminated as to a Leasehold Parcel in accordance with the provisions hereof, the remaining Leasehold Parcel shall thereafter be referred to herein as the Block 2 Leasehold.

3. TERM

A. Term. The term of this Lease will commence upon the Effective Date and will expire the earlier of: (i) as to a particular Leasehold Parcel on the date Successor Agency enters into a vertical ground lease for the development of affordable housing and commercial space (if applicable) on that Leasehold Parcel, (ii) December 31, 2025, or (iii) as earlier terminated in accordance with this Lease (“**Term**”).

B. Holding Over. No holding over is permitted under this Lease. Lessee shall have no further rights hereunder upon the termination of the Lease in accordance with the provisions hereof.

C. Lessor Right to Terminate. In addition to other rights of termination under this Lease, the Lessor shall have a right to terminate this Lease, upon 60 days written notice to Lessee, if Co-Developers fail to obtain sufficient financing to develop the Vertical Project (or portion thereof) within the timeframe specified in the ENA (as it may be amended from time to time).

4. RENT

Unless otherwise required to satisfy restrictions existing on the Block 2 Leasehold, Lessee's consideration to Successor Agency shall be (a) one dollar (\$1) per year payable in advance on the Effective Date and annually thereafter; and (b) in the form of fulfilling its obligations under this Lease (including without limitation obligations under Section 51), which the parties acknowledge is a benefit to the community and to Successor Agency and would not otherwise be provided.

5. LESSEE COVENANTS

Lessee covenants and agrees for itself and its successors and assigns to or of the Block 2 Leasehold, or any part thereof, that, as of the Effective Date:

A. Authority. Lessee is a California limited liability company and has full rights, power, and authority to enter into and perform its obligations under this Lease.

B. Use of Block 2 Leasehold and Rents. During the Term of this Lease, Lessee and its successors and assigns will comply with the following requirements:

1. Permitted Uses. Lessee will devote the Block 2 Leasehold to the uses specified in this Lease (including Section 7 below), which are the only uses permitted by this Lease. Lessee acknowledges that that a prohibition on changes in use contained in Section 7 is expressly authorized by California Civil Code section 1997.230 and is fully enforceable.

2. Non-Discrimination. The Lessee herein covenants for itself and for its agents, contractors and invitees that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, sexual orientation, gender identity, marital or domestic partner status, disability (including AIDS or HIV status), national origin, ancestry, or other protected class in the use of the Block 2 Leasehold. Lessee 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 Successor Agency's Nondiscrimination in Contracts Policy, adopted by Agency Resolution No. 175-97, as such Policy may be amended from time to time (see Exhibit 8-4 "Nondiscrimination in Contracts and Benefits Form"). Lessee will include in all contracts relating to the Block 2 Leasehold a non-discrimination clause obligating the contracting party in substantially the form of the foregoing. Lessee's failure to comply with the obligations in this Subsection will constitute a breach of this Lease.

3. Access for Disabled Persons. Lessee will comply with all applicable Laws providing for access for persons with disabilities, including, but not limited to, the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973.

6. CONDITION OF LEASEHOLD PARCELS—"AS IS"

C. As-Is Condition. Lessee acknowledges and agrees that Lessee is familiar with the Block 2 Leasehold, the Block 2 Leasehold is being leased and accepted in their "as-is" condition, without any improvements or alterations by Successor Agency, without representation or warranty of any kind, and subject to all applicable Laws governing their use, development, occupancy, and possession. Lessee further represents and warrants that Lessee has investigated and inspected, either independently or through agents of Lessee's own choosing, the condition of the Block 2 Leasehold and the suitability of the Block 2 Leasehold for Lessee's intended use. Lessee acknowledges and agrees that neither Successor Agency nor any of its agents have made, and Successor Agency hereby disclaims, any representations or warranties, express or implied, concerning the rentable area of the Block 2 Leasehold, the physical or environmental condition of the Block 2 Leasehold, or the present or future suitability of the Block 2 Leasehold for Lessee's use, or any other matter whatsoever relating to the Block 2 Leasehold, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose; it being expressly understood that the Block 2 Leasehold is being leased in an "AS IS" condition with respect to all matters.

7. PERMITTED AND PROHIBITED USES

A. Permitted Uses. Lessee may enter and use the Block 2 Leasehold to perform the following (collectively, the "**Permitted Uses**"):

1. The Horizontal Project, which includes preconstruction site preparation activities on the Block 2 Leasehold to make the Block 2 Leasehold ready for development of the Vertical Project, including: (a) demolition of existing improvements; (b) soil, archeological and other preconstruction testing; (c) grading, excavation, off-haul and soil improvement; and (d) remediation of Hazardous Substances required by applicable Environmental Laws, all in accordance with and as more particularly described in the Approved Plans and Specifications; and

2. Activities related to Lessee's obligation to secure and maintain the Block 2 Leasehold during the Term;

3. Staging of construction vehicles, equipment and materials.

B. Prohibited Uses. Lessee shall use the Block 2 Leasehold and shall ensure the Block 2 Leasehold is used solely for Permitted Uses and for no other purpose. Any other use in, on or around the Block 2 Leasehold or surrounding or adjacent Successor Agency property shall be strictly prohibited unless approved in advance by Successor Agency in its sole discretion, including without limitation:

1. Waste, nuisance or unreasonable annoyance to the public (including the preparation, manufacture or mixing of anything that might emit any objectionable odors, noises, or lights onto adjacent properties, or the use of loudspeakers or sound or light apparatus that can be heard or seen outside the Block 2 Leasehold);

2. Interference, injury or obstruction of the rights of owners or occupants of adjacent properties, including without limitation rights of ingress and egress except in accordance with permits issued by the City;

3. Obstruction of traffic (except in accordance with permits issued by the City), or vehicle and equipment maintenance (including without limitation fueling, changing oil, transmission or other automotive fluids);

4. Any auction, distress, fire, bankruptcy or going out of business sale on the Block 2 Leasehold without the prior written consent of Successor Agency, which consent may be granted, conditioned, or withheld in the sole and absolute discretion of Successor Agency;

5. The storage of excavated materials, including without limitation dirt, concrete, sand, asphalt, and pipes, except to the extent related to the Permitted Uses and for the timeframe reasonably necessary in Lessee's reasonable discretion to complete such activities; and/or

6. The storage of non-excavated aggregate material, or bulk storage, such as wood, fencing or of other loose materials, except to the extent necessary for performance of maintenance or repairs to the Block 2 Leasehold reasonably necessary in Lessee's reasonable discretion to complete such maintenance or repairs.

8. HORIZONTAL PROJECT

Lessor and Lessee agree to the following concerning the performance of Horizontal Project and reimbursement therefor under this Lease:

A. Engagement to Perform Horizontal Project. Lessor hereby engages Lessee to perform or cause to be performed the Horizontal Project, which is necessary to allow for future construction of the Block 2 Project in accordance with vertical ground lease or leases with Affordable Developers. Lessee accepts such engagement by Lessor and agrees to perform the Horizontal Project as an independent contractor and not as an agent of the Successor Agency, in accordance with and subject to the terms and conditions of this Lease.

B. Reimbursement for Performance of Horizontal Project.

1. Budget; Maximum Horizontal Project Reimbursement Amount. The maximum amount reimbursable to Lessee for performing the Horizontal Project is _____ Dollars (\$ _____), as detailed in the attached Budget (Exhibit 3) ("**Budget**") for the Horizontal Project ("**Reimbursement Amount**"). Any request from Lessee to reallocate costs among the line items shown in the Budget, or to change the budget limits for a particular line item therein, must be approved as follows: (i) a requested reallocation of costs in an aggregate amount below ten percent (10%) of the Reimbursement Amount may be made with the express written approval of Successor Agency's Housing Manager; and (ii) a requested reallocation of the costs in an amount of ten percent (10%) or greater of the Reimbursement Amount may be made only with the express written approval of the Successor Agency Executive Director. Any such approved changes will be incorporated as amendments to the Budget.

2. Disbursement of Funds. As and when requested, and in accordance with this Lease and the approved line-item budget contained in the Budget, Successor Agency will make Disbursements to or for the account of Lessee in an aggregate sum not to exceed the Reimbursement Amount.

3. Conditions to Disbursement. Successor Agency's obligation to reimburse Lessee for costs of Horizontal Project is subject to Lessee's satisfaction of the following conditions precedent:

(a) Lessee must have delivered to Successor Agency an Expenditure Request generally in the form attached hereto as Exhibit 4 together with documentation that the Horizontal Project costs covered by the Expenditure Request have been paid by Lessee, or incurred by Lessee on behalf of the Horizontal Project, together with:

- (1) copies of invoices, contracts or other documents covering all amounts requested;
- (2) a line-item breakdown of costs to be covered by the Expenditure Request; and
- (3) copies of checks issued to pay expenses covered in the previous Expenditure Request.

(b) No Event of Default, or event that with notice or the passage of time or both could constitute an Event of Default, may have occurred that remains uncured as of the date of the Expenditure Request.

(c) With respect to any Expenditure Request for construction costs, Lessee must have certified to Successor Agency that all construction-related work Horizontal Project complies with the labor standards set forth in Exhibit 8, if applicable.

4. Approval or Disapproval; Timing. Successor Agency shall use best efforts to either approve or disapprove each such Expenditure Request within ten (10) business days of receipt. If Successor Agency disapproves an Expenditure Request, Successor Agency shall provide written notice thereof to Lessee specifying the reason for such disapproval. Successor Agency shall use best efforts to fund all approved Expenditure Requests within five (5) business days of approval.

5. Retention. In addition to the other conditions to Successor Agency's obligation to reimburse Lessee, Lessee acknowledges that the amount of hard costs included in any Expenditure Request associated with construction, when added to previously approved costs, may not exceed ninety percent (90%) of the approved budgeted costs on a line-item basis. Successor Agency (or other entity approved in writing by Successor Agency) will retain the remaining ten percent (10%) of hard costs associated with construction (the "**Retention**"), and no portion of the Retention may be released without Successor Agency's prior written consent. Lessee

may request that Successor Agency release its Retention only upon satisfaction of each of the following conditions, unless otherwise approved in writing by Successor Agency: (a) completion of the Horizontal Project and an engineer's certificate of completion; (b) timely recordation of a notice of completion; and (c) either expiration of the lien period and the absence of any unreleased mechanics' liens or stop notices or recordation of the lien releases of all contractors, subcontractors and suppliers who provided labor or materials for the Horizontal Project.

After fifty percent (50%) of the Horizontal Project is complete as determined by the Successor Agency-assigned construction management staff, and upon Lessee's written request, Lessee may reduce the amount of Retention withheld to a level of no less than five percent (5%) of the hard costs (resulting in a blended 7.5% aggregate Retention), provided that the following prerequisites have been met: (a) all work required to be performed by all parties for whom Successor Agency agrees to release the Retention (the "**Early Retention Release Contractors**") has been completed in conformance with the terms of the applicable contract documents, the plans and specifications approved by the City and all applicable Laws; (b) the applicable Early Retention Release Contractors have filed unconditional lien waivers satisfactory to the Successor Agency construction specialist; (c) no liens or stop notices have been filed against the Block 2 Leasehold (or any portion thereof) that have not been released or bonded for according to construction mechanic's lien laws of the State of California or an appropriate title endorsement has been issued in a form reasonably satisfactory to Successor Agency; (d) no claims against Block 2 Leasehold (or any portion thereof) are pending; (e) Successor Agency determines that the contingency is in balance and adequate to complete the Horizontal Project; and (f) the Horizontal Project is on schedule.

6. Limitations on Approved Expenditures. Successor Agency may refuse to make a reimbursement: (a) during any period in which an event that, with notice or the passage of time or both, would constitute an Event of Default remains uncured; or (b) for disapproved, unauthorized or improperly documented Expenditure Requests. Successor Agency is not obligated to approve expenditure of the full Reimbursement Amount unless approved Expenditure Requests support Disbursement of the full Reimbursement Amount, and in no event may the aggregate amount of all costs reimbursed to Lessee under this Lease exceed the Reimbursement Amount.

7. Retention of Excess Funds. Successor Agency will retain Excess Funds.

C. Contracting Requirements. In the selection of all contractors and professional consultants for the Horizontal Project, Lessee must comply with all applicable laws and Successor Agency's Contract Compliance requirements set forth in Exhibit 8.

D. Plans and Specifications. Prior to commencement of any Horizontal Project, Lessee shall obtain Successor Agency's approval (for purposes of consistency with the Redevelopment Requirements, this Lease and Commission approvals related to the Block 2 Project) of Lessee's available plans and specifications (as approved by Successor Agency and by all other applicable City agencies in accordance with Sections 8(J) and 8(L), the "**Approved Plans and Specifications**") and the construction contract for the Horizontal Project (the "**Construction Contract**"). The Construction Contract must explicitly identify the Approved Plans and Specifications. The Construction Contract may include funder requirements not otherwise addressed in the Approved Specifications. After completion of the Horizontal Project, Lessee

must retain the Construction Contract and the Approved Plans and Specifications, and obtain and retain any applicable "as-built" plans for the Horizontal Project, all of which Lessee must make available to Successor Agency upon request at any time during the Term.

E. Compliance with Construction Requirements. Successor Agency's approval of the Plans and Specifications is not directed to engineering or structural matters or compliance with local building codes and regulations, the Americans with Disabilities Act, or any other applicable Law relating to construction standards or requirements. Nothing in this Lease will limit in any way Lessee's obligation to obtain any required approvals from City officials, departments, boards or commissions having jurisdiction over the Horizontal Project. By entering into this Lease, Successor Agency is in no way modifying or limiting Lessee's obligation to cause the Block 2 Leasehold to be used and occupied in accordance with all applicable Laws.

F. Issuance of Permits for Horizontal Project.

1. Lessee will have the sole responsibility for obtaining all necessary permits for the Horizontal Project, and will make application for such permits directly to the responsible governmental entity to the extent required. Successor Agency understands and agrees that Lessee may use the Fast Track method of permit approval for the Horizontal Project. Lessee shall report permit(s) status every thirty (30) days to Successor Agency. Failure to timely file and to diligently pursue issuance of permits for the Horizontal Project shall be a breach of this Lease.

2. Lessee is advised that the Central Permit Bureau will forward all building permits to Successor Agency for approval of compliance with Redevelopment Requirements. Successor Agency's approval under this Section 8(F)(2) is limited to its determination of compliance with Redevelopment Requirements and does not include matters addressed in Section 8(E), above. Successor Agency evidences such compliance by signing the permit and returning the permit to the Central Permit Bureau for issuance directly to the Lessee. Approval of any intermediate permit (if any) is not approval of compliance with all Redevelopment Requirements necessary for a full and final building permit for the Horizontal Project.

G. Change Orders. Lessee may not approve or permit any change orders to the Approved Plans and Specifications without Successor Agency's prior written consent. Lessee acknowledges that Successor Agency's approval of any change order will not constitute an agreement to amend the Budget or to provide additional funds for the Horizontal Project, unless Successor Agency agrees in its sole discretion to amend the Budget or provide additional funds for that purpose. Successor Agency shall endeavor to provide written approval or disapproval of each change order and any equivalent amendment to the Budget within ten (10) calendar days of receipt for request therefor.

H. Insurance; Bonds. Before starting any Horizontal Project, Lessee must deliver to Successor Agency insurance as required by Section 16 below.

I. Commencement and Completion of Horizontal Project.

1. Commencement and Completion. Lessee must commence and complete the Horizontal Project in substantial accordance with the Approved Plans and Specifications and

in accordance with the Schedule of Performance. Completion of the Horizontal Project shall be documented by a closure report prepared by [engineering firm] reviewed and accepted by the Successor Agency, the date of such acceptance being the "**Completion Date.**"

2. Notice to Proceed. Horizontal Project may not commence until Lessee has issued a written notice to proceed with Successor Agency's approval. Prior to issuance of such notice, Lessee must have delivered to Successor Agency:

- (a) Lessee's Charter Documents;
- (b) Copies of the Approved Plans and Specifications;
- (c) Evidence of insurance (including required endorsements), acceptable to Successor Agency, and, if requested by Successor Agency, copies of policies for all insurance required under Exhibit 6 of this Lease; and
- (d) Any other documents reasonably requested by Successor Agency.

3. Notice of Completion. Promptly upon completion of the construction of the Horizontal Project in accordance with the provisions of this Lease, Lessee will file a Notice of Completion, record said notice in the Official Records and provide Successor Agency with a copy of the recorded notice.

J. Horizontal Project Standards; Required Approvals. All Horizontal Project work must be performed in a first-class manner, substantially in accordance with the Approved Plans and Specifications and in accordance with this Lease and all applicable Laws, including all laws relating to accessibility for persons with disabilities and all applicable mitigation measures identified in the Mitigation Monitoring and Reporting Program pursuant to Successor Agency supervision. Lessee understands and agrees that Lessee's use of the Block 2 Leasehold and performance of the Horizontal Project permitted under this Lease will require authorizations, approvals, or permits from governmental regulatory agencies with jurisdiction over the Block 2 Leasehold, including, without limitation, City agencies. Lessee covenants that it has obtained or will obtain in a timely manner and comply with all federal, state and local governmental approvals required by Law to be obtained for performance and completion of the Horizontal Project. Subject to Section 15, this Section does not prohibit Lessee from contesting any interpretation or application of Laws in good faith and by appropriate proceedings. Lessee will bear all costs associated with applying for and obtaining any necessary or appropriate regulatory approval as part of the budget contained in the Budget and will be solely responsible for satisfying any and all conditions imposed by regulatory agencies as part of a regulatory approval; provided, however, any such condition that could affect use or occupancy of the Block 2 Project or Successor Agency's interest therein must first be approved by Successor Agency in its sole discretion. Any fines or penalties levied as a result of Lessee's failure to comply with the terms and conditions of any regulatory approval will be immediately paid and discharged by Lessee, and Successor Agency will have no liability, monetary or otherwise, for any such fines or penalties. Lessee will indemnify, defend, and hold harmless Successor Agency and the other Indemnified Parties hereunder against all Claims (as such terms are defined in Section 15 below) arising in connection with Lessee's failure to obtain or failure by Lessee, its agents, or invitees to comply with the terms

and conditions of any regulatory approval except to the extent such Claims are caused by gross negligence or willful misconduct of the party seeking indemnification.

K. No Improvements. The parties acknowledge that the Horizontal Project will not result in the creation of any improvements on the Block 2 Leasehold.

L. Compliance with Laws. Lessee must comply, and where applicable, require its contractors to comply, with all applicable Laws governing the use of the Reimbursement Amount for the Horizontal Project, including the requirements of the CRL, and those Laws set forth in Exhibit 8. Lessee acknowledges that its failure to comply with any of these requirements will constitute an Event of Default under this Agreement. Subject to Section 15, this Section does not prohibit Lessee from contesting any interpretation or application of Laws in good faith and by appropriate proceedings.

M. General Requirements and Rights of Successor Agency.

1. Licensed Professionals. If required by law, the plans and specifications prepared for the Horizontal Project must be prepared by a person registered in and by the State of California to prepare such plans and specifications (or portions thereof). Any and all improvements shall be owned, for federal income tax purposes, by Lessee, subject to the rights of Successor Agency upon expiration or early termination of the Lease.

2. Times for Construction. Lessee agrees for itself, and its successors and assigns to or of the Block 2 Leasehold or any part thereof, that Lessee and such successors and assigns will promptly begin and diligently prosecute to completion the Horizontal Project upon the Block 2 Leasehold, and that the Horizontal Project will be completed no later than the dates specified in the Schedule of Performance.

3. Progress Reports. Upon issuance of the Notice to Proceed and continuing until the Completion Date, Lessee will make a report in writing to Successor Agency every month, in such detail as may reasonably be required by Successor Agency, as to the actual progress of the Lessee with respect to the Horizontal Project. During such period, the work of the Lessee shall be subject to inspection by representatives of Successor Agency, at reasonable times and upon reasonable advance notice.

4. Access to Block 2 Leasehold. Lessee will permit Successor Agency to access the Block 2 Leasehold whenever and to the extent necessary to carry out the purposes of the provisions of this Lease or other governmental obligations of the Successor Agency, at reasonable times and upon reasonable advance notice, and on an emergency basis without notice whenever Successor Agency believes that emergency access is required.

5. Horizontal Project Monitoring, Reports, Books and Records.

(a) Generally.

(1) Lessee understands and agrees that it will be monitored by Successor Agency from time to time to ensure compliance with all

terms and conditions in this Agreement and all Laws. Lessee must cooperate with the monitoring by Successor Agency and ensure full access to the Leasehold Parcel and all information related to the Horizontal Project as reasonably required by Successor Agency.

(2) Lessee must keep and maintain books, records and other documents relating to the receipt and use of all Funds. Lessee must maintain records of all income, expenditures, assets, liabilities, agreements, operations, and condition of the Horizontal Project. All financial reports must be prepared and maintained in accordance with GAAP as in effect at the time of performance.

(b) Horizontal Project Completion Report. Within the specific time periods set forth below after the completion of the Horizontal Project, as applicable, Lessee must provide to Successor Agency the reports listed below certified by Lessee to be complete and accurate. After the required submission of the reports listed below, Lessee shall provide Successor Agency with information or documents reasonably requested by Successor Agency to assist its review and analysis of the submitted reports. To the extent not otherwise prohibited by applicable Law, Lessee shall provide the following reports in accordance with specified timelines:

(1) A report on expenditures to third-party firms, including but not limited to consultants, contractors, and subcontractors, whether such firms are small business enterprises, the type of work and the dollar value of such work, provided within thirty (30) days after the Completion Date; and

(2) A project completion audit performed by an independent certified public accountant identifying the uses of all the funds reimbursed to Lessee, to be provided within one hundred eighty (180) days after the Completion Date.

(c) Response to Inquiries. At the request of Successor Agency, its agents, employees or attorneys, Lessee must respond promptly and specifically to questions relating to the income, expenditures, assets, liabilities, agreements, operations and condition of the Horizontal Project, and any other requested information with respect to Lessee or the Horizontal Project.

(d) Delivery of Records. At the request of Successor Agency, made through its agents, employees, officers or attorneys, Lessee must provide Successor Agency within a reasonable period of time of no less than sixty (60) days from request therefor with copies of any other records related to the services rendered on the Leasehold Parcel, certified in writing by Lessee to be complete and accurate.

(e) Access to Other Books and Records. In addition to Lessee's obligations elsewhere in this Lease or in any other Successor Agency Document,

Lessee agrees that duly authorized representatives of Successor Agency (which shall include but not be limited to MOHCD staff) will have access to and the right to inspect, copy, audit and examine all books, records and other documents Lessee is required to keep at all reasonable times, following reasonable notice, for the retention period required under Section 8(M)(5)(f).

(f) Records Retention. Lessee must retain all records required for the periods required under applicable Laws.

N. No Horizontal Project Fees. Except as otherwise expressly provided herein, Lessee shall not be entitled to payment of any fees in consideration of its performance of the services arising under this Lease.

9. ASSIGNMENT, SUBLEASE, OR OTHER CONVEYANCE

A. Assignment, Sublease, or Other Conveyance by Lessee. Lessee may not sell, assign, convey, sublease, or transfer in any other mode or form all or any part of its interest in the Block 2 Leasehold, this Lease or any improvements hereunder, except as provided in this Lease.

B. Assignment, Sublease, or Other Conveyance by Successor Agency. The parties acknowledge that any sale, assignment, transfer, or conveyance or encumbrance of all or any part of Successor Agency's interest in the Block 2 Leasehold, improvements thereon, or this Lease, is subject to this Lease. Successor Agency will require that any purchaser, assignee, or transferee expressly assume all of the obligations of Successor Agency under this Lease by a written instrument recordable in the Official Records. This Lease will not be affected by any such sale, and Lessee will attorn to any such purchaser or assignee.

10. TAXES

Subject to any exemption available therefor, Lessee agrees to pay, or cause to be paid, before delinquency to the proper authority, any and all valid taxes, assessments, and similar charges levied or assessed on the possession, use or occupancy, as distinguished from the ownership, of the Block 2 Leasehold or improvements thereon. Lessee will not permit any such taxes, charges, or other assessments to become a defaulted lien on the Block 2 Leasehold (or any portion thereof); provided, however, that in the event any such tax, assessment, or similar charge is payable in installments, Lessee may make, or cause to be made, payment in installments; and, provided further, that Lessee may contest the legal validity or the amount of any tax, assessment, or similar charge, through such proceedings as Lessee considers necessary or appropriate provided that such proceedings are initiated on or before the date the disputed tax, assessment or similar charge would otherwise be due and payable, and Lessee may defer the payment thereof so long as the validity or amount thereof is contested by Lessee in good faith and without expense to Successor Agency. If Lessee contests a tax, assessment, or other similar charge, then Lessee will protect, defend, and indemnify Successor Agency against all Claims resulting therefrom, and if Lessee is unsuccessful in any such contest, Lessee will immediately pay, discharge, or cause to be paid or discharged, the tax, assessment, or other similar charge. Successor Agency will furnish such information as Lessee may reasonably request in connection with any such contest, provided that such information is in Successor Agency's possession or control or is otherwise available to

the public. Successor Agency hereby consents to and will reasonably cooperate and assist with Lessee applying for and obtaining any applicable exemptions from taxes or assessments levied on the Block 2 Leasehold (or any portion thereof), improvements thereon or on Lessee's interest therein. Lessee will have no obligation under this Section before the Effective Date, including but not limited to any taxes, assessments, or other charges levied against the Block 2 Leasehold (or any portion thereof) that are incurred before the Effective Date, nor shall Lessee have any obligation under this Section to pay any taxes, assessments, and similar charges levied or assessed on the Block 2 Leasehold related to the ownership of the Block 2 Leasehold.

11. UTILITIES

From and after the Effective Date, Lessee will, to the extent needed, procure water and sewer service from the City and electricity, telephone, natural gas, if applicable, and any other utility service from the City or utility companies providing such services, and will pay all connection and use charges imposed in connection with such services. From and after the Effective Date, as between Successor Agency and Lessee, Lessee will be responsible for the installation and maintenance of all facilities required in connection with such utility services to the extent not installed or maintained by the City or the utility providing such service.

12. MAINTENANCE AND SECURITY

A. Maintenance. At all times during the Term, Lessee shall maintain the Block 2 Leasehold in good condition and repair to the reasonable satisfaction of Successor Agency. Successor Agency will not be obligated to make any repairs, replacements, or renewals of any kind, nature, or description whatsoever to the Block 2 Leasehold. Lessee hereby waives all rights to make repairs at Successor Agency's expense under Sections 1932(1), 1941 and 1942 of the California Civil Code or under any similar Law now or hereafter in effect.

B. Security. At all times during the Term, Lessee shall secure the Block 2 Leasehold to ensure the safety of the general public and to prevent access to and of the Block 2 Leasehold by the general public and any other non-invitee of the Lessee (except as may be provided under this Lease), all to the reasonable satisfaction of the Successor Agency. As part of this obligation, Lessee shall install and maintain construction fencing enclosing all portions of the Block 2 Leasehold subject to the Lease, shall monitor access gates through said fencing to prevent unauthorized access, and shall monitor the Leasehold Parcel as necessary during non-work hours to ensure the security of the Block 2 Leasehold.

C. Successor Agency's Right to Self Help. If Lessee fails to maintain or secure the Block 2 Leasehold as required by this Lease, then subject to applicable notice and cure periods, Successor Agency may repair the damage at Lessee's sole cost and expense and Lessee will immediately reimburse Successor Agency for all costs of the maintenance or repair.

13. LIENS

Lessee will use its best efforts to keep the Block 2 Leasehold free from any liens arising out of the Horizontal Project. If Lessee does not cause a lien to be released of record or bonded around within thirty (30) days following written notice from Successor Agency of the imposition

of the lien, Successor Agency will have, in addition to all other remedies provided in this Lease and by Law, the right (but not the obligation) to cause the lien to be released by any means as it deems proper, including payment of the claim giving rise to such lien. All sums paid by Successor Agency for such purpose, and all reasonable expenses incurred by it in connection therewith, will be payable to Successor Agency by Lessee as additional Rent, and paid promptly on demand. Notwithstanding the foregoing, Lessee will have the right, upon posting of an adequate bond or other security, to contest any lien, and Successor Agency will not seek to satisfy or discharge the lien unless Lessee has failed so to do within ten (10) days after the final determination of the validity of the lien. If Lessee contests a lien, then Lessee will protect, defend, and indemnify Successor Agency against all Claims resulting therefrom. The provisions of this Section will not apply to any liens arising before the Effective Date, or any liens that are not the result of Lessee's contractors, consultants, or activities.

14. GENERAL REMEDIES

The provisions of this Section 14 govern the parties' remedies for breach of this Lease.

A. Breach by Successor Agency. If Lessee believes that Successor Agency has materially breached this Lease, Lessee must first notify Successor Agency in writing of the purported breach, giving Successor Agency one hundred twenty (120) days from receipt of such notice to cure the breach. If Successor Agency does not cure the breach within the 120-day period, or if the breach is not reasonably susceptible to cure within that 120-day period, begin to cure within one hundred twenty (120) days and diligently prosecute then cure to completion, then Lessee will have all of its rights at law or in equity by taking any or all of the following remedies: (i) terminating in writing this entire Lease; (ii) prosecuting an action for damages (provided that under no circumstances will Successor Agency be liable to Lessee for any special or consequential damages arising out of actions or failure to act by Successor Agency); (iii) seeking specific performance of this Lease; or (iv) any other remedy available at law or equity.

B. Breach by Lessee.

1. Default by Lessee. Subject to the notice and cure rights under Section 14(B)(2) below, the following events each constitute a basis for Successor Agency to take action against Lessee:

- (a) Lessee fails to comply with the Permitted Uses;
- (b) Lessee fails to commence and complete Horizontal Project in accordance with this Lease;
- (c) Lessee fails to perform any maintenance or security obligation concerning the Block 2 Leasehold;
- (d) Lessee voluntarily or involuntarily assigns, transfers, or attempts to transfer or assign this Lease or any rights in this Lease, or in the Horizontal Project, except as permitted by this Lease or otherwise approved by Successor Agency;

(e) Lessee (or its successor in interest) fails to pay taxes or assessments in accordance with Section 10, or places or allows to be placed a lien in conflict with Section 13, and the taxes or assessments have not been paid, or the encumbrance or lien removed, discharged or bonded around within the time period provided in Section 13; provided, however, that Lessee has the right to contest any tax or assessment or encumbrance or lien as provided in Section 10 or Section 13;

(f) Lessee is adjudicated bankrupt or insolvent or makes a transfer to defraud its creditors, or makes an assignment for the benefit of creditors, or brings or has brought against Lessee any action or proceeding of any kind under any provision of the Federal Bankruptcy Act or under any other insolvency, bankruptcy, or reorganization act and, in the event such proceedings are involuntary, Lessee is not dismissed from the proceedings within sixty (60) days thereafter; or, a receiver is appointed for a substantial part of the assets of Lessee and such receiver is not discharged within sixty (60) days;

(g) Lessee (or Mercy or CCDC) fails to perform or observe any term, covenant or agreement contained in any Successor Agency Document, and the failure continues for thirty (30) days after Lessee's receipt of written notice from Successor Agency to cure the default (with the exception of breach of Section B.1(c), above, which shall be subject to a cure period of ten (10) days), or, if the default cannot be cured within a 30-day period, within the period of time deemed necessary by Successor Agency, provided that Lessee commences to cure the default within the 30-day period and diligently pursues the cure to completion;

(h) Any representation or warranty made by Lessee in this Lease proves to have been incorrect in any material respect when made; or

(i) Lessee breaches any other material provision of this Lease.

2. Notification and Successor Agency Remedies. Upon the happening of any of the events described in Subsection B.1 above, and before exercising any remedies, Successor Agency will notify Lessee in writing of Lessee's purported breach, failure, or act in accordance with the notice provisions of Section 32, giving Lessee sixty (60) days from the giving of the notice to cure such breach, failure, or act, with the exception of breach of Section 14(B)(1)(c), above, which shall be subject to a cure period of ten (10) days. If Lessee does not cure or, if the breach, failure, or act is not reasonably susceptible to cure within the applicable cure period, begin to cure within the applicable cure period and thereafter diligently prosecute such cure to completion, then Successor Agency will have all of its rights at law or in equity, including, but not limited to:

(a) Terminating Lessee's right to possession of the Block 2 Leasehold (or a Leasehold Parcel, as applicable) at any time. No act by Successor Agency other than giving notice of termination to Lessee will terminate this Lease. Acts of maintenance, efforts to relet the Leasehold Parcel, or the appointment of a receiver on Successor Agency's initiative to protect Successor Agency's interest under this Lease will not constitute a termination of Lessee's right to possession. If Successor Agency elects to terminate this Lease, then Successor Agency has the rights and

remedies provided by California Civil Code Section 1951.2 (damages on termination for breach), including the right to terminate Lessee's right to possession of the Block 2 Leasehold (or a Leasehold Parcel, as applicable) and to recover the worth at the time of award of the amount by which the unpaid Rent and any additional charges for the balance of the Term after the time of award exceeds the amount of rental loss for the same period that Lessee proves could be reasonably avoided, as computed pursuant to subsection (b) of such Section 1951.2. Successor Agency's efforts to mitigate the damages caused by Lessee's breach of this Lease will not waive Successor Agency's rights to recover damages upon termination;

(b) The right to have a receiver appointed for Lessee upon application by Successor Agency to take possession of the Block 2 Leasehold (or a Leasehold Parcel, as applicable) and to exercise all other rights and remedies granted to Successor Agency under this Lease; or

(c) Seeking specific performance of this Lease.

C. Force Majeure. For the purposes of any of the provisions of this Lease, and notwithstanding anything to the contrary, neither Successor Agency nor Lessee, as the case may be, will be considered in breach or default of its obligations, and there will not be deemed a failure to satisfy any conditions with respect to the beginning and completion of construction of the Horizontal Project, or progress in respect thereto, in the event of enforced delay in the performance of such obligations or satisfaction of such conditions, due to unforeseeable causes beyond its control and without its fault or negligence, including, but not limited to, acts of God, acts of the public enemy, terrorism, fires, floods, epidemics, pandemics, quarantine restrictions, strikes, freight embargoes, general scarcity of materials, unusually severe weather, or delays of subcontractors due to unusual scarcity of materials or unusually severe weather; it being the purposes and intent of this provision that the time or times for the satisfaction of conditions to this Lease including those with respect to construction of the Horizontal Project, will be extended for the period of the enforced delay; provided, however, that the party seeking the benefit of the provisions of this paragraph must have notified the other party of the delay and evidence of its causes in writing within thirty (30) days after the beginning of any such enforced delay and requested an extension for the reasonably estimated period of the enforced delay.

D. Successor Agency's Right to Cure Lessee's Default. If Lessee defaults in the performance of any of its obligations under this Lease, Successor Agency may at any time thereafter after notice and expiration of the applicable cure period (except in the event of an emergency as determined by Successor Agency, in which case the Successor Agency may act when it determines necessary), remedy the default for Lessee's account and at Lessee's expense. Upon demand, Lessee will pay to Successor Agency all sums expended by Successor Agency, or other costs, damages, expenses, or liabilities incurred by Successor Agency, including reasonable attorneys' fees, in remedying or attempting to remedy the default. Lessee's obligations under this Subsection will survive the termination of this Lease. Nothing in this Subsection implies any duty of Successor Agency to do any act that Lessee is obligated to perform under any provision of this Lease, and Successor Agency's cure or attempted cure of Lessee's default will not constitute a waiver of Lessee's default or any rights or remedies of Successor Agency on account of the default.

E. Waiver of Redemption. Lessee hereby waives, for itself and all persons claiming by and under Lessee, redemption or relief from forfeiture under California Code of Civil Procedure Sections 1174 and 1179, or under any other pertinent present or future Law, in the event Lessee is evicted or Successor Agency takes possession of the Block 2 Leasehold (or a Leasehold Parcel) by reason of any default of Lessee hereunder.

F. Remedies Not Exclusive. The remedies set forth in Section (14)(B) are not exclusive; they are cumulative and in addition to any and all other rights or remedies of Successor Agency now or later allowed by Law or in equity. Lessee's obligations under this Section 14 will survive any termination of this Lease.

G. Clean-up. If this Lease is terminated as to the Block 2 Leasehold (or an individual Leasehold Parcel after subdivision) prior to the date Successor Agency enters into a vertical ground lease for the Vertical Project the applicable Leasehold Parcel, Lessee shall, at Successor Agency's election, clean up and remove all debris from the applicable Leasehold Parcel and adjacent and underlying property and leave the applicable Leasehold Parcel in a clean and safe condition and in compliance with all Laws upon surrender.

H. Waiver. Lessee and Successor Agency intend that this Lease fully govern all of their rights and obligations in the event of any damage or destruction of the Leasehold Parcel. Accordingly, Successor Agency and Lessee each hereby waive the provisions of Sections, 1933(4) and 1942 of the California Civil Code, as such sections may from time to time be amended, replaced, or restated.

15. DAMAGE TO PERSON OR PROPERTY; HAZARDOUS SUBSTANCES; INDEMNIFICATION

A. Damage to Person or Property—General Indemnification. Successor Agency will not in any event whatsoever be liable for any injury or damage during the Term of this Lease to any person happening on or about the Leasehold Parcel, for any injury or damage during the Term of this Lease to the Leasehold Parcel, or to any property of Lessee, or to any property of any other person, entity, or association on or about the Leasehold Parcel, unless arising from the gross negligence or willful misconduct of an Indemnified Party (as defined below). Lessee will defend, hold harmless, and indemnify Successor Agency and the City and County of San Francisco, including but not limited to their boards, commissions, commissioners, departments, agencies, and other subdivisions, officers, agents, and employees (each, an “**Indemnified Party**” and collectively the “**Indemnified Parties**”), of and from all claims, loss, damage, injury, actions, causes of action, and liability of every kind, nature and description (collectively, “**Claims**”) incurred in connection with or directly or indirectly arising after the Effective Date (a) from Lessee's interest in the Leasehold Parcel, this Lease, Lessee's tenancy, its or their use of the Leasehold Parcel including adjoining sidewalks and streets, and any of its or their operations or activities thereon or connected thereto and (b) from or as a result of Lessee's noncompliance with any Federal, state or local laws, regulations or guidelines; all regardless of the active or passive negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on, the Indemnified Parties, except to the extent that the indemnity is void or otherwise unenforceable under applicable Law in effect on or validly retroactive to the date of this Lease and further excepting only such Claims that are caused exclusively by the willful misconduct or gross

negligence of the Indemnified Parties. The foregoing indemnity will include, without limitation, reasonable fees of attorneys, consultants, and experts and related costs and Successor Agency's reasonable costs of investigating any Claim. Lessee specifically acknowledges and agrees that it has an immediate and independent obligation to defend Successor Agency from any claim that actually or potentially falls within any indemnity provision set forth in this Lease even if such allegation is or may be groundless, fraudulent, or false, which obligation arises at the time such claim is tendered to Lessee by an Indemnified Party and continues at all times thereafter. Notwithstanding the foregoing, this Section 15 shall not be deemed or construed to and shall not impose any obligation on Lessee to indemnify and save harmless the Indemnified Parties from any Claims arising from or in any way related to or connected with any willful misconduct or gross negligence by an Indemnified Party. Lessee's obligations under this Section will survive the termination or expiration of this Lease.

B. Hazardous Substances—Indemnification.

1. Lessee will indemnify, defend, and hold the Indemnified Parties harmless from and against any and all Claims of any nature whatsoever (including, without limitation, the reasonable fees and disbursements of counsel and engineering consultants) incurred by or asserted against any Indemnified Party in connection with, arising out of, in response to, or in any manner relating to violation of any Environmental Law, or any Release, threatened Release, and any condition arising after the Effective Date of pollution, contamination or Hazardous Substance-related nuisance on, under or from the Leasehold Parcel caused by Lessee, its employees, agents, affiliates, or contractors; provided, however, that this Section 15(B)(1) shall not be deemed or construed to, and shall not impose any obligation on Lessee to indemnify and save harmless the Indemnified Parties from any Claim arising from or in any way related to or connected with any willful misconduct or gross negligence by any Indemnified Party occurring after the Effective Date. No Indemnified Party shall be entitled to indemnification under this Section for, and Lessee will have no liability for any Claims relating to a violation of, any Environmental Law, Release, or threatened Release, or arising out of any condition or action of pollution, contamination or Hazardous Substance-related nuisance on, under or from the Leasehold Parcel occurring prior to the Effective Date except for those contributed to or exacerbated by Lessee.

2. For purposes of this Section 15(B), the following definitions apply:

(a) "**Hazardous Substance**" has the meaning set forth in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended as of the date of this Lease, 42 U.S.C. 9601(14), and in addition includes, without limitation, petroleum (including crude oil or any fraction thereof) and petroleum products, asbestos, asbestos-containing materials, polychlorinated biphenyls ("**PCBs**"), PCB-containing materials, all hazardous substances identified in the California Health & Safety Code 25316 and 25281(d), all chemicals listed under the California Health & Safety Code 25249.8, and any substance deemed a hazardous substance, hazardous material, hazardous waste, or contaminant under Environmental Law. The foregoing definition does not include materials or substances that occur naturally on the Leasehold Parcel except if and to the extent they are regulated by Laws. The foregoing definition of Hazardous Substances does not include commercially reasonable amounts of hazardous materials or substances

used in the ordinary course of construction and operation of a residential development, provided they are used and stored in accordance with all applicable Laws.

(b) **"Environmental Law"** means all Laws governing hazardous waste, wastewater discharges, drinking water, air emissions, Hazardous Substance releases or reporting requirements, Hazardous Substance use or storage, and employee or community right-to-know requirements related to the work being performed under this Lease.

(c) **"Release"** means any spillage, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, including the abandonment or discharging of barrels, containers, and other closed receptacles containing any Hazardous Substance.

C. Exculpation and Waiver. Lessee, as a material part of the consideration to be rendered to Successor Agency, hereby waives any and all Claims against the Indemnified Parties related to this Lease including their rights or obligations as Successor Agency under this Lease, including without limitation all Claims arising from the joint or concurrent, active or passive, negligence of the Indemnified Parties, but excluding any Claims caused solely by the Indemnified Parties' willful misconduct (including breach of this Lease) or gross negligence. The Indemnified Parties will not be responsible for or liable to Lessee, and Lessee hereby assumes the risk of, and waives and releases the Indemnified Parties from all Claims against the Indemnified Parties related to this Lease including their rights or obligations as Successor Agency under this Lease for, any injury, loss, or damage to any person or property in or about the Leasehold Parcel by or from any cause whatsoever occurring on or after the Effective Date including, without limitation, (a) any act or omission of persons occupying adjoining Leasehold Parcel or any part of the Leasehold Parcel adjacent to or connected with the Leasehold Parcel, (b) theft, (c) explosion, fire, steam, oil, electricity, water, gas or rain, pollution or contamination, (d) stopped, leaking, or defective building systems, (d) construction or Leasehold Parcel defects, (f) damages to goods, wares, goodwill, merchandise, equipment, or business opportunities, (g) Claims by persons in, upon or about the Leasehold Parcel or any other Successor Agency property for any cause arising at any time, (h) alleged facts or circumstances of the process or negotiations leading to this Lease before the Effective Date (other than with respect to any Environmental Law or Release and other than those facts withheld by misrepresentation or fraud); and (i) any other acts, omissions, or causes.

Lessee understands and expressly accepts and assumes the risk that any facts concerning the Claims released in this Lease might be found later to be other than or different from the facts now believed to be true, and agrees that the releases in this Lease will remain effective. Therefore, with respect to the Claims released in this Lease, Lessee waives any rights or benefits provided by Section 1542 of the Civil Code, which reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Lessee initials ____

Lessee specifically acknowledges and confirms the validity of the release made above and the fact that Lessee was represented by counsel who explained the consequences of the release at the time this Lease was made, or that Lessee had the opportunity to consult with counsel, but declined to do so.

D. Insurance. The indemnification requirements under this Lease, or any other agreement between Successor Agency and Lessee, will in no way be limited by any insurance requirements under any such agreements.

E. Survival. The provisions of Section 15 will survive the expiration or earlier termination of this Lease.

16. INSURANCE

Subject to approval by Successor Agency's Risk Manager of the insurers and policy forms, Lessee must obtain and maintain, or cause to be maintained, the insurance and bonds as set forth in Exhibit 6 throughout the Term of this Lease at no expense to Successor Agency (but the costs of which may be reimbursed in accordance with Section 8(B) hereof).

17. COMPLIANCE WITH LEASEHOLD PARCELS-RELATED AND LEGAL REQUIREMENTS

A. Compliance with Legal Requirements. From and after the Effective Date, Lessee will at its cost and expense, promptly comply with all applicable Laws now in force or that may later be in force, including, without limitation, the requirements of the fire department or other similar body now or later constituted and with any direction or occupancy certificate issued under any Law as any of them may relate to or affect the condition, use, or occupancy of the Leasehold Parcel. If Lessee contests any of the foregoing, Lessee will not be obligated to comply therewith to the extent that the application of the contested Law is stayed by the operation of law or administrative or judicial order and Lessee indemnifies, defends, and holds harmless the Indemnified Parties against all Claims resulting from noncompliance.

B. Regulatory Approvals. Lessee understands and agrees that Successor Agency is entering into this Lease in its capacity as a landowner with a proprietary interest in the Leasehold Parcel and not as a regulatory agency with certain police powers. Lessee understands and agrees that neither entry by Successor Agency into this Lease nor any approvals given by Successor Agency under this Lease will be deemed to imply that Lessee has thereby obtained any required approvals from City departments, boards, or commissions that have jurisdiction over the Leasehold Parcel. By entering into this Lease, Successor Agency is in no way modifying or limiting the obligations of Lessee to perform the Horizontal Project in accordance with all Laws and as provided in this Lease.

Lessee understands that the Horizontal Project will require approval, authorization, or permit by governmental agencies with jurisdiction. Lessee must use good faith efforts to obtain and will be solely responsible for obtaining any approvals required for the Horizontal Project in

the manner set forth in this Section. Throughout the permit process for any regulatory approvals, Lessee will consult and coordinate with Successor Agency in Lessee's efforts to obtain permits. Successor Agency will cooperate reasonably with Lessee in its efforts to obtain permits; provided, however, Lessee may not agree to the imposition of conditions or restrictions in connection with its efforts to obtain a permit from any other regulatory agency if Successor Agency is required to be a co-permittee under the permit or the conditions or restrictions could create any financial or other material obligations on the part of Successor Agency whether on or off of the Leasehold Parcel, unless in each instance Successor Agency has approved the conditions previously in writing and in Successor Agency's reasonable discretion. No approval by Successor Agency will limit Lessee's responsibility to comply with the conditions under this Section. Lessee must pay all costs associated with applying for and obtaining any necessary regulatory approval, which may be reimbursed in accordance with Section 8(B) hereof, as well as any fines, penalties or corrective actions imposed as a result of Lessee's failure to comply with the terms and conditions of any regulatory approval, which are not reimbursable without further specific Successor Agency action authorizing such reimbursement.

With Successor Agency's prior written consent, Lessee will have the right to appeal or contest any condition in any manner permitted by Law imposed upon any regulatory approval. In addition to any other indemnification provisions of this Lease, Lessee must indemnify, defend, and hold harmless Successor Agency and its commissioners, officers, agents or employees from and against any and all Claims that may arise in connection with Lessee's failure to obtain or comply with the terms and conditions of any regulatory approval or with the appeal or contest of any conditions of any regulatory approval, except to the extent damage arises out of the gross negligence or willful misconduct of Successor Agency or its agents.

18. ENTRY

A. Successor Agency reserves for itself and its authorized representatives (including MOHCD) the right, at its cost, to enter the Leasehold Parcel at all reasonable times during normal business hours upon not less than forty-eight (48) hours' written notice to Lessee (except in the event of an emergency), for any of the following purposes:

- a) to determine whether the Leasehold Parcel is in good condition and to inspect the Leasehold Parcel (including soil borings or other Hazardous Substance investigations) as reasonably determined by Successor Agency to be warranted;
- b) to determine whether Lessee is in compliance with its Lease obligations and to cure or attempt to cure any Lessee default;
- c) to serve, post, or keep posted any notices required or allowed under any of the provisions of this Lease;
- d) to do any remediation, maintenance or repairs to the Leasehold Parcel that Successor Agency has the right or the obligation, if any, to perform hereunder; and

- e) to show the Leasehold Parcel to any prospective purchasers, brokers, lenders, or public officials.

In the event of an emergency, as reasonably determined by Successor Agency, at its sole option and without notice, Successor Agency may enter the Leasehold Parcel and alter results of the Horizontal Project or Lessee's (or Lessee's invitees') personal property on or about the Leasehold Parcel as reasonably necessary to make the Leasehold Parcel safe, given the nature of the emergency. Successor Agency will have the right to use any and all means Successor Agency considers appropriate to gain access to any portion of the Leasehold Parcel in an emergency, in which case, Successor Agency will not be responsible for any damage or injury to any property, or for the replacement of any property, and no emergency entry may be deemed to be a forcible or unlawful entry onto or a detainer of the Leasehold Parcel, or an eviction, actual or constructive, of Lessee from the Leasehold Parcel or any portion thereof.

B. Successor Agency will not be liable in any manner for any inconvenience, disturbance, loss of business, nuisance, or other damage arising out of Successor Agency's entry onto the Leasehold Parcel, except as provided in Section 18(A) above or to the extent damage arises out of the gross negligence or willful misconduct of Successor Agency or its agents. Successor Agency will be responsible for any losses resulting from its gross negligence or willful misconduct and will repair any resulting damage promptly.

C. Successor Agency will use its reasonable good faith efforts to conduct any activities on the Leasehold Parcel allowed under this Section in a manner that, to the extent practicable, will minimize any disruption to Lessee's use of the Leasehold Parcel as permitted by this Lease.

19. CONDEMNATION AND TAKINGS

A. Parties' Rights and Obligations to be Governed by Agreement. If, during the term of this Lease, there is any condemnation of all or any part of the Leasehold Parcel or any interest in the Leasehold Estate is taken by condemnation, the rights and obligations of the parties will be determined under this Section 19. Accordingly, Lessee waives any right to terminate this Lease upon the occurrence of a partial condemnation under Sections 1265.120 and 1265.130 of the California Code of Civil Procedure, as those sections may from time to time be amended, replaced, or restated.

B. Notice. In case of the commencement of any proceedings or negotiations that might result in a condemnation of all or any portion of the Leasehold Parcel during the Term, the party learning of such proceedings will promptly give written notice of the proceedings or negotiations to the other party. The notice will describe with as much specificity as is reasonable, the nature and extent of such condemnation or the nature of such proceedings or negotiations and of the condemnation that might result, as the case may be.

C. Total Taking. If the Leasehold Parcel (or a Leasehold Parcel after subdivision) is totally taken by condemnation, this Lease will terminate on the date the condemnor has the right to possession of the applicable Leasehold Parcel.

D. Partial Taking. If any portion of the Leasehold Parcel is taken by condemnation, this Lease will remain in effect, except that Lessee may elect to terminate this Lease if, in Lessee's reasonable judgment, the remaining portion of the Leasehold Parcel is rendered unsuitable for planned development. If Lessee elects to terminate this Lease, Lessee must exercise its right to terminate under this paragraph by giving notice to Successor Agency within thirty (30) days after Successor Agency notifies Lessee of the nature and the extent of the taking. Lessee's termination notice must include the date of termination, which date may not be earlier than thirty (30) days or later than six (6) months after the date of Lessee's notice; except that this Lease will terminate on the date the condemnor has the right to possession of the affected Leasehold Parcel if that date falls on a date before the date of termination as designated by Lessee. If Lessee does not terminate this Lease within the thirty (30) day notice period, this Lease will continue in full force and effect.

E. Effect on Rent and Obligations. If any portion of the Block 2 Leasehold is taken by condemnation and this Lease remains in full force and effect, then Lessee's obligations hereunder shall be limited to those portions of the Block 2 Leasehold not taken, and the Rent shall remain unchanged.

F. Award and Distribution. Any compensation awarded, paid, or received on a total or partial condemnation of a Leasehold Parcel or threat of condemnation of a Leasehold Parcel will solely belong to and be distributed to Successor Agency.

G. Temporary Condemnation. If there is a condemnation of all or any portion of the Leasehold Parcel for a temporary period lasting longer than 30 days, at the election of the Parties this Lease may be terminated or remain in full force and effect. If the latter, Lessee will be relieved of its maintenance and security obligations for the duration of the temporary condemnation only, there will be no abatement of Rent. Any condemnation award solely belong to and be distributed to Successor Agency.

H. Personal Property; Goodwill. Notwithstanding Section 18(F) above, Successor Agency will not be entitled to any portion of any award payable in connection with the condemnation of personal property of Lessee or any of its sublessees, contractors or invitees, or any moving expenses, loss of goodwill or business loss or interruption of Lessee, or other award intended to compensate damages suffered by Lessee.

20. ESTOPPEL CERTIFICATE

Successor Agency or Lessee, as the case may be, will execute, acknowledge, and deliver to the other, promptly upon request, its certificate certifying (a) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that this Lease is in full force and effect, as modified, and stating the modifications), (b) the dates, if any, to which rent has been paid, (c) whether there are then existing any charges, offsets, or defenses against the enforcement by Successor Agency or Lessee to be performed or observed and, if so, specifying them, and (d) whether there are then existing any defaults by Lessee or Successor Agency in the performance or observance by Lessee or Successor Agency of any agreement, covenant, or condition on the part of Lessee or Successor Agency to be performed or observed under this Lease, and whether any notice has been given to Lessee or Successor Agency of any default that has not been cured and, if so, specifying the uncured default. Within ten (10) days following Lessee's request, Successor

Agency shall deliver to Lessee an estoppel certificate in the form reasonably acceptable to the parties.

21. SURRENDER AND QUITCLAIM

A. Surrender.

1. Upon expiration of the Term as to the Block 2 Leasehold or a Leasehold Parcel, Lessee will surrender to Successor Agency the applicable property in condition consistent with the completion of the Horizontal Project (or, if applicable, in the condition required by Section 13(G) hereof). The applicable property must be surrendered free of debris, waste, and Hazardous Substances, and free and clear of all liens and encumbrances other than liens and encumbrances existing as of the date of this Lease and any other encumbrances created or approved in writing by Successor Agency. On or before the expiration of this Lease, Lessee at its sole cost will remove all Personal Property from the applicable property, and repair any damage caused by removal thereof, including any signage. Changes to the applicable Leasehold Parcel resulting from the Horizontal Project (or any portion thereof) will remain in the applicable Leasehold Parcel as Successor Agency property and title vested in Successor Agency.

2. If the applicable Leasehold Parcel is not surrendered at the expiration of the Term and in accordance with the provisions of this Section 21, Lessee will continue to be responsible for all Lessee obligations under this Lease until the applicable Leasehold Parcel is surrendered in accordance herewith, and Lessee will indemnify, defend and hold harmless the Indemnified Parties from and against any and all Claims resulting from delay by Lessee in so surrendering the applicable Leasehold Parcel including without limitation any costs of Successor Agency to obtain possession of the applicable Leasehold Parcel; any loss or liability resulting from any Claim against Successor Agency made by any succeeding Lessee or prospective Lessee founded on or resulting from such delay and losses to Successor Agency due to lost opportunities to lease any portion of the applicable Leasehold Parcel to any such succeeding lessee or prospective lessee, together with, in each instance, reasonable attorneys' fees and costs.

3. No act or conduct of Successor Agency, including but not limited to the acceptance of access to security gates to a Leasehold Parcel, will constitute an acceptance of the surrender of that Leasehold Parcel by Lessee before the expiration of the Term. Only a written notice from Successor Agency to Lessee confirming termination of this Lease and surrender of the applicable Leasehold Parcel by Lessee will constitute acceptance of the surrender of the Leasehold Parcel and accomplish a termination of this Lease.

B. Quitclaim. Upon the expiration of this Lease as to the Leasehold Parcel (or a Leasehold Parcel after subdivision), the applicable Leasehold Parcel will automatically, and without further act or conveyance on the part of Lessee or Successor Agency, become the property of Successor Agency, free and clear of all liens and without payment therefore by Successor Agency. Upon expiration of this Lease as to a Leasehold Parcel, Lessee must surrender the applicable Leasehold Parcel to Successor Agency and, at Successor Agency's request, will execute, acknowledge, and deliver to Successor Agency a good and sufficient quitclaim deed with respect to any interest of Lessee in the Leasehold Parcel.

C. Abandoned Property. Any items, including Personal Property, not removed by Lessee will be deemed abandoned. Successor Agency may retain, store, remove, and sell or otherwise dispose of abandoned Personal Property, and Lessee waives all Claims against Successor Agency for any damages resulting from Successor Agency's retention, removal, and disposition of abandoned Personal Property; provided, however, that Lessee will be liable to Successor Agency for all costs incurred in storing, removing, and disposing of abandoned Personal Property and repairing any damage to the Leasehold Parcel resulting from its removal. Lessee agrees that Successor Agency may elect to sell abandoned Personal Property and offset against the sales proceeds Successor Agency's storage, removal, and disposition costs without notice to Lessee or otherwise according to the procedures set forth in California Civil Code Section 1993, the benefits of which Lessee waives.

D. Survival. Lessee's obligation under this Section 21 will survive the expiration (or partial expiration as to a Leasehold Parcel) of this Lease.

22. EQUAL OPPORTUNITY

Lessee agrees to comply with Successor Agency's Equal Opportunity Program as described in Exhibit 8-4 and will submit all documents required pursuant to the policies included in Exhibit 8-4.

23. SUCCESSOR AGENCY LABOR STANDARDS PROVISIONS

California Labor Code Section 1720 *et seq.* requires payment of prevailing wages for developments paid for in whole or in part out of public funds. Although the Parties acknowledge that the Horizontal Project is a private work of improvement, Lessee further acknowledges that the Horizontal Project may be subject to Labor Code requirements. Lessee agrees to pay or cause to be paid prevailing rates of wages in accordance with the requirements set forth in Exhibit 8-3 and to comply with applicable provisions of the Labor Code.

24. SUCCESSOR AGENCY MINIMUM COMPENSATION AND HEALTH CARE ACCOUNTABILITY POLICY

Successor Agency finds that it has a significant proprietary interest in the public parcel that is being leased to the Lessee pursuant to this Lease. Lessee agrees that the Lessee and its sublessees, contractors and invitees participating in the Horizontal Project, if any, will comply with the applicable provisions of Successor Agency's Health Care Accountability Policy, Exhibit 8-5, and Minimum Compensation Policy, Exhibit 8-6, and, adopted by Agency Resolution No. 168-2001 on September 25, 2001, as these policies may be amended from time to time.

25. ARTICLE 34 CONFLICT OF INTEREST

No commissioner, official, or employee of Successor Agency may have any personal or financial interest, direct or indirect, in this Lease, and any such commissioner, official, or employee may not participate in any decision relating to this Lease that affects his or her personal interests or the interests of any corporation, partnership, or association in which he or she is directly or indirectly interested.

26. ARTICLE 35 NO PERSONAL LIABILITY

No commissioner, official, or employee of Successor Agency will be personally liable to Lessee or any successor in interest in the event of any default or breach by Successor Agency or for any amount that may become due to Lessee or its successors or on any obligations under the terms of this Lease.

27. JOINT AND SEVERAL LIABILITY

If more than one person or entity signs this Lease as Lessee or if Lessee consists of more than one person or entity, the obligations of such persons and entities shall be joint and several.

28. ENERGY CONSERVATION

Lessee agrees that it will use its best efforts to maximize provision of, and incorporation of, both energy conservation techniques and systems and improved waste-handling methodology in the performance of the Horizontal Project.

29. WAIVER

The waiver by Successor Agency or Lessee of any term, covenant, agreement or condition in this Lease will not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, agreement, or condition in this Lease, and no custom or practice that may grow up between the parties in the administration of this Lease may be construed to waive or to lessen the right of Successor Agency or Lessee to insist upon the performance by the other in strict accordance with its terms. The subsequent acceptance of rent or any other sum by Successor Agency will not be deemed to be a waiver of any preceding breach by Lessee of any term, covenant, agreement, or condition of this Lease, other than the failure of Lessee to pay the particular rent or other sum accepted, regardless of Successor Agency's knowledge of the preceding breach at the time of acceptance of such rent or other sum. Any waiver by Successor Agency of any term or provision of this Lease must be in writing.

30. LESSEE RECORDS

Upon reasonable notice during normal business hours, and as often as Successor Agency may deem necessary, Lessee will make available to Successor Agency and its authorized representatives for examination all records, reports, data, and information made or kept by Lessee regarding its activities or operations on the Leasehold Parcel.

31. REPRESENTATIONS AND WARRANTIES

As a further inducement for Successor Agency to enter into this Agreement, Lessee represents and warrants as follows:

A. The execution, delivery and performance of this Lease will not contravene or constitute a default under or result in a lien upon assets of Lessee under any applicable Law, any charter document of Lessee or any instrument binding upon or affecting Lessee, or any agreement, judgment, order, decree or other instrument binding upon or affecting Lessee.

Attention: Director
Email: eric.shaw@sfgov.org

or to such other address with respect to either party as that party may from time to time designate by notice to the other given under the provisions of this Section 32. Any notice given under this Section 32 will be effective on the date of delivery or the date delivery is refused as shown on the delivery receipt. Courtesy copies of notices may be delivered by email.

33. HEADINGS

Any titles of the paragraphs, articles, and sections of this Lease are inserted for convenience only and will be disregarded in construing or interpreting any of its provisions. "Paragraph," "article," and "section" may be used interchangeably.

34. SUCCESSORS AND ASSIGNS

This Lease will be binding upon and inure to the benefit of the successors and assigns of Successor Agency and Lessee and where the term "Lessee" or "Successor Agency" is used in this Lease, it means and includes their respective successors and assigns; provided, however, that Successor Agency will have no obligation under this Lease to, and no benefit of this Lease will accrue to, any unapproved successor or assign of Lessee where Successor Agency approval of a successor or assign is required by this Lease.

35. TIME

Time is of the essence in the enforcement of the terms and conditions of this Lease. References to days, months and years mean calendar days, months and years unless otherwise specified.

36. PARTIAL INVALIDITY

If any provisions of this Lease are determined to be illegal or unenforceable, that determination will not affect any other provision of this Lease and all the other provisions of this Lease will remain in full force and effect.

37. APPLICABLE LAW

This Lease is governed by and construed under the laws of the State of California.

38. THIRD-PARTY BENEFICIARIES; CLAIMS BY THIRD PARTIES

Third-Party Beneficiaries. This Lease is entered into solely among, between, and for the benefit of, and may be enforced only by, the parties hereto and does not create rights in any third party except the City as provided herein. Nothing contained in this Lease, nor any act of Successor Agency, may be interpreted or construed as creating the relationship of third-party beneficiary, limited or general partnership, joint venture, employer and employee, or principal and agent between Successor Agency and either Lessee, its agents, employees or contractors.

No Claims by Third-Parties. Nothing contained in this Lease creates or justifies any claim against Successor Agency by any person or entity with respect to the purchase of materials, supplies or equipment, or the furnishing or the performance of any work or services with respect to the Horizontal Project. Lessee must include this requirement as a provision in any agreements for the performance of the Horizontal Project.

39. ARTICLE 45 ATTORNEYS' FEES

If either Successor Agency or Lessee fails to perform any of its obligations under this Lease or in the event a dispute arises concerning the meaning or interpretation of any provision of this Lease, the defaulting party or the non-prevailing party in such dispute, as the case may be, will pay the prevailing party reasonable attorneys' and experts' fees and costs, and all court costs and other costs of action incurred by the prevailing party in connection with the prosecution or defense of such action and enforcing or establishing its rights under this Lease (whether or not such action is prosecuted to a judgment). For purposes of this Lease, reasonable attorneys' fees of Successor Agency or the City's Office of the City Attorney will 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 City Attorney's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by Successor Agency or the Office of the City Attorney. The term "attorneys' fees" also includes, without limitation, all such fees incurred with respect to appeals, mediations, arbitrations, and bankruptcy proceedings, and whether or not any action is brought with respect to the matter for which the fees were incurred. The term "costs" means the costs and expenses of counsel to the parties, which may include printing, duplicating, and other expenses, air freight charges, hiring of experts, and fees billed for law clerks, paralegals, and others not admitted to the bar but performing services under the supervision of an attorney.

40. EXECUTION IN COUNTERPARTS

This Lease and any memorandum hereof may be executed in counterparts, each of which will be considered an original, and all of which will constitute one and the same instrument.

41. BROKERS

Neither party has had any contact or dealings regarding the leasing of the Leasehold Parcel, or any communication in connection therewith, through any licensed real estate broker or other person who could claim a right to a commission or finder's fee in connection with the Lease contemplated herein. If 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 a claim will be responsible for such commission or fee and will indemnify, defend and hold harmless the other party from any and all Claims. The provisions of this Section shall survive any termination of this Lease.

42. RECORDATION OF MEMORANDUM OF GROUND LEASE

This Lease may not be recorded, but a memorandum of this Lease may be recorded upon the mutual consent of Lessor and Lessee in a form agreed to by the Lessor and Lessee.

43. SURVIVAL

Expiration of this Lease will not affect the right of either party to enforce any and all indemnities and representations and warranties given or made to the other party under this Lease, the ability to collect any damages or sums due, and it will not affect any provision of this Lease that expressly states it will survive termination or expiration of this Lease.

44. TRANSFER; PARTNERSHIP INTERESTS IN LESSEE

Lessee may not cause or permit any voluntary transfer, assignment, or encumbrance of its interest in the Block 2 Leasehold or of any ownership interests in Lessee, or lease or permit a sublease on all or any part of the Block 2 Leasehold except as permitted by Successor Agency in its reasonable discretion.

45. COMPLETE AGREEMENT

This Lease (including its Exhibits) incorporate the terms of all agreements made by Successor Agency and Lessee with regard to the subject matter of this Lease. There are no oral agreements between Lessee and Successor Agency affecting this Lease, and this Lease supersedes and cancels any and all previous negotiations, arrangements, agreements, and understandings between Lessee and Successor Agency with respect to the lease of the Leasehold Parcel.

46. AMENDMENTS

Neither this Lease nor any terms or provisions hereof may be changed, waived, discharged, or terminated, except by a written instrument signed by the party against which the enforcement of the change, waiver, discharge, or termination is sought. No waiver of any breach will affect or alter this Lease, but each and every term, covenant, and condition of this Lease will continue in full force and effect with respect to any other then-existing or subsequent breach thereof. Any amendments or modifications to this Lease, including, without limitation, amendments to or modifications to the Exhibits to this Lease, will be subject to the mutual written agreement of Successor Agency and Lessee, and Successor Agency's agreement may be made upon the sole approval of Successor Agency's Executive Director, or his or her designee; provided, however, material amendments, or modifications to this Lease (a) changing the legal description of the Leasehold Parcel, (b) increasing the Term beyond than provided in Section 3, (c) increasing the Rent, (d) changing the Permitted Uses, and (e) any other amendment or modification which materially increases Successor Agency's liabilities or financial obligations under this Lease will additionally require the approval of the Successor Agency Commission. Notwithstanding the foregoing, immediately prior to the date Successor Agency enters into a vertical ground lease for the development of affordable housing and commercial space (if applicable) on a Leasehold Parcel, this Lease will be amended to the extent necessary to release such Leasehold Parcel from this Lease.

47. FURTHER ASSURANCES

Lessee agrees to: (a) pursue in an effective and continuous manner; (b) use best efforts to achieve; and (c) take all actions reasonably required by Successor Agency from time to time to confirm or otherwise carry out the purpose of this Agreement.

48. CONSENT

Except as expressly provided otherwise, whenever consent or approval of a party is required in any Successor Agency Document, that party agrees not to withhold or delay its consent or approval unreasonably.

49. INTENTIONALLY OMITTED**50. LESSEE'S PERSONNEL**

The Horizontal Project shall be implemented only by competent personnel under the direction and supervision of Lessee.

51. WORKS FOR HIRE; OWNERSHIP OF RESULTS

A. Any interest of Lessee or any sub-lessee, in drawings, plans, specifications, studies, reports, memoranda, computation sheets, the contents of computer diskettes, or other documents or Publications prepared by or on behalf of Lessee or any sub-lessee as part of the Horizontal Project or otherwise in connection with this Lease, the implementation of the Horizontal Project, the services to be performed under this Lease ("**Work Product**"), is hereby pledged to OCII as Rent for this Lease, pursuant to that certain Assignment of Work Product attached hereto as Exhibit 7, and upon an Event of Default, subject to all applicable notice and cure periods, shall become the property of and be promptly transmitted by Lessee to Successor Agency. Notwithstanding the foregoing, Lessee may retain and use copies for reference and as documentation of its experience and capabilities.

B. If, in connection with this Lease or the implementation of the Horizontal Project, Lessee creates or causes to be created systems designs, surveys, demolition or construction plans or drawings, diagrams, artwork, copy, posters, billboards, photographs, videotapes, audiotapes, software, reports, source codes or any other original works of authorship or publications, such creations shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such creations shall be the property of Successor Agency. If it is ever determined that any such creations are not works for hire under applicable law, Lessee hereby assigns all copyrights thereto to Successor Agency, and agrees to provide any material, execute such documents and take such other actions as may be necessary or desirable to effect such assignment. With the prior written approval of Successor Agency, Lessee may retain and use copies of such creations for reference and as documentation of its experience and capabilities. Lessee shall use commercially reasonable efforts to obtain all releases, assignments or other agreements from other persons or entities implementing the Horizontal Project to ensure that Successor Agency obtains the rights set forth in this Section.

52. EXHIBITS

The following Exhibits are attached to this Lease and by this reference made a part hereof:

1. Legal Description of Leasehold Parcel
2. Schedule of Performance
3. Horizontal Project Budget
4. Reimbursement Request Form
5. Lobbying/Debarment Form
6. Insurance Requirements
7. Assignment of Work Product and Engineer's Consent to Assignment of Work Product
8. Contract Compliance Policies
 - 8-1. Small Business Enterprise Agreement
 - 8-2. Construction Workforce Agreement
 - 8-3. Prevailing Wage Policy
 - 8-4. Nondiscrimination in Contracts and Benefits
 - 8-5. Health Care Accountability Policy Declaration
 - 8-6. Minimum Compensation Policy Declaration

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS LEASE, LESSEE ACKNOWLEDGES AND AGREES THAT NO OFFICER OR EMPLOYEE OF SUCCESSOR AGENCY HAS AUTHORITY TO COMMIT SUCCESSOR AGENCY TO THIS LEASE UNLESS AND UNTIL THE COMMISSION ON COMMUNITY INVESTMENT AND INFRASTRUCTURE HAS DULY ADOPTED A RESOLUTION APPROVING THIS LEASE AND AUTHORIZING THE TRANSACTIONS CONTEMPLATED HEREBY. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF SUCCESSOR AGENCY UNDER THIS LEASE ARE CONTINGENT UPON ADOPTION OF SUCH A RESOLUTION, AND THIS LEASE WILL BE NULL AND VOID IF THE COMMISSION ON COMMUNITY INVESTMENT AND INFRASTRUCTURE DOES NOT APPROVE THIS LEASE IN ITS SOLE DISCRETION. APPROVAL OF THIS LEASE BY ANY DEPARTMENT, COMMISSION, OR AGENCY OF CITY WILL NOT BE DEEMED TO IMPLY THAT SUCH RESOLUTION WILL BE ENACTED, AND NO SUCH APPROVAL WILL CREATE ANY BINDING OBLIGATIONS ON SUCCESSOR AGENCY.

[signatures begin on following page]

IN WITNESS WHEREOF, the Lessee and Successor Agency have executed this Lease as of the day and year first above written.

LESSEE:

Transbay 2 Family LLC,
a California limited liability company

By: Mercy Housing Calwest,
a California nonprofit public benefit corporation, its sole member/manager

By:
Ramie Dare, Vice President

[Signatures continue on following page]

SUCCESSOR AGENCY:

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

APPROVED AS TO FORM:

James B. Morales, General Counsel

By: _____

Authorized by Resolution No. __-2023 adopted _____, 2023

EXHIBIT 1

LEGAL DESCRIPTION OF LEASEHOLD PARCEL

EXHIBIT 2
SCHEDULE OF PERFORMANCE

EXHIBIT 3
HORIZONTAL PROJECT BUDGET

EXHIBIT 4
REIMBURSEMENT REQUEST FORM

EXHIBIT 5

LOBBYING/DEBARMENT FORM

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement.
2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress or an employee of a member of Congress in connection with this federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.

This lobbying certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed under Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for such failure.

3. Neither the undersigned nor its principals is listed by the General Services Administration as debarred, suspended, ineligible or voluntarily excluded from receiving the Funds on the Effective Date. The undersigned will review the list to ensure that any contractor or subcontractor who bids for a contract in excess of \$100,000 is not debarred, suspended, ineligible or voluntarily excluded from participating in federal programs and activities and will obtain the certification of each contractor or subcontractor whose bid is accepted that such contractor or subcontractor is not debarred, suspended, ineligible or voluntarily excluded from participating in federal programs and activities.

Transbay 2 Family LLC, a California limited liability company

BY: _____

NAME: _____

TITLE: _____

DATE: _____

EXHIBIT 6

INSURANCE REQUIREMENTS

Subject to approval by the OCII Risk Manager of the insurers and policy forms, Lessee must obtain and maintain, or caused to be maintained, the insurance and bonds as set forth in this Exhibit 6 throughout the Compliance Term of this Agreement, or in accordance with the timeframes stated herein, at no expense to OCII.

A. Overview of Coverage Requirements. The following table summarizes required insurance policies and documentation. Please see Section B of this Exhibit for more detailed descriptions of policy requirements.

Insurance Type	Coverage Amount (Minimum)	Applicable Parties	Endorsement or Certificate Required
Commercial General Liability (see Section B.1)	\$1,000,000 per occurrence/ \$2,000,000 aggregate*	Lessee’s design and professional contractors; and Lessee (prior to start of Construction and after completion of construction when site is vacant or used for staging)	Additional insured (see Section G) Completed Operations Coverage endorsement (on construction stage policy) (see Section G)
	\$10,000,000 per occurrence/ \$10,000,000 aggregate*	Lessee (upon construction start and until construction completion), general contractor, and subcontractors to the general contractor	
Automobile Liability (see Section B.2)	\$1,000,000 per accident*	Lessee and Lessee’s contractors	Additional insured (see Section G)
	\$10,000,000 per accident*	Upon construction start - general contractor and subcontractors to the general contractor	
Worker’s Compensation and Employer’s Liability (see Section B.3)	As per statute for Workers Comp; \$1,000,000 per accident; \$1,000,000 per employee; and in aggregate for bodily injury by disease as respects Employers Liability*	Lessee and Lessee’s contractors	Waiver of subrogation
Professional Liability (see Section B.4)	\$2,000,000 per claim/ \$2,000,000 aggregate	Lessee if engaged in any eligible design-related activities; and Lessee’s design and professional contractors	None

Crime/Dishonesty (see Section B.5)	\$1,000,000 per loss	Lessee	Loss payee endorsement
Insurance Type	Coverage Amount (Minimum)	Applicable Parties	Endorsement or Certificate Required
Pollution Liability/Asbestos (see Section B.6)	\$1,000,000 per claim/ \$2,000,000 aggregate	Lessee or Lessee's construction contractor(s)	Additional insured (see Section G)
Builder's Risk – During Construction (see Section B.7a)	100% of replacement value	Lessee	Loss payee endorsement
Property Insurance – After Construction Completion (see Section B.7b)	100% of replacement value	Lessee or Lessee's property manager	Loss payee endorsement
Performance and Payment Bonds (see Section B.8)	100% of contract value	Lessee's construction contractors	OCII and Lessee named as dual obligees

** Umbrella, excess liability policy, contractor controlled insurance program (CCIP), or owner controlled insurance program (OCIP) may be used to meet limits (see Section D)*

B. Minimum Scope and Limits of Insurance. Lessee and/or Lessee's Contractors must maintain insurance with limits no less than:

1) Commercial General Liability coverage, under Insurance Services Office occurrence form CG 00 01 or other form approved by OCII, with additional insured endorsement (form CG 20 10 or equivalent) (see Section G). Limits set forth below. Coverage must be included for contractual liability; explosion, collapse and underground (XCU); products and completed operations. Umbrella, Excess Liability, or an Owner Controlled Insurance Policy may be used to meet the terms of this section.

a. Before the start of demolition/construction if the Site is unoccupied, Lessee and Lessee's Contractors will maintain coverage of not less than One Million Dollars (\$1,000,000) combined single limit per occurrence and Two Million Dollars (\$2,000,000) annual aggregate limit. These limit requirements apply to Lessee's design and professional contractors throughout the required coverage period;

b. During demolition/construction and occupancy of the Site and ongoing operations of the Project, Lessee and its Construction Contractors and/or Property Manager will maintain coverage of not less than Ten Million Dollars (\$10,000,000) combined single limit per occurrence and Ten Million Dollars (\$10,000,000) annual aggregate limit. For subcontractors to the Construction General Contractor and the Property Manager, the Lessee, in consultation with the Construction General Contractor and the Property Manager, as appropriate, is required to assess the risks associated with such contractors and determine,

authorize, and verify the appropriate level of coverage provided by the subcontractor or consultant;

c. The construction period general liability policy must include completed operations coverage for a minimum of ten (10) years. Lessee must provide a completed operations coverage endorsement (form CG 20 37 or equivalent) and OCII must be named as an additional insured pursuant to Section G below.

- 2) Automobile Liability coverage for all owned, non-owned, scheduled, and hired automobiles under Insurance Services Office form number CA 00 01 or other form approved by OCII, with additional insured endorsement (see Section G). If Lessee does not own any automobiles, Lessee must provide OCII a written statement confirming that no automobiles are owned, and OCII will accept an Automobile Insurance policy providing coverage for Symbol 8 (hired autos) and Symbol 9 (non-owned autos), with additional insured endorsement. One Million Dollars (\$1,000,000) per accident for bodily injury and property damage, combined single limit.

For construction operations, Lessee's Contractor will maintain coverage of not less than Ten Million Dollars (\$10,000,000) per accident for bodily injury and property damage, combined single limit. For subcontractors to the Construction General Contractor and the Lessee, the Construction General Contractor, is required to assess the risks associated with such contractors and, with the authorization of the Lessee, determine and verify the appropriate level of automobile liability coverage provided by the subcontractor or consultant.

- 3) Worker's Compensation and Employer's Liability as required by the State of California. A waiver of subrogation naming OCII is required (also known as "transfer of rights of recovery against others to us"). Employer's Liability coverage must provide limits of One Million Dollars (\$1,000,000) for bodily injury each accident; and not less than One Million Dollars (\$1,000,000) per employee; and One Million Dollars (\$1,000,000) in the annual aggregate for bodily injury by disease. If the Lessee does not have any employees, then evidence of Workers' Compensation and Employers Liability coverage required herein must be provided by either the Project Sponsor(s) or the General Partner of the Partnership, in lieu of such coverage being provided by the Lessee. Additionally, the Lessee must provide a written statement confirming that the Lessee does not have employees.
- 4) Professional Liability (Errors and Omissions) insurance, applicable to the Lessee's licensed design and professional contractors (architects, engineers, surveyors and other eligible consultants) and to the Lessee only if the Lessee or Sponsor has any employees providing design or engineering services. Two Million Dollars (\$2,000,000) for each claim and in the annual aggregate limit covering negligent acts, errors or omissions in connection with professional services to be provided in connection with the Project. If the Professional Liability insurance is "claims made" coverage, these minimum limits shall be maintained for no less than five (5) years beyond completion of the scope of services performed. Any deductible over One

Hundred Thousand Dollars (\$100,000) each claim must be reviewed by OCII Risk Management.

Design professionals who utilize the services of subcontractors or consultants to complete work in connection with this project are required to assess the risks associated with such contractors and, with the authorization of the Lessee, determine and verify the appropriate level of coverage provided by the subcontractor or consultant. The design professional and the Lessee shall assume costs and expenses that may be incurred in fulfilling any indemnity obligations as to itself or any subcontractors or consultants for whom the design professional and/or the Lessee are legally liable in the absence of adequate subcontractor or consultant coverage.

- 5) Crime Policy or Fidelity Bond covering Lessee's officers and employees against employee dishonesty, forgery and alteration, theft of money and securities, and theft via electronic means, endorsed to cover third party fidelity, covering all officers and employees with respect to the Reimbursement Amount. One Million Dollars (\$1,000,000) each loss, with any deductible not to exceed Fifty Thousand Dollars (\$50,000). Lessee must provide an endorsement naming OCII as an additional obligee or loss payee.

Application of Crime Insurance Proceeds. Lessee shall promptly notify OCII of any claim under the required Crime Insurance Policy. OCII may retain from the proceeds of the required Crime Insurance Policy, a sufficient amount of the proceeds to pay the Reimbursement Amount, if any, and shall pay the balance to Lessee. For the avoidance of doubt, OCII shall have no right or claim to the proceeds of the required Crime Insurance Policy in excess of the Reimbursement Amount.

- 6) Pollution Liability and/or Asbestos Pollution Liability applicable to the work being performed, with a limit no less than One Million Dollars (\$1,000,000) per claim or occurrence and Two Million Dollars (\$2,000,000) aggregate per policy, this coverage shall be endorsed to include Non-Owned Disposal Site coverage. This policy may be provided by the Lessee's construction contractor to maintain these minimum limits for no less than three (3) years beyond completion of the Project.
- 7) Property Insurance
 - a. Builder's Risk Insurance during the course of any construction, special form coverage, excluding earthquake and flood, for one hundred percent (100%) of the replacement value of all completed improvements and OCII property in the care, custody and control of Lessee or its contractor, including coverage in transit and storage off-site, with a deductible not to exceed Fifty Thousand Dollars (\$50,000) each loss, including OCII as loss payee. Builder's Risk must be maintained by the Lessee or the Lessee must cause its general contractor to maintain this insurance.

- b. Property Insurance after completion of construction, special form coverage, excluding earthquake and flood, but including vandalism and malicious mischief, and including boiler and machinery insurance, for one hundred percent (100%) of the replacement value of all furnishings, fixtures,

equipment, improvements, alterations and property of every kind located on or appurtenant to the Site, including coverage for loss of rental income due to an insured peril for twelve (12) months, with a deductible not to exceed Twenty Five Thousand Dollars (\$25,000) each loss, including OCII as a loss payee. A waiver of subrogation naming OCII is required (also known as “transfer of rights of recovery against others to us”).

- 8) Performance and Payment Bonds for eligible construction contractors during construction and/or rehabilitation, each in the amount of one hundred percent (100%) of contract amounts, naming OCII and Lessee as dual obligees, or other completion security approved by OCII in its sole discretion. OCII has approved issuance of a Completion Guaranty by an affiliate of Lessee to Lessee’s institutional lender as completion security.

- 9) Performance Insurance. Lessee shall require its general contractor to obtain performance insurance that insures against delay in delivery of modules, up to the amount of Lessee’s or Lessee’s general contractor’s contract amount for the delivery of modules for the construction of the Project. Lessee shall limit general contractor’s use of proceeds from the performance insurance policy to be used to solely to reduce cost overruns in the construction of the Project related to or caused by delay in the delivery of modules, and Lessee shall, and shall require general contractor, to obtain OCII’s approval prior to expending such proceeds.

C. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions in excess of those required for policies stated herein must be declared to and approved by OCII. At the option of OCII, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects to OCII, the City and County of San Francisco and their respective commissioners, members, officers, agents and employees; or Lessee shall provide a financial guarantee satisfactory to OCII guaranteeing payment of losses and related investigations, claim administration and defense expenses.

D. Umbrella, Excess Liability, Contractor Controlled Insurance Policies (CCIP), and Owner Controlled Insurance Policies (OCIP). An Umbrella and/or Excess Liability policy(ies), CCIP, or an OCIP may be used to reach the Commercial General Liability, Workers’ Compensation, and/or Automobile Liability coverage limits required herein. The Umbrella/Excess Liability/OCIP policy(ies) must appropriately schedule any such underlying policy(ies).

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

F. General Requirements.

- 1) If the Lessee maintains additional coverages and/or higher limits than the minimums shown in this Attachment 8, OCII requires and shall be entitled to the additional coverage and/or the higher limits maintained by the Lessee.
- 2) The policies required herein, with the exception of Professional Liability and Workers Compensation, shall be primary insurance and non-contributory as respects to OCII, the City and County of San Francisco and their respective commissioners, members, officers, agents, and employees. Any insurance or self-insurance maintained by OCII, the City and County of San Francisco and their respective commissioners, members, officers, agents or employees shall be in excess of Lessee's insurance and shall not contribute with it.
- 3) Each insurance policy required herein must be endorsed (if endorsement is available) to state that coverage will not be suspended, voided, canceled by either party, or reduced in coverage or in limits, except after thirty (30) days' prior written notice by mail has been given to OCII. Should the insurance carrier not be able to provide such notice, then the responsibility to provide the notice to OCII shall be borne by the policyholder.
- 4) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to OCII, the City and County of San Francisco and their respective commissioners, members, officers, agents or employees.
- 5) Approval of Lessee's insurance by OCII will not relieve or decrease the liability of Lessee under this Agreement.
- 6) OCII and its officers, agents and employees will not be liable for any required premium under any policy maintained by Lessee.
- 7) All claims based on acts, omissions, injury or damage occurring or arising in whole or in part during the policy period must be covered. If any required insurance is provided under a claims-made policy, coverage must be maintained continuously for a period ending no less than five (5) years after recordation of a notice of completion for builder's risk or the Compliance Term for general liability and property insurance.

G. Verification of Coverage. Lessee must furnish OCII with certificates of insurance and original endorsements evidencing coverage required by this clause. The certificates and applicable 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. OCII reserves the right to require complete, certified copies of all required insurance policies, including endorsements demonstrating the coverage required by these specifications at any time. Lessee shall require and verify that its contractors and consultants maintain the required policies as stated herein.

Lessee must furnish OCII with copies of certificates and endorsements upon request. All certificates shall include the following:

- 1) Identify the following as the certificate holder:
Successor Agency to the Redevelopment Agency
of the City and County of San Francisco
Office of Community Investment and Infrastructure
One South Van Ness Avenue, 5th Floor
San Francisco, CA 94103
- 2) Identify the name of the insurance policy holder (Lessee or Contractor), the Project name, and the Project address.
- 3) For policies in which OCII is required to be named as an additional insured, loss payee, dual obligee, or named on a waiver of subrogation, the policy shall name “Office of Community Investment and Infrastructure/ Successor Agency to the Redevelopment Agency of the City and County of San Francisco, the City and County of San Francisco and their respective commissioners, members, officers, agents and employees” on the certificate and on the attached endorsement or certificate.

H. Review. OCII reserves the right to modify the insurance coverage under this Section, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other circumstances consistent with OCII’s Risk Management Policy. The insurance coverage required under this Section shall be evaluated by OCII for adequacy from time to time. OCII may require Lessee 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.

EXHIBIT 7

ASSIGNMENT OF WORK PRODUCT AND ENGINEER'S CONSENT TO ASSIGNMENT
OF WORK PRODUCT

FOR VALUE RECEIVED, Transbay 2 Family LLC, a California limited liability company ("Lessee") does hereby sell, assign, pledge, transfer and set over to 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, ("Agency") all of its rights, title and interest in and to any contract entered into between Lessee and any licensed design profession or engineer ("Architect" or "Engineer"), and those certain Plans and Specifications and all amendments, modifications, supplements, general conditions and addenda thereto ("Plans") prepared by the Architects and Engineers for the account of Lessee in connection with the Horizontal Project and the development of approximately 335 units of affordable rental housing at Transbay Block 2 ("Project").

Lessee and Architect or Engineer, by executing the Consent to this assignment, agree that Agency does not assume any of Lessee's obligations or duties concerning the contracts and the Plans, including, but not limited to, the obligation to pay for the preparation of the contract and the Plans, until and unless Agency shall exercise its right hereunder.

Lessee hereby irrevocably constitutes and appoints Agency as its attorney-in-fact to demand, receive, and enforce Lessee's rights with respect to the contracts and the Plans, to give appropriate receipts, releases and satisfactions for and on behalf of Lessee and to do any and all acts in the name of Lessee or in the name of Agency with the same force and effect as Lessee could do if this Assignment had not been made.

Lessee hereby represents and warrants to Agency that no previous assignment of its interest in the contracts and the Plans has been made, and Lessee agrees not to assign, sell, pledge, transfer, mortgage or otherwise encumber its interest in the contracts and the Plans so long as this Assignment is in effect.

This Assignment shall be binding upon and inure to the benefit of the heirs, legal representatives, assigns, or successors in interest of the Lessee and Agency.

IN WITNESS WHEREOF, Lessee has caused this Assignment to be executed on _____, 2023.

Lessee:
Transbay 2 Family LLC,
a California limited liability company

Consent to Assignment

FOR VALUE RECEIVED, **Transbay 2 Family LLC**, a California limited liability company, (“Lessee”) does hereby sell, assign, pledge, transfer and set over to 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, (“Agency”) all of its rights, title and interest in and to any contracts entered into between Lessee and any licensed design professional or engineer ("Architect" or Engineer"), and those certain Plans and Specifications and all amendments, modifications, supplements, general conditions and addenda thereto (“Plans”) prepared by the Architect(s), Engineer(s) and others for the account of Lessee in connection with the Horizontal Project and development of approximately 335 units of affordable rental housing at Transbay Block 2 (“Project”).

The undersigned has prepared the Plans, hereby consents to the above Assignment hereby waives his/her lien rights, if any, for services rendered to date with respect to the Plans. The undersigned also agrees that in the event of a breach by Lessee of any of the terms and conditions of the Agreement or any other agreement entered into with the undersigned in connection with the Plans, that so long as Lessee’s interest in the Plans is assigned to Agency, it will give written notice to Agency of such breach. Agency shall have sixty (60) days from the receipt of such notice of default to remedy or cure said default; however, nothing herein shall require the Agency to cure said default, but only gives it the option to do so.

The undersigned also agrees that in the event of default by Lessee under any of the documents or instruments entered into in connection with the Project, the undersigned, at Agency’s request, shall continue performance under the contract in accordance with the terms hereof, provided that the undersigned shall be reimbursed in accordance with the contract for all services rendered on Agency’s behalf including all services rendered on Lessee's behalf.

Dated: _____, 2023

(signatures continue on the following page)

ENGINEER:

By: _____

Name: _____

Title: _____

ENGINEER:

By: _____

Name: _____

Title: _____

EXHIBIT 8

CONTRACT COMPLIANCE POLICIES

1. Equal Opportunity Policies. Lessee shall comply with OCII's Equal Opportunity Policies:

- (i) Small Business Enterprise (SBE) Policy (adopted by Resolution No. 7-2022, March 15, 2022
- (ii) Prevailing Wage Policy (adopted by Resolution No. 327-1985 Nov. 12, 1985);
- (iii) Nondiscrimination in Contracts and Benefits (adopted by Resolution No. 175-1997);
- (iv) Health Care Accountability Policy (adopted by Resolution No. 168-2001); and
- (v) Minimum Compensation Policy (adopted by Resolution No. 168-2001).

Copies of the aforementioned policies are available on the OCII website at <http://sfocii.org/policies-and-procedures>

2. Environmental Review. The Project must meet the requirements of the California Environmental Quality Act (Cal. Pub. Res. Code §§ 2100 et seq.) and implementing regulations, and any other environmental reviews as required by any federal funding sources obtained, including the National Environmental Policy Act ("NEPA").

3. Conflict of Interest.

(a) Except for approved eligible administrative or personnel costs, no employee, agent, consultant, officer or official of Lessee or OCII who exercises or has exercised any function or responsibilities with respect to activities assisted by Funds, in whole or in part, or who is in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest in or benefit from the activities assisted under this Agreement, or have an interest, direct or indirect, in any contract, subcontract or agreement with respect thereto, or in the proceeds thereunder either for himself/herself or for those with whom he/she has family or business ties, during his/her tenure and for one year thereafter. In order to carry out the purpose of this Section, Lessee must incorporate, or cause to be incorporated, in all contracts, subcontracts and agreements relating to activities assisted under the Agreement, a provision similar to that of this Section. Lessee will be responsible for obtaining compliance with conflict of interest provisions by the parties with whom it contracts and, in the event of a breach, Lessee must take prompt and diligent action to cause the breach to be remedied and compliance to be restored.

(b) Lessee represents that it is familiar with the provisions of Sections 1090 through 1097 and 87100 et seq. of the California Government Code, all of which relate to prohibited conflicts of interest in connection with government contracts. Lessee certifies that it

knows of no facts that constitute a violation of any of these provisions and agrees to notify OCII immediately if Lessee at any time obtains knowledge of facts constituting a violation.

(c) In the event of any violation of the conflict of interest prohibitions, Lessee agrees that OCII may refuse to consider any future application for funding from Lessee or any entity related to Lessee until the violation has been corrected to OCII's satisfaction, in OCII's sole discretion.

4. **Disability Access.** Lessee must comply with all applicable disability access Laws, including the Americans with Disabilities Act (42 U.S.C. §§ 1201 et seq.), Section 504 of the Rehabilitation Act (29 U.S.C. § 794) and the Fair Housing Amendments Act (42 U.S.C. §§ 3601 et seq.). Lessee is responsible for determining which disability access Laws apply to the Project, including those applicable due to the use of Funds. In addition, before occupancy of the Project, Lessee must provide to OCII a written reasonable accommodations policy that indicates how Lessee will respond to requests by disabled individuals for accommodations in Units and common areas of the Project.

5. **Lead-Based Paint.** Lessee must satisfy the requirements of Chapter 36 of the San Francisco Building Code ("Work Practices for Exterior Lead-Based Paint") and the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4821 et seq.) and implementing regulations at 24 CFR part 35. Lessee must also comply with the provisions contained in 17 CCR 350000 et seq., and 8 CCR 1532.1 and all other applicable Laws governing lead-based hazards.

6. **Relocation.** Lessee must meet any applicable requirements of the California Relocation Assistance Act (Cal. Gov. Code §§ 7260 et seq.) and implementing regulations in Title 25, Chapter 6 of the California Administrative Code and similar Laws.

7. **Non-Discrimination in OCII Contracts and Benefits Policy.**

(a) **Lessee May Not Discriminate.** In the performance of this Agreement, Lessee agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, height, weight, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status) against any employee of, any City employee working with, or applicant for employment with Lessee, in any of Lessee's operations within the United States, or against any person seeking accommodations, advantages, facilities, privileges, services or membership in all business, social or other establishments or organizations operated by Lessee.

(b) **Non-Discrimination in Benefits.** Lessee does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in San Francisco or where the work is being performed for OCII or elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a Governmental Agency under state or local law authorizing such registration, subject to the

conditions set forth in the Agency's Nondiscrimination in Contracts Policy, adopted by Agency Resolution 175-97, as amended from time to time.

8. Public Disclosure

(a) Lessee understands and agrees that under the State Public Records Law (Cal. Gov. Code §§ 6250 et seq.) and the Agency Public Records Policy, this Agreement and any and all records, information and materials submitted to OCII or the City hereunder are public records subject to public disclosure. Lessee hereby authorizes OCII and the City to disclose any records, information and materials submitted to OCII or the City in connection with this Agreement as required by Law.

9. Limitations on Contributions. Through execution of this Agreement, Lessee 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 Agency for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) the Mayor or members of the Board of Supervisors, (2) a candidate for Mayor or Board of Supervisors, or (3) a committee controlled by such office holder or candidate, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Lessee acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Lessee further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Lessee's board of directors; Lessee's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Lessee; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Lessee. Additionally, Lessee acknowledges that Lessee must inform each of the persons described in the preceding sentence of the prohibitions contained in section 1.126.

Finally, Lessee agrees to provide to OCII the names of each member of Lessee's general partners' (or, if applicable, general partners' managing members) board of directors; Lessee's general partners' (or, if applicable, general partners' managing members) chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Lessee's general partners (or, if applicable, general partners' managing members); any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Lessee.

EXHIBIT 8-1

SMALL BUSINESS ENTERPRISE AGREEMENT

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

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

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

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

CONSTRUCTION	50%
PROFESSIONAL SERVICES	50%
SUPPLIERS	50%

IV. **TRAINEE HIRING GOAL.** In addition to the goals set forth above in Section III, there is a trainee hiring goal for all design professionals (architects, engineers, planners, and environmental consultants) on contracts or subcontracts over \$100,000. The trainee hiring goal requires architects, engineers and other design professionals only to hire qualified San Francisco residents as trainees. The trainee hiring goal is based upon the total amount of the design professional’s contract as follows:

<u>Trainees</u>	<u>Design Professional Fees</u>
0	\$ 0 – \$99,000
1	\$ 100,000 – \$249,999
2	\$ 250,000 – \$499,999
3	\$ 500,000 – \$999,999
4	\$1,000,000 – \$1,499,999
5	\$1,500,000 – \$1,999,999
6	\$2,000,000 - \$4,999,999
7	\$5,000,000 - \$7,999,999
8	\$8,000,000 – or more

A. Procedures For Trainee Hires

1. Compliance with the Trainee Hiring Goal

Design professionals will be deemed in compliance with this Agreement by meeting or exceeding the trainee hiring goal or by take the following steps in good faith towards compliance.

2. Execution and Incorporation of this Agreement to Sub-agreements

The Agency-Assisted Contractor shall execute this Agreement and shall incorporate by reference or attach this Agreement to its contract(s) with the architects, engineers and other design professionals. Thus, each design professional (regardless of tier) will be obligated to comply with the terms of this Agreement. The Agency-Assisted Contractor and/or the design professionals shall retain the executed Agreements and make them available to the Agency Compliance Officer upon request.

3. Contact Educational Institutions

Each design professional shall call the City and County of San Francisco Office of Economic and Workforce Development (OEWD) or educational institution(s) and request referrals for the required trainee positions. The request will indicate generally: (1) the number of trainees sought; (2) the required skills set (keeping in mind that these are trainee positions); (3) a brief description of job duties; (4) the duration of the trainee period; and (5) any other information that would be helpful or necessary for the educational institution or OEWD to make the referral. The minimum duration of assignment is part-time for one semester. However, design professionals are strongly encouraged to offer longer trainee employment periods to allow a more meaningful learning experience. (For example, a half-time or full-time assignment over the summer.) Although the initial contact shall be made by phone, the educational institution(s) or OEWD may require the design professionals to send a confirming letter or complete its form(s). Each design professional is required to timely provide all of the information requested by the OEWD or educational institution(s) in order to get the referrals.

4. Response from Educational Institutions

Each educational institution may have a different way of referring applicants, such as: sending resumes directly to the design professional; having the applicant contact the design professional by phone; require design professionals to conduct on-campus interviews; or some other method. The timing and method of the response will normally be discussed with the design professional during the initial phone request. The design professional is required to follow the process set by the educational institution(s) in order to get the referrals.

5. Action by Design Professionals When Referrals Available

The design professional shall interview each applicant prior to making the decision to hire or not to hire. The design professional shall make the final determination whether the

applicant is qualified for the trainee position and the ultimate hiring decision. The Agency strongly encourages the design professional to hire a qualified San Francisco resident referred by the educational institution(s). The design professional shall notify the educational institution in writing of the hiring decision.

6. **Action by Design Professionals When Referrals Unavailable**

If after contacting two or more educational institutions the design professional is informed that no San Francisco residents are currently available, then the design professional should wait thirty (30) days and contact the educational institutions a second time to inquire whether qualified San Francisco residents are currently available for hire as trainees. If no qualified San Francisco residents are currently available after the second request, then the design professional has fulfilled its obligation under this Agreement, provided that the design professional has acted in good faith. The design professional must retain its file on all of the steps it took to comply with this Section IV and submit a copy of its file to the Agency Compliance Officer upon request.

7. **Action by Design Professional When No Response From Educational Institutions**

If a design professional has not received a response to its request for referrals from any of the educational institutions within five (5) business days after the design professional has fully complied with the procedures, if any, set by the educational institution(s) for obtaining referrals, then the design professional should immediately advise the Agency Compliance Officer by phone, fax or email. The Agency Compliance Officer or his/her designee shall cause the educational institution(s) to respond to the design professional within five (5) business days of the Agency Compliance Officer being notified. If the design professional still has not received a response from the educational institution(s) after this additional five (5) business day period has run, then the design professional has fulfilled its obligation under this Section IV, provided that the design professional has acted in good faith. Each design professional must retain its file on all of the steps it took to comply with this Agreement and submit a copy of its file to the Agency Compliance Officer upon request.

8. **Termination of Trainee for Cause**

If at any time during the Term, it becomes necessary to terminate for cause a trainee who was hired under this Agreement and the design professional has not met the minimum duration requirements under this policy, then the design professional shall hire a new trainee by following the process set forth above.

B. Reporting Requirements For Trainee Hires

1. **Reporting**

Upon completion of the Term of the Agreement or the term of the design professional's contract with the Agency-Assisted Contractor, whichever is less, the design professional (i.e. Employer) shall fax or email a report to the Agency Compliance Officer stating in detail: (1) the

names of the San Francisco resident(s) interviewed for trainee positions; (2) the date(s) of each interview; (3) the reasons for not hiring the San Francisco resident(s) interviewed; (4) the name, address, gender and racial/ethnic background of the successful candidate for the trainee position; and (5) the number of San Francisco residents hired as trainees.

2. **Report on Terminations**

In the event a San Francisco resident hired pursuant to this Agreement is terminated for cause, the responsible design professional shall within five (5) days fax or email a termination report to the Agency Compliance Officer stating in detail: (1) the name of the trainee(s) terminated; (2) his/her job title and duties; (3) the reasons and circumstances leading to the termination(s); and (4) whether the design professional replaced the trainee(s).

V. TERM. The obligations of the Agency-Assisted Contractor and/or Contractor(s) with respect to SBE Program shall remain in effect until completion of all work to be performed by the Agency-Assisted Contractor in connection with the original construction of the site and any tenant improvements on the site performed by or at the behest of the Agency-Assisted Contractor unless another term is specified in the Agency-Assisted Contract or Contract.

VI. FIRST CONSIDERATION. First consideration will be given by the Agency or Agency-Assisted Contractor in awarding contracts in the following order: (1) Project Area SBEs, (2) San Francisco-based SBEs (outside an Agency Project or Survey Area, but within San Francisco), and (3) Non-San Francisco-based SBEs. Non-San Francisco-based SBEs should be used to satisfy participation goals only if Project Area SBEs or San Francisco-based SBEs are not available, qualified, or if their bids or fees are significantly higher than those of non-San Francisco-based SBEs.

VII. ASSOCIATIONS AND JOINT VENTURES (JV). OCII will recognize JVs and Associations between non-SBE firms and SBE firms where the SBE partner performs at least 35% of the work defined in the JV or Association agreement, and receives at least 35% (or a proportionate share, whichever is higher) of the dollars to be earned by the JV or Association. Under this arrangement, OCII will deem the JV or Association to be an SBE for the purposes of meeting the SBE goal. Due to the technical nature of the disciplines and the various standards of each industry, OCII will not require a standardized agreement. However, each JV and Association agreement must be in writing and contain, at a minimum, the following terms:

- Define the management of the agreement between the parties;
- Define the technical and managerial responsibilities of each party;
- Define the scope of work to be performed by each party, and where possible identify the percentage and break-down of scope of work for each party;
- Identify any additional subcontractors or consultants that will perform the work under the agreement;
- Define the schedule, duration, and deliverable of the agreement;
- Detail the fee schedule, fee breakdown, or division of compensation;
- Specify insurance requirements and/or if each party shall maintain its own

- insurance;
- Specify how additional work or changes in scope shall be negotiated or determined and which party shall be responsible for notifying OCII of the changes;
- Specify how claims and disputes will be resolved.

A copy of the JV or Association agreement must be provided to OCII for approval in order for the JV or Association to be recognized.

VIII. CERTIFICATION. The Agency no longer certifies SBEs but instead relies on the information provided in other public entities' business certifications to establish eligibility for the Agency's program. Only businesses certified by the Agency as SBEs whose certification has not expired and economically disadvantaged businesses that meet the Agency's SBE Certification Criteria will be counted toward meeting the participation goals. The SBE Certification Criteria are set forth in the SBE Policy.

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

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

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

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

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

Agency Contract means personal services contracts, purchase requisitions, and other similar contracts and operations agreements that the Agency executes with for-profit or non-

profit entities.

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

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

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

Association means an agreement between two parties established for the purpose of completing a specific task or project. The associate agreement shall provide the SBE associate a significant project management role and the SBE associate shall be recognized in marketing and collateral material. The Association shall be distinguished from traditional subcontracting arrangements via a written Association agreement that defines the management of the agreement, technical and managerial responsibilities of the parties, and defined scopes and percentages of work to be performed by each party with its own resources and labor force. Unlike the more formal Joint Venture, an Association does not require formation of a new business enterprise between the parties. The Associate agreement shall contain, at a minimum, provisions required by Section VII and be subject to OCII approval.

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

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

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

Joint Venture means an entity established between two parties for the purposes of completing a venture or project. The Joint Venture agreement typically creates a separate business entity and requires acquisition of additional insurance for the newly created joint business entity. The Joint Venture agreement shall contain, at a minimum, provisions required by Section VII and be subject to OCII approval.

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

Office” or “Offices means a fixed and established place(s) where work is performed of a clerical, administrative, professional or production nature directly pertinent to the business being certified. A temporary location or movable property or one that was established to oversee a project such as a construction project office does not qualify as an “office” under this SBE Policy. Work space provided in exchange for services (in lieu of monetary rent) does not constitute an “office.” The office is not required to be the headquarters for the business but it must be capable of providing all the services to operate the business for which SBE certification is sought. An arrangement for the right to use office space on an “as needed” basis where there is no office exclusively reserved for the business does not qualify as an office. The prospective SBE must submit a rental agreement for the office space, rent receipt or cancelled checks for rent payments. If the office space is owned by the prospective SBE, the business must submit property tax or a deed documenting ownership of the office.

Project Area Small Business Enterprise means a business that meets the above-definition of Small Business Enterprise and that: (a) has fixed offices located within the geographical boundaries of a Redevelopment Project or Survey Area where a commercially useful function is performed; (b) is listed in the Permits and License Tax Paid File with a Project Area or Survey Area business street address; (c) possesses a current Business Tax Registration Certificate at the time of the application for certification as a SBE; (d) has been located and doing business in a Project Area or

Survey Area for at least six months preceding its application for certification as a SBE; and (e) has a Project Area or Survey Area office in which business is transacted that is appropriately equipped for the type of business for which the enterprise seeks certification as a SBE. Post office box numbers of residential addresses alone shall not suffice to establish a firms' location in a Project Area or Survey Area.

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

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

Small Business Enterprise (SBE) means an economically disadvantaged business that is certified by another public entity (either municipal, State, or federal agency) that considers the certification criteria stipulated in this Policy. In general, such criteria shall include a determination by the public entity as to whether an economically disadvantaged business is an independent and continuing business for profit; performs a commercially useful function; is owned and controlled by persons residing in the United States or its territories; and has average gross annual receipts in at least the three years (and no more than five years, if practiced by the public entity) immediately preceding its application for certification as a SBE that do not exceed the following limits:

Industry	OCII SBE Size Standard
Construction Contractors	\$24,000,000
Specialty Construction Contractors	\$14,000,000
Suppliers (goods/materials/ equipment and general services)	\$12,000,000

Professional Services	\$5,000,000
Trucking	\$5,000,000

In addition, an economically disadvantaged business shall meet the other certification criteria described in Exhibit I of the SBE Policy in order to be considered an SBE by the Agency.

In order to determine whether or not a firm meets the above economic size definitions, the Agency will use the firm’s most recent business tax returns (i.e., 1040 with Schedule C for Sole Proprietorships, 1065s with K-1s for Partnerships, and 1120s for Corporations) to calculate the firm’s average annual gross receipts. In addition, the calculation of a firm's size shall include the receipts of all affiliates.

Once a business reaches the average size threshold for the applicable industry the business ceases to be economically disadvantaged, it is not an eligible SBE and it will not be counted towards meeting SBE contracting requirements (or goals).

Specialty Construction Contractor means a contractor licensed by the Contractors State License Board under the “C” classification license pursuant to California Business and Professions Code Section 7058.

Survey Area means an area of San Francisco that meets the requirements of the Community Redevelopment Law, Health and Safety Code Section 33310. These areas currently include the Bayview Hunters Point Redevelopment Survey Area C.

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

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

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

2. **Request List of SBEs.** Request from the Agency’s Contract Compliance Department a list of all known SBEs in the pertinent field(s), particularly

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

B. Pre-Solicitation Meeting. For construction contracts estimated to cost \$5,000 or more, hold a pre-bid meeting for all interested contractors not less than 15 days prior to the opening of bids or the selection of contractors for the purpose answering questions about the selection process and the specifications and requirements. Representatives of the Contract Compliance Department will also participate.

C. Follow-up. Follow up initial solicitations of interest by contacting the SBEs to determine with certainty whether the enterprises are interested in performing specific items involved in work.

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

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

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

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

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

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

J. Utilize SBEs as Lower Tier Subcontractors. The Agency-Assisted Contractor and its Contractor(s) shall encourage and assist higher tier subcontractors in

undertaking good faith efforts to utilize SBEs as lower tier subcontractors.

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

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

XII. ADDITIONAL PROVISIONS

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

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

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

“Amounts for work performed by a subcontractor shall be paid within seven (7) days of receipt of funds by the contractor, pursuant to California Business and Professions Code Section 7108.5 *et seq.* Failure to include this provision in a subcontractor or failure to comply with this provision shall constitute an event of default which would permit the Agency to exercise any and all remedies available to it under contract, at law or in equity.”

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

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

XIII. PROCEDURES

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

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

B. Affidavit. If the Agency-Assisted Contractor or Contractor(s) contend that the contract has been awarded to a SBE, the Agency-Assisted Contractor or Contractor(s) shall, at the same time also submit to the Agency a SBE Application for Certification and its accompanying Affidavit completed by the SBE owner. However, a SBE that was previously certified by the Agency shall submit only the short SBE Eligibility Statement.

C. Good Faith Documentation. If the 50% SBE Participation Goals are not met in each category (Construction, Professional Services and Suppliers), the Agency-Assisted Contractor or Contractor(s) shall meet and confer with the Agency at a date and time set by the Agency. If the issue of the Agency-Assisted Contractor's or Contractor's good faith efforts is not resolved at this meeting, the Agency-Assisted Contractor or Contractor shall submit to the Agency within five (5) days, a declaration under penalty of perjury containing the following documentation with respect to the good faith efforts ("**Submission**"):

1. A report showing the responses, rejections, proposals and bids (including the amount of the bid) received from SBEs, including the date each response, proposal or bid was received. This report shall indicate the action taken by the Agency-Assisted Contractor or Contractor(s) in response to each proposal or bid received from SBEs, including the reasons(s) for any rejections.

2. A report showing the date that the bid was received, the amount bid by and the amount to be paid (if different) to the non-SBE contractor that was selected. If the non-SBE contractor who was selected submitted more than one bid, the amount of each bid and the date that each bid was received shall be shown in the report. If the bidder asserts that there were reasons other than the respective amounts bid for not awarding the contract to an SBE, the report shall also contain an explanation of these reasons.

3. Documentation of advertising for and contacts with SBEs, contractor associations or development centers, or any other agency which disseminates bid and contract information to small business enterprises.

4. Copies of initial and follow-up correspondence with SBEs, contractor associations and other agencies, which assist SBEs.

5. A description of the assistance provided SBE firms relative to obtaining and explaining plans, specifications and contract requirements.

6. A description of the assistance provided to SBEs with respect to bonding, lines of credit, etc.

7. A description of efforts to negotiate or a statement of the reasons for not negotiating with SBEs.

8. A description of any divisions of work undertaken to facilitate SBE participation.

9. Documentation of efforts undertaken to encourage subcontractors to obtain small business enterprise participation at a lower tier.

10. A report which shows for each private project and each public project (without a SBE program) undertaken by the bidder in the preceding 12 months, the total dollar amount of the contract and the percentage of the contract dollars awarded to SBEs and the percentage of contract dollars awarded to non-SBEs.

11. Documentation of any other efforts undertaken to encourage participation by small business enterprises.

D. Presumption of Good Faith Efforts. If the Agency-Assisted Contractor or Contractor(s) achieves the Participation Goals, it will not be required to submit Good Faith Effort documentation.

E. Waiver. Any of the SBE requirements may be waived if the Agency determines that a specific requirement is not relevant to the particular situation at issue, that SBEs were not available, or that SBEs were charging an unreasonable price.

F. SBE Determination. The Agency shall exercise its reasonable judgment in determining whether a business, whose name is submitted by the Agency-Assisted

Contractor or Contractor(s) as a SBE, is owned and controlled by a SBE. A firm's appearance in any of the Agency's current directories will be considered by the Agency as prima facie evidence that the firm is a SBE. Where the Agency-Assisted Contractor or Contractor(s) makes a submission the Agency shall make a determination, as to whether or not a business which the Agency-Assisted Contractor or Contractor(s) claims is a SBE is in fact owned and controlled by San Francisco-based SBEs. If the Agency determines that the business is not a SBE, the Agency shall give the Agency-Assisted Contractor or Contractor a Notice of Non-Qualification and provide the Agency-Assisted Contractor or Contractor with a reasonable period (not to exceed 20 days) in which to meet with the Agency and if necessary make a Submission, concerning its good faith efforts. If the Agency-Assisted Contractor or Contractor disagrees with the Agency's Notice of Non-Qualification, the Agency-Assisted Contractor or Contractor may request arbitration pursuant to Section XIII.

G. Agency Investigation. Where the Agency-Assisted Contractor or Contractor makes a Submission and, as a result, the Agency has cause to believe that the Agency-Assisted Contractor or Contractor has failed to undertake good faith efforts, the Agency shall conduct an investigation, and after affording the Agency-Assisted Contractor or Contractor notice and an opportunity to be heard, shall recommend such remedies and sanctions as it deems necessary to correct any alleged violation(s). The Agency shall give the Agency-Assisted Contractor or Contractor a written Notice of Non-Compliance setting forth its findings and recommendations. If the Agency-Assisted Contractor or Contractor disagrees with the findings and recommendations of the Agency as set forth in the Notice of Non-Compliance, the Agency-Assisted Contractor or Contractor may request arbitration pursuant to this SBE Agreement.

XIV. ARBITRATION OF DISPUTES.

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

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

C. Parties' Participation. The Agency and all persons or entities who have a

contractual relationship affected by the dispute shall be made an Arbitration Party. Any such person or entity not made an Arbitration Party in the Demand for Arbitration may intervene as an Arbitration Party and in turn may name any other such person or entity as an Arbitration Party, provided however, that the Agency-Assisted Contractor or Contractor made an initial timely Demand for Arbitration pursuant to Section XIII.B. above.

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

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

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

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

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

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

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

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

2. Require any Arbitration Party to refrain from entering into new contracts related to work covered by the Agency-Assisted Contract or this SBE

Agreement, or from granting extensions or other modifications to existing contracts related to services covered by the Agency-Assisted Contract or this SBE Agreement, other than those minor modifications or extensions necessary to enable compliance with this SBE Agreement.

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

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

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

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

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

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

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

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

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

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

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

Agency

Agency-Assisted Contractor

XV. AGREEMENT EXECUTION

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

Transbay 2 Family LLC,
a California limited liability company

By:

EXHIBIT 8-2

CONSTRUCTION WORKFORCE AGREEMENT

I. **PURPOSE.** This Agreement is entered into between the Office of Community Investment and Infrastructure (“OCII” or “Agency”), as successor agency to the San Francisco Redevelopment Agency, and Owner (who for this purposes of this Exhibit shall be the Lessee as defined under the Lease to which this document is an Exhibit), for the purposes of ensuring participation of San Francisco residents and equal employment opportunities in the construction work force involved in constructing any of the phases upon the Site covered by the underlying agreement to which this Agreement is attached hereto.

II. **DEFINITIONS.**

The following definitions apply to this Agreement.

- A. “CityBuild” means the construction employment program of the Workforce Development Division of the San Francisco Office of Economic and Workforce Development (OEWD).
- B. “Contract” means any agreement in excess of \$10,000 between the Owner, its Contractors and a person to provide or procure labor, materials or services for the construction of the Horizontal Project, including a purchase order that requires installation of materials.
- C. “Contractor” means the Owner’s general contractor, all prime contractors and all subcontractors (regardless of tier) having a Contract or subcontract in excess of \$10,000 and who employ persons in a Trade for construction of the Horizontal Project.
- D. “Horizontal Project” has the meaning set out in the Lease to which this Exhibit 8-2 is attached.
- E. “Project Area Resident” means a San Francisco Resident who resides in a redevelopment area under the management of OCII.
- F. “San Francisco Resident” in the case of a new hire shall mean an individual who has lived in San Francisco for at least one week prior to submitting his/her initial application for employment to work on the Improvements. In the case of a person employed by the Owner or its Contractor or Consultant prior to assignment to the Improvements, this term shall mean a person who has lived in San Francisco for at least six months prior to the date he/she applied for a transfer to a position at the Improvements or the date he/she was assigned to work on the Improvements, whichever is earlier; or a person who establishes, to the satisfaction of the Agency, that he/she lived in San Francisco prior to applying for or being considered for a position with the owner, Contractor or Consultant.

III. WORK FORCE GOALS.

The Owner agrees and will require each Contractor and all subcontractors to use good faith efforts to employ 50 percent of its construction workforce hires by trade and by hours from qualified San Francisco Residents with first consideration given to Project Area Residents. Owner and Contractors will be deemed in compliance with this Agreement and the Policy by meeting or exceeding the goal or by demonstrating good faith efforts toward compliance.

IV. GOOD FAITH EFFORTS.

A. Submission of Labor Force Projections and Other Data

The Contractor shall submit, to the extent available, labor force projections to the OCII Compliance Officer, or its agent, within two (2) weeks of contract award.

B. Submit Subcontractor Information Form

The Contractor shall submit to the Compliance Officer, or its agent, the Subcontractor Information Forms, twenty-four (24) hours prior to the preconstruction meeting. The Subcontractor Information Forms are available from the Compliance Officer upon request.

C. Preconstruction Meeting

The Contractor shall hold a preconstruction meeting which shall be attended by the Compliance Officer, CityBuild, all prime contractor(s) and all subcontractor(s). The preconstruction meeting shall be scheduled between two (2) days and thirty (30) days prior to the start of construction at a time and place convenient to all attendees. The purpose of the meeting is to discuss: the hiring goals, workforce composition, worker referral process, certified payroll reporting, procedure for termination and replacement of workers covered by this Agreement and to explore any anticipated problems in complying with the Agreement. All questions regarding how this Agreement applies to the Owner, Contractor, subcontractors and consultants should be answered at this meeting. Failure to hold or attend at least one (1) preconstruction meeting will be a breach of the Policy and this Agreement that may result in the Agency ordering a suspension of work until the breach has been cured. Suspension under this provision is not subject to arbitration.

D. Submit Construction Worker Request Form

For the Term of the Agreement, each time the Owner or Contractor seeks to hire workers for the construction or rehabilitation of improvements, they must first submit, by fax, email or hand delivery, an executed construction

worker request form to CityBuild. Preferably this request will be submitted at least two (2) business days before the workers are needed. However, requests with less than two (2) business days notice will be accepted. The construction worker request form will indicate generally: the number of workers needed, duration needed, required skills or trade and date/time to report. The construction worker request form is available from the Compliance Officer upon request.

E. Response from CityBuild

CityBuild shall respond, in writing, via fax, email or hand delivery to each request for construction workers. The response shall state that CityBuild was able to satisfy the request in full, in part or was unable to satisfy the request. CityBuild shall look to their own referral lists, as well as confer with CBOs in an attempt to find qualified Project Area Residents and San Francisco Residents. If CityBuild is able to satisfy the request in full or in part, it shall direct the qualified Project Area Resident(s) or San Francisco Resident(s) to report to the Contractor on the date and time indicated in the request. If CityBuild is unable to satisfy the request, then CityBuild shall send a fax or email stating that no qualified Project Area Residents or San Francisco Residents are currently available.

F. Action by Contractor When Referrals Available

The Owner or Contractor whose request has been satisfied in full or in part shall make the final determination of whether the Project Area Residents or San Francisco Residents are qualified for the positions and the ultimate hiring decision. The Agency strongly encourages the Contractor to hire the qualified Project Area Residents or San Francisco Residents referred by CityBuild. However, if the Contractor finds the Project Area Residents or San Francisco Residents are not qualified, then the Contractor shall send the Project Area Residents or San Francisco Residents back to CityBuild. Before the close of business on the same day, the Contractor shall fax or email a statement addressed to CityBuild stating in detail the reason(s) the Project Area Residents or San Francisco Residents were not qualified or the reason(s) for not hiring the Project Area Residents or San Francisco Residents. CityBuild shall, within one (1) business day of receipt of the fax or email, send new qualified Project Area Residents or San Francisco Residents that meet the legitimate qualifications set by the Contractor or alternatively, send a fax or email stating that no qualified Project Area Residents or San Francisco Residents are currently available.

G. Action by Contractor When Referrals Unavailable

If a Contractor receives a response from CityBuild stating that no qualified Project Area Residents or San Francisco Residents are currently available, then the Contractor may hire the number of construction workers requested from CityBuild, using its own recruiting methods, giving first consideration

to Project Area Residents and then San Francisco Residents. Any additional new construction workforce hires (including the replacement of any terminated workers) must comply with this Policy, unless the Contractor has already met or exceeded the goal. The Contractor must keep a copy of the response it receives from CityBuild as proof of compliance and submit a copy of each response received to the Compliance Officer upon request.

H. Action by Contractor When No Response From CityBuild

If a Contractor has not received a response to its construction worker request from CityBuild within two (2) business days, then the Contractor should immediately advise the Compliance Officer by phone, fax or email. The Compliance Officer or his/her designee shall cause a response to be sent to the Contractor within two (2) business days of being notified. If the Contractor does not receive a response from CityBuild within four (4) business days (the original two (2) business days plus the additional two (2) business days), then the Contractor may hire the number of construction workers requested from CityBuild, using its own recruiting methods, giving first consideration to Project Area Residents and then San Francisco Residents. Any construction workforce hires (including the replacement of any terminated workers) must comply with this Policy, unless the Contractor has already met or exceeded the goal. The Contractor must keep a copy of the response it receives from CityBuild as proof of compliance and submit a copy of each response received to the Compliance Officer upon request. This Policy is intended to provide qualified Project Area and San Francisco Residents with employment opportunities without causing undue delay in hiring needed construction workers.

I. Action by Contractor When No Response From Union

The Contractor should immediately advise the Compliance Officer by phone, fax or email when the Contractor has sent a qualified Project Area Resident or San Francisco Resident to a union hall for referral in accordance with a collective bargaining agreement and the union did not refer the qualified Project Area or San Francisco Resident back for employment or when the union referral process impedes the Contractor's ability to meet its obligations under this Policy. Nothing in this Policy shall be interpreted to interfere with or prohibit existing labor agreements or collective bargaining agreements.

J. Hiring Apprentices

A Contractor may meet part of the Construction Workforce Goal by hiring apprentices. However, hiring an apprentice does not satisfy or waive the trainee hiring obligation, if any, for design professionals. Unless otherwise permitted by law, apprentices must be trained pursuant to training programs approved by the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training or the California

Department of Industrial Relations, Division of Apprenticeship Standards. Credit towards compliance will only be given for paid apprentices actually working on the project. No credit is available for apprentices while receiving class room training. Under no circumstances shall the ratio of apprentices to journeymen in a particular trade or craft exceed 1:5.

K. Termination and Replacement of Referrals

If at any time it becomes necessary to terminate for cause a construction worker who was hired under this Policy, the Contractor shall notify CityBuild in writing via fax or email and submit a report of termination pursuant to Section (B)(4). If the Contractor intends to fill the vacant position, then the Contractor shall follow the process set forth in this Policy beginning at Section (A)(6).

V. **REPORTING REQUIREMENTS.**

A. Submission of Certified Payroll Reports

Each Contractor subject to this Policy shall submit to the Agency a certified payroll report for the preceding work week on each of its employees. The Owner is ultimately responsible for the submission of these reports by the Contractors. The certified payroll report is due to the Agency by noon each Wednesday. To facilitate compliance, the Agency uses an online Project Reporting System (PRS) for submission of certified payroll reports. This system is available at no cost to the Contractor. Training and educational materials for PRS are available at no cost online and through the Compliance Officer. Contractors are required to report certified payroll using PRS. However, a waiver may be granted to any Contractors who do not have a computer or online access.

B. Additional Information

In order to prevent unlawful discrimination in the selection, hiring and termination of employees on the basis of race, ethnicity, gender or any other basis prohibited by law and to identify and correct such unlawful practices, the Agency will monitor and collect information on the ethnicity and gender of each construction worker and apprentice. If an identifiable pattern of apparent discrimination is revealed by this additional information, it will be treated as a breach of this Policy and may be addressed as set forth in the arbitration provisions included in Agency contracts.

C. Report on Terminations

In the event a Project Area Resident or San Francisco Resident hired pursuant to this Policy is terminated for cause, the responsible Contractor shall within two (2) days fax or email a termination report to CityBuild with a copy to the Compliance Officer stating in detail: (1) the name of the worker(s) terminated; (2) his/her job title and duties; (3) the reasons and circumstances leading to the termination(s); (4) whether the Contractor replaced the construction worker(s); and (5) whether the replacement worker(s) were Project Area Resident(s) or San Francisco Resident(s).

D. Inspection of Records

The Owner and each Contractor shall make the records required under this Agreement available for inspection or copying by authorized representatives of the Agency and its designated Compliance Officer, and shall permit such representatives to interview construction workers and apprentices during working hours on the job.

E. Failure to Submit Reports

If a Contractor fails or refuses to provide the reports as required it will be treated as a breach of this Agreement and the Policy, and may be addressed under arbitration provisions pursuant to Article VII (Arbitration of Disputes) of this Agreement.

F. Submission of Good Faith Effort Documentation

If the Owner's or Contractor's good faith efforts are at issue, the Contractor shall provide the Agency or its designated Compliance Officer with the documentation of its efforts to comply with this Policy and the Agreement. The Owner or Contractor must maintain a current file of the names, addresses and telephone numbers of each Project Area Resident or San Francisco Resident applicant referral (whether a self-referral or a referral from a union, CBO or CityBuild referral) and what action was taken with respect to each such individual.

G. Coding Certified Payrolls

Each Contractor shall include, on the weekly payroll submissions, the proper job classification (as approved by the California Department of Industrial Relations), apprentice's craft (if applicable), skill level, protected class status, and domicile of each construction worker.

VI. RECORDKEEPING REQUIREMENTS.

Contractor shall comply with the requirements of California Labor Code Section 1776, as amended, regarding the keeping, filing and furnishing of certified copies of payroll records of wages paid to its employees and to the employees of its subcontractors of all tiers.

In addition, each Contractor shall keep, or cause to be kept, for a period of four years from the date of substantial completion of the Horizontal Project, certified payroll and basic records, including time cards, tax forms, and superintendent and foreman daily logs, for all workers within each trade performing work on the Horizontal Project. Such records shall include the name, address and social security number of each worker who worked on the covered project, his or her classification, a general description of the work each worker performed each day, the apprentice or journey-level status of each worker, daily and weekly number of hours worked, the self-identified race, gender, and ethnicity of each worker, whether or not the worker was a local resident or disadvantaged worker, and the referral source or method through which the Contractor hired or retained that worker for work on the Horizontal Project (e.g., core workforce, name call, union hiring hall, City-designated referral source, or recruitment or hiring method). Contractor may verify that a worker is a local resident through the worker's possession of a valid SF City ID Card or

other government-issued identification. OCII may require additional records to be kept with regard to Contractor's compliance with this Agreement. All records described in this section shall at all times be open to inspection and examination by the duly authorized officers and agents of OCII, including representatives of the OEWD.

VII. ARBITRATION OF DISPUTES.

- A. **Arbitration by AAA.** Any dispute regarding this Construction Work Force Agreement shall be determined by arbitration through the American Arbitration Association, San Francisco, California office ("AAA") in accordance with the Commercial Rules of the AAA then applicable, but subject to the further revisions thereof. The arbitration shall take place in the City and County of San Francisco.
- B. **Demand for Arbitration.** Where the Owner disagrees with the Agency's Notice of Non-Qualification or Notice of Non-Compliance, **the Owner shall have seven (7) business days, in which to file a Demand for Arbitration**, unless otherwise stipulated by the parties. The Demand for Arbitration shall contain at a minimum: (1) a cover letter demanding arbitration under this provision and identifying entities believed to be involved in the dispute; (2) a copy of the Notice of Non-Qualification or Notice of Non-Compliance; and (3) any written response to the Notice of Non-Qualification or Notice of Non-Compliance. If the Owner fails to file a timely Demand for Arbitration, the Owner shall be deemed to have accepted and to be bound by the finding of Non-Qualification or the findings and recommendations contained in the Notice of Non-Compliance.
- C. **Parties' Participation.** The Agency and all persons or entities that have a contractual relationship affected by the dispute shall be made an Arbitration Party. Any such person or entity not made an Arbitration Party in the Demand for Arbitration may intervene as an Arbitration Party and in turn may name any other such person or entity as an Arbitration Party, provided however, that the Owner made an initial timely Demand for Arbitration pursuant to Section VII.B. above.
- D. **Agency Request to AAA.** Within seven (7) business days after service of a Demand for Arbitration, the Agency shall transmit to AAA a copy of the Demand for Arbitration, the Notice of Non-Qualification or Notice of Non-Compliance, and any written response thereto from the affected party. Such material shall be made part of the arbitration record.
- E. **Selection of Arbitrator.** One arbitrator shall arbitrate the dispute. The arbitrator shall be selected from the panel of arbitrators from AAA by the parties to the arbitration in accordance with the AAA rules. The parties shall act diligently in this regard. If the Arbitration Parties fail to agree on an arbitrator within seven (7) days from the receipt of the panel, AAA shall appoint the arbitrator. A condition to the selection of any arbitrator shall be

that person's agreement to render a decision within ninety (90) days from the arbitrator's fulfillment of the disclosure requirements set forth in California Code of Civil Procedure Section 1281.9.

- F. **Setting of Arbitration Hearing.** A hearing shall be held within ninety (90) days of the date of the filing of the Request, unless otherwise agreed by the parties. The arbitrator shall set the date, time and place for the arbitration hearing(s) within the prescribed time periods by giving notice by hand delivery or first class mail to each Arbitration Party.
- G. **Discovery.** In arbitration proceedings hereunder, discovery shall be permitted in accordance with Code of Civil Procedure §1283.05.
- H. **Burden of Proof.** The burden of proof with respect to Construction Work Force compliance and/or Good Faith Efforts shall be on the Owner. The burden of proof as to all other alleged breaches by the Owner shall be on the Agency.
- I. **California Law Applies.** Except where expressly stated to the contrary in this Construction Work Force Agreement, California law, including the California Arbitration Act, Code of Civil Procedure §§ 1280 through 1294.2, shall govern all arbitration proceedings.
- J. **Arbitration Remedies and Sanctions.** The arbitrator may impose only the remedies and sanctions set forth below:
 - 1. Order specific, reasonable actions and procedures, in the form of a temporary restraining order, preliminary injunction or permanent injunction, to mitigate the effects of the non-compliance and/or to bring any non-compliant Arbitration Party into compliance.
 - 2. Require any Arbitration Party to refrain from entering into new contracts related to work covered by the Owner or this Construction Work Force Agreement, or from granting extensions or other modifications to existing contracts related to services covered by the Owner or this Construction Work Force Agreement, other than those minor modifications or extensions necessary to enable compliance with this Construction Work Force Agreement.
 - 3. Direct any Arbitration Party to cancel, terminate, suspend or cause to be cancelled, terminated or suspended, any contract or portion(s) thereof for failure of any party to the arbitration to comply with any of the Agency's Work Force policy requirements. Contracts may be continued upon the condition that a program for future compliance is approved by the Agency.
 - 4. If any Arbitration Party is found to be in willful breach of its obligations hereunder, the arbitrator may impose a monetary sanction not to

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

5. Direct any Arbitration Party to produce and provide to the Agency any records, data or reports which are necessary to determine if a violation has occurred and/or to monitor the performance of any Arbitration Party.
- K. **Arbitrator's Decision.** The arbitrator shall make his or her award within twenty (20) days after the date that the hearing is completed; provided that where a temporary restraining order is sought, the arbitrator shall make his or her award not later than twenty-four (24) hours after the hearing on the motion. The arbitrator shall send the decision by certified or registered mail to each Arbitration Party.
- L. **Default Award; No Requirement to Seek an Order Compelling Arbitration.** The arbitrator may enter a default award against any person or entity who fails to appear at the hearing, provided that: (1) said person or entity received actual notice of the hearing; and (2) the complaining party has a proof of service for the absent person or entity. In order to obtain a default award, the complaining party need not first seek or obtain an order to arbitrate the controversy pursuant to Code of Civil Procedure §1281.2.
- M. **Arbitrator Lacks Power to Modify.** Except as otherwise provided, the arbitrator shall have no power to add to, subtract from, disregard, modify or otherwise alter the terms of this Construction Work Force Agreement or any other agreement between the Agency and Owner or to negotiate new agreements or provisions between the parties.
- N. **Jurisdiction/Entry of Judgment.** The inquiry of the arbitrator shall be restricted to the particular controversy which gave rise to the Demand for Arbitration. A decision of the arbitrator issued hereunder shall be final and binding upon all Arbitration Parties. The non-prevailing Arbitration Party(ies) shall pay the arbitrator's fees and related costs of arbitration (or reimburse the Arbitration Parties that advanced such arbitration fees and costs). Each Arbitration Party shall pay its own attorneys' fees, provided,

however, that attorneys' fees may be awarded to the prevailing party if the arbitrator finds that the arbitration action was instituted, litigated, or defended in bad faith. Judgment upon the arbitrator's decision may be entered in any court of competent jurisdiction.

- O. **Exculpatory Clause.** Owner expressly waives any and all claims against the Agency for damages, direct or indirect, including, without limitation, claims relative to the commencement, continuance and completion of construction and/or providing professional and consulting services ("the Work"). Owner acknowledges and agrees that the procedures set forth herein for dealing with alleged breaches or failure to comply with the obligations and requirements of this Construction Work Force Agreement are reasonable and have been anticipated by the parties in securing financing, in inviting, submitting and receiving bids and proposals for the planning, design and construction of the Horizontal Project and in determining the times for commencement and completion of the planning, design and construction and/or for providing consulting, professional or personal services.
- P. **Severability.** The provisions of this Construction Work Force Agreement are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this Construction Work Force Agreement or the invalidity of the application thereof to any person or circumstance shall not affect the validity of the remainder of this Construction Work Force Agreement or the validity of their application to other persons or circumstances.
- Q. **Arbitration Notice:** BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS SUCH RIGHTS ARE SPECIFICALLY INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

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

Agency

Owner

I, hereby certify that I have authority to execute this Construction Work Force Agreement on behalf of the Owner listed below and that Owner agrees to diligently exercise good faith efforts to comply with this Agreement to meet or exceed the construction work force participation goals. I declare under penalty of perjury under the laws of the State of California that the above statement is true and correct.

Transbay 2 Family LLC,

a California limited liability company

By:

EXHIBIT 8-3

PREVAILING WAGE POLICY

These Prevailing Wage Provisions (hereinafter referred to as "Labor Standards") apply to any and all construction of the Horizontal Project as defined in the underlying agreement between the Lessee and OCII of which this Exhibit and these Labor Standards are a part.

11.1 All Contracts and Subcontracts for construction and construction-related scopes of work shall contain the Labor Standards.

- (a) All specifications relating to the construction of the Horizontal Project shall contain these Labor Standards and the Lessee shall have the responsibility to assure that all contracts and subcontracts, regardless of tier, incorporate by reference the specifications containing these Labor Standards. If for any reason said Labor Standards are not included, the Labor Standards shall nevertheless apply. The Lessee shall supply the Agency with true copies of each contract relating to the construction of the Horizontal Project showing the specifications that contain these Labor Standards promptly after due and complete execution thereof and before any work under such contract commences. Failure to do shall be a violation of these Labor Standards.
- (b) If applicable, before close of escrow under the Agreement and as a condition to close of escrow, the Lessee shall also supply a written confirmation to the Agency from any construction lender for the Horizontal Project that such construction lender is aware of these Labor Standards.

11.2 Definitions. The following definitions shall apply for purposes of this Exhibit 8-3:

- (a) "Contractor" is the Lessee if permitted by law to act as a contractor, the general contractor, and any contractor as well as any subcontractor of any tier subcontractor having a contract or subcontract that exceeds \$10,000, and who employs Laborers, Mechanics, working foremen, and security guards to perform the construction on all or any part of the Horizontal Project.
- (a) "Laborers" and "Mechanics" are all persons providing labor to perform the construction, including working foremen and security guards.
- (b) "Working foreman" is a person who, in addition to performing supervisory duties, performs the work of a Laborer or Mechanic during at least 20 percent of the work week.

11.3 Prevailing Wage.

- (a) All Laborers and Mechanics employed in the construction of the Horizontal Project will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by §5) the full amount of wages and bona fide

fringe benefits (or cash equivalents thereof) due at the time of payment computed at rates not less than those contained in the General Prevailing Wage Determination (hereinafter referred to as the "Wage Determination") made by the Director of Industrial Relations pursuant to California Labor Code Part 7, Chapter 1, Article 2, sections 1770, 1773 and 1773.1, regardless of any contractual relationship which may be alleged to exist between the Contractor and such Laborers and Mechanics. A copy of the applicable Wage Determination is on file in the offices of the Agency.

- (b) All Laborers and Mechanics shall be paid the appropriate wage rate and fringe benefits for the classification of work actually performed, without regard to skill. Laborers or Mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein provided that the Contractor's payroll records accurately set forth the time spent in each classification in which work is performed.
- (c) Whenever the wage rate prescribed in the Wage Determination for a class of Laborers or Mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit in the manner as stated therein i.e. the vacation plan, the health benefit program, the pension plan and the apprenticeship program, or shall pay an hourly cash equivalent thereof.
- (d) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any Laborer or Mechanic the amount of any costs reasonably anticipated in providing benefits under a plan or program of a type expressly listed in the Wage Determination, provided that the Executive Director of the Agency has found, upon the written request of the Contractor, made through the Contractor that the intent of the Labor Standards has been met. Records of such costs shall be maintained in the manner set forth in subsection (a) of §8. The Executive Director of the Agency may require the Contractor to set aside in a separate interest bearing account with a member of the Federal Deposit Insurance Corporation, assets for the meeting of obligations under the plan or program referred to above in subsection (b) of this §4. The interest shall be accumulated and shall be paid as determined by the Agency acting at its sole discretion.
- (e) Regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

11.4 Permissible Payroll Deductions.

The following payroll deductions are permissible deductions. Any others require the approval of the Agency's Executive Director.

- (a) Any withholding made in compliance with the requirements of Federal, State or local income tax laws, and the Federal social security tax.
- (b) Any repayment of sums previously advanced to the employee as a bona fide prepayment of wages when such prepayment is made without discount or interest. A "bona fide prepayment of wages" is considered to have been made only when case or its equivalent has been advanced to the employee in such manner as to give him or her complete freedom of disposition of the advanced funds.
- (c) Any garnishment, unless it is in favor of the Contractor (or any affiliated person or entity), or when collusion or collaboration exists.
- (d) Any contribution on behalf of the employee, to funds established by the Contractor, representatives of employees or both, for the purpose of providing from principal, income or both, medical or hospital care, pensions or annuities on retirement, death benefits, compensation for injuries, illness, accidents, sickness or disability, or for insurance to provide any of the foregoing, or unemployment benefits, vacation pay, savings accounts or similar payments for the benefit of employees, their families and dependents provided, however, that the following standards are met:
 - 1. The deduction is not otherwise prohibited by law; and
 - 2. It is either:
 - a. Voluntarily consented to by the employee in writing and in advance of the period in which the work is to be done and such consent is not a condition either for obtaining or for the continuation of employment, or
 - b. Provided for in a bona fide collective bargaining agreement between the Contractor and representatives of its employees; and
 - 3. No profit or other benefit is otherwise obtained, directly or indirectly, by the Contractor (or any affiliated person or entity) in the form of commission, dividend or otherwise; and
 - 4. The deduction shall serve the convenience and interest of the employee.
- (e) Any authorized purchase of United States Savings Bonds for the employee.
- (f) Any voluntarily authorized repayment of loans from or the purchase of shares in credit unions organized and operated in accordance with Federal and State credit union statutes.

- (g) Any contribution voluntarily authorized by the employee for the American Red Cross, United Way and similar charitable organizations.
- (h) Any payment of regular union initiation fees and membership dues, but not including fines or special assessments provided, that a collective bargaining agreement between the Contractor and representatives of its employees provides for such payment and the deductions are not otherwise prohibited by law.

11.5 **Apprentices and Trainees.** Apprentices and trainees will be permitted to work at less than the Mechanic's rate for the work they perform when they are employed pursuant to and are individually registered in an apprenticeship or trainee program approved by the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training ("BAT") or with the California Department of Industrial Relations, Division of Apprenticeship Standards ("DAS") or if a person is employed in his or her first 90 days of probationary employment as an apprentice or trainee in such a program, who is not individually registered in the program, but who has been certified by BAT or DAS to be eligible for probationary employment. Any employee listed on a payroll at an apprentice or trainee wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate for a Mechanic. Every apprentice or trainee must be paid at not less than the rate specified in the registered program for the employee's level of progress, expressed as a percentage of a Mechanic's hourly rate as specified in the Wage Determination. Apprentices or trainees shall be paid fringe benefits in accordance with the provisions of the respective program. If the program does not specify fringe benefits, employees must be paid the full amount of fringe benefits listed in the Wage Determination.

11.6 **Overtime.** No Contractor contracting for any part of the construction of the Horizontal Project which may require or involve the employment of Laborers or Mechanics shall require or permit any such Laborer or Mechanic in any workweek in which he or she is employed on such construction to work in excess of eight hours in any calendar day or in excess of 40 hours in such workweek unless such Laborer or Mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of eight hours in any calendar day or in excess of 40 hours in such workweek, whichever is greater.

11.7 **Payrolls and Basic Records.**

- (a) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of its construction of the Horizontal Project and preserved for a period of one year thereafter for all Laborers and Mechanics it employed in the construction of the Horizontal Project. Such records shall contain the name, address and social security number of each employee, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for fringe benefits or cash equivalents thereof), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the wages of any Laborer or Mechanic include

the amount of any costs reasonably anticipated in providing benefits under a plan or program, the Contractor shall maintain records which show the costs anticipated or the actual costs incurred in providing such benefits and that the plan or program has been communicated in writing to the Laborers or Mechanics affected. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage prescribed in the applicable programs or the Wage Determination.

- (b) The Contractor shall submit to the Agency on each Wednesday at noon a copy of the payrolls for the week preceding the previous week in which any construction of the Horizontal Project was performed. The payrolls submitted shall set out accurately and completely all of the information required by the Agency's Optional Form, an initial supply of which may be obtained from the Agency. The Contractor if a prime contractor or the Contractor acting as the Contractor is responsible for the submission of copies of certified payrolls by all subcontractors; otherwise each Contractor shall timely submit such payrolls.

11.8 Each weekly payroll shall be accompanied by the Statement of Compliance that accompanies the Agency's Optional Form and properly executed by the Contractor or his or her agent, who pays or supervises the payment of the employees.

- (a) The Contractor shall make the records required under this §8 available for inspection or copying by authorized representatives of the Agency, and shall permit such representatives to interview employees during working hours on the job. On request the Executive Director of the Agency shall advise the Contractor of the identity of such authorized representatives.

11.9 **Occupational Safety and Health.** No Laborer or Mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous to his or her safety and health as determined under construction safety and health standards promulgated by Cal-OSHA or if Cal-OSHA is terminated, then by the federal OSHA.

11.10 **Equal Opportunity Program.** The utilization of apprentices, trainees, Laborers and Mechanics under this part shall be in conformity with the Agency's equal opportunity program set forth in Attachment 5 of this Lease Agreement.

11.11 **Nondiscrimination Against Employees for Complaints.** No Laborer or Mechanic to whom the wage, salary or other Labor Standards of this Agreement are applicable shall be discharged or in any other manner discriminated against by the Contractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or relating to these Labor Standards.

11.12 Posting of Notice to Employees. A copy of the Wage Determination referred to in subsection (a) of §4 together with a copy of a "Notice to Employees," in the form appearing on the last page of these Labor Standards, shall be given to the Contractor at the close of escrow. The Notice to Employees and the Wage Determination shall both be posted and maintained by the Contractor in a prominent place readily accessible to all applicants and employees performing construction of the Horizontal Project before construction commences. If such Notice and Wage Determination is not so posted or maintained, the Agency may do so.

11.13 Violation and Remedies.

- (a) Liability to Employee for Unpaid Wages. The Contractor shall be liable to the employee for unpaid wages, overtime wages and benefits in violation of these Labor Standards.
- (b) Stop Work--Contract Terms, Records and Payrolls. If there is a violation of these Labor Standards by reason of the failure of any contract or subcontract for the construction of the Horizontal Project to contain the Labor Standards as required by §2 ("Non-Conforming Contract"); or by reason of any failure to submit the payrolls or make records available as required by §8 ("Non-Complying Contractor"), the Executive Director of the Agency may, after written notice to the Contractor with a copy to the Contractor involved and failure to cure the violation within five working days after the date of such notice, stop the construction work under the Non-Conforming Contract or of the Non-Complying Contractor until the Non-Conforming Contract or the Non-Complying Contractor comes into compliance.
- (c) Stop Work and Other Violations. For any violation of these Labor Standards the Executive Director of the Agency may give written notice to the Contractor, with a copy to the Contractor involved, which notice shall state the claimed violation and the amount of money, if any, involved in the violation. Within five working days from the date of said notice, the Contractor shall advise the Agency in writing whether or not the violation is disputed by the Contractor and a statement of reasons in support of such dispute (the "Notice of Dispute"). In addition to the foregoing, the Contractor, upon receipt of the notice of claimed violation from the Agency, shall with respect to any amount stated in the Agency notice withhold payment to the Contractor of the amount stated multiplied by 45 working days and shall with the Notice of Dispute, also advise the Agency that the moneys are being or will be withheld. If the Contractor fails to timely give a Notice of Dispute to the Agency or to advise of the withhold, then the Executive Director of the Agency may stop the construction of the Horizontal Project under the applicable contract or by the involved Contractor until such Notice of Dispute and written withhold advice has been received.

Upon receipt of the Notice of Dispute and withhold advice, any stop work which the Executive Director has ordered shall be lifted, but the Contractor

shall continue to withhold the moneys until the dispute has been resolved either by agreement, or failing agreement, by arbitration as is provided in §14.

- (d) Withholding Certificates of Completion. The Agency may withhold any or all certificates of completion of the Horizontal Project provided for in this Agreement, for any violations of these Labor Standards until such violation has been cured.
- (e) General Remedies. In addition to all of the rights and remedies herein contained, but subject to arbitration, except as hereinafter provided, the Agency shall have all rights in law or equity to enforce these Labor Standards including, but not limited to, a prohibitory or mandatory injunction. Provided, however, the stop work remedy of the Agency provided above in subsection (b) and (c) is not subject to arbitration.

11.14 Arbitration of Disputes.

- (a) Any dispute regarding these Labor Standards shall be determined by arbitration through the American Arbitration Association, San Francisco, California office ("AAA") in accordance with the Commercial Rules of the AAA then applicable, but subject to the further provisions thereof.
- (b) The Agency and all persons or entities who have a contractual relationship affected by the dispute shall be made a party to the arbitration. Any such person or entity not made a party in the demand for arbitration may intervene as a party and in turn may name any such person or entity as a party.
- (c) The arbitration shall take place in the City and County of San Francisco.
- (d) Arbitration may be demanded by the Agency, the Lessee or the Contractor.
- (e) With the demand for arbitration, there must be enclosed a copy of these Labor Standards, and a copy of the demand must be mailed to the Agency and the Contractor, or as appropriate to one or the other if the Contractor or the Agency is demanding arbitration. If the demand does not include the Labor Standards they are nevertheless deemed a part of the demand. With the demand if made by the Agency or within a reasonable time thereafter if not made by the Agency, the Agency shall transmit to the AAA a copy of the Wage Determination (referred to in §4) and copies of all notices sent or received by the Agency pursuant to §13. Such material shall be made part of the arbitration record.
- (f) One arbitrator shall arbitrate the dispute. The arbitrator shall be selected from the panel of arbitrators of the AAA by the parties to the arbitration in accordance with the AAA rules. The parties shall act diligently in this regard. If the parties fail to select an arbitrator, within seven (7) days from the receipt of the panel, the AAA shall appoint the arbitrator. A condition to the selection


of any arbitrator shall be that person's agreement to render a decision within 30 days from appointment.

- (g) Any party to the arbitration whether the party participates in the arbitration or not shall be bound by the decision of the arbitrator whose decision shall be final and binding on all of the parties and any and all rights of appeal from the decision are waived except a claim that the arbitrator's decision violates an applicable statute or regulation. The decision of the arbitrator shall be rendered on or before 30 days from appointment. The arbitrator shall schedule hearings as necessary to meet this 30 day decision requirement and the parties to the arbitration, whether they appear or not, shall be bound by such scheduling.
- (h) Any party to the arbitration may take any and all steps permitted by law to enforce the arbitrator's decision and if the arbitrator's decision requires the payment of money the Contractor shall make the required payments and the Contractor shall pay the Contractor from money withheld.
- (i) Costs and Expenses. Each party shall bear its own costs and expenses of the arbitration and the costs of the arbitration shall be shared equally among the parties.

11.15 **Non-liability of the Agency.** The Contractor and each Contractor acknowledge and agree that the procedures hereinafter set forth for dealing with violations of these Labor Standards are reasonable and have been anticipated by the parties in securing financing, in inviting, submitting and receiving bids for the construction of the Horizontal Project, in determining the time for commencement and completion of construction and in proceeding with construction work. Accordingly the Contractor, and any Contractor, by proceeding with construction expressly waives and is deemed to have waived any and all claims against the Agency for damages, direct or indirect, arising out of these Labor Standards and their enforcement and including but not limited to claims relative to stop work orders, and the commencement, continuance or completion of construction.

EXHIBIT 8-4

NONDISCRIMINATION IN CONTRACTS AND BENEFITS

	<p>OFFICE OF COMMUNITY INVESTMENT AND INFRASTRUCTURE (OCII) (SUCCESSOR TO THE SAN FRANCISCO REDEVELOPMENT AGENCY)</p> <p>DECLARATION FORM</p> <p>Nondiscrimination in Contracts and Benefits</p>
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Section A

Is your company/organization currently certified by the City and County of San Francisco in compliance with Administrative Code 12B Equal Benefits Ordinance and will your company/organization ensure nondiscrimination in contracts and benefits pursuant to 12B on OCII contracts? If yes, please indicate below, skip Section B, and execute the Declaration in Section C. If no, please skip Section A and complete Sections B and C.

- My company/organization is certified and compliant with the 12B Equal Benefits Ordinance of the City and County of San Francisco and there has been no change in our 12B Declaration since certification. My company/organization agrees to ensure nondiscrimination in contracts and benefits pursuant to 12B on OCII contracts. (Please check box to affirm, if applicable)

Section B

1. Nondiscrimination—Protected Classes

a. Is it your company/organization’s policy that you will not discriminate against your employees, applicants for employment, employees of the Office of Community Investment and Infrastructure (successor to the San Francisco Redevelopment Agency) (Agency), or City and County of San Francisco (City), or members of the public for the following reasons:

- | | | |
|---------------------------|------------------------------|-----------------------------|
| • Race | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • color | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Creed | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Religion | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • ancestry | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • national origin | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Age | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • sex | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • sexual orientation | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • gender identity | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • marital status | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • domestic partner status | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Disability | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • AIDS or HIV status | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

b. Do you agree to insert a similar nondiscrimination provision in any subcontract you enter into for the performance of a substantial portion of the contract that you have with the Agency or the City?
 Yes No

If you answered “no” to any part of Question 1a or 1b, the Agency or the City cannot do business with you.

2. Nondiscrimination—Equal Benefits (Question 2 does not apply to subcontracts or subcontractors)

- a. Do you provide, or offer access to, any benefits to employees with spouses or to spouses of employees?
 Yes No
- b. Do you provide, or offer access to, any benefits to employees with domestic partners (Partners) or to domestic partners of employees?
 Yes No

If you answered “no” to both Questions 2a and 2b, skip 2c and 2d, and sign, date and return this form. If you answered “yes” to Question 2a or 2b, continue to 2c.

- c. If “yes,” please indicate which ones. This list is not intended to be exhaustive. Please list any other benefits you provide (even if the employer does not pay for them).

Benefit	Yes, for Spouses	Yes, for Partners	No
• Medical (health, dental, vision)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Pension	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Bereavement	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Family leave	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Parental leave	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Employee assistance programs	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Relocation and travel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Company discounts, facilities, events	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Credit union	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Child care	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Other _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Other _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

- d. If you answered “yes” to Question 2a or 2b, and in 2c indicated that you do not provide equal benefits, you may still comply with the Policy if you have taken all reasonable measures to end discrimination in benefits, have been unable to do so, and now provide employees with a cash equivalent.

- (1) Have you taken all reasonable measures? Yes No
- (2) Do you provide a cash equivalent? Yes No

3. Documentation for Nondiscrimination in Benefits (Questions 2c and 2d only)

If you answered “yes” to any part of Question 2c or Question 2d, you must attach to this form those provisions of insurance policies, personnel policies, or other documents you have which verify your compliance with Question 2c or Question 2d. Please include the policy sections that list the benefits for which you indicated “yes” in Question 2c. If documentation does not exist, attach an explanation, e.g., some of your personnel policies are unwritten. If you answered “yes” to Question 2d(1) complete and attach form SFRA/CC-103, “Nondiscrimination in Benefits—Reasonable Measures Affidavit,” which is available from the Agency. You need not document your “yes” answer to Question 1a or Question 1b.

Section C

I declare (or certify) under penalty of perjury that the foregoing is true and correct, and that I am authorized to bind this entity contractually.

Name of Company/Organization: _____

Doing Business As (DBA): _____

Also Known As (AKA): _____

General Address: _____

Remittance Address (if different from above): _____

Name of Signatory: _____ Title: _____

(Please Print)

Signature: _____

Phone Number: _____ Federal Tax Identification Number: _____

Approximate number of employees in the U.S.: _____ Vendor Number: _____
(if known)

EXHIBIT 8-5

HEALTH CARE ACCOUNTABILITY POLICY DECLARATION

What the Policy does. The Office of Community Investment and Infrastructure (“OCII”) (as Successor Agency to the Redevelopment Agency of the City and County of San Francisco) adopted the San Francisco Health Care Accountability Policy (the “HCAP”), which became effective on September 25, 2001. The HCAP requires contractors and subcontractors that provide services to OCII, contractors and subcontractors that enter into leases with OCII, and parties providing services to tenants and sub-tenants on OCII property to offer health plan benefits to their employees.

Specifically, contractors can either: (1) offer the employee minimum standard health plan benefits established by the San Francisco Department of Public Health (“SFDPH”), as approved by the OCII Commission; (2) pay OCII an amount equivalent to the current fee established by the SFDPH for each hour the employee works on the covered contract or subcontract or on property covered by a lease and OCII will appropriate the money for staffing and other resources to provide medical care for the uninsured; or (3) participate in a health benefits program developed and offered by SFDPH. The minimum health plan standards and fees established by SFDPH are published at <https://sf.gov/information/understanding-minimum-compensation-ordinance>.

OCII may require contractors to submit reports on the number of employees affected by the HCAP.

Effect on OCII contracting. For contracts and amendments signed on or after September 25, 2001, the HCAP will have the following effect:

- in each contract, the contractor will agree to abide by the HCAP and to provide its employees the minimum benefits the HCAP requires, and to require its subcontractors to do the same.
- if a contractor does not provide the HCAP’s minimum benefits, OCII can award a contract to that contractor **only if** the contract is exempt under the HCAP, or if the contract has received a waiver from OCII.

What this form does. Your signed declaration will help OCII’s contracting practice. Sign this form if you can assure OCII that, beginning with the first OCII’s contract or amendment you receive after September 25, 2001 and until further notice, you will provide the minimum benefit levels specified in the HCAP to your covered employees, and will ensure that your subcontractors also subject to the HCAP do the same.

If you cannot make this assurance now, please do not return this form.

For more information, please see the complete text of the HCAP, available from the OCII’s Contract Compliance Department at: (415) 749-2400 or <http://sfocii.org/policies-and-procedures>.

Routing. Return this form to: Contact Compliance Department, Office of Community Investment and Infrastructure, 1 South Van Ness Avenue, Fifth Floor, San Francisco, CA 94103.

Declaration

Effective with the first OCII contract or amendment this company receives on or after September 25, 2001, this company will provide the minimum benefit levels specified in the HCAP to our covered employees, and will ensure that our subcontractors also subject to the HCAP do the same, until further notice. This company will give such notice as soon as possible.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Signature

Date _____

Print Name

Company Name

Phone _____

EXHIBIT 8-6

MINIMUM COMPENSATION POLICY DECLARATION

What the Policy does. The Office of Community Investment and Infrastructure (“OCII”) (Successor Agency to the San Francisco Redevelopment Agency) adopted the Minimum Compensation Policy (“MCP”), which became effective on September 25, 2001. The MCP requires contractors and subcontractors to pay Covered Employees a minimum hourly wage and to provide 12 compensated and 10 uncompensated days off per year. The Minimum Compensation rate adjusts automatically to match the wage rate required by the City and County of San Francisco’s Minimum Compensation Ordinance. Contractor is obligated to keep informed of the then-current requirements, which are published at <https://sf.gov/information/understanding-minimum-compensation-ordinance>.

OCII may require contractors to submit reports on the number of employees affected by the MCP.

Effect on OCII contracting. For contracts and amendments signed on or after September 25, 2001, the MCP will have the following effect:

- in each contract, the contractor will agree to abide by the MCP and to provide its employees the minimum benefits the MCP requires, and to require its subcontractors subject to the MCP to do the same.
- if a contractor does not provide the MCP minimum benefits, OCII can award a contract to that contractor only if the contract is exempt under the MCP, or if the contract has received a waiver from OCII.

What this form does. Your signed declaration will help OCII’s contracting practice. Sign this form if you can assure OCII that, beginning with the first OCII contract or amendment you receive after September 25, 2001 and until further notice, you will provide the minimum benefit levels specified in the MCP to your covered employees, and will ensure that your subcontractors also subject to the MCP do the same.

If you cannot make this assurance now, please do not return this form.

For more information, please see the complete text of the MCP, available from the OCII Contract Compliance Department at (415) 749-2400 or <http://sfocii.org/policies-and-procedures>.

Routing. Return this form to: Contract Compliance Department, Office of Community Investment and Infrastructure (Successor to the San Francisco Redevelopment Agency), 1 South Van Ness, Fifth Floor, San Francisco, CA 94103.

Declaration

Effective with the first OCII contract or amendment this company receives on or after September 25, 2001, this company will provide the minimum benefit levels specified in the MCP to our covered employees, and will ensure that our subcontractors also subject to the MCP do the same, until further notice. This company will give such notice as soon as possible.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Signature

Date

Print Name

Company Name

Phone