

# City and County of San Francisco First Source Hiring Program



*Edwin M. Lee, Mayor*

Office of Economic and Workforce  
Development Workforce  
Development Division

## Attachment A-1: First Source Hiring Agreement

### For Business, Commercial, Operation and Lease Occupancy of a Vertical Improvement

This First Source Hiring Agreement (this “FSHA Operations Agreement”), is made as of \_\_\_\_\_, by and between \_\_\_\_\_ (the “Lessee”), and the First Source Hiring Administration, (the “FSHA”), collectively the “Parties”:

#### RECITALS

WHEREAS, Lessee has plans to occupy a portion of the building at [Address] (the “Premises”) which required a First Source Hiring Agreement between the contractor and FSHA because the Premises is subject to a property contract between [Developer/Vertical] and the City acting through the San Francisco Port Commission;

WHEREAS, the **[Developer/Vertical Developer]** was required to provide notice in leases, subleases and other occupancy contracts for use of the Premises (“Contract”);and

WHEREAS, as a material part of the consideration given by Lessee under the Contract, Lessee has agreed to execute this FSHA Operations Agreement and participate in the Workforce System managed by the Office of Economic and Workforce Development (“OEWD”) as established by the City and County of San Francisco pursuant to Chapter 83 of the San Francisco Administrative Code (“Chapter 83”);

**[Use the following WHEREAS for Vertical Developer operations of Vertical Improvements]**

WHEREAS, Lessee has plans to operate the building at [Address] (the “Premises”) which required a First Source Hiring Agreement between the contractor and FSHA because the Premises is subject to a property contract between Lessee and the City acting through the San Francisco Port Commission; and

**[Use the following WHEREAS for subtenants of Vertical Improvements]**

WHEREAS, as a material part of the consideration given by Lessee under the property contract, Lessee has agreed to execute this FSHA Operations Agreement and participate in the Workforce System managed by the Office of Economic and Workforce Development (“OEWD”) as established by the City and County of San Francisco pursuant to Chapter 83 of the San Francisco Administrative Code (“Chapter 83”);]

NOW, THEREFORE, in consideration of the mutual covenants set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Parties covenant and agree as follows:

1. DEFINITIONS

For purposes of this FSHA Operations Agreement, initially capitalized terms shall be defined as follows:

- a. Entry Level Position: Any non-managerial position that requires no education above a high school diploma or certified equivalency, and less than two (2) years training or specific preparation, and shall include temporary, permanent, trainee and intern positions.
- b. Developer shall mean FC Pier 70, LLC, a Delaware limited liability company, including any successor during the term of this FSHA Operations Agreement.
- c. Lessee shall mean every commercial tenant, subtenant, or any other entity occupying a Workforce Improvement for the intent of doing business in the City and County of San Francisco and possessing a Business Registration Certificate with the Office of Treasurer required to enter into a First Source Hiring Agreement as defined in Chapter 83.
- d. Project Site shall mean the area consisting of an approximately 28-acre site located in the Pier 70 area bounded by Illinois Street on the west, 22<sup>nd</sup> Street on the south, and San Francisco Bay on the north and east.
- e. Referral: A member of the Workforce System who has been identified by OEWD as having the appropriate training, background and skill sets for a Lessee specified Entry Level Position.
- f. Vertical Developer shall mean [*insert name of applicable Vertical Developer*], including any successor during the term of a FSHA Operations Agreement.
- g. Vertical Improvement shall mean a new building that is built at the Project Site.
- h. Workforce Improvement: Vertical Improvements that are subject to Chapter 83.
- i. Workforce System: The First Source Hiring Administrator established by the City and County of San Francisco and managed by OEWD.

2. OEWD WORKFORCE SYSTEM PARTICIPATION

- a. Lessee shall notify OEWD's Business Team of every available Entry Level Position and provide OEWD 10 business days to recruit and refer qualified candidates prior to advertising such position to the general public. Lessee shall provide feedback including but not limited to job seekers interviewed, including name, position title, starting salary and employment start date of those individuals

hired by the Lessee no later than 10 business days after date of interview or hire. Lessee will also provide feedback on reasons as to why referrals were not hired. Lessee shall have the sole discretion to interview any Referral by OEWD and will inform OEWD's Business Team why specific persons referred were not interviewed. Hiring decisions shall be entirely at the discretion of Lessee.

- b. Notwithstanding anything to the contrary herein, nothing in this FSHA Operations Agreement precludes Lessee from immediately advertising and filling an Entry Level Position that performs essential functions of its operation prior to notifying OEWD provided, however, the obligations of this FSHA Operation Agreement to make good faith efforts to fill such vacancies permanently with Referrals remains in effect. For these purposes, "essential functions" means those functions absolutely necessary to remain open for business. If Lessee has an immediate need to fill an Entry Level Position that performs essential functions, Lessee shall provide OEWD notice of such position, and the fact that there is an immediate need to fill such position, on or before the date such position is advertised to the general public.
- c. This FSHA Operations Agreement shall be in full force and effect as to each Workforce Improvement until ten (10) years following the date Lessee opens for business at the Premises, and all subsequent leases within 10 years of that date. After that date, this FSHA Operations Agreement shall terminate and be of no further force and effect on the parties hereto, but the requirements of Chapter 83 shall continue to apply.
- d. Unless otherwise agreed to by the Parties, compliance with this Agreement shall be determined on an individual Workforce Improvement basis and will be measured by dividing the number of new Entry Level Positions occupied by First Source referrals by the total number of new Entry Level Positions within the Workforce Improvement. Notwithstanding anything to the contrary, new Entry Level Positions occupied by First Source referrals within the Project Site, but not within the Vertical Improvement, may, at the election of Developer, be counted towards compliance of the Workforce Improvement for this Agreement.

### 3. GOOD FAITH EFFORT TO COMPLY WITH ITS OBLIGATIONS HEREUNDER

Lessee will make good faith efforts to comply with its obligations under this FSHA Operations Agreement. Determination of good faith efforts shall be based on all of the following:

- a. Lessee will execute this FSHA Operations Agreement and Attachment B-1 upon entering into leases for the commercial space of the Workforce Improvement. Lessee will also accurately complete and submit Attachment B-1 annually to reflect employment conditions.
- b. Lessee agrees to register with OEWD's Referral Tracking System, upon execution of this FSHA Operations Agreement.

- c. Lessee shall notify OEWD's Business Services Team of all available Entry Level Positions 10 business days prior to posting with the general public, subject to the provisions of Section 2 above. The Lessee must identify a single point of contact responsible for communicating Entry Level Positions and take active steps to ensure continuous communication with OEWD's Business Services Team.
- d. Lessee attempts to fill at least 50% of open Entry Level Positions with First Source referrals. Specific hiring decisions shall be the sole discretion of the Lessee.
- e. Nothing in this FSHA Operations Agreement shall be interpreted to prohibit the continuation of existing workforce training agreements or to interfere with consent decrees, collective bargaining agreements, or existing employment contracts. In the event of a conflict between this FSHA Operations Agreement and an existing agreement, the terms of the existing agreement shall supersede this FSHA Operations Agreement.

Lessee's failure to meet the criteria set forth in this Section 3 does not impute "bad faith", but shall trigger a review of the referral process and compliance with this FSHA Operations Agreement. Failure and noncompliance with this FSHA Operations Agreement will result in penalties as defined in SF Administrative Code Chapter 83, Lessee agrees to review SF Administrative Code Chapter 83, and execution of the FSHA Operations Agreement denotes that Lessee agrees to its terms and conditions.

#### 4. NOTICE

All notices to be given under this FSHA Operations Agreement shall be in writing and sent via mail or email as follows:

If to OEWD:

ATTN:

If to Lessee:

ATTN:

#### 5. ENTIRE AGREEMENT

This FSHA Operations Agreement and the Transaction Documents contain the entire agreement between the parties and shall not be modified in any manner except by an instrument in writing executed by the parties or their respective successors. If any term or provision of this FSHA Operations Agreement shall be held invalid or unenforceable, the remainder of this FSHA Operations Agreement shall not be affected. If this FSHA Operations Agreement is executed in one or more counterparts, each shall be deemed an original and all, taken together, shall constitute one and the same instrument. This FSHA Operations Agreement shall inure to the benefit of and be binding on the parties and their respective successors and assigns. If there is more than one party comprising Lessee, their obligations shall be joint and several.

Section titles and captions contained in this FSHA Operations Agreement are inserted as a matter of convenience and for reference and in no way define, limit, extend or describe the scope of this Agreement or the intent of any of its provisions. This FSHA Operations Agreement shall be governed and construed by laws of the State of California.

[Signature Page Follows]

IN WITNESS WHEREOF, the following have executed this FSHA Operations Agreement as of the date set forth above.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Name of Authorized Signer: \_\_\_\_\_

Company: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

Confidential Draft

*Confidential Draft*